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The Italian Labour Market after the Biagi Reform

Abstract: This paper examines the reasons for the Biagi Reform, and identifies the low levels of labour market participation and the extensive hidden economy in Italy as key factors. With a focus on the objectives of the European Employment Strategy, the Biagi reform, first outlined by Marco Biagi in the White Paper on the Labour Market in October 2001 and enacted by means of Legislative Decree No. 276/2003 and subsequent decrees, aims to raise employment levels, increase the number of workers in stable employment, and promote labour market access for disadvantaged groups. The principle of subsidiarity leads to the allocation of certain tasks to the Regions and to collective bargaining, while maintaining the unitary structure of the reform, also for the purposes of creating the conditions for consolidated legislation in the form of a Work Statute. The paper provides a survey of the implementation of the reform so far, including the recent ruling by the Constitutional Court upholding the principles of the reform, and argues that a proper assessment will only be possible in a longer time frame, but that initial results are indicative of an increase in the level of stable employment.

1. THE REASONS FOR THE REFORM

With the entry into force of Act No. 30/2003, and the decrees implementing the Act, Italy has initiated an ambitious process for the radical reform of the labour market

The reform project outlined in the White Paper on the Labour Market published in October 2001¹ has encountered considerable difficulties along the way, and this helps to explain why the Italian legislator has provided quite a long interim period,² in order to enable the transition from the old to the new legal framework to be carried out gradually by means of a series of experimental stages. The opposition of part of the trade union movement to Government proposals to suspend or repeal, even only on an

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¹ Available on the Marco Biagi Centre for International and Comparative Studies website www.csmb.unimo.it, selecting *Riforma Biagi* from the list of contents A-Z.

² For a reconstruction of the transitional legal provisions and an assessment see M. Tiraboschi (ed.), *La riforma Biagi del mercato del lavoro, Prime interpretazioni e proposte di lettura del d.lgs. 10 settembre 2003, n. 276. Il diritto transitorio e i tempi della riforma*, Giuffrè, Milan, 2004.

experimental basis,³ certain consolidated elements of Italian labour law – in particular, Article 18 of the *Statuto dei lavoratori* that dates back to 1970 and deals with the protection of the worker in the case of unjustified dismissal – gave rise to a long period of tension and social conflict that had a strong impact on the approval of a range of measures, even though they are largely a continuation of those adopted during the previous legislature, and in particular the Treu measures introduced in 1997.

Nor should it be forgotten that the confrontation between the Government and the social partners was dramatically altered – and contaminated – by a sudden revival of domestic terrorism with the assassination by a group of terrorists on the evening of 19 March 2002 of Prof. Marco Biagi, who had drafted both the White Paper and the related delegating legislation.⁴

Only in the early months of 2003 – in the wake of the tripartite agreement of 5 July 2002 (known as the *Patto per l'Italia* or Pact for Italy) signed by 36 employers' and trade union organisations (with the sole exception of the CGIL)⁵ and following the entry into force of Act No. 30/2003⁶ – was it possible to proceed with a legislative intervention aimed at reorganising the labour market,⁷ together with the reform of the Labour Inspectorate and the supervisory functions relating to employment and social insurance.⁸ In relation to the programme outlined in the White Paper, the parts that still have to be introduced are the new safety-net measures – that are incorporated, together with the proposal to modify Article 18 of the *Statuto dei lavoratori*, in a proposal for delegating legislation currently under discussion in Parliament – and, at a later stage, a *Statuto dei lavori* or Work Statute.⁹ The Government intends this to be a single piece of legislation consolidating all the norms relating to labour law, so that the current reform becomes part of an organic and unitary framework.

The reform of the labour market – quite rightly dedicated to Marco Biagi¹⁰ – should not be seen as the final stage of a reform programme that

³ The reform makes provision for a two-year experimental period (October 2003 – October 2005), after which by means of negotiation the Government and the social partners will ascertain which norms to confirm, and which ones to amend or abolish.

⁴ News reports and articles on the various stages of the reform are available on the Marco Biagi Centre for International and Comparative Studies website (www.csmb.unimo.it).

⁵ See www.csmb.unimo.it, list of contents A-Z, *Riforma Biagi*.

⁶ See www.csmb.unimo.it, list of contents A-Z, *Riforma Biagi*.

⁷ See Legislative Decree No. 276/2003, as amended by Legislative Decree No. 251/2004, at www.csmb.unimo.it, list of contents A-Z, *Riforma Biagi*.

⁸ See Legislative Decree No. 124/2004, at www.csmb.unimo.it, list of contents A-Z, *Servizi ispettivi*.

⁹ See www.csmb.unimo.it, list of contents A-Z, *Statuto dei lavori*.

¹⁰ The polemical discussion about the authorship of the reform appears to have been rather futile. For a collection of drafts and norms that provide incontrovertible evidence of the fact that the reform was designed by Marco Biagi, see *La riforma Biagi del mercato del lavoro: il lungo*

can trace its roots a long way back. Rather, the legislative decrees implementing Act no. 30/2003 represent a starting point, an essential step that is not sufficient in itself to bring about a complex redefinition and rationalisation of the rules governing the labour market. This is not just because the necessary preconditions are now being put in place for a codification of a *Statuto dei lavori* or Work Statute, laying down a body of fundamental rights for all workers, and not just those in the public administration or in large and medium-sized undertakings, in order to overcome once and for all the dichotomy between those with a particularly high level of protection and those with hardly any safeguards at all, resulting from an ill-conceived and shortsighted distribution of employment protection rights. What is even more decisive, in this transition period between the old and the new legal frameworks, is the role of the social partners and, in particular, of the bilateral bodies¹¹ provided in the new legislation as the forum for the regulation of the labour market and for balancing the interests of the two sides. The reform assigns a central role to the social partners, as shown by the 43 references to collective bargaining in the decree law. Collective bargaining is therefore intended as the means for dealing with the various matters covered by the reform.

Any assessment of the implementation of the reform therefore needs to be based on a careful monitoring of collective bargaining, as this is essential for the implementation of the measures laid down by the national legislation. However, this will only be possible at the end of the transition period, and in particular only once the functions to be performed by the social partners have been implemented not only in the various productive sectors but also in individual undertakings and above all at a local and regional level.

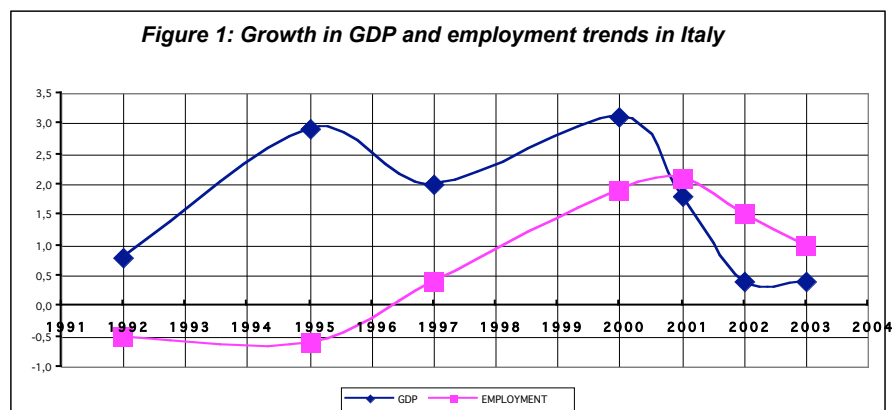
On this basis, in order to describe the most important developments and the changes taking place in the regulation of the Italian labour market since the enactment of the Biagi reform, it is necessary to provide an outline of the reasons for the reform, reasons that are evident if we consider the poor performance of the Italian labour market in comparison not just with that of the United States and Japan, but also with other European countries.

Over the years the Italian economy has been characterised by low employment levels in relation to economic growth, also due to the significant barriers that limit access to the regular labour market, as shown in Figure 1.

percorso della modernizzazione, in *Quaderni AGENS*, n. 1/2004, available at www.csmb.unimo.it, selecting *Pubblicazioni*.

¹¹ See G. De Lucia, S. Ciuffini, *The System of Bilateral Bodies in the Artisan Sector: The Italian Experience in the Context of European Social Dialogue*, in *IJCLIR*, Vol. 20 (1), 2004, p. 133.

Figure 1: Growth in GDP and employment trends in Italy.



Source: Graph based on ISTAT figures

What is particularly serious is the shortfall compared to the employment objectives laid down in Lisbon, most notably the target of 70 per cent employment for all the European economies. In spite of the positive trend over the past three years (with a 2.5 per cent increase), in 2003 the regular employment rate stood at just 56 per cent of the total population, the worst performance in Europe. The female employment rate, at 42.7 per cent, is also clearly insufficient, and the same may be said for those over the age of 55, at just 30.3 per cent. Activity and employment rates for men and women are shown in Figure 2.

Figure 2: Rates of activity (A) and employment (E) for the 15-64 age range, 2002-2003.

Area	2002				2003			
	Men		Women		Men		Women	
	(A)	(E)	(A)	(E)	(A)	(E)	(A)	(E)
North	76.0	74.0	55.7	52.5	76.6	74.6	56.5	53.4
Centre	74.0	70.5	50.8	46.0	74.9	71.4	51.8	46.9
South	71.4	61.2	36.8	27.0	71.4	61.4	36.3	27.1
Italy	74.0	68.8	47.9	42.0	74.4	69.3	48.3	42.7

Source: National Employment Plan 2004 based on ISTAT figures

Also the duration of unemployment is one of the longest in Europe: more than 5 per cent of the workforce have been unemployed for at least a year, compared to the EU average of 3.8 per cent. The statistics are even more alarming if we shift the focus from the national to the regional figures, and consider the territorial differences between the North and the South of Italy. The shortage of workers in the North-East is the counterpoint to the high level of unemployment and the limited prospects for growth in the *Mezzogiorno*. In recent months unemployment in the South has fallen below 20 per cent, but the chronic inefficiency of the public employment services tends to aggravate the long-term structural problems rather than alleviating them.

Together with a regular employment rate that is one of the lowest in Europe, Italy is characterised by an enormous submerged or hidden economy, especially in the South, that is estimated to account for 23-27 per cent of GDP,¹² twice the European average. This may be seen as a national emergency that concerns a vast number of people: more than four million workers, who are employed outside of any regulatory framework. There is also an extensive grey area, between self-employment and salaried employment, often consisting of forms of employment that are based on a legal fiction of self-employment when they are not actually *contra legem*.

It is well known that in the late 1990s, various forms of employment not leading to a stable and regular occupation gradually degenerated, giving rise to a kind of quasi-salaried employment known as *collaborazioni coordinate e continuative*. Many undertakings made widespread use of this form of employment in a vain attempt to meet the demands of competition, in an increasingly international market, simply by reducing costs instead of aiming to improve the quality of labour by investing in human capital. This model of employment contract is associated not just with genuine forms of self-employment, but also with precarious forms of employment that give rise to situations of illicit work and the evasion of social insurance contributions, which until recently was widely tolerated. The fact that such practices are firmly rooted in the Italian labour market goes some way to explaining the lack of flexible forms of salaried employment facilitating access to the labour market on the part of young people and women, and encouraging the participation of older persons. In the rest of Europe – where quasi-salaried employment in the form of *collaborazioni coordinate e continuative* does not exist – part-time work involves 18 per cent of the workforce (and one out of every three women), and fixed-term contracts almost 13 per cent of the

¹² Research reports on employment in the hidden economy are available on the website of the Ministry of Labour and Social Policy (www.welfare.gov.it), selecting *Lavoro, occupazione e mercato del lavoro*.

workforce, whereas in Italy just 9 per cent of workers are part-time, and fixed-term contracts account for just under 10 per cent.

Moreover, the provisions for supporting the transition from full-time education to employment are inadequate. The employment and training participation rate on the part of young people is more than 6 percentage points lower than in the rest of Europe, whereas the unemployment rates for young people, and the long-term unemployment rates for the same category (in the case of young people, more than six months without work or training) are among the highest in Europe.

Italy presents clear and alarming signs of a decline in the quality of human capital also in terms of training for those of working age, in the form of continuing education. Although some informal training is provided in the extensive network of small and medium-sized enterprises, without which it would be hard to account for Italy's competitive position, Italy's performance in terms of lifelong learning is better only than that of Greece and Portugal, even in the enlarged EU with 25 Member States. The European average is almost 10 per cent of the workforce receiving training in the past year (still far short of the target adopted in Lisbon), whereas in Italy it is just 4 per cent.

This figure also reflects a low level of occupational mobility in the Italian labour market, compared to the economies of the UK, the Netherlands and the Nordic countries, that have rates that are from five to eight times higher.

Recent surveys¹³ have shown that in Italy three out of four enterprises (accounting for 44 per cent of employees) have carried out no training at all. The main factor appears to be the absence of any perception of the need for training or the lack of time on the part of the employees, who are too busy contributing to the production of goods and services. On the other hand, training costs do not appear to be a significant factor for companies, though in this case Italy ranks above the other EU countries, with a cost of €47 per participant against an EU average of €31. Considering the enterprises taking part in the survey, just 18 per cent reported that the training services they required were available on the market, a figure that was well below the EU average of 29 per cent.

From the scenario outlined above it was clear – and continues to be clear – to those drafting the reform that the labour market is not highly developed and is lacking in dynamism, with negative features both in quantitative and qualitative terms, and a low level of investment in human capital. Alongside a group of workers enjoying high levels of protection (some 3.5 million in the public administration and some 8.5 million in large and medium-sized enterprises), there are others with low levels of protection (more than five million atypical or non-standard workers along

¹³ See the bibliography in M. Sacconi, P. Reboani, M. Tiraboschi, *La Società attiva*, Marsilio, Venezia, 2004, also available at www.csmb.unimo.it.

with those employed in small and medium-sized enterprises), and those with no protection whatsoever (some four million workers in the hidden economy).

The Biagi reform takes as its starting point the need to recognise and deal with the poor performance of the Italian labour market and – as stated in Article 1 of Legislative Decree No. 276/2003 – to contribute to increasing the rates of regular quality employment, especially with regard to access to employment for the categories at risk of social exclusion, the so-called outsiders.

2. THE PILLARS OF THE BIAGI REFORM OF THE LABOUR MARKET: EMPLOYABILITY, ADAPTABILITY AND EQUAL OPPORTUNITIES

In the light of the overall structure of the labour market outlined above, with all its evident shortcomings, it seems to be misleading to interpret the Biagi reform, as has been prevalently the case until now, as if it were intended to expand the area of precarious employment or, on the basis of political and/or ideological positions, in terms of mere flexibility as an end in itself.¹⁴ It is clear that with some four million workers in the hidden economy and some two million in quasi-salaried employment the Italian labour market has been characterised for some time by the worst forms of precarious employment, of a deregulated kind over which the trade unions are not in a position to exert any influence. Flexibility of this kind is therefore outside the legal framework, with serious consequences in terms of employment protection but also in terms of competition between enterprises, giving rise to a vicious circle that the Biagi reform is intended to break, albeit by means of largely experimental measures that need to be put to the test in practical terms. It is significant that the final article of Legislative Decree No. 276/2003 clearly states the experimental nature of the decree, specifying that in May 2005 a round of negotiations is to take place between the Government and the social partners to assess its impact on the labour market, also with a view to introducing any changes to the legal provisions that may be required.

If the interpretation of the reform as an attempt to introduce flexibility and precarious employment is misleading, in a market that is as dysfunctional as ours, the key words for interpreting the reform appear to be “employability”, “adaptability” and “equal opportunities”. These concepts are adopted as labour policy guidelines in the European Employment Strategy¹⁵ and are embodied in the reform in an efficient

¹⁴ For a survey of the legal issues, see M. Biagi, M. Tiraboschi, *Istituzioni di diritto del lavoro*, Giuffrè, Milan, 2004.

¹⁵ On the relationship between the Biagi reform and the European Employment Strategy, see M. Biagi, M. Tiraboschi, *Istituzioni di diritto del lavoro*, cit.

system of employment services, public and private, authorised and accredited, which, as part of a network creating an online employment database, facilitate the matching of the supply and demand for labour.¹⁶ The various forms of flexibility in this framework are regulated and negotiated with the trade unions, providing an alternative to precarious employment and the hidden economy, and striking a balance between the requirements of the enterprise to compete on international markets, and the fundamental need for employment protection and for improving conditions for employees. Moreover, the framework provides for experimental measures with active “workfare” policies in favour of those groups of workers who today encounter most difficulty in gaining access to regular employment of good quality, with a view to improving job security, achieving a balance between work and personal and family life, meeting the needs of women workers, workers with disabilities, young people and persons over 45/50 years of age, and so on.¹⁷ Further initiatives include measures to promote and support compliance with the law, rendering effective legal provisions rather than honouring them in the breach, by means of a redesigned Labour Inspectorate and supervisory functions relating to employment and social insurance.¹⁸

The central aim of the reform, as stated in the technical report accompanying it,¹⁹ is to safeguard the employability of each worker in a context – that of the knowledge and information society – in which the paradigms of economic growth and social development tend to converge and enhance the importance of the individual (in the sense of human capital). In relation to this objective, it is only ideological blinkers that prevent the recognition of the fact that the Italian labour market today is particularly inefficient and lacking in equity, as shown by the extensive areas of social exclusion (evidence for which is to be found in the low employment rates and the abnormal level of irregular employment in the hidden economy) and the precarious nature of much employment arising from low levels of educational achievement and the lack of continuing education and training (see *infra* § 1).

Although there are some gaps that need to be filled (above all the lack of a modern system of safety-net measures), the reform places an emphasis on the central role of persons of working age – considering both their rights and their responsibilities – when it redefines the employment service

¹⁶ For an in-depth analysis, see P. Olivelli, M. Tiraboschi (ed.), *Il nuovo diritto del mercato del lavoro*, Giuffrè, Milan, 2005, list of contents available at www.csmb.unimo.it, selecting *Pubblicazioni*.

¹⁷ For further discussion, see the papers in M. Tiraboschi (ed.), *La riforma Biagi del mercato del lavoro*, cit.

¹⁸ For further analysis, see the papers in C. Monticelli, M. Tiraboschi (ed.), *La riforma dei servizi ispettivi e delle attività di vigilanza*, Giuffrè, Milan, 2004, list of contents available at www.csmb.unimo.it, selecting *Pubblicazioni*.

¹⁹ See www.csmb.unimo.it, list of contents A-Z, *Riforma Biagi*.

as a network based on the personal details of the individual worker, to be accompanied by a training portfolio. This concept is further developed in the promotion of an efficient and transparent labour market by means of an online employment database, along with duly authorised and/or accredited employment consultants, and centres for the certification of employment contracts – all of them free of charge for the worker – providing assistance to social actors who in many cases are “weak” due to the lack of adequate information and training. In this way access is provided to information about all the employment opportunities across the country in a transparent and timely manner, so those seeking work can find an employment contract that matches their requirements.

In this connection mention should be made of the reform of safety-net measures currently under discussion in Parliament, which, as agreed in the Pact for Italy of 5 July 2002, extends the period for which unemployment benefit is paid, making it payable for twice as long as at present; in addition it provides for supplementary benefits to be paid by the social partners, and close links between the social partners and the training and career guidance services. This part of the reform will complete the framework of active employment policies required for a modern and transparent labour market capable of identifying and preventing individual social exclusion.

Until this part of the reform is approved, there is a risk that the provisions introduced by the Biagi law risk not being sufficient to revive the Italian labour market and provide support for workers in the transition from one form of employment to another.

Once the system of safety-net measures comes into force, the new contracts²⁰ introduced by the Biagi law will contribute to an improvement of the employability of the individual. These contracts are intended to combine (genuine) training and (quality) employment, such as the new apprenticeship contracts, that, together with employment access contracts, are a way to allocate economic incentives for employment primarily in favour of weaker groups in the labour market. These are fixed-term contracts, but nobody can consider them to be the cause of precarious employment, since they are not only accompanied by legal provisions aiming at job stability, but they also provide access or a return to the labour market by offering training to those who lack key employment skills, or whose skills are now outdated. The new apprenticeship contracts perform a specific function for those who have dropped out of school, as they are linked to a system of credits to facilitate a return to full-time education.

A significant provision of the reform is the setting up of joint training bodies, providing training for various categories, including apprentices and workers made redundant. Although such bodies are to be found in

²⁰ See *infra*, documentation.

comparative experience, in Italy they are a significant innovation. In implementing Act No. 388/2000, and in keeping with the aims of the Biagi law, provision has been made to allow enterprises to allocate 0.3 per cent of total payroll costs to the training and retraining of employees. Thanks to the joint training bodies, the social partners now have the opportunity to play a key role in planning and managing a substantial share of the public funding allocated for training. The bilateral approach, directly involving the employers' associations and the trade unions, is the most appropriate way to identify and respond to the demand for continuous education and training, leading to innovative programmes for the management of resources and training schemes. In order to raise the level of continuous education and training, it is essential to facilitate access, to reduce the cost of management of training centres, to disseminate knowledge, and to provide practical, financial and procedural indicators, *ex ante* and *in itinere*, to support the planning and implementation of training schemes.

Mention should also be made of the new approach to the regulation of contracts with non-standard or flexible hours (part-time, job sharing, on-call or zero-hours contracts) that are intended to encourage the mutual adaptation between the requirements of employees and those of the employer by means of contracts aimed at providing stability of employment. When a company decides to increase the number of employees in relation to the same workload, it modifies its organisational structure with lasting effects, leading to more employment in the form of open-ended contracts. Moreover, it is evident that the chance to reconcile work and personal or family commitments facilitates access and continuing participation in the labour market for many men and women who would otherwise not be able to take up employment opportunities. Flexibility is incorporated into these contracts as a means to achieve regular and stable employment, aiming not at the disintegration of stable employment and careers, but rather at providing an effective legal framework for work that would otherwise be carried out in a precarious and informal manner in the hidden economy, that in Italy is estimated to be three or four times larger than in other European countries.

A further objective of the reform is to provide for the appropriate development – and a legal framework in keeping with the demands of the new economy and the need for employment protection – of processes of labour outsourcing (and insourcing), enabling companies to benefit from networking arrangements and from investments in information and communications technology (with the development of facility management, logistics, and so on) in order to deal with fraudulent forms of labour outsourcing.

In particular, employment agency work, including both temporary agency work and staff leasing, though often alleged to be a form of exploitation that reduces the status of labour to that of a commodity, does

not reduce the level of protection of the worker and undermine his or her dignity, provided that, for this purpose, a binding contract is agreed on between the employment agency and the worker. In other words, agency work is in itself a neutral procedure that does not determine the nature of the employment relation, but is simply an exchange between a company providing certain services and another company that utilises them. The significant issue is rather that of the legal protection provided for the worker. In this regard it is highly significant that in Italian case law and legislation, there are continual references to legitimate forms of agency work and illegitimate forms of workforce intermediation.

In this connection a significant provision is to be found in Legislative Decree No. 276, 10 September 2003, which provides sanctions in the case of illegitimate or fraudulent forms of agency work, thus confirming to all intents and purposes a similar provision in Article 1 of Act No. 1369/1960. In spite of claims that employment agency work was undergoing total deregulation, the provisions regulating employment agencies now take a strong stand on fraudulent dealings, in order to prevent agency work being used in such a way as to harm the rights of employees based on inderogable provisions of law or collective bargaining. At the same time these provisions aim to clarify the law deriving from the case law interpretations relating to the combined effect of Article 2094 of the Civil Code and Article 1 of Act No. 1269/1960. The aim of the decree is therefore not only to repeal all those norms aimed solely at preventing flexibility in the management of labour, even in cases where labour protection is not at stake, but also at removing obstacles to forms of labour outsourcing that can play a significant role in the context of the new economy.

A further indication that procedures such as staff leasing are not a matter of speculation in the labour market is to be found in the principle of equal treatment laid down in the decree between temporary agency workers and employees of the same grade in the user enterprise (on the basis of the framework laid down in the Treu reforms regulating temporary labour). As shown in comparative research,²¹ in the systems where the equal treatment principle is adopted, the net income of the employment agency is not simply based on the difference between the amount received by the agency and the amount paid to the worker: once equal treatment has been assured for the agency employee, the earnings of the employment agency are necessarily based on the capacity of the agency to supply labour in a timely and professional manner that without the intervention of the agency would be uneconomical for the user company to procure, or specialised labour that may not be readily available on the market. In these cases the earnings of the employment agency can be justified as profits

²¹ See M. Tiraboschi, *Lavoro temporaneo e somministrazione di manodopera*, Giappichelli, Turin, 1999, including bibliographical references.

arising from a typical business risk in that agency is obliged to offer at market conditions a service which, in terms of the individual worker, is supplied at a higher cost than that which in theory the user company would incur were it to hire the employee directly. On the other hand, the higher costs incurred by the user company that makes use of the services of the employment agency, together with the fact that not all the responsibilities typically taken on by the employer are transferred to the agency, should mean that the user company makes use of agency workers only in the case of objective need. It is for this reason that the use of agency work, especially for an unlimited period (staff leasing), is linked to the presence of technical, organisational or productive reasons laid down by the legislator or delegated to collective bargaining.

3. TOWARDS AN OPEN, TRANSPARENT AND EFFICIENT LABOUR MARKET

The aim of creating an open, transparent and efficient labour market, that was the fundamental criterion for Act No. 30/2003 on the reform of the labour market, has given rise to the need to provide a clear and explicit organisational model and related regulatory techniques²². This task was approached in two distinct ways. On the one hand, a definition was provided of the roles and functions of the various actors taking part in the regulation of the labour market with regard both to the structural norms, that is to say the norms aimed at the organisation of the market, and the regulatory norms, that is to say the norms, including sanctions but above all incentives, aimed at guiding the behaviour of those operating on the market. On the other hand, a definition was provided of the roles and functions of the various operators (both public and private) on the market supplying various types of services and taking part in the management of the relative organisational model.²³

From the point of view of the regulation of the market, the roles and functions of the various actors reflect the principle of subsidiarity, and are defined in compliance with the powers assigned to the Regions in relation to “employment protection and security” by Constitutional Act No. 3, 18 October 2001, as confirmed by an important ruling of the Constitutional Court in January 2005.²⁴

The reform of the labour market undoubtedly poses the delicate problem of the division of powers between the State and the Regions. However, rather than persisting with an exhausting and questionable

²² For an overall view of the labour market reform see the contributions in M. Tiraboschi (ed.), *La riforma del collocamento e i nuovi servizi per l'impiego*, Giuffrè, Milan, 2003.

²³ See *infra*, documentation, paragraph 1.

²⁴ Sentence No. 50 deposited on 28 January 2005. See www.csmb.unimo.it, contents A-Z, *Riforma Biagi*.

formalistic division of the two spheres of competence,²⁵ the reform deals with the question in terms of the functional synergy between State and regional competences, on the basis of the belief that this type of approach leads to more productive results than one that sees the two levels as being in competition with each other, leading to pointless comparisons between the concepts of “civil order” and “employment protection and security”. The initial pronouncements of the Constitutional Court relating to the new Title V suggest that the expression “employment protection and security” should be construed not simply in the strict sense, but rather as a principle protected by the Constitution²⁶ which, in connection with the regulation of employment services, can fruitfully be translated into an integrated system for supporting the constitutional right of access to work.

On the assumption that the effectiveness of active labour market policies depends on the efficiency of employment services, particular emphasis has to be placed in regulating this matter on safeguarding an essential level of services (not necessarily the minimum level) in all parts of the country with measures for improving access to the labour market, which is the main priority.²⁷ As a result, the new framework of competences concerning the labour market identifies the following as the responsibility of the national legislator:

- the identification of the fundamental principles and role of coordinating the definition of national standards, also in order to avoid duplicating or making more onerous the duties to be performed by those operating in the market, in a perspective of streamlining and simplifying procedures for matching the supply and demand for labour;
- the determination of the essential level of services concerning civil and social rights, that undoubtedly includes employment services, to be provided in a uniform manner in all parts of the country, constituting the framework and standard, not necessary at a minimum level, of the concurrent legislation;
- the planning of national labour policies, in order to ensure their compliance with EU objectives in relation to employability, as well as in relation to equal opportunities, adaptability, and entrepreneurship;

²⁵ See M. Biagi, *Il lavoro nella riforma costituzionale*, in L. Montuschi, T. Treu, M. Tiraboschi, *Marco Biagi. Un giurista progettuale. Scritti scelti*, Giuffrè, Milan, 2003.

²⁶ See the analysis of Constitutional Court sentence No. 407, 26 July 2002, in A. Trojsi, *Prime indicazioni su “tutela e sicurezza del lavoro” nella recente giurisprudenza costituzionale*, in *DLM*, 2003, n. 1, spec., 199-205 and P. Tullini, *Mercato del lavoro, modello organizzativo e livelli di regolazione (ancora dubbi di legittimità costituzionale?)*, in C. Serra (ed.) *La riforma del mercato del lavoro: deregolazione o riregolazione?*, Giuffrè, Milan, 2005.

²⁷ See P. Sestito, *Pubblico e privato nei servizi per l’impiego: quale ruolo per l’operatore pubblico?*, in C. Serra (ed.) *La riforma del mercato del lavoro: deregolazione o riregolazione?*, Giuffrè, Milan, 2005.

- the definition and planning of policies for coordinating the various systems, in particular the links between schools, vocational training, employment, and social insurance;
- the integration and monitoring of regional services;
- the development and management, for monitoring and decision-making purposes, of statistical services and IT systems, in collaboration with the Regions, in support of employment services and policies

On the other hand, the Regions have responsibility for the following activities:

- the planning regional employment policies, within the framework laid down at national level;
- the management and design of employment incentives within the framework of fundamental principles adopted at national level;
- the design and implementation of active labour policies, in particular training policies;
- the definition of operational parameters (unemployment status, prevention of long-term unemployment, loss of unemployment status, and so on);
- the provision of access by individuals and enterprises to integrated employment services run by public and private bodies;
- the implementation of information networks for public and private bodies and users.

In assigning powers to the State and the Regions, one particularly sensitive matter was the certification of private companies, with regard to agency work (both of a temporary and an open-ended nature) and with regard to intermediation (placement services and career guidance, consultancy services, skills audits and so on).

On the basis of a literal interpretation, as so far adopted under the terms of prevailing legal opinion, of the expression “employment protection and safety”, the matter in question could have been considered to come within the powers of the Regions, with grave risks for the unitary structure of the system. A unitary structure could not have been achieved simply by means of a definition of the fundamental principles laid down by the national legislator. As a result there were valid reasons, in a perspective of subsidiarity, for safeguarding above all the unitary structure of the system, for allocating the regulation of access to the labour market by private agencies to the national legislator, while sharing certain tasks with the Regions.

With reference in particular to employment agency work, it must be noted, looking beyond the letter of the legislative decree (that made

reference to a unified system of authorisation and accreditation) that illegal intermediation in the labour market is still today deemed to be an offence (also of a criminal nature), and bearing this in mind there was no reason to provide, even considering the new constitutional provisions, a system of authorisation that was differentiated in various parts of the country but accompanied by identical criminal sanctions.

Moreover, it is widely recognised in the debate about regulatory techniques for employment agency work that the system of regulation for private agencies is not particularly significant in itself, but exists for the purposes of protecting the rights of workers, so it should be dealt with under the general civil provisions at national level. This approach has been confirmed by the proposed Community directive on the supply of temporary labour, that lays down an obligation on the Member States to abolish all restrictions on the administration of temporary labour, including restrictions relating to the system of authorisation of private agencies, except in cases in which the regulations serve the purpose of protecting the rights of temporary agency workers or to defend interests of a general nature.²⁸

On the other hand, if it had been assigned to the regional level, the system of authorisation would have posed the question of mutual recognition between the different regional systems, with a significant risk of social dumping, resulting in the need for an intervention by the national legislator to determine the essential level of services relating to civil and social rights. Pursuant to Title V, these rights must be safeguarded in a uniform manner in all parts of the country (Article 117(2)(m) of the Constitution).

In application of the principles of subsidiarity and adequacy, the authorisation and certification of private undertakings operating in the sector of agency work was therefore assigned to the national legislator, albeit in close cooperation with the Regions, since this is indispensable for it to be effective, considering that the regional level does not appear to be the most effective for dealing with all the issues (legal and organisational) arising from authorisation and certification.

With regard on the other hand to activities relating to the recruitment and selection of personnel and staff outplacement, the Regions were given the option of issuing authorisation for businesses operating within a given Region. Unlike agency work, where an employment relationship is established between the agency and the worker, and where a high level of protection is required, for the other functions it may be argued that the level of protection required is not so high, since the relation between the agency and the worker is one in which services are provided, without a contract of employment being concluded, and consequently the conditions

²⁸ See www.csmb.unimo.it selecting *Somministrazione* from the list of contents A-Z.

giving rise to the need for regulation at national level, as outlined above, no longer pertain.

Clearly it is a different matter when dealing with systems for the accreditation of private and other public bodies providing services within a framework of horizontal and vertical subsidiarity, such as career guidance, monitoring, vocational qualifications, and so on. This kind of accreditation is assigned exclusively to the regional authorities. The Regions have the power to adopt, promote and develop models of employment services at territorial level, providing for the transfer of functions to external public and private bodies, recognised as qualified to operate in an integrated manner with the public system. The Regions are therefore empowered to adopt provisions setting up and regulating accreditations and the procedures for issuing them. At the same time the reform has pursued the objective of safeguarding the homogeneity of the level of services at national level, by identifying principles and general criteria with which the Regions have to comply.

A second significant point is that of the level and type of regulation. The general ineffectiveness of the centralised state-sector model for matching the supply and demand for labour has led to experimentation, where possible, with innovative regulatory techniques or “soft laws” in contrast with the traditional approach based on binding legal provisions. In the employment agency sector, that is characterised by a high level of illegal activity, there was a need to experiment with new forms of regulation, in particular management by objectives, providing an alternative to the enactment of legislative norms seen almost as an end in themselves, with a view to achieving decentralisation, a reduced reliance on legislative instruments, and a devolution of the normative sources (with the delegation of certain tasks to collective bargaining and secondary regulations).

In this perspective a particularly important function is the gathering and dissemination of information, and attempts have been made to provide incentives for this function at a normative level, for example by making applications for authorisation and accreditation conditional on the utilisation of IT systems that are integrated with the public employment services, and conditional on supplying all the information required for the labour market to function effectively, and so on. A similar approach has been taken to providing access to employment for disadvantaged groups in the labour market, who are to be assisted also by private employment agencies thanks to financial incentives and normative provisions. Opportunities for those in disadvantaged groups to enter or re-enter the labour market will be enhanced if private employment agencies also seek to meet their requirements, by means of suitable incentive mechanisms.²⁹

²⁹ See *Il diritto del mercato del lavoro dopo la riforma Biagi*, P. Olivelli, M. Tiraboschi (a cura di), Giuffrè, Milan, 2005.

A third significant element is the organisation of a national online employment database that is a key resource for governing the labour market and improving the interface between public and private operators. The Biagi law makes provision for the setting up of an Employment Information System with unitary and standardised characteristics, mainly with a view to defining the standards and setting up a unified network linking the various operational levels (national, regional, provincial and local). From this point of view, based on the supposition that it would be less problematic than defining a division of powers between the State and the Regions, while responding to the need to set up a practical and efficient system, it was decided to provide direct access to the customers. This makes it possible to set up an online employment database without any filters or barriers to access,³⁰ but also to take a radical approach to the problem of State and regional competences, since in this perspective the driving force is the working of market mechanisms, in a framework of total freedom and subsidiarity within the system. The online database can only be set up in a reasonable period of time if resources are not wasted by the proliferation of different IT systems, and this network is now proceeding according to plan. If this matter had not been dealt with in a timely manner, in keeping with Article 120 of the Constitution that prohibits the placing of limits of any kind on the exercise of the right to work in any part of the national territory, the system would have suffered from various forms of rivalry between the State, the Regions and the Provinces, leaving the market without rules and channels of communication in line with Community, national and regional labour policies.³¹

It is in this sense that it is necessary to interpret the fundamental norms governing the labour market contained in the legislative decree, in particular in the article in which provision is made for the setting up of a national employment database “safeguarding the effective enjoyment of the right to work laid down in Article 4 of the Constitution, and fully respecting Article 120 of the Constitution”. In this perspective the national employment database is to be directly accessible to workers and employers alike, and it will be possible to consult it from anywhere in the network. Workers and employers will have the right to place jobseekers’ notices and vacancy announcements directly on the database without having to go through any intermediaries, using the access points provided by public and private operators who are authorised and accredited.

³⁰ See M. Tiraboschi, W. Bromwich, O. Rymkevitch, S. Spattini, *Employment Services and Employment Contracts in the Biagi Law*, in this issue, paragraph 1.5.

³¹ See M. Tiraboschi, *La borsa continua nazionale del lavoro*, in M. Tiraboschi (ed.), *La riforma Biagi del mercato del lavoro*, Giuffrè, Milan, 2004, p. 573.

The network will consist of a series of regional nodes with both a national and a regional dimension.³² At national level the focus will be on defining national technical standards for the exchange of information, the interoperability of the regional systems, and the definition of the information resulting in the highest degree of effectiveness and transparency in the matching of the supply and demand for labour. At a regional level, while respecting the competences of the Regions in planning and managing regional employment policies, the focus will be on setting up and integrating public and private systems, authorised and accredited, operating within the region, with a view to designating and setting up employment service models. The Regions will also be called on to cooperate in the definition of national standards of communication.

With regard to the roles and functions of the various operators (public and private) in delivering the different types of services and managing the relative organisational model, the decision was taken to identify certain public functions for which public bodies are responsible, even though at an operational level they are provided by private agencies (accredited or authorised), and certain functions (that are no longer to be defined as public and therefore perhaps better considered to be services) to be provided in a system of horizontal and vertical subsidiarity.

The exclusively public functions continue to be:

- the tracking and updating of the employment status of the worker and the quantitative and qualitative monitoring of labour market operations (personal data, vocational profiles, and communications systems for employees) also for the purposes of setting up and maintaining an employment information system;
- the certification of involuntary unemployment and its duration, for the purposes of providing access to preventive measures and benefits (vocational training, work experience, and so on), tax and contributions relief, and social insurance benefits.

The functions and services to be provided in a system of horizontal and vertical subsidiarity on the part of public- and private-sector operators are:

- the matching of supply and demand;
- the prevention of long-term unemployment;
- the promotion of access to the labour market by disadvantaged groups (on the part of public but also private operators, such as personal service agencies, that hire the worker);

³² See S. Pirrone, *Borsa continua nazionale del lavoro: standard tecnici, flussi informativi di scambio, implementazione e messa a regime*, in P. Olivelli, M. Tiraboschi (a cura di), *Il diritto del mercato del lavoro dopo la riforma Biagi*, Giuffrè, Milan, 2005, p. 629.

- support for the geographical mobility of the worker;
- the setting up of a national employment database providing access that is as universal as possible, promoting an effective matching of supply and demand for labour, and therefore an open market with access for all (public and private service providers and customers);
- the recognition of the role of public operators that can contribute to the efficiency and transparency of the labour market, in particular public bodies and universities that can provide employment services for specific segments of the labour market and also experiment with pilot projects aimed at promoting employability and adaptability, especially by means of local agreements, making full use of the opportunities made available by the legislative decree on the labour market.

The opening up to public bodies such as local authorities, universities and high schools, in particular, is aimed at strengthening and raising the profile of the public operators in the labour market, particularly in the crucial phases of access to employment. These phases do not consist solely of matching the supply and demand for labour, but also of developing and validating the phase in which the employment contract is negotiated, by means of certification programmes.

In this way the unitary structure of the Biagi law is confirmed, as it is not intended to introduce two separate reform programmes, consisting of one setting up the new employment services and another one introducing new forms of employment contracts (such as on-call working or zero-hours contracts, project work, and job sharing) or the reorganisation of existing forms of employment (part-time and agency work).³³ On closer examination, it may turn out to be the case that certification can play a decisive role, linking up the various aspects of the employment relationship and matching various forms of employment protection and market mechanisms pending a comprehensive reform of the entire sector by means of the long-awaited consolidating legislation known as the Work Statute³⁴ (see *infra*).

4. QUASI-SUBORDINATE EMPLOYMENT

Having proposed a new structure for the labour market, the Biagi law aims to deal with the various types of employment by means of a relaxation of the limitations on employment contracts with reduced working hours, or modulated or flexible working hours, together with a reduction of the other

³³ See *infra*, documentation.

³⁴ With regard to the Work Statute see the collection of papers and draft norms available at <www.csmb.unimo.it> selecting *Statuto dei lavori* from the list of contents A-Z.

areas of quasi-subordinate employment which should pave the way for the codification of the Work Statute mentioned above.

The regulation of quasi-subordinate employment by means of “project work” appears to be the most innovative element – but also the most critical – in the legislative decrees implementing the Biagi law. The rigorous limits laid down by the legislator in the decrees, aimed at restricting the use of quasi-subordinate employment to a significant extent, represents what for many will be an unexpected innovation compared to the existing structure of the labour market, but also in relation to the debate on non-standard or atypical employment. In this debate there may appear to be a clear-cut choice between two alternatives: either granting official recognition to a type of employment that is in between salaried and self-employment, or proceeding with the codification of a Work Statute.

The Biagi law on the other hand favours a different approach, a kind of third way, with the introduction of a series of barriers, consisting of definitions and sanctions, to prevent the improper use of quasi-subordinate employment, and the strategy is therefore to abandon any attempt to consolidate a type of employment contract in a grey area between self-employment and salaried employment.³⁵ However, under the terms of the Pact for Italy signed on 5 July 2002, this matter is to be dealt with as part of the overall reform of the labour market known as the Work Statute. The main characteristic of this proposal is that it replaces the traditional dichotomy between self-employment and salaried employment, along with the proliferation of employment contract types, with a series of protections based on concentric circles (with the highest level of protection in the inner circle) and variable arrangements depending on the forms of employment protection adopted. It may be seen then that Legislative Decree No. 276/2003 does not attempt to impose the same level of protection for quasi-subordinate employment as for salaried employment, nor does it assign to collective bargaining the task of providing such protection.

At the same time it is not intended to promote autonomous bargaining in an abstract and generic manner regardless of the field of application of project work. Indeed, those who see the Legislative Decree as an attempt to place limits on the autonomy of the parties to collective bargaining tend to overlook the fact that quasi-subordinate employment has so far not been a clearly defined form of employment for bargaining purposes, but rather a catch-all category including a variety of contracts characterised by economic dependency, reflecting an asymmetrical relationship placing the worker in an inferior position to the client firm.

The conceptual choice of considering quasi-subordinate employment as a genuine form of self-employment, in order to prevent the improper use

³⁵ See M. Tiraboschi, *Il lavoro a progetto: profili teorico-ricostruttivi*, in C. Serra (ed.), *La riforma del mercato del lavoro: deregolazione o riregolazione?*, Giuffrè, Milan, 2005.

of this type of employment contract, has resulted in a political intervention aimed at moving as many employment contracts as possible, in a gradual manner over a period of time, from the uncertain grey area of atypical employment to the area of salaried employment. This area has now been extended to provide a variety of different forms reflecting the objective of redesigning the forms of protection leading to regulated flexibility subject to the approval of the trade unions. In anticipation of the Work Statute, this operation is intended to replace the ill-defined mass of individual arrangements currently to be found in the grey area with a continuum of employment contract types located between the two extremes of quasi-subordinate employment and salaried employment on open-ended contracts. In other words, this continuum is intended to result in the emergence of irregular employment contracts, and those that are lacking in clarity, with a view to redefining the various forms of employment protection while taking account of the weaker position of the worker. In taking an approach to employment matters that focuses on the various forms of protection, rather than focusing on the definition of the employment relationship³⁶, the structure of a Work Statute needs to be placed in a perspective of “economic dependency”.

Proceeding with the codification of a Work Statute without first having brought together, by means of new types of employment contracts, the myriad of employment arrangements located in the grey area and increasingly in the hidden economy, would probably have been an admirable symbolic gesture devoid of any practical effects arising from the legislative intervention. In reply to those who refer to “44 types of flexibility (and even more with the certification of employment contracts) after this reform”³⁷ it should be pointed out that the proliferation of employment contract types is more apparent than real. The aim of the reform is to make inroads into that vast area of employment that is irregular or located in the hidden economy, for which every employment contract represents a particular type of contractual flexibility, with the result that the codification of a Work Statute without the prior identification and redefinition of types of employment that are adopted at present without the least regard for regulations and trade union negotiation would have given rise to a futuristic project without a solid foundation.

The Italian labour market needs first of all a process of emergence and restructuring, and to this end the diversification of contractual types can be the first phase in the move towards the regularisation, structuring and emergence that would facilitate the introduction of a Work Statute for all

³⁶ Reflecting the approach of T. Treu, *Intervento*, in M. D’Antona, T. Treu *et al.*, *Nuove forme di lavoro tra subordinazione, coordinazione, autonomia*, Cacucci, Bari, 1997, p. 225.

³⁷ See the comment by T. Boeri, *Il co.co.co. dovrà cambiare pelle*, in *La Stampa*, 8 June 2003, in contrast with those who claim that there has been an increase in rigidity (see, for example, P. Ichino *cit.* in note 4). In line T. Boeri, see T. Treu, *Statuto dei lavori: una riflessione sui contenuti*, in *Ildiariodellavoro.it*, 18 September 2003.

types of employment, whether typical or atypical, in the form of self-employment, project work, or salaried employment. With the regulation of quasi-salaried employment by means of project work, a wide range of atypical employment contracts that are difficult to classify (estimated to involve some two and a half million workers) will be clearly defined and brought back within the legal framework.

5. CRITICAL ASPECTS OF THE REFORM

It needs to be clearly stated that the reform does not deal with all the problems of the labour market and presents certain critical aspects, the most evident of which is the exclusion of the public administration from the application of Legislative Decree No. 276/2003. This is a policy choice that is undoubtedly open to criticism, especially considering the widespread use of quasi-salaried employment and the contracting out of public services, but it may be explained (though not justified) in terms of political and trade union choices with regard to privatising the work of public-sector employees, rather than in technical terms. It is to be hoped that the Government will maintain the commitment, laid down in the final provisions of the decree, to hold negotiations with the social partners with a view to drafting legislative provisions leading to harmonisation.

A further matter about which no conclusions can at present be drawn is that of part-time work³⁸: it remains to be seen whether greater flexibility for the purposes of increasing the take-up of this type of employment will generate more employment opportunities for workers. The reform is not intended to deregulate part-time work, and in any case such a move would not be possible, due to the provisions laid down at EU level. The approach adopted in the decree aims rather at providing more room for manoeuvre for autonomous bargaining (individual or collective) with a view to providing incentives for consensual part-time working, in compliance with sentence No. 210/1992 of the Constitutional Court that lays down a requirement for the consent of the employee to be obtained whenever working time comes into conflict with personal and family responsibilities.

At the same time as mentioned above in Sections 1 and 2 it cannot be denied that some of the measures aimed at defining an organic set of employment protections in the market, and not just in a given employment relationship, are likely to be less effective due to the failure to include in the decree the safety-net measures and employment incentives, that have been presented as a separate piece of legislation that is currently under discussion in Parliament. But also in this case, political considerations and

³⁸ See *infra*, documentation, paragraph 2.6.

the outcome of negotiations with the social partners have necessarily prevailed over purely rational and abstract criteria.

In order to appreciate the reasons for certain choices of legislative policy or for the adoption of certain technical solutions, another significant consideration is that this reform is intended to be carried out without resulting in any increase in public expenditure. Article 7 of the Legislative Decree specifies that the implementation of the various measures is to take place without generating additional costs for the State. In the report accompanying the decree of 6 June 2003³⁹ it was argued with good reason that overall the decree not only would not present problems in terms of costs, but in the medium- to long-term it is expected to give rise to significant savings and generate an increase in revenue, by means of:

- a series of measures for regularising employment by means of normative incentives with a view to increasing the number of those in regular employment who pay contributions to the State. With the approval of the decree there is expected to be an increase in regular employment, and in particular with the reform of quasi-salaried employment, and a more widespread use of salaried employment contracts, with the result that many workers will be transferred from contracts giving rise to minimal contributions to others with higher rates of contributions;
- a series of measures for reducing unemployment that will lead to a decline in the number of those receiving unemployment benefit and a lower take-up of certain safety-net measures (workfare programmes, long-term unemployment, workers on mobility schemes, and so on);
- stringent measures aimed at reducing the area of quasi-salaried employment and at scaling back (by means of incentives and sanctions) the illicit use of other contractual types, such as fictitious partnership arrangements, that are at present exempt from contributions. An extremely significant number of quasi-salaried employment contracts with a 12 per cent contribution rate will be converted into salaried employment contracts that are subject to a contribution rate of 33 per cent, even if they are temporary, part-time or job sharing contracts;
- measures aimed at containing occasional or casual employment. The decree provides that every employment relationship that continues for more than 30 days a year, or which generates an income of €5,000 with the same client firm, cannot be considered to be occasional or casual work, but must be regulated by the new project work contracts or as salaried employment. The decree also

³⁹ See www.csmb.unimo.it, selecting *Riforma Biagi* from the list of contents A-Z.

lays down regulations for occasional or casual work of an accessory nature that at present is in most cases carried out in the hidden economy. In this case a small contribution is introduced for the industrial injuries fund, INAIL, and the social insurance fund, INPS;

- the widening of the range of flexible contractual types that is likely to lead to a decline in the use of fictitious work training contracts that are at present utilised for the purposes of containing labour costs.

In effect the Biagi reform aims to increase the levels of regular employment, presumably with positive effects in terms of tax revenues and insurance contributions. Also in the light of previous experience in Italy following the Treu reforms in 1997, the introduction of new forms of flexibility and options for regular employment should result in an increase not only in the potential for growth in GDP but also of overall employment levels in the economy. This objective, over a year after the entry into force of Legislative Decree No. 276 of 10 September 2003, appears to be confirmed by recent ISTAT figures, that show an increase in stable employment of good quality and a decline in work in the hidden economy.⁴⁰

However, on the basis of the traditional auditing criteria relating to these provisions adopted by the State accounting department, the legislator issuing the decree was not able to base the calculation of costs on the positive effects mentioned above, that are to be taken into consideration only for the purposes of defining the macroeconomic and financial framework for the coming years, and for economic and financial planning, but not for the drafting of the legislative decree. This aspect of the delegating legislation gave rise to a careful examination, carried out jointly with the Ministry for the Economy and Finance, of the certain and direct effects of the provisions. This had a significant impact on the formulation of Article 13 relating first of all to workfare provisions for those receiving unemployment and similar benefits, that was almost completely rewritten, then to job sharing, that is now limited to two workers per contract, and finally to the definition of the field of application of financial contracts and the new access-to-work contracts.⁴¹

⁴⁰ The quarterly ISTAT survey of the workforce shows that in the last 12 months almost 200,000 permanent jobs have been created, whereas the number of workers on temporary contracts has fallen by 110,000. See T. Boeri, P. Garibaldi, *Nuovi lavori e nuovi numeri*, in *Lavoce.info*, 28 September 2004.

⁴¹ See M. Tiraboschi, *Employability, active labour policies and social dialogue in Europe: comparison of experiences*, Collana del Dipartimento di Economia Aziendale dell'Università degli Studi di Modena e Reggio Emilia, n. 94, available at www.csmb.unimo.it, selecting *Ricerche*.

6. AN INITIAL ASSESSMENT

In an attempt to draw initial conclusions, it may be said that we are in the presence of a complex process of reform that still presents areas of uncertainty,⁴² but which should be construed in a constructive spirit reflecting an awareness of the need for far-reaching reform in the Italian labour market in the interests both of employers and workers.

Although it is now a year and a half since the reform came into force, it still seems to be too early to make an assessment⁴³, though it must be mentioned that all the legislative texts pertaining to the Ministry of Labour have been produced in a timely manner⁴⁴. However, it is also true that collective bargaining has implemented only part of the provisions, at times in a contradictory and incoherent manner. It should also be noted that the Regions have not intervened in a timely manner to deal with the matters within their sphere of competence, especially concerning the new apprenticeship contracts.

The fact that this is not a deregulation of the labour market is clear to all concerned, but particularly to all those workers who have so far been employed in a context devoid of regulation – in the hidden economy and the area of precarious employment that the Biagi law is intended to combat. It would be easy to point out that the quarterly ISTAT figures released over the past year for the period corresponding to the entry into force of the Biagi law have revealed a constant rise in stable employment, a significant decline in temporary work, and a scaling back of the hidden economy⁴⁵, but this is not the point. It is evident that a year and a half is too short a period to obtain reliable data and to draw conclusions. This is shown by the recent example, albeit less complex, of the Treu reforms of 1997, that started to bear fruit only several years later, mainly with the rise of temporary agency work. This is all the more the case with a measure such as the Biagi law, which, with the exception of the regulation of dismissals, has an impact on all the key aspects of the labour market, making provision for a gradual entry into force, by means of a series of experimental programmes, also with the participation of the social partners. This is the case of quasi-subordinate employment, that has become a sort of weathervane for the reform, with the termination of the transitional phase on 24 October 2004, though further extensions are allowed until 24 October 2005 as agreed during collective bargaining. For

⁴² See European Commission, *Draft Joint Employment Report 2004/5* and *Second Implementation Report on the 2003-2005 Broad Economic Policy Guidelines*, available in *Bollettino ADAPT*, No. 3/2005 (www.csmb.unimo.it).

⁴³ The same view is expressed in the 38th *Rapporto annuale Censis sulla situazione sociale del paese*. A summary is to be found in *Bollettino ADAPT* No. 46/2004 (<www.csmb.unimo.it>).

⁴⁴ See <www.csmb.unimo.it>, list of contents A-Z, selecting *Riforma Biagi*.

⁴⁵ See. note 27: T. Boeri, P. Garibaldi, *Nuovi lavori e nuovi numeri*, in *Lavoce.info*, 28 September 2004.

this reason, for the moment it is not possible to make a realistic and objective judgement about the intention, announced by the Government and supported by the reform of the Labour Inspectorate, of carrying out a drastic reduction of the area of fictitious quasi-subordinate employment. The same applies to the other measures introduced by the reform, that are only now coming into full effect: the new apprenticeship contracts, employment agency work, on-call or zero-hours contracts, certification, work vouchers, and the online employment database.

However, it is also true that a year and a half is a sufficient period for a provisional assessment of the state of application of the reform as a whole. It is not particularly significant that all the regulations for implementing the reforms have been adopted in record time, because the real changes only take place in the hearts and minds of those involved, and cannot be achieved simply by enacting legislation and decrees. As Marco Biagi used to say, the modernisation of the labour market is a particularly delicate matter that requires a constructive approach on the part of all those concerned to reforms that are really necessary for governing the changes taking place in economic and social relations.⁴⁶ This is an endeavour that requires a team spirit, as Luca di Montezemolo, the President of Ferrari and Confindustria, the employers' association, recently remarked⁴⁷, and it is from here that we need to move forward, concluding the experimental phase in a spirit of fairness, before drawing conclusions about a law that is still in its early stages. In the experimental phases that we are now entering, the contribution of the social partners, together with that of the Regional authorities, will be decisive in building on the foundations laid down by the Biagi law to construct a dynamic, flexible and competitive labour market providing adequate levels of employment protection.

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DOCUMENTATION – SHORT NOTE OF SYNTHESIS OF THE BIAGI LAW (*)

EMPLOYMENT SERVICES AND EMPLOYMENT CONTRACTS IN THE BIAGI LAW⁽⁴⁸⁾

⁴⁶ See Marco Biagi's articles published in *Il Sole24 ore*, available at www.csmb.unimo.it selecting *Gruppo di Ricerca*, then Marco Biagi, and *Articoli sul Sole-24 Ore*.

⁴⁷ See *infra* L.C. di Montezemolo, ...

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⁴⁸ See: M. Biagi, M. Tiraboschi, *Istituzioni di diritto del lavoro*, Giuffrè, Milan, 2004, 3rd edition, and M. Tiraboschi, *La riforma Biagi del mercato del lavoro*, collana ADAPT / Fondazione "Marco Biagi", Giuffrè, Milan, 2004 (www.csmb.unimo.it).

1. EMPLOYMENT SERVICES

1.1. The network of employment services ⁽⁴⁹⁾

A fundamental objective of the Biagi Law, Legislative Decree No. 276/2003, is the design and setting up of a network of employment services run by public, private and non-profit bodies, linked together in a national online employment database (*borsa nazionale continua del lavoro*). By means of a register of employees it will be possible to ascertain at any time the position of all those in work and all those in search of employment, also for career guidance and training purposes. Moreover, subject to certain conditions, the new employment agencies can now provide a complete range of services (job search services, recruitment and selection, career guidance and training, and employment agency work).

Local authorities are free to set up their own job matching services, especially to meet the needs of disadvantaged groups. In addition incentives are provided to encourage cooperation between private companies and non-profit organisations to meet the needs of individuals in disadvantaged groups. Trade unions and bilateral bodies (set up jointly by employers' associations and trade unions) are also authorised to run employment services, and provision is made for schools and universities to arrange work experience programmes and job placements for school-leavers and undergraduates. All private employment services are free of charge for the employee, whereas a charge is levied for employers.

Public employment services continue to operate, but in cooperation, and in some instances in competition, with private employment agencies and other authorised bodies. These public employment services are run at a provincial level on the basis of guidelines laid down by the Regions, and are responsible for the employment register, career guidance, matching the supply and demand for labour, preliminary selection procedures, advice for employers, and assistance for people with disabilities or in disadvantaged groups.

1.2. Private-sector services

In the private sector, employment agencies provide a range of services, including both temporary work and staff leasing, job matching, recruitment and selection of staff, and outplacement. In order to perform these activities, employment agencies require a specific authorisation.

The Ministry of Labour and Social Policy issues authorisations only to private-sector agencies that meet the following conditions:

- the registered office must be located in Italy or another EU member state;
- the agency must have suitable premises;

⁴⁹ See: P. Olivelli, M. Tiraboschi, *Il diritto del mercato del lavoro dopo la riforma Biagi*, collana ADAPT / Fondazione "Marco Biagi", Giuffrè, Milan, 2005 (www.csmb.unimo.it).

- the agency must comply with data protection requirements;
- the staff of the agency must have approved qualifications;
- the directors and managers of the agency may not have a criminal record;
- the agency is required to be linked to and share data with the online national employment database.

Once an agency has obtained an authorisation, it is entered in an official register (*Albo delle agenzie per il lavoro*⁵⁰) in one of the following five categories:

- (1) employment agencies (*agenzie di somministrazione*), dealing with both temporary work and staff leasing, that may also provide job matching services, recruitment and selection, and outplacement services. In particular, they are required to have a paid-up capital of at least €600,000, to carry on business in at least four regions and to pay contributions to a training fund and an income support fund for agency workers. In addition they have the right to run their own training, work access and retraining programmes for disadvantaged workers;
- (2) staff leasing agencies, dealing only with this activity;
- (3) job matching agencies (*agenzie di intermediazione*), that are required to have a paid-up capital of at least €50,000, and to carry on business in at least four regions. They also have the right to run recruitment, selection and outplacement services;
- (4) recruitment and selection agencies (*agenzie di ricerca e selezione*), that are required to have a paid-up capital of at least €25,000;
- (5) outplacement agencies (*agenzie di supporto alla ricollocazione del personale*), that are required to have a paid-up capital of at least €25,000. (Articles 3-7, Legislative Decree No. 276/2003).

The Regions are responsible for the accreditation system of employment agencies, enabling them to take part in the network of employment services and providing support for disadvantaged people to enter or return to the regular labour market.

1.3. Authorised bodies

The work of the public employment services and private employment agencies is supplemented by that of other bodies authorised either by law or by registration.

Public and private universities, together with university foundations dealing with labour market issues, are authorised by law provided that:

- they operate on a non-profit basis;

⁵⁰ See www.welfare.gov.it, selecting *Lavoro* and then *Agenzie per il lavoro - Albo informatico*.

- they link up to and share data with the national online employment database;
- they undertake to provide all the information relevant to employment statistics and labour market policy, pending the completion of the national online employment database.

Other bodies may be authorised by registration, in particular:

- municipal authorities;
- chambers of commerce;
- schools;
- trade unions, employers' association and bilateral bodies;
- foundations providing labour law advice and consultancy services.

1.4. Disadvantaged groups

Provisions for improving access to employment by disadvantaged groups are laid down in Articles 13 and 14, Legislative Decree No. 276/2003, including specific schemes run by employment agencies that sign agreements with public operators (local, provincial and regional authorities), and incentives for companies that award contracts to cooperatives employing disadvantaged workers. In addition to these specific measures, disadvantaged workers can benefit from access-to-work contracts. The definition of disadvantaged groups is laid down in Article 2, EC Regulation No. 2204/2002.

Employment agencies are authorised to run individual access-to-work schemes for disadvantaged groups on condition that:

- they have drawn up an individual access-to-work or return-to-work plan, with provision for training;
- the worker is assisted by an adviser with suitable qualifications and experience;
- the scheme lasts for at least six months.

Provided these conditions are fulfilled, the employment agency may benefit from certain more favourable conditions than those laid down by general regulatory provisions, in particular:

- a derogation from the principle of equal pay compared to other employees with the same employment grade, allowing for a lower rate of pay;
- deductions from the wages to be paid equivalent to the mobility allowance, unemployment benefit, or any other benefit or subsidy.

In this case the contract must be for at least nine months.

Social cooperatives that employ disadvantaged workers benefit from a system of framework agreements providing incentives for companies to award contracts to them. These agreements are concluded with:

- employment services;
- employers' associations and trade unions recognised as most representative at national level;

- associations representing social cooperatives and consortia of cooperatives.

Enterprises that negotiate framework agreements of this type are deemed to have met the requirements for hiring a certain number of workers on the mandatory employment register.

Both of these types of measure in favour of disadvantaged groups are of an experimental nature: at a later stage the Minister of Labour and Social Policy and the most representative employers' associations and trade unions at national level are to carry out an assessment of their impact, after which the Minister will report to Parliament.

1.5. The national online employment database

Based on a network of regional nodes, the national online employment database is freely accessible on the Internet. It is an information system intended to increase the transparency of the labour market and to favour the matching of the supply and demand for labour.

The intended users are:

- workers and jobseekers, who can reply directly to vacancy notices without having to go through intermediaries;
- enterprises and employers, who can advertise vacancies;
- authorised and accredited public and private operators, who are required to enter into the online employment database all the data they collect from workers and employers.

Anyone in search of employment can access the database either directly or through public employment services or private employment agencies, choosing the level (provincial, regional or national) at which they intend to distribute their jobseeker's profile. Jobseekers can choose either to publish their personal data or to maintain confidentiality.

The matching of supply and demand takes place by means of a computerised procedure for identifying suitable vacancies. The vacancy notices are freely accessible, though job applicants are required to provide identification.

The online database operates at two levels, national and regional, each of which has specific functions:

- the national level defines the technical standards for the exchange of information, for harmonising the regional systems, identifying the information for maximising the effectiveness of the system and the transparency of the matching of supply and demand;
- the regional level is intended to promote cooperation between the public and private systems within the region, to design and implement regional models of employment services, and to cooperate with the national level for the definition of operational standards for communication between the various regional services.

In order to ensure the smooth working of the system, a body responsible for coordinating the national and regional levels is in the process of being set up.

1.6. The labour inspectorate ⁽⁵¹⁾

With the reform of the labour inspectorate, the Ministry of Labour and Social Policy has taken on a central role in the supervision of labour relations and in bringing employment out of the hidden economy. This function is carried out by provincial and regional labour inspectors, along with inspectors from the industrial injury and social insurance funds.

A central body has been set up by the Ministry to coordinate efforts by regional and provincial labour departments in order to enforce existing regulations in an effective manner. In addition, the inspections carried out by all the relevant bodies are recorded in a section of the national online employment database, containing all the information about the employers inspected, and providing an overview of labour market trends, and training materials for labour inspectors.

The regional and provincial labour departments are responsible for a number of functions such as:

- monitoring the application of employment protection provisions of all kinds;
- monitoring the application of collective labour agreements;
- monitoring social insurance and pensions contributions to be paid by professional associations, and public and private bodies, with the exception of those that are run directly by State, provincial or local authorities;
- carrying out enquiries and surveys as required by the Ministry.

The Biagi law has introduced a new function for the labour inspectorate: in cases in which an employer has not paid wages and salaries in full, the inspectorate has the power to issue an injunction for payment.

2. EMPLOYMENT CONTRACTS

2.1. The rationale of the new employment contracts ⁽⁵²⁾

The Biagi law aims to (re)regulate certain employment contracts intended to promote access to and continuity in regular employment, particularly for those who need to reconcile working time and family

⁵¹ See: C.L. Monticelli, M. Tiraboschi, *La riforma dei servizi ispettivi in materia di lavoro e previdenza*, collana ADAPT / Fondazione "Marco Biagi", Giuffrè, Milan, 2004.

⁵² M. Tiraboschi, *La riforma Biagi del mercato del lavoro*, collana ADAPT / Fondazione "Marco Biagi", Giuffrè, Milano, 2004; C. Enrico, M. Tiraboschi, *Compendio critico per la certificazione dei contratti di lavoro. I nuovi contratti – lavoro pubblico e lavoro privato*, Giuffrè, Milan, 2005 (www.csmb.unimo.it).

responsibilities, or who need training and retraining, and those with other specific needs.

These employment contracts include an extension of employment safeguards and opportunities for workers while encouraging companies to hire them, overcoming the traditional resistance to the idea of distributing the same workload among a larger number of workers. These contracts are intended to regularise employment and to provide stability for those at present employed on a precarious basis.

The reform is also intended to make it easier to enter or return to the regular labour market by combining work and training opportunities. Training is provided in the form of apprenticeship contracts organised in a flexible manner with the participation of bilateral bodies set up by employers' associations and trade unions.

2.2 The new apprenticeship contracts

In apprenticeship contracts the employee receives training at the employer's expense in addition to remuneration. Legislative Decree No. 276/2003 provides for three types of apprenticeship contract:

- educational training apprenticeships, providing training and access to the labour market for school leavers;
- vocational training apprenticeships, combining on-the-job training with a technical or vocational qualification;
- higher-level apprenticeships, with advanced technical training leading to a high-school diploma or university-level qualification.

Educational training apprenticeships are designed mainly for 15-18 year olds, whereas vocational training apprenticeships and higher-level apprenticeships are for 18-29 year olds, or for 17 year olds with a vocational qualification (pursuant to the reforms proposed by the Education Minister).

Apprenticeship contracts may be concluded in any sector, including agriculture, but the number of apprentices may not exceed the number of qualified staff in a given firm. Small firms without qualified staff (or with fewer than three) may hire up to three apprentices, and other provisions apply to artisan firms.

With regard to duration, educational training apprenticeships may last for up to three years, depending on the qualification to be obtained, whereas vocational training apprenticeships may last from two to six years, depending on the provisions of collective bargaining, but this type of contract may be used to provide further training at the end of an educational training apprenticeship. As regards training matters, the duration of higher-level apprenticeships is established at regional level, in agreement with the social partners and the educational bodies involved.

Apprenticeship contracts must be issued in writing, specifying the work to be performed, the training schedule and the qualification to be

awarded. Remuneration may not be based on piecework, and the pay may not be more than two levels below the level specified in the company-level collective agreement for workers with the same employment grade. The qualification awarded for each of the three levels provides credits for further training and education. During the apprenticeship the employer cannot terminate the contract except for a just reason or cause, but has the right to discontinue the employment relationship when the contract runs out. Social insurance contributions are payable pursuant to Act No. 22/1955.

2.3 Access-to-work contracts

Access-to-work contracts (Legislative Decree No. 276/2003, Articles 54-59) are designed to enable certain categories to enter or return to the labour market by means of an individual plan for the purposes of acquiring the skills required for a particular working environment. In the private sector these contracts replace the old work training contracts. The following categories are eligible for these contracts:

- 18-29 year olds;
- long-term unemployed 29-32 year olds;
- workers over the age of 50 who are no longer in employment;
- workers who wish to return after a break of two years or more;
- women of any age resident in areas where the employment rate for women is more than 20% less than for men (or the unemployment rate is 10% higher);
- individuals with a recognised physical or mental disability.

The following employers may make use of access-to-work contracts:

- public bodies, enterprises and consortia;
- groups of enterprises;
- professional, socio-cultural and sports associations;
- foundations;
- public or private research bodies;
- sectoral organisations and associations.

There is no upper limit on the percentage of workers hired on these contracts, except for the limits laid down in national, sectoral or company-level collective bargaining. An employer may only hire new workers on access-to-work contracts if at least 60% of the employees hired in this way whose contracts have run out in the previous 18 months are still employed by the company.

With regard to the field of application, access-to-work contracts may be issued in all sectors, except for the public administration. For the first time the Biagi law permits groups of employers to hire workers on these contracts, thus granting them legal recognition as employers.

Access-to-work contracts can be issued for a period of nine to 18 months (or for up to 36 months in the case of workers with a physical or

mental disability), but periods of military or voluntary service, or maternity leave, do not count. At the end of the contract, it is not permitted to continue with another contract of the same kind with the same employer, but the employee may take up work on another such contract with a different employer. Any extensions must be kept within the limits laid down by law (18 or 36 months). The contract must be in writing, specifying the training to be provided; in cases in which the employer fails to issue a written contract, the agreement becomes null and void and the employment relationship is transformed into open-ended salaried employment. Remuneration may not be more than two levels below the level specified in the national collective agreement for workers with the same employment grade. These contracts give rise to benefits in the form of tax and contributions relief for the employer.

2.4 Project work contracts

These are quasi-subordinate employment contracts relating to one or more specific projects or project phases, managed autonomously by the worker with reference to the end result, regardless of the time required for completion. The purpose of these contracts is to prevent the improper use of quasi-subordinate employment and to provide a higher level of protection for the employee.

Contracts of this type may be issued in all employment sectors, but the following are excluded:

- sales representatives;
- professionals obliged to register with professional bodies (that were in existence when the decree came into force);
- board members and company auditors;
- members of panels and commissions (including those of a technical nature);
- people over the age of 65;
- athletes engaged on a freelance basis, even if in the form of quasi-subordinate employment;
- those engaged in quasi-subordinate employment with one client firm for no more than 30 days a year, or earning up to €5,000 with one client firm;
- individuals working for the public administration;
- those in quasi-subordinate employment with recognised sports associations.

The project work contract must be in writing, and provide an indication of the duration of the project or project phase, a description of the project or phase to be implemented, the amount of remuneration or the criteria by which it is to be determined, payment dates, any provisions relating to expenses, methods for coordination between the project worker and the client firm, and any health and safety protection measures

additional to those already adopted in the workplace. The remuneration must be comparable to similar work on a freelance basis in the place where the work is carried out. Legislative Decree No. 276/2003 (Articles 61-69) provides a higher level of protection for these contracts in comparison to quasi-subordinate employment with regard to sickness, injury and maternity. In the case of sickness or injury, the employment relationship is suspended but not extended. In the event of a suspension that is more than one sixth of the duration of the contract (if specified), or more than 30 days, the client firm has the right to terminate the contract, whereas in the case of maternity, the contract is suspended and automatically extended for 180 days. In addition, the project worker has the right to work for other client firms (unless specified in the individual contract that this is not permitted), and may claim patent rights for any inventions arising from the work performed.

2.5 Occasional labour

Occasional or casual labour is intended for individuals at risk of social exclusion, those who have yet to enter the labour market, and those who are about to leave it. The aim of this type of work is to enable these workers to make the transition from the hidden economy, where they have no protection whatsoever, to the regular economy, as well as to facilitate access to the labour market on the part of disadvantaged groups, enabling them to find work in private households or the non-profit sector. Those who can make use of these contracts are:

- individuals who have been unemployed for over a year;
- housewives, students and retired people;
- people with disabilities and those in rehabilitation centres;
- non-EU citizens with a regular work permit, in the first six months after losing their job.

This measure is intended to enable the following to employ help on an occasional basis:

- private households;
- non-profit organisations;
- individuals who are not entrepreneurs, or entrepreneurs not engaged in their main business.

The type of work is intended to be as follows:

- light housework of an occasional nature, including childcare, and assistance for older persons and people with disabilities;
- private lessons;
- gardening, cleaning and maintenance of buildings and monuments;
- social, sports, cultural and charity events;
- collaboration with public bodies and voluntary associations for dealing with emergencies and unexpected natural events.

In the agricultural sector, work performed by family members, unpaid work and work for which only expenses are paid is not deemed to be occasional labour.

The contract may be in the form agreed between the parties, for a maximum of 30 days per calendar year and up to €5,000 per annum. A particular payment system is provided, with vouchers for an amount established by ministerial decree, to be purchased by the employer in advance. These vouchers are then presented to authorised centres, that deduct a percentage for their services, together with a 13% social insurance and 7% industrial injury insurance contribution, and pay the balance to the worker. No income tax is payable, and the worker continues to be classified as unemployed or not in employment (Legislative Decree 276/2003, Articles 70-74).

2.6 Part-time work

This is considered to be anything less than full-time working hours. It may be horizontal (a shorter working day), vertical (full time but only on certain days or certain times in the month) or mixed, consisting of shorter working days and a reduction in the number of days worked.

It has been found to be a particularly effective way to increase employment opportunities for particular groups, such as young people, women, older people and retired persons. It provides stable rather than precarious employment, making it possible to reconcile the employer's need for flexibility with the worker's need to deal with family responsibilities or educational requirements. Part-time contracts give rise to salaried employment, that may be open-ended or fixed-term. Contracts must be in writing and specify the working hours, the days of the week, the weeks and the months to be worked in the course of the year.

Part-time employees may not be discriminated against in relation to full-time workers, and as a result the hourly rate of pay, and rates for sickness, injury and maternity leave are calculated in proportion to the hours worked, unless the applicable collective agreement makes provision for rates that are more than proportionate. In addition, part-time workers have the same right to annual leave, maternity/parental leave, sickness and injury provisions, and so on.

Compared to the measures previously in force, Legislative Decree No. 276/2003 allows for greater flexibility in the management of working hours and fewer limits on working additional hours, overtime and flexibility or elasticity clauses, for which collective agreements can make provision within the limits laid down for full-time working.

Individual contracts may allow the part-time worker to opt for full-time working whenever the employer intends to hire full-time workers, with the part-time worker taking priority over incoming workers with the same employment grade. In the same way, full-time workers are entitled to

be informed of the intention to hire new part-timers and may opt for part-time. Employees who are diagnosed with a tumour may opt for part-time and then at a later date opt to return to full-time working.

The part-time provisions in Legislative Decree No. 276/2003 are immediately applicable, and not subject to tripartite assessment at a later stage, though further provisions may be laid down by collective bargaining.

2.7 Job sharing

In this contract two workers jointly take on the rights and responsibilities arising from an individual employment contract, and are free to divide up the hours as they choose. The aim of job sharing is to reconcile work requirements with other responsibilities, while striking a balance between the needs of the employer and those of the worker, but it is not permitted in the public administration. In relation to previous provisions, the innovation in the Biagi law consists of limiting this type of contract to two workers at a time.

The job-sharing contract must be in writing, and specify the hours to be worked by each of the employees. They may modify these arrangements as they wish but are required to notify the employer on a weekly basis of the hours each of them intends to work, so that a record can be kept of any absences. The employment contract may be open-ended or fixed-term, and the principle of equal pay and equal treatment with other workers of the same employment grade applies. For the purpose of calculating social insurance contributions, workers on job-sharing contracts are treated like part-timers, but the calculation has to be made on a monthly basis. In the event of the dismissal or resignation of one of the employees, the contract of the other employee is also terminated, though the employer may offer the remaining employee a part-time or full-time salaried position. Moreover, the employer has the right to refuse to take on a third party to fill the position.

2.8 On-call work

On-call or zero-hours contracts are used when the worker agrees to work intermittently (for activities laid down by national or territorial collective bargaining) or at certain times of the week, month or year. This contract is entirely new in the Italian system and may take two different forms: with or without a stand-by allowance, depending on whether the worker agrees to be bound to accept the offer of work.

The purpose of this new type of contract is to regularise a particular use of payment by invoice, used until now for work of an intermittent nature. It is also intended to be a way of creating employment opportunities for unemployed people trying to find a way into (or back into) the labour market.

On an experimental basis, these contracts may be issued to:

- unemployed workers up to the age of 25;
- workers over the age of 45 who have been made redundant or are on mobility schemes or registered as unemployed.

Companies that have not carried out a health and safety assessment pursuant to Legislative Decree No. 626/1994 are not permitted to issue contracts of this kind, nor is the public administration. In addition, employers are not permitted to issue contracts of this kind to replace workers who are on strike, and they may not be used in companies that have made workers redundant in the past six months, unless provided otherwise by collective bargaining.

Rates of pay are required to be the same as those for comparable workers on standard contracts. In cases in which the worker agrees to be bound to accept an offer to work, a monthly stand-by allowance is made, that may be divided by an hourly rate, laid down by ministerial decree, not payable in the event of illness. An unjustified refusal to respond to an offer of work may result in termination of the contract, the repayment of the stand-by allowance, and payment of damages as laid down in the collective agreement or, in the absence of such a provision, in the employment contract. In the case of on-call working only at certain times of the week, payment is made only when the worker is called out. This type of contract is experimental and subject to tripartite assessment at the end of the trial period.

2.9 Employment agency work ⁽⁵³⁾

This type of work enables a user company to utilise the services of workers (on the basis of temporary agency work or staff leasing) who are employed by an employment agency. It is important to distinguish between two types of contract that are the basis of this arrangement:

- a contract for the supply of labour between the employment agency and the user company, which is a commercial contract, and
- a subordinate employment contract, between the employment agency and the worker.

Each of these contracts may be fixed-term or open-ended. Such contracts are a form of outsourcing (or rather insourcing, due to the fact that workers take their instructions from the user firm), and are intended to enable companies to expand their workforce quickly and flexibly, while providing employment opportunities for the workers hired by the agency.

The law does not place any limits on contracts between employment agencies and user companies, and subordinate employment contracts may be concluded with all categories of workers, not just disadvantaged groups.

Open-ended employment agency contracts may be issued for:

⁵³ See: M. Tiraboschi, *Il regime giuridico delle esternalizzazioni dopo la riforma Biagi*, collana ADAPT / Fondazione "Marco Biagi", Giuffrè, Milan, 2005 (www.csmb.unimo.it).

- information technology consultancy services;
- cleaning and caretaking services;
- transport and haulage;
- the management of libraries, parks, museums, archives and warehouses;
- interim management services, certification, resource planning, organisational development and change, human resources management, staff recruitment and selection;
- marketing, market research, commercial operations;
- call-centre operations;
- certain tasks in the building industry;
- other functions as laid down in collective agreements concluded by the most representative employers' associations and trade unions.

Fixed-term employment agency contracts may be issued for:

- technical, production, organisational and labour replacement needs, even in relation to the ordinary activity of the user company (Article 20, Legislative Decree No. 276/2003);
- temporary requirements as laid down in existing collective agreements until they run out (Article 86, Legislative Decree No. 276/2003).

An employment contract of this kind can be extended for a longer period by the employment agency, with the consent of the worker and in writing, as provided in the collective agreement applied by the employment agency. The contract between the user company and the employment agency is required to be in writing and contain certain specific indications. However, there are no specific requirements for the form of the contract between the worker and the employment agency.

Employment agency workers have the right to equal treatment with comparable workers in the user company, provided their duties are the same. The user company is jointly liable with the employment agency to pay the worker the agreed remuneration and contributions: as a result, if the employment agency fails to pay the agreed amount, the worker may demand payment from the user company, which is under an obligation to pay the amount due.

In the case of fixed-term contracts, the employment agency is obliged to pay the worker an indemnity as laid down in the collective agreement, but which cannot be less than €350 per month pursuant to a decree of the Minister of Labour and Social Policy.

Open-ended contracts are regulated by the general employment provisions laid down by the Civil Code and special laws, and may be part-time.

Fixed-term contracts are regulated by Legislative Decree No. 368/2001, with certain differences:

- the employment agency may issue a number of fixed-term contracts in sequence without having to comply with the provision requiring an interval between contracts;
- special provisions are made for information and training;
- no percentage limits are laid down for agency work, so an employer may choose to use only agency workers in the undertaking.

Employment agency contracts may be issued by:

- temporary work agencies, authorised to operate under the previous regulations, as soon as they have submitted an application for authorisation pursuant to the new provisions;
- other operators as soon as they are authorised to operate as employment agencies and register as such (pursuant to Legislative Decree No. 276/2003).

The provisions relating to employment agencies are of an experimental nature and will be subject to tripartite assessment at the end of the trial period.

2.10. Other employment provisions

The forms of employment outlined above are intended to illustrate the innovative nature of the Biagi law, and do not provide an exhaustive survey. Mention should however be made of provisions relating to contract work (Article 29), secondment of employees on a temporary basis (Article 30), the continuity of employment in the event of the transfer of an undertaking or part of an undertaking (Article 32), the clarification of the position of workers in cooperatives (Article 9), and finally work experience programmes (*tirocini*) (Article 60) for school-leavers and undergraduates. These programmes are not a form of employment but are intended to provide experience for young people during their secondary or higher education enabling them to take part in training and to make informed choices in the labour market.

3. CERTIFICATION OF EMPLOYMENT CONTRACTS

The certification of employment contracts by bilateral bodies, provincial labour departments and universities registered with the Minister of Labour and Social Policy (Articles 75-84) is a procedure for ascertaining whether an employment contract that is about to be issued complies with the provisions laid down by the law. It is a voluntary procedure that can be adopted only at the request of both parties, the employer and the employee, and is intended to reduce the number of individual employment disputes.

This procedure can be applied to any kind of employment contract. Certification may also be used to deal with any particular provisions, the settlement of disputes between an employee and an employer, and internal

regulations in cooperative societies relating to employment contracts issued to worker members.

Certification can be carried out by committees set up by:

- bilateral bodies established by employers' associations and trade unions in a given area or at national level;
- provincial labour departments;
- local authorities at provincial level;
- public and private universities that have submitted an application to be enrolled on the Ministry of Labour and Social Policy register.

The certification procedure is initiated by a joint application submitted in writing by the employer and the employee, and the procedure must be completed within 30 days of submission of the application. In assessing the application the committee must take account of best practices. The procedure is concluded with a deed of certification stating the reasons for the decision and indicating the authority to which an appeal may be presented, the deadlines for submission, and the effects of the certification. An appeal against the deed of certification may be lodged by the employer, the employee, or any interested third party, with the labour courts or the regional administrative tribunal. Applications for certification and the certified contracts must be kept on file by the certifying body for at least five years after their period of validity has come to an end. The certifying bodies also provide advice and assistance to the worker and the employer in relation to the negotiation of the contract and any changes to be agreed on. These provisions are of an experimental nature for an 18-month period, after which a tripartite assessment will be carried out in order to decide whether to continue with these certification procedures.