In-Work Poverty in Europe

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Founding Editor

The series started in 1970 under the dynamic editorship of Professor Roger Blanpain (Belgium), former President of the International Industrial Relations Association. Professor Blanpain, Professor Emeritus of Labour Law, Universities of Leuven and Tilburg, was also General Editor of the International Encyclopedia of Laws (with more than 1,600 collaborators worldwide) and President of the Association of Educative and Scientific Authors Authors. He passed away in October 2016.

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Introduction

The Bulletins constitute a unique source of information and thought-provoking discussion, laying the groundwork for studies of employment relations in the 21st century, involving among much else the effects of globalization, new technologies, migration, and the greying of the population.

Contents/Subjects

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Objective

The Bulletins offer a platform of expression and discussion on labour relations to scholars and practitioners worldwide, often featuring special guest editors.

The titles published in this series are listed at the end of this volume.

In-Work Poverty in Europe

Vulnerable and Under-Represented Persons in a Comparative Perspective

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CHAPTER 4

In-Work Poverty in Italy*

Ester Villa, Giulia Marchi & Nicola De Luigi

This chapter focuses on in-work poverty in Italy. After introducing the most important elements in the Italian production and regulatory system having an influence on in-work poverty, the focus turns to a targeted analysis of the four Vulnerable and Under-Represented Person (VUP) groups. First, the composition and the direct measures that affect in-work poverty are considered for each VUP group. The measures that indirectly influence in-work poverty of the four VUPs by type of household are then analysed. Finally, some concluding remarks are provided on the strengths and weaknesses of national legislation and on how it affects the different VUP groups.

§4.01 INTRODUCTION

Comparative political economy literature has often described Italy as the 'sick man' of Europe.[1] In terms of economic and employment performance, it lags behind the Nordic and Continental countries.[2] Furthermore, in recent decades, the gap with other Mediterranean countries, like Spain, has widened when considering specific indicators, such as economic growth or the female employment rate.[3] Italian capitalism has experienced difficulties in adapting to the structural changes triggered by the transition

* The chapter is the outcome of a joint discussion between the authors. However, the author of §4.01 and §4.06 is Nicola De Luigi; the author of §4.02, §4.03, and §4.07 is Ester Villa; the author of §4.04 and §4.05 is Giulia Marchi.

1. Andrea Mammone & Giuseppe A. Veltri, *Italy today: the sick man of Europe* (Routledge 2010).
2. OECD, *Strengthening Active Labour Market Policies in Italy, Connecting People with Jobs* (OECD Publishing 2019).
3. Margarita León & Emmanuele Pavolini, *'Social investment' or back to 'familism': the impact of the economic crisis on family and care policies in Italy and Spain*, South European Society and Politics, 19:3, 353-369 (2019).

from a labour-intensive to a knowledge-intensive economy.[4] Accordingly, compared to other advanced economies, the historical distortions that characterise its Welfare State are far from being fixed, and new social risks – including in-work poverty – continue to be poorly covered.[5] The 2008 economic and financial crisis had a profound effect on the country, highlighting and exacerbating its structural weaknesses.

Some factors have a particular influence on in-work poverty, contributing to the development of economic uncertainties among workers and their household members.

First, the structure of the production system is often described as molecular.[6] Indeed, in 2018, micro enterprises (3-9 employees) and small enterprises (10-49 employees) accounted for, respectively, 79.5% and 18.2% of the total production units, while medium enterprises (50-249 employees) and large enterprises (more than 250 employees) covered just 2.3% of the total.[7] Accordingly, more than 55% of the labour force was employed in micro and small enterprises. This specific structure of the production system has delayed the transition to a knowledge-based economy and the development of a high-tech sector.[8] This has had major consequences on the employment rate and the quality of jobs: since the 1990s, the Italian labour market has produced an abundance of precarious, low-skilled, and poorly paid jobs.[9]

Second, the Welfare State has historically been characterised by a functional distortion involving different levels of social risk coverage, with the bulk of resources being focused on the old-age risk.[10] This has created a hypertrophic pension sector with a lack of (or fragmented) protection of other social risks, particularly new ones. More specifically, although poverty has always been a widespread risk, it has never been tackled with a coherent strategy and with ad hoc instruments.[11] However, in 2018, a minimum income guarantee was introduced for the first time in Italy – the Inclusion Income (*Reddito di Inclusione* – REI) – later replaced, in turn, by a new measure, which is more generous in terms of cash benefits, known as Citizenship Income (*Reddito di Cittadinanza* – RdC). Accordingly, the redistribution capacity of the Italian Welfare State has increased in recent years.[12]

Third, in relation to households and family policies, Italy has traditionally followed a male-breadwinner family model, with men going out to work and women

4. Silja Häusermann, *The multidimensional politics of social investment in conservative welfare regimes: family policy reform between social transfers and social investment*, Journal of European Public Policy, 25:6, 862-877 (2018).
5. Valeria Fargion & Elisabetta Gualmini, Tra l'incudine e il Martello. Regioni e nuovi rischi sociali in tempo di crisi (Il Mulino 2013).
6. Yuri Kazepov & Costanzo Ranci, *Is every country fit for social investment? Italy as an adverse case,* Journal of European Social Policy, 27, 90–104 (2017).
7. Istat, *Censimento permanente delle imprese 2019: i primi risultati*, https://www.istat.it/it/files/ /2020/02/Report-primi-risultati-censimento-imprese.pdfIstat (2019).
8. Silja Häusermann, *The multidimensional politics*, *supra* n. 4.
9. Yuri Kazepov & Costanzo Ranci, *Is every country fit, supra* n. 6.
10. Maurizio Ferrera, *Il Modello Sud-Europeo di Welfare State*, Rivista Italiana di Scienza Politica 1, 67-101 (1996).
11. Maurizio Ferrera, *Welfare state reform in Southern Europe fighting poverty and social exclusion in Italy, Spain, Portugal and Greece* (Routledge 2005).
12. Giovanni B. Sgritta, *Politiche e misure della povertà: il reddito di cittadinanza*, Politiche Sociali, 1, 39 (2020).

staying at home to look after the children and other dependent relatives.[13] Accordingly, family policies have followed a familistic approach, striving to avoid removing from families (particularly, women) their care responsibilities. Therefore, Italy is characterised by an unsupported family-based structure.[14] For this reason, the dual-earner model, with both parents working full-time, is uncommon, even in the aftermath of the economic crisis.

Regarding the labour market, comparative literature has highlighted that Italy suffers from two interlinked shortcomings: a historically low employment rate – by comparative standards – in conjunction with a high unemployment rate, and the presence of a strong occupational divide, the insider/outsider gap.[15]

Turning our focus to the data on employment, the economic and financial crisis struck Italy profoundly, more so than other European countries. Between 2008 and 2013, the employment rate (20-64 years old) progressively decreased (dropping from 62.9% to 59.7%) and only started to recover from 2014.[16] However, this upturn in the employment rate was not followed by an increase in occupational intensity, namely the total volume of working hours. Indeed, this value still remains lower than the pre-crisis period. When considering the unemployment rate (6.1% in 2007, increasing to 9.2% by 2019), the picture is far from optimistic, with the rate still remaining well above the EU-27 average (7.1%).

These employment data should be analysed in view of the strong segmentation of the Italian labour market, with insiders, on one side, and outsiders, on the other. The former are employed on a full-time and permanent basis, while the latter include unemployed persons and atypical workers.[17] The risk of becoming an outsider in the aftermath of the economic crisis has not diminished, while the pandemic crisis has exacerbated the situation for some outsider groups.

The data discussed should also be considered in view of the recent evolution of both employment legislation and labour market policies.

In relation to its employment legislation, since the 1990s, like most advanced economies, Italy has undertaken a process of deregulating its labour market with a view to increasing its flexibility. However, up until the mid-2010s, this flexibility was only marginally present.[18] Therefore, it did not cover the insiders, but only the newcomers.

The situation changed in the aftermath of the economic and financial crisis. In 2012, the so-called Fornero Reform modified Article 18 of the Workers Statute (Italian Law no. 300/1970), making it less strict. For the first time, the rights of insiders, in

13. Chiara Saraceno, *The ambivalent familism of the Italian welfare state*, Social Politics: International Studies in Gender, State & Society, 1, 60-82 (1994).
14. Wolfgang Keck & Chiara Saraceno, *The impact of different social-policy frameworks on social inequalities among women in the European Union. The labour-market participation of mothers,* Social Politics – International Studies in Gender, State & Society, 20:3, 297-328 (2013).
15. Patrik Vesan, *La politica del lavoro*, in *Le politiche Sociali* (Maurizio Ferrera ed., Il Mulino 2019).
16. Eurostat data.
17. David Rueda, *Social democracy inside out: partisanship and labour market policy in industrialized democracies* (Oxford University Press, 2007).
18. Patrik Vesan, *La politica del lavoro*, *supra* n. 15.

terms of job protection, were included. The Fornero Reform also attempted to restrict the use of atypical employment contracts in order to reduce the amount of precarious jobs. Nevertheless, the real change occurred in the mid-2010s when the Jobs Act was approved in 2014. This Act reduces the rigidity of insiders' employment contracts by introducing new regulations on unlawful dismissals for employees hired after 7 March 2015 (known as '*contratto a tutele crescenti*').[19] The repercussions of this change were extensive, as the flexibility – which was previously marginal – now directly covered labour market insiders. Simultaneously, flexibility at the margins continued to be promoted, with fixed-term contracts being further liberalised. One countertrend was the recognition of employee protections also for hetero-organised collaborations, for which they had previously been excluded.

A partial turnaround occurred in 2018. The coalition government approved the 'Dignity Decree' (*Decreto Dignità*), which involved re-regulating the labour market, making it more difficult for employers to use fixed-term contracts, and increasing the compensation for unlawful dismissals for those hired from 7 March 2015 onwards. During those years, the Constitutional Court ruled on the latter regulation, strengthening the protection applied to circumstances of unfair dismissal.[20]

Although in-work poverty and low-wage work are different concepts, low wages can increase the risk of being poor while in work. Italian legislation does not include any statutory provision establishing a minimum wage, and collective agreements only apply to employers and employees who are members of the signatory trade unions. However, according to established case law, the concept of fair remuneration is determined with reference to the minimum wage rates established by national collective agreements signed by the most representative trade unions in the sector. Although these sector-based minimum wages are relatively high in comparison to the average wage,[21] many issues arise as to their effective functioning, enforcement, and compliance with contractual minimum wages. In addition, this sector-based minimum wage only covers employees and hetero-organised workers.

The COVID-19 pandemic had an immediate and disruptive effect on living and working conditions in Italy and across Europe, exacerbating inequality and poverty, particularly among those social groups which were already experiencing severe hardship. The Italian government introduced many extraordinary – albeit temporary – measures to tackle the economic and social consequences of the pandemic and to support workers and employers. The most important were those aimed at protecting employment levels.[22] From March 2020, individual dismissals and collective redundancies for economic reasons were temporarily suspended. This suspension was

19. More in detail, it covers employees working in companies whose workforce exceeds 15 employees in the same business unit or municipality or 60 people in total; employees on fixed-term contracts converted into open-ended employment contracts after 7 March 2015; and employees on apprenticeship contracts converted into open-ended contracts after 7 March 2015.
20. *See* further §4.02, [B][1].
21. Andrea Garnero, *The dog that barks doesn't bite: coverage and compliance of sectoral minimum wages in Italy*, IZA Discussion Papers, No. 10511 (2017).
22. Dismissal in violation of these rules was considered null. These measures, however, are problematic with regard to the principle of freedom of private economic initiative (Art. 41

gradually extended to 30 June 2021, due to the ongoing pandemic crisis.[23] The block on dismissals was accompanied by the payment of income support to employees whose employment had been suspended. In particular, a wage guarantee fund was set up to respond to the COVID-19 crisis, with simplified rules.[24] Although this protection was strong, the remuneration paid during the suspension period was still lower than it had been before, as the wage guarantee fund only paid a portion of the salary. In addition, employees could also take time off from work to look after their children while educational and teaching services were suspended, and to care for disabled people requiring assistance due to the temporary closure of their facilities.

Self-employed workers were probably the most affected by the COVID-19 pandemic crisis and the least protected against its socio-economic consequences.[25] For these workers, who were not receiving a wage or pension, income-support allowances were introduced.[26]

Regarding labour market policies, until the 2010s, the labour market deregulation was not associated with an increase in social security, in terms of both passive benefits and active measures. In other words, Italian 'flexicurity' was more biased towards flexibility.[27]

Historically, Italian unemployment benefits have not been very generous and their eligibility requirements, in terms of contributions and seniority, are strict.[28] This means that for many workers – mostly outsiders – unemployment risks were not covered. However, in the 2010s, during and in the immediate aftermath of the economic crisis, the picture began to change: the cited Fornero Reform introduced a new unemployment benefit, the ASPI (*Assicurazione sociale per l'impiego*), which was more generous but maintained the contribution and seniority requirements, making it difficult to access for a large number of employees, particularly atypical workers. ASPI was then replaced by a new form of unemployment insurance known as NASPI (*Nuova assicurazione sociale per l'impiego*), which substantially relaxed the eligibility criteria. NASPI has become a quasi-universal benefit covering almost all employees, including atypical ones. A new unemployment benefit was also introduced for non-subordinate

Const.). *See* Franco Scarpelli, *Blocco dei licenziamenti e solidarietà sociale*, Rivista italiana di diritto del lavoro, I, 313 (2020); Carlo Zoli, *La tutela dell'occupazione nell'emergenza epidemiologica fra garantismo e condizionalità*, Labor, 439 (2020).

23. The prohibition on dismissal was introduced for a period of 60 days with Art. 46, law decree No. 18, 17 March 2020, converted in law No. 27/2020. The prohibition was extended to five months by way of Art. 80, law decree No. 34, 19 May 2020. It was subsequently extended by way of Art. 14, law decree No. 104 of 14 August 2020, followed by Art. 12, law decree No. 137/2020, and, lastly, law No. 178 of 30 December 2020.
24. Claudia Carchio, *Gli ammortizzatori sociali alla prova dell'emergenza Covid-19: un'ennesima conferma*, Il lavoro nella giurisprudenza, 5, 454 (2020).
25. The self-employed are usually excluded from wage supplementation schemes and experience a lack of coverage in terms of social security.
26. It applied to self-employed workers, namely professionals not enrolled in official registers, para-subordinate workers enrolled in the INPS (national institute of social security) separate pension scheme, artisans and workers in the entertainment industry.
27. Fabio Berton, Matteo Richiardi & Stefano Sacchi, *Flexinsecurity. Perchè in Italia la flessibilità diventa precarietà* (Il Mulino 2009).
28. Stefano Sacchi & Patrick Vesan, *Le politiche del lavoro* (Il Mulino 2011).

workers (known as Dis-coll). In addition, since 2019, resources have been invested to strengthen public job centres and, following the approval of the National Recovery and Resilience Plan, measures to protect the unemployed have been bolstered.[29]

The data considered in the previous pages can assist us in understanding why the in-work poverty rate in Italy is well above the EU-27 average (9.4%) and is one of the highest among the European Union (EU) Member States. Somewhat unexpectedly, male workers are more likely to be at risk of poverty than female workers (respectively 13.4% vs. 10.6% in 2017). However, these data are not surprising when considering the structure of both the labour market and Italian households. Indeed, the female employment rate is very low by comparative standards, and the dual-earner family model is quite scarce. When employed, women tend to be the second-earners, topping up men's income. In Southern Italy, in particular, the male, single-earner and bread-winner family model is still predominant.

This household structure affects the in-work poverty risk for individuals from various perspectives. First, workers aged 18-24 are slightly better off than those aged 25-54 (respectively, 12.3% and 12.8% in 2017), as a relatively high percentage of younger workers continue to live with their parents. Second, work intensity plays a significant role: in-work poverty risks are much higher in households with medium or low work intensity than those with very high or high work intensity. Finally, there appears to be a strong association between in-work poverty, on one hand, and the number of earners/presence of children, on the other. In-work poverty is higher among single parent and 'traditional breadwinner' families. Once again, these data are very indicative: one condition for lowering the in-work poverty risk in households with children appears to be the presence of two primary earners, thus involving a shift from the traditional male-breadwinner family model to the dual-earner or modern multi-earner model. However, this shift seems a long way off.

§4.02 VUP GROUP 1: LOW OR UNSKILLED STANDARD EMPLOYMENT

[A] Poor Sectors, Composition, and In-Work Poverty Risk

To analyse VUP Group 1, the poor sectors had to be identified: according to Eurostat, in Italy, these are 'administrative and support service activities', 'other service activities', 'accommodation and food service activities' and, finally, 'real estate activities'.[30]

Based upon the general data, according to European Union Statistics on Income and Living Conditions (EU-SILC), in 2018 10.4% of workers belonged to this specific VUP group. This proportion increased over time, confirming that the labour market is experiencing something of a downward trend, with the bulk of new jobs being positioned in the low-skilled/poor sectors.

29. 'Piano Nazionale di Ripresa e Resilienza. Italia Domani'. For further information, https://italiadomani.gov.it/en/home.html.
30. Eurostat, earn_ses_pub1n, extraction: 01.03.2021.

Shifting the focus to the individual variables, the probability of members of this group being at risk of poverty, compared to employees with permanent contracts in standard sectors, is much higher (14.3% vs. 7.5% in 2018). It should also be noted that the in-work poverty phenomenon for VUP Group 1 deteriorated over time: not only did it increase compared to 2007 (12.2%) but when a positive trend occurred in 2013 – when the value slightly decreased (11.4%) – this was then reversed.

The in-work poverty risk has a particular impact on the 18-34 and 34-49 age groups (respectively, 14.2% and 15.2% in 2018). For these age groups, the likelihood of being at risk of poverty decreased between 2007 and 2013, but it increased again in the late 2010s. Conversely, for those aged over 50, the risk remained rather constant, albeit slighting declining over time (from 13.7% in 2007 to 13% in 2018).

When considering the gender variable, *women* are more likely than men to be at risk of in-work poverty (15.2% vs. 13.3%). This risk has constantly increased since 2007. In other words, women belonging to VUP Group 1 were strongly affected by the economic and financial crisis, and their situation did not improve once the economy recovered in the mid-2010s. Once again, the data are not surprising when considering that women are generally paid less than men and that their access to social insurance benefits is more restricted.

Nationality appears to be associated with a much higher possibility of being poor while in work. Almost 32.2% of non-Italian low-skilled employees in poor sectors are at risk of in-work poverty (vs. 9.3% of those with Italian citizenship). Interestingly, between 2013 and 2018, the risk worsened for both natives and migrants, but to a very different extent: for Italians, the risk increased by just 1 percentage point (pp), while for non-Italians, it grew by 10.1 pp.

In terms of *education* levels, it is clear that being highly qualified does not automatically protect workers from the risk of in-work poverty. In VUP Group 1, in 2018, the risk of in-work poverty was higher among those with a low education level (18.7%) than those with medium and higher levels (respectively, 11.5% and 12.1%); however, the latter two values remain quite high. Furthermore, the risks increased sharply for the highly-educated from 2007 to 2018 (from 2.3% to 12.1%). These data confirm the scarce amount of economic returns gained from education in Italy, leading to an increasing share of over-qualified, highly skilled employees working in poor sectors.

In shifting the focus to *household variables*, it is interesting to note that, in 2018, the risk of in-work poverty was higher for single-member households (13.8%) than for those with two or more members (respectively, 5.2% and 7.6%). Furthermore, while, for the latter, the risk decreased between 2013 and 2018, for single-member households, it increased.

The risk of in-work poverty consistently appears to be much higher in single-earner families (23.3%) than in dual-earner households (5.1%). The data once again confirms that the old-fashioned male-breadwinner family model exacerbates in-work poverty risks, particularly for employees in low-skilled occupations and poor sectors. However, it should be noted that for both single and dual-earner households, the risk

increased over time, thus revealing a general deterioration of the economic conditions of VUP Group 1 households.

Finally, the data demonstrates that the risk of in-work poverty is associated with the number of children in the household. Before the crisis, the risk was extremely high (27%) for households with more than one child. In 2013, the situation substantially improved, with the risk decreasing by almost 15 pp. However, the data revealed a further decline in 2018. At the end of the 2010s, both households with one child and those with more than one child experienced much higher risks than those with no children (respectively, 18.3%, 20.2% vs. 11.8%). These values suggest that family policy measures undertaken by Italian governments do not seem to be effective in lowering the levels of in-work poverty.

[B] Relevant Legal Framework

In recent years, many legislative reforms affecting those in VUP Group 1 have compounded their precariousness and deteriorated their working conditions, such as regulations on dismissals, active policies, and unemployment benefits. In addition, the wage-setting mechanism is a problematic issue, particularly for employees of VUP Group 1.

[1] Dismissals

Italian Legislative Decree no. 23 of 4 March 2015 introduced a *new system of penalties for unlawful dismissal for those hired from 7 March 2015,*[31] making permanent employment contracts more flexible in terms of the costs of dismissal, thus weakening the protection against unfair dismissals. This decree *reduced the scope for reinstatement in circumstances of unfair dismissal* and *increased the cases in which the employee is only entitled to monetary compensation*.

Reinstatement[32] applies only to discriminatory and invalid dismissals, or dismissals that are considered ineffective in the absence of written notification. In these cases, the employee also receives compensation in an amount equal to the sum of wages lost from the day of dismissal to the day of reinstatement.[33] Reinstatement also applies to disciplinary dismissals that are found to be illegal due to the lack of any justified subjective reason or just cause *if the circumstances do not exist*. In this case, however, the amount of compensation is equal to the wages lost from the day of dismissal to that of actual reinstatement, but they may not be higher than the 12-month standard wage.

31. Employees hired before 7 March 2015, are protected by Art. 18, law No. 300/1970 (so-called Workers' Statute), as amended in 2012, and Art. 8, law No. 604/1966. The latter discipline applies only to employees in firms with less than 15 employees in the productive unit or less than 60 employees at national level.
32. As an alternative to reinstatement, the employee can opt for substitution benefit equivalent to 15 months' worth of standard wage.
33. The compensation must not be lower than 5 months' worth of standard wage.

In other cases of disciplinary and economic dismissals without justified reason,[34] *under the original formulation, only monetary compensation was provided, increasing in accordance with seniority*: the amount of compensation was equal to 2 months' wages per year of service, ranging from a minimum of 4 to a maximum of 24 months (Article 3). This regulation was amended by the '*Decreto Dignità*' (Italian Law no. 96/2018), representing a countertrend compared to other recent reforms. Indeed, it enhanced the compensation for unlawful dismissal, providing that the monetary compensation should not be less than 6 months' wages or more than 36 months' wages.

The Constitutional Court ruled on this regulation in its judgements no. 194/2018 and no. 150/2020. It addressed the issue of the constitutionality of this system, in which the compensation is determined solely based on the dismissed employee's length of service. The court deemed unconstitutional 'the phrase that automatically tied the amount of compensation to the length of service of the dismissed employee'. The court ruled that in treating different situations identically, this inflexible criterion was unreasonable and violated the principle of equality: the detriment caused in the different circumstances by unfair dismissal depends upon a variety of factors. Thus, while length of service is certainly relevant, it is just one of many elements. In conclusion, the contested Article 3(1) was considered unconstitutional with regard only to the phrase 'in an amount equal to two months' wages […] for each year of service'.[35] As a result, the compensation for unjustified dismissals (Article 3) varies from a minimum of 6 to a maximum of 36 months of remuneration.[36] When determining the amount of compensation, *the courts will primarily take account of the length of service, along with other criteria*, which may be inferred on a systematic basis from the development of legislation imposing limits on dismissals, such as *number of employees, scale of business activity, conduct and circumstances of the parties*.[37]

[2] Remuneration

Regarding wage-setting mechanisms, there are many significant issues, such as wage indexation mechanisms, decentralised collective bargaining, and pirate collective

34. The same rule applies in case of violation of criteria for selecting employees to be dismissed in the case of collective dismissals, and violation of procedural rules in collective dismissals. For formal or procedural violations in the case of individual dismissals, compensation was equal to 1 monthly wage per year of service, ranging, however, between 2 and 12 months (Art. 4).
35. For the same reasons, the court contested Art. 4 with regard to the phrase 'in an amount equal to one monthly salary […] for each year of service'.
36. Compensation for violation of formal and procedural rules (Art. 4) varies from a minimum of 2 to a maximum of 12 months' worth of remuneration.
37. For a comment on these judgments, *see* Carlo Cester, *Il Jobs Act sotto la scure della Corte costituzionale: tutto da rifare?*, Il lavoro nella giurisprudenza, 163 (2019); Arturo Maresca, *Licenziamento ingiustificato e indennizzo del lavoratore dopo la sentenza della Corte costituzionale n. 194/2018 (alla ricerca della norma che non c'è)*, Diritto delle relazioni industriali, 228-243 (2019); Maria Teresa Carinci, *La Corte costituzionale n. 194/2018 ridisegna le tutele economiche per il licenziamento individuale ingiustificato nel 'Jobs Act', e oltre*, WP C.S.D.L.E. 'Massimo D'Antona'. IT, No. 378 (2018).

agreements.[38] However, for VUP Group 1, the latter is currently the most problematic issue.

As previously described, Italian legislation does not include any statutory provision establishing a minimum wage. When an employee claims before a court that his/her wage does not satisfy the principle of fairness and adequacy envisaged by Article 36 of the Constitution,[39] the court determines the wage level according to Article 2099 of the Italian Civil Code (c.c.). Courts usually refer to the 'basic wages' (*minimi tabellari*)[40] established in national industrial collective agreements. Thus, it is be an industry and contractual – as well as judicial – national minimum wage.

The number of collective agreements has dramatically increased in recent years.[41] This phenomenon and the proliferation of a variety of competing industry collective agreements – which can be applied by the employer regardless of the activity performed – may lead to sharp reductions in wages and deteriorations of working conditions.

First, the multiplicity of collective agreements applicable to a single category – or with partially overlapping scope of application – encourages employers to apply the agreement that envisages the lowest cost of labour.

Second, with the view to deviating from the provisions and protections included in collective agreements stipulated by the most representative social partners in the industry, many firms seek collective agreements negotiated outside the boundaries of their main economic activity, simply to save on labour costs. This practice drives something of a downward trend in collective negotiated minimum wages as, on average, employee salaries covered by pirate collective agreements are estimated to be 15% lower than those covered by other collective agreements.[42]

38. There are no set criteria used to define a collective agreement as 'pirate'. Indeed, it is not possible to regard an agreement as such simply because it provides for lower minimum rates than those contained in the collective agreement entered into by the comparatively most representative trade unions. Between the pirate contract and the leader contract, there is a wide 'middle ground' (*see* Marzo Peruzzi, *Viaggio nella 'terra di mezzo', tra contratti leader e pirata*, Lavoro e diritto, 211 (2020). According to some interpretations, pirate contracts are entered into by subjects working in 'collusion' with the employer organisation. *See* Giulio Centamore G., *Contratti collettivi o diritto del lavoro «pirata»?*, Variazioni su temi di diritto del lavoro, 479 (2018); Andrea Lassandari, *Pluralità di contratti collettivi nazionali per la medesima categoria*, Lavoro e diritto, 261-299 (1997).
39. Article 36 of Constitution establishes that workers have the right to fair wages, in accordance with the quality and quantity of their work. Adequate wages shall in any case be guaranteed, such as to ensure them and their families a free and dignified existence.
40. Seniority, special allowances and incentives are excluded. The basic wage rates may be adjusted downwards for apprentices.
41. On this issue, *see* Giulio Centamore, *I minimi retributivi del CCNL confederale Vigilanza privata, sezione Servizi fiduciari, violano l'Art. 36 Cost.: un caso singolare di dumping contrattuale e una sentenza controversa del Tribunale di Torino*, Diritto delle relazioni industriali, 850 (2020); Silvia Ciucciovino, *Fisiologia e patologia del pluralismo contrattuale tra categoria sindacale e perimetri settoriali*, Lavoro e diritto, 185-210 (2020).
42. Daria Vigani & Carlo Lucifora, *Losing control? The effects of pirate collective agreements on wages*, in http://conference.iza.org/conference_files/LaborMarketInstitutions_2019/vigani_d2 3851.pdf (2019). On this issue, *see* Supreme Court, 20 February 2019, n. 4951. For a comment on this ruling, *see* Lucio Imberti, *Trattamento economico minimo (del socio lavoratore) e c.c.n.l. parametro: chi individua la categoria e il parametro della stessa?*, Labor, 4 (2019).

However, it should be noted that *collective agreements signed by historical unions also sometimes establish an unfair wage level*. As employers can technically apply an industry collective agreement regardless of the activity performed, they sometimes 'choose' the most convenient one, thus leading to downward competition between such agreements.[43] For this reason, employee wages are often inadequate.

There have been many rulings on this issue. In such cases, although employees were entitled to wages established in collective agreements stipulated by the comparatively most representative trade-unions' and employers' associations – in compliance with Article 7, paragraph 4 of Italian Decree Law no. 248 of 2007 on cooperatives' working members – judges considered the remuneration to be in conflict with Article 36 of the Constitution. Indeed, employee wages fell drastically over the years, in some cases by more than 30%, following the takeover of the employer organisation. This wage was considered insufficient to live a dignified existence or to make ends meet.[44] In one case, the court asserted that the remuneration was in conflict with Article 36 of the Constitution as it was lower than the absolute poverty threshold calculated by Istat (the Italian institute of statistics). Indeed, if a wage in line with the absolute poverty threshold was considered adequate, fair remuneration would be 'flattened' to the minimum level.[45]

When the remuneration envisaged by the national collective agreement stipulated by the comparatively most representative trade unions is considered to be in conflict with Article 36 of the Constitution – as in these rulings – the judge then faces the problem of re-determining the remuneration in accordance with the principles of the Constitution. In this respect, many authors highlight the risk of falling into a sort of 'judicial subjectivism'.[46]

This issue is particularly widespread in certain sectors, particularly those most affected by decentralisation and outsourcing, such as cooperatives, logistics, retail, tourism, catering, multi-service, and cleaning. Indeed, in such labour-intensive sectors, in which production does not require many tangible assets or a high level of competence or specific know-how to perform the contract, companies often outsource activities that are not strictly connected to their core business with the aim of reducing labour costs, with a high turnover of entrepreneurs.[47]

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43. Andrea Lassandari, *Oltre la 'grande dicotomia'? La povertà tra subordinazione e autonomia*, Lavoro e diritto, 82-102 (2019).
44. Court of Milan, 30 June 2016, No. 1977, confirmed by the Milan Court of Appeal, 28 December 2017, n. 1885, in *DeJure*. For a similar case, *see* Court of Turin, 9 August 2019, No. 1128. *See* Giulio Centamore, *Contratti collettivi «qualificati» e trattamento economico dei soci lavoratori di cooperativa: cronaca e implicazioni di una vicenda singolare*, Labor, 237 (2017); Lucio Imberti, *Art. 36 Costituzione: in assenza di interventi legislativi chi è l'autorità salariale?*, in Lavoro diritti europa (2019).
45. Stefano Bellomo, *Determinazione giudiziale della retribuzione e individuazione del contratto collettivo-parametro tra Art. 36 Cost. e normativa speciale applicabile ai soci lavoratori di cooperative*, Rivista italiana di diritto del lavoro, II, 28-38 (2020).
46. Lucio Imberti, *Art. 36 Costituzione, supra* n. 44.
47. Roberto Riverso, *Cooperative spurie ed appalti: nell'inferno del lavoro illegale*, in Questione giustizia online (2019). The weakness of such workers is due to the instability of employment in contractor companies, which operate in a highly competitive market and whose performances are strongly influenced by the decisions of the clients. *See* David Weil, *The fissured workplace.*

[3] Active Labour Market Policies, Training, and Unemployment Benefits

Unemployed persons must declare their immediate availability for work in order to access job centre services. After making this declaration, they must then enter into a 'personalised service agreement' with the job centre, in which they undertake to participate in training, qualification, and professional retraining initiatives to promote their entry into the labour market. However, due to the lack of investments made and the small number of job centre operators, the agreement has thus far not lived up to its promise of personalising initiatives for the unemployed. The situation began to change in 2019, when an extraordinary plan to bolster job centres was approved. New resources have also been invested in more recent years. Following the approval of the National Recovery and Resilience Plan, a series of measures were approved to provide a more personal service to unemployed individuals seeking employment, including a programme known as the 'Workers Employability Guarantee' (GOL). For the first time, this is a reform programme having some credibility, also thanks to the significant resources made available by the EU.

When turning our attention to unemployment benefits, it should be noted that they also present critical issues.

If employees meet the statutory requirements, they are entitled to NASPI – new social insurance provision for employment (*Nuova assicurazione sociale per l'impiego*) – consisting of an amount of approximately 75% of the monthly average wage over the last 4 years. After 3 months, the benefit amount decreases by 3% per month (known as '*decalage*'). If the circumstance of unemployment occurred from 1 January 2022, the rule of *decalage* becomes more favourable: indeed, the amount of the benefit decreases by 3% per month only after 6 months, while the *decalage* commences from the eighth month for NASPI beneficiaries aged over 55.

However, this unemployment benefit is conditional: the employee must actively be seeking a job and must accept *a suitable job offer*. The notion of suitable job offer is defined by law.[48] From the economic perspective, it must pay a wage that is at least 20% higher than the unemployment benefit received; from the professional perspective, the notion of 'suitable job offer' varies, depending on whether the person has been unemployed for less than 6 months, for between 6 and 12 months, or for more than 12 months. After 12 months, the suitable job offer that must be accepted by employees may even differ greatly from their previous jobs and does not have to be linked to their skills. Finally, from the geographical perspective, in the first 12 months, unemployed persons must accept offers of jobs within 50 km from their home, while, after 12 months, offers of jobs up to 80 km from their home are considered suitable.

If a suitable job offer is rejected, the unemployment benefit is lost.

Some observations can be made on this regulation.

Why work became so bad for so many and what can be done to improve it (Harvard 2017). *See* also *Dall'impresa a rete alle reti di impresa. Scelte organizzative e diritto del lavoro* (Maria Teresa Carinci ed., Giuffrè 2015); Matteo M. Mutarelli, *Riassunzione nell'avvicendamento di appalti e jobs act*, Il diritto del mercato del lavoro, 293 (2015).

48. Art. 25, legislative decree No. 150/2015 and Ministerial Decree 10 April 2018.

First, the logic behind the *decalage* system is debatable, in cases where the unemployed person has actively been seeking a new job. This issue remains problematic even though the regulation has been made more favourable. This regulation risks excessively penalising individuals who have previously received a low wage. In order to prevent a situation where unemployed persons receive benefits that do not allow them to make ends meet, those who receive a NASPI below a certain threshold and demonstrate that they have been actively seeking work may be exempted from the *decalage*.

Second, it is problematic to determine a suitable job offer on the basis of the amount of the unemployment benefit. Given that NASPI can be much lower than the individual's most recent wage, a worker in VUP Group 1 could be 'forced' to accept a job offer with very low remuneration, even lower than the remuneration earned in their previous job. Moreover, as the notion of suitable job offer becomes broader over time, there is the risk of forcing persons into jobs that are less well-paid and at lower professional level.

An active policy measure, namely the *individual job placement allowance*, was recently reinstated. This allowance consists of a voucher – available for unemployed persons who have been in receipt of NASPI for at least four months, provided that they take part in vocational retraining courses, and beneficiaries of the 'Citizen's Income' – which can be spent on obtaining intensive job placement support, including vocational retraining courses, at public or private accredited entities. Moreover, in such cases, there are measures to encourage the development of employee skills, as well as incentives both for employees who accept a suitable job offer and for the employer hiring the employee. From 1 January 2022, this measure became part of the 'Workers Employability Guarantee'. Under this scheme, which will be implemented in the coming months – it appears that unemployed persons who have been in receipt of NASPI for at least four months and beneficiaries of the 'Citizen's Income' will be entitled to the individual job placement allowance, although this will depend on the measures adopted by the Regions.

§4.03 VUP GROUP 2: SOLO AND BOGUS SELF-EMPLOYMENT

[A] Composition and In-Work Poverty Risk

Starting with more general data, according to EU-SILC, in 2018 13.5% of employed persons were self-employed with no employees.

This employment status is not associated with more secure and well-paid jobs. Self-employed persons actually experience a higher risk of in-work poverty than employed persons (18.6% vs. 12.2% in 2018). Furthermore, while this risk has slightly reduced compared to the immediate aftermath of the economic and financial crisis (20.3% in 2013), it has not returned to pre-crisis values (16.2% in 2007).

Shifting the attention to individual variables, there is a particular risk of in-work poverty for the 18-34 and 34-49 age groups (respectively, 20.6% and 21.2% in 2018). More specifically, the likelihood of being at risk of poverty for the 18-34 age group has

increased constantly over time (+7.5% since the pre-crisis level). Conversely, for the group aged over 50, the risk is lower (15.4% in 2018); this category demonstrates that it is more capable of recovering from the effects of the crisis (indeed, compared to 2013, the rate has decreased and is now much closer to pre-crisis values).

Considering the *gender variable* in this group, women are less likely than men to be at risk of in-work poverty (13.8% vs. 20.7%). This somewhat surprising fact should be viewed very carefully. Indeed, women were consistently under-represented within the group compared to men (30.8% vs. 69.2% in 2018). Therefore, the sharp difference in the risk of in-work poverty may be explained by the lower representativeness of the group.

Nationality appears to be strongly associated with a much higher possibility of being poor while in work. In 2018, 45.8% of non-Italian self-employed persons with no employees were at risk of in-work poverty (vs. 17% of Italians). Furthermore, over time, the in-work poverty risk for non-Italians has constantly increased (+16.6 pp from 2007 to 2018).

When considering *education levels*, persons who are highly qualified are not automatically protected from the risk of in-work poverty. In 2018, this risk is much higher among those with a low level of education (26.3%) compared to those with medium and higher levels (respectively, 18% and 12.1%); however, the latter two values are still rather high by comparative standards. Furthermore, while the risk decreased slightly for the low-skilled persons between 2013 and 2018, it constantly and sharply increased over time for the highly-educated. This data confirms the scarce economic returns of education in Italy.[49]

Shifting the focus to *household variables*, in 2018 the risk of in-work poverty is much higher for single-member households (21.4%) than for those with two or more members (respectively, 11.2% and 18.7%). Furthermore, for the latter category, the risk decreased between 2013 and 2018, while it increased for single-member households. Accordingly, the risk of in-work poverty appears to be much higher in single-earner families (29.9%) than in dual-earner households (9%). The risk for both types of household has remained rather constant over time. The data once again confirms that the old-fashioned male-breadwinner family model exacerbates in-work poverty risks.

Finally, the data demonstrates that the risk of in-work poverty is associated with the number of children in the household. Before the crisis, the risk was extremely high (28.7%) for households with more than one child and worsened with the crisis (36.3% in 2013). In 2018, the situation improved, and the rate decreased to 25.8%, a level even lower than the pre-crisis period. Interestingly, for those families with one child, the risks constantly increased over time, albeit slightly.

49. Silja Häusermann, Thomas Kurer, & Hanna Schwander, *High-skilled outsiders? Labor market vulnerability, education and welfare state preference*, Socio-Economic Review, 13:2, 235 (2015).

[B] Legal Framework

[1] Notion

The employment contracts relevant to VUP Group 2 are hetero-organised collaborations (*lavoro eterorganizzato*), semi-subordinate employment contracts (*lavoro parasubordinato*), and solo self-employment contracts.

Starting with hetero-organised collaborations, pursuant to Article 2 of Italian Legislative Decree no. 81/2015, subordinate employment protections also apply to these collaborations 'which take place mainly through personal work and continuous work, the methods of which are organised by the client'.

Their characterising features are: prevalent personality, continuity, and hetero-organisation. '*Prevalent personality*' occurs when the collaborator's personal work prevails over the work of auxiliaries and the use of tools and machinery, both quantitatively and qualitatively. This requirement is not fulfilled if the worker uses a complex organisation, particularly in the form of a company. *Continuity* occurs when the service is not occasional but lasts over time and involves a constant commitment by the worker to perform activities in favour of the client over a certain period.[50] *Hetero-organisation* is the functional integration of the worker into the client's production organisation – arranged unilaterally by the client itself – such that the work performed can be suitably and structurally linked to this organisation.[51] The collaboration is deemed to be hetero-organised if the client determines the collaborator's working methods.

For hetero-organised collaborations, Article 2, paragraph 2 establishes several exclusions from the scope of application of subordinate employment protections. The most important exclusion concerns employment relationships regulated by national collective agreements signed by the comparatively most representative trade unions at national level, which envisage a specific regulatory framework on wages and regulatory treatment in view of the specific production and organisational requirements of the sector or industry.[52]

There has been a lively debate on the issue of classifying *hetero-organised collaborations*. According to some scholars, Article 2 identifies a new sub-type of

50. These notions have already been set out by case law with respect to coordinated and continuous collaborations pursuant to Art. 409. On the concepts of main personality and continuous work, *see, for instance,* Cass. 26 July 1996, n. 6752; Cass. 9 March 2001, n. 3485.
51. Cass. n. 1663/2020, which concerns the case of Foodora riders. On work on demand via apps *see* VUP group 4.
52. This provision enables collective bargaining to select collaborations that will not be subject to subordinate employment protections. Other exceptions are the following: collaborations consisting of professional intellectual work, for which workers are required to be registered with specific professional bodies; activities carried out, in the performance of their duties, by member of corporate bodies; activities performed, for institutional purposes, in favour of amateur sports associations and clubs affiliated with national sports federations, associated sports disciplines and sports promotion bodies recognized by the C.O.N.I.; collaborations provided in the field of production of shows and performances by music sector foundations; collaborations by operators working in the field of mountain and speleological rescue.

subordinate employment, thus extending the subordination category,[53] while others consider these collaborations to be self-employment relationships, to which subordinate employment protections should be extended.[54] However, the practical effect of the reform is 'to extend the subjective scope of application of the legal protection previously intended only for subordinate work'.[55]

The notion of *semi-subordinate employment* (*lavoro parasubordinato*) is identified in the new wording of Article 409, no. 3 of the Italian Civil Procedure Code. According to this provision, this sub-type includes collaborations consisting of continuous and coordinated work (*co.co.co*), mainly personal, though not in the form of a subordinate employment relationship. The amendment made by Italian Law no. 81/2017 specified the meaning of coordination, which is the distinguishing feature of such collaborations, thus clarifying the distinction between coordination and hetero-organisation. By asserting that collaborations are coordinated when, in compliance with the coordination methods agreed by the parties, the worker autonomously organises his/her work, the legislator has identified this distinguishing element as the 'co-determination of organisational constraints'. In *co.co.co.* arrangements, the worker is obliged to carry out the activity in accordance with the methods of organisation agreed in the contract so that his/her work is integrated into the client's production organisation; however, any power of direction or interference by the client in the performance is excluded.[56]

Italian Law no. 81/2017 has also introduced some measures to protect *solo self-employment*.[57] Pursuant to Article 1, the protections identified in this law apply to non-entrepreneurial self-employed workers, namely self-employed workers as defined in Article 2222 of the Italian Civil Code, with the exclusion of entrepreneurs. A person is self-employed when he/she performs a task or work in return for payment and is not subject to any subordination towards the other party. In this case, the legislator's aim

53. Luca Nogler, *La subordinazione nel d.lgs. n. 81/2015: alla ricerca dell' 'autorità dal punto di vista giuridico'*, WP C.S.D.L.E. 'Massimo D'Antona'. IT, No. 267 (2015); Michele Tiraboschi, *Il lavoro etero-organizzato*, Diritto delle relazioni industriali, 978-987 (2015); Tiziano Treu, *In tema di Jobs Act. Il riordino dei tipi contrattuali*, Giornale di diritto del lavoro e di relazioni industriali, 155-181 (2015).
54. *See* Adalberto Perulli, *Il lavoro autonomo, le collaborazioni coordinate e le prestazioni organizzate dal committente*, WP C.S.D.L.E. 'Massimo D'Antona'. IT, No. 272 (2015); Roberto Voza, *La modifica dell'Art. 409, n. 3 c.p.c., nel disegno di legge sul lavoro autonomo*, WP C.S.D.L.E. 'Massimo D'Antona'. IT, No. 318 (2017); Mariella Magnani, *Autonomia, subordinazione, coordinazione nel d.lgs. n. 81/2015*, WP C.S.D.L.E. 'Massimo D'Antona'. IT, No. 294 (2016). On the debate on the classification of hetero-organised collaborations, *see* Riccardo Diamanti, Diamanti, *Il lavoro etero-organizzato e le collaborazioni coordinate e continuative*, Diritto delle relazioni industriali, 205 (2018).
55. Massimo Pallini, *Towards a new notion of subordination in Italian labour law?*, Italian labour law e-journal,12:1 (2019).
56. On the contrary, when such co-determination is absent and the client unilaterally imposes methods of organisation, the collaboration must be regarded as hetero-organised.
57. On this regulation, *see* Giuseppe Santoro-Passarelli, *Il lavoro autonomo non imprenditoriale, il lavoro agile e il telelavoro*, Rivista italiana di diritto del lavoro, I, 369-396 (2017); Adalberto Perulli, *Il jobs act degli autonomi: nuove (e vecchie) tutele per il lavoro autonomo non imprenditoriale*, Rivista italiana di diritto del lavoro, I, 173-201 (2017); Stefano Giubboni, *Il Jobs act del lavoro autonomo: commento al capo I della legge n. 81/2017*, Giornale di diritto del lavoro e di relazioni industriali, 471-495 (2017).

is to introduce some minimum protections for self-employed workers who are in a position of contractual weakness.[58]

[2] Labour Law and Social Security Standards

As envisaged by Article 2 of Italian Legislative Decree no. 81/2015, hetero-organised workers are entitled to the same protections as those granted to subordinate employees, including the right to fair remuneration. However, doubts have arisen with regard to the identification of the applicable provisions. Indeed, according to some scholars, only certain provisions can be extended, as these collaborations are sub-types of self-employment.[59] Conversely, according to the consolidated interpretation, also approved by Employment Ministry Circular no. 3/2016, the entire regulation of subordinate employment applies, including the social security provisions. In ruling no. 1663/2020, meanwhile, the Court of Cassation found that extending the protections applicable to subordinate employees was – on balance – reasonable in order to protect workers who are weaker due to the imbalance in their relationship with the client.

Although coordinated and continuous collaborators do not enjoy the same protections available to employees, they are covered not only by the same labour dispute regime as subordinate employees (Article 409, no. 3 of the Italian Civil Procedure Code), but also by other legal protections, namely: Article 2113 of the Italian Civil Code, on waivers and settlements by employees of the rights provided by mandatory rules of law or collective agreements, which are not valid; mandatory social security provisions (Article 2, paragraph 26 of Italian Law no. 335/1995 extended the scope of application of social security provisions to *co.co.co.*, making the latter eligible to receive the services provided by the INPS separate pension scheme); provisions on maternity and paternity protections, including the right to an allowance for maternity leave and parental leave; sickness protections; mandatory employers' insurance for workplace injuries and occupational diseases (Article 5 of Italian Legislative Decree no. 38/2000) and health and safety regulations, when the work is performed in the client's workplace (Article 3, paragraph 7 of Italian Legislative Decree no. 81/2008); unemployment benefits, namely the right to DIS-COLL (Article 15 of Italian Legislative

58. Fabrizio Ferraro, *Le misure a tutela del lavoro autonomo non imprenditoriale*, in Diritto e processo del lavoro e della previdenza sociale, 356 (Giuseppe Santoro Passarelli, Utet Giuridica 2020); Marco Peruzzi, *L'ambito di applicazione del primo capo della l. n. 81/2017: identikit del 'lavoro autonomo non imprenditoriale'?*, Variazioni su temi di diritto del lavoro, 661-684 (2018). For this reason, Art. 1, para. 2, explicitly excludes entrepreneurs from the scope of application of the protections. An entrepreneur, as defined by Article 2082 c.c, is a person who professionally performs an organized economic activity for the purpose of producing or exchanging good and services. Also, small entrepreneurs are excluded from the scope of application of law no. 81/2017. According to Article 2083 c.c., small entrepreneurs are those working as farmers, craft workers, small traders and those who perform a professional activity, mainly organised as personal work or with the help of his or her family members.

59. Arturo Maresca, *Coordinazione, organizzazione e disciplina delle collaborazioni continuative*, Massimario di giurisprudenza del lavoro, 133-141 (2020).

Decree no. 22/2015);[60] active policy provisions for enterprises experiencing times of economic crisis (Italian Law no. 296/2006).

Similarly, Italian Law no. 81/2017 introduced some protections for non-entrepreneurial self-employed persons, such as protection in commercial transactions; a provision protecting inventions of the self-employed; the right to deduct costs for training and vocational education; protections against unfair clauses, i.e., clauses that allow the client to amend the contractual terms and conditions unilaterally or, in the case of a continuous collaboration, to withdraw from the contract without adequate notice, and clauses in which the parties establish payment terms exceeding 60 days; in addition, any refusal by the client to stipulate the contract in writing can be regarded as abusive conduct. In such cases, the worker is entitled to be compensated in the form of damages. The law has also stabilised the application of DIS-COLL to workers enrolled on the INPS separate scheme. If the worker performs continuous activity for the client, then maternity, illness, and work-related injury will not give rise to termination of the employment relationship, which will be suspended for a period not exceeding 150 days in one year. It also establishes the right to maternity and parental allowances for workers enrolled on the INPS separate scheme who have paid contributions for at least 3 months in the preceding 12-month period. Furthermore, with a view to aligning supply and demand, it places an obligation on job centres and employment agencies to create a self-employment branch, with the task of reporting professional opportunities and providing information on the procedures for starting autonomous businesses and taking part in public contract procedures.

However, Italian Law no. 81/2017 does not provide any minimum wage guarantees.[61] Indeed, it is debatable whether minimum wage regulations are applicable to these workers. Although the right to fair remuneration is traditionally only guaranteed for subordinate employees, and the self-employed are not covered by minimum wages agreed in collective agreements, some scholars highlight the opportunity to extend the scope of application of Article 36 to dependent self-employment. Indeed, pursuant to Article 35 of the Constitution, 'the Republic protects work in all its forms and practices' and not only subordinate employment. Regarding dependent and solo self-employment, in particular, workers may be in a condition of economic dependence and contractual imbalance towards a single client, which would justify this protection. However, with some exceptions, no statutory provision has, to date, laid down the right to fair remuneration for these workers, and Italian case law still excludes self-employment from the scope of application of Article 36 of the Constitution.[62]

60. Law. 30 December 2021, No. 234, art. 1, co. 223 has increased the maximum duration from 6 to 12 months.
61. Marco Ferraresi, *Il lavoro autonomo dopo la l. n. 81/2017: nuovi equilibri tra fattispecie e disciplina*, Variazioni su temi di diritto del lavoro, 629 (2018).
62. *See* Cass. 30.12.2011, n. 30590; Cass. 28.06.2017, n. 16213.

[3] Unionisation and Application of Collective Agreements

The role of collective bargaining with regard to self-employment has rarely been investigated, although – particularly in recent decades – some trade unions have established special divisions to represent these workers. These include Nidil-Cgil (*Nuove identità di lavoro*), Felsa-Cisl (*Federazione lavoratori somministrati autonomi ed atipici*), and UILTemp, which represent non-standard workers, namely agency workers, semi-subordinate workers, and the self-employed. Moreover, trade-union confederations have established associations such as CISL Vivace, a freelancers' association offering individual services, i.e., business advice, legal assistance, and financial and tax support.[63]

Collective bargaining has played a crucial role in self-employment, intervening in accordance with Article 2, paragraph 2, letter a) of Italian Legislative Decree no. 81/2015 on the matter of hetero-organised collaborations. Indeed, through this provision, the legislator confers upon collective bargaining the power to regulate collaborations despite the law: Article 2, paragraph 2, letter a) excludes the applicability of subordinate employment protections to hetero-organised collaborations when national collective agreements signed by the comparatively most representative trade unions at national level provide a specific regulatory framework on wages and regulatory treatment. This provision was immediately applied, for instance, in the call centre sector, which often relies on collaborations and where the activity is usually organised by the client, and in many sectors where the activities performed could be regarded as hetero-organised work, but where applying the subordinate employment regulations – and the associated labour costs – may lead to the cessation or outsourcing of the activities. Indeed, in the 2015-2017 period alone, almost 20 collective agreements introduced a specific provision to regulate hetero-organised collaborations.[64]

§4.04 VUP GROUP 3: FIXED-TERMERS, AGENCY WORKERS, INVOLUNTARY PART-TIMERS

[A] Composition and In-Work Poverty Risk

According to EU-SILC, in 2018, 15.8% of employed persons were temporary workers or involuntary part-timers. Interestingly, there was a clear increase in this trend over time. Once again, the data are not surprising as many of the jobs created in recent decades have been atypical.

63. There are also some associations representing professionals, such as ACTA, a 'quasi-union' promoting many political actions and social initiatives. *See* Orsola Razzolini, *Collective action for self-employed workers: a necessary response to increasing income inequality*, WP CSDLE 'Massimo D'Antona'. INT, No. 155 (2021).
64. Lucio Imberti, *L'eccezione è la regola?! Gli accordi collettivi in deroga alla disciplina delle collaborazioni organizzate dal committente*, Diritto delle relazioni industriali, 393-430 (2016); Paolo Tomasetti, *Il lavoro autonomo tra legge e contrattazione collettiva*, Variazioni su temi di diritto del lavoro, 717-760 (2018).

As expected, temporary workers are much more likely to be at risk of in-work poverty than standard employees (21.5% vs. 12.2% in 2018). Furthermore, this risk constantly increased over time and did not reduce when the economy began to recover from the recession in the early 2010s. The data thus suggest that in-work poverty among the VUP3 Group is a structural problem.

Shifting the attention to individual variables, the in-work poverty risk particularly affected the 35-49 age group, while it was lower among the younger groups (respectively, 24.8% and 17.7% in 2018). However, the risk increased constantly for all age groups over time. These data can be explained when considering household characteristics. Indeed, younger workers – who usually receive meagre wages – still tend to live with their parents.[65] In other words, the family acts as a *shock absorber*, thus softening the side effects of atypical jobs.

When considering the *gender variable*, it is interesting to note that women are less likely than men to be at risk of in-work poverty (18.6% vs. 25.2%). For men, however, the risk changed only slightly over time, while it increased substantially for women. In other words, female temporary workers and involuntary part-timers were affected by the economic crisis, and they have not managed to recover (between 2007 and 2018, the in-work poverty risk increased by 7 pp, from 11.6% in 2007 to over 18.4% in 2013 and 18.6% in 2018).

Nationality appears to be strongly associated with a much higher possibility of being poor while in work. In 2018, 34.7% of non-Italian temporary workers and involuntary part-timers were at risk of in-work poverty (vs. 18.3% of Italians).

When considering *education levels*, in comparison to VUP Group 1 and VUP Group 2, education seems to have a stronger and more positive effect. In 2018, the in-work poverty risk among workers with a low education level (29.8% in 2018) was almost double that of those with a medium level (17.4% in 2018) and triple that of those with a higher level (10.2% in 2018). For lower-educated workers, the risk remained rather stable over time, while it increased sharply and constantly for the highly-educated (approximately +8 pp from 2007 onwards).

Shifting the focus to *household variables*, in 2018 the risk of in-work poverty was higher for single-member households (34.4%) than for those with two or more members (respectively, 15.5% and 20.2%). However, regardless of their size, the economic situation deteriorated for all households, with the risk of in-work poverty substantially increasing compared to the pre-crisis level.

Accordingly, the risk of in-work poverty appears to be much higher in single-earner families (38.9%) than in dual-earner households (9.2% in 2018). The risk for both types of households constantly increased in the aftermath of the economic crisis (respectively, from 33.5% and from 6.6% in 2007). The data confirms that the old-fashioned male-breadwinner family model exacerbates in-work poverty risks, particularly when considering temporary workers and involuntary part-timers, who often receive a lower and more insecure wage than standard employees.

65. Paolo Barbieri, Giorgio Cutuli, & Stefani Scherer, *In-work poverty in Southern Europe: The case of Italy*, in *Handbook on in-work poverty*, 312 (Henning Lohmann & Ive Marx eds., Elgar 2018).

Finally, the data demonstrates that the risk of in-work poverty is associated with the number of children in the household. Compared to pre-crisis levels, the risk of in-work poverty for those with more than one child increased by 4.6 pp, moving from 26% to 31.6%. Conversely, the risk increased only slightly among households with just one child (from 18% in 2007 to 21.6% in 2018) – although it remains at a relatively high level by comparative standards. These values suggest that family policy measures, in-kind and not in-kind, applied by Italian governments have little effect in lowering the risk of in-work poverty.

[B] Fixed-Term Employees: Legal Framework

In recent decades, the regulation of fixed-term employment relationships has been reformed on several occasions. The Jobs Act recently amended the previous regulation, repealing the provisions on compulsory identification of specific reasons to justify the use of a fixed-term contract. Under the regulation established in Italian Decree Law no. 34/2014 ('*Decreto Poletti*'), as well as in Italian Legislative Decree no. 81/2015, fixed-term contracts were no longer viewed unfavourably, largely based upon the idea that there is a link between more flexible employment relationships and a rise in employment levels. Today, the fixed-term contract is regulated by Article 19-29 of Italian Legislative Decree no. 81/2015, as amended by Italian Decree Law no. 87/2018, converted with amendments by Italian Law no. 96/2018 (so-called *Decreto Dignità*). According to the preamble of the '*Decreto Dignità*', *this reform aimed to combat growing job insecurity, increasing the restrictions and conditions on entering into fixed-term* – and agency employment – *contracts, thus favouring permanent employment contracts*.

There are many provisions aimed at preventing misuse of the fixed-term contract.

The first concerns the *maximum duration* of the employment contract which stands at 24 months, while the original formulation of Article 19 envisaged 36 months. More precisely, *for employment contracts lasting a maximum of 12 months, there is no requirement for the employer to specify the reasons to justify using a fixed-term contract*.

According to Article 19, paragraph 1, the contract can be further extended after this period – up to a maximum of 24 months – provided that the contract is being used for at least one of the following reasons: a) to meet temporary and objective needs, *unrelated to the ordinary business activity*, or the need to replace other employees;[66] b) to meet needs relating to temporary, significant and *unpredictable increases* in the ordinary business activity.

66. The first, concerning temporary and extraordinary needs, and not concerning the ordinary productive cycle of the business activity, states that fixed-term contracts can be stipulated where there is no alternative, i.e., as an *extrema ratio*. *See* Antonio Preteroti, *Il contratto di lavoro a tempo determinato*, in *Diritto e processo del lavoro e della sicurezza sociale* (Giuseppe Santoro Passarelli ed, Utet Giuridica 2020).

Collective agreements stipulated by the comparatively most representative trade unions' and employers' associations at national level may establish exceptions on the maximum duration of the contracts.[67]

If a contract exceeding 12 months is entered into without providing these reasons, the contract itself will be converted into a permanent contract from the date on which the limit is exceeded. The contract is also transformed into a permanent contract if the 24-month limit is exceeded.

With the exception of employment relationships lasting no more than 12 days, the fixed-term nature of the contract must be stated in a written document.

The contract may only be *renewed* if the conditions required under Article 19, paragraph 1 are met.[68] In addition, the first renewal within a 12-month period is subject to the conditions of Article 19. If the contract is renewed within 10 days of the expiry date of a previous fixed-term contract lasting up to 6 months – or within 20 days from the termination of a contract of more than 6 months – it is converted into a permanent contract.

The contract may be freely *extended* in the first 12 months but, thereafter, may only be extended if the conditions referred to in Article 19, paragraph 1 are in place. However, the duration of a fixed-term contract may be extended, with the employee's consent, only when the term of the initial contract is less than 24 months, and, in any case, up to a maximum of 4 times over a 24 month period.[69] If these provisions are breached, then the contract will be converted into a permanent contract.[70]

The fixed-term employment relationship may *continue beyond the expiry of the term*. In this case, the employer must pay the employee an allowance for each day of continuation beyond the established term equal to 20% of the wage up to the 10th subsequent day, and 40% for each additional day. However, if the employment relationship continues beyond the 30th day for contracts lasting less than 6 months, or beyond the 50th day in other cases, the contract will be converted into a permanent contract from the expiry of the aforementioned terms.[71]

In order to prevent employers from abusing the fixed-term contract, there is also a *quantitative limit*: the number of fixed-term employees may not exceed 20% of the permanent workers in the workforce.[72] Any breach of this percentage restriction will not result in the contracts concerned being transformed into permanent contracts; instead, the employer will be fined.

In order to ensure the quality of fixed-term work and equal treatment for fixed-term workers – in compliance with Council Directive 1999/70/EC – Article 25 of

67. *See also* Circular of the Ministry of Labour, n. 17 of 31 October 2018, which also specifies that, on the contrary, collective bargaining cannot intervene with regard to justifying reasons for fixed-term contracts.
68. The renewal implies the stipulation of a new fixed-term contract.
69. The number of lawful extensions within a 24-month period has been reduced from 5 to 4 by the so-called *Decreto Dignità*.
70. Art. 21 of legislative decree No. 81/2015.
71. Art. 22 of legislative decree No. 81/2015.
72. Art. 23. For employers with up to five employees, it is always possible to enter into fixed-term employment contracts.

Legislative Decree no. 81/2015 lays down the principle of non-discrimination: according to this principle, fixed-term employees must not be treated less favourably solely because they have a fixed-term contract, unless different treatment is justified on objective grounds. If the employer fails to comply with the non-discrimination obligations, then it will be fined.

Fixed-term employees are entitled to a right of priority. Indeed, unless otherwise specified in collective agreements, an employee who has worked for the same employer under one or more fixed-term contracts for longer than 6 months has a right of priority, for the following 12 months, in any hiring processes for permanent contracts concerning the role carried out under the fixed-term relationship(s). The right of priority must be expressly indicated in the employment contract.[73] If the right of priority is breached, consolidated case law states that the employee is not entitled to the stipulation of an employment contract, but only to receive compensation for damages.[74]

Moreover, Article 26 of Italian Legislative Decree no. 81/2015 stresses the importance of training for fixed-term employees, to enhance their skills, career advancement and to improve their occupational mobility. To this end, it states that *collective agreements may envisage methods to facilitate access for temporary workers to adequate training opportunities*. In this way, the Italian legislator has entrusted this task to collective bargaining, in order to comply with clause no. 6, paragraph 2 of Directive 1999/70/EC. However, the main collective agreements do not appear to introduce rules to encourage the effective training of fixed-term employees.[75]

Temporary employees are entitled to social security benefits, similarly to employees having permanent contracts. However, certain difficulties may arise in the event of any fragmentation of working careers. This is particularly true with regard to unemployment benefits: NASPI is granted to employees who have paid social security contributions to INPS for at least 13 weeks in the 4 years preceding the unemployment period and for at least 30 days in the previous 12 months. This means that those workers who have been employed under very short-term contracts may be excluded from the scope of application of this measure.

The current regulation of fixed-term employment represents a compromise solution: a reason must be provided to justify the use of fixed-term arrangements for contracts exceeding one year and for any renewal, but this reason does not have to be specified for the first fixed-term contract lasting under one year. In this way, *the legislator aims to discourage the frequent and continuous use of fixed-term contracts to*

73. Problems arise if the contract makes no mention of such right. *See* Cristina Alessi, *Il contratto di lavoro a tempo determinato. Commento agli artt. 19-23, d. lgs. n. 81/2015*, in *Codice Commentato del Lavoro*, 2770 (Riccardo Del Punta & Franco Scarpelli eds, Wolters Kluwer 2020). *See also* Court of Rome, 10 September 2019, No. 7311, in De Jure. According to Art. 24 of legislative decree n. 81/2015, also employees hired on a fixed-term basis for the performance of seasonal activities have right of priority.
74. Supreme Court, 26 August 2003, No. 12505, in De Jure; Court of Teramo, 24 October 2018, No. 766, in De Jure; Court of Frosinone, 10 October 2018, in Laws of Italy.
75. *See, for example,* CCNL metalworker industry, CCNL trade for employees in tertiary, distribution, and services companies of 30 July 2019 and CCNL for chemical sector of 19 July 2018.

satisfy long-term economic needs. However, as this regulation does not restrict the use of the first short fixed-term contract – the duration of which must not exceed one year – *it does not actually address the issue of precariousness. On the contrary, it risks contributing to the higher turnover of employees, thus exacerbating job insecurity*.[76]

With regard to the role of social partners, meanwhile, this has been reduced compared to the past. Today, collective bargaining can regulate many issues concerning fixed-term employment relationships, such as training, waiver of the right of priority or quantitative limits, and maximum duration.[77] *Thus, collective bargaining intervenes – and has intervened – in facilitating the use of fixed-term contracts, despite the 'new' restrictive rules laid down in Italian Legislative Decree no. 81/2015*.

[C] Temporary Agency Workers: Legal Framework

Temporary agency work is actually regulated in Italian Legislative Decree no. 81/2015 (Articles 30-40), as recently amended – with the aim of reducing flexibility and precarious employment relationships – by the *Decreto Dignità*.

Pursuant to Article 30, an agency employment contract is a permanent or fixed-term contract by which an authorised agency makes one or more workers available to a user;[78] workers assigned to a user operate under the supervision and control of the latter. It is a *triangular relationship* – between the *employment agency*, the *user*, and the *worker* – governed by *two contracts*, the *agency contract* and the *employment contract*. Both the employment contract (between the agency and the worker) and the agency contract (between the agency and the user) may be fixed-term or permanent. If the agency contract is permanent, then the employment contract must also be permanent. Therefore, permanent agency work is not synonymous with precariousness.

There are certain provisions aimed at *preventing misuse of agency work*.

There is a quantitative limit: pursuant to Article 31, the number of workers employed under a permanent agency employment contract may not exceed 20% of the number of permanent workers in the user's workforce, while the number of workers hired under fixed-term contracts or fixed-term agency employment contracts may not

76. Maria Paola Aimo, *Lavoro a tempo, on demand, 'imprevedibile': alla ricerca di una 'ragionevole flessibilità' del lavoro non standard*, Working Paper C.S.D.L.E. 'Massimo D'Antona'. IT, No. 431 (2020); Pasquale Passalacqua, *Il contratto di lavoro subordinato a tempo determinato e la somministrazione di lavoro alla prova del decreto dignità*, Working paper C.S.D.L.E. 'Massimo D'Antona'. IT, No. 380 (2018); Massimiliano Marinelli, *Contratto a termine ed attività stagionali*, Lavoro diritti europa, n. 1 (2019); Cristina Alessi, *Il contratto di lavoro a tempo determinato*, *supra* n. 73.
77. Circular of the Ministry of Labour n. 17 of 31 October 2018. On this issue, *see* Arturo Maresca, *Coordinazione, organizzazione, supra* n. 59; Antonio Preteroti, *Il contratto di lavoro, supra* n. 66. This is the case, for instance, with regard to collective agreements for the cinematographic industry on 31 July 2018 and for temporary agency work signed on 21 December 2018, which provided for a maximum duration of more than 24 months.
78. The agency must have specific administrative authorisation, which is only issued to those companies that comply with certain requirements concerning their reliability and economic stability.

exceed 30% of the number of permanent workers employed by the user. Collective agreements may introduce a different quantitative limit. Unlike fixed-term contracts, if the quantitative limits are exceeded, agency workers can ask to be categorised as permanent employees employed by the user.

Article 35 of the Decree establishes a principle of non-discrimination towards agency workers. Indeed, agency workers are entitled to economic and regulatory treatment no inferior to the treatment enjoyed by the user's employees in the same production unit having the same duties, as well as being entitled to the same social and welfare services. However, the *tertium comparationis*, i.e., the comparable employee, is difficult to define: indeed, if agency work is an instrument of the outsourcing process, there may be no comparable employees within the user. Furthermore, in some cases, the equal treatment principle envisaged with regard to agency employment makes it more convenient for users to rely on procurement contracts rather than on agency work. Indeed, there is no statutory provision establishing a general principle of equal treatment to protect a contractor's employees, with the exception of those concerning public procurement and transnational posting of workers.

The employment contract between the agency and the worker may be permanent or fixed-term.

If workers are hired by an agency on a permanent employment contract, the subordinate employment regulations apply. In this case, the worker is entitled to an *availability allowance* for periods during which he/she is not assigned to work at a user. The amount of this allowance is determined by way of collective agreements and may not, in any case, be lower than the rate fixed by Decree of the Minister of Employment and Social Policies. The national collective agreement signed on 21 December 2018 by the comparatively most representative trade unions in the sector establishes the amount of the availability allowance at EUR 800 per month. If the collective agreement does not apply, Italian Ministerial Decree of 10 March 2004 fixes the amount of the availability allowance at EUR 350 per month.

For fixed-term employment contracts, the provisions referred to in Articles 19-29 of Italian Legislative Decree no. 81/2015 apply. This regulation is very different from the one previously in force, where the fixed-term contract between the agency and the worker was subject to specific provisions.[79] Now, however, the provisions established for the fixed-term contract arrangement are applied generally, with the following exceptions: it is not necessary to wait for a certain period of time between one fixed-term contract and the next; there is no maximum number of fixed-term contracts; the right of priority in hiring processes is not granted to temporary agency workers. Therefore, after the first 12 months, a specific reason for using the fixed-term contract must be indicated, in reference to the user,[80] and, in any case, the contract may last for up to 24 months.

79. Pasquale Passalacqua, *Il contratto di lavoro subordinato a tempo determinato*, *supra* n. 76; Andrea Bollani, *Contratto a termine e somministrazione nelle scelte del legislatore del 2018*, Diritto e pratica del lavoro. Inserto, No. 40 (2018).

80. The more restrictive governance of the fixed-term contract arrangement with an agency seems to comply with EU law and the jurisprudence of the Court of Justice of the European Union. *See*

Article 35 establishes the *joint liability* of the user and the employment agency for wages and social security payments.

At the end of the agency arrangement, the user may hire the agency worker; any clause aimed at limiting this right for the user, even indirectly, is invalid. This restriction is legitimate only when the worker has received adequate compensation, as established by the collective agreement applicable to the user.

The legislator has introduced some guarantees concerning trade union rights for agency workers and has involved collective bargaining in regulating temporary agency employment. Pursuant to Article 36, agency workers are granted the trade union rights and collective guarantees envisaged by Italian Law no. 300/1970, as well as the right to participate in union meetings held at the user. In addition, in order to guarantee that the trade-union representatives can monitor the use of agency work, each year, the user must notify the trade-union representatives within the company or at local level of the number and duration of agency employment contracts in place, as well as the number and qualifications of the agency workers.[81]

In the context of collective agreements on agency work, the provisions on vocational education are particularly interesting. If certain agency workers are hired on a permanent contract but no job opportunities arise, the regulations governing collective dismissal do not apply. The national collective agreement for agencies of 27 February 2014, renewed on 21 December 2018, establishes a complex procedure to be applied in these circumstances. This procedure involves paying remuneration to support the worker and the participation of the latter in professional retraining initiatives. The agency may only dismiss the worker at the end of the procedure.

Article 38 deals with the consequences of any illegitimate use of agency employment. If the agency contract is not stipulated in writing, the workers must be regarded as employees of the user. If the agency arrangement is unlawful – in that it violates the limits and conditions envisaged by Articles 31, 32, and 33 – the worker may demand the establishment of an employment relationship with the user, which becomes effective from the beginning of the agency arrangement.

[D] Involuntary Part-Timers: Legal Framework

The original purpose of regulating part-time work was to facilitate a better work-life balance. This purpose has only been partly achieved as, over time, the regulation of part-time work has become more flexible in terms of adapting the work to meet the needs of the employer. The role of the collective agreement has also changed over time: although collective agreements play an important role in regulating the flexibility of

Luca Ratti, *Natura temporanea del lavoro tramite agenzia e limiti derivanti dal diritto europeo*, Rivista italiana di diritto del lavoro, II (2021).

81. A breach of such obligations is regarded as constituting anti-union conduct pursuant to Art. 28 of the Workers' Statute. *See* Alberto Lepore, *Trasferimento d'azienda, Outsourcing, somministrazione del lavoro ed appalto*, in *Diritto e processo del lavoro e della previdenza sociale*, 1806 (Giuseppe Santoro Passarelli ed., Utet Giuridica, 2020).

part-time contracts, unlike the past, the law gives greater flexibility to the employer, in the absence of collective agreements.

Part-time work is actually regulated by Articles 4-12 of Italian Legislative Decree no. 81/2015, which define the part-timer as an employee with fewer normal working hours than a comparable full-time worker, usually amounting, in accordance with Article 3 of Italian Legislative Decree no. 66/2003, to 40 hours per week.[82] Part-time work does not require a minimum number of working hours in the day, week, month, or year.[83]

The part-time contract must be stipulated in writing, in order to prove its existence, and must contain *details* of the *working hours* and *their arrangement with regard to the day, week, month, and year*. If there is no proof that a part-time employment contract has been signed and if the duration of working hours is not specified in writing in the contract, the employee may request the judicial conversion of the part-time employment contract into a full-time contract. If the omission only concerns the arrangement of working hours, the judge will determine these details, taking account of the employee's *family responsibilities*, his/her *need to supplement the income* by carrying out other working activities, and the needs of the employer.

The law introduces a sort of 'rigid flexibility', as the amount of hours and the arrangement of working hours must be established in advance in the contract. The law then allows for the regulation to be made more flexible with the possibility of introducing *extra-hours work* (*lavoro supplementare*), *overtime work* (*lavoro straordinario*), and *flexible clauses*.

With regard to the arrangement of working hours, in compliance with the provisions of collective agreements and within the limits of normal working hours, the employer may request the performance of additional work, i.e., extra-hours work. If the collective agreement regulates extra-hours work, the employee is obliged to provide this performance. In the past, if the collective agreement did not regulate extra-hours work, the employer could not demand that it be provided. On the other hand, if applicable collective agreements do not regulate this issue or if collective agreements are not applicable to the employment relationship, the employer may now require the employee to perform extra-hours work up to a maximum of 25% of the agreed hours of work per week. In this case, the employee may only refuse to provide extra-hours work on the basis of proven work, health, family, or vocational training grounds. Employees who work extra hours are entitled to an allowance equal to 15% of the hourly wage.

The employer may also request the performance of *overtime*, i.e., work exceeding normal hours. If the applicable collective agreement regulates overtime work, the

82. Collective agreements may provide for normal hours of work of less than 40 hours per week. In this case, part-time work means contracts with less hours than the normal hours provided for by the collective agreement.

83. Both employees who work 38 hours a week and those who work 2 hours per week are part-timers.

employee must perform this work within the limits and under the conditions established in the collective agreement. Otherwise, overtime work requires an agreement between the employee and the employer, and it must not exceed 250 hours per year.[84]

The employer is granted some flexibility in part-time arrangements by way of *flexibility clauses*, which allow the employer *unilaterally to amend the duration or schedule of working hours*. The primary regulatory source of these clauses is the collective agreement. If the applicable collective agreements do not regulate this issue or if collective agreements do not apply to the employment relationship, flexibility clauses can be stipulated at individual level, before a certifying commission and in written form.[85] Under penalty of invalidity, flexibility clauses must set out the terms and conditions for amending the duration and schedule of work. However, the employer may only change working hours with at least 2 working days' notice, and up to a maximum of 25% of annual part-time work. In these cases, the employee is entitled to a 15% increase in the hourly wage. If the work is performed in application of flexibility clauses without respecting the conditions and limits envisaged by law or by collective agreements, then employees are entitled to compensation for damages.

In order to ensure that employees genuinely consent to these arrangements, Article 6, paragraph 8 also states that any refusal by an employee to accept changes to working hours does not constitute justified grounds for dismissal. The issue concerns situations where an employee's consent is requested when establishing the employment relationship. Indeed, this makes it difficult to guarantee truly free and genuine consent.

The law envisages for the employee the 'right to reconsider' the flexibility clause. This right is only recognised for employees suffering from cancer or chronic-degenerative diseases or employees with disabled children aged under 13.

Despite the attempt to guarantee minimum protection to employees, the limits on the employer's power to arrange working hours as it sees fit do not seem sufficient. On the contrary, the current regulation of part-time work makes the employment relationship flexible and adaptable to the employer's needs, hindering opportunities for employees to organise their time freely – thus preventing a reasonable work-life balance – or to take on additional work to supplement their income. Indeed, this regulation may even lead to a deterioration in the living conditions of part-time workers.[86]

The equal treatment principle is provided with the aim of granting fair treatment. Pursuant to Article 7, part-time employees must not be treated less favourably than full-time employees employed in the same position and at the same level. Indeed, part-timers are entitled to the same rights as comparable full-time workers and their economic and regulatory treatment is determined based upon the *pro rata temporis* principle, i.e., the reduction of working hours.

84. *See* Art. 5, Legislative Decree No. 66/2003.
85. The employee has the right to be assisted by a representative from his or her trade-union association.
86. Massimiliano Delfino, *Il lavoro part-time nella prospettiva comunitaria. Studio sul principio volontaristico* (Jovene 2008); Vincenzo Bavaro, *Il tempo nel contratto di lavoro* (Cacucci 2008).

Part-time employees are entitled to the payment of social security contributions in proportion to the hours worked.[87]

§4.05 VUP GROUP 4: CASUAL AND PLATFORM WORKERS

[A] Casual Workers: Notion and Relevant Legal Framework

A casual worker is a worker whose work is irregular or intermittent. This category includes intermittent work (*prestazione occasionale*) and on-call work (*lavoro a chiamata*).

[1] Intermittent Work

Voucher-based work (*lavoro occasionale*) was introduced in 2003 by Italian Legislative Decree no. 276/2003 in the framework of occasional accessory work (*lavoro occasionale accessorio*). Originally, voucher-based work relationships were intended to be occasional, as they were only allowed in specific sectors and for certain activities, and only for certain categories of people at risk of social exclusion or unemployed persons. The many reforms deregulating the use of vouchers, thus expanding their scope of application, led to an extraordinary increase in the number of vouchers used every year. Therefore, the regulation of voucher-based work was strongly criticised, with vouchers often being misused.

Today, intermittent work is regulated by Article 54-bis of Italian Decree Law no. 50/2017.[88] Voucher-based work is a particular form of employment in which the employer pays workers for an occasional service with a voucher. The employer purchases a voucher to be used as payment for each hour of activity performed by the worker, covering both pay and social security contributions; the worker then presents the vouchers at the competent offices to receive cash.

There are different 'schemes' of voucher-based work: the so-called *Libretto Famiglia*, which can be used by private individuals to pay workers who provide domestic and care services,[89] and the '*occasional work contract*' for workers employed in small firms, having no more than five employees.[90] However, there are some limits on the 'purchase' of occasional work: the maximum yearly voucher-based income for each worker may not exceed EUR 5,000; each user may not use vouchers for payments exceeding EUR 5,000; for work performed by a worker for the same user, the amount may not exceed EUR 2,500 in one calendar year. In addition, the duration of the work

87. Marco Papaleoni, *Il nuovo part-time. Nel settore privato e pubblico* (Cedam 2004).
88. Francesca Marinelli, *Il lavoro occasionale in Italia. Evoluzione, disciplina e potenzialità della fattispecie lavoristica* (Giappichelli 2019).
89. This is the case, for instance, of gardening, cleaning, maintenance works, babysitting, or care services for elderly or sick people.
90. Law Decree No. 87/2018, converted with amendments by Law No. 96/2018, provided that hotel and tourism sector companies employing up to eight workers and agricultural business with up to five employees can also use such occasional work contracts.

or service may not exceed 280 hours in one calendar year. The aim of these limits is to prevent vouchers from replacing other forms of employment.

If the legal limits are breached, the employment relationship is converted into a full-time permanent subordinate employment relationship.

The hourly wage amount to be paid using vouchers is established by the legislator. For this reason, some academics regard it as a sort of statutory minimum wage. For small companies, this amounts to EUR 9, while for the *Libretto Famiglia* the payment is higher, in the net hourly amount of EUR 10.00. These payments are exempt from taxation; they do not affect unemployment status, and they can be calculated for determining the income required to obtain a residence permit.

With regard to access to social security measures, such workers have limited protections. They are entitled to INPS national insurance for invalidity, old-age, and survivors' benefits[91] and INAIL[92] insurance for workplace accidents and occupational diseases. However, they are excluded from sickness cash benefits, maternity allowance, unemployment benefits, and family allowance.

[2] On-Call Work

On-call work (*lavoro intermittente*) is regulated by Articles 13-18 of Italian Legislative Decree no. 81/2015. It takes the form of a permanent or fixed-term employment contract where the employer can 'use' a worker's activity intermittently or irregularly. This means that the employee declares his/her availability to work over a certain period of time, during which he/she may be called in to work, even for a few days, at short notice. There is no provision concerning a minimum and/or a maximum number of working hours.

There are two different types of on-call work. In the first – and most frequent – the employer can call the employee, who is not obliged to answer the call (on-call work with no obligation to answer the call). During periods when the worker is not employed, he/she is not entitled to receive a wage or other benefits. In the second type of arrangement – on-call work with obligation to answer – if the employer calls the employee, he/she is obliged to answer. In this case, he/she has the right to an availability allowance, the amount of which is established by collective agreements; however, it may not be lower than the minimum rate determined by the Ministerial Decree, adopted following consultation with the comparatively most representative trade unions.[93] For sickness or other events meaning that the worker is temporarily unable to work, he/she must inform the employer, specifying the duration of the hindrance. During this period, the worker is not entitled to any availability allowance. If the worker fails to inform the employer, he/she loses the right to the availability allowance for a period of fifteen days. Any unjustified refusal to work may constitute

91. They are enrolled in separate insurance scheme.
92. INAIL is the Italian national institute for insurance against accidents and occupational disease at work.
93. The Ministerial Decree 10 March 2004 still determines the availability allowance amount, setting it at 20% of the salary provided for by the applicable collective agreement.

grounds for dismissal and for return of the portion of availability allowance covering the period after the refusal.

On-call work arrangements may be entered into in two situations: first, in the cases identified by collective agreements or, in the absence of collective agreements, in the cases identified by Ministerial Decree.[94] Second, the contract may also be entered into with workers under 24 years old – provided that the work is performed in the 25th year – or those aged over 55.

The employment contract may not exceed 400 days of work over 3 years. If the duration of work continues for a longer period, the relationship is converted into a full-time subordinate employment relationship. The aforementioned limit does not apply, for example, to the tourism or entertainment sectors, where the law allows this type of contract to be used on an unlimited time basis.

The legislation ensures equal treatment for on-call workers compared to standard employees. In accordance with Article 17, they must not be treated less favourably than comparable permanent workers, obviously on a *pro rata temporis* basis, in light of the work actually performed.

Since on-call employment relationships are usually established for the performance of a short-term service, these workers struggle to access unemployment benefits, although the current regulation of this matter is more favourable than in the past.

[B] Platform Workers: Notion and Relevant Legal Framework

A platform worker is an individual who uses an app or a website to match him/herself with customers, in order to perform specific tasks or to provide specific services in exchange for payment. There are two different sub-types of platform workers: workers-on-demand via app (the most common type in the Italian legal system) and crowd-workers.

[1] Workers On-Demand via App

The *legal status* of platform workers has been the subject of great debate, particularly with regard to food delivery riders. Indeed, food delivery platforms generally use semi-subordinate employment contracts or occasional self-employment contracts, in view of the fact that workers are not restricted in terms of workplace and working hours. This classification leads to a lack of protection for such workers: often the platforms are used to adopt piecework based pay and, as workers are thought of as being self-employed, there is no statutory coverage for workplace accidents.[95] Despite this classification, in many cases the employment relationship of these workers is similar to subordinate employment, as they are subject to managerial power and are

94. Ministerial Decree 23 October 2004 that refers to a 1923 decree.
95. Feliciano Iudicone & Michele Faioli, *Country Background; Italy', DON'T GIG UP! State of the Art Report* (Institut de Recherchese Economiques et Sociales 2019).

economically dependent on the employer, who 'often unilaterally determines the terms and conditions of work without any scope for negotiation'[96] and coordinates the work performance.

This debate also emerges in case law: indeed, the first ruling on this issue considered riders to be semi-subordinate workers,[97] while subsequent decisions classified them as hetero-organised workers with the consequent application of the subordinate employment regulation.[98] In another decision, the court considered platform workers to be subordinate employees.[99]

Italian Decree Law no. 101 of 3 September 2019, converted with amendments by Italian Law no. 128/2019, intervened in the regulation of riders' employment relationships. It amended Article 2 of Italian Legislative Decree no. 81/2015 and, in addition, established protections for work via digital platforms, introducing specific provisions in Chapter 5-bis of Italian Legislative Decree no. 81/2015.

According to the 'new' formulation of Article 2 of Decree no. 81/2015, the regulation and protections envisaged for subordinate employment relationships also apply to those collaborations that result in mainly personal and continuous performances, the methods of which are organised by the client, even if this takes place via digital platforms. Thus, it explicitly allows for employees working on demand via apps to be included among hetero-organised workers.

As stated in Article 47-bis, chapter V-bis of Italian Legislative Decree no. 81/2015, the legislator intended to ensure, beyond the scope of Article 2 paragraph 1, *minimum protection levels for self-employed workers engaged in delivering goods on behalf of others*, in urban areas and using bicycles or motor vehicles, via platforms, including digital ones. It means that other gig-workers are excluded from the scope of application of this regulation. The following provisions lay down regulations concerning form and information (Article 47-ter); payment (Article 47-quater); prohibition on discrimination (Article 47-quinquies); mandatory insurance against workplace accidents and occupational diseases (Article 47-septies).

Regarding payments – representing the most problematic issue – Article 47-quater states that collective agreements stipulated by the comparatively most representative trade unions' and employers' associations at national level may define criteria for determining the overall remuneration. However, piecework based remuneration is prohibited. Indeed, in the absence of a specific collective agreement, riders

96. European Commission, Study to gather evidence on the working conditions of platform workers, Final Report, 13 March 2020, 245.
97. Court of Turin, 7 May 2018, No. 778. *See* Gionata Cavallini, *Torino vs. Londra il lavoro nella gig economy tra autonomia e subordinazione*, Sintesi, 5, 7 (2018); Pietro Ichino, *Subordinazione, autonomia e protezione del lavoro nella gig-economy*, Rivista italiana di diritto del lavoro, II, 294 (2018).
98. *See* Supreme Court, 24 January 2020, No. 1663 – on this judgment, *see* Mariella Magnani, *Al di là dei ciclofattorini. Commento a Corte di Cassazione n. 1663/2020*, Lavoro Diritti Europa, 1 (2020); Giuseppe Santoro Passarelli, *Sui lavoratori che operano mediante piattaforme anche digitali, sui riders e il ragionevole equilibrio della Cassazione 1663/2020,* WP C.S.D.L.E. 'Massimo D'Antona'. IT, No. 411 (2020) – and Court of Appeal of Turin, 4 February 2019, No. 26.
99. Court of Palermo, 24 November 2020, no. 3570.

may not be paid on the basis of deliveries made; such workers must be guaranteed a minimum hourly wage based on the minimum rates determined by national collective agreements for similar or equivalent sectors signed by the comparatively most representative trade unions' and employers' associations at national level.

With the spread of platform work, many spontaneous coalitions of workers have been established[100] and many collective agreements have regulated the employment relationship of platform workers. On 18 July 2018, the trade unions Filt-CGIL, Fit-Cisl, and Uil Trasporti signed a supplementary agreement for subordinate riders, attached to the renewed National Collective Agreement for Logistics, Transport of Goods and Shipments. It includes provisions on health and social security insurance for those workers and establishes the working hours at 39 hours per week. On 2 November 2020, Filt-CGIL, Fit-Cisl, and Uil Trasporti signed another Protocol attached to the National Collective Agreement of Logistics, Transportation of Goods and Shipments, implementing the provisions of Chapter 5-bis of Italian Legislative Decree no. 81/2015. It provides for the application to self-employed riders of rights and protections applicable to their subordinate counterparts as envisaged by the annex to the 2018 National Collective Agreement for Logistics, Transport of Goods and Shipments for subordinate riders.[101]

On 15 September 2020, Assodelivery[102] and UGL signed a 'National Collective Agreement regulating the deliveries of goods on behalf of third parties by self-employed workers, known as riders'. This agreement provides a regulatory framework for self-employed riders, pursuant to Article 47-quater, paragraph 1, as well as Article 2, paragraph 2, letter a) of Italian Legislative Decree no. 81 of 2015. The latter allows the national collective agreements signed by the comparatively most representative trade union associations at national level to exclude hetero-organised collaborations from the labour law protections. The Assodelivery-UGL agreement ratifies the autonomous nature of the relationship, based on the flexibility that characterises the working activity of these workers and the possibility for riders to accept or reject deliveries throughout the entire relationship. In this way, these workers are precluded from accruing extraordinary remuneration, additional monthly payments, holidays, and severance indemnities, sickness payments, and maternity allowance. Furthermore, Articles 10 and 11 of the Collective Agreement attempt to waive the prohibition on piecework pursuant to Article 47-quater of Italian Legislative Decree no. 81/2015, stating that the rider will receive fees based on the deliveries completed, with the only

100. These include, for instance, 'Riders Union Bologna', that in 2018 signed the 'Charter of fundamental rights of digital work in the urban context.' It was signed by the mayor of Bologna, Riders Union Bologna, the three most important national trade union Confederations (CGIL, CIISL, UIL) and the managers of two local food delivery platforms (Sgam and MyMenù). The Charter laid down minimum protections applicable to workers who use a platform to perform their job, regardless of the classification of the employment relationship. Further examples of spontaneous coalitions are Deliverance Project, Deliverance Milano, and Riders Union Firenze.

101. On this and on problematic issues of such an extension, *see,* Paolo Tosi *La tutela dei riders, carenze legislative ed eccedenze interpretative*, Lavoro diritti europa, 1 (2021).

102. It is the employer's association representing some food delivery companies, such as Deliveroo, Glovo, Social Food, and Uber Eats.

corrective provision being that he/she is guaranteed, in any case, minimum remuneration for one or more deliveries – determined on the basis of the estimated time for completing that delivery – equivalent to EUR 10.00 gross per hour. This means that the minimum hourly remuneration of EUR 10.00 per hour is only guaranteed for working hours and not for the availability periods between one delivery and the next, thus derogating from the statutory provision referred to in Article 47-quater, paragraph 1, applicable in the absence of any regulation by collective agreements. Another problematic issue concerning this agreement is the comparative representativeness of Ugl Rider and Assodelivery, which is questionable.[103]

[2] Crowdworkers

Crowdwork has not received the same attention given to work on-demand via apps. Indeed, due also to the lack of attention from the media, crowdwork is excluded from the statutory protections envisaged by Italian Decree Law no. 101 of 3 September 2019, converted with amendments by Italian Law no. 128/2019.

Crowdworkers are usually programmers, freelancers, or professionals who make themselves available to perform different jobs from home or from other locations via online platforms.[104] Crowdworkers perform their work online – and therefore potentially anywhere – making it difficult to identify the particular state's law to which they are subject. Usually, 'traditional' economic entities use crowdwork as a form of outsourcing. Online outsourcing processes concern both microwork and freelancing.

Trade unions have paid less attention to these workers and no collective agreement has addressed the arrangement. Only a few union experiences have emerged, consisting of communities spontaneously arising on the web, such as 'Vivace' – a community created by CISL to give a voice to freelancers – or ACTA – the Italian freelancers' association – aimed at creating a network and fostering cooperation among freelancers, in order to represent, protect, and enhance autonomous professional activities.

103. For this reason, the Ministry of Labour addressed a note to Assodelivery, in which it highlighted that the unions signing the agreement seem not to satisfy this requirement. For a comment on this collective agreement, *see* Gionata Cavallini, Il *Ccnl Rider Ugl-Assodelivery. Luci e ombre di un contratto che fa discutere*, Sintesi, 5 (2020); Franco Carinci, *Il CCNL rider del 15 settembre 2020 alla luce della Nota dell'Ufficio legislativo del Ministero del lavoro spedita a Assodelivery e UGL, firmatari del contratto*, Lavoro europa diritti, 1 (2021). The Court of Bologna (30 June 2021) considered unlawful the Deliveroo's direction, imposing on its riders the acceptance of the collective agreement stipulated with UGL in September 2020, as a condition for continuing the collaboration. The court also excluded that UGL was a comparatively more representative trade union.
104. *See* Davide Dazzi, *GIG Economy in Europe*, in Italian Labour Law Journal, 12:1, 67 (2019).

§4.06 MEASURES INDIRECTLY INFLUENCING IN-WORK POVERTY

It is also important to consider the indirect measures, since the notion of in-work poverty involves the equivalent household disposable income. The following considerations emerge from an analysis of nine areas: social assistance; family benefits; means-tested monetary benefit; housing policy; childcare services; healthcare; long-term care policies; education; and life-long learning – referring to four types of households.[105]

The first aspect to emerge is that most of these measures have a potential indirect effect on all four VUPs, regardless of the household composition. Universal measures, such as healthcare and education, indeed provide social rights based on citizenship (or residency) and are therefore disconnected from employment status and the household size. At the same time, policies based on the selective universalism principle – such as the minimum income guarantee – provide means-tested benefits which do not, however, discriminate on the grounds of an individual's particular employment. At first sight, the Italian Welfare State seems to be effective in giving equal protection to a varied range of occupational groups and households. However, a more in-depth analysis paints a less optimistic picture. Some considerations can be provided in this regard.

First, the fact that no major differences emerged between household types does not necessarily mean that the system is equal. On the contrary, the diverse composition of households has an influence – negative or positive – on the likelihood of individuals experiencing in-work poverty. It is, accordingly, reasonable to consider that more at-risk households should receive higher protection. The data suggest that this is only partially the case in Italy. Single-parent households receive better treatment when looking at means-tested benefits or in the case of family allowance, but there is no *ad hoc* measure specifically applied to them.

Second, as already mentioned, in the family area – concerning both cash transfers, leave, and services – the system is far from being equal, and the impact for the various VUPs is likely to differ.

With regard to cash transfers, until 2021, *family allowance* (*Assegno al nucleo familiare*, ANF) was earnings-related, being inversely connected to the household income, increasing as the number of family members grew. It was also financed through contributions. However, there was an occupation-based eligibility criterion that excluded a broad number of workers. Only employees and semi-subordinate employees (in this case, with some significant restrictions) were entitled to this benefit. Consequently, self-employed persons (VUP2) and casual and platform workers (VUP4) were completely or partially excluded.[106] Family allowance, like all other cash transfers based on household income, had a 'familiarising effect': ANF could have an indirect negative effect for (male) single-earner households – particularly for those likely to

105. Single-earner, single-parent household with childhood, one earner couple with childhood, and household composed of two workers with childhood.
106. These groups could benefit only the *Birth Allowance* and the *non-contributory family benefit* for the third child.

receive a low wage – reinforcing a vicious cycle in which, for women, it is not convenient to work as the economic return is limited.

The *tax credit for dependent family members* (*detrazioni fiscali per familiari a carico*) represents another cash-transfer measure expected to have a different effect on the four analysed VUPs. The benefit is given to all workers, and the amount depends on the individual taxable income. The higher the income, the lower the final credit will be. However, those receiving a low income are very likely not to be able to benefit from this measure or only to do so partially (so-called *incapienti*). This may be the case for platform workers (VUP4) or some atypical workers, for example, fixed-term workers with several months of unemployment.

In March 2021, a new universal family benefit (the *Universal and Unique Family Allowance*) – which replaced family allowance, deductions for dependent children, and birth-related allowance – was approved. The measure provides the family with a monthly allowance for all children, regardless of the parents' employment status, from the seventh month of pregnancy to twenty-one years of age.[107] Starting from 1 March 2022, the allowance is paid monthly, and it is linked to the ISEE (Indicator of Equivalent Economic Conditions, which takes account of both income and wealth) and the number of children. If the ISEE is not provided or if it is higher than EUR 40,000, the household will only be entitled to the minimum amount (EUR 50 per child). The maximum amount is EUR 175 per child if the household ISEE does not exceed EUR 15,000. If the ISEE exceeds EUR 15,000, the amount gradually reduces. At least on paper, the measure represents a significant change towards an equal system, although we must await its actual implementation before assessing its effect.

In 2018 a minimum income guarantee was introduced for the very first time – the Inclusion Income (*Reddito di Inclusione* – REI) – which has, in turn, been replaced by a new measure (more generous in terms of cash benefits) known as the Citizenship Income (*Reddito di Cittadinanza* – RdC).[108] The RdC is expected to pay up to EUR 780 per month to individuals with no income, adjusted to take account of the household composition. This measure is conditional on engaging in job seeking and training initiatives, despite the fact that job seeking and training programmes are inadequate in many regions. Thanks to the RdC, the distribution capacity of the Welfare State has increased over the last three years.[109] However, the RdC is another measure that shows no favour to more disadvantaged households, as it tends to benefit families with one single person without children more so than families with two parents and one or more children.

107. For dependent adult children, up to the age of 21, it is required that they attend at a school or professional training course, or a degree course; or carry out an internship or work activity with an income lower than 8.000 euro per year; or are unemployed or carry out the civil service. For dependent children with disabilities, there is no age limit.
108. Vincenzo Ferrante, *Reddito di cittadinanza, retribuzione e salario minimo legale*, Rivista giuridica del lavoro e della previdenza sociale, 414-452 (2021).
109. Anna Alaimo, *Il reddito di inclusione attiva: note critiche sull'attuazione della legge n. 33/2017*, Rivista del Diritto della Sicurezza Sociale, 3, 419 (2017); Giovanni B. Sgritta, *Politiche e misure della povertà: il reddito di cittadinanza*, Politiche Sociali, 1, 39-56 (2020).

Shifting the attention to leave periods, differences between the VUPs can also be identified here. Maternity leave is guaranteed to all workers but in a very different manner. Semi-subordinate workers are entitled to maternity leave and to the respective allowance, but the right to parental leave only applies until the child is 3 years old, whereas, for employees, it applies until the child is 12. For self-employed women, the right to the allowance is subject to a previous contribution. Fixed-term employees are protected only if they have an active contract at the beginning of the leave. Those who have unstable jobs are often excluded from the benefit or receive a negligible amount if they have paid contributions in other separate pension public schemes. Furthermore, the various forms of fixed-term work, even with all legal protections, can make parental leave and maternity leave risky in terms of working continuity. In other words, it seems that only low-skilled workers in standard employment (VUP1) can fully benefit from these measures.

Finally, with regard to services, childcare for children aged 0-3 is *de jure* universal, but *de facto* – as the recent reforms have not ruled out co-payment – occupational status and household composition indirectly affect the actual entitlement to this service. In the public sector, fees are controlled, making the service affordable for low-wage workers (and thus for all four VUP categories). However, as the public provision of this service is minimal, most families are forced to rely on private sectors, where the prices are higher. Although there are several vouchers – at central and local administration level – to reduce the cost of the fees, enrolment priority – in both public and private sectors – is usually given to children with both parents working. This means that, in reality, all four categories of VUPs in single-earner households are likely to have more limited access to the service. It is not surprising that, given the design of the policy, in 0-3 childcare, the higher social classes are overrepresented.

The final consideration concerns the capacity of social policies to mitigate the effects of in-work poverty, which varies depending on the regions analysed. Indeed, as social assistance and healthcare have been devolved to regional and local governments, strong geographical differences have arisen between northern and southern regions, with the latter displaying lower levels in terms of measures/resources available and quality of services. Therefore, all four VUP categories may experience a very different 'mitigation effect': while this is higher in the northern and central regions – for example, regarding access to affordable public childcare – it is lower in the southern regions. In other words, the historical north-south divide that characterises the Italian Welfare State has led to fragmented social citizenship and thus to differences in the effectiveness of those social policies, which indirectly alleviate the everyday problems experienced by the working poor.

§4.07 CONCLUSIONS

Some concluding remarks can be made with regard to the VUP Groups.

In relation to measures that directly affect in-work poverty, low or unskilled standard employees (VUP Group 1) are the most protected workers, although, in recent

years, many reforms have compounded their precariousness and their working conditions, for instance, by weakening the protection against unfair dismissal. In addition, unemployment benefit regulations often risk excessively penalising low or unskilled standard employees who have previously received a low wage, 'forcing' them to accept a job offer with very low remuneration and pushing them towards lower level professions. Another issue concerns wage-setting mechanisms, particularly pirate collective agreements, which often lead to strong reductions. This results in employee wages often being inadequate.

With regard to VUP Group 2, demands for protection of solo and bogus self-employment have gradually emerged for those economically dependent self-employed workers facing economic-social weakness. This has led to the extension of significant statutory protections, particularly for so-called hetero-organised workers. However, coordinated and continuous collaborators and solo or non-entrepreneurial self-employed persons are still excluded from many protections, such as minimum wage guarantees.

The regulations on fixed-term employment, although recently amended with a view to reducing flexibility and irregular employment relationships, do not actually address the precariousness issue and, conversely, actually risk exacerbating job insecurity. Moreover, certain difficulties may arise with regard to access to social security benefits: indeed, those workers who have been employed on very short-term contracts risk being excluded from the scope of application, for instance, of unemployment benefits, which are only granted to employees who have paid social security contributions for a minimum period of time. The regulation of part-time work also does not provide adequate protection, as the possibility for the employer to introduce extra-hours work, overtime work, and flexible clauses may hinder the employee in arranging and scheduling his/her working hours. Clearly, this has a particular impact on involuntary part-timers, who work part-time as they are unable to find full-time work, reducing their chances of performing other work and earning adequate remuneration to make ends meet. Even the principle of non-discrimination – established by the law with regard to employees of VUP Group 3 – often fails to ensure that they are not treated less favourably than comparable permanent or full-time employees or than the user's employees assigned to the same duties, as it is often problematic to identify so-called comparable employees.

Finally, the employment relationships of casual workers included in VUP Group 4 are characterised by job insecurity and precariousness. Indeed, despite the minimum protections and the limits laid down by law to prevent such job arrangements from replacing other forms of employment, it may be difficult for these workers to enjoy minimum standard protections and to access social security measures. It largely depends on the very short duration or the occasional nature of the performance of a service. Some positive measures that have improved the situation are those ensuring a form of minimum wage for voucher-based work and a minimum amount of availability allowance for on-call workers, as well as the statutory regulation of riders' employment relationships laid down in Italian Decree Law no. 101 of 3 September 2019.

The outbreak of the COVID-19 pandemic has compounded the situation. In general, VUP Group 1 employees received very strong protection during the epidemiological emergency, although the remuneration of these low-wage employees is still lower than before, as the wage guarantee fund only pays a portion of the salary. Self-employed workers, as well as casual workers, were probably most affected by the COVID-19 pandemic crisis and least protected against its socio-economic consequences, receiving only limited income-support benefits. The pandemic has definitely emphasised the need for more inclusive social shock absorbers and social security measures.

When interpreting these findings in combination with some characteristics of the production system, the resulting picture is far from optimistic. The Italian production and labour market systems have driven a race to the bottom: indeed, investments in research and development remain scarce, along with the demand for highly skilled workers, who are more likely to be paid higher wages. The bulk of new jobs are low-skilled and precarious, with atypical jobs increasing after the economic recession. The characteristics of the production system also have an impact on education: indeed, the economic returns from higher education are lower compared to other European countries.

Shifting the attention to the labour market, the deregulation implemented in recent years has not been supported by ad hoc measures for combating in-work poverty. Since 2012 no policy measures have been introduced explicitly to address in-work poverty.[110] One indirect measure that may assist in alleviating in-work poverty is the RdC, which is much more generous than the previous measure. This measure appears to be rather effective in covering the needs of the working poor, albeit it has been applied more as an unemployment benefit than as a fully-fledged minimum income scheme.[111] However, the pillar for the activation of RdC has been poorly designed. It follows that an 'active inclusion' which supports access to quality employment is still absent.

Finally, in-work poverty is more likely to affect those households with only one parent employed, that is, single-parent and breadwinner family models. This means that a move towards a dual-earner family model is a crucial aspect for preventing in-work poverty. However, such a move requires the already mentioned obstacles to female employment being removed. Thus far, access to real, universal childcare and to a leave system which promotes gender equality is, unfortunately, still limited.

In conclusion, it seems reasonable to state that the micro-drivers of in-work poverty are generated, preserved, and strengthened by distortions in the Italian system. In this context, the outbreak of the COVID-19 pandemic – and its resulting economic crisis – has only exacerbated the situation.

110. The only – and however 'partial' exception is the '*bonus 80 euro*', a supplementary income-support measure, consisting in a special deduction applicable to employees' income tax. Michele Raitano, Matteo Jessoula, Emmanuele Pavolini & Marcello Natili, *ESPN thematic report on in work poverty – Italy* (European Social Policy Network – ESPN 2019).

111. Armando Vittoria, *La scomparsa dei poveri. Una prima valutazione di policy sul Reddito di Cittadinanza*, Politiche Sociali, 3, 525 (2020).