



Collective bargaining in Italy between the institutional framework and concrete practices: the analysis and the preliminary results of the European project CODEBAR

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Since the 1990s and, more generally after the 2008 economic and financial crisis, decentralisation of collective bargaining has been promoted in Italy, like in other continental European countries, **with the aim to help companies compete in increasingly global and integrated markets.** As is commonly known and recently reasserted (M. Tiraboschi, *Tra due crisi: tendenze di un decennio di contrattazione*, in *Diritto delle Relazioni Industriali*, 2021, n. 1, 143-173.), on August 5, 2011 a letter was sent by the European Central Bank to the then Italian Prime Minister, Silvio Berlusconi, asking for a reform of the collective wage bargaining system, with the aim of ‘allowing firm-level agreements to tailor wages and working conditions to firms’ specific needs and increasing their relevance with respect to other levels of negotiations’. In the same vein, the second level of collective bargaining, institutionally envisaged for the first time with the Giugni tripartite Protocol of 1993, was further encouraged via the introduction of tax incentives linked to local or company-level negotiations on performance-related pay, and the opportunity granted to decentralised bargaining to derogate, upon certain conditions, from sectoral-level collective agreements and national legislation (Article 8 of Decree-Law No. 138/2011, converted into Law No. 148/2011). In the same years, also social partners opened up to a process of organised decentralisation, by enabling decentralised bargaining to deviate from standards set by the national agreements, provided that the derogatory agreement was approved by sectoral trade unions. Therefore, in the social partners’ articulation of collective bargaining, the derogation principle was originally affirmed in addition to the traditional criteria of delegation and *ne bis in idem*, thus triggering a meaningful change in the Italian industrial relations system.

After more than ten years from the adoption of such regulatory measures, **the times are finally ripe to go deeper in the organised decentralisation model still implemented in most cross-industry and sectoral agreements in Italy thus casting light on whether and to what extent it applies in reality.** The assessment is particularly important given the implications that collective bargaining systems have for productivity gains and labour market outcomes, especially in the light of more recent challenges brought about by growing globalisation, technological advancements, demographic change and climate crisis. An opportunity to conduct this investigation has been offered by **the research project [CODEBAR](#) (Comparisons in Decentralised Bargaining: Towards New Relations between**

Trade Unions and Works Councils?), started in 2020 with the financial support of the European Commission and run by an international partnership, including ADAPT, and coordinated by the University of Amsterdam. In addition to documental research and content analysis of key legal provisions, collective agreements and case law (which enabled to outline the state of art for decentralised collective bargaining in our country and the accompanying academic debate), the Italian report has entailed also case study analyses on industrial relations in the metalworking, electricity and retail national industries. Moreover, one company case study for each sector has been conducted, through semi-structured interviews with managers, workers' representatives and local and/or national trade unionists operating in the workplaces examined.

Two opposite scenarios of collective bargaining

A particularly fragmented scenario of collective bargaining stands out among the preliminary results of documental research and case study analyses. Whereas the two-tier collective bargaining system continues to be outlined in cross-industry and sectoral collective agreements, the scope and extent of its concrete implementation tend to vary in relation to different sectors and above all, company size. In this sense, **it is possible to shed light on at least two main models of collective bargaining articulation at firm level.**

The first concerns large companies at the top-end of the value chain, like those analysed in the report, which are generally unionised and covered by decentralised bargaining boasting a certain autonomy from NCLAs and their coordination rules in regulating a wide range of issues and finding diverse and original solutions to firm-specific organisational and productive needs. It is therefore no wonder that also among the analysed companies there have been negotiations of fixed pay increases, despite the clear recommendation laid down in NCLAs, to exclusively concentrate on variable wage linked to productivity and efficiency results. Moreover, as already highlighted by the most recent ADAPT reports on collective bargaining, decentralised parties do not always take advantage of the normative flexibility granted by NCLAs. For instance, in two of the three companies examined, no experimental revision on the job classification scheme has been negotiated, though this move had been expressly encouraged by national agreements. These forms of misalignment between the functional articulation of bargaining levels, as envisioned in cross-industry and sectoral agreements, and the concrete practices of decentralised negotiations, prove to be unrelated to the degree of bargaining autonomy formally attributed to workplace representation structures, since sectoral trade unions are found to exert a substantial influence on decentralised bargaining in all companies examined, including the one from the metalworking industry, where workers' representatives regularly and autonomously bargain with management at department level. This non-compliance with certain national delegations must not nevertheless overshadow the proven ability of decentralised players to achieve bargaining outcomes, which are largely in line with the favourability principle vis-à-vis workers, while also taking into account corporate competitiveness needs. And it is therefore not surprising that among the industrial relations practitioners interviewed, there are those who perceive collective bargaining at their company as potentially independent from the NCLA, in respect to a wide range of subjects and provisions.

In these contexts, despite **the formal two-tier structure and functional hierarchy between the two levels, a fully decentralised model seems feasible and partly already in place, without derogations of labour standards and overall, with beneficial results for both**

employers and workers. Moreover, in large multi-location companies, the distinction between the first and second level of collective bargaining tends to be compromised not only by the considerable regulatory capacity of decentralised parties, but also by a centralisation trend in firm-level collective bargaining which, by favouring negotiations at central-corporate level rather than at single plants or workplaces, reduces the ‘spatial’ distance between the two contractual levels and flattens the respective differences in terms of actors, functions and contents. In this first scenario, **the provision by national agreements of just general guidelines and efficient procedures for the transfer of information, knowledge and competences from national to company-level parties would be enough**, as moreover argued by some industrial relations practitioners themselves, to both continue preventing the violation of national labour norms, and better promote the achievement of all the objectives of performance and innovativeness historically attributed to decentralised bargaining. After all, the choice recently made by the social partners in the chemical and pharmaceutical industry to overcome the mere listing of delegated topics, by introducing an original distinction between issues on which decentralised parties ‘need’ to act and those on which they ‘have the opportunity’ to do so, seems to be consistent with this trend. As documented by ADAPT’s VI report on collective bargaining in Italy (2020, pp. 207-261), the last renewal of the sectoral NCLA has set forth specific guidelines on issues such as work-life balance, welfare, training and equal opportunities, in an effort to steer, without excessively interfering with, the action of decentralised parties. Their upskilling in respect to collective bargaining is moreover promoted by training paths organised at the local level by sectoral employers’ associations and trade unions.

The second scenario regards all those companies, generally micro and small-sized ones located at the lowest positions of the value chains, which, as revealed by recent studies (e.g. S. Leonardi, M. C. Ambra, A. Ciarini, *Italian collective bargaining at a turning point*, WP CSDLE “Massimo D’Antona”.INT – 139/2017), **are not covered by firm-level collective bargaining and cannot make use of its normative flexibility to compete in the global context.** Subsequently, they tend to seek competitiveness from other sources including, in a system lacking the automatic *erga omnes* efficacy of collective agreements and experiencing the multiplication of NCLAs, also the application of the most cost-effective national agreements, whether signed by the trade unions operating in their respective sector and affiliated to the major confederations or not. **For these companies, a centralized model of collective bargaining applies.**

Against the many loopholes of the system and the threats made by ‘pirate contracts’ as well as the ‘corporatisation’ of new national agreements (aimed at covering sub-sectors formerly belonging to NCLAs with a wider scope), **a trend towards the flexibilisation of traditional NCLAs’ structure is detectable**, whereby differentiated labour standards for emerging branches and small operators are laid down in order to favour their inclusion and retention. In this regard, it is worth pointing out that in the latest renewal of the NCLA for the electricity industry, not only the application scope was redefined to include also those operators involved in the emerging fields of energy efficiency, renewable sources and customer services in trade activities, but the parties committed themselves also to the definition of ‘lighter’ regulations of both economic and normative aspects for these players, which nowadays are particularly attracted by other sectoral NCLAs. With the 2021 update to the NCLA, this different framework was laid down. Similarly, the provision by national agreements in both the metalworking and retail sector, of solutions of organisational and working time flexibility

unilaterally enforceable by employers would constitute both a response to the lack of development of decentralised bargaining in many small companies and the subsequent manifestation of diverse NCLAs taking over flexibility and competitiveness functions originally attributed to second-level collective bargaining.

The regulatory autonomy of decentralised bargaining, especially in large companies, and the flexibilisation trends in the structure of NCLAs seem to mirror the growing fragmentation of economic sectors and production processes in Italy. The latter are indeed more and more articulated in complex networks, made up of few core leading companies, usually unionised and covered by decentralised bargaining, which impose purchasing terms and conditions to their multiple (sub)suppliers and (sub)contractors: the lower their position in the subcontracted value chain and the more they tend to be unfamiliar with trade unions and collective bargaining and to struggle to respect even the minimum labour standards fixed in the most representative NCLAs. Though falling outside of the scope of this research, the apparel industry displays many of the above characteristics, and along with the retail sector, it is the most affected by ‘pirated bargaining’ in terms of both magnitude and reach of the phenomenon, as it well emerged from the study conducted in 2019 and summarised in the ADAPT’s V report on collective bargaining (pp. 213-231). **Whereas the formal hierarchical articulation of collective bargaining levels still seems to largely ignore the vertical disintegration of production occurred in many industries in the last fifteen years, these developments are already impacting on the everyday functioning and performance of industrial relations on both national and corporate levels.**

What remains of a model of organised decentralization

In the midst of these two opposite scenarios, we should also mention the significant share of small companies operating in sectors characterised by high levels of casual work, such as agriculture, constructions, tourism and services, which apply NCLAs and territorial collective agreements in a complementary way. However, the development of territorial collective bargaining is not homogenous throughout the country. Moreover, national reports on the developments of collective bargaining in Italy (such as those produced by ADAPT, Fondazione Di Vittorio and CISL) cast light on a share of medium and small companies, especially in the manufacturing sector, which are covered by both NCLAs and, for a limited number of delegated issues, also by firm-level collective bargaining. So described, although forms of non-compliance with inter-level coordination rules (such as via the regulation of fixed pay elements) cannot be excluded even in these cases, companies fitting into this scenario seem to represent, better than others, the two-tier structure of collective bargaining formally envisioned by cross-industry and sectoral agreements in Italy. As interestingly pointed out (G. Sateriale, *Ripensare la contrattazione*, in *Diritto delle Relazioni Industriali*, 2017, n. 3, 710-728), though, the shrinking proportion of medium companies in manufacturing sectors over the past few decades would have contributed to an increasing polarisation of the size of Italian enterprises and therefore – we could add – of the structure of collective bargaining. **Indeed, the two-tier model governed by a logic of ‘organised decentralisation’, which was traditionally well embodied by medium companies, seems to progressively leave room, at the two expanding extremes of our classification, for a unique level of collective bargaining: either fully decentralised in large and very large companies, or totally centralised, albeit with flexibilities, in micro and small companies.**

Although these developments largely occur in the shade of the traditional articulation of collective bargaining still outlined in cross-industry and sectoral agreements, certain recent clashes and divisions within the representation of employers' interests in Italy (such as the exit of FCA from Federmeccanica-Confindustria and that of Federdistribuzione from Confcommercio) appear to give further substance to such polarisation, by proving the difficulty of employers' associations to keep together increasingly polarised interests and preferences, also when it comes to collective bargaining (F. Bulfone, A. Afonso, *Business against markets: Employer resistance to collective bargaining liberalization during the Eurozone crises*, in *Comparative Political Studies*, 2020, vol. 53, n. 5, 809-846). In this sense, **the teachings of Marco Biagi** (M. Biagi, *Cambiare le relazioni industriali. Considerazioni sul rapporto del gruppo di alto livello sulle relazioni industriali e il cambiamento nella UE*, in *Rassegna Italiana di Diritto del Lavoro*, 2002, n. 2, 147-168) **regarding an industrial relations model based upon a single level of collective bargaining (alternatively national or company) at the choice of decentralised parties, where regulating all relevant labour issues, would be relevant than ever.** However, that widespread development of the local dimension of collective bargaining, which, in Biagi's vision, should have been given priority over NCLAs as a better tool to fulfil the organisational and productive demands of small companies, still seems pretty far from materialising. And probably also for this reason, the labour market outcomes (especially in terms of unemployment rates, the inclusion of vulnerable workers and wage disparities) of such fragmented and weakly coordinated scenario, could raise concerns (A. Garnero, *The impact of collective bargaining on employment and wage inequality: Evidence from a new taxonomy of bargaining systems*, in *European Journal of Industrial Relations*, 2021, vol. 27, n. 2, 185-202).


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