ITALIAN INDUSTRIAL RELATIONS:
TOWARDS A STRONGLY DECENTRALIZED COLLECTIVE BARGAINING?

SUMMARY: 1. The global trend towards contractual decentralization. - 2. The (insurmountable) problems of “organized” decentralization in a “disorganized” IR system: a) conflicts among collective agreements of different levels. - 3. (continued) – b) competition among both trade unions and employers’ associations. - 4. (continued) – c) wage setting. - 5. It's time for a law.

1. - The global trend towards contractual decentralization.

It is known that in the USA and UK, since the 80’s the most relevant level of collective bargaining has been the company-based one. More recently, however, also in the continental Europe States, usually featuring a sector-based national collective bargaining, it is possible to identify a progressive shift of the axis of negotiation towards the company level. This trend has significantly accelerated in the last years of economic and financial crisis also as a consequences of the pressure by the Troika and EU Commission (Jacobs 2014, 171 ss.).

According to the mainstream economic scholarly opinions, this process of contractual decentralization is the natural and inevitable effect of the transition from closed national markets to global and integrated ones, regulated – at least basically – by free competition and circulation of goods, services, capitals, and people. In the global context national sectoral collective bargaining faces insurmountable difficulties in efficiently carrying out its traditional macro-economic functions of redistributing national wealth among social classes, safeguarding the purchasing power of salaries through the control of inflation via wage regulation and sustaining internal demand for goods and services through the definition of wage minimums higher than those that would result naturally form the labor market dynamics.

Nowadays the capital can, in fact, more easily escape the pressures of the trade unions by delocalizing the production plants or simply investing in activities in countries in which productions costs are lower, taxation is more favourable, services and infrastructures are more efficient or a combination of several of more of these commodities.

Inflation has become even desirable, to a certain degree, because of its capacity of stimulating the consumers' propensity to buy and however, at least in the Euro-area Member States, its effects on the money supply cannot be managed by a single country. Support to internal demand does not necessarily implies support to national undertakings, since it can be redirected towards the acquisition of goods and services located abroad and distributed in the national territory, providing these manufactures with the bulk of the added value of the good or service sold (Bank of Italy 2015).

On the contrary, company-based bargaining can provide a better regulation of employment conditions of the workers than the national one, satisfying the specific organizational and productive demands of the undertaking, and contributing in increasing its productivity, competitiveness and - ultimately- profitability in a more targeted and effective way (EU Commission 2011). Trade unions and workers within the company are called to play a cooperative rather than conflictual role, as partners rather than counterparts: if the “competitiveness bet” is won, workers should be able to obtain as compensation not only the stability and continuity of their employment relationships, but also a significant share of the profits of the firm in which they are employed.
At the same time the risks trade unions have to deal with in a decentralized collective bargaining system are also evident: a) in SMEs, where trade union density is lower, the representative body cannot have per se the necessary bargaining power to negotiate an acceptable minimum wage or a significant profit sharing; b) it may be possible to experience a significant shift of the business risk on the workers, who may be forced in a race to the bottom with reference to wages and employment conditions in order to ensure an adequate profitability of the undertaking through the compression of the labor cost rather than the quantity and quality of the production.

The historical function of sectoral national collective bargaining and even of labor law has been to set mandatory labor standards which could not be modified by the individual worker in order to avoid this race to the bottom (Jacobs 2014); in the current global context, however, standards are differentiated among competitors of a same market of goods or services and it is not possible to identify international or EU-level sources of regulation setting mandatory conditions of employment.

The path undertook by continental European countries to govern the conflict between the firm competitiveness and the safeguard of even minimum standards among workers in the various national productive sectors has been the one of the so-called “organized decentralization”, assigning the power to derogate from national collective agreements or even the legal regulation only with reference to specific subjects and only to subject (both on the workers’ and employers’ side) representative at a level higher than the company one. This option has been progressively pursued also in Italy.

Social partners have signed agreements regulating the different bargaining levels which have legitimized company bargaining to intervene at first only on the subjects delegated by sectoral bargaining (Protocollo 1993), than on those not regulated by national bargaining even in the absence of an explicit reference (ne bis in idem principle in 2009 interconfederal Agreement) and lastly also derogating to the provisions of the national bargaining by the representative bodies in the undertaking adhering to the more representative confederations of by the elected trade union representatives (interconfederal Agreements 2011, 2013 and Consolidated Act-Testo Unico 2014).

Massive doses of “deregulation” of labor law have also been introduced: the possibility to derogate from the (subjective, objective and quantitative) limits to the recourse to atypical contracts (fixed-term, agency works, part time with “elastic” and “flexible” clauses, job sharing, job on call, etc.) was granted first to sector agreements signed by the most representative trade unions (l. n. 196/97, so-called Treu Package), than - only partly - by their bodies in the undertaking (d.n. 368/2001 and 276/2003 so-called Biagi Law) and, more recently, by attributing company agreements to derogate national bargaining and the law in a set of subjects¹ so wide to encompass the whole of the conditions of employment, with the only limitation of the respect of Constitutional, EU norms and international standards (art. 8 L. n. 148/2011).

This represents the legacy of the Berlusconi administration and was adopted in the autumn of 2011 responding the a specific request contained in the famous letter by Trichet and Draghi of the same year. The most representative trade unions, CGIL in particular, have strongly opposed the use of this law by refusing to sign company agreement based on this normative item or, when forced to do so through the threat of collective redundancies or outsourcing, by avoiding in the text of the agreement explicit references to the law in question (Imberti 2013).

The current Renzi’s Government has not abrogated art. 8 of l. 148/2011, which is therefore currently in force, but has placed at its side a norm which appears a return to the technique of the “selective delegation” by the law to the agreements signed by the most representative trade unions in order to derogate the law on atypical forms of employment: this capacity is granted indistinctly to collective agreements of any level (national, territorial or company-based), putting them on the same level without any hierarchical relationship among them (art. 51 D.l. n. 81/2015).

¹ A/V systems, the introduction of new technologies, duties and classification of the employees, fixed term work, part-time, joint liability in procurements, reasons for the use of agency work, working time, recruitment, regulation of the employment relationship (included project and autonomous work), conversion of employment contracts and consequences of termination of employment (with the exception of discriminatory and/or parental dismissal)
2. - The (insurmountable) problems of “organized” decentralization in a “disorganized” IR system: a) conflicts among collective agreements of different levels.

Notwithstanding the efforts by the State and social partners it is difficult to describe Italian system of industrial relations as “organized” among various collective actors and contractual fields at national, territorial and company level; it appears, on the contrary, that chaos reigns.

Paragraph 1 of Art. 39 of the Italian Constitution unconditionally recognized trade union freedom: the following paragraphs, however, set a series of requirements that trade unions must present in order to be legitimized to sign \textit{erga omnes} agreements, binding for all the workers and the undertakings of the “categories” to which the agreement refers. To this end trade unions shall: a) be registered as legal entities with a democratic internal statute; b) participate in a national bargaining body, which necessarily requires the activation of public procedures aiming at gauging the number of the members of the various trade unions willing to take part in the bargaining.

Because of the aversion of the most representative trade unions to subject themselves to the control by public authorities on their size and internal democracy, the second part of art. 39 Cost. was never implemented. The Constitutional Court has determined that this does not imply that the norm is ineffective, but that has an “preventing effect”, precluding the adoption of instruments to grant collective agreements any \textit{erga omnes} efficacy.

For this reason collective agreements of any level are in Italy civil law agreement, binding only \textit{inter volentes}, among the signatory parties: employers’ associations, trade unions and their members, by virtue of their membership to the representative organization.

Since they are civil law contracts, there is are no legal hierarchy or coordination criteria regulating the relationships between agreements signed at different levels, so that conflicts are solved by the jurisprudence chronologically (the most recent agreement prevails), or recurring to the “speciality” criterion, according to which the prevailing agreement is the closer to the subject regulated (for instance, with reference to the organization of work shifts, the company agreement prevails even if prior to sectoral one).

As noted, social partners have attempted to regulate the relationships among agreements at different levels by signing a series of Agreements, the last one of which is the C.A. of the 10th January 2014, that reaffirms the hierarchical prevalence of the national category agreement and allows it to be derogated by company agreements only in the ways and for the subjects set by the national agreement itself. The structural limit of these Agreements, even if signed by the most representative trade unions and employers’ associations, is that they also have civil law nature and are therefore binding only the signatories and the subjects that these parties represent.

In this context the FIAT-FCA case has shown Italian public opinion something which had been already clear for the experts for a long time: contractual “decentralization” can be pursued by a company in a very radical and effective way by simply leaving any employers’ association, avoiding its contractual duties with the trade unions and returning free to sign an own company agreement with the available trade unions, irrespectively from the representativeness of the workers involved.

FIAT, wanting to derogate from the national metalworkers collective agreement for subjects such as shifts and working time, and not to be bound by the criteria set by the Government in terms of hierarchy of collective agreements, has created two new companies, not adhering to any employers’ association, to which it has handed over its undertakings, and has subsequently canceled its membership to Confindustria, the major employers’ association. Nothing new or shocking, as a matter of fact: for years the SMEs of Italian North-East “escape” from the employers’ association to avoid the application of national agreements, and the number of members of he employers’ association has constantly and considerably decreased, so much that Federmeccanica, the most representative organization in the metalworking sector, is considering to amend its statute in order to allow the membership also for the companies which decide not to apply the collective
agreements signed by the organization itself, exactly as it has already happened in Germany with the opting out clauses for the sectoral agreement.

3. (continued) – b) competition among both trade unions and employers’ associations.

The failure in implementing art. 39 Cost. deprives the Italian system of a legal discipline to select the bargaining actors on the workers’ and employers’ side at the various levels. Since the right to bargain collectively is based only on the constitutionally recognized trade union freedom, any representative subject, however small and/or formed for the occasion, can bargain and sign agreements on behalf of its members, provided that the employer is willing to negotiate.

In its original version art. 19 of the Workers’ Statute (Statuto dei lavoratori - l. n. 300/70) did not select the actor legitimated to company bargaining (hereinafter RSA) but aimed at promoting the formation of company representative bodies linked to the most representative confederations at national level or to trade union which had signed “national or provincial” agreements. This link with the national association dissolved as a consequence of a 1965 referendum which implied the repeal of the first requisite for the formation of RSAs (adhesion/membership to the the most representative confederations at national level) and the amendment of the second requisite, abrogating the reference to “national or provincial” collective agreements, so that the signature of any agreement at any level legitimizes the trade union to form RSAs. The current letter of art. 19 states that RSAs can be formed at workers’ initiative in any productive unit, within the trade unions of the agreements applied in the unit.

Immediately after the referendum it has been stated - on the basis of a very coherent analysis - that there had been a leap backwards to the time of the industrial relations based on the logic of the “trade union legal order”, which draws its regulatory ability from the reciprocal recognition granted by the opposing parties. This would have implied a complete eradication of the framework set by the Statute: art. 19 would not perform any promotional function, but would simply regulate trade union rights deriving from the employers’ recognition. Other authors, while not sharing such radical conclusions, have also underlined a “circularity fault” or the “tautology” of this norm, attributing rights to actors already able to obtain them through bargaining processes, so that the “supporting legislation does not support anybody or, at most, supports who is already standing”.

The Constitutional Court had affirmed thrice the compatibility of a similar formulation of art. 19 (ruling n.1/94 -admitting the referendum - and nn. 244/96 e 345/96). In these ruling the Court did not find art. 19 as granting the employer with a power of trade union recognition. The signature of a company agreement was elected by the legislator as an exclusive indicator of the representative capacity of the trade union: securing further rights to such a trade union would not be in contrast nor with art. 39 Const. as it would not compress the trade union freedom of the non-signatory unions, nor with art. 3 Cost (equality principle), because the selection criterion adopted in order to attribute these rights would appear reasonable as it is linked to the conclusion of the agreement, highlighting the “effectiveness of the action” of the signatory trade union.

Even if in the Italian framework the employer in not subject to any duty to bargaining or sign an agreement and can, therefore, autonomously select its trade unions counterparts, it is nonetheless interested in signing agreements with unions which gather a wide consensus among the

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2 “confederazioni maggiormente rappresentative sul piano nazionale”
3 (D.P.R. 28.7.1995 n. 312)
4 “Rappresentanze sindacali aziendali possono essere costituite ad iniziativa dei lavoratori in ogni unità produttiva, nell’ambito delle associazioni sindacali che siano firmatarie di contratti collettivi di lavoro applicati nell’unità produttiva”
5 S. LIEBMAN, Forme di rappresentanza degli interessi organizzati e relazioni industriali in azienda, DRI, 1996, 1, 8.
workers to which the agreement are applied, otherwise the stability of the agreement could be hindered by protests or disputes by the same workers.

Ruling n. 244/96 states that the principle of the signature of a collective agreement “extended to the whole area of collective bargaining” is justified “in an historical and sociological” as well as rational practical perspective, because of the correspondence of this criterion to the typical measuring tool of trade union strength - and therefore of its representativeness - provided by the industrial relations systems. The Court, therefore, did not consider art. 19 as a norm granting the employer a power of union recognition but as a “qualifying” one, providing that “supporting” trade union rights are assigned on the basis of an objective and pre-existing circumstance - the representativeness connected with the signature of a collective agreement. The Court also qualified the need for an agreement regulating organically the employment relationships, not in all their aspects but at least for a sector or an important aspect of their regulation.

The dispute between FIAT and the biggest metalworking union, FIOM (adhering to CGIL), has highlighted that in the current “historical-sociological” context the signature of a company agreement does not imply anymore the bigger representativeness of the union, so much that FIOM, while being undoubtedly the biggest trade union, did not sign to the company agreement struck by FIAT an the other sectoral unions and was excluded from the possibility to form RSAs within FIAT plants and from the enjoyment of trade union rights set by Title III of the Workers’ Statute.

The Constitutional Court has been called once again to evaluate the constitutional compatibility of art. 19 SL within this disputed and reached opposite conclusions than in the previous instances. The Court (ruling n. 231/2013) underlined that, in the new industrial relation context, the principle of signature of a company agreement shifts from a system of selecting the actors by virtue of their representativeness to a mechanisms excluding the most representative or a significantly representative actor within the undertaking, and therefore is inevitably in contrast with artt. 2, 3 e 39 Const. The Court therefore, with a so-called additive ruling, has declared that art. 19 SL is in contrast with the Constitution as it does not allow a trade union to form RSAs when it has participated to the bargaining for the company agreement, even if it ultimately has not signed it.

This ruling has set a selection criterion useful to solve the FIAT/FIOM dispute allowing the trade union - although temporarily - to form RSAs in the undertaking even if it had not signed the company agreement, but this instrument does not appear suitable to perform as the main instrument to measure the representativeness of a trade union. The Italian system does not provide a duty to bargain with the most representative union; therefore the employer will be able to exclude unwanted trade unions from the bargaining, calling into question the new requisite set by the Court for the formation of RASs. The Court itself is aware of the problem that the interpretation of art. 19 stemming from ruling n. 231/2013 can make it constitutionally compatible solely with respect to the dispute in question, and cannot perform as a selection tool for the cases in which no agreement is reached or any bargaining is carried out. The Court therefore solicits a legal intervention and even presents the alternative options which appear compatible with the Constitution: a) selecting trade unions legitimated to form RSAs on the basis of their effective representativeness b) introducing a duty to bargain with trade unions going beyond specific thresholds c) remitting to the contractual
system as a whole and not solely to the company agreement, d) establishing representative bodies in
the undertaking directly elected by the workers. This intervention by the Constitutional Court did
not overcome the traditional aversion of social partners for a legal regulation of the matter, as they
have tried to define a contractual framework to measure trade union representativeness, select the
bargaining parties and regulating the relationships between agreements signed at different levels.
On January 10, 2014 by Confindustria, CGIL, CISL and UIL signed a new interconfederal
Agreement with the intention of replacing the legislation in the regulation of the matter made
evident by the naming of the Agreement as Consolidated Act, a terminology generally used for
framework law reorganising a specific subject or field. The objective of the 2014 Agreement is, in
fact, to intervene on the industrial relation system defined by the 1993 Protocol and the 2011 and
2013 Agreements, making it more rational and efficient.

The measuring tool for trade union representativeness is linked to the scope of application of
the sectoral agreement; the undertaking must indicate the agreement applied and the membership
numbers of each trade union. Within the undertakings, in the occasion of the election of a unitary
representative body (RSUs), which can be entered by any trade union, the number of votes collected
by each trade union are counted and collected by a public authority (CNEL) in relation to the
undertakings applying the same sectoral agreement. The representativeness of each trade union is
then measured by averaging the “associative datum” (the percentage of membership in relation to
the entire number of workers) with the “electoral datum” (percentage of the votes obtained in
relationship with the totality of the voters for RSUs in undertakings covered by the same national
agreement). In order to participate to collective bargaining a trade union must obtain at least 5% as
average result, and the agreements are to be considered approved and binding for all the subjects
covered by the same sectoral agreements (firms, trade unions and employees) if they are signed by a
trade union coalition reaching 50%+1 of the average between the two data.

The parties agreed that on the basis of the indication of ruling n. 231/2013, the 5% requisite
sets the condition for the recognition of trade union rights stated by art. 19 SL by legitimizing a
trade union to bargain collectively.

RSUs election can be entered by any trade union on the condition that they accept explicitly,
formally and entirely the contents of the 2011, 2013 and 2014 Agreements, and if they are not
signatories of those agreement, present a roster of candidates accompanied by a number of
signatures of workers in the productive unit equal to 5% of the voters in the companies employing
more than 60 workers; in the companies with 16-59 employees the list must be accompanied by at
least three workers’ signatures.

Any candidate can compete in one list only: if a member of the RSU changes trade union
membership it shall forfeit its office and will be substituted by the first non-elected in the original
list. RSU take decision through majority votes of their members.

The 2014 Agreement intends to grant company agreement a general effectiveness: it
provides in fact that the agreements signed according to these procedures are binding for all the
workers and trade unions which have signed the 2014 Agreement itself and that where no RSUs
are set up company agreements have similar effectiveness if approved by majority RSAs. Such
agreements must be voted upon by the workers if so requested by a trade union adhering to one of
the confederation which have signed the 2014 Agreement or by 30% of the employees of the
company. In order for the vote to be valid it is necessary the participation of 50%+1 of the voters:
the agreement is rejected by explicit simple majority vote.

The 2014 Agreement however faces an insurmountable limit in effectively binding all the
workers employed by an undertaking in being a contractual sources of duties and obligations,
icapable to produce legal effects for those subjects which have not agreed to it either because they
are not member of any trade union or because they are members of trade unions which have not
participated to RSUs elections nor have agreed the conditions set by interconfederal agreements.

10 “… sono efficaci ed esigibili per l’insieme dei lavoratori e delle lavoratrici nonché pienamente esigibili per tutte le
organizzazioni aderenti alle parti firmatarie della presente intesa”.
For what it refers to the collective bargaining system the 2014 Agreement restates the centrality of the national agreement as the main tool to ensure the certainty of common terms and conditions of employment for all the workers of the sector. The possibility for the company agreement to derogate from the national level is provided for within the limits and the procedures set by the national collective agreements;11 when these conditions are not set by the (national) agreement applied in the undertaking, RSAs can sign agreements in derogation to national agreement with reference to work performance, working time and work organization in order to face corporate crisis situations or to allow relevant investments to encourage business expansion but they can do so only in agreement with the territorial branches of the trade unions which have signed or agreed the 2014 Consolidated Act.

4. (continued) – c) wage setting.

As much as the major trade unions and employers’ associations aspire to form an organized system of regulation their efforts are at risk of being thwarted by the competition of agreements signed for the same sectors by different organizations, however less representative on a national basis. As it was outlined, in the absence of a law on the representativeness for collective bargaining no association or coalition can claim a monopoly on collective bargaining of any level, even the company one. There is no instrument to grant erga omnes effectiveness to a collective agreement or to select an actor legitimated to sign such an agreement.

The same area where the measurement of the representativeness should be carried out is undefined and indefinable. According to the prevalent doctrinal and judicial opinion, the notion of “category” which is referred to in art. 39 Const. and should define the scope of application of an agreement is not defined by law: the category does not pre-exist to the agreement, but each agreement creates its own category by defining its scope of application. It is possible to affirm therefore that there are as many categories as many agreements, and within each specific category the signatories are generally the most representative actors. If the reference area for the measurement of the representativeness is not predetermined with respect to the definition of the scope of application, it is practically impossible to carry out a reliable measurement. This impossibility makes notions such as “most representative associations” and “comparatively most representative association” (adopted in order to provide greater specificity) significant on a historical-sociological level rather than a mathematical/numerical one.

The legislator has utilized these notions to select the trade unions legitimated to derogate or supplement the law in particular for the regulation and conditions of use of atypical contracts and forms of employment. Lastly, in the 2015 Jobs Act this power is assigned to “national, territorial or company” collective agreements signed by trade unions “comparatively more representative at national level” and company agreements signed by their RSAs or by the RSUs.12 The measurement of the representativeness is carried out at national level and does not allow to define in a sufficiently precise and invariable way the area of the measurement. Furthermore, the generic reference to representative trade unions as signatories of the agreement does not clarify whether it is needed the agreement by all the most representative trade unions, or by some of them, and whether they may need to represent the majority of associations or, rather, workers covered by the agreement.

These problems did not find any solutions in the selection criteria set by art. 8 l. n. 148/2011 in order for company agreements to derogate in pejus from national agreements and from several

11 “nei limiti e con le procedure previste dagli stessi contratti collettivi nazionali di lavoro”
12 “contratti collettivi nazionali, territoriali o aziendali stipulati da associazioni sindacali comparativamente più rappresentative sul piano nazionale e i contratti collettivi aziendali stipulati dalle loro rappresentanze sindacali aziendali ovvero dalla rappresentanza sindacale unitaria” (art. 51 d.lgs. n. 81/2015)
labor law items\textsuperscript{13}, with the only limitation of the respect of Constitutional, EU norms and international standards. The norm specifies that such derogating agreements are binding for all the workers if they are signed at company or territorial level by trade unions comparatively more representative at national level or by their company representative bodies on the basis of a majority criterion\textsuperscript{14}. Even if the norm explicitly states the application of a majority criterion, it does not set the conditions for its operability since it does not identify the measurement parameters, nor precludes interpretations such as the one providing that this requisite must be evaluated with reference to the number of trade unions or RSAs signing the agreement rather than to the number of workers, as it would appear more adequate in a democratic sense.

This uncertainty has fostered the emersion of several trade unions signing national agreements featuring very narrow scopes of application (for instance the agreement for logistics company employing less than 15 workers) in which they can claim some sort of representativeness. Sometimes these unions are linked with the management and are created in order for the employers to enjoy the “derogations” set by the law. It is not by case that during the financial crisis the already very high number of national agreements has almost doubled, from 400 to around 700. By applying these “rogue” agreements, the companies are able to avoid the application of the collective agreements signed by the trade unions adhering to the historically most representative confederations (CGIL, CISL, UIL) without forfeiting the opportunity to exploit the regulatory flexibility stemming from the conclusion of an agreement, which they would lose should they decide not to apply any collective agreement.

Furthermore the provisions of collective agreements regulating individual employment contracts are considered by the jurisprudence as binding for all the workers, even if they are not members of the signatories trade unions, because they respond to operational needs which need to be uniformly regulated within the undertaking. According to a widely agreed theoretical reconstruction (M. D’Antona, 1999) the de facto universal applicability of the agreement would derive from the remittal by the law to the agreement and not from the agreement itself, preserving its compatibility with art. 39 Cost.

The main offense carried out by rogue agreements to national collective bargaining is represented in the competition in wage setting with reference to the minimum wage for all the companies in a specific sector according to art. 36 Const. This norm states that workers have the right to a remuneration commensurate to the quantity and quality of their work and in all cases to an adequate remuneration ensuring them and their families a free and dignified existence\textsuperscript{15}. The jurisprudence considers this right as directly enforceable by the worker against its employer and, in absence of a statutory minimum wage, the courts have historically identified in the collective agreements signed by the most representative associations the factual parameter to determine the minimum wage. The basic wage provision set in these agreements, therefore, are universally applicable since all the employers operating in the sector which constitutes the scope of application of the agreement must comply with the wage set by the latter even if they have not signed it. The use of this parameter enforces the right set by art. 39 and does not imply the application to all the undertakings of the national collective agreement, and theoretically allows the judges to allow lower wages set by territorial or company agreements by virtue of the lower cost of life in some areas of

\textsuperscript{13} A/V systems, the introduction of new technologies, duties and classification of the employees, fixed term work, part-time, joint liability in procurements, reasons for the use of agency work, working time, recruitment, regulation of the employment relationship (included project and autonomous work), conversion of employment contracts and consequences of termination of employment (with the exception of discriminatory and/or parental dismissal)

\textsuperscript{14} “... sottoscritti a livello aziendale o territoriale da associazioni dei lavoratori comparativamente più rappresentative sul piano nazionale o territoriale ovvero dalle loro rappresentanze sindacali operanti in azienda ai sensi della normativa di legge e degli accordi interconfederali vigenti … sulla base di un criterio maggioritario relativo alle predette rappresentanze sindacali”

\textsuperscript{15} “Il lavoratore ha diritto ad una retribuzione proporzionata alla quantità e qualità del suo lavoro e in ogni caso sufficiente ad assicurare a sé e alla famiglia un'esistenza libera e dignitosa”
the country (in particular Southern Italy), even if these deviations have been considered compatible with art. 36 Const. only when of very limited entity.

Nowadays rogue agreements, on the basis of a alleged higher representativeness of the stipulating trade unions in the specific and narrow scopes of application, undermine the wage setting monopoly of national agreements signed by the trade unions adhering to the most representative confederations; this explains the proliferation of new national collective agreements signed by new trade unions in the last years.

The historically most representative confederations (CGIL, CISL, UIL) are trying to defend the minimum wage setting function of the national agreement: the recent unitary proposal recently (January 14, 2016) put forward by CGIL, CISL and UIL regarding the reform of the Italian industrial relations system, reasserts the centrality of the national agreement as main source of identification of the mandatory minimum wage that, on the basis of a renewed assertive platform rather than of wage restraint, should be determined according to indicators taking into account the macroeconomic dynamics, not only with reference to inflation levels, but also to economic growth and sectoral trends.

Moreover, it may be highlighted that this function of the national collective agreements signed by the most representative trade unions were acknowledged either by art. 8 l. n. 148/2011, which does not includes wages among the subjects that can be derogated by the company or territorial agreement, and by the more recent l. 183/2014, by delegating the task to the Renzi’s Government to define a statutory minimum wage only for those sectors in which national collective agreements are not applied, implying therefore that in all the other circumstances the national agreements would continue to make up the reference for the mandatory minimum wage. May this one is the real reason because the Government has decided to not utilize this legislative mandate received by the Parliament leaving the conceded term expiring