



► Background note: Labour relations and COVID-19

October 2020¹

The response of social partners to the COVID-19 crisis in Italy

► Overview of industrial relations

The Italian system of industrial relations - and in particular the institution of collective bargaining- is characterised by strong elements of autonomy of the social partners acting as private law bodies. Therefore, in Italy collective bargaining is a negotiation between parties of private law. As a result, the outcome of such negotiation - namely the collective agreement- is in principle binding only for the signatory parties. This happened because for historic reasons social partners decided to operate in the national system of industrial relations without being formally registered. A constitutional provision² recognised to registered trade union personality of public law making them able to sign collective

agreements automatically binding *erga omnes*, but it never got operationalised.

Unsuccessful attempts to establish the applicability *erga omnes* of collective agreements among private-law bodies were made by the legislator.³ Eventually it was through the jurisprudence⁴ that mechanisms of extension *erga omnes* were found, making it possible to overcome the limitation that this system of bargaining rooted in private law brought. As a result, collective agreements are currently considered as minimum floor of guarantees applying to all workers of a given sector which can only be derogated for the better by individual contracts.

► Responses to COVID-19 at workplaces in Italy

In recent history, Italy has known an intensive season of concertation with social partners during the late 80s and 90s, which came to an end towards the early 2000s. It was during the years of the latest economic crisis, in fact, that a series of important labour reforms conducing to an ever-growing flexibilization of the employment relationship were introduced with little or no involvement of social partners.⁵

The recent COVID-19 pandemic triggered a revitalization of tripartite social dialogue, shaping the government's response and leading to a key role for labour relations and collective bargaining between the social partners at both sectoral and enterprise levels in designing, adapting and implementing policy solutions. Following the Government's invite to the social partners to negotiate OSH-related guarantees and

1 This note was compiled in May 2020. Often additional details will be accessible through the provided sources.

2 Art. 39 Italian Constitution provides that collective agreements can be applied *erga omnes* if signed by registered trade unions. However, this rule has never been applied because, following the experience of corporatism during the fascist period, workers' organizations of the newly born democratic State preferred not to register in order to avoid all kinds of control by the public authority.

3 In 1959 Law No.751/59 also known as Vigorelli law delegated to the government the power to issue legislative decrees transposing what agreed by social partners in national collective agreements and ensuring to them applicability *erga omnes*. This law was later on declared unconstitutional as it foreseen a way to bypass provisions of Art. 39 of the Constitution.

4 *Erga omnes* applicability of national collective agreements -in the part in which they regulate wages and benefits- has been recognized by well-established jurisprudence. The standards established by national collective agreements have been considered as the sectoral minimum to which all individual contracts needed to conform. Such jurisprudential guide results from Art.36 of the Constitution read jointly with Art.2099 Civil Code: the first guarantees the worker the right to a reasonable remuneration if compared with the quality and quantity of his work, and sufficient to guarantee him a decent existence together with his family while the latter provides that the judge may determine the worker's remuneration in the absence of collective agreements or agreements between the parties. The pay rate contained in the collective agreement is therefore recognised as a minimum floor and as a reference when the judge needs to estimate the reasonable remuneration as established in Art. 36 Constitution.

5 See also [Committee on the Application of Standards, Individual Case- Discussion: 2015, Publication: 104th ILC session \(2015\), Employment Policy Convention, 1964 \(No.122\), Italy.](#)

protections made in a [Presidential Decree of March, 11](#) the social partners negotiated under the aegis of the Government the content of two national protocols, on [March 14](#)⁶ and [April 24](#).⁷ The first Protocol was meant to define OSH measures to be put in place in order to protect workers employed in front-line sectors, while the latter expanded the scope so to cover all workers and sectors in view of the reopening of economic activities on May, 18. The two national protocols whose content had been negotiated by the social partners but which were signed also by the Government, were included in two Presidential Decrees,⁸ giving them the force of law. Sector-specific protocols were signed in almost all productive

sectors,⁹ adapting and in some cases complementing the scope of the protections set out in the two national ones. Two in particular (the Protocol on Logistics and Transport of April 20 and the Construction sites Protocol of April 24) were transposed in the Presidential Decree of April 26 giving them force of law.

The national protocols as well as the numerous sectoral ones gave rise to, and oriented the content of, a series of agreements signed by trade unions and employers at the enterprise level in a remarkable example of multi-level coordinated social dialogue.

► National protocols to support companies and secure safe working conditions

The two national protocols followed a similar structure and included a number of guidelines to reorganize work in undertakings and activities which continued operating during the crisis (first protocol) and which retrieved after the end of the lockdown (second protocol) so to ensure the guarantee of health and safety for workers and a number of complementary measures related to income security, social protection and social security.

In particular, the guidelines related to OSH risks included but were not limited to:

- Temperature check when accessing the workplace;
- Duty to respect 1-meter physical distance between workers;
- Duty to limit workers' movement within the undertaking and to stagger access to shared spaces;
- Duty to suspend / cancel all work-related travel;
- Procedures to manage employees who get sick at work;
- Limitation of access to the enterprise premises in case of contact with someone who tested positive in the last 14 days;
- Duty to ensure health monitoring and medical checks prior to return to work following sick leave;
- Protection of employees' privacy when managing sensitive information about their health;
- Management of common recreational areas;
- Duty to clean the workplaces on a daily basis and sanitize it periodically;

- Measures to regulate access of contractors/suppliers to the premises.

Additional provisions touched upon the following issues:

- Adjustments to expected productivity levels;
- Suspension of all "non-essential" activities;
- Maximization of smart-work and telework;
- Incentivizing the use of paid leave, including parental leave, supported by the economic measures put in place by the government;
- Using employment retention or short time work when necessary;
- Fostering enterprise level collective agreements;
- Creation of territorial committees to coordinate COVID-19 policy initiatives;
- Involvement of occupational health services at the enterprise level¹⁰ to identify risks and vulnerabilities;
- Roles for both occupational health services at the enterprise level and workers' health and safety representatives¹¹ in ensuring compliance with the guidelines promulgated by health authorities;
- Encouraging adjustment to the shift schedules, minimizing contact among workers;
- Promoting enterprise regulations regarding access of outsiders to the undertaking.

Both protocols provided for the creation of an enterprise committee composed of enterprise union representatives,

6 English translation available here: [«Joint Protocol for regulating the measures designed to combating and containing the spreading of COVID-19 in workplaces»](#), 14 March 2020.

7 English translation available here: [«Common regulatory protocol for measures to combat and contain the spread of the COVID-19 virus in the workplace»](#), update of 24 April 2020.

8 The protocol of March 14 has been transposed into Presidential Decree (DPCM) of March 22 and the protocol of April 24 has been transposed into Presidential Decree (DPCM) of April 26.

9 In particular: in the bank, insurance, chemical and pharmaceutical industry, energy, gas, glass, garment, food, stone, retail and transport sector.

10 Which according to Legislative Decree No. 81/2008 (Art. 18) need to be appointed by the employer in enterprises carrying out activities that expose workers to risk.

11 Legislative Decree No. 81/2008 (Art. 47 (4) provides that in unionized workplaces employing more than 15 workers, the workers' representative for health and safety (RLS), is chosen by trade union' representatives in the undertakings.

the representative of occupational health services at enterprise level and eventually external consultants if deemed appropriate by the company. The committee was responsible for the enforcement and assessment of the protocols' guidelines in the undertakings. In cases where the enterprise committee could not be created, the 24 April

protocol foresaw the creation of territorial committees composed of joint health and safety bodies, territorial representatives for health and safety and representatives of social partners. Failure to comply with all the provisions of the national protocols would lead to the suspension of productive activities.

▶ Sectoral protocols and bipartite agreements at enterprise level to secure safe working conditions in all sectors

The guidelines developed in the national protocols were then further adapted to the sector-specific OSH risks in sectoral protocols, often signed under the aegis of the relevant Minister. The sectoral guidelines were then adapted and complemented to fit the needs and specificities of given enterprises.

Specific duties and obligations have been included in various enterprise-level agreements in the following sectors:

1. Automotive sector

Fiat-Chrysler Automotive (FCA) and trade unions signed an [agreement on April 9](#) for the progressive resumption of activities. It included, but was not limited to:

- ▶ Information sharing prior to the return to work through WhatsApp, e-mail and on the web portal "Employees" in a section dedicated to COVID-19;
- ▶ Information sharing and training on the new protective measures and behaviours when returning to work;
- ▶ Continuous plant-level monitoring through workers' safety and health representatives;
- ▶ Regular cleaning and sanitization and ongoing use of masks and sanitizer in every productive unit, and
- ▶ Sign-in sheets to trace possible infections within the undertaking.

Ferrari and the trade unions agreed on a [company regulation](#) based on the resumption of economic activities over three phases, and also agreed on:

- ▶ Voluntarily screening of employees (blood tests and other exams aimed at giving a general overview of employees' health condition in a given plant);
- ▶ The opportunity to use a specific app to have medical support including in the monitoring of eventual symptoms;
- ▶ Medical and psychological support to be provided both door-to-door and via telephone, and
- ▶ In the eventuality that employees were affected by COVID-19, the enterprise agreed to provide accommodation allowing them to quarantine in

complete isolation, with door-to-door medical help and all necessary medication.

Other enterprise-level agreements were signed as well, for example, by **Toyota**, **Piaggio** and **Magneti Marelli**.

2. Home Appliance Manufacturers

Electrolux confederate unions (CGIL, CISL and UIL) signed an [agreement](#) with enterprise representatives establishing such measures as:

- ▶ A system to inform and involve employees in the implementation of health and safety measures;
- ▶ Collaboration with specialized hospitals in monitoring testing of employees;
- ▶ Development of an app which tracks employees and monitors risk of infection;
- ▶ Provision of hand sanitizer to each employee, and
- ▶ An additional 180 hours of paid leave for trade union representatives to be used by July 2020.

Whirlpool signed an [agreement](#) with the trade unions providing, for example:

- ▶ An additional chapter dedicated to COVID-19 in the Risk Assessment Document¹² (DVR) within every undertaking;
- ▶ A checklist – to be checked by health and safety department in the undertaking – to verify compliance with the additional measures foreseen in the new chapter of the DVR, and
- ▶ Collaboration with the Red Cross to anonymously monitor the temperature of workers, contractors and visitors.

3. Energy

ENEL¹³ and unions representing their workforce signed an [agreement](#) which included:

- ▶ A revised shift system, minimizing contact between workers categorized as part of the "essential

¹² The creation of this document was made compulsory by Legislative Decree No. 81/2008 and was required to be present in every undertaking following a visit assessing the risks by an independent health and safety expert.

¹³ ENEL is a multinational enterprise engaged in the generation and distribution of electricity, as well as natural gas distribution.

workforce”, through alternating periods of 14 working days;

- ▶ Workers not considered part of the “essential workforce” would stay home, but remain available as a backup to the “essential workforce” in emergency situations. Backup workers received regular pay (supported by the “solidarity bank” of working days, as outlined below) and if called to work they received an additional indemnity;
- ▶ A “solidarity bank of working days”¹⁴ was created to avoid layoffs and ensure payment of salaries for workers who were neither part of the essential workforce nor could perform their tasks through teleworking;
- ▶ Those workers designated as essential workforce were kept in isolation and accommodated in designated facilities within or near the undertakings, at the company’s expense. ENEL also covered expenses for meals, ensured sanitization of the accommodation units, and placed psychological support at the disposal of workers, and
- ▶ An additional fixed amount of EUR110 was paid to members of the “essential workforce” for each day spent in isolation.

Italgas¹⁵ signed an [agreement](#) with trade unions for:

- ▶ The creation of territorial committees made up of enterprise union representatives within a given territory and representatives of management. The territorial committee would assess the extent of implementation of the national protocol signed by social partners in response to COVID-19;
- ▶ The creation of a national committee composed of nine trade union representatives and six management representatives;
- ▶ Extending telework arrangements to the entire workforce, including through the distribution of 400 smartphones, and
- ▶ Training of additional workers who would be prepared to intervene in crisis situations.

Several other enterprise-level agreements were signed across nearly all sectors. This includes the garment (**Gucci**) and furniture (**Natuzzi**) sectors; electronics (**Thales**), eyewear (**Luxottica**); engineering components for oil and gas (**Nuovo Pignone**) with provisions similar to those outlined above.

▶ Key effects of the agreements and outlook

The response to COVID-19 demonstrated the value of coordinated mechanisms of bipartite and tripartite social dialogue and collective bargaining at different levels. Social partners agreements paved the way for the organization and management of Covid-19 related OSH risks and provided guidelines for the entire economy on the application of prevention measures.

The measures ensured minimum protections and guarantees for those who were called to continue working through the lockdown, as well as for those who returned to work following resumption of economic activity. Moreover, trade unions and

employers were able to complement higher-level protocols with more adapted solutions at sectoral and enterprise levels.

In fact, the bipartite agreements proved to be critical tools for adapting the response to sector-specific OSH risks, production requirements and workers’ concerns. Moreover, the creation – through the tripartite protocols – of bipartite labour-management committees contributed to the effective enforcement of health and safety measures. In a number of cases, these mechanisms were further strengthened in sectoral and enterprise collective agreements which established technical committees to collect and share best practices at national level.¹⁶

▶ Access for further information

Please consult the information provided in the footnotes for sources and further information.

¹⁴ This solution consists of a “deposit” where both the enterprise and worker can convey working days to cover for the payment of colleagues’ non-worked shifts. ENEL covered the payment of one working day for each worker employed in Italy (around 30,000) and employees can on a voluntary basis “donate” their leave days..

¹⁵ A natural gas distribution company.

¹⁶ Such was the case of the bipartite agreements in the stone and garment sectors.

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