

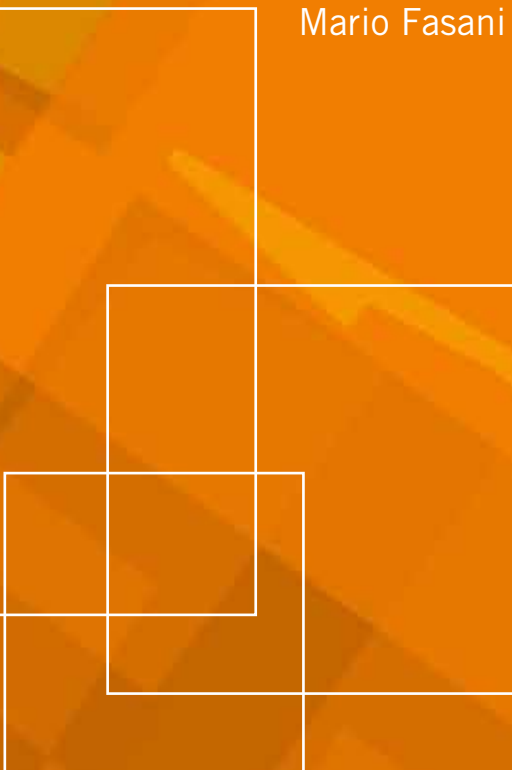


International  
Labour  
Office  
Geneva

# LAB/ADMIN

## Labour Inspection in Italy

Mario Fasani



**Working Document Number 11**

**Labour Administration and Inspection Programme  
LAB/ADMIN**

## **Labour Inspection in Italy**

**Mario Fasani**

**International Labour Organization – Geneva**

**March 2011**

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#### ILO Cataloguing in Publication Data

Fasani, Mario

Labour inspection in Italy / Mario Fasani ; International Labour Office, Labour Administration and Inspection Programme (LAB/ADMIN). - Geneva: ILO, 2011

1 v.

ISBN: 9789221246954;9789221246961 (web pdf)

International Labour Office; Labour Administration and Inspection Programme

labour inspection / labour administration / code of conduct / labour legislation / comment / sanction / judicial procedure / Italy

04.03.5

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Printed in Switzerland

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## Preface

In the last few years, several countries have started to reform their labour inspection systems. In particular, the labour inspection system in Italy has undergone substantial changes. It had to adapt to the economic and social circumstances characterised by changes in the labour market and in the employment relationship and it had to respond in a more efficient way by ensuring compliance through preventive measures, advice and detection of labour legislation infractions.

Mr Mario Fasani, Labour Administration/Inspection Officer, in this comprehensive study, deals with the various aspects of the labour inspection reform in Italy. Among others, the author looks at the changes in the labour inspection legislation, the re-organisation of the labour administration system, the purpose of labour inspection services today, how labour inspectors ensure compliance with labour legislation, the nature of sanctions and remedies, the way labour inspection helps to improve labour legislation, the issues that labour inspection services oversee, the main modern principles to guide labour inspection, the “new” obligations that labour inspectors have, including their powers; and how a labour inspection visit is performed, how labour inspection cooperates with other administrative units and the role social partners play in improving the delivery of labour inspection services. These and many other aspects of labour inspection are analysed in this study.

The hope is that this study would be of a useful reading for labour administrators and inspectors, workers and employers.

Special thanks go to Ms Caroline Augé and Ms Angela Onikepe for their assistance in editing and formatting this document.

Giuseppe Casale  
Director  
Labour Administration and  
Inspection Programme  
(LAB/ADMIN)



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## 1. The International Framework

The importance of labour inspection, as an indispensable institution of social policy, has always been recognised internationally. Labour inspection has been high on the International Labour Organization (ILO) agenda since the Organization was founded in 1919<sup>1</sup>.

In this section, we will give an overview of the most relevant Conventions and Recommendations related to labour inspection which have had significant impacts in the Italian legislation on this matter, namely: Recommendation Nos. 5, 20, and Conventions Nos. 81, 129 and 150 (the latter for some specific aspects)<sup>2</sup>.

Recommendation No. 5 of 1919 on “health services”, and Recommendation No. 20 of 1923 on the “General Principles for the Organisation of Systems of Inspection to Secure the Enforcement of the Laws and Regulations for the Protection of the Workers” were two of the very first ILO instruments on this topic. They, albeit in a nonbinding form, contained several basic principles of modern labour inspection systems. Later in the years the ILO adopted Convention No. 81 on Labour Inspection in Industry and Commerce in 1947 and in 1969 its twin Convention No. 129 on Labour Inspection in Agriculture<sup>3</sup>. In particular, Convention No. 81 has been considered since its adoption as the universal reference instrument on labour inspection and still remains one of the highest ratified Conventions of the ILO<sup>4</sup>. Given its particularly high level of ratifications (141), the Labour Inspection Convention No. 81 serves as a good international guide to common features of the labour inspection services.

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<sup>1</sup> Italy is a member of the ILO as a founding country (the ILO Constitution is part of the Peace Treaty of Versailles adopted by the Peace Conference in April 1919 which ended the First World War).

<sup>2</sup> See ILO, “*Labour Inspection*”, International Labour Conference, 95th Session, Report III (Part 1B), pp 1-4 and CASALE, “*Il diritto internazionale del lavoro ed il ruolo dell’Organizzazione Internazionale del Lavoro*”, pp. 35-36.

<sup>3</sup> Conventions Nos. 81 and 129 have been ratified by Italy respectively in 1952 with Law No. 1305 and in 1981 with Law No. 157.

<sup>4</sup> Convention No. 81 is one of the four priority Conventions. Apart from the eight fundamental Conventions, the other priority Conventions are: the Employment Policy Convention, 1964 (No. 122); the Labour Inspection (Agriculture) Convention, 1969 (No. 129); the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).



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It defines the main functions of labour inspection as “to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work”<sup>5</sup>. The powers of enforcement and the right to enter workplaces, set out in Article 12 of Convention No. 81 differentiate labour inspection from other activities in the area of labour administration. Article 15 of the Convention further specifies the duty of inspectors to be independent and impartial in the exercise of these powers. In addition, it defines the functions of labour inspectors and their powers to: freely enter any workplace liable to inspection; carry out inquiries and in particular to question people; examine documents and take samples; make orders with a view to remedying defects and deciding whether they are appropriate; give warning and advice, or institute or recommend proceedings. In return, inspectors are required to respect certain obligations: they are prohibited from having any direct or indirect interest in the undertakings under their supervision and shall not reveal manufacturing or commercial secrets of the workplaces they inspect, or the source of any complaint<sup>6</sup>.

Convention No. 129 applies to agricultural undertakings and covers workers or apprentices or – subject to a declaration by the ratifying State to this effect – tenants, sharecroppers and similar categories of agricultural workers, members of a cooperative or of the family of the operator. Its provisions are to a large extent based on those of Convention No. 81 regarding the organization, the functions and the staff of the inspection system, as well as the duties, powers and obligations of the inspectors. The Convention contains certain innovation that take into account the special characteristics of the agricultural

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<sup>5</sup> On the application of this Convention, the Committee of Experts on the Application of Conventions and Recommendations (CEACR 2009/80<sup>th</sup> Session) made some observations concerning Italy. The Committee had noted that numerous structural and legislative measures adopted to implement Legislative Decree No. 124/2004 focused on strengthening the powers of the Ministry of Labour and Social Policy for combating unauthorized work and illegal employment and that labour inspectors played a major role in this process. The Committee had emphasized the need to re-establish labour inspectors in their duties defined by the Convention and limit their cooperation with the immigration authorities to an extent that is compatible with the purpose of this Convention. According to the Italian government, inspectors’ powers are not limited to the control of clandestine non-EU workers and their principal objective is to ensure observance of employment and social legislation. The duties of the inspectors of the Ministry of Labour and Social Policy are enumerated under Act No. 628 of 22 July 1961 and Legislative Decree No. 124 of 23 April 2004. These include the monitoring of the application of all laws concerning civil and social rights, the protection of labour relations and the occasional control of contractual arrangements, typical or atypical; the monitoring of the correct application of contracts and collective agreements; the monitoring of occupational safety in the building sector only; the supervision of the functioning of pension funds and the welfare activities of professional associations; the carrying out of inquiries and investigations at the request of the Ministry of Labour; and the fulfilment of the functions required by legislation and regulations or delegated by the Ministry of Labour. The function of monitoring and control is entrusted not only to inspectors of the Ministry of Labour and Social Policy but also to the Carabinieri of the Labour Protection Division, the inspectors of the Social Security and insurance institutions and the local health authority inspectors. The Committee underlined that the role of the labour inspectorate, pursuant to the provisions of the Convention, is to monitor not the legality of the employment relationship but the conditions in which the work is performed and that the system of labour inspection must apply to all employees or apprentices, however they may be remunerated and whatever the type, form or duration of their contract. Cooperation with the immigration authorities should be carried out cautiously, keeping in mind that the main objective of the labour inspection system is to protect the rights and interests of all workers and to improve working conditions. In this respect, it should be emphasized that the expression “while engaged in their work” used in Article 3(1)(a) of the Convention indicates that the protection afforded by labour inspection must be provided to workers during their period of employment.

<sup>6</sup> For more details on ILO’s Conventions Nos. 81, 129 and 150 see CASALE, SIVANANTHIRAN, “*Fundamentals of Labour Administration*”, pp. 1-11 and 46-53.

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sector, and the experiences gained since Convention No. 81 came into force 20 years earlier. These innovations take the form of certain provisions: the organizational flexibility and structure of the inspection services; the extension to inspectors of advisory or enforcement functions regarding legal provisions relating to the living conditions of workers and their families; and the possibility of including representatives of occupational organizations in the system of labour inspection and of entrusting certain inspection functions at the regional or local level to other appropriate government services or public institutions<sup>7</sup>.

Throughout the world, labour inspection is organized as a part of a labour administration system. For this reason, it should be noted that Convention No. 150<sup>8</sup> on Labour Administration adopted by the ILO in 1978 refers to the importance of having a sound labour administration system in place within which labour inspection plays a key role. It envisages that the labour inspection system be integrated into national labour administration structures and lays down an international framework within which the preparation, implementation, coordination, supervision and evaluation of national labour policy are carried out. Moreover it sets out the overall duties of a labour administration, including labour inspection. The quality of the overall labour administration system, it reads, is vital to the effectiveness of a labour inspectorate.

In a nutshell, Convention No. 150 sets out the functions of labour administration as:

- preparation (of legal instruments);
- administration;
- coordination;
- checking and reviewing national labour policy;
- preparing and implementing laws and regulations;
- tasks relating to national employment policy;
- conditions of work and working life;

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<sup>7</sup> As for the ILO Convention No. 81, the CEARC made observations on the application in Italy of the ILO Convention No. 129. The Committee at the 80<sup>th</sup> Session of 2009, had noted that the extent of illegal employment in various forms in agriculture has led the Government to focus inspection operations, conducted jointly with other official bodies pursuing different objectives from that of the protection of workers while engaged in their work, mainly on the detection of undertakings guilty of contraventions and on prevention in this area. The CEARC pointed out that, under the terms of Article 4 of the Convention No. 129, the system of inspection in agriculture must cover all wage workers or apprentices, “however they may be remunerated and whatever the type, form or duration of their contract”. Although the labour inspectorate may often be asked to cooperate with the immigration authorities in view of the growing numbers of migrant workers in many countries, such cooperation should be carried out cautiously, keeping in mind that the main objective of the labour inspection system is to protect the rights and interests of all workers and to improve their working conditions. The Committee recalled that even though there may be no doubt that measures are necessary to put a stop to the phenomenon of illegal migration, the role assigned to labour inspectors in this regard at the workplace can severely jeopardize the realization of the prime objective of the Convention, namely, to ensure the protection of workers against the imposition of conditions of work which are contrary to the relevant legal provisions.

<sup>8</sup> Ratified by Italy with Law No. 862 of 19 November 1984.

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- terms of employment;
  - services and advice to employers and workers and their organizations; and
  - representing the State in international labour affairs.

More recently, in 2006, the ILO, confirming labour inspection as one of its priority, called upon its member States to adopt a series of policies to “reinvigorate, modernize and strengthen labour inspectorates worldwide, in a move to boost the implementation of labour laws on the working conditions that protect the rights of millions of workers worldwide. Moreover, both the Declaration on Social Justice for a Fair Globalization (2008) and the Global Jobs Pact (2009) have reaffirmed the need for “the building of effective labour inspection systems” as well as “strengthening capacities for labour administration and labour inspection”<sup>9</sup>. As a reflection of this increased interest the ILO created a new programme on labour administration and inspection (LAB/ADMIN) in 2009 to lead the ILO’s technical support and advisory services to strengthen labour administration and promote modern labour inspection<sup>10</sup>. This new ILO programme leads the relevant expertise on labour inspection and works through networks, technical sectors and regions to enhance its services to governments, workers’ and employers’ organizations. Moreover, the Governing Body of the ILO decided in June 2010 to place on the agenda of the International Labour Conference (ILC) of June 2011 the item of labour administration and labour inspection for a general discussion.

Beside the ILO, mention should be made of the European Union Senior Labour Inspectors’ Committee (SLIC).

SLIC<sup>11</sup>, whose Secretariat is based in Luxembourg, was first established in 1982 to assist the European Commission in monitoring the enforcement of EU legislation at the local level. A Commission Decision (95/319/EC) gave the Committee formal status in 1995 with a mandate to give its opinion to the Commission, either at the Commission’s request or on its own initiative, on all problems relating to the enforcement by the EU Member States of Community law on labour inspection.

The SLIC’s overriding objective is to achieve common principles of labour inspection in the areas of inspection services (availability of effective sanctions) and prevention services (availability of a wide range of technical expertise) especially in the field of occupational safety and health.

Its role is to monitor, on the basis of close cooperation between its members and the Commission, the effective and equivalent enforcement of secondary EU law on health and safety at work, and to analyse the practical questions involved in monitoring the enforcement of legislation in this field. It sets out to develop an ongoing exchange of information among the national bodies and, in addition to its regular meetings, the Committee organises seminars and an exchange system for safety inspectors.

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<sup>9</sup> On this point see CASALE, SIVANANTHIRAN, “*Fundamentals of Labour Administration*”, pp. v-viii.

<sup>10</sup> See GB.308/5(Add.) 308th Session, June 2010.

<sup>11</sup> See the Official Journal of the European Union, volume 51 of 30 October 2008, p. 5.

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The principal activities of SLIC are to:

- Define common principles of labour inspection in the field of health and safety at work and developing methods of assessing the national systems of inspection in relation to those principles
- Promote improved knowledge and mutual understanding of the different national systems and practices of labour inspection, the methods and legal frameworks for action
- Develop exchanges of information between national labour inspection services about their experiences in monitoring the enforcement of secondary Community law on health and safety at work
- Promote a labour inspector exchange programme between national administrations and the setting up of inspector training programmes
- Develop a reliable and efficient system of rapid information exchange between labour inspectorates about health and safety issues
- Establish active cooperation with labour inspectorates in third countries to promote better understanding and to assist in resolving any cross-border problems
- Study the possible impact of other Community policies on labour inspection activities relating to health and safety at work and working conditions.

As from 1 January 2010, the Committee is composed of the Commission and one representative of the labour inspection services of each EU Member State. It assembles for a meeting every six months in the EU Member State holding the EU Presidency.



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## 2. The Labour Inspection System in Italy

### 2.1. Historical developments

The Italian labour inspection system is quite elaborate and richly articulated. Within it a considerable number of various agents and subjects (administrative supervisory bodies) participate and interact.

Already in existence for more than a century, albeit in a very simple fashion/form at its inception, the system has been amply and profoundly modified, both formally and substantially, along its history<sup>12</sup>.

The turning points were: Legislative Decree No. 124 of 2004 (hereinafter Lgs. D. No.124/2004) on “the measures of rationalization of the functions of inspection and surveillance on social security and labour”; the directive of September 2008 issued by the Ministry of Labour, on the inspection services and the surveillance activities in the field of labour and social security; and the introduction of the so-called Single Labour Book<sup>13</sup> (SLB) which reorganized the labour inspection techniques and, at the same time, repealed the earlier registry of enterprises, the accountant’s books and other compulsory labour books<sup>14</sup>.

In order to appreciate the changes and improvements made to the pre-existent system, we need to retrace, though briefly, the historical developments of the labour inspection system in Italy<sup>15</sup>.

The first mention of “labour inspectors” can be found in Law No. 4828 of 1879, which introduced in the then Ministry of Agriculture, Industry and Trade two positions of labour inspectors, although the specific requirements and functions assigned to the inspectors were given later with Law on Child Labour, No. 3657, of 1886.

In 1893, with Law No. 184, the “Corps of Engineers and Inspectors of mines, quarries and peat bogs” was established.

In 1902, with Law No. 246, at central level within the Ministry of Agriculture Industry and Trade, was instituted a Labour Office.

In September 1904, with Law No. 572, the Italian Government ratified the Convention between Italy and France, of 15 April 1904, having as its object the establishment of a Labour Inspection Service employed by the State to comply with labour laws.

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<sup>12</sup> See RAUSEI, “*L’ispezione del Lavoro: sintesi storica, programmazione e coordinamento*”, pp. 12-15.

<sup>13</sup> Adopted with Law No. 133/2008, as implemented by the Ministerial Decree of 9th July 2008.

<sup>14</sup> For farmers, journalists, home workers, drivers and entertainment employers.

<sup>15</sup> For a more in-depth discussion on this topic see generally MOFFA, “*L’ispettorato del lavoro. Storia organizzazione, funzioni e compiti*” and MANCINELLI, “*Cenni storici sull’Ispettorato del lavoro*”.

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More specifically, Article 4 of that Convention reads: “At the time of signature of this Convention, the Italian government undertakes to complete the organization throughout the kingdom, and more particularly in regions where industrial employment is developed, of a labour inspection service operating under the State and able to provide, for the application of labour laws, guarantees similar to those applicable in France by the labour inspection service.”

The main areas, as identified in the same Convention, controlled by the Labour Inspection were the following: the Italian labour laws to protect women and children with particular emphasis on the prohibition of night work; minimum age for admission to employment in industries; daily work duration and weekly rest requirement. In order to strengthen the role of labour inspectors, in 1906 Law No. 380 provided extraordinary funds to the Ministry of Agriculture, Industry and Commerce with a view implementing the Italian-French Convention. Consequently, as a result of a ministerial circular of November 1906, the first territorial labour inspection services started to be established in Turin, Milan and Brescia.

In the Italian legal system, however, the specific law establishing the Labour Inspectorate is considered to be Law No. 1361 of December 1912, which established, in fact, the Inspectorate of “Industry and Labour” and its relative powers. According to this law, the main tasks of the new labour inspectors were those to ensure the implementation of labour laws (women and children, injuries, weekly rest, abolition of night work); detect, collect and transmit to the Minister any news and information on technical and hygiene conditions of industries, organization and work remuneration, data concerning unemployed workers, strikes, their causes and their results, the number of accident at work place. When invited by the parties, the inspectors could also intervene for the prevention and peaceful resolution of labour dispute (Article 1). Moreover, they had the right to visit and access any enterprise, at any time of day and night (Article 2). Were also set procedures for the appointment of inspectors, the composition of the inspection staff, the obligation to the inspection secrecy and activity of coordination between inspectors, governors, central and territorial authorities, trade unions, technical and health inspectors( Articles 4-8).

In the parliamentary discussions<sup>16</sup>, before its approval one could find an evaluation of the labour inspector’s professional profile. This was given by the political leader Filippo Turati, who claimed: “... among other things, Labour Inspectorate’s personnel must be equipped with readiness and endurance as military personnel, with a range of culture and continuous ability of increasing intellectual agility, able to follow the rapid progress of industry and to solve new and subtle problems, including unexpected risks and capable, as well, to develop that authority needed to win the resistance and, sometimes, the collusion between industrialists and workers”. Both, Law No.1361 of 1912 and the Royal Decree No. 431 approved in 1913 represented the legal basis of the institutional activity of the Labour Inspectorate, still structured within the Ministry of Agriculture, Industry and Trade. Law No. 700 of 1920 established the Ministry of Labour and Social Security as a separate ministry. The latter raised immediately the profile of the labour inspection services. In the same year, the first National Conference of Labour Inspectors was held in Rome (2 to 5 September).

During the fascist period (1922-1944), the Labour Inspectorate, initially under the Ministry of National Economy which gathered in a single department the services and offices that were dependent on the Ministries of Agriculture, Industry, Trade and Labour, were transferred under the Department of the Corporations (established by Royal Decree No. 1131 of 1926). Meanwhile, the Royal Legislative Decree No. 3425 of 1923 redefined

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<sup>16</sup> See “*Discorsi parlamentari di Filippo Turati*”, Roma, Tipografia della Camera dei Deputati, 1950, volume primo, pp. 287-289.

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the mission of the Inspectorate of Industry and Labour authorizing the recruitment of fixed-term labour inspectors and attesting the establishment of industry and labour inspection services in Rome as well as in the following main towns: Bari, Bologna, Brescia, Catania, Cagliari, Florence, Genoa, Milan, Naples, Padua, Trieste and Turin.

After the fall of the fascist regime with Royal Decree No. 377 of 1945, the Ministry of Industry, Commerce and Labour was divided into two Ministries: the Ministry of Commerce and Industry and the Ministry of Labour and Social Security. The division of responsibilities and personnel between the two new Ministries were determined by the further Decree No. 474 of 1945 which organized the Ministry of Labour and Social Security in four General Directorates (personnel and general affairs, domestic employment and migration, social security, cooperation).

In 1961 Law No. 628 established a new organization of the Minister of Labour and Social Security. At central level were created various General Directorates for general affairs and personnel, for labour relations, for guidance and training of professional workers, for hiring workers and for social security. Each of them was responsible for coordination and monitoring in its own field of competence. At peripheral level were, instead, established the Labour Inspectorate, the Immigration Office and the Labour Office for maximising employment.

The Labour Inspectorate, which operated following the guidelines and directives set by each General Directorates, was divided into Regional, Provincial and Medical Inspectorates. It was responsible for monitoring on the implementation of all labour laws and collective agreements relating to employment and social security in industrial, commercial and agriculture fields. In the Labour Inspectorate both at the regional and provincial level was also established a special section responsible to give advice, consultancy, information and all clarification around the laws that had to be monitored. This in accordance to its function of prevention and promotion when providing clarifications on the application of the law.

With regard to hygiene, health and safety at work place, the responsibility on these subject matters which were, before of competence of the Labour Inspectorate, was attributed by Law No. 833 of 1978 exclusively to the then Local Health Units (USL), today Local Health Agencies (ASL)<sup>17</sup>.

Such a competence, has been modified later on by Article 23 of Legislative Decree No. 626 of 1994 according to which in the occupational sector involving high risk activities, the task of monitoring the application of the social security legislation can also be exercised by the Labour Inspectorate.

Law No. 628 of 1961 referred also to other peripheral agencies: the Immigration Offices and the Labour Office for Maximising Employment. The latter, consisting of regional and provincial offices, was responsible of promoting all initiatives aimed at achieving the maximum rate of employment. The main functions of the regional offices were to plan, coordinate and supervise the activities of the provincial ones. It carried out: statistical reports; studies of phenomena relating to unemployment; settlement of collective labour disputes.

Provincial offices, in turn, were responsible for collecting all data relating to the phenomena of unemployment, the placement of workers, the recruitment of migrant

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<sup>17</sup> See LUZZI, “*Salute e sanità nell’Italia Repubblicana*”, pp. 289-308 and 339-351.



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workers, the professional training and guidance. The centres of immigration were responsible for the care of migrant workers and their families.

This state of affairs remained unchanged for a long period of time until the Ministerial Decree No. 687 of 1996 which changed not only the denominations of the various offices deputed at supervisory activities but has developed a general reconstruction both structural and functional of the entire system that was in force. Today, the Labour Inspectorate is one of two Services that compose each Provincial Labour Directorate (DPL). The Labour Inspectorate has been renamed “Labour Inspection Service” while the other service is named “Policies Labour Service” and has replaced the previous Office for Maximising Employment<sup>18</sup>.

## **2.2. Objectives of the labour inspection reform: prevention, promotion, and fight against irregular work**

As it has been stated by the International Labour Conference in June 2006, the awareness of the need to proceed with a reform of the labour inspection system at country’s level arose from different critical factors the most part of which linked to the economic, social and technological changes affecting the world of work<sup>19</sup>. As a result, also in Italy, the mandate and the powers of labour inspectors have been broadened in order to allow the labour inspection system to keep pace with new challenges. In this perspective, an approach almost exclusively repressive-based was no more suitable to both the spread of new organizational models of work and the increasing of phenomena subjected to illegality. The inspection system needed to combine repression, exercised through the means of the sanctioning powers, with the promotion of a preventive culture with a view to complying with labour legislation. The reform which started in 2004 has been carried out in view of this purpose<sup>20</sup>.

In this regard, labour inspectors were empowered, alongside the traditional function of controlling and sanctioning, with functions of prevention, promotion, information and consultation<sup>21</sup>. These functions were aimed at ensuring compliance with labour law and social security regulations, at providing information on the operational procedures for the proper application of the law itself and at promoting new guidelines coming directly from the central administration with the distribution of circulars, notes, communications, etc.,

According to Article 8 of Legislative Decree of 2004, the Regional and Provincial Labour Directorates can organize initiatives and activities finalized to inform employers or their organizations as well as consultants and professional associations on the application and interpretation of labour law provisions. In addition to these activities, Article 9 of Lgs.

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<sup>18</sup> For more details see RAUSEI, “*Illeciti e sanzioni. Procedure e strumenti di difesa*”, pp. 9-13.

<sup>19</sup> See Report III (Part 1B), International Labour Conference - 95th Session, 2006, p. 4.

<sup>20</sup> See PENNESI, “*La riforma dei servizi ispettivi*”, p. 1096.

<sup>21</sup> If labour inspectors interventions are to be effective, it is essential for employers and workers to be fully aware of the need to know and exercise their respective rights and obligations. Article 3, paragraph 1(b), of Convention No. 81 and Article 6, paragraph 1(b), of Convention No. 129 give the same importance to information and advice to employers and workers concerning the most effective means of complying with the legal provisions as to enforcement. These two functions are inextricably linked and represent the two key aspects of labour inspection. On this point see also DEGAN, SCAGLIARINI, “*Prevenzione, promozione e diritto d’interpello*”, pp. 154-178.

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D. 124/2004 establishes the so-called right of “interpello”<sup>22</sup> or the right which allow workers, employers, their organizations and professional associations to consult directly the Directorate General for the Co-ordination of the Inspection Activities (DGCIA) on the application and interpretation of the law.

With this reform, the labour inspection tried to move a step forward also regarding the fight against the irregular work<sup>23</sup>. Article 1 of Legislative Decree No. 124/2004 assigns to the Ministry of Labour the task to develop measures finalized to tackle undeclared and irregular work, as well as to prevent these phenomena and to promote the compliance with labour standards. The Ministers of Labour (Maroni-Damiano-Sacconi) repeatedly stated that the fight against irregular work was a national priority and several measures were introduced, in consultation with social partners. The main instruments employed to fight undeclared work were the following ones: incentives in favour of employers of small enterprises for the gradual regularization of their employees (Wages Alignment Agreements, *contratti di riallineamento*); incentives for attracting the emergence of the informal economy<sup>24</sup> (Law No. 383 of 2001); fiscal incentives for construction buildings and for the regularisation of immigrants. The two former measures are directed at all workers and sectors, whereas the latter two are specifically addressed to the construction sector and to foreign workers.

These regulations, however, have been proved to be inconclusive. All in all, the quest to minimize labour led more and more enterprises to hire irregular manpower.

A direct intervention on the irregular work was made by Legislative Decree No. 223 of 2006 (the so-called Decreto Bersani, now Law No. 248 of 2006). According to this law:

- a) work can be suspended and construction sites can be shut down if irregular employment (undeclared work or irregularities concerning working time) is found at by a labour inspection and until the regularisation by the entrepreneur has been completed. In particular, closure can be ordered if the undeclared workers total

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<sup>22</sup> See PAPA, “*Diritto di interpello: cambiano le regole*”, pp. 12-18.

<sup>23</sup> Irregular/undeclared work is variously referred to as underground or hidden labour, clandestine employment, “black” labour, moonlighting or, commonly, *illegal* work. For more exhaustive study on this phenomenon see generally “Labour inspection in Europe: undeclared work, migration, trafficking”, LAB/ADMIN Working Document No. 7, ILO, Geneva, 2010.

<sup>24</sup> According to the new conceptual framework, job-based, informally employed people working in a formal enterprise are to be considered as belonging to the informal economy. In the ILO Report, Decent work and the informal economy (ILO, 2002b) informal employment is defined as “the total number of informal jobs, whether carried out in formal sector enterprises, informal sector enterprises, or households, or as the total number of persons engaged in informal jobs during a given reference period”. The most often mentioned jobs are those of: street vendors, shoeshiners, rag pickers, waste pickers, weavers and embroiderers. The National Accounts estimate the underground economy including both unregistered residents and non-resident foreigners (Istat, 2009). The underground economy is defined in terms of legal productive activities that are not registered to avoid tax and social contribution obligations. For the years 2000-2009 the underground economy has been estimated both as share of GDP and as share of unregistered fulltime equivalent units<sup>7</sup> (FTE). In 2008 the share of unregistered FTE was 12%; it was higher for employees than for the self-employed (13% and 9% respectively). The economic activity sectors where the incidence is higher are agriculture (23%) and wholesale/retail trade, hotels and restaurants (19%). More women than men are engaged in undeclared work. However, use of estimates based on the indirect method does not allow for the collection of in-depth data regarding job and socio-demographic characteristics.

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20% or more of the regular ones, or in case of reiterated breach of legislation on working time, (daily and weekly days off);

- b) a compulsory identification card testing the regularity of the hiring of workers has been introduced in the construction sector;
- c) the engagement has to be communicated to the National Assurances for Work Injuries (INAIL) and to the National Institute of Social Security (INPS) the day before the worker starts the work activity (mainly to avoid the unpleasant practise to hire the worker, in case of injury, the very day the accident occurs);
- d) a substantial penalty is imposed for each undeclared worker (EUR 12,000 + EUR 150 for every actual working day). Moreover, as compared to the old law – which considered an irregular worker as an “employee who is not recorded in the accounting and compulsory administrative books” – the Bersani Decree extended the definition of irregular workers to self-employed and new contractual atypical workers (i.e. *parasubordinati*). In particular, an undeclared worker is one who is not registered in the firm’s “wage” and accounting books; who is not known to the authorities or the employment centres due to a missing communication (which is compulsory and is considered official proof for the starting of the employment relationship); or a self-employed worker, working on construction sites, who is not recorded in the appropriate register (*albo commerciale*);
- e) the minimum threshold for administrative sanction for the missing payment of social contributions to undeclared workers is set at EUR 3,000. This penalty has to be paid both to the INAIL and the INPS, in addition to the reimbursement of all the due social contributions for each irregular worker;
- f) the firms condemned for irregular safety matters are excluded from contributions incentives.

Other measures against undeclared work have been introduced in the Budget Law for 2007<sup>25</sup>. In particular, mention should be made of the fiscal incentives for hiring workers with open-ended contracts; strengthening inspection activities and the definition of the “congruity indexes” (*indici di congruità*). The latter ones and their value, as specified by sectors, categories of companies and local areas, should depend on the ratio between the quality of the produced goods and supplied services and the necessary quantity of hours of work. In other terms, the indexes should determine the number of working hours required to produce a specific good/service of a certain quality. In other words, firms which do not respect the “predicted values” should then be checked by inspections. Due to fierce opposition by some employers’ associations, such a measure has been repealed more recently by Law No. 133 of 2008. Recently, a European Network on Undeclared Work has been set up between the governments of five Member States – Belgium, France, Germany, Italy and Romania. The network is coordinated by the Italian Ministry of Labour, and seeks to promote the exchange of expertise on a wider policy agenda dealing with undeclared work<sup>26</sup>. Such cooperation could be extended to a more comprehensive range of

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<sup>25</sup> See “*I volti del sommerso: percorsi di vita dentro il lavoro irregolare*”, Rapporto IRES, p. 4.

<sup>26</sup> Italy is also involved in other European projects aimed at combating undeclared work, namely: “*Implementing Cooperation in a European Network Against Undeclared Work*” (ICENUW ) led by Belgium with the participation of the French and Italian labour inspectorates as partners; the “*CIBELES*” project led by the Spanish Inspectorate for Labour and Social Security. The latter is aimed to build channels for easy information exchange, to collect knowledge in order to build a basis for cross-border enforcement and mutual assistance and to provide guidance to the European Commission.

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countries and also across the full range of strategic and operational issues, particularly data sharing.

### 2.3. The ministerial Directive of September 2008

Since 2003, the labour inspection system went through a deep reform which ended in September 2008 with the approval of a new ministerial directive.

The purpose of this Directive was to revive “the preventive and promotional culture of labour inspection” already introduced by Lgs. D. No.124/2004. The directive provides the inspectors with a “framework of rules for establishing a new logic of collaboration with employers, workers and their organizations (and/or advisors) in order to prevent abuse and mainly punish phenomena of legal irregularities”. Labour inspectors, says the directive, must focus their attention on the protection of the workers as well as of the employers with the ultimate aim not only to sanction, but to prevent irregularities, with a view to promoting a culture of legality<sup>27</sup>.

The key principles stressed by the Directive can be summarized as follows:

➤ Programming

In the directive, considerable room is given to programming, which is crucial, especially if supported by an appropriate use of monitoring, prosecuting of substantive violations and prevention. It changes the methodological approach when carrying out labour inspection visits. With the purpose to address the socio-economic emergencies that produce an heavily impact on production and competitiveness of firms, the labour inspection approach moves from a centralized information system dealing with phenomena of irregularities in specific economic sectors, to a wider approach in which the Directorate General for the Coordination of the Inspection Activities first collects the regional and provincial results of monitoring and planning, and afterwards send out its “programming circulars”. This approach wanted to give an answer to the difficulties that labour inspectors encountered at the local level on a daily. The DRL and DPL represent, in this new perspective, the operative centres of the labour inspection system. With the reform, they are now able to acquire information of the peculiarities and characteristics of a single local reality. In the end, this would assist in a proper planning of the administrative supervisory activities and inspections services. With this change, it has been possible to introduce an innovative policy based on a synergy between the various administrative supervisory bodies and the analysis of the dynamics at the local level. In so doing, labour inspectorates interact with workers’ and employers’ organizations, professional labour consultants, representatives of local administrations, universities and research centres.

In a nutshell, the new approach allows, on one hand, to take into account the specificities of the different local realities in order to gain specific knowledge on economic and social problems characterising them, especially the status of the different industrial districts and the segments of the market sectors, and, on the other hand, to obtain a more efficient and effective supervisory action aimed at achieving concrete results, based on a special “mapping” that is carried out by the labour inspectorates.

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<sup>27</sup> For more information on the directive see RAUSEI, “*Illeciti e sanzioni. Procedure e strumenti di difesa*”, pp. 132-140; PARISI, “*Ispezioni del Lavoro: controlli e garanzie*”, pp. 6-32; TIRABOSCHI, “*Ispezioni sul lavoro: la direttiva del Ministero*”, Guida al Lavoro, il Sole 24 Ore, N. 38, pp. 12-21.

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In this perspective, it should be noted that the 2008 ministerial directive emphasizes an approach towards more on inspections of autonomous initiative rather than on inspections activated by a request of intervention.

All in all, the reform calls for a better coordination between the various administrative bodies responsible for programming thanks also to the use of computer technology, which avoids the overlapping of labour inspection visits carried out by different units.

➤ Anonymous request of inspection visits

Great care is requested for the evaluation of the so-called **request of intervention**<sup>28</sup> (a complaint from one or more workers, or their respective workers' organizations against a specific enterprise/entrepreneur).

In this regard, the ministerial directive says that, "in order to avoid manipulation of the role of the labour inspector it is better not to perform visits following anonymous complaints". As a rule, therefore, and "with limited exceptions of particular gravity and credibility emerging directly from the complaint's allegations with clear and uncontroversial evidence, the anonymous complaint, **"even though detailed or exhaustive"** shall not be taken into account when labour inspectors plan their visits "because this could be contrary to the principles of fairness and transparency of the public administration". "According to the principles of efficiency, effectiveness and economy which lead the administrative action", the complaint itself does not oblige the administration to start an inspection audit, unless the allegations concern penal violations. Therefore, a request of intervention even if signed by the complainant, but that does not contain the proof of what is alleged, it may not be able to provoke an inspection visit.

➤ The first entry visit record and the single inspection report

According to the directive, in the new organization of the inspection services, the simplification in legislation requires also an administrative streamlining in order to speed up the inspection process. To this end, *the first entry inspection report* (FEIR) and *the single inspection report* (SIR) were introduced. They represent tools of guarantee for the inspected enterprise because it allows the employer to be aware since from the beginning reasons why he/she is inspected or sanctioned<sup>29</sup>.

➤ Methods of investigations

When carrying out investigations, labour inspectors are requested to create and keep a climate of collaboration with employers or his/her consultants, with a view to getting all the necessary information and to make them aware the limits and/or the features of the offences.

➤ "Monocratic conciliation" and "diffida accertativa" proceedings

In order to resolve disputes relating to worker's wage rights as well as to shorten their timely satisfaction, the directive gave a boost to the two proceedings introduced by

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<sup>28</sup> See amply paragraph 3.3.

<sup>29</sup> FEIR and SIR as well as the "monocratic conciliation" and "diffida accertativa" proceedings have been recently modified by Arts. 33 and 38 of Bill No. 1441-quarter- F (now Law No.183 of 2010). For more details see paragraph 1.5.

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Articles 11 and 12 of Lgs. D. 124/2004: “*monocratic conciliation*” and “*diffida accertativa*”<sup>30</sup>”.

The directive considers “*monocratic conciliation*” compulsory. As a consequence, any worker wishing to go to court in order to redress a violated right (non-payment of wages, respect of rights as prescribed by the collective agreements), must first undergo a conciliation procedure before a labour court trial. The conciliation can take place before the intervention of the labour inspectorate within the enterprise (if it has been requested by the worker), or it may carry out directly by inspection staff during an inspection visit. During the conciliation proceedings, the agreement between the parties (through written statements) extinguishes the inspection procedure, while in the opposite case (lack of agreement between the parties) the labour inspector will investigate the enterprise. However, it should be noted that the conciliation attempt is not possible for those employment relationships that have received “*certification*”<sup>31</sup> about their full recognition.

The 2008 directive focuses its attention also on the correct adoption of the so-called “*diffida accertativa*”<sup>32</sup> proceedings. In accordance to the directive, “it is a power of extraordinary importance given to the labour inspectors for a faster satisfaction of workers’ credits owed against the employer as result of the employment relationship”.

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<sup>30</sup> For more details see pp. 51 and 52.

<sup>31</sup> Legislative Decree No. 276 of 2003, as amended by Legislative Decree No. 251 of 2004, aimed at reducing the number of labour disputes. It envisaged the possibility to obtain the certification of employment contracts in agreement with the voluntary procedure provided by Articles 75-84.

According to Article 75 of Legislative Decree No. 276 of 2003 voluntary procedures apply to all employment contracts, including the task contracts and the partnership agreements.

The certification procedure.

Certification committees were created for such a certification. They are set up by joint industry boards at the national or local level, within the Provincial Labour Directorates and provincial authorities, public or private universities, including registered university foundations, as per Article 76. Voluntary certification procedures are envisaged and they are applied following a joint written claim by the parties involved in the employment contract. In particular, a claim must be filed: - in case of committees set up within the Provincial Labour Directorates, the claim shall be filed by the worker to the Committee in the same area of jurisdiction where his enterprise or branch is located; - in case of committees set up within the joint industry boards, the claim shall be lodged with the committees set up the employees’ and employers’ organizations.

Certification procedures are regulated by the memorandum of association of committees and must be enforced according to codes of good practice, in accordance with Article 78 (set up by the Ministry of Labour by means of a decree for the identification of unavailable clauses for the purpose of the certification of the employment relationship, with specific reference to workers’ rights and economic and regulatory norms).

More specifically, once the certification request has been submitted, the Provincial Labour Directorate shall forward the notification to the competent public authorities, towards which the certification is bound to produce effects and the procedure shall have to be accomplished within thirty days, since the filing of the claim (namely, since the receipt of the documents requested for the procedure).

The written certification shall have to be motivated and explicitly mention the civil, administrative, social security and tax effects in relation to which parties request such a certification.

For a more extensive discussion see GAROFALO, “*La certificazione dei rapporti di lavoro*”, pp. 421-425 and GHERA, “*La certificazione dei contratti di lavoro*”, pp. 140-150.

<sup>32</sup> See BOLEGO, “*Commento all’Articolo 12 d. Lgs. No. 124/2004*” pp. 957-972.

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- Prevention, promotion and transparency of the labour inspection action

The directive reaffirms the importance of the prevention and promotional role carried out by the DPLs, DRLs and Directorate General for Co-ordination of the Inspection Activities (DGCIA) as well as the proper use of the so-called “*interpello*” (information channel) to guarantee and ensure full compliance with labour legislation and social security provisions or to disseminate the correct application of new labour standards. Labour inspectors are also requested to use to the maximum extent possible, confidentiality and transparency when carrying out inspection visits. They must operate with efficiency, transparency and fairness, not only in strict compliance with the “Code of Conduct” approved in 2006, but also when adopting any other measure to ensure their impartiality toward enterprises and their advisers as well as workers and their organizations.

## 2.4. The so-called “Labour Inspection’s Quality Project”

In 2009, with the purpose to monitor the effectiveness of the labour inspection action as well as to direct it towards objectives deserving a better protection, the Directorate General for the Co-ordination of the Inspection Activities (DGCIA) adopted the so-called *Labour Inspection’s Quality Project* (QP)<sup>33</sup>. It was introduced with the ministerial directive of 2008 which, among other things, required to strengthen “the quality of the labour inspection activities, abandoning all the logic from the past based essentially on the number of sanctions given per violations found”.

The QP is a mechanism for improving the quality of the investigation - aimed primarily to combat phenomena such as undeclared work, child labour, trafficking, etc. – and, at the same time, encouraging the use of tools such as “*monocratic conciliation*” and “*diffida accertativa*” proceedings introduced by Legislative Decree No. 124 of 2004, to ensure immediate protection of workers’ rights, as mentioned above.

The QP consists of three indexes/indicators: quality indicator, presence on territory and profitability. The quality indicator consists of giving a predetermined set of rates to certain types of violations certified or to actions carried out. In socio-economic terms, higher is the violation discovered by the inspector and higher will be the score given by the supervisory body. According to DGCIA the quantification of the scores would stimulate the labour inspection action to focus on certain objectives and ignore those forms of control, which are not in the workers’ interests. In this regard, the highest scores are assigned to both the child labour and illegal work. The total marker is then determined by dividing the total score obtained by the number of inspections with the number of violations. The QP is, in other words, an indicator that provides “quality” information in terms of tackling the most serious violations and in terms of meeting the real needs of workers.

The indicator of presence on the territory and the profitability indicator are used at provincial level to evaluate the activities carried out by the DPLs. For example, the indicator of presence provides information about the ability of the Provincial Directorate to ensure a constant presence on the territory. In fact, it is related to the number of visits annually planned and hence it shows an increase or decrease compared to the previous numbers of visits carried out. The indicator takes into account the number of inspections carried out by providing a “rewarding” score, in cases of an increased number of visits compared to what was forecasted, and a “penalty” score for failure to achieve such an

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<sup>33</sup> For more details see PAPA, “*Attività di vigilanza: nasce il progetto qualità*”, pp 6-7.

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objective. The main purpose is to prevent a lower number than the one pre-determined at the beginning.

The third indicator, the profitability of the labour inspection visits, is the least important. The efficiency of a DPL cannot be calculated summing the amount of the fines collected only. The indicator relates to the number of visits carried out by DPL in a given period of time and the funds received from the administrative penalties.

In the end, the three indicators - quality, presence on the territory and profitability- will converge in a summary indicator, the so-called “overall indicator of the effectiveness of the labour inspection action”. This very last indicator, constructed according to a particular mathematical formula, will be influenced differently by the three indicators that constitute it with a view that the quality indicator, for instance, will have more weight as compared with the indicator of the presence on the territory or with the indicator of profitability.

## **2.5. Labour law reform and its impact on labour inspection**

In November 2010, a new Law (the so-called “*Collegato Lavoro*”) was by the Parliament<sup>34</sup>.

The *iter* for this approval was interrupted by the President of the Italian Republic (who did not sign the previously text of the law in March 2010), who asserted that several articles (among others those on conciliation, arbitration and termination of the employment) were not in line with the Italian Constitution. In addition, the President claimed that several articles did not offer adequate protection for workers.

With Article 33<sup>35</sup> of the new bill, Article 13 of Legislative Decree 124/2004 has been amended. The main changes deal with the “first entry inspection record” (FEIR)<sup>36</sup>, the power of warning by labour inspectors and the “single inspection records” (SIR).

With these changes, labour inspectors, at the end of their visits, are obliged to issue to the employer or to his/her representative, a FEIR containing the following elements:

- a) the identification of the workers found at workplace accompanied by the description of the tasks that they were carrying out;
- b) a specification in details of the activities carried out by labour inspectors when visiting the workplace;
- c) records of statements made by the employer during the labour inspection visit;
- d) any other information useful for the continuation of the investigation.

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<sup>34</sup> Law No. 183 of 4.11.2010.

<sup>35</sup> For a detailed analysis on this Article see: “*Collegato Lavoro*”- primi chiarimenti operativi, Direzione Provinciale del Lavoro di Modena, (Modena, Ottobre 2010) and generally Tiraboschi, “*Collegato Lavoro*”, Guida al Lavoro, il Sole 24 ore, 2010.

<sup>36</sup> For more details please see p.38 of the present paper.



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The obligation to prepare the FEIR is now provided by law, whereas previously it was related to sources of an administrative nature, such as the ministerial directive of 2008. This is a significant development. Legally, failure to adopt such a record brings with it different consequences. In fact, before 2010, the omission to adopt the FEIR was recorded only in terms of a discipline sanction against a negligent inspector; from now on it is a violation of the law with tangible consequences.

In addition Article 33 addresses labourer inspectors' power to issue warnings<sup>37</sup>.

Notwithstanding the legal discipline provided by Article 13 of Legislative Decree No. 124 of 2004, the main difference between Article 33 and the Decree is represented by the time given to the employer to regularize his/her position. Previously, the period of time for the regularization was discretionary, now a deadline is provided directly by the law<sup>38</sup>.

The last change concerns labour inspectors' obligation to draft and notify the employer of the "Single Inspection Record". According to the new law, this record has to include:

- a) the results of the investigation carried out, including evidence of the violation found;
- b) warnings to regularize remediable violations;
- c) indications of the various possibilities to extinguish the sanctioning proceedings;
- d) information concerning the existing right of the employer to defend his/her interests (which could involve appealing the sanction in front of the competent body), along with the indication of the time limit to appeal.

The new reform modifies also the "*monocratic conciliation*" and the so-called "*maxi-sanction*" for undeclared work. According to Art. 38, the enforceability of the monocratic conciliation agreement, issued by the Director of the DPL, can now be claimed by the workers by going directly to the courts. In addition, Art. 4 provides a new discipline for the "*maxi-sanction*" for undeclared work. The fine for undeclared work varies from a minimum of 1.500 Euros up to a maximum of 12.000 Euros for each worker, with the an additional 150 Euros for each effective working day. This amount, which before had to be paid by any employers (private, public or domestic), now it has be paid only by private employers who failed to inform the local public employment office about the existence of an employment relationship.

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<sup>37</sup> See paragraph 4.2.1 on "Compulsory Warning".

<sup>38</sup> Starting from the notification of the FEIR, the employer has 30 days to eliminate the violation, plus 15 more days to pay the favourable fine.

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### 3. Labour inspection organization

#### 3.1. Hierarchical organization structure

As mentioned above, Legislative Decree No. 124 of April 2004 and the 2008 Directive have reshaped the hierarchical labour inspection structure<sup>39</sup>. According to Articles 1 and 2 of Lgs. D. No. 124/2004, the two institutions responsible of programming and coordinating the labour inspection are the Minister of Labour and the Director General (DG) of the General Directorate for Co-ordination of the Inspection Activities (GDCIA). The Minister of Labour, positioned at the top of the hierarchical structure, holds the role of programming the labour inspection activities while the DG has the additional task of programming and coordinating<sup>40</sup>.

The ministerial directive of 2008, regarding the direction and coordination of the labour inspection activities, has substantially confirmed the pyramidal structure such as established by Articles 2-5 of Lgs. D. No. 124/2004:

- the General Directorate for the Co-ordination of the Inspection Activities (GDCIA) at the central level;
- the Regional Labour Directorate (DRL) at regional level;
- the Provincial Labour Directorate (DPL) at provincial level.

#### 3.2. The Directorate General and the Central Commission for the Co-ordination of the Inspection Activities

The Directorate General for the Co-ordination of the Inspection Activities (DGICIA) was established by Article 2 of Legislative Decree No. 124 of 2004. It has been created with a view to increasing the overall role of coordination of the Ministry of Labour at the central level.

The Directorate General for Inspection Activities, in the person of the DG, supervises and coordinates the labour inspection activities according to the directives that are, from time to time, issued by the Ministry of Labour itself. It issues operational directives with the double purpose of ensuring the unitary exercise of the inspection activities and the uniformity of behaviours of the various administrative supervisory bodies. In this regard, the labour inspection reform has also introduced the Central Commission for the Coordination of the Inspection Activities (CCCCIA), Article 3 of Lgs. D. No. 124/2004<sup>41</sup>.

The CCCCCIA was first established with the aim to propose and identify guidelines, strategic objectives and priorities of the labour inspection activities. Based on the analysis

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<sup>39</sup> The ILO Labour Inspection Recommendation, 1923 (No. 20), already suggested that the labour inspectorate be placed under the direct and exclusive control of a central state authority, and that it should be entirely independent of local authorities. Article 4 of Convention No. 81 reaffirms the principle of having a single central authority.

<sup>40</sup> RAUSEI, *“Illeciti e sanzioni. Il diritto sanzionatorio del lavoro”* p. 4 on-wards.

<sup>41</sup> See NOGLER, ZOLI, *“Note introduttive”*, pp. 871-876

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of specific annual reports (submitted by the 30<sup>th</sup> of November of every year by the different units) and the information collected and prepared by the Central Register of Active Social Security Positions, the CCCIA advises the Minister of Labour with organisational adjustments that may ensure greater effectiveness of the labour inspection system<sup>42</sup>.

The CCCIA is composed of 15 members: the Ministry of Labour or its secretariat officer, in the quality of President; the Directors General of Directorate General for Inspection Activities, INPS (Pension Agency) and INAIL (Work Accidents Agency); the General Commander of *Guardia di Finanza* corps; the Director General of Revenue Agency; the National Coordinator of the Local Health Authorities (ASL); the President of the National Committee for the Formalization of Irregular Work; four representatives of employers and four representatives of workers appointed accordingly to the comparatively most representative organizations at national level. At the same time, other bodies and institutions may also participate, such as the Commander of the nucleus of *Carabinieri* who deals with the Labour Inspectorate (NIL). For example, in case of problems related to undeclared work, the General Commander of the *Carabinieri* corps and the Chief of the Police may take part in the meeting organised by the CCCIA. In this regard, policies against undeclared work are decided and guidelines, objectives and priorities of the labour inspection interventions are programmed. The CCCIA is also involved in implementing and ensuring the functioning of the Computerized Data System which collects all information on the inspections visits.

### **3.3. Regional Labour Directorate (DRL) and Regional Commission for the Co-ordination of the Inspection Activities (RCCIA)**

On a local basis, the coordination of such activities is provided directly by the Regional and Provincial Labour Directorates.

Today, there are 18 DRL (including the autonomous region of Sicily) and 106 DPL<sup>43</sup>.

The DRL, as provided by Article 4 of Lgs. D. No. 124 of 2004, coordinates the labour inspection activities. The DRL has the duty to identify specific operational lines in accordance to those prescribed by the DG, and it has to consult, every three months, the Directors General of INPS, INAIL and related social security funds. In looking closely to the current reform, one could say that this reform has created in the person of the Regional Director of Labour, the regional equivalent of the Minister of Labour<sup>44</sup>.

This occurs, from a management's role point of view, in the fact that the Regional Director is competent for identifying the operational lines when implementing the directives sent by the DG, and before that, by the Minister. In terms of coordination, the Regional Director is responsible for convening the Regional Commission for the Co-ordination of the Inspection Activities (RCCIA, a reproduction of the CCCIA, at regional level) which operates in the fight against undeclared and illegal work. The Regional Directorate makes sure that the operational guidelines issued by the DRL are concretely implemented, and facilitates the collaboration of other agencies with the labour inspectorate. The RCCIA is composed of 13 members: the Director General of DRL, as

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<sup>42</sup> See PAPA, "*L'ispezione del lavoro in azienda*", pp. 14-16.

<sup>43</sup> Source: Ministry of Labour and Social Policy, November 2010.

<sup>44</sup> See ROMANO, "*L'ispezione in materia di lavoro e legislazione sociale*", pp. 21-25.

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chairperson, the Directors General of INPS and INAIL; the Regional Commander of *Guardia di Finanza* corps; the Regional Director of Revenue Agency; the Regional Coordinator of the Local Health Authority (ASL); four representatives of employers and four representatives of workers appointed accordingly to the comparatively most representative organizations at national level. May also intervene to the work of the RCCIA, the Regional Directors of the social security institutions, the members of the Regional Committee for the Formalization of Irregular Work and, for problems related to illegal work, the Regional Commander of the *Carabinieri* corps and one or more commanders of the Police corps<sup>45</sup>.

At least six times per year, the DRL has to convoke the presidents of the Committees for Undeclared Work in order to inform the DG about the internal labour market and, in particular, on the results of the labour inspection visits.

Other tasks of the DRL are: to deal with administrative appeals against the order-injunctions made by the DPL and to decide within 60 days to set up, in accordance and in consultation with the Regional Directorates of INPS and INAIL and with the nucleus of *Carabinieri* at the Labour Inspectorate (NIL) and within its area of competence, extraordinary intervention groups dealing with specific phenomena of illegality, such as trafficking. These special groups operate on the basis of DG's instructions.

At the same time, the DRL, as well as the DPL has the competence to intervene in matters of "*interpello*". The latter is a system introduced by the reform and gives an opportunity to ask questions and receive information by workers and employers. This would ensure the respect of labour legislation, social laws, employment contracts, collective agreements and social security issues.

### 3.4. Provincial Labour Directorate (DPL)

Further down the labour administrative inspection structure, we find the organization at provincial level: the Provincial Labour Directorate (DPL). According to Article 5 of Legislative Decree No. 124 of 2004, the DPL follows essentially the pattern so far outlined for the above-mentioned DG and the DRL. It coordinates the labour inspection activities on a more restricted territorial level and defines the operational modalities. The DPL has the major responsibility for the practical implementation of the programming activities. It follows the guidelines provided by DRL and the general provisions of the DG. The DPL avoids duplication of interventions of the different entities with respect to the same enterprises which could be counter-productive. It coordinates and supervises the labour inspection visits, including the ones carried out by INPS, INAIL and social security institutions. In fact, these agencies cannot program autonomously inspections but must follow the directives of the DPL, with the only exception of pension and insurance control<sup>46</sup>.

In looking at the internal organization, each DPL has several units, with specific tasks:

- the Office of Managing Resources and General Affairs, which deals with the public relations;

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<sup>45</sup> See PENNESI, "*L'attività ispettiva*", pp. 1099-1112.

<sup>46</sup> See RAUSEI, P., "*Illeciti e sanzioni. Procedure e strumenti di difesa*", pp. 19-27.

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- the Office of Legal and Litigation Affairs, which holds the legal representation of the DPL in front of the court, for administrative appeals and administrative investigations on work accidents;
  - the Operative Office for Technical Monitoring (*ufficio operativo per la vigilanza tecnica*, UOVT) which is specialized on overseeing safety and health at workplace, construction, women, child labour, working mothers, vulnerable workers. It has also the task of controlling facilities and machine equipment, lifts and elevators, and take administrative measures to regard to hygiene;
  - the Operative Office for Ordinary Monitoring (*ufficio operativo per la vigilanza ordinaria*, UOVO) deal with controls on the application of collective agreements, labour and social security laws, programming and coordinating the activities of other supervisors on social security and taxation matters. Within the UOVO there are also two special units:
    1. Administrative and Accounting Control Unit;
    2. Agriculture Unit.
  - the Office for Labour Relations and Labour Dispute is in charge of dealing with conciliation of individual and collective disputes in both public and private sectors. It deals with the conciliation and arbitration committees, the collection of employment contracts and collective agreements;
  - the Cooperative Office, where there is the data archive of the cooperatives and is concerned with the cooperatives operating at the local level.

Of the units just mentioned above, some of them are part of the “Labour Inspection Service” such as the Operative Office for Technical Monitoring and the Office for Ordinary Monitoring. The others unit belong to the “Labour Policy Service”. Within the Labour Inspection Service, we also find the Nucleus of the *Carabinieri*. In addition to these services, there is also an Administrative Department for Employment, which is divided in the Department of Employment and the Department of Information and Technology Services.

At the provincial level, this standard internal organizational structure is typical one, and could be found in almost every province in the country.

### 3.5. Committees for the Emergence of Undeclared Work (CLES)

Unlike for the Directorate General and Regional Directorate of Labour, for the undeclared and illegal work the reform has revived the administrative bodies established by Law No. 266 of 2002: the “Committees for the Emergence of Undeclared Work” (*Comitati per il lavoro e per l'emersione del sommerso*, CLES)<sup>47</sup>, which were expanded in terms of their composition (supplemented by the participation of: the provincial

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<sup>47</sup> Its main objectives include the creation of an institutional network between the central government and regional authorities with the aim of gaining knowledge about the characteristics of the informal economy. It also works to develop formalization policies, encouraging workers and employers to be tax compliant, and fighting undeclared work. For more information about CLES see PENNESI, PAPA, “*Lotta al sommerso e sicurezza del lavoro: primi orientamenti interpretativi*”, Guida al Lavoro n. 36/2006, pp. 13-26.

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Commander of the *Guardia di Finanza* corps; a representative of the local offices of the Revenue Agency; the President of the Provincial Committee for the Formalization of Irregular Work; the provincial Commander of the *Carabinieri* and the *Questore* in representation of the Police).

The CLES, which can be articulated into operational sub-commissions, can contact the officials of the Labour Inspection Service, the Labour Policy Service and the Office of Legal Affairs and Litigation in order to obtain statistical data and information. Every three months, the CLES has to draft reports on the current situation of the labour market, labour inspection visits and results. It prepares annual reports.

### **3.6. Social security and social insurance institution: INPS, INAIL and ENPALS**

The DRL and DPL must also ensure the proper application of the law, protect all the employment relationships, the proper application of collective agreements, the reporting on social security prepared by professional associations, supervision of public and private institutions. They also had to provide clarification on the laws to be applied and must perform the functions as prescribed by bodies hierarchically superior, first and foremost the Ministry of Labour, and carry out all additional tasks.

According to Article 6 of Legislative Decree No. 124 of 2004, the inspectors of pension, work accident and social security agencies (INPS) for which exist compulsory contributions, have powers similar to those of labour inspectors<sup>48</sup>. These inspectors of “Social Security”, have to ensure the compliance of the social security legislation, provide clarification on the correct application of legislation itself, and promote training and information activities<sup>49</sup>.

Circular No.132 of 2004 recognises to these inspectors, powers such as access to enterprises workplaces, examine enterprises compulsory books, acquire declarations of employers and workers, and last but not least, the power of caution in case irregularities are found during an inspection.

INPS has a specific role in the exercise of the right of “*interpello*”. In fact, employers and workers may ask questions to this administrative body to make inquiries related to the social security issues<sup>50</sup>.

Similar functions are provided by other labour inspectors of INAIL (National Work Accidents Agency) and ENPALS (Social Security Agency for the Entertainment Employers’). They adopted a unique model of inspection report which is submitted, at least one per year, to all the administrative supervisory bodies. According to Law No. 388 of 2000, concerning the relationship between social security institutions and DPL, only the social security inspectors have the power to enforce administrative penalties associated with the contribution evasion. The ratio of this standard lies in the fact that the area of violations in the contributory matter still belongs to the field of social security and insurance, which is exclusive subject matter for welfare and not of DPL.

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<sup>48</sup> See PARISI, “*Ispezioni del Lavoro: controlli e garanzie*”, p. 59.

<sup>49</sup> See GASPARI, GUADAGNINO, “*Le ispezioni in azienda: obblighi, poteri e tutele dopo il D.Lgs. 124/2004 - Ministero del lavoro ed Enti previdenziali: due sistemi ispettivi a confronto*”, pp. 35-46.

<sup>50</sup> See GUADAGNINO, “*I poteri ispettivi degli enti previdenziali dopo il D. Lgs. No. 124/2004*”, pp. 2-4.

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### 3.7. Cooperation between inspection bodies and other institutions

Albeit with investigative tasks, other bodies are also involved in the labour inspection activities, such as the Revenue Agency, the *Carabinieri*, the Police and the *Guardia di Finanza* corps. Those institutions, according to Law No. 689 of 1981 can perform administrative police duties as well as criminal police role with regard to important aspects of criminal law.

The Central Revenue Agency, in particular its Central Directorate of Investigation provides activities such as the analysis and the research on elusive phenomena, the international cooperation and tax audits. In addition to these tasks, the Central Revenue Agency, through its inspectors, visits workplaces, examines records and any other relevant document related to tax matter.

Since 1937 personnel from *Carabinieri* has been assigned to the Ministry of Labour to check the application of labour legislation<sup>51</sup>.

The *Carabinieri* of the Labour Protection Division perform similar functions to the inspectors of the Ministry of Labour, that is criminal police activities which, unlike those of labour inspectors, are not subject to “the limits of the service and under powers conferred under current legislation”. They are involved in almost all the highly risked labour inspection visits.

The personnel, after specific training obtain the qualification of Inspector, which is necessary to develop control activities in this sector, especially the power to enter freely in all work places.

The activity of the *Carabinieri* Command for the Labour Protection is not only related to monitoring, preventing, and suppressing violation of labour and social security legislation, it is also involved in: carrying out analysis and studies in the field of economy and labour market; the control of working conditions and the protection of security and health of workers; the fight against illegality and undeclared work<sup>52</sup>; concealed employment and sweat labour as well as against every type of human exploitation, trafficking in human beings and reduction in slavery. They provide workers with legal advice.

The same powers of inspection and supervision are entrusted by the *Police* and the *Guardia di Finanza Corps*, military police, which assist labour inspectorate in highly risked situations and whenever they are asked to take part in labour inspections.

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<sup>51</sup> The *Carabinieri* of the Labour Protection Division was established by Royal Decree No. 804 of 1937.

<sup>52</sup> The CEARC at the 80th Session of 2009, considered that the role assigned to labour inspectors as *Carabinieri* of the criminal police may severely jeopardize the performance of their original duties as defined by Convention 81, namely to ensure that workers are protected against the imposition of conditions of work which are contrary to legislation.

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## 4. The “new” labour inspectors

### 4.1. Supervision’s personnel

The complexity of the subject matters dealt with in labour inspection function, requires that there are different “subjects and entities”, both public and private, with supervisory functions on labour and social legislation. In addition to those who are institutionally responsible for labour inspection (e.g. Ministry of Labour’s inspectors, INPS and INAIL’s officials, etc), there are also those from the National Health Services (regarding matters relating to occupational health and safety at workplace), the police (*Carabinieri, Guardia di Finanza and Police Corps*) who have general powers of investigation on all criminal and administrative offenses), national bodies (CNEL, CENSIS, ISTAT), with different mandates, are involved in processing data on labour dynamics, provincial employment services, workers’ and employers’ organizations through bilateral institutions that contribute in the monitoring of the local economic and social reality.

The new definition of labour inspectors has been introduced by Legislative Decree No. 124 of 2004.

According to Art 6, labour inspectors are the staff in force at the Regional and Provincial Labour Directorates. In accordance with the powers conferred by the law, to labour inspectors compete the status of judicial police. The reform shows a picture of the multitasked work carried out by the labour inspector. The inspector becomes the controller, promoter, consultant and trainer on all labour law issues. He/she operates throughout the national territory and ensures the compliance with labour law and regulations on social security in industrial, commercial and agriculture sectors as well as in all cases of wage earned situations. The competence is in all economic sectors with few exceptions: maritime, land transport, quarries and mines that have specialized units depending on their own respective departments. The inspector is also responsible for the application of labour law in the public sector with the exception of the military sites. The labour inspector controls the execution of all contracts of employment, the regular remuneration and provides information on the interpretation of the law<sup>53</sup>. Nevertheless, it has to be considered that social security bodies have their own inspection services. These are carried out by the INPS and INAIL’S officials. Their remit concerns only the enforcement of legal provisions related to social contributions and fees related to compulsory insurance against work accidents. (Article 6 par. 2 of Lgs. D. No. 124/2004). However, also Labour Ministry’s inspectors are entrusted with the same competence on the understanding that their remit is broader than INPS and INAIL inspectors’ mandate. In order to avoid a duplication of efforts, each body in charge of controls related to compulsory social security contribution has to inform the other about the employers already inspected. But, if INPS and/or INAIL’s officials find violations excluded from their mandate, they must pass the

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<sup>53</sup> According to Article 2, paragraph 1, of ILO Convention No. 81, conditions of work and the protection of workers while engaged in their work are the main areas of competence of labour inspectorates in industrial and commercial workplaces. Article 6, paragraph 2, of ILO Convention No. 129 states that labour inspectors may have enforcement functions regarding legal provisions concerning conditions of life of agricultural workers and their families. Many different issues are covered by the term “working conditions”. They concern the conditions and the environment in which work is carried out. For example, Article 3, paragraph 1(a), of Convention No. 81, refers to hours, wages, safety, health and welfare, and the employment of children and young persons, while Article 6, paragraph 1(a), of Convention No. 129 refers in addition to weekly rest, holidays, and the employment of women.



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files on to labour inspectorates or judicial authorities according to the administrative or penal nature of the violations.

Another important difference between the two categories of inspectors deals with their legal status: labour inspectors are the only ones having the prerogatives of judiciary police officers (Article 6, par. 2, Lgs. D. No. 124/2004). This status becomes relevant when violations and the relative sanctions have penal implications. Officials from INPS and INAIL or coming under other social security institutions have not these prerogatives, but in the area of their competence they are entrusted with the same powers of labour inspectors and they can proceed for the application of sanctions.

In the field of occupational safety and health, labour inspectors share responsibility with the Ministry of Health, especially with regional administration from which the local health agencies (ASL) depend on. Labour inspector, in conjunction with ASL, is responsible for matters relating to health and safety at workplace. In addition, the technical ASL labour inspector tests and verifies the elevators, hoists, mobile equipment, lifting motors and suspension bridges. At the initiative of the Ministry of Labour, the ASL labour inspectorate carries investigation and research on specific technical issues. However, its jurisdiction is limited to a number of specific areas and sometimes joint inspection visits become complex to organise, due to the prerogatives of the ASL mandate. Since 1997, the health and safety inspectorate is also responsible for work on construction sites, galleries and worksites where there is the use of explosives and compression chambers<sup>54</sup>. According to Article 8 of Lgs. D. No. 124/2004, labour inspectors have also an important role of prevention and promotion as well as a role of consultant. When carry out these activities they cannot perform any investigation nor provide information, advices or clarifications on “specific case” or “special problems of interest to the enterprise”. In fact, as established by the Ministerial Circular No. 24 of 2004, the labour inspectors can only provide general guidelines on the application of general labour standards, circulars, directives, and all others instructions received by the Minister of Labour and Social Security.

For this reason the need of ensuring to labour inspectors a continuous training has become even more important. Inspectors, in fact, work and deal continuously with individuals (employers, company, workers, associations) involved in the labour market, especially when they apply the law during their visits, they need to balance the personal situation (communicating to the judicial authority for criminal proceedings) and the patrimonial one (providing remedies and sanctions). Such training needs are recognised by Article 18 of Legislative Decree No. 124 of 2004 that reads “the ability to accomplish new tasks to all labour inspection personnel is ensured through continuing training courses”. Training covers a variety of subject including labour and social security legislation, industrial relations, statistics, communication, use of information systems, methodology of social research and inspection investigation techniques.

## **4.2. “Code of Conduct” of the labour inspectors**

As result of a memorandum of understanding signed on April 2005 by the Ministry of Labour, INPS, INAIL, ASL, the administrative supervisory bodies adopted, in 2006, the so-called “Code of Conduct” of the labour inspectors<sup>55</sup>.

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<sup>54</sup> Decree DPCM No. 412 of 1997.

<sup>55</sup> The Code was adopted by Decree of 20 April 2006.

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The Code gives harmonization to a matter that has been since long time heterogeneous. It harmonizes the conducts of the inspector, when performing inspection visits in labour and social security legislation. The code has four parts.

The first part lays down the general principles governing the subject matter, defines the subjects, their scope as well as aspects of diligence, loyalty, fairness, impartiality.

The second part contains the guidelines, in terms of conducts, to be held in the relationship with the employer namely:

1. Cooperation, that corresponds in the attitude to understand and collaborate in highlighting the irregularities by the entrepreneur to remedy them before the sanction;
2. Mutual respect, that is to say abandoning the logic of “suspicion” vis-a-vis the subject inspected and of “confidence” in the State function represented by labour inspectors;
3. Less disruption, in the sense of non-intrusiveness into the enterprise’s activity subject to the inspection visit.

The third part lays down the proceedings and formalities to follow during the inspection. In an easy schematic structure of the labour inspection, therefore, we can distinguish the following phases: - Programming (Article 5); - Preparation (Article 6); - Inspection access (Articles 7-10); - Investigative Activities (Articles 11-12); - Inspection Findings (Articles 11-12); - Verbalization (Articles 13-14 and 16); - Complaint/notification of administrative sanctions and fines (Articles 14 -15); - Detection of criminal and tax sanctions (Article 18); - Transmission of the report and of the inspection findings (Article 17). Not all the above-mentioned phases are compulsory. Some of them are discretionary.

The fourth part provides a code of ethics that must be followed by the inspectors when carrying out their visits. Articles 20-26 are dedicated to the exposure of real and proper duties of “conduct”. In particular, mention should be made of: a) the fundamental values: impartiality, objectivity, efficiency, confidentiality, professional adequacy, transparency, honesty (personal and intellectual) and integrity (moral); b) the obligation for the labour inspector to refrain him/herself performing the inspection if there are possibilities to get personal or financial advantages; c) the obligation to protect, keeping secret, the source of the complaint when the inspection visit begins following a request of intervention.

#### **4.3. Planning of inspection: Inspection support action**

Supervision in the world of work is a complex and delicate activity. For this reason, the investigation on this subject matter requires two preliminary key actions: the first one is that concerning coordination, and this has already been dealt above; the second one deals with the planning of the inspection visits and its objectives. The latter will be discussed herewith. In the current labour inspection system described by the 2008 ministerial directive and the Lgs. D. No. 124/2004, the program of the inspection planning is prepared by Directors of the Provincial Labour Directorates according to the criteria and guidelines set by the General Directorate for the inspection activity through the Regional Directorate

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of Labour<sup>56</sup>. Generally, a labour inspection visit can be generated from three different types of inputs.

The first type of initiative is the so-called **request of intervention**<sup>57</sup>. It consists in a complaint against a specific entrepreneur/enterprise, reported from one or more workers (or their respective trade unions or organizations), concerning unlawful or irregular treatments suffered by workers when performing their working activities.

The second is represented by **the office communication** consisting of the transmission by another administrative supervisory body (INPS, INAIL, EPALS, Revenue Agency,) or by the judicial police (*Carabinieri, Guardia di Finanza, Police corps*) of its inspection findings.

The latter is **the autonomous initiative**, namely the planned labour inspection visits. In this case, it is the DPL itself, according to a specific planning coming from local administrations or on the basis of operational guidelines outlined by the Regional Labour Directorate, which decides to inspect a specific enterprise. The autonomous initiative can also be placed on the basis of statistics studies and monitoring activities carried out previously by territorial supervisory bodies.

The third type is certainly the one which better reflects the essence of labour inspection's activities. In fact, the inspectors acting without any request, can obtain the "surprise effect" that provides a higher effectiveness of the investigation, something that cannot be guaranteed by a visit following a complaint. The latter, in fact, can be easily anticipated by the employer who can cover in advance all the inefficiencies or illegalities. The request of intervention may also have another drawback: it can be used by the worker as an instrument of revenge against the employer (the so-called blackmail request).

All types of inspection may be carried out in different ways such as the joint, coordinated and integrated inspection.

The **joint inspection** is carried out by several bodies together, usually inspectors from DPL, INPS, INAIL and ASL. There is, for this type of inspection, a special section at the DPL that regularly plans joint inspections. The **coordinated inspection** does not have the periodicity of the joint inspection, it is planned within the Commission for the Coordination of the Inspection Activities and CLES by sectors, periods, according to the needs, such the labour inspection visits in agriculture during the harvest season. The **integrated inspection**, instead, is that made by the staff of DPL together with other bodies, different from those involved in the joint inspection, responsible for combating irregular work, for example with the intervention of *Carabinieri, Guardia di Finanza* or Police corps.

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<sup>56</sup> Establishing inter-institutional cooperation and multilateral collaboration is an inherent part of the very concept of an administration system. The designation of a central labour inspection authority ensures that the activities of the authorities placed under its control are coordinated with a view to achieving a clearly defined objective. It also ensures a degree of cohesion between mechanisms for cooperation and collaboration with other public and private bodies and institutions and with the employers and workers and their organizations, which are referred to in Article 5 of Convention No. 81 and Articles 12 and 13 of Convention No. 129.

<sup>57</sup> According to Article 8 of the Code of Conduct, the essential request for intervention is to be collected directly at the offices of the Provincial Labour Directorate by the "Personal Officer", the so-called "Inspector on duty".

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#### 4.4. The inspection visits

In order to ascertain the respect of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other related matters, labour inspectors have the power to enter workplaces where those activities are going on at any time of the day or the night. Its exercise cannot be limited<sup>58</sup>, labour inspectors are only requested to qualify themselves showing the identification card before entering the undertakings. This power represents, without doubts, the prerogative of the labour inspectors and, because of its importance, is also being stressed the ILO's "Labour Inspection Conventions" Nos. 81 and 129<sup>59</sup>. Moreover, workplaces can be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions. Once entered the undertaking, the labour inspector takes the first contact with the employer or with his/her representative and starts the inspection visit examining the SLB, records, and any other relevant document as well as taking statements and interviewing the employer, workers and any other person liable under the law. Statements can be made by workers, their organizations, or by whoever is informed of the facts. They constitute the major source of evidence of irregularities at workplace. Workers and other persons found in the undertaking cannot refuse to declare at least their identity and their positions into the company structure. Following the inspection visit, the labour inspector writes an inspection report, the so-called first entry inspection record<sup>60</sup> – FEIR - (*verbale di primo accesso ispettivo*), and delivers it to the employer. This report is substantially a formal listing of activities carried out at workplace and might include various issues found: highlight the lack of compliance with safety and labour laws, social security; identify breaches in law; give instruction on how eliminate illegal situations. Sometimes, when the activities to carry out are very complex and require more time to be finalized, the labour inspector can deliver to the employer an "interlocutory report"<sup>61</sup> (IR) within which are summarized the activities already carried out and those needed to be completed. These reports are very important because allow the inspector to take further action against the employer (providing sanctions, fines or submitting the case to the competent judicial authority in the case were found criminal breaches) and the employer to get remedies against it in the exercise of his/her right to defend its interests (eliminating the violation, appealing it in front of the competent body).

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<sup>58</sup> Employers having a non-cooperative behaviour during the inspections or omitting to provide inspectors with required information and documentation may be severely prosecuted.

<sup>59</sup> Article 12 of Convention No. 81 and Article 16 of Convention No. 129 are intended to ensure that inspectors may carry out inspections at any time, without previous notice, with the necessary freedom for an effective inspection without interrupting the work more than necessary. Under Article 12, paragraph 1, of Convention No. 81 and Article 16, paragraph 1, of Convention No. 129, labour inspectors provided with proper credentials shall be empowered: (a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection; and (b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection. Article 16, paragraph 2, of Convention No. 129 adds that they shall not enter the private home of the operator of an agricultural undertaking except with the latter consent or with a special authorization issued by the competent authority.

<sup>60</sup> This is mandatory in accordance to the Ministerial Directive of September 2008. For the last update see paragraph 1.5 of this paper.

<sup>61</sup> See Article 13 of the Code of Conduct of the Labour Inspectors.

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Since 2009<sup>62</sup>, labour inspectors from the Ministry of Labour as well as INPS, INAIL and ASL inspectors adopted the so-called single inspection record<sup>63</sup> (SIR, verbale ispettivo unificato). It represents a step forward the simplification permitting to gather in a unique and unified record, regardless of the officer who carried out the inspection, violations and relative sanction which before used to be notified with different records.

## 5. The sanctioning system and the enforcement proceedings

### 5.1. General remarks

The 2004 reform first and the 2008 Ministerial Directive later, in addition to the structural and functional reorganization of labour inspections system, has also readjusted the powers of the labour inspectors as well as the sanctioning system<sup>64</sup>.

From a general point of view, the labour sanction system can be defined as a legal apparatus composed of precepts and repressive measures aimed at prosecuting employers responsible of violation of working conditions and protection of workers<sup>65</sup>.

According to the degree of violation, there are different types of sanctions:

- **Administrative.** They represent the majority and correspond in a payment of a certain amount of money, the proceeding procedure is administrative and it is regulated by Law No. 689 of 1981.
- **Civil.** These sometimes are due in the case of failure, incorrect payment or evasion of social security contributions. They are regulated by special law.
- **Penal.** They follow penal offenses. They are regulated by the penal and penal procedure codes and can be imposed only by penal tribunals.
- **Other.** These sanctions are not identifiably in the above-mentioned categories. They are also defined as “deflationary instruments of litigation between the parties”<sup>66</sup>. They have been introduced, for the first time, by Lgs. D. 124/2004, and amended by ministerial Directive of 2008.

### 5.2. Administrative sanctions

The previous legislation in Italy included systematically penal sanctions. Following Law No. 689 of 1981 and Legislative Decree No. 758 of 1994, these sanctions have

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<sup>62</sup> Ministerial Directive of September 2008 and Ministerial Circular of March 2009 No. 25/II/0001489.

<sup>63</sup> SIR has been modified by the so-called “Collegato Lavoro” Law of November 2010, see paragraph 1.5.

<sup>64</sup> See CAFFIO, “*Labour Inspection in Italy: The sanctioning system*”, p. 1.

<sup>65</sup> NATALINI, “*il nuovo regime sanzionatorio del testo unico*”, pp. 33-61.

<sup>66</sup> See FOGLIA, “*I servizi ispettivi nel sistema riformato e deflazione delcontenzioso*”, pp. 426-441.

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become primarily administrative ones. Generally, can be defined as administrative the legal consequences which the law relates, primarily, to the payment of a sum of money and subsequently, or at the same time, measures that restrict the use of goods and services by suspending the property rights. These are the result of the violation of a legal precept which itself aims to safeguard public interests concerning the Public Administration. In almost all cases, it is possible to prevent the condemnation through the regularization of the sanction and the payment of an administrative fine<sup>67</sup>.

Before focusing the attention on the specific measures that can be adopted by the labour inspectors, it must be noted that, regarding to the determination of sanctions' amount, in the current legislation, the administrative sanctions can be pre-fixed by law or a minimum and a maximum amount. In the first case, the amount predetermined by the law doesn't follow discretionary parameters or index related with the degree of violation. In the second case, (the majority of administrative sanctions), the amount of the penalty varies and depends on different factors such as the moment at which the employer straighten the situation of non-compliance, the type prosecution proceeding used, the seriousness of the violation, etc... Regardless of the kind of sanctions, the basic amount of the fine can vary according to: a) the number of workers involved in the violation and/or the number of violations found; b) the seriousness of the violation; c) the repetition of the violation<sup>68</sup>.

### **5.2.1. “Compulsary Warning” (*Diffida Obbligatoria*)**

According to Article 13 of Legislative Decree No. 124 of 2004<sup>69</sup>, if during an inspection visit the labour inspector, including INPS and INAL's ones, found non-compliance of rules whose breaches is punishable only with administrative sanctions, the labour inspector must warn the employer for the regularization of the non-compliance that was identified, setting a deadline to eliminate the violation. Compliance to the warnings by the employer brings with it a favourable sanction (the so-called *sanzione ridottissima*, the lowest sanction) consisting in a reduction of the amount equal to the minimum provided by the law for the minimum-maximum sanction or to a quarter of the amount, in the case of a sanction with a fixed amount. This type of warning can be used only if the violation is a remediable one or, said in other words, would not affect those regulations laid down for the direct protection of the psychophysical integrity of the worker. This warning has a mandatory nature. It means that labour inspector cannot adopt any sanctions nor start administrative proceedings before attempt the mandatory warning. Following the warning, the payment extinguishes the sanction proceedings. If the employer does not comply with the warning, the labour inspector must proceed according to Articles 14 and 16 of Law No. 689 of 1981. The employer will be notified of the administrative violation of one or more labour laws. In details, labour inspectors, as soon as the term assigned with the warning is expired, must proceed to notify the trespasser of the non-compliance with warning and the consequent prosecution of the proceeding. It should be noted that since 2009 a new form of proceedings has been adopted, the so called “single inspection record” (SIR) by means of which, labour inspectors must no more notify employer of his/her violations and relative sanctions with different documents. As a result, labour inspectors use a single document to notify those guilty of a warning and the possible continuation of the prosecution proceedings if he/she does not comply with. This single document reports the terms within which both the employer can adopt the required remedies in order to regularize his/her

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<sup>67</sup> See BRICOLA, “Carattere sussidiario del diritto penale e oggetto della tutela”, pp. 107-117.

<sup>68</sup> See NATALINI, “*il nuovo regime sanzionatorio del testo unico*”, pp. 33-61 and BOMBARDELLI, “*Commento all'Articolo 13 d. Lgs.. No. 124/2004*”, pp. 972-985.

<sup>69</sup> This Article has been lastly modified by Law No. 183 of 2010

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position and he/she is submitted to the continuation of the prosecution proceedings in case of non – compliance. This latter hypothesis entails that employer has 60 days to pay sanctions (the so-called *sanzione ridotta*, lower sanction) for violations reported by the inspectors, equal to the lower amount between a third of the maximum (or of the fixed measure penalty) and the double of the minimum in case of minimum-maximum sanctions. As can be noticed, in this case the amounts of the penalties are higher than in the hypothesis of compliance order.

### **5.2.2. “Compulsory Order” (Disposizione)**

This measure was introduced by Article 10 of Decree of the President of the Republic No. 520 of 1955 according to which within legal provisions dealing with the prevention of work accidents, that leaves room to a discretionary assessment on how to apply them, labour inspectors could issue a compulsory order containing the remedial actions to be undertaken by the employer with a view to complying with the law. This law gave to labour inspectors a wide range of discretion in the application of such provisions characterized from the fact that they did not provide for a specific duty to comply with for the employer, but they only stated a general principle that could be supplemented by a compulsory order on the basis of the concrete modalities in which the inspected employer operates.

Under Article 14 of Lgs. D. No. 124/2004, the field of enforcement has been extended to the labour law and social security legislation, but with the substantial difference that this second kind of compulsory order can be issued only by inspectors under the authority of the labour ministry that is the only one with a comprehensive remit as regards the supervision of labour and social security law<sup>70</sup>.

A significant difference exists from this power and the warning referred above. As a matter of fact, the first deals with the issue of the warning regulated from Article 13 of Lgs. D. No. 124/2004 that is a mandatory duty of labour inspectors every time the violation can be regularized, whereas the adoption of compulsory order examined here is fully remitted at the discretion of the labour inspectors. Last, but not least, warning with issued in the aim to enforce a legal provision for the violation of which law provides for a specific sanction; on the contrary, compulsory order refers to legal provisions which do not establish any specific requirement, so that no legal offences occur and no sanctions are provided.

At the same time, this specific power has a concrete use only in the area of safety and health<sup>71</sup>, whereas in the area of labour law and social security is really hard to find provisions for which such a compulsory order could be issued.

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<sup>70</sup> CAFFIO, “*Labour Inspection in Italy: The sanctioning system*”, p. 30.

<sup>71</sup> For instance, according to Article 2087 of the Civil Code, in order to prevent work accidents, the employer should adequate the features of his/her own establishment keeping pace with the technology, in the aim to grant workers with the highest degree of safety and health protection. In this perspective, labour inspector could issue a compulsory order, with the prescription of the way how to achieve an increase of the comprehensive degree of workers’ safety (e.g. modernizing the establishment by means of the substitution of old machinery).

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### **5.2.3. The employer's right of defence**

From this perspective, national legislation provides for several ways through which the employer can exercise his/her right of defence against prosecution proceedings initiated by labour inspectors<sup>72</sup>.

The first one consists in the possibility for the guilty, within 30 days after the expiration of the term fixed by the inspector in the warning with which the employer has not complied, to produce at the legal office set up within the DPL a written report in his/her defence. In this report, the guilty can also apply for being listened in order to put forward reasons and aspects that could exclude or reduce his/her responsibility as regards violations. This is a significant implementation of the "Legality Principle" that allows an employer to obtain a cut (but never a complete cancellation) of the fines applied, for instance if he/she can demonstrate his/her "bona fide". Generally, due to organizational reasons, the RDL summons guilty the one who has applied for an official examination after the expiration of the 60 days term fixed in the notification of the administrative offense, so that, if this is the case, he can obtain a reduction of the penalties' total amount respect to the one adjusted from the inspectors, only in the injunction-order.

According to Article 16 of Lgs. D. No. 124/2004 the employer has the possibility to present appeal to RDL against the injunction order within 30 days from the notification. This kind of appeal is permitted only if the violations from which fines arise, do not concern the existence or the qualification of the employment relationship. Until the adoption of a decision from the DRL, this administrative procedure suspends the 30 days term fixed by art 22 of Act No. 689/1981, within which the guilty can always lodge an appeal to the civil tribunal judge. The decision of RLD can confirm, cancel or modify the fines.

In addition, Article 17 of Lgs. D. No. 124/2004 provides the possibility for the guilty employer to lodge an administrative appeal to the Regional Committee for employment relationships. Unlike the procedure under Article 16, this kind of appeal can only deal with the existence or the qualification of employment relationships and it can be presented also in a previous phase with respect to the issue of the injunction order. As a matter of fact, also the other proceedings (act of notification of the administrative offense) can be subject of appeal which suspends all terms within which the trespasser can exercise his/her own rights of defence previously described<sup>73</sup>.

### **5.2.4. The power of suspension of the business activity (Article 14 Legislative Decree No. 81 of 2008 or the "Code on Health and Safety Protection of Employees in the Workplace")**

In addition to the other instruments and in order to tackle undeclared work as well as to provide workers with a higher degree of protection, labour inspectors have the power to order the immediate suspension of the business activity according to Article 14 of Legislative Decree No. 81 of 2008<sup>74</sup>. Before the recent legal changes, such a suspension

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<sup>72</sup> See ROMANO, "Vigilanza nei rapporti di lavoro: il nuovo potere di diffida e problematiche applicative".

<sup>73</sup> For more details see DE PRETIS, "Commento all'Articolo 16 and 17" Lgs. D. No. 124/2004.

<sup>74</sup> See BASENGHI, GOLZIO, ZINI, "La prevenzione dei rischi e la tutela della salute in azienda", pp. 245-257.



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power was exercised only for the construction site (Article 36-bis, Law No.248 of 2006). In the following years (under Article 5 of Law 123 of 2007), this instrument has been revised through the enactment of the Consolidated Safety Work Text (Law Decree No. 81, April 9 of 2008) in force since 15 May 2008 that extends such a power to all economic sectors and employers regardless of the activities carried out.

The preconditions for the enactment of this measure are:

- the presence of undeclared workers (have not been recorded in the company's payroll and in other mandatory books) in a percentage equal or greater than 20% of all workers in the workplace;
- serious and repeated violations of safety and health legal provisions<sup>75</sup>.

In the latter case, the offence to be considered serious must be listed in an annex of the Lgs. D. No. 81/2008, whereas the repetition of the violation has to be understood as an offence dealing with the same legal provisions or other ones listed in the above mentioned annex, violated during the last five years. The power to adopt this measure is also given to both ASL inspectors within the limits of their remit (i.e. the suspension can be ordered for serious and repeated violations of safety and health legislation, but not in the case of undeclared work) and Fire Brigades with reference to the serious and repeated violations regarding fire prevention. At the same time, in case of violations of safety and health legislation, inspectors from the Ministry of Labour can order conversely the suspension exclusively within the sectors they have the competence to monitor.

The measure of suspension can be revoked and the employer can restart his/her activity if he/she regularize his/her position (regular engagement of undeclared or black workers found at workplace at the moment of the inspection, adoption of the required remedial to comply with safety and health legal provisions violated) and pay a fine equal to 1500 Euros in the former case and 2500 Euros in the latter. However, law punishes employer who does not comply with the order of suspension (i.e. he/she continues by carrying out ordinary activities of his/her undertakings) in different ways depending on the suspension is caused respectively by undeclared work or serious and repeated violations of safety and health legislation. In the former case, the sanction is the imprisonment from 3 up to 6 months or a fine from 2500 Euros up to 6600 Euros, whereas in the latter the penalty is the imprisonment up to 6 months.

### 5.3. Civil sanctions

As referred above, civil sanctions are due in case of failure, incorrect payment or evasion of social security contributions. The civil nature of this group of penalties arises from the need to get both a more powerful deterrent effect towards evaders and to increase social contributions revenues<sup>76</sup>. For this purpose, Article 116 of Law No. 388 of 2000 has repealed all administrative sanctions related to the non payment of social contributions and, at the same time, has provided for a new criterion of determining them, based on the application of a percentage of increase on the dodged contributions. In this regard, law

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<sup>75</sup> According to Article 14, par- 11-bis of Lgs. D. No. 81/2008, the suspension order cannot be issued if the enterprise has only one worker resulting undeclared. This exception, of course, is provided only in the case of violations dealing with undeclared work, but never in the case of concurrence between the first cause referred above and the one related to serious and repeated offences of safety and health legal provisions.

<sup>76</sup> See PARISI, "*Ispezioni del Lavoro: controlli e garanzie*", p. 134.

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provides for an increase of contributions evaded varying on the basis of the seriousness of the illegal behaviour of the employer. In details, the least severe sanction consists in the payment of the due contributions increased of a percentage equal to the official interest rate to which a 5.5% rate is added<sup>77</sup>. The sanction reaches up to an increase of 30% (annualized rate) on due contributions in case of undeclared work or unfaithful recording of wages on statutory boos. In this last case, law punishes in a more severe manner the will of the employer to evade, that is the fraudulent intention. Obviously, civil sanctions are applied in addition to the administrative and criminal ones.

#### **5.4. Penal sanctions and relative prosecution proceedings**

Although the most part of penal sanctions are provided for violations of safety and health legislation, out of this area, some situations of non compliance with working conditions and protection of workers legislation can be subject to those as well.

The main offences prosecuted in working conditions and protection of workers concern child labour, illegal employment of young and women (as regards night work), irregular work by agency (that is, supplying of workforce from an employer non-authorized according to the national law)<sup>78</sup>. As seen regarding the administrative sanctions, the severity of penalties varies according to the same criteria: number of workers affected by the violation, repetition and seriousness of the offence in relation to both the social category of workers affected (e.g. involvement of child or women during pregnancy) or the fraudulent intention.

As a general rule, within the Italian penal legal system we must distinguish between sanctions related to crimes “*delitti*” (punished with imprisonment and fines) from sanctions related to minor offences “*contravvenzioni*” (punished alternatively with imprisonment or pecuniary penalty, or, notwithstanding the penal nature of the violation, with the sole pecuniary penalty)<sup>79</sup>.

In the first case, according to the penal proceeding code, labour inspector who ascertains such violation has the obligation to submit immediately the case to the competent judicial authorities for the penal proceedings. In the second case (violation of minor gravity), the offense can be legally converted from penal into administrative through two instruments that we are going to discuss below: the *oblazione* (fines) and the *prescrizione obbligatoria*.

##### **5.4.1. Oblazione (Fines)**

This procedure is regulated by Articles 162 and 162-bis of the Italian Penal Code.

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<sup>77</sup> This sanction operates when the employer makes the monthly contribution return statement but he/she does not pay the owed contributions.

<sup>78</sup> ILO Conventions Nos. 81 and 129 establish an explicit link between labour inspection and child labour by including among the primary functions of labour inspection the enforcement of the legal provisions relating to conditions of work and the protection of workers, such as provisions relating to the employment of children and young persons.

<sup>79</sup> For more details see Natalini, F., “*Il nuovo regime sanzionatorio del Testo Unico*”, pp. 33-61, Guida al Lavoro n. 19, Milano, 2008.

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Originally, the *oblazione* could be granted only for those offences punished with pecuniary penalty (Article 162). Subsequently, by the introduction of art 162 bis, the procedure has been extended to offences that are also punished with a penalty alternative, i.e., detention convertible into penalty<sup>80</sup>.

By law, the person found guilty can reduce the offense by paying a fine whose amount is (according to the situation) one third or one half of the maximum penalty determined by law.

According to the procedure, if the person investigated requests the *oblazione*, the judge expresses his or her opinion, which he or she does by checking the case at hand: the judge may deem that the request should not be granted, if there is a repeated offense, or if there are otherwise aggravating circumstances. If the judge deems that the investigated person's request of an *oblazione* be granted, the judge transmits his or her favourable opinion to the appropriate authorities, so that the investigation is closed.

The institute is fell into disuse, as replaced by another deflationary instrument almost similar but in fact cheaper and more beneficial to the offender: the "*Prescrizione Obbligatoria*".

#### **5.4.2. Prescrizione Obbligatoria (Mandatory prescription)**

Introduced by Articles 20 and 21 of Legislative Decree No 758 of 1994 in the field of health and safety, the *Prescrizione obbligatoria* has been extended by Article 15 of Legislative Decree No. 124 of 2004 to those violations of legislation concerning working conditions<sup>81</sup>. Similarly to the warning issued in the case of administrative offences, it is a special procedure initiated by labour inspector or by other officials having the legal status of judicial police (e.g. ASL officials). On the procedural level, in order to eliminate the violation found, the supervisory body, usually during an inspection visit, must proceed with a *prescrizione* containing a time limit within which the employer must regularize the situation by adopting the required remedial actions<sup>82</sup>. At the same time, inspectors are obliged to notify to the public prosecutor of the beginning of the penal prosecution proceedings<sup>83</sup>. During the period given to the guilty in order to straighten out his/her position, the ordinary penal proceedings carried out from the public procurator is suspended until the expiration of the term assigned by the labour inspector/official.

At the expiration date, if the employer comply with the order, he/she is permitted to pay a fine equal to a quarter of the fine's maximum amount and the penal proceedings is dismissed, whereas if this is not the case, labour inspector/official communicates to the public prosecutor the non compliance with the compulsory prescription and the penal proceedings carry on following its ordinary way, during which inspectors can be asked for

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<sup>80</sup> For a general discussion on the *oblazione* see FIANDACA, MUSCO, "*Diritto Penale*", p. 768.

<sup>81</sup> The mandatory use of the procedure for labour inspector is provided from article 15 of Lgs. D. No. 124/2004 whereas in the field of safety and health, legal provision is article 301, Lgs. D. No. 81/2008.

<sup>82</sup> According article 20, par. 1, Lgs. D. No. 758/1994, the time limit cannot exceed 6 months, with the possibility given to the guilty to ask for an extension of the terms no longer then further 6 months, if the adoption of remedies results particularly difficult for the employer.

<sup>83</sup> See article 347 of the Procedure Penal Code.

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both supplying further information and giving evidence during the trial against the employer.

This special instrument produces a double beneficial effect related to both a prompt enforcement of the legal provisions due to the short time limit assigned to the employer for the execution of compulsory prescription and a potential decrease of the penal judicial cases. On the other hand, the penal nature of both these categories of sanctions and the consequent prosecution proceedings act as a considerable deterrent.

## 5.5. Other special prosecution proceedings

In order to protect the workers' economic rights as well as to deflate the litigation and the arbitration proceedings on this matter, the 2004 reform has empowered labour inspectors with two alternative sanctioning tools: the "*monocratic conciliation*" and the "*diffida accertativa*" (an alternative measure for the timely satisfaction of worker's claim)<sup>84</sup>.

These special prosecution proceedings has been recently encouraged and sustained by the current Minister of Labour himself, who has underlined and emphasized their use to better keep a climate of cooperation and collaboration with the employers without forget the protection of workers<sup>85</sup>.

### 5.5.1. Monocratic conciliation

The *monocratic conciliation* is provided for by Article 11 of the Legislative Decree No.124 of 2004. It entered into force on May 27th, 2004 and it is a procedure aimed at speeding up the dispute settlement process related to workers' property rights (the majority of labour lawsuits concern wage-related claims and disputes)<sup>86</sup>. *Monocratic conciliation* applies not only to workers but also to self-employed. In particular, it can also be applied to cases of task work or temporary work, envisaged by Legislative Decree no. 276 of 2003; whereas it does not apply to employment relations, which have obtained certification<sup>87</sup>. *Monocratic conciliation* can be executed at the same time as the inspection performed by the labour inspectors (*conciliazione monocratica contestuale*), or before the labour inspection takes place (*conciliazione monocratica preventiva*). Nevertheless, in both cases, for *monocratic conciliation* to apply, all evidence of criminal violations should be ruled out. In the latter case, the labour inspection visit would be compulsory.

It is called *monocratic conciliation* because the whole procedure takes place in front one officer of the DPL. The preventive *monocratic conciliation* can be filed, if so requested by a worker or by a trade union. In this case, an official from the DPL shall summon the parties for a conciliation attempt.

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<sup>84</sup> See paragraphs 1.3 and 1.5.

<sup>85</sup> See FOGLIA, "*I servizi ispettivi nel sistema riformato e deflazione del contenzioso*", pp. 426-441 and CASOTTI, GHEIDO, "*Le strategie difensive del datore di lavoro. Dalla diffida accertativa alla conciliazione monocratica*".

<sup>86</sup> See ZOLI, "Commento all'Articolo 11 d. Lgs.. No. 124/2004, pp. 950-956 and MESSINEO, "La nuova conciliazione monocratica nella riorganizzazione dei servizi ispettivi", pp. 718-723.

<sup>87</sup> See note No. 22.

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The contextual *monocratic conciliation*, instead, can be executed during a labour inspection. The labour inspector can receive the approval by the parties to carry out a conciliation attempt.

In both cases, should the conciliation attempt fail, the labour inspectors are required to carry out the labour inspection visit. In this case, it is clear that the inspector plays a role of mediation between parties involved. At the same time, this measure constitutes one of the rare situations in which the law leaves ample discretionary power to inspectors.

It should be pointed out that *monocratic conciliation* becomes effective and leads to the completion of labour inspection procedures only upon the payment of the social security charges, which shall be determined according to the rules and regulations in force and corresponding to the amount that has been agreed upon during conciliation, concerning the working period identified by the parties and upon the payment of the amount due to the worker.

### **5.5.2. *Diffida accertativa***

The *diffida accertativa* is a novelty of the worker's protection rights system. Introduced for the first time by Legislative Decree No. 124 of 2004, it aims to provide workers with an alternative to the judicial proceeding in order to obtain satisfaction of wage-related claims and disputes<sup>88</sup>. In this regard, according to Article 12, if labour inspectors during their activity find wage differences deriving from employer's lacks in the application of collective agreements, they must issued a warning containing the order to the employer to correspond the sums due. Within 30 days starting from the notification of the warning, employer can apply for a conciliation procedure to be carried out by DPL's officials. The reaching of an agreement extinguishes the proceeding, whereas in the event of either the absence of agreement or the expiration of the term to act for the conciliation procedure, the warning acquires the nature of executive deed and it can be used directly from the workers to obtain the due payments directly from their employer or, if he/she does not comply, it gives workers the right to act for a coercive execution carried out by the bailiff.

The 2008 Directive stresses that labour inspectors should use more and more such an instrument because it allows workers to obtain a quicker satisfaction of their claims.

Furthermore, leaving apart the boost given to this measure from the Labour Ministry, it constitutes an instruments the use of which is destined to raise as a result of the increasing spread of the so called "pirate collective agreements". With this term, in Italy, scholars refer to collective agreements stipulated and signed from small trade unions having a low degree of representativeness in the sector of reference. The peculiarity of these collective agreements lies in the fact that they fix lower wages than the ones established in collective agreements brought off from the most representative trade unions, with the risk that such practices entailed social dumping phenomena. In order to tackle these practices, in 2008<sup>89</sup> the parliament has established that the overall wage paid to employees working in cooperatives<sup>90</sup> has to be at least equal to the one fixed by collective

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<sup>88</sup> See ROMANO, "*Vigilanza nei rapporti di lavoro: il nuovo potere di diffida e problematiche applicative*", pp. 5-13.

<sup>89</sup> Article 7, par. 4, Act. No. 31/2008.

<sup>90</sup> In Italy, according to Law No. 142/2001, workers engaged in cooperatives have the same legal status of employees, because they are at the same time, workers and partner. However, it has to be underlined that this is true only if workers are engaged as employees. As a matter of fact, cooperative's workers can be also hired as quasi-dependent workers.

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agreements stipulated by the most comparatively representative workers' organizations. Especially in the services sector (concierge service, packaging, logistics, cleanings, collective catering, canteen), such a provision is finalized to grant to employees working in cooperatives to receive a sufficient and proportionate wage (according to Article 36 of the Constitution) and employers to comply with labour legislation. It is in this perspective that the 2008 directive needs to be read and appreciated.

## Conclusions

From the analysis above, the Italian labour inspection system underwent a serious and deep reform. Considerable efforts have been made by the government and parliament to set up a suitable inspection system which has adapted to the changes occurred in the last 20 years, especially due to the new enterprises' organizational models.

Since 2004, the potential of the new instruments starts to be understood and used by labour inspectors, even though their complete implementation would need a longer period of time. This is partly due that new regulations need to be first adjusted and only later better implemented.

The most significant change in the Italian labour inspection system along with other European Countries is the promotion of mechanisms of cooperation with other bodies/institutions entrusted with different institutional tasks. This systemic approach has to be situated in the context of quality inspection system emphasized in the 2008 Directive of the Labour Minister.

In this regard, recent statistical data demonstrate the effectiveness of the new direction that the reform has given to the system. As a matter of fact, from the annual report of the Labour Ministry on inspection activity of 2009, there is an increase of law violations in spite of the lower number of work sites inspected. For example, in the period 2008-2009 the so called maxi-sanction for undeclared work had a 61% increase, irregular work by agency (or temporary work) a 273% increase, violations of legislation on hours of work a 154% increase, frauds towards social security bodies with a 495% increase, administrative offences against women a 67% increase, penal offences against safety and health, especially for women workers a 155% increase.

With this new reform, the labour inspection in Italy is contributing to a better compliance with labour legislation and the fight against undeclared work.

It is also moving workers and employers in adapting a new approach vis-à-vis the introduction of a preventive culture specifically on occupational safety and health. All this in line with the European Union directives as well as international labour standards.



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