

Covid-19 and labour law in Italy

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Abstract

This article provides an account of the Italian response to the Covid-19 pandemic in the labour law field. The author focuses on the policy measures in the matters of income support, parental leave, rest and holiday leave, agile working (i.e. teleworking), dismissal, as well as on the special provisions arranged by the social partners and later adopted by the legislator to preserve the health and safety of the employees and also to prevent the spread of coronavirus in the workplace. Ultimately, the author hints at the potential development of employee participation in Italy in the wake of the upsurge of social dialogue during the coronavirus emergency.

Keywords

Covid-19, Pandemic - Italian Labour Policy Measures

1. Introduction

As broadly known, Italy was the first country after China to be seriously affected by the Covid-19 epidemic (later, pandemic). In response to an emergency that escalated quickly from late February 2020, the Government adopted an increasing number of measures entailing personal and professional limitations, that have just begun to taper off.¹

At first, Law Decree of 23 February 2020, No. 6 (later converted into Act No. 13 of 5 March 2020), and the Decree of the President of the Council of Ministers of 1 March 2020 ordered the closure of any activity (with the exception of essential services)² in the so-called ‘red zone’, whilst

1. For a detailed account see V. Fili, *Diritto del lavoro dell'emergenza epidemiologica da Covid-19 e nuova 'questione sociale'*, *Lav. Giur.*, 2020, forthcoming. In English language, see C. Gaglione, I. Purificato, O.P. Rymkevich, *COVID-19 and Labour Law: Italy*, in *Italian Labour Law e-Journal*, 2020, 13, 1, 1 ff.

2. The list of essential activities included food and agriculture, newsagents, veterinary, pharmacy and transportation services.

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severe limitations were imposed in the so-called ‘yellow zone’.³ Pursuant to Law Decree 2 March 2020, No. 9, the employees in the ‘yellow zone’ could access a wage guarantee fund (*Cassa Integrazione Guadagni*) and self-employed workers were also granted income support for the month of March 2020.

The Decree of the President of the Council of Ministers of 4 March 2020 suspended other activities on the national territory and asked companies to prioritise agile working (see *infra*).

New restrictions on free movement and professional activities were posed by the Decree of the President of the Council of Ministers of 8 March 2020 for the ‘orange zone’.⁴ With the Decree of the President of the Council of Ministers of 9 March 2020 the measures adopted for the ‘orange zone’ were extended to the whole national territory.

The Decree of the President of the Council of Ministers of 11 March 2020 broadened the list of suspended activities and also further encouraged the companies to use agile working and to avail of paid rest periods and holiday leave.

Law Decree No. 18 of 17 March 2020 (the so-called ‘*Cura Italia*’) extended to the whole country the labour policies enacted in the ‘red zone’ by Law Decree of 2 March 2020, No. 18 (converted with amendments by Act No. 27 of 27 April 2020). The idea of the Government was to implement an emergency plan based on: i) wage guarantee funding, ii) parental leave, iii) agile working, iv) a temporary dismissal ban, and v) more detailed provisions to counter the spread of coronavirus in the workplace as well as to preserve workers’ health and safety.

The Decree of the President of the Council of Ministers of 22 March 2020 sanctioned the almost complete lockdown of the country, by ordering the closure of any non-essential industry and activity until 3 April, later extended until 13 April by Decree of the President of the Council of Ministers of 1 April 2020 and until 4 May by Decree of the President of the Council of Ministers of 10 April 2020.

With Law Decree No. 23 of 8 April 2020 (converted with amendments by Act No. 40 of 5 June 2020), Italian companies were granted financial resources in view of the re-opening (so-called ‘Stage-2’ of the emergency), through a State guarantee on bank loans which hinged upon a set of conditions among which was ‘the commitment of the company to manage the occupational levels through collective agreements’ (Art. 1, par. 2, letter l), Law Decree No. 23 of 8 April 2020).

With the Decree of the President of the Council of Ministers of 24 April 2020, the health and safety provisions embedded in the Tripartite Agreement⁵ of 24 April 2020 were made a condition for the progressive re-opening of the general activities, which commenced on 4 May 2020.

At the beginning of May 2020, the Government started to draft a wide-ranging ‘Relaunch Decree’ to address the economic challenges of ‘Stage 2’ of the emergency. According to Media sources, the two main parties of the Government Coalition initially struggled to find a shared position on the actions to take on the matter of migrant work and this stalled the overall initiative for a while. A compromise was finally reached around mid-May and Law Decree No. 34 of 2020 was passed, coming into force on 19 May 2020. The ‘Relaunch Decree’ entails further measures in the matters of i) wage guarantee funding, ii) parental leave, iii) agile working, iv) a temporary

3. The ‘red zone’ and the ‘yellow zone’ were the two areas (inside the territory of Lombardy and Veneto) where the epidemic initially originated.

4. The ‘orange zone’ was basically an enlarged ‘yellow zone’.

5. In the context of Italian industrial relations, Tripartite Agreements are those entered into by the Social Partners (on both sides) together with the Government.

dismissal ban, v) non-standard work, vi) irregular migrant work legalisation, along with vii) extensive financial and tax incentives aimed at supporting the businesses affected by the lockdown.

2. Income support

From a labour law perspective, the mandatory closure of activities and businesses impacted equally on workers and employers, that were both unable to fulfil their contractual obligations due to the external constraint of the authorities (*factum principis*).⁶ Accordingly, unless the employees were sick or in quarantine⁷ or unless they kept carrying out their working activities through agile working (see *infra*), employers were freed from the obligation to pay wages. This explains why the workers employed by the closed businesses (initially in the ‘red zone’ and later in the whole country) were granted financial aid through the Italian social security system. The legislator opted for an extensive use of the Ordinary Wage Guarantee Fund (*Cassa Integrazione Guadagni Ordinaria*), which was made available through a simplified and quicker procedure.⁸ The maximum duration of financial support due to the Covid-19 emergency was determined to be nine weeks of suspension until August 2020. The latter period was extended to fourteen weeks pursuant to Article 68 Law Decree N. 34 of 2020, which also granted four additional weeks of suspension from 1 September 2020 to 31 October 2020.

The Ordinary Wage Guarantee Fund was also available to companies which previously applied for the Extraordinary Wage Guarantee Fund (*Cassa Integrazione Guadagni Straordinaria*) or for other special allowances (*Fondo di Integrazione Salariale; Assegno di Solidarietà*).⁹

The employers that did not qualify for such treatments were granted access to alternative measures, such as the Derogatory Wage Guarantee Fund (*Cassa Integrazione Guadagni in Deroga*) for the maximum duration of nine weeks as well (extended to 14 weeks pursuant to Article 70 Law Decree N. 34 of 2020, which also granted four additional weeks of suspension from 1 September 2020 to 31 October 2020).¹⁰

Additionally, according to Article 19-bis Law Decree No. 18/2020 (as amended by Act No. 27/2020), the employers that had access to the pandemic-related wage guarantee funds could renew or extend the duration of the fixed-term employment already in place without the objective reasons generally required by the law.¹¹ Furthermore, pursuant to Article 93 Law Decree No. 34/2020, ‘in order to restart the activities in the wake of COVID-19 emergency’ any company was allowed to

6. N. De Marinis, *Obbligazione di lavoro ed emergenza epidemiologica*, A. Pileggi (ed.), *Il Diritto del Lavoro dell'emergenza epidemiologica*, *Lav. Prev. Oggi*, Special Issue, 2020, 23; A. Pileggi, *Una riflessione sul diritto del lavoro alla prova dell'emergenza epidemiologica*, *ibidem*, 6.

7. Pursuant to Art. 26 Law Decree No. 18 of 2020, the period of quarantine and mandatory domestic isolation had to be treated as sickness period for the purposes of social security support: see F. Rondina, *Quarantena, permanenza domiciliare fiduciaria e malattia*, A. Pileggi (ed.), *Il Diritto del Lavoro dell'emergenza epidemiologica*, *Lav. Prev. Oggi*, Special Issue, 2020, 67.

8. M. Marrucci, *Covid-19 e ammortizzatori sociali per il territorio nazionale*. Prime annotazioni, *giustiziacivile.com*, 1 April 2020.

9. M. Faioli, *Tutela del lavoro e emergenza da COVID-19*. COVID-19 e istituti speciali di sostegno al reddito, *Treccani Online*, 31 March 2020; D. Mesiti, *La tutela previdenziale temporanea speciale dei lavoratori nell'emergenza Covid-19*, A. Pileggi (ed.), *Il Diritto del Lavoro dell'emergenza epidemiologica*, *Lav. Prev. Oggi*, Special Issue, 2020, 120 ff.

10. C. De Marco, *La Cassa integrazione guadagni in deroga alla prova del Covid-19*, A. Pileggi (ed.), *Il Diritto del Lavoro dell'emergenza epidemiologica*, *Lav. Prev. Oggi*, Special Issue, 2020, 141.

11. G. Fiaccavento, *Integrazioni salariali speciali: un primo tentativo di universalizzazione delle tutele*, A. Pileggi (ed.), *Il Diritto del Lavoro dell'emergenza epidemiologica*, *Lav. Prev. Oggi*, Special Issue, 2020, 135.

renew or extend the duration of the fixed-term contracts which were in place on 23 February 2020 until 30 August 2020 without the objective reasons generally required by the law.

Finally, Law Decree No. 18/2020 bestowed upon the self-employed workers (Article 27) and seasonal workers (Article 29) the right to a special allowance of EUR 600 for the month of March 2020. The latter measure was later extended to the month of April 2020 under Article 84 Law Decree No. 34/2020, which also granted the same workers a special allowance of EUR 1000 for the month of May 2020 on the condition that they either faced a significant reduction in their income or involuntarily ceased their working activity during the period of the pandemic.

3. Parental leave

As a consequence of the temporary closure of schools, the private and public sector employees and self-employed workers who cared for children under 12 years of age or disabled children were granted, by Article 23 of Law Decree No. 18/2020, the right to a compensatory leave of up to 15 days overall (both parents included).¹² During this period of leave, the workers were entitled to an indemnity of 50% of the monthly wage or income. As an alternative to the leave, the workers could apply for a bonus of EUR 600 (EUR 1000 in the case of those working in the health, rescue and defence sectors) to cover costs of babysitting.

Conversely, the employees and the self-employed workers that cared for children from 12 to 16 years of age were entitled to uncompensated leave for the period of school closures: for the relevant period of time, the workers enjoyed a temporary dismissal ban.¹³

Additionally, the workers who were normally in charge of taking care of disabled family members were entitled to 12 days of paid leave under Art. 24 Law Decree No. 18/2020 (converted with Act No. 27/2020),¹⁴ instead of the three days of paid leave per month granted by Art. 33 of Act No. 104/92¹⁵.

4. Temporary dismissal ban

Pursuant to Article 46 of Law Decree No. 18 of 17 March 2020, the employers were prohibited from initiating a collective layoff procedure for a period of 60 days. Conversely, the pending procedures which were initiated after 23 February 2020 were mandatorily suspended. This means that the pending procedures that were initiated before 23 February 2020 could be concluded and thus the employees could be potentially laid off, despite the complexities of managing the union consultation stage and the administrative stage of the collective redundancy procedure in the lockdown scenario.¹⁶

12. M. Vitaletti, *Equilibrio tra attività lavorativa e vita familiare nell'emergenza Coronavirus*, giustiziavivile.com, 19 March 2020; A. M. Battisti, *La specialità dei congedi e la ordinarietà dei bisogni*, A. Pileggi (ed.), *Il Diritto del Lavoro dell'emergenza epidemiologica*, *Lav. Prev. Oggi*, Special Issue, 2020, 59 ff.

13. P. Passalacqua, *I limiti al licenziamento nel D.L. n. 18 del 2020*, A. Pileggi (ed.), *Il Diritto del Lavoro dell'emergenza epidemiologica*, *Lav. Prev. Oggi*, Special Issue, 2020, 163.

14. At first, the measure was granted for the months of March and April 2020, but it was later extended to the months of May and June 2020 under Article 73 Law Decree No. 34/2020.

15. A. Riccobono, *L'estensione dei permessi retribuiti per l'assistenza ai disabili nel decreto 'Cura Italia'*, giustiziavivile.com, 31 March 2020.

16. F. Chietera, *CODIV 19 e licenziamenti*, A. Pileggi (ed.), *Il Diritto del Lavoro dell'emergenza epidemiologica*, *Lav. Prev. Oggi*, Special Issue, 2020, 149; F. Lombardo, G. Pigliararmi, *La sospensione delle procedure di licenziamento per*

Article 46 of Law Decree No. 18 of 17 March 2020 also banned any individual dismissal on economic grounds for 60 days, regardless of the number of employed workers. On the contrary, disciplinary dismissals (i.e. those due to the employee's breach of contract) were not suspended. Any (either collective or individual) dismissal effected in violation of the temporary ban ought to be considered null and void: in the event, the employee would thus be entitled to reinstatement and back-pay.¹⁷ Notably, the 'Relaunch Decree' extended the temporary dismissal ban until 17 August 2020 (Art. 80 Law Decree No. 34/2020). However, Law Decree No. 34/2020 came into force on (or, more precisely, in the late evening of) 19 May 2020, when the 60-day dismissal ban mandated by Law Decree No. 18 of 17 May 2020 had already elapsed. As a consequence, one might argue that the companies might have enjoyed a temporary waiver from the statutory dismissal ban,¹⁸ save that the dismissed employee was able to demonstrate the employer's intention to circumvent the law (*fraus legis*).

5. Agile working (i.e. teleworking)

With Act No. 81 of 2017, the Italian legislator passed an extensive regulation of so-called 'agile working', in the wake of the previous experiences of 'smart working' regulated by the company-level collective agreements entered into by some of the major Italian businesses.¹⁹ Still, as a product of collective autonomy, smart working was marked by different features in any company. Conversely, agile working was statutorily defined as 'a manner of performance of the employment contract' arranged by the two parties and featuring: i) the absence of rigid working time or working place limitations; ii) the likely use of high-technology devices and tools; and iii) the performance of the working activity both inside and outside the employer's premises (Article 18 Act No. 81 of 2017).

Yet, until the coronavirus epidemic occurred, agile working was not extensively relied upon by private companies (especially in small-to-medium-sized businesses, the use of agile working was extremely rare) and it was generally neglected in the public sector.²⁰ The Covid-19 emergency marked a breakthrough for agile working,²¹ since the core features of this 'type' of work fit this time of shutdown as well as the stage of a re-opening based on social distancing.²² Not by chance, agile working was strongly recommended in the private sector and in the public sector it was even

ragioni economiche ed organizzative durante la fase di emergenza da Covid-19, in *Bollettino ADAPT*, 20 April 2020, n. 16.

17. M. Miscione, *Diritto del lavoro dell'emergenza epidemiologica da Covid-19 e nuova 'questione sociale'*, *Lav. Giur.*, 2020, forthcoming; P. Iervolino, *Sospensione (rectius nullità) dei licenziamenti economici per il COVID – 19 e dubbi di legittimità costituzionale*, *giustiziacivile.com*, 24 April 2020.

18. M. Verzaro, *Alla ricerca della ragionevolezza perduta: il divieto di licenziamento per g.m.o. nelle more della emanazione del decreto rilancio*, *ilgiuslavorista*, 21 May 2020.

19. G. Zilio Grandi & M. Biasi (eds.), *Commentario Breve allo Statuto del Lavoro Autonomo e del Lavoro Agile*, Padua, 2018.

20. M. Russo, *Emergenza lavoro agile nella P.A.*, *giustiziacivile.com*, 17 March 2020. Compare P. Iervolino, *Lo smart working al vaglio del COVID-19: un altro fallimento nel processo di privatizzazione del pubblico impiego*, A. Pileggi (ed.), *Il Diritto del Lavoro dell'emergenza epidemiologica*, *Lav. Prev. Oggi*, Special Issue, 2020, 43.

21. P. Ichino, *Se l'epidemia mette le ali allo smartworking*, *lavoce.info*, 28 February 2020.

22. S. Cairoli, *L'incentivo al lavoro agile nelle misure emergenziali di contrasto al CODIV-19: prime osservazioni*, *giustiziacivile.com*, 18 March 2020.

treated by the legislator as the regular method of conducting work during the epidemic (Article 87, par. 1, Law Decree No. 18/2020).²³

Notably, the legislator authorised – at first, in the ‘red zone’ (Law Decree No. 6 of 23 February 2020), then in the whole country (Decree of the President of the Council of Ministers 1 March 2020 and Decree of the President of the Council of Ministers 4 March 2020) – the use of agile working by the employer even in the absence of the agreement between the employee and the employer which is normally required by Article 18 Act No. 81/2017.

Conversely, disabled workers were granted the right to use agile working, in so far as their tasks were consistent with teleworking, under Art. 39, par. 1, Law Decree No. 18/2020.²⁴ Later, Article 90 Law Decree No. 34 of 2020 bestowed upon one of the working parents of a child under 14 years of age the right to perform agile working until the end of the Covid-19 emergency. Still, the construction of agile working either as a right of either the employer or the employee seemed, to many, to be at odds with the essential bilateral nature of the arrangement pursuant to Act No. 81/2017.²⁵

Lastly, the statutory ‘type’ of agile working entails the interchange of internal and external work (i.e. work performed inside and outside the employer’s premises), whereas the temporary regulation of agile working during the Covid-19 emergency was (reasonably) centered upon the use of ‘mere’ home-working. This is why the commentators related the latter to a simplified form of home working²⁶ or teleworking,²⁷ rather than to agile working in its proper (i.e. legal) meaning.²⁸

6. Health and safety at work

In view of the broadly known features of coronavirus, the rules regarding workplace hygiene and cleaning became immediately pivotal in the policy action. With the Decree of the President of the Council of Ministers Decree of 8 March 2020 and the Decree of the President of the Council of Ministers of 11 March 2020, the Government set out special measures in the areas of distancing, hygiene and cleaning and also recommended the adoption of safety protocols.

More detailed provisions were embedded in the Tripartite Agreement of 14 March 2020, which was entered by the Government and by the Social Partners (on both sides).²⁹ These provisions were subsequently made generally mandatory by Decree of the President of the Council of Ministers of

23. M.C. Cataudella, Lo smart working ‘emergenziale’ nelle Pubbliche Amministrazioni, A. Pileggi (ed.), *Il Diritto del Lavoro dell’emergenza epidemiologica*, Lav. Prev. Oggi, Special Issue, 2020, 35.

24. Compare I. Alvino, È configurabile un diritto del lavoratore al lavoro agile nell’emergenza COVID-19?, *giustiziacivile.com*, 8 April 2020; P. Sordi, Le disposizioni a favore dei lavoratori destinatari delle previsioni della Legge n. 104 del 1992, A. Pileggi (ed.), *Il Diritto del Lavoro dell’emergenza epidemiologica*, Lav. Prev. Oggi, Special Issue, 2020, 55. For a link between the right of disabled workers to agile working in times of emergency and the general duty of the company to grant reasonable accommodations to the disabled employees, see the decision of Trib. Grosseto 23 April 2020, *rivistalabor*, 9 May 2020.

25. C. Macchione, Il lavoro agile ai tempi del Coronavirus, *giustiziacivile.com*, 14 April 2020.

26. S. Bini, Lo smart working al tempo del coronavirus. Brevi osservazioni, in stato di emergenza, *giustiziacivile.com*, 17 March 2020; C. Di Carluccio, Emergenza epidemiologica e lavoro agile, *Riv. It. Dir. Lav.*, 2020, III, 5.

27. M. Menegotto, Coronavirus: trasferte, lavoro agile e telelavoro, *Boll. Adapt*, 17 February 2020, n. 7.

28. L. Foglia, Emergenza lavoro e lavoro in emergenza, A. Pileggi (ed.), *Il Diritto del Lavoro dell’emergenza epidemiologica*, Lav. Prev. Oggi, Special Issue, 2020, 29.

29. S. Cassar, Prime osservazioni in ordine ai protocolli di sicurezza anti-contagio, A. Pileggi (ed.), *Il Diritto del Lavoro dell’emergenza epidemiologica*, Lav. Prev. Oggi, Special Issue, 2020, 75 ff.

22 March 2020 and by Law Decree No. 19/2020.³⁰ The aforementioned rules were also supplemented by the additional protocols agreed at sectoral level (e.g. in the transportation and in the health sectors) and also at company level (e.g. Fiat Chrysler Auto, Fincantieri),³¹ as well as by the subsequent Tripartite Agreement of 24 April 2020 (made generally mandatory by Decree of the President of the Council of Ministers of 26 April 2020).³²

The following measures were deemed necessary to guarantee an adequate level of protection:³³ the maintenance of hygiene in respect of persons, tools and premises; the observation of social distancing of at least one metre; the use of shift rotation; the use of personal devices of protection; the suspension of face-to-face health and safety training; and the imposition of an entrance ban on those with a body temperature higher than 37.5C.³⁴ With Law Decree No. 18/2020, Legislative Decree No. 23/2020 and also, ultimately, Law Decree No. 34/2020, companies were granted tax deductions to ensure the sanitation of the premises and equipment. Accordingly, in so far as the companies carefully implemented all the required health and safety measures, the refusal of the employee to go back to work would qualify as a breach of contract,³⁵ arguably unless the working activity could be equally performed remotely.³⁶ On the one hand, the legislator clearly favoured agile working also in view of attempting to reduce the spread of the virus. On the other hand, the risk of infection is not necessarily (or not entirely) work-related, as anyone might potentially contract the virus while working remotely (e.g. via contact with other family members).³⁷

7. The upsurge in social dialogue during the emergency phase: back to the future of Italian industrial relations?

As previously noted, the Government has recently favoured the method of social dialogue in the adoption of the measures in matter of health and safety in respect of the re-opening stage.

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30. F. Di Noia, COVID-19 e relazioni industriali: il Protocollo del 14 marzo 2020 e oltre, *giustiziacivile.com*, 22 April 2020.
31. S. Bologna, Tutela del lavoro e emergenza da COVID-19. Coronavirus e salute e sicurezza: le risposte degli ordinamenti intersindacale e statale, *Treccani Online*, 31 March 2020.
32. S. Giubboni, Covid-19: obblighi di sicurezza, tutele previdenziali, profili riparatori, WP C.S.D.L.E. 'Massimo D'Antona'.IT, 2020, 417.
33. G. Natullo, Covid-19 e sicurezza sul lavoro: nuovi rischi, vecchie regole?, WP C.S.D.L.E. 'Massimo D'Antona'.IT, 2020, 413, 3-4.
34. On the possible privacy issues related to the mandatory measurement of the body temperature at the workplace entrance see E. Dagnino, La tutela della privacy ai tempi del coronavirus: profili giuslavoristici, *giustiziacivile.com*, 17 March 2020; M.T. Carinci, Back to work al tempo del Coronavirus e obbligo di sicurezza del datore di lavoro. I test sierologici rapidi, WP Adapt, 2020, 3.
35. Compare A. Ingraio, C'è il Covid19, ma non adeguati dispositivi di prevenzione: sciopero o mi astengo?, *giustiziacivile.com*, 18 March 2020; D. Calafiore, La sicurezza nei luoghi di lavoro tra disciplina dell'emergenza da Covid 19 e disciplina ordinaria, *giustiziacivile.com*, 20 April 2020; L.M. Pelusi, Tutela della salute dei lavoratori e COVID-19: una prima lettura critica degli obblighi datoriali, *Dir. sic. lav.*, 2019, 2, 122 ff.; D. Mezzacapo, Misure in tema di distanziamento sociale, dispositivi di protezione individuale e sanificazione dei locali aziendali nell'emergenza COVID-19. Inadempimento datoriale e rifiuto di eseguire la prestazione, A. Pileggi (ed.), *Il Diritto del Lavoro dell'emergenza epidemiologica*, *Lav. Prev. Oggi*, Special Issue, 2020, 95.
36. Compare R. Guariniello, La sicurezza sul lavoro ai tempi del Coronavirus, Milano, 2020, 20.
37. P. Pascucci, Ancora su coronavirus e sicurezza sul lavoro: novità e conferme nello ius superveniens del d.P.C.M. 22 marzo 2020 e soprattutto del d.l. n. 19/2020, *Dir. Sic. Lav.*, 2020, 1, 117 ff.; C. Lazzari, Per un (più) moderno diritto della salute e della sicurezza sul lavoro: primi spunti di riflessione a partire dall'emergenza Covid-19, *Dir. Sic. Lav.*, 2020, 1, 136 ff.

Additionally, the national tripartite agreements were supplemented by plant-level arrangements which were entered into by almost all labour unions. This happened also in companies such as Fiat Chrysler Auto, where in the recent past there had been a considerable friction between unions and management, resulting in an intense industrial conflict and in a lengthy labour dispute.³⁸

The legislator seemed to further bolster social dialogue and employee involvement with a very important provision on the matter of loan conditionality. According to Article 1, par. 2, letter l), Law Decree 8 April 2020, No. 23 (which was not modified by Act No. 40 of 5 June 2020), the company which benefits from the State loan guarantee ‘undertakes to manage the occupational levels by means of collective agreements’. Although the policy message appears very clear, the extent of employee involvement in the management of companies under this provision remains uncertain.³⁹

Considering that employee participation in the management of companies might range from ‘weak’ (information and consultation rights) to ‘strong’ forms of participation (veto and co-determination),⁴⁰ the legislator could clarify which involvement rights the union enjoys pursuant to the provision at stake. If unions were granted a veto (or co-determination) right in *any* decision in matters of hiring and firing, the provision would turn into a very invasive limitation of the managerial prerogative and the employer side would certainly question its conformity with the freedom to conduct a business.⁴¹ If, on the contrary, unions were ‘just’ entitled to sit at the bargaining table to bargain – in good faith – with the employer on the personnel strategies, the employer would still retain the final say in the decision and thus the provision would be a further incentive to the fruitful cooperation of employees in the management of companies envisioned (rather than enshrined) under Article 46 of the Italian Constitution.⁴² In a nutshell, the signs are promising, but it is still too early to foresee a final breakthrough in a saga that dates back to the wake of II World War.⁴³ Yet, beyond the (intentional?) absence of clarity of the recent emergency policy, it is hard to doubt that the future of employee involvement in Italy will largely depend upon the economic and social structure of the country in the aftermath of the pandemic.

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38. M. Biasi, Statutory Employee Representation in Italian and US Workplaces: A Comparative Analysis of the Fiat/Chrysler Case, *Labor Law Journal*, 2015, 4, 233 ff.

39. A. Preteroti, A. Delogu, I licenziamenti collettivi e individuali al tempo del coronavirus, A. Pileggi (ed.), *Il Diritto del Lavoro dell'emergenza epidemiologica*, *Lav. Prev. Oggi*, Special Issue, 2020, 175.

40. M Biasi, On the Uses and Misuses of Worker Participation: Different Forms for Different Aims of Employee Involvement, *The International Journal of Comparative Labour Law and Industrial Relations*, 2014, 30, 459 ff.

41. Compare A. Sitzia, G. De Luca, Cosa si intende per ‘impegno a gestire i livelli occupazionali mediante accordi sindacali’ ai fini del ‘decreto liquidità’ (d.l. 23/2020)?, *Boll. ADAPT*, 27 April 2020.

42. Pursuant to Article 46 of the Italian Constitution, ‘with the aim of improving the economic and social conditions of the workforce, the employees have the right to cooperate in the management of companies, in accordance with the law’.

43. M. Biasi, Participación de los trabajadores en Italia: por fin un avance definitivo de una saga interminable?, *Documentación Laboral*, 2017, 109, 1, 81-87, <https://dx.doi.org/10.2139/ssrn.3135856>.