

# From Fixed to Flexible? Wage Coordination and the Collective Bargaining System in Italy

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*This article analyses the rules on wage coordination and their effectiveness in the Italian two-tier bargaining system. It seeks to cast light on bargaining coordination by starting from the analysis of collective agreements, rather than focusing exclusively on normative and institutional aspects of wage bargaining. Accordingly, the study examines a dataset of 498 company-level collective agreements concluded between 2012–2015 in three sectors – metalworking, food, banking and finance – to analyse wage developments in company-level bargaining. The study considers the extent to which local wage negotiations are consistent with the rules on wage bargaining coordination laid down in economy-wide agreements and national collective labour agreements. Wage coordination rules are generally respected, though a significant number of company-level agreements still provide fixed-rate pay rises in breach of the rule that wage increases at company level should be linked to productivity and other factors relating to the workers' and/or the firm's economic performance. Although the violation of wage bargaining rules between national agreements and company-level collective agreements is in line with the favourability principle, it is argued that local negotiations on fixed-rate pay rises could be regarded as a form of uncoordinated decentralization, diminishing the effectiveness of horizontal coordination policies and the normative role of the social partners.*

## 1 INTRODUCTION

In their analysis of the effort to redesign the Italian industrial relations framework in the early 1990s, Locke and Baccaro argued that the reform could be interpreted in two contrasting ways – i.e. either in terms of continuity or as a fundamental break with 'Italy's never-ending, ad hoc and sometimes inconsistent institutional reform process'.<sup>1</sup> They concluded that only time would tell between these two

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<sup>1</sup> L. Baccaro & R. M. Locke, *Learning from Past Mistakes? Recent Reforms in Italian Industrial Relations*, 27 (4) *Indus. Rel. J.* 300 (1996).

interpretations.<sup>2</sup> In a similar vein, Thelen observed that the trajectory of change of Italian industrial relations in 1990s seemed to parallel developments in the coordinated market economies (CMEs).<sup>3</sup>

Wage bargaining coordination was the cornerstone of the Protocol of 23 July 1993, which sought to restructure collective bargaining in order to make it more rational and functional to economic policies. According to the Protocol, wage increases were to be set at industry level in line with the rate of inflation, and company-level or local increases were to be linked to productivity and other factors related to the performance of the workers, and/or the firm. Originally aimed at controlling inflation through wage moderation,<sup>4</sup> this policy was confirmed by the national framework agreement of 22 January 2009<sup>5</sup> aimed at aligning wages to productivity.<sup>6</sup> As reported by Eurofound, in Italy:

both trade unions and employer organisations tend to have a positive stance towards the increased adoption of variable pay. In recent years, the debate has mainly focused on the relationship between salaries and productivity, in view of the continuing stagnation of productivity in Italian companies.<sup>7</sup>

Accordingly the 2009 agreement gave decentralized bargaining ‘the essential, if not exclusive, task of connecting remuneration to productivity and profits, measured variably’.<sup>8</sup> In contrast, the only competence entrusted to the national agreement was that of ‘defending the overall purchasing power of remuneration’.<sup>9</sup>

<sup>2</sup> Similar views are expressed in: L. Baccaro & R. M. Locke, *The End of Solidarity? The decline of Egalitarian Wage Policies in Italy and Sweden*, 4(3) Eur. J. Indus. Rel. 283–308 (1998).

<sup>3</sup> K. Thelen, *Varieties of Labor Politics in the Developed Democracies*, in *Varieties of Capitalism. The Institutional Foundations of Comparative Advantage* (P. A. Hall & D. Soskice eds, Oxford: Oxford University Press 2001).

<sup>4</sup> T. Treu, *L'accordo del 23 luglio 1993: assetto contrattuale e struttura della retribuzione*, 1 Rivista giuridica del lavoro 215 (1993); L. Tronti, *La nuova regolamentazione della retribuzione*, 3 DLRI (1996); L. Zoppoli, *Retribuzione, politiche dei redditi e tecniche regolative*, 3 DLRI 357–396 (1996).

<sup>5</sup> R. Pedersini, *CGIL Refuses to Sign Agreement on Collective Bargaining Reform*, EurWORK (29 Apr. 2009); L. Bellardi, *L'Accordo quadro e la sua applicazione nel settore privato: un modello contrattuale 'comune'?*, in *Nuove regole per la rappresentanza sindacale. Ricordando Massimo D'Antona* (A. Andreoni ed., Roma: Ediesse 2010); L. Bellardi, *L'attuazione dell'Accordo quadro: pluralità dei sistemi contrattuali ed eterogenesi dei fini. Alcune note di sintesi*, 2 DLRI 387–399 (2010b). G. Ferraro, *Retribuzione e assetto della contrattazione collettiva*, 4 Rivista italiana di diritto del lavoro, I, 693–718 (2010); R. Voza, *Effettività e competenze della contrattazione decentrata nel lavoro privato alla luce degli accordi del 2009*, DLRI 126, 361–377 (2010).

<sup>6</sup> A. Lassandari, *Contrattazione collettiva e produttività: cronaca di evocazioni (ripetute) e di incontri (mancati)*, 2 Rivista giuridica del lavoro 299–334 (2009); T. Treu, *Le forme retributive incentivanti*, 4 Rivista italiana di diritto del lavoro 637–688 (2010).

<sup>7</sup> Eurofound, *Changes in Remuneration and Reward Systems*, Dublin 53 (2016).

<sup>8</sup> T. Treu, *Le forme retributive incentivanti*, 4 Rivista italiana di diritto del lavoro 367 (2010).

<sup>9</sup> *Ibid.*

Economic objectives were not the only reason for the decision to exclude fixed-rate pay increases from company-level bargaining. Confindustria and the other employers' organizations in Italy committed themselves to a multi-employer, two-tier bargaining system with a twofold objective, reflecting industrial relations theory: safeguarding *market control*, i.e. keeping fixed wages out of competition;<sup>10</sup> and safeguarding *managerial control*, i.e. ensuring certainty and governability of labour standards agreed under national collective labour agreements.<sup>11</sup> This introduced the principle of *delegation* (of competences from national agreements to decentralized bargaining) and of *ne bis in idem*<sup>12</sup> as norms of coordination between negotiating levels. According to these principles, once a decision to increase fixed minimum wages has been reached at the national level, it cannot be subjected to renegotiation at the decentralized level. As a result, management and workers' representatives at company level are only entitled to negotiate on variable pay linked to the firm's productivity and profits, or to worker performance.

Against this background, the idea is that, once the social partners at national level have agreed on a given economic policy, whatever its provisions, the local actors are required to comply with it. Otherwise coordination fails, the normative role of the national social partners is undermined and the social partners lose credibility. The aim of this article is to examine how and why wage coordination rules, reaffirmed in the 2011, 2013 and 2014 collective bargaining reforms,<sup>13</sup> have remained partially ineffective.

The article seeks to contribute to the discussion on bargaining coordination in Italy by examining collective agreements, rather than focusing exclusively on normative aspects relating to wage bargaining. Accordingly, the study examines a dataset of 498 company-level collective agreements concluded between 2012 and 2015 in three sectors – metalworking, food, banking and finance – to analyse wage developments in company-level bargaining and cast light on how and why local negotiations on pay increases are consistent with wage bargaining coordination rules.

<sup>10</sup> M. D. Flanders, *The Tradition of Voluntarism*, Brit. J. Indus. Rel. 355 (1974); K. Sisson, *The Management of Collective Bargaining* 5 (Oxford, Blackwell 1987).

<sup>11</sup> M. D. Flanders, *The Tradition of Voluntarism*, Brit. J. Indus. Rel. 356 (1974); K. Sisson, *The Management of Collective Bargaining* 5 (Oxford, Blackwell 1987).

<sup>12</sup> The *ne bis in idem* principle derives from criminal law: according to this principle, a person cannot be prosecuted more than once for the same offence. In the common law countries refer the principle is that of double jeopardy.

<sup>13</sup> R. Pedersini, *Intersectoral Agreement on Representativeness Heals Rift*, EurWORK (8 Jan. 2012); R. Pedersini, *Intersectoral Agreement on Representation and Representativeness*, EurWORK (24 June 2013); R. Pedersini & L. Rustico, *Milestone Agreement Signed on Union Representativeness and Representation*, EurWORK (29 May 2014).

## 2 THEORETICAL FRAMEWORK

Centralization vs decentralization in collective bargaining has always been an issue of considerable interest to industrial relations scholars,<sup>14</sup> especially in two-tier bargaining systems in which ‘multi-employer agreements determining minimum (and sometimes maximum) pay levels are supplemented by single-employer bargaining involving, inter alia, pay levels’.<sup>15</sup> In 1995 a seminal paper by Traxler shifted the focus of the discussion from the quantitative to the qualitative dimension of decentralization of collective bargaining, introducing the concept of what he referred to as ‘organized’ (rather than ‘disorganized’) decentralization.<sup>16</sup> This highlighted certain issues already debated by legal scholars: the conflict between collective agreements at different levels,<sup>17</sup> especially in contexts without legislative regulation of industrial relations practices,<sup>18</sup> and the coordination of collective bargaining.<sup>19</sup>

In the following years, the notion of (dis)organized decentralization was integrated with the concept of the governability of collective bargaining and the focus shifted from the goals to the means of coordination. While bargaining coordination is defined as the integration or synchronization of wage policies of distinct bargaining units<sup>20</sup> or ‘the degree to which minor players deliberately follow along with what major players decide’,<sup>21</sup> the governability of collective bargaining refers to the effect of statutory provisions for the legal enforceability of collective agreements and the ‘peace obligation’ or ban on industrial action during their period of validity.<sup>22</sup> The governability of collective bargaining may be said to be:

<sup>14</sup> T. Treu, *Centralisation-Decentralisation in Collective Bargaining*, 2 Int’l J. Comp. Lab. L. & Indus. Rel. 41–65 (1985).

<sup>15</sup> T. Boeri, *Two-Tier Bargaining*, IZA Discussion Paper No. 8358/2014, 2.

<sup>16</sup> F. Traxler, *Two Logics of Collective Action in Industrial Relations?*, in *Organised Industrial Relations in Europe: What Future?* 23–44 (C. Crouch & F. Traxler ed., Aldershot: Avebury 1995).

<sup>17</sup> G. Giugni, *Recent Developments in Collective Bargaining in Italy*, 91(4) Int’l L. Rev., 273–291 (1965); N. Aliprantis, *Conflicts Between Collective Agreements at Different Levels*, 2 Int’l J. Comp. Lab. L. & Indus. Rel. 109–142 (1985).

<sup>18</sup> O. Kahn-Freund, *Intergroup Conflicts and Their Settlement*, 5(3) Brit. J. Soc. 193–227 (1954); M. D. Flanders, *The Tradition of Voluntarism*, Brit. J. Indus. Rel. 12 (1974); Lord Wedderburn & S. Sciarra, *Collective Bargaining as Agreement and as Law: Neo-Contractualist and Neo-Corporative Tendencies of our Age, in Law in the Making 186–237* (A. Pizzorusso ed., Springer 1988).

<sup>19</sup> G. Giugni, *Articulated Bargaining in Italy*, in *Collective Bargaining* 267 et seq. (A. Flanders ed., Penguin Modern Management 1969); O. Kahn-Freund, *Labour and the Law* (Stevens & Sons 1972).

<sup>20</sup> D. W. Soskice, *Wage Determination: The Changing Role of Institutions in Advanced Industrialised Countries*, 6 Oxford Rev. Econ. Pol’y 36–61 (1990); F. Traxler & B. Brandl, *Collective Bargaining, Inter-Sectoral Heterogeneity and Competitiveness: A Cross-National Comparison of Macroeconomic Performance*, 50(1) Brit. J. Indus. Rel. 73–98 (2012).

<sup>21</sup> L. Kenworthy, *Wage-Setting Institutions: A Survey and Assessment*, 54 World Pol. 57–98, 75 (2001).

<sup>22</sup> F. Traxler & B. Kittel, *The Bargaining System and Performance: A Comparison of 18 OECD Countries*, 33 Comp. Pol. Stud. 1154–1190 (2000).

not simply a hierarchical mechanism that transmits higher-level wage agreements down to the rank and file. Instead of imposing substantive agreements, bargaining governability constitutes certain rules of the game that leave the shopfloor as much freedom as is compatible with higher-level wage coordination.<sup>23</sup>

Rooted in sociological and legal theory, the discourse of collective bargaining governability became central to the debate on the effects of collective bargaining on economic performance. Regardless of the degree of (de)centralization, that is essential to corporatist and neo-corporatist theories of collective bargaining,<sup>24</sup> the empirical evidence shows that the best performance tends to be associated with a high level of collective bargaining governability.<sup>25</sup>

Coordination between bargaining levels is widely accepted to be crucial to ensuring the effectiveness of collective bargaining. Conversely, what Traxler refers to as ‘disorganization’ between bargaining levels undermines the capacity of the social partners to play a self-regulatory role and to conclude effective agreements. Coordinated bargaining ‘acts as means of governance by preventing the distinct bargaining units of, either the trade unions and the employers, from being played off against one another’.<sup>26</sup> For labour, this means the ability to ‘contain the risk that competition in the labour market prompts employees to undercut existing collective agreements and thus to unleash a “race to the bottom”’.<sup>27</sup> For employers, bargaining coordination is intended to protect them ‘from “whipsawing” union tactics aimed at confronting the employers individually or group by group’.<sup>28</sup> To a certain extent, lack of coordination between bargaining levels reduces the interest of the company in continuing to take part in multi-employer bargaining.

Coordination in multi-employer bargaining involves both a horizontal and a vertical dimension.<sup>29</sup> The horizontal dimension refers to coordination between bargaining units at the same level, but independent of one another. The vertical dimension refers to coordination between bargaining units at different levels where there is a dependency relationship and bargaining outcomes at the subordinate level

<sup>23</sup> B. Kittel, *How Bargaining Mediates Wage Determination: An Exploration of the Parameters of Wage Functions in a Pooled Time-Series Cross-Section Framework*, MPIfG Discussion Paper 01/3, 15.

<sup>24</sup> T. S. Aidt & Z. Tzannatos, *Trade Unions, Collective Bargaining and Macroeconomic Performance*, 39(4) *Indus. Rel. J.* (2008).

<sup>25</sup> Traxler & Kittel, *supra* n. 22, at 1154–1190; F. Traxler, S. Blaschke & B. Kittel, *National Labour Relations in Internationalized Markets* (Oxford: Oxford University Press 2001); F. Traxler, *Bargaining (De)centralization, Macroeconomic Performance and Control over the Employment Relationship*, 41(1) *Brit. J. Indus. Rel.* 1–27 (2003); F. Traxler & B. Brandl, *The Economic Effects of Collective Bargaining Coverage: A Cross-National Analysis* (GURN 2009); N. Braakmann & B. Brandl, *The Efficacy of Hybrid Collective Bargaining Systems: An Analysis of the Impact of Collective Bargaining on Company Performance in Europe*, MPRA Paper No. 70025/2016.

<sup>26</sup> V. Pulignano, *Trade Unions and the Coordination of Collective Bargaining in Europe*, 2010, online paper, § 3.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> F. Traxler, *The Contingency Thesis of Collective Bargaining Institutions*, in CESifo DICE Report 2/2003.

conform to the principles or parameters agreed at a higher level.<sup>30</sup> Effective coordination requires resolving the problem of both horizontal and vertical coordination. Whether the attempts at horizontal coordination are effective ‘depends on the extent to which the bargaining systems are governable in terms of vertical coordination’.<sup>31</sup> Coordination efforts launched by trade union confederations and employers’ associations cannot work without the support of the local actors and members.

Visser has argued that the organization of employers across firms, within sectors or regions, is a necessary condition for multi-employer bargaining. Associations need to have ‘the authority over and the mandate from member firms to negotiate an agreement with the union(s) and bind its member firms to its terms’.<sup>32</sup>

However, Traxler has argued that in the absence of statutory provisions to provide collective agreements with legal enforceability, the vertical problem of coordination remains: any local collective agreement at local level can bypass higher-level agreements. As a result, the vertical problem is even more important than the horizontal problem: ‘when experiments with income policy and “pacts” on wage moderation and employment fail, they usually do so due to insurmountable problems of vertical co-operation manifest in excessive wage drift, wildcat strikes and other forms of non-compliance’.<sup>33</sup>

In the view of Regalia and Regini, this problem has historically been noticeable in the Italian industrial relations system, which is marked by a dual tension:<sup>34</sup> between the official positions of the actors at the central level and their actions at local level; and between the voluntary nature and limited formalization of relations between labour market organizations and their institutional involvement in the administration of social policies. A seminal study by Locke examined the first tension in terms of localism and particularism, arguing that the Italian model of capitalism is based on local socio-political networks and different cultural environments resulting in a strong and direct influence on industrial relations and collective bargaining.<sup>35</sup> Even some important provisions of the Workers’ Statute (Act no. 300/1970), including those relating to individual dismissals, are not applied in a coherent manner, with a variety of rulings handed down by the courts in different regions.

<sup>30</sup> P. Marginson & K. Sisson, *Co-ordinated Bargaining: A Process for Our Times?*, 40(2) *Brit. J. Indus. Rel.* 197–220 (2002).

<sup>31</sup> Kittel, *supra* n. 23, at 14.

<sup>32</sup> J. Visser, *What Happened to Collective Bargaining During the Great Recession?*, 5(9) *IZA J. Lab. Pol’y* (2016).

<sup>33</sup> F. Traxler, *The Contingency Thesis of Collective Bargaining Institutions*, in CESifo DICE Report 2/2003, 35.

<sup>34</sup> I. Regalia & M. Regini, *Between Voluntarism and Institutionalization: Industrial Relations and Human Resources Practices in Italy*, in *Employment Relations in a Changing World Economy* 131–163 (Locke R, Kochan T & Piore M eds, Cambridge, MA: MIT Press 1998).

<sup>35</sup> R. M. Locke, *Remaking the Italian Economy, Ithaca* (New York: Cornell University Press 1995).

In legal terms, Caruso describes the second tension by referring to the asymmetry between an excess of functions that the law entrusts to collective bargaining and the lack of statutory regulation of trade unions representativeness, along with the lack of the *erga omnes* effect in collective bargaining, i.e. the extension of the collective agreement to all the workers and companies operating within its scope.<sup>36</sup>

Most of the recent literature on this issue has focused on the failure of company-level bargaining to comply with the standards laid down in national agreements in the form of concession bargaining,<sup>37</sup> the adoption of derogation clauses<sup>38</sup> and the consequent reconfiguration of the principle of favourability,<sup>39</sup> the principle by which lower-level bargaining can modify what is agreed at the higher levels only by providing better conditions for workers.

It appears that limited attention has been paid to violations of bargaining coordination rules that comply with the favourability principle. With regard to the Italian method of coordinating multi-employer bargaining some forms of disorganization of bargaining have little to do with the discourse of better vs worse working conditions negotiated at company level. Marginson refers to the Italian approach to coordination as follows:

the principle of universal applicability is partially breached under two-tier bargaining arrangements which entail a demarcation of competence of the sector and company levels according to issue, as in Italy.<sup>40</sup>

A lack of coordination in bargaining may be said to occur when this demarcation of competence is breached. In Italy, this is particularly strong when it comes to wage bargaining coordination: national multi-employer agreements clearly

<sup>36</sup> S. B. Caruso, *Democrazia sindacale e rappresentatività – Verso un insolito (evitabile?) destino: la postdemocrazia sindacale*, 1 Quaderni di rassegna sindacale 75 et seq. (2005); B. Caruso, *Rappresentanza sindacale e contrattazione collettiva sulla flessibilità*, in *Politiche di flessibilità e mutamenti del diritto del lavoro. Italia e Spagna*, ESI, 170 (M. D'Antona ed., 1990).

<sup>37</sup> R. B. McKersie & P. Cappelli, *Concession Bargaining*, MIT Working Paper, 1322–1382 (1982); P. Cappelli, *Plant-Level Concession Bargaining*, 39(1) ILRR 90–104 (1985); W. K. Roche, P. Teague & A. Coughlan, *Employers, Trade Unions and Concession Bargaining in the Irish Recession*, 36(4) Econ. & Indus. Democracy 653–676 (2015).

<sup>38</sup> M. Keune, *Decentralising Wage Setting in Times of Crisis? The Regulation and Use of Wage-Related Derogation Clauses in Seven European Countries*, 2 Eur. Lab. L.J. (2011); T. Haipeter, *Works Councils as Actors in Collective Bargaining: Derogations and the Development of Codetermination in the German Chemical and Metalworking Industries*, 32(4) Econ. & Indus. Democracy 679–695 (2011); T. Haipeter, *'Unbound' Employers' Associations and Derogation: Erosion and Renewal of Collective Bargaining in the German Metalworking Industry*, 42(2) Indus. Rel. J. 174–194 (2011).

<sup>39</sup> S. Deakin & A. Koukiadaki, *The Sovereign Debt Crisis and the Evolution of Labour Law in Europe*, in *Resocialising Europe in a Time of Crisis* 163–188 (N. Countouris & M. Freedland eds, Cambridge: Cambridge University Press 2013); P. Marginson, *Coordinated Bargaining in Europe: From Incremental Corrosion to Frontal Assault?*, 21(2) Eur. J. Indus. Rel. 97–114 (2015). In Italy, see the articles collected in: *Contrattazione in deroga* (F. Carinci ed., Milano, IPSOA 2012). See also: A. Perulli, *La contrattazione collettiva di 'proximità'. Teoria, comparazione e prassi*, 4 Rivista italiana di diritto del lavoro 919–960 (2013); L. Imberti, *A proposito dell'articolo 8 della legge n. 148/2011: le deroghe si fanno, ma non si dicono*, 138 DLRI 255–272 (2013).

<sup>40</sup> Marginson, *supra* n. 39, at 97–114.

distinguish between two levels of bargaining: on the one hand, fixed-wage increases negotiated in national agreements in line with inflation, and, on the other hand, variable pay linked to company or individual performances based on objective parameters laid down in company-level agreements. This kind of wage coordination is not subject to derogation clauses.<sup>41</sup> In Italy neither statutory nor collectively agreed derogation clauses deal with wage issues.<sup>42</sup> This has two implications: concession agreements aimed at undercutting sectoral pay standards at company level – i.e. providing conditions that are worse than national agreement wage standards – are forbidden; formally company-level agreements are not supposed to concede fixed wage increases.

### 3 METHODOLOGY

This study is based on primary and secondary sources of data. Section 4 provides an overview of the historical development of wage bargaining at company level in Italy, with a focus on how wage increases are negotiated. The Italian literature on this specific issue is fragmentary because, in general, Italian socio-economic and legal research does not deal with the contents of company-level collective agreements: the macro-economic and institutional approach tends to prevail in the analysis of collective bargaining. It is also due to the lack of official/public statistics in Italy concerning collective bargaining provisions, especially at company level. As a result, it was decided to use secondary sources to provide a historical overview of the characteristics and dissemination of fixed-rate wage increases in company-level agreements from the origins of coordinated bargaining in Italy. This underlines the historical importance of how and why in the Protocol of 1993 the social partners excluded fixed-rate increases from company-level bargaining.

Section 5 examines the quantitative dimension and qualitative aspects of fixed-rate wage increases in company-level agreements. For this purpose the ADAPT dataset of company-level agreements was used. At the time of the study, the dataset consisted of 915 company-level collective agreements concluded in Italy in the period 2012–2015. Each collective agreement was coded, with a code assigned to each matter negotiated in the company-level collective agreements. A system of filters was put in place to make it possible to search for one or more codes. It was thus possible to ascertain the number of agreements in the dataset dealing with a specific matter. The company-level agreements were also accessible as pdf files.

The company-level collective agreements were examined using the search term ‘fixed-rate wage increases’ and ‘performance-related pay increases’. The study

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<sup>41</sup> *Supra* n. 38.

<sup>42</sup> Boeri, *supra* n. 15, IZA Discussion Paper No. 8358/2014.



was then limited to three sectors: metalworking, food, and banking and finance. This is because these three sectors are those with more than 100 agreements in the dataset, meaning that the quantitative data is likely to be more reliable. It is not possible to establish the representativeness of the dataset, because in Italy there are no official statistics on the number of firms concluding company-level collective agreements, or the number of company-level collective agreements in force in the period covered by the dataset.<sup>43</sup> As a result, it was not possible to compare the ADAPT dataset with official statistics, though coverage of company-level bargaining is generally assumed to be limited in Italy.

With reference to the CNEL dataset for the period 1998–2006, Boeri recently argued that ‘the percentage of firms doing two-tier bargaining in Italy is steadily declining over time as more and more employers prefer to stick to the industry agreements without further bargaining at the plant-level’.<sup>44</sup> The only nationwide information on company-level bargaining coverage is provided by the Fondazione Giuseppe Di Vittorio,<sup>45</sup> which recently elaborated the ISTAT-CNEL panel data. Accordingly, the percentage of businesses (considering only those with at least ten employees) covered by collective bargaining per employee category (2012–2013) is estimated as follows: 8.8% (10–49 employees); 31.9% (50–199); 56.6% (200–499); 65.5% (500+). However, this survey does not provide access to the company-level agreements since it is based on questionnaires submitted to a panel of companies.

In any case, the quantitative dimension of this research is mainly descriptive and indicative: it only serves as a support for the legal/institutional analysis conducted to answer the research questions. This is consistent with the methodological approach according to which research into collective bargaining should take account of the empirical analysis of collective agreements, aimed at identifying the configuration of a normative case, from social and contractual relationships.<sup>46</sup> The content analysis of collective agreements is also coherent with the idea that ‘a comprehensive discussion of centralised vs decentralised systems needs to go beyond the bargaining levels as the sole variable of interest, and instead address the full complexity of bargaining structure’.<sup>47</sup> Accordingly, the company-level collective agreement were examined to identify the legal characteristics of the

<sup>43</sup> More information about the characteristics of the data set is provided in ADAPT, *La contrattazione collettiva in Italia (2015). II Rapporto ADAPT XVII* (ADAPT University Press 2016), Executive summary; ADAPT, *La contrattazione collettiva in Italia (2016). III Rapporto ADAPT XIII* (ADAPT University Press 2017) Executive summary.

<sup>44</sup> Boeri, *supra* n. 15, IZA Discussion Paper No. 8358/2014, 4.

<sup>45</sup> *Contrattazione integrativa e retribuzioni nel settore privato* (L. Birindelli ed., Rome: Fondazione Giuseppe Di Vittorio 2016).

<sup>46</sup> H. Sinzheimer, *Der Korporative Arbeitsnormenvertrag* (Duncker & Humblot 1907–1908); G. Giugni, *Introduzione allo studio dell'autonomia collettiva* (Giuffrè 1960).

<sup>47</sup> OECD, *Employment Outlook 2017* 147 (2017).

different types of fixed-rate wage increases in the analysis and evaluate their consistency with wage coordination rules.

#### 4 FIXED-RATE VS FLEXIBLE WAGES IN COMPANY-LEVEL BARGAINING IN ITALY: HISTORICAL OVERVIEW

The most basic criterion for pay bargaining within companies is the fixed-rate payment. Giugni attributes the origin of this practice to the *una tantum* (one-off payment) paid following labour unrest or by way of compensation for strike days, ‘in order to contain, at least temporarily, the pressure from workers without assuming any future commitments’.<sup>48</sup> From the early days of coordinated bargaining in Italy,<sup>49</sup> the conversion of wage rises not based on objective parameters was negotiated, on the understanding that the unions had ‘the power to request the elimination of “any anti-union or anti-strike features”’.<sup>50</sup> Subsequently, moves towards flexible pay were limited: it was a continuous struggle to connect wage rises to ‘objective parameters’ linked to company productivity and to [make them] function as genuinely ‘variable’ wage sums,<sup>51</sup> and they remain confined ‘to the remote area of additional and supplementary pay’.<sup>52</sup> It is only since the late 1980s that, following the phasing out of piece-work as a ‘flexible’ way of remunerating work,<sup>53</sup> there has been a ‘return to incentives’<sup>54</sup> in a number of sectors,<sup>55</sup> particularly in the form of bonuses to reduce absenteeism.<sup>56</sup> However, empirical research conducted in 1984–1987 showed that the percentage of fixed-rate wage increases and variable pay was largely in favour of the former: 69.2% vs 23.5%.<sup>57</sup> Legal research on the relationship between wages and productivity also provides confirmation of this picture.<sup>58</sup>

<sup>48</sup> G. Giugni, *L'evoluzione della contrattazione collettiva nelle industrie siderurgica e mineraria (1953–1963)* 73 (Milan: Giuffrè 1964).

<sup>49</sup> G. Giugni, *Bargaining Units and Labor Organization in Italy*, 10(3) ILRR 424–439 (1957).

<sup>50</sup> Giugni, *supra* n. 48, at 73.

<sup>51</sup> A. Alaimo, *Sistemi partecipativi e incentivanti di retribuzione: l'evoluzione storica in Italia*, 1 DRI 14 (1991).

<sup>52</sup> M. D'Antona & R. De Luca Tamajo, *La retribuzione ad incentivi: introduzione*, 1 DRI 6 (1991).

<sup>53</sup> G. Giugni, *Organizzazione dell'impresa e evoluzione dei rapporti giuridici. La retribuzione a cottimo*, 1 Rivista italiana di diritto del lavoro 3–85 (1968); M. Roccella, *I salari*, Bologna, Il Mulino (1986). F. Carinci, B. Caruso & C. Zoli, *La struttura della retribuzione e della contrattazione: il caso italiano*, in *Retribuzione, costo del lavoro, livelli di contrattazione. Relazioni sindacali e politiche dei redditi* 45–101 (R. Brunetta ed., Rome, Etas 1992).

<sup>54</sup> *Il ritorno degli incentivi*, (G. P. Cella ed., Milan, Franco Angeli 1989).

<sup>55</sup> A. Pandolfo, *La contrattazione sugli incentivi nel settore metalmeccanico*, 1 DRI 61–66 (1991); A. Viscomi, *La contrattazione sugli incentivi nel settore della grande distribuzione commerciale*, 1 DRI 67–72 (1991); I. Regalia, *Sugli incentivi nel terziario avanzato. Note in margine ad una ricerca*, 1 DRI 73–79 (1991); E. Balletti, *Gli accordi collettivi di produttività nel settore del credito*, 1 DRI 81–88 (1991).

<sup>56</sup> F. Carinci, *Flessibilità, retribuzione flessibile e relazioni collettive*, 2 *Diritto ed economia* 581–605 (1989).

<sup>57</sup> A. Ceci, *Salario*, in *La contrattazione collettiva nelle aziende industriali in Italia*, Franco Angeli 172 (G. Baglioni & R. Milani ed., 1990).

<sup>58</sup> R. Pessi, *Dinamiche salariali e produttività*, in *Retribuzione e redditività: Italia, Europa e Giappone a confronto* 13 (M. Biagi ed., Rimini, Maggioli 1990).

While the tension between the management preference for wage flexibility and the unions' preference for standard pay was a key driver in the history of pay structures in Italy from the end of the Second World War until the 1990s,<sup>59</sup> the practice of converting fixed-rate pay into variable wage elements was institutionalized in the Protocol of 23 July 1993.<sup>60</sup> Noting that the coordination of collective bargaining involves a two-way process between higher (sector and multisector) and lower (company and workplace) levels, Marginson notes that:

Examples of 'pull-down' developments include Italy's 1993 cross-sector agreement adopting the two-tier bargaining structure, where the competence allocated to the company level to determine that part of wage increase which related to performance consolidated already existing practice.<sup>61</sup>

In 1997 the Commission of Experts set up by the government and the social partners to evaluate the effects of the Protocol observed that:

Although decentralized collective bargaining (with agreements concluded at company or territorial level) was expected to increase the variability of wages, in order to foster flexibility, it has been both qualitatively and quantitatively insufficient and unsatisfactory [ ... ]. Decentralized bargaining has been largely characterized by traditional wage increases, not linked to any objective parameters of productivity and profits.<sup>62</sup>

Similar conclusions were reached by other economic and legal researchers analysing wage bargaining developments in the early 2000s.<sup>63</sup>

In 2009 the Government started to promote the decentralization of collective bargaining through legislative measures. Every year since then, governments have approved exemptions on income tax and social security contributions for additional wages linked to productivity, such as incentive/performance-related pay. Aimed at promoting decentralized bargaining, these fiscal measures only apply to

<sup>59</sup> P. Ichino, *Il contratto di lavoro, Vol. II, Soggetti e oggetto, sicurezza del lavoro, retribuzione, qualità, luogo e tempo della prestazione*, Giuffrè, § 241 (2003).

<sup>60</sup> M. D'Antona, *Il protocollo sul costo del lavoro e l'autunno freddo dell'occupazione*, 41 *Rivista italiana di diritto del lavoro* 411–428 (1993); M. Roccella, *Azione sindacale e politica dei redditi: appunti sull'accordo triangolare del 23 luglio 1993*, 1 *Rivista giuridica del lavoro* 263 (1993). L. Bellardi, *Concertazione e contrattazione. Soggetti, poteri e dinamiche regolative* (Bari: Cacucci 1999); T. Treu, *L'accordo del 23 luglio 1993: assetto contrattuale e struttura della retribuzione*, 1 *Rivista giuridica del lavoro* 215 (1993). G. Zilio grandi, *La retribuzione. Fonti, struttura, funzioni* (Napoli, Jovene 1996); L. Zoppoli, *supra* n. 4, at 357–396; V. Leccese, *Gli assetti contrattuali delineati dal Protocollo del luglio 1993 e i rapporti tra contratti collettivi di diverso livello*, 4 *Argomenti di diritto del lavoro* 265–280 (1997).

<sup>61</sup> Marginson, *supra* n. 39, at 97–114.

<sup>62</sup> *Relazione finale della Commissione per la verifica del Protocollo del 23 luglio 1993*.

<sup>63</sup> M. Napoli, *La riforma della struttura della contrattazione collettiva*, *Diritto delle relazioni industriali* 3 (2003); C. Dell'Aringa, *Salario minimo e contrattazione collettiva*, in *Rivista di politica economica* (Luglio–Agosto 2006); L. Tronti, *The Italian Productivity Slow-down: The Role of the Bargaining Model*, 31(7) *Int'l J. Manpower* 770–792 (2010).

variable performance-related pay resulting from decentralized collective agreements at local, company or plant level, and they do not apply to fixed-rate wage increases. However, these measures have been of limited effectiveness. According to a recent European Commission opinion for a Council Recommendation on the 2017 National Reform Programme of Italy:

Second-level bargaining is not broadly used. This hampers the efficient allocation of resources and the responsiveness of wages to local economic conditions. This is also due to the existing framework rules and practices for collective bargaining, which entail uncertainty in industrial relations and leave limited scope for local-level bargaining. Tax rebates on productivity-related pay increases have not proved effective in extending the use of second-level bargaining significantly.<sup>64</sup>

## 5 DATA ON WAGE INCREASES IN COMPANY-LEVEL BARGAINING IN 2012–2015

Table 1 shows the distribution of wage increases in company-level bargaining for the period 2012–2015. The metalworking industry has the highest percentage of company-level agreements providing fixed-rate wage rises (18.8%), followed by the financial sector (18.4%) and the food industry (13.4%). On the other hand, performance-related pay increases are most widespread in the food industry (85.7%), followed by the financial sector (75.1%) and metalworking (55.5%).

*Table 1 Distribution of Wage Increases in Company-Level Bargaining (2012–2015), Absolute Values and Percentages*

<i>Sector</i>	<i>No. of Company Level Collective Agreements (2012–2015)</i>	<i>No. of Agreements Including Fixed-Rate Payments and Their Percentage</i>		<i>No. of Agreements Including Variable Performance-Related Pay and Their Percentage</i>	
Metalworking	245	46	18.8%	136	55.5%
Banking/ Finance	141	26	18.4%	106	75.1%
Food	112	15	13.4%	96	85.7%
Total	498	87	17.4%	338	67.8%

*Source:* ADAPT database on company-level collective bargaining

<sup>64</sup> See COM(2017) 511 final, point 22, 8.

As regards the trade unions concluding agreements with provision for fixed-rate wage rises – across all the sectors analysed – the unions affiliated to CGIL (the Italian General Confederation of Labour) registered the highest frequency of agreements (79.3%), followed by CISL (Italian Confederation of Trade Unions) unions (67.8%) and those affiliated to UIL (the Italian Labour Union) (51.7%). This composition is confirmed by the disaggregated data for the metalworking and food sectors, while in the financial sector the largest number of agreements was signed by the CGIL and CISL (84.6%). The largest number of agreements (Table 2) with employers' associations providing fixed-rate wage increases was in the food industry (33.3%), followed by metalworking (32.6%). No agreements were concluded with employers' associations in the banking and financial sector.

*Table 2 Signatories of Agreements Providing Fixed-Rate Wage Increases as Part of Company-Level Bargaining (2012–2015), Expressed as Percentages*

<i>Sector</i>	<i>Unions Affiliated to CGIL</i>	<i>Unions Affiliated to CISL</i>	<i>Unions Affiliated to UIL</i>	<i>Employers' Associations</i>
Metalworking	76.1	63	39.1	32.6
Banking/Finance	84.6	84.6	69.2	0
Food	80	53.3	53.3	33.3
Total	79.3	67.8	51.7	23

*Source:* ADAPT database of company-level collective bargaining

Similarly, among the trade unions concluding agreements providing performance-related pay increases, across all the sectors analysed, the unions affiliated to CGIL were the most likely to conclude agreements (68%), followed by those affiliated to CISL (65.3%) and those affiliated to UIL (44.6%). This composition is confirmed by the disaggregated data for both the finance and food sectors, while in metalworking the largest number of agreements was concluded by the CISL sectoral federation (75.7%). The largest number of agreements (Table 3) containing performance-related pay increases concluded with employers' associations was found in the food industry (50%), followed by metalworking (41.1%). No agreements were concluded with employers' associations in banking and finance.

Table 3 Signatories of Agreements Containing Performance-Related Pay Increases as Part of Company-Level Bargaining (2012–2015), Expressed as Percentages

Sector	Unions Affiliated to CGIL	Unions Affiliated to CISL	Unions Affiliated to UIL	Employers' Associations
Metalworking	68.3	75.7	39.7	41.1
Banking/Finance	42.4	36.7	33	0
Food	95.8	82.2	64.5	50
Total	68	65.3	44.6	30.7

Source: ADAPT, database of company-level collective bargaining

The following sections (5.1–5.4) provide an overview of wage schemes resulting from the content analysis of company-level collective agreements. Four types of wage elements were identified: fixed-rate bonuses; collective extra pay; *una tantum* payments (one-off payments); performance-related pay. The characteristics of these different wage schemes are described along with their functional mechanisms.

### 5.1 FIXED-RATE BONUSES

Fixed-rate bonuses are a form of pay that can either be laid down by company-level bargaining or granted unilaterally. They are an irreversible wage increase, supplementing the minimum on the scale determined by the national agreement. They are fixed in the sense that, unlike variable bonuses, they are paid regardless of whether agreed and verifiable objectives have been achieved, in the form of a bonus or to all the workers covered by the company-level agreement. They are most common in banking and finance, and the food industry.

Such payments are usually made annually (as in the case of companies such as Sace or Cameo), but there are cases of fixed-rate bonuses being paid monthly (Mutti). In metalworking the annual fixed-rate increase is added to the monthly wage, a system which, over the years, has compensated for the elimination of the fourteenth monthly wage from the national agreement. The company-level agreement at UNI lays down that ‘in June of every year employees shall normally be paid an annual allowance equal to 100% of one month’s wage’.

In most cases, the fixed-rate bonus cannot later be set off against further future wage rises paid for other reasons, including promotions or wage increases laid down by the collective agreement. The amount of the fixed-rate bonus usually varies in proportion to employment grade (Allianz, Mutti). In some cases, they are

taken into account for in the calculation of severance pay and for the purposes of all the provisions laid down in the collective agreement (Ghinzelli), whereas in other cases they are not (Cameo). In many collective agreements this question is not dealt with explicitly.

## 5.2 COLLECTIVE EXTRA PAY

Collective extra pay is determined by company-level bargaining. It is an irreversible wage increase, additional to the minimum wage laid down by the national agreement, supplementing the basic wage. It is collective because, unlike the extra pay given to individual workers unilaterally by the employer, it is disbursed to all workers covered by the company-level agreement, usually with the aim of increasing their purchasing power, or to consolidate the amounts determined by previous company-level bargaining. Collective extra pay is most common in metalworking.

Wages are always paid monthly (Emak, Interpump, Lamborghini, YKK). In a number of cases, there is an explicit non-absorbability clause (Lamborghini), in others, the extra pay is only absorbed by wage increases following a promotion (Sext). Where it is not specified, in the same way as individual extra pay, collective extra pay is considered to be absorbable into pay rises negotiated in future collective agreements. The amounts of collective extra pay are (almost) always in proportion to the employment grade. There is one case of a company-level agreement that provides for an annual review of the amount based on the ISTAT (Italian Institute of Statistics) index for families of manual workers and employees (UNI). In other cases, the increase in collective extra pay is a response to specific demands made by trade unions as part of the renewal of company-level agreements. One company provides for an entry-level wage related to the collective extra pay in force, so that the amount paid out is equal to 50% of the extra pay at the end of the twelfth month of work, and 100% at the end of the twenty-fourth month (Sest). Generally, the payment affects all the contractual provisions, supplementing the overall wage.

## 5.3 THE *UNA TANTUM* (ONE-OFF PAYMENT)

The *una tantum* (one-off payment) is a wage component regulated by collective bargaining at the company or sectoral level. It is a reversible wage increase, additional to the minimum rate determined by the national agreement. Most common in the financial and metalworking sectors, the *una tantum* is granted as an allowance or as compensation for an amount frozen or cancelled from a previous agreement. It is usually paid to all workers covered by the current

company-level agreement, although in some cases payment is conditional on results and has a limited, contingent application. The company-level agreement of one metalworking company (Sest) provides for an *una tantum* allowance when a worker is transferred from a fixed-term contract to an open-ended one, to the benefit of workers who have been employed by the company for at least twelve months. In another case (Mecc. Alte), the payment was made to workers who were victims of flooding in the area where the company was based, following a fundraising effort organized by the management and the works council.

Unlike the fixed bonus, the amount is self-evidently a one-off payment, made during the period covered by the collective agreement (Beretta, Fondiaria SAI, Otis, Rodacciai), sometimes in two instalments (Poste Italiane). Since it is neither periodic nor continuous, this payment does not supplement the overall de facto wage. In most cases, the *una tantum* is not considered to be absorbable, it is not proportionate to the employment grade and it does not affect any contractual or legal provisions.

#### 5.4 PERFORMANCE-RELATED PAY

Pay rises linked to productivity and/or profits, or to workers' performance, takes the form of the *premio di risultato* – i.e. performance-related pay – in Italian company-level collective bargaining. This is a collectively negotiated award linked to one or more targets determined by management and workers' representatives in company-level bargaining, along with indicators to measure the extent to which the targets are reached.

Such pay schemes refer to three types of targets – productivity, profitability, and quality – and correspond to what national social partners have in mind when, in cross-sectoral agreements or in national agreements, they define the competence of company-level bargaining on wages. They are also the type of wage-setting mechanisms covered by fiscal incentives aimed at promoting company-level bargaining in order to more closely align wages and productivity. Nonetheless, most of these pay schemes refer to targets measured at an aggregate level and they rarely take individual performance into consideration, thus generally working as a redistributive mechanism, rather than as an incentive for workers to perform better. Moreover, in most cases pay increases are established *ex ante*, and are equal for all the categories of workers they apply to.

Productivity-related targets are prevalent in metalworking (Acciaieria Arvedi, Ansaldo Breda, Piombiferia Italiana) and in the food industry (Ferrarelle). They refer to a wide range of indicators designed to measure the relationship between output (e.g. number of pieces, tons of material, added



value) and input (e.g. number of working hours, number of employees) in the production process. In many cases (Brembo, Dayco), profit-sharing schemes linked to productivity targets take into account the employee absenteeism as an indicator for increasing and/or decreasing the total bonus. In some cases, such pay schemes are linked to targets aimed at reducing accidents at work (ArcelorMittal, Same Deutz-Fahr). Pay rises can be linked to the number of accidents, or to the outcome of internal audits monitoring employee compliance with health and safety standards and measures.

Profit-related targets are prevalent in company-level bargaining in the banking sector (Intesa-San Paolo, Deutsche Bank, Santander). They are linked to a wide range of indicators relating to the firm's earnings and profits, such as the return on sales, the operational margin, or EBITDA – Earnings before Interest, Taxation, Depreciation and Amortization: these indicators can be measured and linked to pay rises in absolute terms, or in relation to costs or the value of production.

Quality-related targets are prevalent in metalworking and in the food sector. They refer to the quality of products and production processes. Pay rises are linked to parameters related to waste products or materials (Brembo), and to the quantity of products and services that fail to meet the expectations of the commercial partner (Fincantieri, Lavazza). In some cases (TenarisDalmine), quality targets refer to individual worker performance, taking the form of skills-based pay systems, i.e. pay rises linked to behavioural and soft skills expressed in terms of job performance.

## 6 ANALYSIS

The research shows that the ratio of fixed-rate to variable pay systems in company-level bargaining is inverted in comparison to the results of a similar study conducted in 1984–1987, when 69.2% of pay rises were fixed-rate and 23.5% were variable. In 2012–2015 most company-level collective agreements adopted flexible pay schemes linked to the performance of the firm or the workers. This suggests that company-level bargaining tends to respect wage coordination rules set by cross-sectoral collective agreements and national agreements. In contrast with comparable research conducted in the late-1990s that described the relationship between national agreements and company-level bargaining in food companies in terms of disorganization,<sup>65</sup> wage coordination seems to work particularly well in

<sup>65</sup> M. Tiraboschi, *Brevi considerazioni sui rapporti tra contrattazione nazionale e contrattazione aziendale nel settore alimentare*, 2 DRI 252–256 (2000).

the food industry, as confirmed by recent studies of company-level bargaining in this sector.<sup>66</sup>

On the other hand, the research shows that several company-level collective agreements still violate the rules on wage bargaining coordination, by introducing traditional fixed-rate elements with no connection to objective parameters: collective extra pay, fixed-rate bonuses and other clauses breach the wage bargaining coordination rule according to which pay rises at local level should be linked to the performance of the firm or the workers, measured by means of objective indicators. The metalworking industry is where wage coordination seems to be least effective, with variable pay schemes accounting for just 55.5% of the total.

The most anomalous form of company-level wage bargaining is collective extra pay, most common in the metalworking industry. Its characteristics are most similar to the wage increases laid down by the national agreement. The case of companies adopting mechanisms to link wage increases to the cost-of-living index is emblematic: they are encroaching on the role of safeguarding workers' purchasing power, which cross-industry agreements assign to the national agreement.

In contrast, the most acceptable formula from the point of view of the rules coordinating the multi-employer bargaining is the *una tantum* (one-off payment), in particular when it is given as a consolidation, for example for the purposes of harmonization between two different company-level collective agreements or when companies are merged, as compensation for missed payments, or as a supplement to workers' income in specific circumstances.

The fixed-rate bonus may be considered as complying with the division of competences between bargaining levels, when the connection between this type of remuneration and the success of the company or the performance of the workers is assumed. Such pay schemes might reflect the productivity of the companies: either past productivity or expected future productivity which the collective bargaining actors have taken into account. However, rules on wage coordination clearly state that wage rises should be linked to objective parameters negotiated by the parties in company-level bargaining. Bearing in mind the fact that company-level agreements remain in force for three years, and the payment of bonuses of this kind is annual (sometimes monthly), industrial relations developments over the past five years have highlighted the considerable limitations and risks of such agreements: given the growing volatility of the markets and fluctuating demand, many companies which were profitable at the time of signing a collective agreement were not able to maintain the agreed wage commitments due to a sudden worsening of economic conditions.

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<sup>66</sup> D. Mosca, *La contrattazione aziendale nell'industria alimentare nel biennio 2014–2015*, 2 DRI 577–585 (2016).

Taken as an indicator of the ‘disorganization’ of collective bargaining (in Traxler’s terms), the evidence in this research lends weight to the argument that the coordination of wage bargaining is still in transition in Italy.<sup>67</sup> It also reveals a complexity that has yet to be fully investigated: the ‘disorganized’ nature of decentralization should be considered not only with reference to the widespread use of conditions that are worse than those laid down in national agreements.<sup>68</sup> The lack of coordination should also be considered with regard to the violation of coordination rules that still complies with the favourability principle, as they might have negative effects on the bargaining model and its effectiveness.<sup>69</sup> In challenging the rationale of multi-employer bargaining, they undermine rather than advancing the interest of companies in applying the conditions laid down in national agreements.<sup>70</sup> Several factors can be mentioned in support of this argument.

First, as coordination theory suggests (see § 2 above), coordination rules in multi-employer bargaining are not just an instrument for wage setting (horizontal coordination), but also a mechanism by which wage policies are enforced and provided with effectiveness (vertical coordination). As a result, if the social partners at national level agree on a specific economic policy (horizontal coordination), local actors should comply with it (vertical coordination), regardless of the contents of the policy.

Second, it is important to consider the widening gap between wages and productivity, and the higher wage costs per unit, resulting from such wage negotiations, thus reducing the competitive margins of individual firms and the system of production in general.<sup>71</sup> It may be argued that the main problem in Italy is the limited use of decentralized bargaining,<sup>72</sup> and that current wage coordination rules work only if company-level bargaining covers 100% of the workforce. Otherwise, the redistribution of profits through decentralized bargaining along with relatively low wages in national agreements is likely to increase the share of profits in gross domestic product, allowing marginal companies to remain competitive, without investing in innovation, skills, research and development.<sup>73</sup> As the social partners at national level are aware that company-level bargaining has limited coverage in Italy, with the 2009 reform they tried to resolve the problem by

<sup>67</sup> M. Pallini, *Italian Industrial Relations: Toward a Strongly Decentralized Collective Bargaining?*, 38 *Comp. Lab. L. & Policy J.* 1 (2016).

<sup>68</sup> *Supra* n. 38.

<sup>69</sup> Traxler, *supra* n. 25, at 1–27.

<sup>70</sup> K. Sisson, *The Management of Collective Bargaining* (Oxford: Blackwell 1987); V. Pulignano, *Trade Unions and the Coordination of Collective Bargaining in Europe* (2010), online paper.

<sup>71</sup> C. Dell’Aringa, *Salario minimo e contrattazione collettiva*, *Rivista di politica economica* (Luglio–Agosto 2006). See in particular 120–125.

<sup>72</sup> A. Lassandari, *supra* n. 6, at 299–334; Birindelli ed., *supra* n. 45.

<sup>73</sup> Tronti, *supra* n. 63, at 770–792.

providing that in the absence of company-level collective bargaining firms should pay a compensatory increase as laid down in the national agreement. Thus, local actors have no excuse: if a company-level agreement is in place, wage increases must be flexible, i.e. linked to the workers' or the company's performance. If a company-level agreement is not in place, firms should pay the compensatory wage increase laid down by the applicable national agreement.

Third, it is important to bear in mind the advantages – for those companies that can – of withdrawing from multi-employer bargaining<sup>74</sup> or, at least – given the difficulty of enforcing the rules justifying a two-tier wage structure based on complementarity between company-level bargaining and national agreements<sup>75</sup> – of promoting a reform of bargaining rules that provides for a model of single-employer bargaining, as in the case of Fiat (now FCA).<sup>76</sup> Circumventing ordinary wage coordination rules can also be achieved by adopting 'pirate agreements', low-cost national agreements 'negotiated and then signed by smaller unions, without real representation, and by complicit business associations, who openly declare that their aim is to adopt an alternative to the national collective agreement, so as to enable the employer to benefit from the legal status – and therefore its benefits – that the law grants to those who apply a collective agreement'.<sup>77</sup>

Fourth, fixed-rate payments can have an adverse effect on industrial relations in workplaces where, when faced with the impossibility of meeting payment commitments due to an unexpected market downturn, the management is tempted to cancel collective agreements<sup>78</sup> or to resort to forms of coercive bargaining.<sup>79</sup> This legitimizes the call of union representatives for collective action, either through the exercise of the right to strike, or in accordance with the judicial procedure laid down by Article 28, Act no. 300, May 1970, (Workers' Statute) to have the employer's anti-union behaviour recognized and sanctioned

<sup>74</sup> Haipeter (2011), *supra* n. 38, 174–194.

<sup>75</sup> T. Boeri, *supra* n. 15, IZA Discussion Paper No. 8358/2014.

<sup>76</sup> I. Senatori, *The Pressure by Multinationals on National Industrial Relations Systems in Times of Crisis. The FIAT Case in the Italian Context*, 4 Int'l J. Comp. Lab. L. & Indus. Rel. 169–488 (2012); M. Biasi, *Statutory Employee Representation in Italian and U.S. Workplaces: A Comparative Analysis of the Fiat/Chrysler Case*, Lab. L.J. 233–256 (Winter 2015).

<sup>77</sup> A. Maresca, *Accordi collettivi separati: tra libertà contrattuale e democrazia sindacale*, 1 Rivista Italiana di Diritto del Lavoro 29 (2010).

<sup>78</sup> M. Tiraboschi, *L'efficacia temporale del contratto collettivo di lavoro: atipicità dello schema negoziale, giuridicità del vincolo e cause di scioglimento*, 1 DRI 83–132 (1994); A. Maresca, *Contratto collettivo e libertà di recesso*, 2 Argomenti di diritto del lavoro 35–62 (1995); G. Pacchiana Parravicini, *Il recesso dal contratto collettivo* (Torino: Giappichelli 2010).

<sup>79</sup> S. Sciarra, *Pars pro toto, totum pro parte: diritti individuali e interesse collettivo*, LD (1987); S. Sciarra, *Automotive e altro: cosa sta cambiando nella contrattazione collettiva nazionale e transnazionale*, 2 DLRI 345–359 (2011); M. Hauptmeier & I. Greer, *Whipsawing: Organizing Labor Competition in Multinational Auto Companies*, Proceedings of the 16th World Congress of ILERA, Philadelphia (2–5 July 2012). S. Sciarra, *Nazionale e transnazionale: i dilemmi della contrattazione collettiva nella crisi*, in *Verso nuove relazioni industriali*, Il Mulino 111 (M. Carrieri & T. Treu ed., 2013).

by the courts. This would be unlikely to occur if – in an approach intended to promote collective bargaining as a form of investment and a source of competitiveness<sup>80</sup> – all wages supplementary to the national agreement minimum wage were linked to the economic performance of the company and/or the workers.

The violation of the rules on wage bargaining coordination is not difficult to explain in strictly legal terms. These rules are contractual in nature:<sup>81</sup> they are self-regulatory provisions that only apply as long as the employers and the workers' representatives at company level choose to apply them. Prevalent case law on collective bargaining in Italy clearly states that company-level bargaining can always deviate from the standards laid down in the national agreements.<sup>82</sup> Although certain case law rulings have stated that deviations from the standards determined in national agreements can occur only within the limits of bargaining coordination rules,<sup>83</sup> there is still a problem of legal enforceability, that undermines collective bargaining governability.<sup>84</sup> When the violation of coordination rules at company level gives rise to a violation of the favourability principle, individual workers or their representatives are likely to refer the matter to the courts to enforce the rule that has been breached. On the other hand, recourse to the courts is less likely to occur if the violation does not affect any tangible interest of the individual worker, such as the fact that wage increases established in the company-level agreement are fixed-rate rather than variable. The structural limit of the wage coordination rules adopted by the Italian social partners in multi-employer cross-industry agreements, even if concluded by the most representative trade unions and employers' associations, is that 'they present a purely contractual nature and are therefore binding only [on] the signatories and the (collective and individual) subjects that these parties represent'.<sup>85</sup>

These arguments give rise to the question of the role of the collective bargaining actors at the different levels. Peak-level associations might be expected to take action against local negotiators (companies and employee representatives)

<sup>80</sup> M. Biagi, *Cambiare le relazioni industriali. Considerazioni sul rapporto del gruppo di alto livello sulle relazioni industriali e il cambiamento nella UE*, Marco Biagi: un giurista progettuale 529–550 (L. Montuschi, M. Tiraboschi & T. Treu eds, Collana Adapt, Giuffrè 2003).

<sup>81</sup> O. Kahn-Freund, *Labour and the Law* (Stevens & Sons 1972). M. D. Flanders, *The Tradition of Voluntarism*, Brit. J. Indus. Rel. (1974); Caruso (2005), *supra* n. 36, at 75 et seq.; Caruso (1990), *supra* n. 36, at 170.

<sup>82</sup> See *ex multis*, Cass. 18 May 2010 n. 12098; Cass. 26 May 2008, n. 13544; Cass. 18 Sept. 2007, n. 19351; Cass. 19 Apr. 2006, n. 9052; Cass. 7 June 2004, n. 10762; Cass. 19 May 2003, n. 7847; n. 4758; Cass. 18 June 2003, n. 9784; Cass. 19 June 2001, n. 8296; Cass. 3 Apr. 1996, n. 3092; Cass. 3 Feb. 1996, n. 931; Cass. 24 Feb. 1990, n. 1403; Cass. 27 May 1987.

<sup>83</sup> Cass. 15 settembre 2014, n. 19396.

<sup>84</sup> Traxler & Kittel, *supra* n. 22, at 1154–1190.

<sup>85</sup> Pallini, *supra* n. 67, at 1, 5.

that fail to comply with coordination rules. Yet the fact that this never occurs leads to two possible conclusions, which are really two sides of the same coin: (1) the weakness of the duty of influence laid down in national agreements, as well as in the statutes of the unions and employers' associations;<sup>86</sup> (2) the weak vertical integration between bargaining units and between peak-levels and local associations.<sup>87</sup> In other words, when local representatives set aside the rules laid down by the national negotiators, the problem of objective/horizontal coordination of the regulations due to the violation of the division of competences between national agreements and company-level agreements becomes important in terms of the subjective/vertical dimension.<sup>88</sup>

Within the scope of this research, the only exceptions were the employers' associations in the financial sector, that had not concluded (and had not taken part in the negotiation of) any company-level agreement providing fixed-rate pay rises. However, this is due to a collective bargaining rule in the financial sector collective agreement that does not provide for the involvement of employers' representatives in decentralized negotiations. In contrast, in the metalworking and food industries, 32.1% and 40%, respectively, of the company-level agreements concluded by the regional branches of Confindustria were of this type. Clearly, the problem of weak vertical coordination regards not only the large trade union federations but also – albeit to a lesser extent – the employers' associations and, notably, the exponents of Confindustria who, since the enactment of the *Testo Unico sulla Rappresentanza* (the Consolidated Act on Representation, in January 2014<sup>89</sup>) have been priding themselves on the battle to align wages and productivity and increase wage flexibility.<sup>90</sup>

This paradox can be explained with reference to the cultural background against which company-level bargaining takes place in different parts of the country.<sup>91</sup> Factors leading to decentralized negotiations on fixed wages include the poor negotiating skills and lack of a sound technical background of the managers responsible for negotiating with the unions<sup>92</sup> since wage flexibility is

<sup>86</sup> G. Ghezzi, *La responsabilità contrattuale delle associazioni sindacali. La parte obbligatoria del contratto collettivo* (Milan: Giuffrè 1963).

<sup>87</sup> Regalia & Regini, *supra* n. 34, at 131–163.

<sup>88</sup> F. Traxler, *The contingency thesis of collective bargaining institutions*, in CESifo DICE Report 2/2003, 35; Traxler, *supra* n. 25, at 1–27.

<sup>89</sup> *Il Testo Unico sulla Rappresentanza, 10 gennaio 2014*, ADAPT Labour, Studies e-Book series, n. 26, (F. Carinci ed., 2014); Pedersini & Rustico, *supra* n. 13.

<sup>90</sup> Confindustria, *Proposte per il mercato del lavoro e per la contrattazione* (2014); Federmeccanica, *Il Manifesto delle relazioni industriali* (2014–2015).

<sup>91</sup> R. M. Locke, *Remaking the Italian Economy*, Ithaca (New York: Cornell University Press 1995).

<sup>92</sup> *Supra* n. 62, § 43, c); L. Valente, *I negoziatori d'azienda non sono pronti a trattare la produttività*, in *Bollettino ADAPT* (26 novembre 2012); M. Damiani, F. Pompei & A. Ricci, *Quei manager che frenano la contrattazione aziendale* (1 Dec. 2015) [www.lavorce.info](http://www.lavorce.info).

complex to negotiate for both workers' representatives and management. A further factor is the hostility towards forms of worker participation in decisions on production methods and company management and results. This is the other side of the coin when it comes to performance-based pay in company-level collective bargaining, where workers' representatives are involved in the definition of performance/productivity/profit targets and parameters linked to pay rises, and where management share information on economic trends of the company. In addition, reference should be made to the management objective to retain direct control of labour costs. Finally, there may be forms of tacit compromise with the unions in which bonuses are negotiated based on unreasonable targets, or alternatively variable pay schemes are set up based on unclear criteria that are easily achievable, thus resulting to all intents and purposes in fixed-rate payments.

## 7 CONCLUSION

This article casts light on the persistent weaknesses of wage coordination policies in three leading sectors of the Italian economy. In contrast with the provisions of economy-wide and national agreements, the rule that decentralized wage bargaining should be based on productivity and/or profitability parameters is breached in about 17% of the agreements examined. However, the research also shows that most company-level agreements comply with wage coordination rules set by peak-level associations. Wage coordination appears to be less effective in the metalworking industry in comparison to the other sectors, where bargaining coordination seems to be more robust.

These results may be seen as a 'glass half-full': against a background of worker disempowerment and erosion of labour market institutions, the fact that the favourability principle is still working and trade unions are still able to negotiate wage increases at company level is in itself positive. However, the main concern of this study was to assess the consistency of the Italian two-tier bargaining system in relation to wage coordination and its objectives. In this connection, as Napoli argued in his analysis of the Protocol of 1993, the fact that many businesses still prefer the old method of fixed-rate payments, in contrast with centrally coordinated wage policies, 'undoubtedly puts the model in crisis, since to state that company-level bargaining must be linked to productivity and income, inevitably condemns the traditional wage bargaining method'.<sup>93</sup> This is the case at least with regard to the wage policies coordinated by peak-level associations, as recently reaffirmed by the CGIL, CISL and UIL proposal to modernize the industrial

<sup>93</sup> Napoli, *supra* n. 63, at 357.

relations model, in order to make wages ‘a factor for growth’ and ‘to expand the experience on productivity-oriented wage bargaining’.<sup>94</sup> On the one hand, it may be argued that wage policy coordination between national agreements and company-level agreements as currently shaped has no reason to exist from an economic and legal point of view. This would mean accepting that the discourse on the importance to link wages to productivity/performances is purely rhetorical and a new wage policy should be agreed on. At the same time, it may be argued that the problem is important and it therefore makes sense to examine it and to seek to resolve it.

As noted by Baccaro and Locke in 1996, and Thelen in 2001, the convergence of the Italian industrial relations system with the characteristics of CMEs and, in particular, with the capacity to ensure the effectiveness and governability of horizontal wage-bargaining policies coordinated at central level, is not yet complete. This article provides confirmation of the traditional status of the Italian industrial relations system within the varieties-of-capitalism literature: it continues to be somewhere in-between liberal market economies and CMEs,<sup>95</sup> with both a high degree of horizontal coordination, and weak vertical coordination.

Most importantly, there continues to be a problem of the vertical coordination of collective bargaining while local trade union representatives and employers’ associations have concluded a number of collective agreements that fail to comply with coordination rules set at a central level. This highlights the tension in industrial relations in Italy between voluntarism and institutionalization, and between centralism and localism.<sup>96</sup>

The complicity of local trade unions and employers’ organizations in the negotiation of fixed-rate wage increases makes it difficult to envisage how to deal with this process without state intervention. In 1997, the Giugni Commission, set up to assess the effects of the 1993 Protocol stated that: ‘change in the rules of the game is destined to remain ineffectual if social partners fail to change their negotiating culture, by respecting the commitment to pursue a wage policy linked to objective parameters’.<sup>97</sup> However, it still appears ‘difficult to define rules of coordination that avoid regulatory conflicts’.<sup>98</sup>

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<sup>94</sup> CGIL, CISL & UIL, *Un moderno sistema di relazioni industriali. Per uno sviluppo economico fondato sull’innovazione e la qualità del lavoro* (2016).

<sup>95</sup> O. Molina & M. Rhodes, *The Political Economy of Adjustment in Mixed Market Economies: A Study of Spain and Italy*, in *Beyond Varieties of Capitalism: Conflict, Contradictions, and Complementarities in the European Economy* (B. Hancké, M. Rhodes & M. Thatcher eds, Oxford: Oxford University Press 2007).

<sup>96</sup> Regalia & Regini, *supra* n. 34, at 131–163.

<sup>97</sup> *Supra* n. 62, § 27.

<sup>98</sup> *Ibid.*, § 43, c).



The logical consequence is that ‘the goal of defining a coherent system of collective bargaining should be backed by a clear regulation of consequences stemming from the violation of the rules on collective bargaining coordination and, above all, by a clear discipline of conflict of regulation’.<sup>99</sup> This could also be achieved through ‘subsidiary legal regulation governing the industrial relations system’.<sup>100</sup> This is among the reasons why some Italian labour lawyers presented two draft proposals for the transposition into law of the 2014 *Testo Unico sulla Rappresentanza* agreed by the social partners,<sup>101</sup> in order to provide it with *erga omnes* effect and legal enforceability. After all, the empirical evidence suggests that statutory provisions for the legal enforceability of collective agreements and the peace obligation during their validity, which together form what Traxler and Kittel call ‘high bargaining governability’, are crucial to ensuring the consistency of economic policies agreed at central level.<sup>102</sup> It is also clear that statutory provisions are a necessary but not a sufficient precondition for the stability of multi-employer bargaining systems: it is the way in which the bargaining parties make use of them that also matters, along with the cultural background against which industrial relations take place at local level.

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<sup>99</sup> *Ibid.*, § 43, c).

<sup>100</sup> *Ibid.*

<sup>101</sup> On the proposal of the *Gruppo Frecciarossa*, see: B. Caruso, *Il Testo Unico sulla rappresentanza*, WP C.S.D. L.E. ‘Massimo D’Antona’. IT, 227/2014, 10; for the *Proposta di legge sindacale della Rivista Diritto Lavori Mercati*, see: *Una nuova costituzione per il sistema di relazioni sindacali?*, 539 (L. Zoppoli, A. Zoppoli & M. Delfino eds, Editoriale scientifica 2014).

<sup>102</sup> Traxler, *supra* n. 25, at 1–27.

