

**Undeclared Flexibility:
Irregularities in Nonstandard Work in Italy**

PHD dissertation

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But the Sun is eclipsed by the Moon
"There is no dark side in the Moon really.
Matter of fact it's all dark."
Roger Water

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Preliminary Remarks

Just few months after I started the Ph.D, the idea of developing the research project on the topic of irregular work became increasingly clear and defined, particularly stimulated by the academic debate on the relevance and complexity characterizing such phenomenon in the Italian labour market(s). The research project has been developed together with the Supervisor prof. *Renata Semenza* during the interdisciplinary Ph.D program in Labour Studies of the Graduate School in Social, Economic and Political Sciences of the “Università degli Studi di Milano”. It involved a stimulating period of empirical research in two territorial Labour Inspection Departments, one in Cagliari and the other in Brescia, thanks to the respective directors *M.C. Madeddu* and *P. Vettori* who saw the importance of the issue. During this period a precious assistance have been provided by the internal labour inspectors of the departments, whose information and practical instructions to gather the required data turned out to be fundamental for the resaerch.

The choice of adopting English as the language of the dissertation, although being aware of the risk of weakening the contents and the details of the research, has been motivated by different reasons. Firstly, it allowed me to develop some working paper on the topic of the research to be presented in September 2010 at the European Doctoral Conference in Industrial Relations, and in December 2010 at the International Conference in Political science, International Relations and Public Policy at the Hebrew University of Jerusalem. Secondly, it gave me the possibility to be accepted as a guest

research at the Amsterdam Institute for Advanced Labour Studies (AIAS), from May 2011 to June 2012. At AIAS the research developed into a working paper with the supervision of *Prof. Maarten Keune* on the issue of the European Flexicurity.

Overall I express here my gratitude and appreciation to Renata Semenza and Marteen Keune for the meaningful support, encouragement and kindness provided during this research.

Antonio Firinu

Introduction.

Irregular and Labour Market Flexibility: a problematic nexus

The purpose of this research to put in a common analytical interface the concept of irregular Work together with the one of labour market flexibility is indeed a challenging task. At first glance, these two concepts may appear to be totally separate and for a certain extent even contrasting. This might be due to the traditional approach adopted by a large majority of the academic establishment to the study of irregular work in a context of continuous evolving of labour markets and social institutions.

The predominant view has seen irregular work as a “backward” component of the economy that will die out with the further “modernization” of the labour market and social institutions. According to the modernization theory, as long as the economy has not yet been comprehensively modernized and democratic institutions and state regulation are not yet broadly stable, its use might even be seen as an option for the low-cost establishment of new small enterprises in uncertain markets and as an option for the integration of marginalized workers during modernization processes.

Similarly, several scholars explained the phenomenon of irregular work as a reflection of the “segmentation” of the labour market in a national economic system. The so-called Segmentation theory developed by several American economists (Doeringer and Piore 1971, Contini 1979) indicated the existence of two types of labour markets: a primary "regular" labour market in the more advanced sectors that is highly structured and protected, and a residual secondary one that is extremely informal and

precarious in the backward sectors. Irregular work, commonly related to the secondary segment of the economy was seen as legally and economically well defined and separated from the formal work regulation.

In Italy the phenomenon of irregular work has been for many years one of the most relevant issue in the political debate on reforming the labour market. The mainstream approach was based on the assumption that the tendency to enter into the range of irregular work is tied to the rigidity of the labour market and to the “employment excessive guarantees”, which have always been cause of a clear segmentation Insiders/Outsiders. Following this approach, many scholars have argued that the process of deregulation of employment relations and the process of flexibilization of the labour market would have a positive impact on the reduction of the extent of irregular work. This argument is based on the two following assumptions.

From the demand side, the rigidity of labour market institutions constitutes one of the most important factors leading companies to engage into irregular forms of employment. According to this argument less stringent regulations in terms of hiring, dismissal and wage would increase the incentive for companies to adopt regular and declared workers.

From the supply side, it is argued, the creation of new occupational opportunities through an enlargement of the number of flexible employment arrangements would reduce the necessity for unemployed to fall into the domain of irregular work. This argument is connected to the assumption that the propensity of workers to be offered in irregular segments of the labour market is positively related to the high rate of

unemployment, and that irregular work constitutes an option of last resort in front of a low probability of finding regular employment.

From the perspective of this research, however, these viewpoints are too narrow, and fail to properly describe the complexity of the phenomenon today. The continuous processes of internal and external organizational restructuring of enterprises and the introduction of new forms of work flexibility are redefining many parts of the official and unofficial sector of the economy. Two empirical cases in this research show *the emergence of new forms of irregular work* linked to the widespread use of nonstandard contracts.

Therefore, from an analytical point of view, the concept of Irregular Work cannot be ascribed to a uniform phenomenon. Rather, it covers a variety of forms of work involving different degrees of social integration, as they are based on different motives of employees and strategies of employers or contractors, and their interplay. Irregular work indeed represents a complex field of differing forms of work relations that are based on different motivations of the actors involved, and the evolution of which is determined by different sets of factors in each case.

It has been often recognized by several scholars (Williams and Windebank 1998, 2001, 2005, Bonolo and Lucifora, 2002, Semenza and Samek-Lodovici 2003) that dimensions and characteristics of irregular work in Europe are rather shaped by its fundamental interplay with the continuous change of labour market institutions, systems of production, and welfare state framework. Irregular work is not considered by these authors just a hidden economic issue to be discovered, but it is seen as a

complex phenomenon itself embedded into the social behaviours and dynamically interacting with official labour market institutions.

From this starting point, the main interest of this thesis is to investigate on the linkage between irregular work and the complex mechanisms of the contemporary labour market in Italy, and in particular, on the consequences of the expansion of a more striking external flexibility. The theoretical assumption asserting that the increasing use of nonstandard forms of employment has always a positive effect on the reduction of undeclared work, which is usually considered as a phenomenon never intersecting with the formal work regulation, will be put under question in this thesis. We focus on those nonstandard work situations actually characterized by “grey areas” very difficult to identify within a clear legal framework. We will finally underline the existence of direct and complementary relationship in Italy between flexibility and irregularity in the Italian context.

The thesis is divided into 6 chapters.

The first Chapter provides a detailed definitional framework of the objects of research and discusses on the terminology in relation to the definitions provided by national and supra-national institutions and by the literature.

The second Chapter is an overview of the main theoretical and empirical literature on the issues of irregular work and regulation of nonstandard employment. We will identify the main gaps of literature and, from here, we will develop our analytical approach and the guiding questions of the research.

The third Chapter presents the main hypotheses of the research. Specifically: a) the existence of a direct relationship between nonstandard and irregular work, b) the

existence of territorial specificities of irregularities in nonstandard work, c) the emergence of new social risks for nonstandard workers. Immediately afterwards, the research design explains the way those hypotheses will be verified.

The fourth Chapter concerns the methodology and the results of the empirical research. The two case studies, the territorial areas (province) of Cagliari and Brescia, are presented separately. Successively we discuss the main theoretical implications of the empirical findings in relation to the literature and the research hypotheses.

The fifth Chapter reviews the main policy strategies adopted to fight the phenomenon of irregular work and the abuses on nonstandard work. It will be firstly given a critical assessment of the Italian approach to the phenomenon along the last two decades, with also a short look to the last reform of the labour market (Fornero Reform). Secondly, the European approach is presented and criticized, while it will be stressed the need of a new strategy approach to contrast the phenomenon.

Finally, conclusive remarks will summarize the most important empirical research findings and discuss on the theoretical implications for future research.

Chapter 1. Definitions and legislative framework

1 Undeclared and Irregular Work

The descriptive design of this Section has been shaped step-by-step having encountered some conceptual ambiguities among the definitions provided in a part of the literature and having found incompatibilities with the definitions given by EU commission and International System of National Accounts. The ultimate aim of this section is to explain why in this thesis the term “Irregular Work” is preferred over the term “Undeclared Work”.

The issue of finding a conventional definition of the phenomenon investigated in this thesis has been object of a controversial academic and political debate, and still today there remain considerable ambiguities among the literature concerning its precise nature. The abundance of terms provided by a broad sociological and economic literature to describe the same phenomenon (such as “Irregular”, “Undeclared”, "Shadow", "Underground", "Unrecorded", the "Unofficial Economy", "Informal", "Unobserved") not always helped to clearly define its boundaries and dimensions within national economies while it created considerable difficulties in the process of its measurement and quantification.

The difficulties to reach a common definition have to be found on the different interpretations of the phenomenon within specific cultural, social and economic contexts. Different authors addressing different questions have employed a variety of alternative definitions and this has led to the criticism that they are "exceedingly fuzzy

concepts" (Peattie, 1987). It happened often that terms semantically different such as informal, irregular, hidden, parallel have been used as synonymous, attached to the different concepts of "work" and "economy" and wrongly used to refer to the same phenomenon. To give an example:

"The National Committee for the Formalisation of irregular work was created in 1998. The main objectives of the initiative include: creating an institutional network between the central government and regional authorities, with the aim of gaining knowledge about the qualitative and quantitative characteristics of the informal economy and proposing formalisation policies, encouraging commitment among workers and employers to be tax compliant, and fighting undeclared work" (Eurofound)¹.

Here irregular work is associated to informal economy. However, as it will be better explained further on, irregular work should not be understood as a branch of Informal economy given that, according to the SNA93, it represents a separated area of the non-observed Economy.

Another problem concerning the definitional framework is that official definitions may differ substantially among different countries. In fact, legal boundaries defining informal/formal, undeclared/declared, strongly depend on the differences between national accounting systems that, in turn, contribute to the creation of different patterns of identification of the phenomenon between national systems.

From a definitional approach, one of the first problems to solve when defining a complex phenomenon such as the "Irregular" or "undeclared" work is to sketch out its conceptual domain in order to provide a common ground for studies and research.

¹ Eurofound -<http://www.eurofound.europa.eu/areas/labourmarket/tackling/cases/it007.htm>

Therefore, making light of the definitions shared in the literature and the official definitions provided by public institutions represent a crucial prerequisite for a better understanding of the research object.

Within this thesis the term “irregular work” is considered more appropriate than the term “undeclared Work”, most used in the international literature. This section aims to provide an operationalization of the two concepts in order to justify this choice. I will start firstly analysing the definitions of “Undeclared Work” provided by the International System of National Accounts and by the European Commission through the classical method of categorization provided by G. Sartori (1984). The aim of this approach is to design the taxonomy of the concept for a better understanding of the phenomenon itself. Following, I will focus on the term of “irregular work” and apply the method provided by D. Collier and S. Levitsky (1997) of “shifting the overarching concept” in order to explain the use of the term “irregular work” from the perspective of this research.

Starting with the term “Undeclared work”, a conventional definition has been provided by The International System of National Accounts in 1993 (SNA 93). All European countries, implementing the constraint for the comparability of data, have joined the international definition. Particularly, the SNA93 proposed a clear separation between three fundamental areas: illegal economy, underground economy, and informal economy.

In the area of Illegal economy are traced all activities that involve an illegal object and / or mode of employment. It is that area of activities including the production of goods and services forbidden by law and provided by non-authorized persons.

The Informal economy refers to those activities performed within interpersonal

relationship or activities directly unobservable by statistics because of their economic characteristics. Within this area economic activities are mainly based on inter-personal, family and social relations, and, in general terms, they don't have to be declared to public authorities. Generally this type of economic activity has modest size and the management is carried out by small amounts of capitals. Examples of this type of economy are family activities and trading and unpaid activities such as volunteering. The 15th International Conference of Labour Statisticians in 1993 provided a further definition of informal sector. It states:

“Art. 5 (1) The informal sector may be broadly characterized as consisting of units (... which) operate at a low level of organization, with little or no division of labour and capital as factors of production and on a small scale. Labour relations – where they exist - are mostly based on casual employment, kinship or personal and social relations rather than contractual arrangements with formal guarantees.

Art. 5 (3) Activities performed by production units of the informal sector are not necessarily performed with the deliberate intention of evading the payment of taxes or social security contributions, or infringing labour or other legislations or administrative provisions.”

The Underground economy refers to “certain activities that may be both productive in an economic sense and also quite legal but deliberately concealed from public authorities for the following reasons:

- (a) To avoid the payment of income, value added or other taxes;
- (b) To avoid the payment of social security contributions;
- (c) To avoid having to meet certain legal standards such as minimum wages, maximum hours, safety or health standards, etc.;

(d) To avoid complying with certain administrative procedures, such as completing statistical questionnaires or other administrative forms.” (SNA93)

This area concerns, the legal production of goods and lawful activities that are not properly registered to the competent tax and/or social security authorities. They are characterized by the deliberate intention of violating labour regulations (tax evasion, circumventing the legislative frameworks on minimum wages or working hours, and tax-regulation), without the activity constituting a criminal offense itself. In turn, Underground economy may concern two different branches. On the one hand it can be represented by undeclared enterprises of variable sizes completely or partially unknown to the tax authorities and official statistics. On the other hand it can be constituted of undeclared working activities, where the working partnership is characterized by the total or the partial absence of a formalized relationship.

Having explicitly defined these different areas of Non Observed Economy, in which area does the concept of “Undeclared Work” must be collocate?

A conventional definition of Undeclared Work has been provided by the European Commission in a Communication in 1998 (COM (1998) 219) and readopted in a communication in 2007 (COM (2007) 628). Here, Undeclared work is described as "any paid activities that are lawful as regards their nature but not declared to the public authorities, taking into account differences in the regulatory systems of Member States".

In this definition three main attributes can be identified.

- 1) It must be a paid activity
- 2) It must be lawful as regard its nature
- 3) It is not declared to public authorities as required by national regulations

In other words, “Undeclared Work” refers to all situations where work performance is not accomplished in accordance with laws and contracts in force: these violations may be of various sizes and can determine the total concealment of the work activity (totally undeclared work), and in several cases only its partial concealment (partially undeclared work).

Therefore, from the EC’s definition of Undeclared work it is possible to exclude Illegal work, i.e. those illegal and criminal monetary-gain activities including production of goods and services forbidden by law because it doesn’t satisfy the attribute 2. In addition, Informal Work, i.e. those kind of informal working activities performed within interpersonal relationship that do not have to be declared to public authorities, must be also excluded for the fact that does not satisfy the attribute 3.

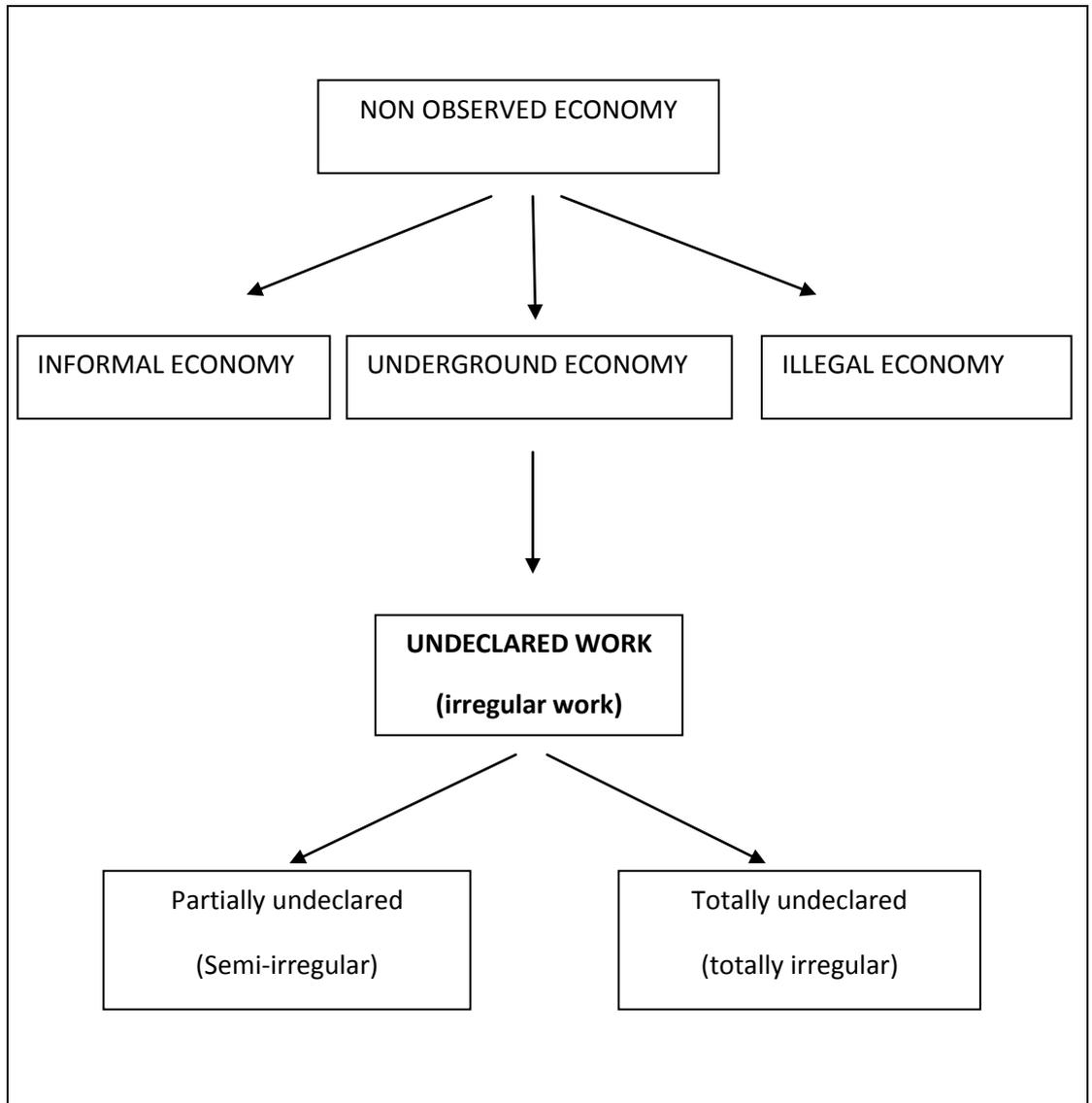
From a conceptual point of view, a further differentiation between undeclared, informal and illegal work can be provided by applying Sartori’s “ladder of Generality” theory (1984).

Within this approach the concept of “Undeclared Work” can be considered as a specific subtypes of the Root concept “work”: “Undeclared” is an adjective which characterizes our concept as a Secondary Category in the “ladder of Generality”. Moving down the Ladder of Generality from the Root Concept “work” and adding the attribute “undeclared” it is specified a subcategory with its own specific characteristics. In fact, the adjective Undeclared semantically differs from the adjective “illegal” or “informal” and these differentiations might help to avoid any possible “conceptual stretching”. This approach also allows us to draw the taxonomy of the concepts in question and their hierarchic relations for a better identification of the field of the

research (see Figure 1).

Today it is jointly recognized that “Undeclared Work” it is a branch of “Underground Economy” which is a diminished subtype of the “Non-observed Economy (NOE)” and at the same time it is excluded from the areas of “illegal economy” and “informal economy”.

Figure 1 The concept of Undeclared work and its Hierarchic relations



Here we arrived in the second step, consisting on differentiating the term of ‘irregular work’, most used in this thesis, from the one of ‘undeclared work’. An important aspect that can determine the use of different terms to indicate the same phenomenon is represented by the perspective of the field from which the phenomenon is observed: commonly there are three main aspect of the non-observability of the phenomenon: the statistical aspect, the juridical aspect and the economic aspect.

In Italy, an official definition of the phenomenon has been established only recently and it has been put under the more general concept of Irregular Work. The law 248/2006 (the so-called Bersani decree), art 36-bis, modified by the law 106/2009, defines irregular work as “employee who is not recorded in the accounting and compulsory administrative books”. In a document of 2008, ISTAT defines Irregular Work as "a non-regular job positions held without respect for the laws on tax-contributory, and not directly observable in the enterprises, institutions and administrative sources" (ISTAT 2008).

According to ISTAT it concerns mostly the following working positions: 1) continuously carried out in contravention of the regulations, 2) occasionally irregular carried out by students, housewives or retired, 3) carried out by irregular immigrants 4) more activities not declared to tax authorities carried out together with the formal activity" (ISTAT 2008).

Overall, we can deduce that: irregular work refers to employment performed for financial gain in violation of legal requirements. We may notice that the definition of irregular work given by the law n.248 in 2006 and by ISTAT in 2008 almost coincides with the definition of Undeclared Work given by the EU. Taking in account the fundamental attributes we can argue that it satisfies all requisites because it describes the situation of a worker performing in a legal activity (attributes 1 and 2), and for which the employers evade completely or partially the legal obligations (attribute 3).

Notwithstanding, the use of the term “irregular” in the latter definition it may be questioned for the fact that “irregular” is semantically different from “undeclared”. The term itself may be referred to any job position which is still totally declared to public authorities, but it is applied not in compliance with regulations concerning different aspects of the work relationship, such as health and safety procedures, administrative

procedures, and so on and so forth. In few words, the domain of the concept of "Irregular Work" is more extensive than that of the "undeclared work", which, instead, refers to those specific kinds of irregularities that aim to conceal, completely or partially, the work performance to public authorities.

However, ISTAT specifies in a note that “from a juridical point of view, irregularities considered are those concerning fiscal and contributory regulations, while are not considered irregularities regarding payments and regulations on health and safety”.

By this assertion, we may assume that the term “Irregular Work” used by ISTAT refers to the same phenomenon the EC calls “Undeclared work”, being specified that 1) the phenomenon is observed from a Juridical point of view and 2) the field of research is limited to those irregularities concerning regulations on tax and fiscal contributions.

In this specific case we may apply the method that Collier and Levitsky (1997) call “shifting the Overarching Concept”². When observing the object of this research from a Juridical joint of view rather than from an Economic point of view, we may call the same phenomenon “Irregular Work” rather than Undeclared work. The overarching concept so far considered, i.e. the Non observed Economy, is here shifted to the concept of “Irregularity” and the phenomenon in question may be considered as a subtype of Irregularity of work while concerning more specifically the non-compliance to the tax-contributory legislations in force.

In the present Research I will mostly use the term "Irregular Work" as defined by

² In their analysis of the concept of “Democratic Regime” a shift in the overarching concept can yield an alternative standard for declaring a particular case to be a democracy, yet without either modifying or stretching the concept of "Democratic Regime". Scholars have used this strategy to create a standard that can be either less or more demanding than the concept in question. The strategy of shifting among alternative overarching concepts can serve to introduce finer differentiation by creating an additional analytic category, in this way making therefore possible to term differently the root concept in question.

ISTAT in order to emphasize, from a juridical point of view, its non-compliance to the Italian legislative framework on regulation of employment relations and, in particular, to underline the irregular use of nonstandard contracts. Differently, the term "Undeclared Work" will be used only when it is referred to the EC definition and when the phenomenon is looked from a statistical or economic point of view, emphasizing its character of non-observability.

2 Defining Flexibility of the labour market and nonstandard employment

2.1 Labour market Flexibility

The second object of the research, as mentioned in the introduction, is Labour Market Flexibility (LMF). The term itself is elusive and ambiguous and can be subject of very different interpretations. It has been defined in very different ways, from the most restrictive to the most extensive, from the simplest to the most sophisticated and has been examined at very different levels of analysis and often from conflicting points of view. This Section starts from the premise that it is necessary to clarify the different meanings the term 'flexibility' may have in the context of labour market policies.

On the one hand different authors have proposed a quite general level definition of Flexibility as "the capacity to adapt to change". Boyer (1987) refers to "the ability of a system or subsystem to react to various disturbances". For Michon (1987) "flexibility becomes imperative in a context of rapid change: it signifies an aptitude for change".

Atkinson (1986) provides the following definition of what he calls "dynamic flexibility": "...changes to institutional, cultural and other social or economic regulations and practices which permanently increase the capacity to respond to change".

On the other hand, for other scholars, flexibility is a very precise concept consisting of either adjustments of the labour force and hours of work to an economic situation that has become unstable, or the possibility of bringing wages into line with the "demands" of the economic situation, and thus the reorganization of wage structures (Meulders and Wilkin 1991).

In both cases the supporters of flexibility stated that a less rigid labour market regulation would be beneficial for both the demand side, because it allows an extension of the undertaking's scope for manoeuvre, and for the supply side, because it gives more chances to unemployed to enter in the labour markets and it would better satisfy the different needs of workers concerning the work-free time balance.

Nevertheless, flexibility is not per se a univocal concept. Indeed it may concern different dimensions directly connected to different aspects of the labour market and of the employment relations. In this aspect, the literature has broadly discussed about different forms of flexibility. The most famous distinction of the forms of flexibility is given by Atkinson (1984). Following his suggestion the literature has successively agreed in dividing the concept of flexibility in four types: a numerical flexibility (or 'external'), a functional (or technical-organizational), a wage flexibility and a temporal flexibility.

Wage flexibility affects the ability of changes in wages and wage structures. From

a static point of view it refers to the ability to apply different wages according to differences on productivity, sector, occupation, age, or geographical area. From an economic point of view, wage flexibility means the adaptation of wages to cyclical fluctuations (inflation and productivity) and external shocks and variations in wages resulting from the performance of undertakings

The first aspect is generally considered external and refers essentially to a macroeconomic dimension while the second may be described as internal and of a microeconomic nature. The adjustment of wages can operate at two levels: the adjustment of the direct wage (gross remuneration paid to the wage earner) and that of contributions and charges paid by the employer (another component of wage cost). The first involves, in the case of downward adjustment, the problem of deflation; the second raises the problem of the intervention of the public authorities in a context of lasting budgetary deficits. The adjustment possibilities must obviously be set against "rigidities" which arise from various kinds of provisions: wage indexing systems, guaranteed minimum wages, the high level of replacement incomes and various charges (leaves and contributions) related to the use of the labour factor.

The advocates of this kind of flexibility generally argue that the drop of the wage cost should increase profits and stimulate investments, thus reducing structural unemployment and strengthen the competitive position of undertakings which would see an increase in the demand for their products.

External or numerical flexibility means the adjustment of the volume of work to the needs of undertakings in response to cyclical or structural variations in demand and/or technological changes. It interests three aspects: the institutional regulation of layoffs and hiring, the use of temporary and nonstandard forms of work, various forms

of externalisation such as subcontracting and outsourcing of functions or phases of the production to other companies.

Any measures which free employers from a lengthy employment relationship with their employees are part of this form flexibility: reduction in so-called termination constraints, massive recourse to temporary work, fixed-term contracts or task-specific contracts, or the use of self-employed workers, or even home work.

The mechanisms whereby numerical flexibility would guarantee the creation of jobs are identical to those which are generally put forward regarding wage flexibility. Thus, for example, the suppression of redundancy payments would limit overall labour cost and should encourage the substitution of labour for capital, which would favour employment.

The other side of the coin is that there would be a tendency towards the proliferation of employment relationships of a precarious nature. This would lead to the institutionalisation of a dual labour market which would include on the one hand poorly paid, unstable jobs (most of which would be held by young people and women) and on the other hand, stable and well-paid occupations.

The functional flexibility (or "internal" and organizational) indicates the ability of companies to adapt the tasks performed by employees to changes in demand, moving employees from one job to another or from one department to another or changing the contents of the task itself. Technical-organisational flexibility thus results from the capacity of the production unit to combine new techniques of organisation and diversified equipment into an overall structure, the purpose of which is to satisfy a demand which is uncertain, both in volume and in composition. This kind of flexibility also encompasses various ways of using labour and human resources. These include the

adaptation of operators to a variety of tasks of varying levels of complexity: multiskilling, job rotation, work units, changes in the functional division of labour, retraining, upgrading, etc.

Workers, therefore, are required to a high professional versatility and willingness to accept a good regeneration processes and frequent changes in working conditions. It should be noted that this flexibility is related to the mobility of workers within the undertaking and, by extension, to their deployment across a number of skill levels which are contractually established and thus subject to modification.

In many respects technical-organisational flexibility appears hardly compatible with the other two forms of flexibility. Because of the major investments in human capital which it requires, it would in fact be counterproductive to pursue a policy of training and versatility whilst allowing a permanent threat of lay-offs or wage reductions to remain.

A fourth kind of flexibility, *the temporal flexibility*, it concerns the ability to use different time schemes that differentiate from traditional daytime hours and the ability to vary the time according to the needs of the production, using the forms of overtime or seasonal work. This form of flexibility covers such aspects as: the fixing of normal or maximum weekly (monthly, yearly) hours of work, various forms of staggered work, the organisation of overtime and compensatory leave, alternate periods of work and training, weekend work, personalised work schedules, etc. The best known examples are the shift to allow the continuous cycle of production, a public holiday and night work and various forms of part-time work.

Theoretically, this kind of flexibility seems capable of reconciling the conflicting objectives of workers and employers, at least in the short term. Thus, it appears possible

to harmonise these objectives through the free choice of timetables, productivity demands and the individual assignment of working time, which is more satisfactory to the worker. Nevertheless, the employment effects of this kind of flexibility depend on the political and social objectives within which it is set. The most promising possibilities are to be found in the sharing of available jobs between a greater numbers of workers. But here again, doubts remain as to the real effects of such a practice, which may vary from sector to sector.

Having introduced the forms of flexibility most mentioned in the literature, it is important to specify here that non all forms of flexibility are object of this research.

The present work will focus mainly on two types of flexibility: firstly external or numerical flexibility and in particular the use by companies of contractual forms of temporary and nonstandard employment and, secondly, temporal flexibility as far as part-time contracts are concerned. For the purposes of research, functional and wage flexibility are not direct objects of analysis.

The following two Sections will focus more specifically on the issue of nonstandard forms of work and will provide a short legislative overview of the different nonstandard contracts introduced in the two last Italian labour market reforms.

2.2 Nonstandard work

European institutions have largely promoted the development of different forms of nonstandard work. As the Lisbon strategy illustrates, Europe's achievement of the labour market targets fixed in 2000 and revised in 2005 relied on developing forms of 'atypical or nonstandard' work arrangements that allow 'for more flexibility, either

numerical or external flexibility. Nonstandard forms of employment allow for adapting hours of work, organization of working time and the responsiveness of work to fluctuations in the demand for production or services³.

In this perspective, it is argued that global economic changes increased competition and uncertainty among firms and put greater pressure on them to push for greater profits and to be more flexible in contracting with their employees and responding to consumers.

In its Green Paper on modernising labour law of November 2006, the European Commission noted that: 'Rapid technological progress as well as globalisation have fundamentally changed European labour markets. Fixed-term contracts, part-time work, job on-call, hiring through temporary employment agencies and self-employment contracts have become an established feature of the European labour market, accounting for 25% of the workforce' (European Commission, 2006).

Various definitions in the literature of nonstandard employment refer to *those work arrangements that fall outside the definition of standard employment in which it was generally expected that work is done full-time, continues indefinitely, and is performed under the employer's direction*. Standard work arrangements were the norm in many industrial relation systems for much of the twentieth century and were the basis of the framework within which labour law, collective bargaining, and social security systems developed (Goldthorpe 1984, Casey 1991, Green et al 1993, Kalleberg et al 2000).

Although during the past two decades nonstandard employment has grown in all European Union, the share of these types of employments as well as their modes of

³ (European Council 2000, 'Presidency Conclusions'. Lisbon)

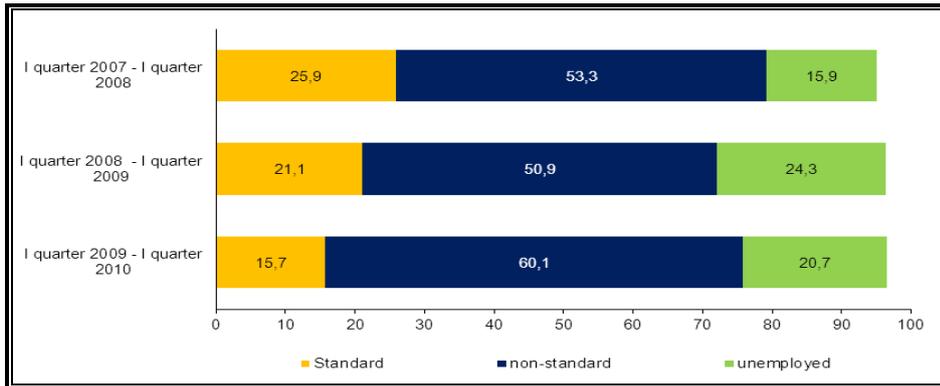
regulation within the systems of industrial relations differ quite substantially between the European Countries (OECD 2004).

Our research will focus on the specificities of the Italian labour market and on the (unintended) consequences of the implementation of different forms of nonstandard contracts provided by the recent labour market reforms.

2.3 Nonstandard work in Italy: a legislative framework

Institutional reforms aimed at deregulate the Italian labour market through the introduction of nonstandard contracts have been gradually introduced since the middle nineties. To describe how Italian labour market has evolved with respect to the other OECD countries and how Italy places in terms of external flexibility, we may have a first idea, simply by looking to the Employment Protection Legislation (EPL) indicators (OECD 2009). In 2008 EPL index in Italy has a value close to the OECD mean (1.89 versus 1.94) and Italy is ranked 25th out of 40 countries. A similar picture emerges if we consider the EPL on temporary contracts: in 2008 Italy occupies the 13th position out 42 countries. The share of temporary workers has increased of 5 percentage points, passing from a 6% of workers employed with a fixed term contract in the 90s to a 11% of workers in the last 5 years. The general growth of nonstandard work is particularly relevant for the young cohort as it is shown in the Figure 2.

Figure 2 Nonstandard employment 18-29 years old



Source: ISTAT 2011

Following we provide an excursus of the main legislative measures in direction of flexibilization of the labour market in Italy.

A first crucial reform of the Italian Labour market was the Treu Law, introduced on June, 24 1997 (law 196/97) with the aim to increase the flexibility of the labour market and to reduce unemployment rate. An important intervention concerned the area of legal provisions of labour outsourcing (articles from 1 to 11). Specifically it concerned the abolition of the public monopoly on temporary agency work (Act No. 1369/1960) and the recognition of the legitimacy of private employment agencies. This reforms intended to provide specific organizational and management resource operating in favour of external flexibility to give more effective responses to the needs of the enterprise wishing to make use of external human resources. It also works in favor of the modernization of the productive system by providing models of contractual integration between companies coordinated by actors offering a range of services with a high degree of specialization.

The Treu Package also modified the discipline on apprenticeship contracts. This contractual form obliges the entrepreneur to give the worker the basic notions necessary to transform him in a qualified worker. Art. 16 raised the age limit for apprenticeship

contracts from 22 to 24. The legal duration of an apprenticeship contract ranges between 18 months and 4 years, with some exception for the handcraft sector⁴.

Following the Treu reform, another important measure concerned the regulation of fixed-term employment in 2001. The Legislative Decree No. 368/2001 implementing EU Directive No. 99/70/EC decided to adopt a clear formulation as found in other European systems: “the employer may hire employees on fixed-term contracts, on condition that at the same time written motivation is provided of a technical, productive, or organizational nature, or for the substitution of personnel”.

The Decree had the objective of curtailing the power of the employer, that would otherwise be discretionary, to place a limit on the duration of the employment contract. In addition, the reform of 2001 establishes the minimum interval (20 days) between two fixed-term contracts for the same worker within which the worker cannot continue to work regularly in the enterprise. In terms of safeguards for the employee, the burden of proof concerning the legitimacy of certain organizational and managerial decisions falls on the employer.

A further step towards the flexibilization of the Labour Market has been the Biagi reform (N.30/2003, Legislative decree 276/2003) in 2003. The aim of the reform was to liberalize the employment regulation system, giving more spaces to nonstandard arrangements in order to create new job opportunities and to make more fluid the labour market to better meet the needs of firms operating in a broader, more uncertain and more unstable economic context.

The reform redesigned existing employment contracts (part-time work,

⁴ Apprenticeship contracts were introduced with law 25/55 and were not modified until the introduction of the Treu reform.

apprenticeships) and introduced new forms of nonstandard employment, to be used according to the needs of employers and employees. Following I briefly list the main new contractual forms.

The *job on call* consists of a working activity to be performed on a discontinued or intermittent basis, according to the requirements specified in the collective agreements or, in their absence, in a specific decree to be issued by Italian Ministry of Labour. Under such type of contracts, the employee shall guarantee his/her availability to perform the work and shall be entitled to be paid an adequate stand-by allowance. Job on call contracts shall contain certain specific contractual elements, including the duration, the objective and subjective circumstances legitimating this type of contract, the place and terms according to which the employee shall be available, and the related notice of call, which shall in no event be less than one working day.

A *job-sharing* contract is established when two or more employees jointly share the responsibility for the supply of a sole work obligation. Job sharers can decide how to replace one another at any time and at their own discretion. This type of contract should be regulated by collective agreements, in compliance with the rules set forth in the relevant decree.

Occasional work has been defined as a self-employment relationship with the same principal not exceeding 30 days in a calendar year, and with a remuneration of less than EUR 5,000 per year. Outside such boundaries, the relationship shall be deemed a coordinated and continuous collaboration, with application of the limits described above.

The Biagi law introduced also a new self-employment contract so-called '*project-base work*'. The project shall be determined in written form and shall specify, inter alia, the duration of the relationship (either determined or determinable), the criteria to

be adopted for determining the remuneration (proportioned to the quantity and quality of the work performed), the expiration dates, the terms of payment and the rules governing the reimbursement of expenses. Generally, collaboration contracts expire upon the completion of the project, but early termination is permitted according to the methods agreed upon by the parties. This area has resulted quite controversial for policy and academic debate for the fact that it combines typical conditions of subordinate employment with those of self-employment.

The Reform has also provided for procedures enabling the "certification" of the new flexible contractual forms illustrated above. According to the legislator's intentions, the "certification" of employment contracts should clearly and correctly qualify the employment relationships, in relation to the distinction between independent and subordinate employment, between the content of staff supply and the contract concerning the supply of other services, and amongst similar contractual typologies (job on call, job sharing, part-time). The aim of such "certification" is to reduce disputes over the qualification of the employment relationships. In other words, the commencement of a certification procedure should provide prior qualification of a contract.

The reform of 2003 has also reconsidered the relations between collective and individual bargaining. Individual autonomy seems to have been given greater recognition by the legislator with the reform. In particular, on numerous occasions, the legislator delegates the negotiation of certain matters (for example, certain aspects of part-time and training contracts, and occasional work) to individual autonomy when such matters are not addressed by collective agreements. However, it must be underlined that the main aim of this new approach by the legislator is to prevent the trade union from exerting power in such a way as to hinder the creation of a regulative

framework for individual bargaining (Tiraboschi 2010).

3 The irregular use of nonstandard contracts in Italy

Having briefly introduced the most important characteristics (for the purpose of the research), of the two recent Labour Market reforms in Italy, this Section aims to provide a clear definition of the main object of research of this thesis: *the phenomenon of irregularities in nonstandard work*.

As far as the definitional framework is concerned, while the definition of "Irregular Work" including the two phenomena of "totally irregular and semi-irregular" in this way seems to be consistent with the definitions given by various national and international institutions, the paradigmatic features of recent developments of the Italian labour market contribute to further complicate the definitional framework.

From the point of view of this research, the improper use of nonstandard contracts fall into the sphere of "Irregular work" when it satisfies the three requirements discussed above - i.e. a) it must be a paid activity; b) it must be lawful as regard its nature; c) it is (partially) not declared to public authorities.

In the case of irregular nonstandard work, the first requirement is satisfied. According to Article 62 of the legislative decree 276/03, nonstandard forms of contract must be stipulated in written form, and contain specific details on the working partnership. In particular it should indicate the pay and method of payment, the working time, and the project in case of project-base contracts. This means also that the lawful nature of the paid activity is, by necessity, certified (second requirement).

In this analysis the main question is *to which extent and, most important, under which contractual nature the employment performance is declared to the public*

authorities (third requirement)?

The official registration of the employment contracts in Italy involves different public authorities. They generally are: 1) specific offices managed at the regional level (Centri per l'impiego, law 59/1997); 2) National institute for the social security (INPS); 3) National institute for health and safety at work (INAIL).

Currently, the employer is obliged to send a compulsory notifications to the Job Centre (centri per l'impiego) one day before the hiring date. Employers must deliver to the employee a copy of the notification, which must contain all of the following information:

- The worker's profile;
- The workplace. In the absence of a fixed or main place of work, an indication that the worker is employed at various places, and the domicile of the employer;
- The date of the begin of the employment relationship, the duration of the employment relationship and whether it is employment-time definite or indefinite;
- The duration of the trial period if required - the placement, level and status attributed to the worker, and a brief description of the job,
- The initial amount of the remuneration with an indication of the payment period
- The duration of paid leave to which the employee is entitled
- The working hours.

The Job centers are required successively to transfer this information to INPS and INAIL. Such information must also be contained in the company employee register (libro unico) to be held at the work place.

The factual application of the contract may be subject to inspection by public

authorities. Labour inspectors should collect "all the elements to assess the correct qualification of the contract, comparing the contents of the contract and the information contained in the company employee register, with the statements made by the worker and his or her colleagues" (Legislative Decree 124/2004). In case of *a clear discrepancy between the nonstandard contract and the factual employment relationship*, inspectors must proceed to reject the contract and qualify the employment relationship under a different contract (see box 1).

Often, *this discrepancy is evident when the working performance of the nonstandard worker is characterized by elements of subordination and/or permanent work. As a result the real nature of the employment relationship turns to be unknown to the official statistics and to the tax authorities*⁵. This undeclared aspect of the employment relationship fits into the ISTAT definition of Irregular Work and the European Commission definition of undeclared work. The employment relationship is declared with a false nonstandard contract, while its real nature is unknown to the public authorities.

In conclusions, the cases of nonstandard employment de facto characterized by elements of subordination or permanent work represent a form of what in literature is commonly referred as grey work, in which the employment relationship is only partially (or wrongly) declared to the public authorities.

Following the same descriptive design, the following chapter will have a deeper look at the theoretical framework surrounding the issues introduced in this first chapter.

⁵ The specific cases of irregular nonstandard work analyzed in the research are listed in Chapter 3, Section 1.

Chapter 2. General theoretical approach and background literature

1 Different explanations of irregular work: sociological and economic literature

The studies attempting to understand the phenomenon of irregular work have concerned different field of research, from social sciences to economic and political studies, and it has involved very different perspectives.

One of the main approaches towards the explanation of the evolution of irregular work refers to theories of modernization and to neoclassical economics. Modernization theory approaches in particular were common in the earlier academic discourse on irregular work in developing countries. In this perspective irregular work was seen as a ‘backward’ component of a national economy (Geertz 1963; Hart 1973) not yet included in the modern economy. Later, other researchers have contested this view. Portes et al. (1999) argued that the irregular work has its own dynamic and innovative capacities for capitalist development and it represents an absolutely integral element in the contemporary economy.

In the more recent debate on the development of welfare states, which is in part influenced by neoliberal thinking, in contrast to arguments based on modernization theory, a high level of state regulation is seen as the main cause of the increase in irregular work. It results from the over-regulation and heavy state intervention in the

economy through tax and social security system. According to this argument, individuals create the 'underground economy' by circumventing legal regulation and thereby establishing the 'real' free market. However, this is contradicted by the finding that in generous welfare states irregular work is rather lower than in less generous welfare states systems. Thus, according to the estimation of the underground economy conducted by Schneider and Feld in 2010 (see Table 1), the estimated pro-portion of irregular work in the GDP of the Northern European welfare states is comparatively low even though these are the most generous welfare state systems. The problem with this approach is that it sees the development of irregular work as taking place according to a single, unique 'logic'. From the point of view of the thesis, there are different types of irregular work that vary with respect to the way in which they are embedded in societal contexts and in terms of the factors that influence the way in which they develop.

Table 1 Size of underground economy on national GDP

OECD-countries	2007
1. Australia	10.7
2. Belgium	18.3
3. Canada	12.6
4. Denmark	14.8
5. Germany	14.6
6. Finland	14.5
7. France	11.8
8. Greece	25.1
9. Great Britain	10.6
10. Ireland	12.7
11. Italy	22.3
12. Japan	9.0
13. Netherlands	10.1
14. New Zealand	9.8
15. Norway	15.4
16. Austria	9.4
17. Portugal	19.2
18. Sweden	15.6
19. Switzerland	8.2
20. Spain	19.3
21. USA	7.2
average for 21 OECD countries	13.9

Source: Schneider and Lend 2010

Large part of the economic and sociological literature has concentrated on the determinants of irregular work with the purpose to identify a pattern of policies to be imprinted at national and subnational level that could contrast the spread of the phenomenon. Nevertheless, even though the literature has so far mentioned a very broad number of possible causes of irregular work, it hasn't reached a common and clear position on the pattern that generates and amplifies the phenomenon.

In order to better delineate the approach of the research, in this section we proceed with a differentiation of the main factors producing irregular work between

those commonly accounted in the economic literature and those analysed by the sociological literature.

Departing from the economic-type determinants of irregular work, most of the literature agrees on attributing to a high level of taxes and social security contributions one of the main reasons to fall into irregular activities. Already in the document of the European Commission (1998) on Irregular Work it is argued that the propensity of economic activities to engage in irregularity of work is related to the general costs of labour, for which taxes and social security contributions represent an important part. Schneider (Schneider and Enste 2000; Schneider 2005) in its studies on the underground economy in Europe attributes an important role to the increase of taxes and social contributions in the labour market. This outlook considers in particular the high tax level as an incentive for workers and entrepreneurs to escape from formal rules and engage in irregular work.

However, although the weight of the tax burden represents an important factor, it is not always decisive for the development of irregular work. OECD (2004) argues that it is not so much the amount of taxes to influence the spread of irregular work, but rather the characteristics of the tax systems and the attitudes of citizens toward the state. Also Schneider (2005) in his more recent empirical study of irregular work in Europe indicates that an important element is the acceptance and the subjective perception of the degree of fairness of the tax system. Accordingly, the higher level of tax morality (the positive attitude of citizens towards the state) corresponds to the less use of the irregular work. In the Table 2 it is shown an estimated percentage of the variables accounted by Schneider in 2005, including the influence in percentage of Tax and Social Security contribution Burdens and the tax morality.

Table 2 Causes of the Shadow Economy

Factors influencing the shadow economy	Influence on the shadow economy (in %)	
	(a)	(b)
(1) Increase of the Tax and Social Security Contribution Burdens	35-38	45-52
(2) Quality of State Institutions	10-12	12-17
(3) Transfers	5-7	7-9
(4) Specific Labour Market Regulations	7-9	7-9
(5) Public Sector Services	5-7	7-9
(6) Tax Morale	22-25	-
Influence of all Factors	84-98	78-96
(a) Average values of 12 studies.		
(b) Average values of empirical results of 22 studies.		

Source: Schneider (2005)

With respect to the case of Italy there is a wide national-level economic literature particularly focusing on the phenomenon of tax evasion in employment relations (Tanzi 1999, Boeri and Garibaldi 2001, Valentini 2004, Marignani and Pisani 2006). The empirical literature investigated on several determinants of tax evasion, such as the firms' size, the geographical location, the sector of activity and the firms' legal framework.

Valentini (2004) studied the causal link between the level of contributions for Social Security and the tax evasion, showing that the effects of the level of contribution rate may turn to be different for the parties. For companies, the contribution rate is an additional cost, while for workers it represents a deferred income more or less relevant depending on the structure of the contribution system. According to Valentini, with

regard to the pension systems, when the retirement age is too high it may encourage irregular work because it averts the prospect of retirement and shortens the period of enjoyment of the pension. In this way the worker's expected benefit is reduced.

Apart from the studies on the very economic-type determinants of irregular work, which constituted an important contribution to the understanding of the phenomenon, a large part of the quantitative research has focused also on other factors more linked to the dynamics and the composition of the labour market in a given society.

In this direction, a common argument of the economic research is that a very important factor for the growth of irregular work is represented by the role of *immigrant work*. Most of this research is conducted with the intent of determining whether the function of immigrant work may be considered an additional rather than a competitive element with respect to the local workforce of a given country (Donolo and Capparucci 2002). In this regard, the majority of scholars of immigration are agreed that the transformations occurring in the advanced economies generate phenomena of segmentation of the labour market, therefore, the use of immigrant doesn't impact employment and wage levels of native workers (Venturini 1996). According to this perspective, Immigrant workers are those who are most likely to fall into irregular work.

Other Empirical studies on the determinants of the irregular work have generally revealed a positive correlation between the spread of irregular work and *unemployment and activity rates*. According to several authors (Boeri and Garibaldi 2002; Barbieri 2000) the reason why unemployment and irregular work are correlated phenomena is because they respond interactively to the formal economy. Specifically, the hypothesis held that when the average duration of unemployment is particularly long it discourages

the finding of a regular job, and irregular positions may become stable. In addition it has been proved that a large amount of unemployed are not totally inactive but rather engaged in undeclared activities (Lucifora 2003, Williams and Windebank 2002) not easy to be grasped by statistical reports.

The economic literature has certainly the merit of having provided a number of tools for the measurement of the phenomenon and for the analysis of the interactions between macro and micro variables in “contextualized economies”. However it has generally provided a description of irregular work as a uniform phenomenon clearly defined and circumscribed by legal boundaries. Within this outlook irregular work is mostly intended as a market-like phenomenon conducted for profit-motivated purposes, generally based of alternative modes of existence with respect to the official rules.

This thesis will particularly refer, instead, to those sociological studies that have highlighted the more elusive and less explicit, but no less significant, aspects of the phenomenon. From the analytical perspective of the thesis, irregular work represents a complex field of differing forms of employment relations that are based on different motivations of the actors involved and involving different degrees of social integration.

For the purpose of the research it is therefore important to look more closely at the impact of the process of flexibilization and the attitude of individual actors to engage into different forms of irregular work. Following this approach, the presence of structural and environmental resources in a specific territory, informal networks, social norms, individual risks in a context of flexible labour market, are all crucial aspects for a deeper understanding of the phenomenon.

Williams and Windebank have conducted a broad sociological research in this direction. They challenged the common interpretation of irregular work exclusively as a

market-like phenomenon conducted for profit-motivated purposes. Instead, they highlighted its social function when conducted for motives more akin to unpaid mutual aid and informal reciprocity (Williams and Windebank 2001, 2005). This interpretation broadly considers the fundamental interplay between informal networks, systems of production, welfare state framework and labour market institutions as determinants of irregular work. What is very important for our purpose here is that irregular work is not considered by these authors just an hidden economic issue to be discovered, but it is seen as a complex phenomenon itself embedded into the social behaviours and closely interacting in a dynamic way with official Labour Market institutions.

It has been argued that the underground economy, often arises from a reciprocity between workers and enterprises or between the suppliers and users of services, and on the implicit social norms that regulate division of the spoils deriving from evasion of the rules (fiscal and contributory). It is through informal relational networks based on complicity that irregular firms can find workers willing to be hired 'off the books'. In specific territorial contexts, these networks represent a necessary condition for the match between demand and supply or for accessing to the market (Williams and Windemback 2002; Regalia 2004).

In sociology, social norms are crucial in determining individual behaviours. Bonaventura (2005) has studied the role of social norms as an important factor conditioning the extent of irregular work in Italy. He describes a mechanism of formation and maintenance over time of a social norm that "coordinates the choices of individuals" in the selection of a regular / irregular economy. The author concludes that the establishment of commonly accepted social norms that "justify" or "reject" the phenomenon of irregular work is determinant for the polarization of a micro-economic systems toward a situation of complete regularity of working positions on the one hand

or irregularity on the other hand. In few words the social norm is crucial for the collective choice toward a certain type (regular or irregular) of labour market.

A critique can be done to the thesis of Bonaventura. His thesis does not consider those situations of "partial irregularity" of the employment relations (Samek Lodovici and Semenza, 2002) actually existing, albeit often in a latent form, in certain working contexts. The main assumption of the Bonaventura's thesis is that irregular and regular work are related by a structural trade-off. The choices of actors, determined by social norms, can lead over time toward a polarization of situations of generalized irregularity or, in the other case, of regularity of the labour market. Contrastingly, in this thesis it will be argued that regular and irregular work can have a different relationship not always characterized by inverse proportionality. Often, a certain kind of regular working contracts may be accompanied by irregular aspect of the performance of the employment relation, therefore regular and irregular may "walk" together in a dynamic interaction.

Another branch of the sociological literature (Dalago 1991, Williams and Windebank 2005; Bonolo 2002; Pfau-Effinger 2009) has focused on the territorial context as a crucial determinant for the establishment and spread of certain type of undeclared work.

In the Italian case Bonolo and Lucifora (2002) identify important differences between two different areas. In Center and South of Italy, we find an irregular work "by necessity" given that the phenomenon of undeclared work is a physiological component deeply embedded in informal network and in micro-systems of small and medium enterprises. Differently, in the North we find an irregular work "by convenience" mostly related to the search for greater flexibility and lower production costs. Following

this perspective, the thesis considers the territorial context as a determining factor in defining the various forms of irregular work and it is the dimension on which we'll focus the empirical research (See chapter 3, Section 1.2). Through the consideration of economic and social characteristics of different geographic areas we consider the different shape and dimensions of irregular work stemming from its interaction with the productive structure and networks of a specific territorial context.

It is also essential to consider the literature that reconstructs the profile of individuals who are most likely to engage in irregular work. Most of irregular workers are generally represented by those categories that lack of substantial requirements to enter in the regular labour market. A *low educational level* is usually accounted as an important determinant for individuals to engage in irregular work (Blossfeld and Mayer 1988; McKeever 2006), given that irregular work has traditionally concentrated in the low professional-profile sectors. Nonetheless, the results of a study by Barbieri and Fullin (2001) shows that the shortening of demand for professional labour pushes also high-educated workers to provide services within the underground economy. For high skilled workers and professionals such as doctors, dentists, therapists, psychoanalysts, the irregular provision of services may represent an attractive option when there is a lack of demand in the regular market. According to the analyses of Ahn and De la Rica (1997) a high education offers more occupational opportunities both in the regular and in the irregular sphere of the labour market when employment prospects are uncertain.

Another important factor to consider is *age*. Barbieri and Fullin argue that the spread of irregular work occurred by excluding the youngest cohorts from the labour market. According to these authors, the young generation is not able to provide the types of skills required in the regular work and is not willing to accept repetitive tasks, and therefore they are more likely to fall into irregular work. Moreover, another age

group at risk of irregular work is composed of the population under retirement. A report by the European Commission (2004) found that the retirement age does not mean the permanent withdrawal from the labour force. Where regulatory issues do not allow the accumulation of retirement income, the retirees may opt for irregular work to supplement their income.

Finally, the studies of individuals most at risk of irregular work have considered *gender inequalities* as another important factor. Pfau-Effinger (2009) suggests to look at the "gender arrangement" of a given society. This concept refers to the relations between the cultural system, social structure and institutions, and it represents the framework in which the gender division of labour occurs. She assumes that the "gender contract" in a country is the result of a previous conflict, but also a process of negotiation and compromise among social actors. This factor varies significantly depending on the welfare regime (Esping-Andersen 1990). Therefore, particularly in Mediterranean countries the subsidiary role of the state in providing services - in particular household services, childcare and services for the elderly - in comparison to the Nordic European countries, increases women's participation in the underground economy.

What has emerged from this brief review is that over the years there have been many theoretical and empirical perspectives dealing with irregular work. In particular, important differences remain between the economic literature, which adopted a more explicative and descriptive approach, and the sociological literature, which embraced a more interpretative perspective. Nevertheless, the phenomenon has shown such a multifaceted character that is difficult, and sometimes superficial, to be explained through a single discipline. Cooperation among social sciences has resulted essential in

the use of multiple interpretive instruments, such as analysis of informal networks and the constant reference to the “embeddedness approach”. By these "crossovers", the study about irregular work has been certainly enriched. Still, several aspects of the phenomenon remain broadly unexplored. The processes of internal and external organizational restructuring of enterprises, the impact of the financial crisis on contextual productive systems and the continuous changes of the legislative framework on regulation of the labour market and social security are redefining many parts of the formal and informal sector of the economy. The next section will focus more deeply on the close interaction between irregular work and the characteristics of today's labour market framework and productive structures.

2 The more flexible, the less irregular?

Within the European Union in the last twenty years there has been a growing call for flexibility in the labour markets. The debate over labour market flexibility has had an increasing influence over the direction of social and economic policy in all European Countries. The view that the “rigidity” of labour markets in terms of institutional constraints, legislation on employment relations and collective agreements, constituted a significant obstacle to economic growth have gained support at the level of policy makers, employers and, not least, in part of the academic establishment. Concerns over high levels of persistent unemployment and low levels of employment in many Member States has led many to argue that a rigid regulative framework has obstructed the operation of labour markets, limiting the necessary adjustments to changes in demand, hindering innovation, and restricting job creation.

Flexibility of the labour market through the provision of higher levels of nonstandard work was considered by the majority of the economic and sociological literature the most effective tool in the fight against mass unemployment of the eighties and nineties (OECD 1994).

Advocates of this viewpoint claimed that employment growth in EU countries could only be achieved through the deregulation of employment legislation and the dismantling of institutional barriers to flexibility. Thus, from the '90s there have been growing calls for the elimination of 'rigidities' in labour markets in order to increase sectorial and occupational mobility within the labour force, and to encourage the use of non standard working patterns, all with a view to expanding overall employment levels (Esping-Andersen and Regini 2000).

However, the relationship between labour market rigidity and unemployment rates has never had a strong empirical support (Blanchard, 1998; Bertola, 1990). What has been demonstrated, instead, is the incidence of rigidity on the average duration of unemployment, and on the strong segmentation between insiders and outsiders. Countries with a more rigid labour market offer greater protection to employees and provide them with greater bargaining power, while the unemployed, particularly those who are seeking their first job, meet high institutional barriers to access into the labour market (Semenza, 2004).

Accordingly, the growth of nonstandard forms of employment may represent an enhancement of employment opportunities for groups previously discriminated by the law's emphasis on protecting workers in 'standard' employment relations. There has been some evidence that nonstandard employment may work as an entry into stable employment, not least, because flexible employment might be used as a screening

period with the 'good matches' being converted into permanent contracts after some time (McGinnity et al., 2005; Addison and Surfield, 2006). Ichino et al. (2003) find support for the 'atypical-push' hypothesis for Italy, showing that temporary forms of employment enhance the workers' chances to subsequently enter in a stable, secure job.

On the other hand, commentators have pointed out that the process of flexibilization of employment conditions and the decomposition of the production systems are accompanied by a decay of the traditional regulation of the labour market. This has raised concerns that these 'new' flexible jobs may crowd out more stable employment (Kahn, 2007) becoming an additional source of insecurity for workers and increasing labour market dualism between workers finding stable career jobs and those failing to do so (OECD 2007; Barbieri and Scherer 2008).

A common assumption in the literature is that *a rigid labour market leads to a segmentation of working status whereby the excluded segment would be more likely to fall into irregular work.*

One of the first theoretical contributions in this direction is the so-called segmentation theory, developed by several American economists (Doeringer and Piore 1971). The authors discussed about the existence of two types of labour markets: a primary "regular" labour market in the more advanced sectors that is highly structured and protected, and a residual secondary one that is extremely informal and precarious in the backward sectors. In Italy, Contini (1979) talks about a particular dualism of the economic system having an official-declared side, where all economic activities are regulated in compliance with law, and an unofficial-undeclared side, where activities mostly rely on informal regulation. In his analysis on the industrial production systems in Italy in the 1960s he found that a growing fraction of the production of goods and

services was achieved through the use of the labour force out of the wage legislation. During the era of fordism, the composition of domestic production was characterized by rigidity, high standardization, and strong employment protection for employees that exacerbated the dichotomy insiders / outsiders. Irregular work, as a phenomenon existing exclusively in the secondary sector, was seen as legally and economically well-defined and separated from the formal work regulation, but it also represented a form of unreported flexibility extremely useful to respond to short-term adjustments of production.

Many interpretations for this dualism refer to the “functional” nature of the undeclared work that is able to respond to the needs of employers searching for lower production costs and higher numerical flexibility in a rigid labour market. However, this dualistic interpretation has been subject to many criticisms. In particular, Meldolesi (1997) argues: "irregular work and secondary labour market are not always directly related, as there exist many areas of undeclared work carried on by high skilled workers, with wage earnings even higher than those in the official market”.

From this starting point, the main interest of this thesis concerns the link between irregular work and the mechanisms of the contemporary Labour Market in Italy, and the consequences of the expansion of a more striking external flexibility, particularly after the Labour Market reform occurred in 2003 (Law 276/2003).

More specifically, the question of greater scientific interest is the following: *Has the spread of nonstandard employment reduced the incidence of irregular work?*

The question raised a peculiar debate among the literature on irregular work. Some studies have shown that the process of flexibilization of the labour market is able

to contrast the underground economy (Loayza 1996; Johnson 1997; Valentini 2004). Other empirical evidence supports this hypothesis: Boeri and Garibaldi (2002) argue that external and numerical flexibility, whenever it facilitates the matching of supply and demand, may be able to reduce irregular employment. This is for the following reasons: From the demand side, the rigidity of labour market institutions constitutes one of the most important factors leading companies to engage into irregular forms of employment. According to this argument less stringent regulations in terms of hiring, dismissal and wage, would increase the incentive for companies to regularize and declare employees at work. From the supply side, it is argued, the creation of new occupational opportunities through an enlargement of the number of flexible employment arrangements would reduce the necessity for unemployed to fall into irregular work. This argument is connected to the assumption that the propensity of workers to be offered in irregular segments of the labour market is positively related to the high rate of unemployment, and that Irregular Work constitutes an option of last resort in front of a low probability of finding regular employment. Therefore, being assumed that flexibility of the labour market increases employment rate, it is also reasonable to consider that it reduces at the same time the incentive (or need), for workers to accept irregular forms of employment.

The assumption of *a trade-off between nonstandard and irregular work* in the case of Italy, however, has been questioned by several research. The National Institute of Statistics (ISTAT 2005) in a publication that takes into account the time series of estimates of nonregular work units in the period 1980-2004 concludes that flexibility has not reduced the extent of irregular work. This is because the phenomenon responds to both employers needs to reduce costs, and employees themselves, whenever it facilitates the entry into the regular labour market. Other studies have pointed out that

many types of nonstandard employment relations entails the risk of an enlargement of semi-irregular work. Samek Lodovici and Zanzottera (2002) and Lucifora (2003), although they clearly underline the complexity in tracing the relationship between nonstandard employment and irregular work, they claim that nonstandard employment provided by the labour market reform Treu (1997) and the Biagi (2003) may create the conditions for the development of semi-irregular work such as the irregular application of working-time flexibility (in part-time contracts) or irregularities in self-employment contracts in order to hide very typical-subordinated employment.

An attempt to evaluate empirically the effect of substitution between nonstandard work and irregular work in Italy has been conducted by Viviani (2010). The author tries to investigate whether the spread of nonstandard employment has or has not provided an opportunity to legalize undeclared occupations. The strategy used is to study the workers' career mobility from a status of 'totally undeclared' toward a status of regular nonstandard worker in the last years. The longitudinal analysis underline the fact that only a very small number of irregular workers have found a job under new forms of nonstandard contracts, concluding that it is unlikely that there are direct shifts within these two status. Overall, the author argues that the empirical results reject the hypothesis that in Italy the spread of nonstandard types of employment has been able to reduce the extent of undeclared work.

In conclusion, the literature that attempted to analyse the relationship between irregular work and flexibility of the labour markets has shown a twofold fundamental shortcoming.

On the one hand, a consistent part assumes that (external) flexibility and irregularity are analytically separated and linked by a substitutive relation, implying that

a quantitative variation of irregular work is only indirectly related to the quantitative variation of nonstandard form of employment. Irregular work and flexible work are considered as two separate spheres and never overlapping, and influenced by external mechanism determining their quantitative dimension. In few words, the basic assumption encountered in the literature is that irregularity and flexibility are “mutually exclusive” (the two phenomena are always separate and therefore substitutable).

On the other hand the literature in some cases mentioned that flexibility and irregularity may coexist in the same working conditions and be directly linked to each other, but it didn't provide a theoretical framework and empirical support that can explain this relationship.

Following the analytical direction suggested by the sociological literature on irregular work, the thesis develops a theoretical framework with a closer focus to those *individual risks* stemming from the characteristics of the contemporary regulative framework and the economic context in Italy. In this aspect, it is therefore necessary an assessment of the literature dealing with the effects of the process of flexibilization of the labour market on the individual sphere and on the dynamics of employment relations. The next section will further develop this point.

3 New practices in employment relations: an open issue

This thesis considers the transformations of employment practices as an inseparable issue from of the individual sphere and from the changing strategies of actors in employment relations. The focus will be in particular on the behaviour of actors at the firm and individual level as regards the way nonstandard contracts may be implemented. It is therefore crucial to consider the different perspectives of the demand

and the supply side on the new possibilities nonstandard contracts may offer within employment relations.

As far as the demand side is concerned, theoretical and empirical literature (Christensen 1995; Kalleberg 1999; Schmid and Storrie 2001) has broadly discussed over the advantages and disadvantages of a widespread use of nonstandard work in a firm. Among the advantages, the availability of nonstandard contracts was reflected on new possibilities for the management with regard to the form in which labour is contracted. The use of new forms of employment may correspond to explicit strategies of flexible production and organization of the firm. In this case, the reasons for the increase in the use of nonstandard contracts can be traced on the fluctuations of demand of goods or services and the need to secure specific skills to be canalized to circumstantial marketing goals. Moreover, the use of nonstandard forms of employment is related to the avoidance of the so called termination costs (costs for individual dismissals), and to the decrease of labour costs linked to a lower pay and less contributory constraints (Sacchi, Berton, Richiardi 2009).

However, there is a wide variety of problems for the management related to the use of flexible work: difficulties in relying on specific human resources with specific skills when needed; increase of work force coordination and management costs; the risk that contingent or peripheral workers will be less committed to the firm and unreliable in their work; the consequent risk of an overload of responsibility on permanent workers; the risk that the quality of products or services will deteriorate (Christensen 1995; Schmid and Storrie 2001; Regalia 2006).

In human resources management, two different needs must be balanced. Firstly, the management needs flexible work to better respond to the fluctuations of demand of

goods, but at the same time it should avoid the negative effects that nonstandard contracts, low wages and modest protections may have on workers commitment resulting in unproductiveness of the investments in specific human capital. The internal segmentation between a group of more stable workers and other workers employed from time to time in order to satisfy temporary needs of production is one of the main strategies used by employers to respond to this problem. From this point of view, in fact, a dualistic model of work organization based on the distinction between a central and a peripheral work force have been confirmed by several empirical studies (Rubery and Wilkinson 1994; Regalia 2006).

As far as the supply side is concerned labour market flexibilization policies may have a twofold effect. On one hand, it may represent a way to increase the employment chances for those categories traditionally weaker and less represented in the labour market (especially women and young persons), and a way to reduce the risk of unemployment and to fall into the irregular labour market (Francesconi and Garcia-Serrano 2004). Furthermore, it can help workers to collect working experiences and knowledge in order to reach an optimal bargaining power within the labour market (Reyneri 2005). Nevertheless, there is a wide variety of risks for workers: risk of lower level of earning security and higher uncertainty of future unemployment; risk of limitations on human capital, given that, in general, nonstandard workers are subject to less investment in their training and career development by firms; risk of reduced rights and entitlements (Francesconi and Garcia-Serrano 2004. Regalia 2006).

In Italy, economic and sociologic literature on the effects of the spread of nonstandard employment (Barbieri 2008; Sacchi, Berton, Ricchiardi 2010; IRES 2011)

has raised several concerns about the risks on which Italian nonstandard workers may occur.

In an empirical study, Barbieri (2008) highlights that educated school leavers are at risk of finding themselves in repeated nonstandard employment contracts, due to the specific way labour market deregulation has been targeted. Therefore, they are more at risk to remain entrapped in precarious economic conditions or to face periods of non-employment increases with successive episode of nonstandard employment, creating the picture of an increasingly segmented labour market.

Sacchi et al. (2009) have identified three main determinants of a condition of 'precariousness' of work: (1) lack of employment continuity, (2) lack of a decent wage level and (3) non-access to income-maintenance schemes in case of unemployment. They clarify that a nonstandard worker is not, per se, precarious, as far as they are able to provide in the medium term for their own economic support through the labour market or through access to income maintenance schemes. Thus, they found out that even if numerical flexibility and precariousness cannot be conflated at the analytical level, it turns out that, in Italy, they are strongly associated at the empirical level. The main finding of their analysis is that the peculiar partial and targeted flexibilization of the Italian labour market led to new and enduring cleavages in the society. This process fosters concrete risks of persistent exclusion for nonstandard workers from full social citizenship rights.

A substantial portion of nonstandard workers tends to be in low-paid jobs and have a lower job protection. Consequently, they often experience periods of unemployment and are usually not entitled to benefits aimed at either replacing income or reducing poverty. Part-time, fixed-term and temporary agency workers despite being formally covered in case of unemployment, are likely to meet insurmountable obstacles

in accessing ordinary unemployment benefits due to the strict eligibility requirements and the existence of minimum thresholds for contributions (cf. Madama and Sacchi, 2007). The So-called project workers (named as co-co-co and co-co-pro workers) are in the most critical condition; in fact, they are formally self-employed and, as a consequence, they not entitled to any kind of unemployment benefit.

The focus on employment relations in this research leads us to deepen on the link between institutional regulative framework and actor's behaviours and strategies at the individual level. For this reason, a part of the theoretical framework will refer to the actor-centered institutionalism perspective. The following section aims to further elaborate the theoretical approach in this direction.

4 The choice of an actor-centered approach

Mechanisms of interaction between individual employers and employees among formal and informal rules in nonstandard work have been generally overlooked by most of the economic and sociological literature. My contribution attempts to underline the importance of actors' strategies and behaviours at the level of employment relations for the emergence of irregular practices within the regulative framework of nonstandard work in Italy.

According to the actor-centered institutionalism perspective (Maynz and Sharpf 1995; Sharpf 1997), central to the literature on institutional change in political economy, the behaviours of individual actors is not completely determined by macro-level institutional settings. Actors have always a room at one's disposal for a change in strategic action and therefore a way to deviate from the formal regulative framework

when implementing the rules in line with their interests. In this perspective, individuals exploit the implicit ambiguity of rules to gain advantages in a context of conflicting interests given a certain space of action, their capabilities and power, and their normative and cognitive orientation. These aspects are crucial for individuals to engage in irregular employment practices.

The actor-centered institutionalism in sociology attempts to bring together the various perspectives in the social sciences by using domain-bridging concepts such as choice, bounded rationality, and social embeddedness. It revitalizes the classical sociological focus on context-bound rationality and integrates sociological with economic approaches, i.e. the interplay between social institutions and economic action. Scharpf (1997) has developed a model that similarly integrates the rational choice model with the institutional perspective, focusing explicitly on how the institutional environment influences the preferences and capabilities of, and interaction between, actors.

This approach also brings together formal and informal rules in structuring behaviour of individuals. According to Scharpf, actors' behaviour depends on socially constructed formal and informal rules to orient their actions that reduce the range of potential behaviour. In other words: the institutional setting affects both their orientations and capabilities. Nonetheless, actions are not related to interests that can objectively be defined; rather actors behave on the basis of their subjective and variable preferences. An actor is pragmatist and preferences develop through interaction. Preferences are not pre-existent, but are constructed and shaped in the course of the interaction between actors and their environment.

Therefore preferences cannot only be deduced from the social role actors play within a certain institutional setting but also from their strategic behaviours given a

certain space of manoeuvre in a context of conflicting interests. Thus, individual self-interest always plays some role and should also be taken into account. In this sense, the framework still contains elements of a rational choice perspective whereby individuals, acting purposefully on the basis of their preferences, are rather capable of determining policy outcomes in line with their own interests.

In our analysis of irregular nonstandard contracts, three main issues mentioned in the actor-centered institutionalism and institutional change are here crucial for the emergence of irregular practices in nonstandard work:

a) Re-interpretation of the rules by individual actors, b) differential power resources, c) normative and cognitive individual orientation.

a) Re-interpretation of the rules individual actors

In their work “Institutional change in advanced political economies”, Streek and Thelen (2005) argue that:

“implementation of a certain policy implies a dynamic process of interaction of the actors involved. Institutional settings can be interpreted differently by different actors and interpretations and outcomes of the institutional environment are closely linked to the interests of actors ... They act strategically and even those not involved in the design of an institution will do everything in their power to interpret its rules in their own interest ... The aim is to compete for market share or strategic assets by exploiting the human, financial and economic resources available in an open market”.

This process also depends on the extent to which rules are open to different interpretations. Rules often contain a certain degree of under-definition and this provides space for discretionary behaviours over how rules should be interpreted and applied. Therefore individual actors do not just implement the rules made for them, but

also try to revise them in the process of implementation and exploit their inherent ambiguity on behalf of their own interests.

b) Differential of power resources between actors

In an actor-centered institutionalism approach individual actors are characterized by specific action capabilities. Capabilities are all resources that allow an actor to influence an outcome in certain respects and to a certain degree. Particularly important here are the action resources defining competencies and granting or limiting rights of participation and autonomous decision of individual actors. They include personal qualities, institutional resources, technological capabilities, and privileged access to information (Scharpf 1997). Accordingly, the extent to which an individual actor can secure its own interest depends on its capability to influence an outcome given a certain degree of power resources vis-à-vis the other actor.

This concerns the issue of power relations. Deviations from the institutional framework may thus be the results of unbalanced power resources of the actors. Today it is commonly recognized that the process of globalization strengthens the power position of capital over labour, and that to an important extent employers and managers over employees (Keune and Schmidt, 2009). Given this asymmetry of power, employers, rather than employees, have a higher capacity to strategically mediate, and opportunely deviate from, the regulative framework of nonstandard work on behalf of their own interests.

c) Normative and cognitive orientation of individuals

Action orientations are roughly the characteristic perceptions and preferences of a particular actor. The actor-centered institutionalism assumes that actors do not act on

the basis of an objective reality but on the basis of a perceived reality. Additionally, it assumes that actors do not only act on the basis of objective needs, but also on the basis of preferences reflecting their normative convictions of how it is right or good or appropriate to act under different circumstances. As Sharpf states “...human action is based on culturally shaped and socially constructed beliefs about the real world. Most human action will occur in social organizational roles with clearly structured responsibilities and competencies with assigned resources that can be used for specific purposes” (Sharpf 1997).

Similarly, Streeck and Thelen have pointed out that the meaning of a rule is never self-evident and always subject to interpretation and clarification of the operative meaning of formal norms that presupposes a culturally shared understanding of those norms. Life in a normatively ordered community requires ongoing efforts to develop and maintain a shared understanding of what the rule says exactly that one has to apply to a given situation. This holds for highly formalized norms, like written law, no less than for informal ones (Streeck and Thelen 2005). Accordingly, it can be argued that an institutional regulative framework may be challenged by a specific cognitive and normative orientation of individuals that is in contrast with its logic and the normative purposes of a certain macro regulative framework.

Summarizing, the extent to which individuals can use the normative framework to pursue their own interests will depend on their capacity to mediate the rules in line with their interests given a certain power and according to their normative and cognitive preferences. Interaction of employers and employees within the evolving of the institutional framework is therefore crucial to understand the mechanisms of development of informal employment practices among the use of nonstandard contracts in Italy.

Chapter 3. Hypotheses and research design: irregularities in nonstandard work

1 Hypotheses

1.1 A direct relationship between irregular and nonstandard work?

The process of deregulation of employment relations and the process of flexibilization of the labour market was considered essential to make the labour market more fluid and efficient, to reduce the high rates of unemployment (total and youth) and to increase productivity and facilitate economic growth.

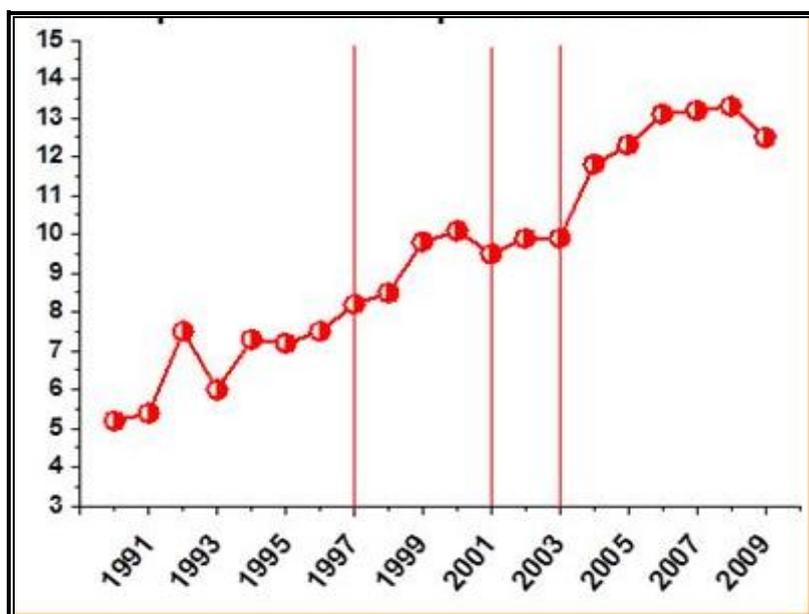
The needs for a renewed Labour Market were reflected in important legislative reforms, the Treu Law (June 1997, n.197) and the Biagi Law (December 2003, n.276), which liberalized the employment regulation system, giving *more spaces to nonstandard work*. The underlying scope of the reforms was to reduce the extent of irregular work on which many enterprises rely in order to avoid unsuited constraints and be more dynamic within the market. In particular one of the objectives of the Biagi law was the creation of a “transparent and efficient labour market that can increase job opportunities and ensure everyone has equal access to a regular employment and quality”. The introduction of new contractual arrangements (such as on-call work, occasional work, etc.) was in fact the purpose of providing a tool to reduce the extent of

irregular work, basically because it would represent an incentive for both the demand and the supply side to declare their irregular activities.

Despite the generalized application of different contractual forms of nonstandard work, no empirical evidence has proven that a more flexible have reduced the extent of Irregular Work within the national economic system.

On the one hand, nonstandard employment has increased rapidly over the last two decades. In 2008 more than half the increase in employment took the form of ‘nonstandard’ contracts (CNEL, 2009). The so-called project workers (named as co-co-co and co-co-pro workers) were estimated to a number between 400,000 and 1 million (Ministero del Lavoro, della Salute e delle Politiche Sociali, 2008): that is, 2–4 per cent of the working population. The percentage of temporary contracts jumped from 5 percent in mid-nineties to more than 13 percent in 2010 (see Figure 3).

Figure 3 Temporary employees on total employees (%)



Source: Tealdi 2012 from OCSE data

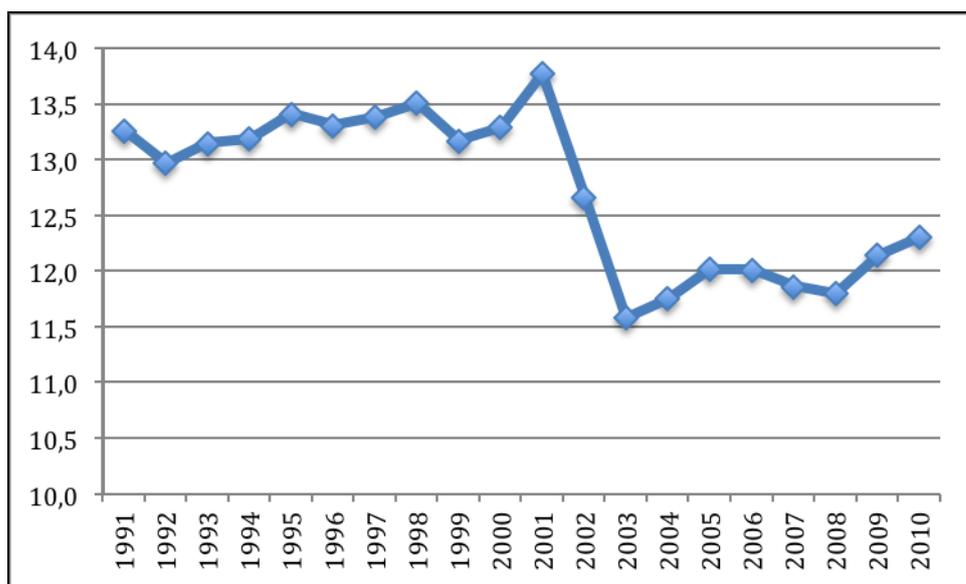
It has to be noted, however, that nonstandard jobs are unevenly distributed across the different cohorts: in 2008 the incidence of fixed-term jobs, for example, varies from 42.3 per cent of total employment for those aged 15–24 to 12.2 per cent in the 35–49 age group and 6.4 per cent for those over 50 years of age (ISTAT 2009). This means that nonstandard work has been mainly pursued for those entering the labour market or, more generally, for the youngest cohort.

On the other hand, the reduction of the extent of irregular work did not occur. The irregularity rate (Figure 4) was maintained at fairly high levels until 2001 and 2002, when two major amnesties have been approved. The first is the law 383 of 2001, which provided incentives such as tax and benefit systems to employers that provided to stabilize the undeclared employees, and the second is the Bossi-Fini law of 2002 which provided for the immediate expulsion of illegal immigrants and proposed an

amnesty for the emergence of undeclared foreign workers. More than 300 thousand illegal workers have been legalized in 2001 and 700 thousand migrant workers have been legalized after the second amnesty. After 2003, estimates by ISTAT (2010) demonstrate irregularity rate in Italy presents a new increasing trend. From a total of 2811700 thousand of irregular work units in 2003, we moved in 2010 to more than 3 million of units (ISTAT 2010).

A recent empirical study conducted by Tealdi (2012) shows that the reform have had no significant effect in absorbing irregular work in Italy: employers traditionally using totally undeclared workers, after the reform continue to do so, while those employers regularly declaring the workforce, after the reform prefer to hire workers with temporary contracts rather than permanent contract.

Figure 3 Estimation of Irregularity rate



Source: elaboration from Istat data 2011

An important aspect must be underlined as regard the real trend of the extent of irregular work: estimation on irregular work provided by Istat (based on irregular “work

units”) *does not include the phenomenon of semi-irregular work*. From this perspective this thesis aims to outline an unexpected consequence of the spread of nonstandard work: *the application of nonstandard contracts may generate forms of grey work not accounted in the official statistics on irregular work*. These are the cases in which there is an inconsistency between the effective working relationship and the contract applied. The non-compliance of contractual requirements established by law for nonstandard work determines its economic and statistical concealment of the real employment relationship, therefore we are in front of forms of semi-irregular work, whereby nonstandard contracts are often used improperly by employers in order to lower production costs and often conceal standard subordinated working relations.

Specifically, the cases of irregular nonstandard employment involved in the research are described below and summarized in Table 3.

1) *The abuse of self-employment or independent contracting (project-base work)*.

From a juridical point of view, the issue is very delicate because it is very difficult to distinguish the lawful use of self-employment from the abuse. In these cases the partial concealment of the working activity consist in the inconsistency between the contract and the factual employment relationship. In other words the employee’s work performance, in most cases following explicit employer requests, is provided in ways that do not match the characteristics of the “project-base work” contract, which is rather used to conceal a very typical and subordinate employment partnerships.

The Civil Code (CC) is the principal normative source for the distinction between subordinate employment and self-employment. It defines a self-employed worker as a person who ‘undertakes to perform a work or a service for remuneration, mainly by

means of his/her own labour and without a relationship of subordination to the client' (CC, art. 2222). According to the CC, the principal characteristic of self-employment is therefore the absence of the subordinate status.

The Biagi Law requires the negotiating parties to specify in advance the characteristics of the partnership, identifying in a written form the project or program or particular phase of it. Moreover, the requirements prescribed by the law characterizing the project-base contract are the following: a) the independence of the employee on the basis of the results; b) the subject of the employment relationship must be a project; c) the irrelevance of the time taken for the implementation of the service; and d) the absence of a subordinated relation with the employer. With the absence of one of these requirements, the job contract is definitely irregular and must be "re-qualified" into a subordinated work contract.⁶

2) *The irregular use of part-time contracts.* This can represent very clearly the case in which the search for flexibility is accompanied by the presence of work irregularity. In fact part-time work often hide irregularities in working hours, given the widespread practice of hiring part-time workers but making them overcoming the legal working time indicated in the contract or using them as of full-time workers. In this case the partial concealment of the working activity is represented by the illegal overtime work, which is not declared to public authorities.

3) *The illegal use of labour outsourcing.* Illegal labour outsourcing (somministrazione irregolare e fraudolenta) is prohibited by art. 27-28-29 of legislative decree 276/2003. It concerns the illegal exchange of workers by two or more

⁶ Art. 69 legislative decree 276/2003.

enterprises. According to that legislation, only authorized temporary work agencies (TWA) may provide workforce and only these agencies are allowed to intermediate between the workers and the user firm.

The nature of labour outsourcing can be twofold, given that it concerns a triangular relation between the worker, the employer, and the user firm. On the one hand, it correspond to a form of subordinate relationship between the worker and the employer; on the other hand it represents a form of nonstandard work (and clearly a form of external flexibility), given that it requires the absence of the subordinate relationship between the worker and the user firm (workers must be direct and organized only by the employer and not by the user firm). In case of illegal outsourcing the formal relationship is disguising a very typical-subordinate employment relationship between the workers and the user firm that directly organize and instruct the outsourced workers in violation of art. 29 of dlgs 276/2003⁷.

4) *The irregular use of temporary work contracts (fixed-term and occasional work).* In this case improper repetitions of the same contract with false changes of tasks and duties can be made in order to conceal long-term partnership. The application of the temporary contracts must respect the requirement of temporariness, and therefore cannot be repeatedly stipulated for an indefinite range of time. Particularly in case of fix-term work, legislative decree 368/2001 establishes the minimum interval of twenty days between two fixed-term contracts. In this interval the worker cannot continue to work regularly in the enterprise. When two successive fixed-term contracts are not

⁷ The phenomenon of illegal labour outsourcing is often concerning cooperatives providing services (usually repairing and maintenance) to other firms. In these cases the object of the cooperative-user firm relationship ends up being the mere provision of the workforce from the cooperative to the user firm and not precisely the provision of services.

respecting the minimum interval, the labour inspector must intervene to convert the fix term contract into permanent contract. In addition,

5) *The irregular use of apprenticeship contracts.* Finally, even cases of apprenticeships contracts may disguise a real long-term employment relationship. According to Legislative decree 276/2003, prerequisite for these forms of contract is the apprentices' technical-practical training period. Employer must ensure the technical and practical training and provide coaching to the apprentices by qualified personnel. With the absence of such requirements the work relationship is beyond the scope required for the implementation of the contract.

Table 3 Types of irregularities

Type of contract	Irregularities
Self-employment (co.co.pro and co.co.co)	Subordinate relationship
Part-time work	Over time – full time work
Labour outsourcing	Direct coordination and organization of the worker by the user firm
Fix-term	Long term relationship
Occasional work	Long term relationship
Apprenticeship	Standard relationship and absence of training programs

The emergence of these forms of irregularities would question the theoretical assumption that the increasing use of nonstandard labour contracts has always a positive effect also on the reduction of irregular work. Therefore as, the first hypothesis of the research, we argue that:

***H1:** a more diffused use of nonstandard contracts may produce different forms of semi-irregular work. As a consequence, a direct relationship between flexibility and irregular work it may exist in the Italian case.*

Indeed, the cases of irregularities in nonstandard employment contracts mean that flexibility and irregularity in Italy can match each other in a sort of complementary relation. The term ‘complementariness’ in this sense means that certain characteristics and mechanisms of two factors (flexibility and irregularity) match and interact to produce and reinforce a certain result, which in this case is the phenomenon of the abuse of nonstandard contracts. For this reason, what we put under question here is, firstly, the principle of "mutual exclusivity" between irregular and nonstandard work (the two phenomena are always separate and therefore substitutable) supported by the mainstream literature, and, secondly, the principle of inverse proportionality (the increase of nonstandard work leads to a decrease of the phenomenon of irregular work).

From an analytical point of view the boundaries between regular and irregular work appear to be more fuzzy and permeable given that undeclared working relations emerge within formal labour regulation settings. Thus, we find a development of nonstandard working situations not easily identifiable in the sphere of legal rules. Rather, they show an “overcrossing” of both regular and irregular features in the same

working circumstances, resulting in a continuum of employment conditions in which the two characters are coexisting.

A theoretical implication of this hypothesis concerns the theories of segmentation developed since the 1970s (Doering and Piore 1971, Contini 1979). These theories argued that the underground economy was mostly present in the secondary segment of the labour market characterized by informality and marginality (See Chapter 2, Section 5).

However, the reality in Italy is different today: the process of flexibilization of employment conditions was reflected in the emersion of a new dualism in the advanced as well as in the backward sectors: the standard - subordinated - full time model and the nonstandard model. In this context, the regulation of nonstandard employment have left some openings in its new structure through which irregularity takes place in different forms, and where legislation has failed to remedy. As a consequence, irregular work may be present in both primary and secondary labour markets.

1.2 A multiform phenomenon?

Within the comparative political economy literature some scholars defined the Italian case as a regionalized capitalism (Burrioni and Crouch 2007). This definition has been provided in order to differentiate the Italian case from the two ideal types of capitalism identified by Hall and Soskice (2001): the coordinated market economies (CMEs) (Austria, Germany, Japan and Nordic European countries) and the liberal market economies (LMEs) (Anglo-Saxon Countries). In fact, in the varieties of capitalism approach the main focus is on the national dimension for the analysis of the

organizational architecture of firms and the governance of the economy. Nevertheless, Hall and Soskice acknowledge that this typology is less effective in classifying countries such as Italy, Spain and France; in this regard, they refer to the definition by Martin Rhodes of ‘Mediterranean capitalism’. This is characterized by a past tradition of extensive state intervention, persistence of non-market coordination in the corporate governance arena, together with a growing liberalization of the labour market (Rhodes & Apeldoorn, 1997).

This leads to consider the specificity of the Italian case. According to Borroni and Crouch (2007) it is not possible to understand the institutional structure and the performance of Italian capitalism without taking into account the importance of local and regional specificities.

The Italian model can be defined as ‘regionalized capitalism’ because of the following main features. First, most innovative and competitive firms that are open to international competition rely on formal and informal coordination mechanisms. Their competitiveness is based on cooperative structures based on informal social ties involving both entrepreneurs and their employees and, at the same time, they rely on formal relationships with collective organizations, local and regional governments (Borroni and Crouch 2007).

A second important feature of the Italian model as a regionalized capitalism is related to the strong and persistent territorial differences in terms of organizational architecture of firms (large firms, industrial districts and clusters of small firms) and regulatory mechanisms of local economies.

Where sectoral specialization and horizontal integration between small firms were more developed, the local systems took the form of ‘industrial districts’ especially in northeast and in the center of Italy. A district is formed by many SMEs, each

specializing in a particular stage or in the production of a particular component of the productive process. Within the production chain, only a small group of these firms has a direct relation with final markets.

In other words, production takes the form of a decentralized process and requires a high level of collaboration between specialized subcontractors and buyer firms. In this context, productivity is influenced by important factors, such as a high level of trust among small entrepreneurs and between workers and entrepreneurs as well as the circulation and rapid diffusion of knowledge and information. As a result, districts can have a high productive dynamism, and a capacity to sustain both high salaries and employment. This helps to explain the persistent regional disparities that characterize the Italian case and the reasons for the success that some regional economies experienced during the 1970s and the 1980s.

In this perspective, the evolution of the phenomenon of irregular work in Italy presents a non-uniform pattern, but rather differentiated on the base of the specificity of the productive system, informal networks and institutional framework of different territorial contexts.

Already in the previous chapter we have mentioned a basic difference identified in the literature on irregular work between the characteristics of Irregular work in North and in the South of Italy (Bonolo and Lucifora 2002). According to this literature, while in South of Italy, the phenomenon of undeclared work is a physiological component deeply embedded in informal network and in micro-systems of small and medium enterprises, in the North, the phenomenon is mostly related to the search for greater flexibility and lower production costs.

Accordingly, the second hypothesis is the follows:

H2: irregularities in nonstandard employment assume different dimensions and shapes in different territorial contexts.

In other words, the relevance of a certain type of irregularity in nonstandard work will depend on the specificity of the productive activities and the networks of enterprises of a localized context. In the South of Italy the underground economy is traditionally widespread and enjoys a legitimacy that arises from a series of social and historical factors. In this context the introduction of a nonstandard contracts is likely to create new types of irregularities more akin to conceal the factual employment relationship. This might be for example the case of the abuse of the project-base employment, whereby the written contractual conditions may be under-defined and ambiguous, in this way leaving space to employers to use project-base workers as very standard and subordinate workers.

In the north, where the productive system is more dynamic and characterized of a high number of industrial districts, irregularities in nonstandard contracts may be more connected to the search of more flexibility for the needs of production. This would be for example the case of irregularities in part-time contracts and occasional work. Furthermore the decentralization of stages of production to specialized subcontractors may create the condition for a large extent of irregular labour outsourcing.

1.3 Undeclared flexibility: a source of new worker's social risks?

The last hypothesis derives from a closer focus on actors' behaviour and strategies in individual employment relations. According to the actor-centered

institutionalism perspective (Maynz and Sharpf 1995; Sharpf 1997), the extent to which individuals can use the institutional framework of nonstandard work to pursue their own interests will depend on their capacity to mediate the rules in line with their interests given a certain bargaining power and according to their normative and cognitive preferences. It is therefore possible to expect a multitude of practices in which one actor will try to gain the most advantages *vis a vis* the other actor in a context of conflicting interests.

In this perspective, final outcomes may result more favourably for employers rather than workers. Employers may have the power to strategically adopt nonstandard work in favour of their interests and deviate from the formal rules. The increase of numerical flexibility through the provisions of new nonstandard contracts may provide employers the sufficient spaces of action to dynamically combine formal and informal strategies and exploit a larger number of possibilities.

In fact, from the point of view of the employers, the improper use of nonstandard workers as very subordinated and/or full time workers would provide them two main advantages. Firstly, they can adjust their workforces more efficiently and more rapidly to variations in demand. Secondly, irregular use of nonstandard work provides substantial savings for the employers for the fact that implies lower labour costs with low risks of punishment (considering the difficulty of labour inspectors in finding evidence of those irregularities). The improper application of the rules laid down for nonstandard contracts, therefore, determine an enhanced ability to evade controls, leading to new working situations in which different types of irregularities are combined and repeated.

In this thesis we call “*undeclared flexibility*” *the strategy of employers to use part of the workforce in a flexible way within and outside the legal framework regulation*

according to the requirements of production, without, in turn, affecting the absolute level of tax payments and of social contribution required for each worker, which are kept at the minimum costs.

For the supply side, irregularities in nonstandard work may assume a totally different meaning. Most of the sociological literature on individual risks and precariousness (see chapter 2, Section 2) has concentrated on the emergence of employees' insecurities of nonstandard employment deriving from the institutional Social Security framework and from the legal features of nonstandard contracts. By adopting an individual level perspective, we shifted the focus instead on the employment relations and on the modes the non-standard contract may be applied. In this perspective, we hypothesize that:

H3: the widespread use of nonstandard forms of employment may generate new social risks for workers in Italy.

A first risk derives from the asymmetry of bargaining power between employers and employees in employment relations. Given that an irregular use of nonstandard work represent a profitable strategy for employers in terms of decrease labour costs and gain further flexibility on internal organization, we may reasonably believe that *an irregular application of nonstandard contracts is likely to be imposed by employers, and not voluntary chosen by workers*⁸.

⁸ An exception should be made for the case of irregular part-time work, whereby a room of reciprocity between the employer and the worker may still exist whenever the overtime-undeclared work is paid to the worker with a higher wage compared to those provided in the regular labour market.

The second risk comes consecutively. Workers involved in such irregularities are *de facto excluded from full citizenship social rights*. Access to Social Security Schemes (such as a certain level of unemployment benefit in case of unemployment, provision for their retirement) will depend on the extent to which their activity is effectively declared, and to the extent to which employers pay the effective amount of social security contributions in relation to the effective worker's performance. From this point of view, what seems striking here is the fact that workers involved in such irregularities are subject to a double discrimination: one deriving from being a nonstandard worker (given the limited access to welfare entitlements and the lower wage level), and the other arising from being an irregular worker, which condition, by necessity, denies the access to the entitlement the worker should have obtained if his activity was regularly declared.

2 Research design

The empirical research intends to investigate on the characteristics and dimension of irregularities in nonstandard contracts in two case studies: *the territorial area of Cagliari in Sardinia and the area of Brescia in Lombardy*. In both cases, data collection on irregularities in nonstandard employment are conducted at the respective territorial Labour Inspection departments (*Direzione Provinciale del Lavoro, DPL*).

2.1 Empirical case studies on local Labour Departments

According to the legislative decree 124/2004 the labour department (*DPL*) is responsible of the organization and coordination of labour inspection in the local area. At the departments are collected and implemented the inspection requests from workers and union organizations, which are addressed successively to the other inspection agencies for more detailed evaluation: INPS (*Istituto Nazionale Previdenza Sociale*) inspectorates in the case of fiscal irregularities, INAIL (*Istituto Nazionale Assicurazioni Infortuni sul Lavoro*) for insurance irregularities, criminal court in the case of a criminal offense.

The law 124/2004 addresses the issue of irregular work as one of the main activities of labour inspectors. Besides the application of high penalties in cases of totally undeclared work (*maxisanzione per lavoro nero*), the law contains practical guidelines for inspectors to detect also the forms of nonstandard employment to assess the correct qualification of the contract.⁹

Nonstandard forms of contract must be stipulated in written form¹⁰, and contain specific details on the working partnership. In case of a clear inconsistency between what resulted from the inspection and what declared by the parties, inspectors must proceed reconverting the contract into permanent/full-time contract (in case of project work¹¹, part-time and occasional work¹². See *Box I*).

In addition, the inspectors must draw up an official document, *the inspection report (Verbale di ispezione)*, representing the coercive act for the recovery of INPS social security contributions and imposing the penalty to the legal offender.

⁹ Detection cannot be carried on towards those employment contracts that have already undergone the scrutiny of a commission for certification (*legislative decree 276/03*).

¹⁰ legislative decree 276/03 art. 56, 62; legislative decree 368/2001 art 2.

¹¹ legislative decree 276/03 art 62.

¹² artt. 35, 37, 38 D.Lgs. n.276/03

Irregularities in nonstandard contracts within the Labour department are certified also by *conciliation practices (conciliazioni monocratiche)*. It is a procedure introduced by legislative decree 124/2004 which purpose is to resolve disputes among workers and employers through a conciliation agreement. It can be brought forward after a request inspection by the worker or his union organization (*preventive conciliation*), but can also arise after the normal inspection procedure, whenever the inspector find consensus by the two parties (*contextual conciliation*). In case of failure of the preventive or contextual conciliation, the case goes back under the normal inspection procedure. Conciliations take place whenever the subjects of the dispute are pay and insurance issues, as the legislation states that the effectiveness of conciliation comes from the payment of social security contributions insurance¹³. The conciliatory resolutions must be determined in accordance with the rules in force, and referred to the payment of amounts owed to the worker, in relation to the period of work recognized by the two parties.

The study of the characters and dimensions of irregularities in nonstandard contracts throughout the collaboration with the territorial labour departments will attempt to contribute on the understanding of the phenomenon and to sketch out its relevancy in the case studies considered.

¹³ Conciliation practices cannot be brought forward whenever there is evidence of violations of criminal law: in such cases inspectors must proceed with the normal inspection procedure

BOX 1 Power of Labour Inspectors on re-classification of employment relationships

The law (Article 7 of Legislative Decree N.124/04) assigns to inspectors the power to verify compliance with the legislation on employment relations, in particular through the following tasks:

- Detection on the implementation of all laws concerning civil and social rights that must be guaranteed throughout the national territory,
- Detection of the protection of employment and social legislation wherever it is paid work activities regardless by contractual scheme, typical or atypical;
- Ensure the proper implementation of contracts and collective bargaining agreements.

Concerning inspections on employment relationships, inspectors have the power to establish a different legal framework of contracts whenever they do not respect the parameters set by law. This happens when the real employment relationship presents a discrepancy between what declared by the parties in the contract and what resulted from the inspection.

In this respect the Supreme Court states that in violation of contractual rules on nonstandard work the contract must be reconverted into a subordinated labour contract and inspectors should establish the nature of the relationship (part-time or full-time). (Cfr. Cass., Sez. lav., n.849/04). This applies specifically in the case of workers wrongly classified as:

- Project-base collaborators;
- Occasional collaborators.

Another case of re-classification concerns the case of part-time employment, which actually conceals a full-time employment. It may happen, in fact, the contract chosen by the parties does not respect the prescription of the law or contract, because the worker performs the service in a systematic and continuous full-time work, rather than part-time.

In the other cases considered in the research, namely, in the case of illegal outsourcing, fix-term and apprenticeship, the law doesn't assign inspectors the power to directly re-classify the the false contract. However the inspectors can start a procedure of conciliation that may end up in a new classification of the employment relationship. In these cases, inspectors have also the power to warn the employer to stabilize the workers through an official contestation (*diffida accertativa*).

For all these inspectors must contest the employer violations (and implement the penalties) relating to:

- Employment relationship notification (full time or part time) to the local job center (*omessa comunicazione al centro per centro per l'impiego*) since the previous communication has been incorrect in terms of the type of contract previously chosen;
- The hiring notification (*omessa consegna della lettera di assunzione*)
- Pay prospect notification (*omessa consegna dei prospetti paga*) containing the appropriate salary and contributions qualifications.
- Payment of the relative social security contributions.

2.2 Verification of hypotheses

The data and information collected are systematically used for the verification of the hypotheses following the logic described below:

Hypothesis 1 (existence of a direct relationship between irregular and nonstandard)

This hypothesis is verified through the data collection and data analysis on irregularities in nonstandard work provided by the inspection labour departments and extracted from *the inspection and conciliation reports*. The aim of the empirical research is to provide a quantitative framework of the emergence of the different types of irregularities in nonstandard work and to describe the trends of those irregularities.

In this analysis, a *sector differentiation* will try to verify the hypothesis of the emergence of irregularities in nonstandard work within the more “advanced” productive sector of the economy, in contrast with the theory of segmentation mentioned above.

Units of analysis in this case will be:

- a) *The irregularities in non standard contracts;*
- b) *The number of enterprises involved;*
- c) *The number of workers involved;*
- d) *The sectors.*

Hypothesis 2 (irregularities in nonstandard employment assume different dimensions and shapes in different territorial contexts)

The choice of two different case studies, one territorial area in the north and one in the south of Italy, is aimed to study the link between the characteristics the productive

system and the relevance of specific types of contractual irregularities in the different territorial areas.

For this hypothesis it is therefore necessary to provide a quantitative data framework on the characteristics of the local productive context and labour market¹⁴. This will allow a better contextualization of the data on irregular work found by inspection activity.

Units of analysis will be:

- a) *Different types of contractual irregularities;*
- b) *The characteristics of the productive system in the case study.*

Hypothesis 3 (Emergence of new workers social risks)

The empirical research will focus also on the individual dimension of the employment relationship and it will attempt to investigate on the real motivations of individual actors for the emergence of those irregularities.

The analysis of the content of inspection and conciliation reports will attempt to delineate and better understand actors' behaviour among the irregularities in nonstandard work. The emergence of new workers' social risks and new employer's strategies hypothesized here are therefore verified through the information that can be directly extracted from the reports.

Units of analysis in this case will be:

- a) *The causes of disputes between employers and workers extracted from the content of inspection and conciliation reports;*

¹⁴ A descriptive data-Sources Table is provided in the Section dedicated to the methodology (Chapter 4, Section 2. Table 5)

b) *The type of inspection (whether the inspection stems from an official request by the workers or it has been independently programmed by the labour department)*¹⁵.

In addition, non-structured and semi-structured interviews to key informants will be conducted during the fieldwork in order to better investigate on the social factors determining those irregularities within the territorial area.

Following, in Table 4 we summarize the research design in relation to the hypotheses previously presented.

¹⁵ See Section 2.1 of this Chapter.

Table 4 Hypothesis and research design

Hypotheses	Research design
Hypothesis 1: <i>existence of a direct relationship between irregular and nonstandard</i>	- 2 case studies - Collection and data analysis conducted at the inspection labour departments Data collection on: a) <i>Irregularities in non standard contracts</i> b) <i>Number of enterprises involved</i> c) <i>Number of workers involved</i> d) <i>Sectors</i>
Hypothesis 2: <i>irregularities in nonstandard employment assume different dimensions and shapes in different territorial contexts</i>	Data collection on: a) <i>Different types of contractual irregularities</i> b) <i>Characteristics of the productive context in the case study</i>
Hypothesis 3: <i>Emergence of new workers social risks</i>	Data collection on: a) <i>Causes of disputes</i> b) <i>Type of inspection</i>

Chapter 4. The empirical analysis: methods and research findings

1 Introduction

This Chapter is aimed to present the results of the empirical research and discuss the main research findings on the base of the main hypotheses presented and described in Chapter 3. The research conducted at the two territorial departments consisted in the collection of confidential data on irregular work. This has allowed the construction of two different databases and to conduct a data analysis specifically intended to study the trends and the dimensions of irregularities in nonstandard work in two local contexts.

However, in order to better contextualize the results of the research, it has been necessary to take into account two important aspects. The first is constituted by the composition and the internal organization of the Labour Department, which differ in each of the two case studies. The extent to which the inspection activity is effective in contrasting irregular work in the province is highly conditioned by the amount of human resources available in a certain period at the labour department. Moreover, the internal organization of the department affects the quality of the data from which we base our empirical research. The second aspect is linked to the structure and the characteristics of the productive context in each territorial area. In this perspective, it would not be possible to understand the evolution and the specificity of irregular work

in a specific territory if the characteristics of the economic activity and the social environment are not taken into account.

The chapter is set as follows. An accurate and detailed description of the methodology adopted in the empirical research will be provided at the first place. In particular, it will be described the different phases of the research, which have involved different methods and instruments for the data analysis. Following, the results of the empirical research on the two case studies are presented separately. Firstly it will be presented the case of Cagliari (Section 3.1), and secondly the case of Brescia (section 3.2). For each case a framework of contextual data concerning the productive system and the performance of the labour market is provided, followed by the description of the structure of the provincial labour department. The research findings on irregularities in nonstandard work based on the results of inspection activity are showed immediately afterwards.

Finally, the theoretical implications in relation to the hypotheses of the research are discussed in Section 4.

2 Research Methods

The research has interested two case studies: the territorial areas of Cagliari and Brescia. In both cases, data collection on irregularities in nonstandard employment was conducted at the respective territorial Labour Department¹⁶ (DPL), in collaboration with the labour inspectors.

¹⁶ The research was conducted firstly at the territorial labour department of Cagliari (Director: Dr. Cristina Madeddu) *from February 2010 to July 2010*, and successively, *From December 2010 – March 2011* at the territorial labour department of Brescia (Director. Dr. Paolo Vettori)

The empirical research in each territorial involved four different phases.

PHASE 1: data collection

Data on irregularities in nonstandard work in each territorial context have been collected through the content analysis of two different official documents¹⁷ prepared by inspectors after an accurate procedure of verification of the irregularities.

a) *Inspection reports*. They provide important information on the cases of contractual irregularities. Specifically, data extrapolated from this documents concerned: the types of irregularities, activity of the enterprise, number of workers involved and time range to which apply the recovery of social contributions (See Box 2 and Annex 6).

b) *Conciliation reports*. These documents concern the positive or negative resolution of individual disputes between employer and workers (see box 2 and annexes 7 and 8). Besides the same types of information contained in inspection reports, from these reports it was also possible to gather information on causes of disputes (regularization of the working contract, overtime work, unpaid social contributions), particularly relevant for the successive phase 4.

In each labour department, access to these documents (available both in digital and in paper format) was achieved through the use of digital archives and internal

¹⁷ Access to sensitive data through the analysis of inspection reports has been possible through a collaboration agreement between the two territorial labour departments and the University of Milan and through an official communication to the Data Protection Authority (*autorità garante della privacy*). The agreement has also required a draft of a statistical report based on the research results of the inspection activity to be available internally at the labour departments (See annexes 9, 10 and 11).

databases, commonly used by operators of the labour departments. Internal databases also provided detailed important information on the characteristics of the enterprises (size, activity, sector) and inspections (year of inspection, type of inspection, civil penalty applied).

PHASE 2: quantitative analysis

The methodology of the research has mainly concerned a quantitative analysis of data on irregularities in nonstandard employment gathered from the inspection activity of the labour department. This phase concerns four important aspects:

1) In each case study, the starting point of the quantitative research was the construction and the organization of the databases. The basic method consisted in the collection of all the cases of enterprises that have been irregularly employing nonstandard workers. Specifically, these are the cases whereby labour inspectors have found an inconsistency between the contract applied and the factual employment relationship.

2) The most relevant variables constituting the databases are: a) Number of irregular nonstandard workers; b) type of irregular contract for each worker. Namely: self-employment, part-time, Labour outsourcing, occasional work, fixed-term contract, apprenticeship, d) size of enterprises; e) sectors; f) activity of the enterprise; g) conciliation report/inspection report; h) type of inspection (stemming from an official denouncement of workers or programmed by the department)¹⁸.

3) The time range covered by the research includes the years from 2005 to

¹⁸ See annex 1 for a detailed description of the database variables.

2009, following the Labour Market Reform of 2003 (The Biagi Law 30/2003), and the so-called Inspection Service Reform (Legislative Decree 124/2004).

4) Data processing and statistical analysis has been run with SPSS and EXCEL.

This phase aimed in particular to build a quantitative framework of irregularities in different nonstandard contracts and sketch the trends of those irregularities from 2005 to 2009 in the case studies. However, the quantitative analysis should be considered with caution. Inspections are often “addressed” to those enterprises that are likely to be irregular. Therefore, the cases considered in the research (enterprises employing irregularly nonstandard workers) *are not statistically representative* for all enterprises in the territorial context but only for all the enterprises involved in inspections. For this reason the quantitative results *can be only taken as indicative*.

PHASE 3: context analysis

Besides the data and information provided by the labour department, it has been necessary to complement the quantitative analysis with other important data that will be used to contextualize the results. This concerns a data framework on the productive system and the general trends of nonstandard and irregular work in the local context and in the region in question (Table 5). All these data are of crucial importance in order to properly assess and understand the relevancy of the phenomenon in the territorial area.

Table 5 Context data

<i>Data from 2005 to 2009</i>	<i>Source</i>
Labour market indicators: national, regional and local level	ISTAT
Trend of irregular work: national and regional level	ISTAT
Trends of nonstandard work contracts at regional and local level	INPS
Productive activities at local level	Excelsior-unioncamere
Employment forecasts	Excelsior-unioncamere
Results of inspection activity on irregular work at national and regional level	Ministry of labour
Results of inspection activity on irregular work at territorial level	Territorial Labour departments (DPL)
Trends and characteristics of irregular work in the local contexts.	CLES (territorial committee for emersion of undeclared work)

PHASE 4: qualitative information and interviews

Finally the empirical research has involved also a phase of collection of important qualitative information. This phase mainly concerned three main aspects. Firstly, the analysis of the content of inspection and conciliation reports. This allows gathering information on the individual employment relationship and, in case of conciliation practice, the causes of the dispute between employers and workers. Furthermore, declarations of the parts contained in the documents in case of conciliation practices

provide the elements to investigate on a) the workers individual risks¹⁹, and b) the advantages for the employers by abusing of nonstandard contracts.

The second aspect concerns the analysis of *internal documents* regarding the organization of the inspection activity. This is a crucial aspect given that the results of inspections can be influenced by a number of exogenous variables more related to issues concerning the procedures and methods used by labour inspectors, including financial and human resources availability, that every year are allocated by authorities for the inspection activity.

Finally, the third aspect concerns non-structured interview and semi-structured interviews to key informants (8 inspectors and 2 local trade unionists in Cagliari and 9 inspectors and 2 local trade unionists in Brescia). Object of the interviews are motivations of the parties for the abuses of nonstandard contracts and the role of inspectors in discovering the abuses. Furthermore, policy measures to contrast these forms of irregularities are discussed in the interviews (See annexes 3, 4 and 5).

¹⁹ Especially in case of conciliation practices deriving from an official denouncement by the worker for the abuse or non-compliance of contractual requirements by the employer.

BOX 2: Content of reports

Inspection reports

The inspection report in case of civil tort (and not criminal offence) describes the irregularity and the relative civil penalty in which the employer incurred.

In case of irregularities in nonstandard contracts, the inspection report provides official act for the recovery of social contribution, the application civil penalties and, in some cases according to legislative decree 276/2003, specifically in cases of false self-employment, part-time, and occasional work, it may also provide the conversion of the contract into permanent-full time contract (See Chapter 3, Section 2).

The report does not contain official declaration of the opponents.

Conciliation reports

Legislative decree 124/2004, art. 11, states that conciliations practices take place when disputes involve monetary issues and insurance issues, as the legislation provides that the resolution of conciliation comes through an agreement between the parts on the recovery of the monetary loss. In the case of a failure of the conciliation between the parts, the case goes back under the normal inspection procedure. Conciliation practices cannot be brought forward whenever there is evidence of violations of criminal law: in such cases inspectors must proceed with the normal inspection procedure.

Conciliation reports entail official declarations of the opponents explaining their motivations of the dispute.

The content analysis of conciliation practices conducted through the empirical research revealed that in the cases of irregularities in nonstandard contracts disputes were about social security contributions issue, in which the employees claimed a non-proportioned payment of social contribution in relation to the factual work performance. At the same time, the content analysis didn't provide evidence of clear claims for reconversion of the contract.

The dispute is positively resolved when the employer accepts the payment of the owned social security contributions. In case of negative resolution the inspectors proceeds with the normal inspection procedure, and in specific cases required by law (see box 1 Chapter 3) they can convert the nonstandard contract into a permanent or full-time contract.

Facsimile of the documents are in Annexes 6, 7 and 8.

3 Research Findings

3.1 Case study 1 – Cagliari

3.1.1 The local economy

The territorial area of Cagliari represents the 46.4% of the all population in Sardinia and contributes for 51,3% to the production of the entire region and the 80% of the regional trade (Camera di commercio di Cagliari 2009). From these data it is evident that the area is a fundamental part of the entire regional economy. It constitutes the main hub of the island, thanks to the major petrochemical complexes and some large companies, and thanks to the port of Cagliari, which has "created" the development of transport services, logistics and storage, giving a further impetus to the growth of other activities and to some traditional manufacturing.

However, the local economy presents some critical aspects that adversely affect the competitiveness of enterprises, including the lack of infrastructural facilities and difficulties deriving from high energy costs (camera di commercio di Cagliari 2009).

In 2009 the area of Cagliari results to be less dynamic than the national average in terms of economic trends (enterprises for 1000 inhabitants in Cagliari 59, Sardinia 58,6, Italy 65,7 - Istat 2010) as well as in terms of Labour market performance (employment rate: Cagliari 54,8, Sardinia 53,5, Italy 56,9; Unemployment rate: Cagliari 11, Sardinia 13,3, Italy 8,3 - Istat 2010).

The Excelsior Survey for 2009 (Unioncamere 2009) reveals that the economic downturn in 2008 strongly affected the region of Sardinia and the province of Cagliari. Employment forecast decreased by 6.2% compared to the previous year. This reduction

applies in particular to companies with over 50 employees in industry and construction. The trend is in line with the forecasts concerning the entire region (-6.3%) and Italy (-8.7%) (Unioncamere 2009).

Some data regarding the structure of the productive system and the extent of irregular work accordingly to ISTAT are presented in the Table 6.

Table 6 Context data - Cagliari

Productive Context	Prevailing of services for transportation and touristic activities. 2 large industrial sites. No industrial districts.
Number of production units	38775 (Istat 2007)
Number of enterprises every 1.000 inhabitant	Cagliari 59, Sardinia 58,6, Italy 65,7 (Istat 2009)
Irregularity rate Sardegna	Total Economy 18,10%; Agriculture 25%; Industry 12,9%, Construction 18,6%, Services 18,4% (Istat 2009)
Irregularity rate Cagliari	Total Economy 16%; Agriculture 25%; Industry 9%; Services 24% (Istat 2005)

Source: ISTAT 2005, 2007 2009.

3.1.2 The labour department

In 2010 the Labour department of Cagliari was composed of 61 inspectors, divided into 4 operative units of ordinary inspections and 2 operative units of technical inspections; 8 operators for administrative support; 5 operators for statistical analysis and 5 operators for conciliation practices.

Given the dimension of the productive system of the province constituted of 38775 enterprises, the DPL of Cagliari is provided of relatively high amount of resourced for inspections. Coverage of inspections is 6.15% of the entire provincial productive context while the national average is around 3% (Ministero del lavoro, risultati attività di vigilanza 2009). The labour department is also a member of the CLES (Commetee for ermersion of undeclared work), which presents every year the results of inspection activity on undeclared work in collaboration with other detective institutions such as INPS, and INAIL.

3.1.3 Research results

3.1.3.1 Irregular work in Cagliari

Economic and sociological literature (Dallago 1991, Williams and Windebank 2005; Bonola and Lucifora, 2002; Pfau-Effinger 2009) has commonly related the dimension of irregular work to the characteristics of the productive system of a certain territorial contexts and the social environment. In Cagliari irregular work represents a phenomenon deeply rooted in the working relations. In this perspective, the high irregular work rate in the territorial area of Cagliari (between 14,7% and 19,3% - Istat 2005) and in the whole Sardinia (18,10%, Istat 2009), is likely to be associated to the high unemployment rates (in average 13,3%, Istat 2010) and to the common practice of relying on informal networks for the recruitment of the workforce.

Moreover, through the results of the labour department inspection activity we have collected data on irregularity linked to nonstandard contracts which seems to

represent a critical issue of the dynamics of the labour market in the local context.

However, a methodological detail must be here specified.

In the following data we consider three types of irregularities at three different levels:

a) All irregularities concerning payment of social contribution, insurance, working time, pay, safety and health, etc. This level may include the other two levels listed below, but it doesn't necessarily represent the type of undeclared work as defined by the Commission in 2007 (see Chapter 1).

b) Totally undeclared workers (workers completely undeclared to the public authorities);

c) Irregularities linked to the abuse of nonstandard contracts;

For these three types of irregularities we collected the number of enterprises and workers involved (Table 7)

Table 7 Results of inspection activity - Cagliari

year	2005	2006	2007	2008	2009	Average
Enterprises involved in inspections (absolute value)	1768	1562	2414	2866	3297	
All irregular enterprises (absolute value)	758	823	1456	1608	1680	
Enterprises with irregular nonstandard workers (%)	<i>3,45</i>	<i>4,61</i>	<i>5,34</i>	<i>5,20</i>	<i>5,76</i>	<i>4,87</i>
	8,05	8,75	8,86	9,27	11,30	9,27
Enterprises with totally undeclared workers (%)	<i>n.d.</i>	<i>4,67</i>	<i>5,72</i>	<i>12,60</i>	<i>11,95</i>	<i>7,78</i>
	n.d.	8,87	9,48	22,46	23,45	16,06
Workers involved in inspections (absolute value)	9547	10778	13036	14187	13353	
All irregular workers (absolute value)	n.d.	2845	4061	5259	3709	
Irregular nonstandard workers (%)	<i>2,52</i>	<i>3,07</i>	<i>18,39</i>	<i>9,01</i>	<i>4,19</i>	<i>7,44</i>
	n.d.	11,63	59,04	24,30	15,09	27,51
Totally undeclared Workers (%)	<i>5,36</i>	<i>4,14</i>	<i>6,64</i>	<i>7,90</i>	<i>9,28</i>	<i>6,66</i>
	n.d.	15,68	21,32	21,2	33,41	22,9

Source: elaboration of Labour department data - Cagliari

Note: percentages in *italic* are calculated on the total enterprises and workers involved in inspections every year. Those in **bold** are calculated on the total irregular enterprises and workers found by inspection.

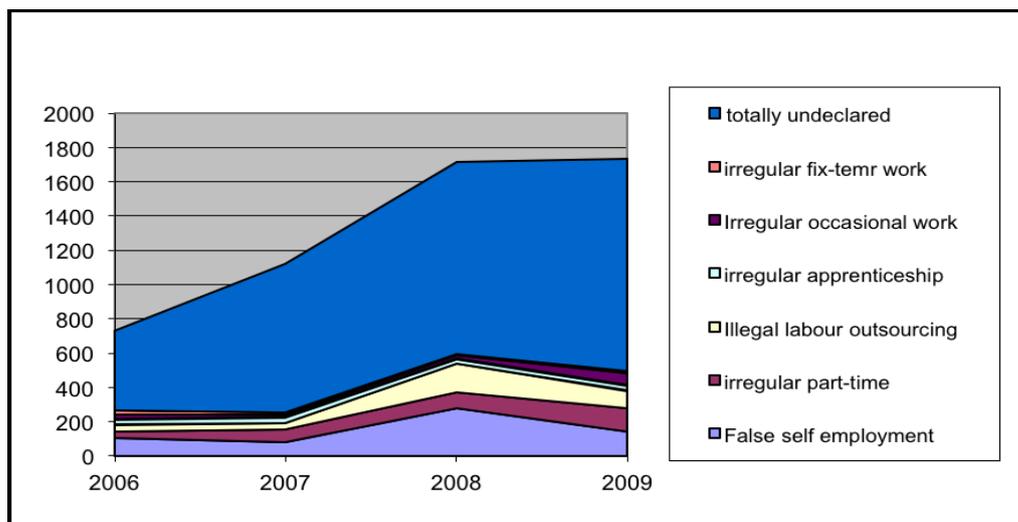
Overall, what emerges from the Table 7 is that irregular nonstandard workers are quantitatively relevant in the case study: they represent in average the 7,44% of all detected workers and the 27,51% of all irregular workers from 2005 to 2009²⁰. The average of irregular nonstandard workers is higher from 2005 to 2009 results higher than the average of totally undeclared workers. For what it concerns the enterprises employing irregularly nonstandard workers, they represent the 4,87% of all enterprises

²⁰ The trend of irregular nonstandard workers found by inspections is largely affected by the “call center inspection campaign in 2007-2008, whereby a huge amount of nonstandard contracts, mostly self employment contracts, resulted to be irregular (2200 were found only in 2007).

involved in inspections and the 9,27% of all irregular enterprises with an increasing trend from 2005 to 2009.

Figure 5 presents the dimension of different form of irregular work in the territorial area of Cagliari, including both totally undeclared work and semi-irregular work represented by the cases object of the research²¹. It is shown that undeclared work is mainly constituted of totally undeclared workers. Nonetheless, significantly relevant are also cases of false self-employment and irregular part-time. Figure 6 shows the trend percentages of irregular work normalized for the yearly amount of inspections and not biased by call center campaign. Both totally undeclared workers and irregular nonstandard workers present an increasing trend from 2005 to 2009.

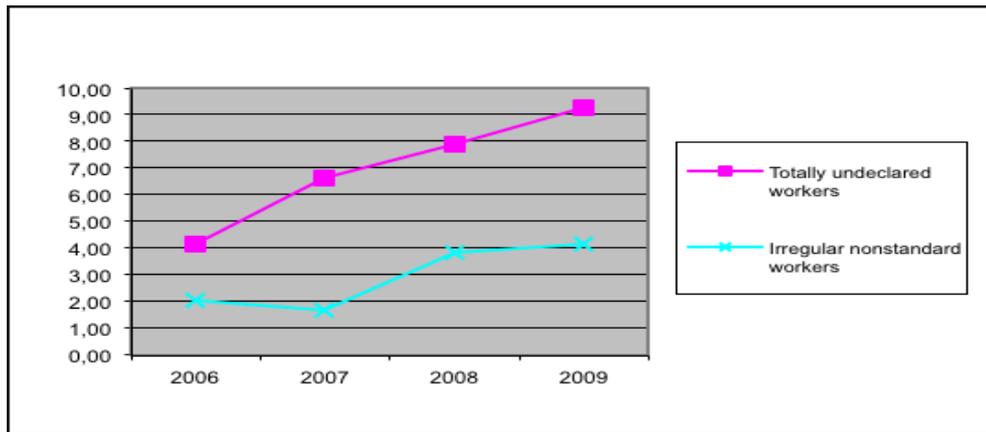
Figure 4 Composition of irregular work - Cagliari



Source: elaboration on labour department data – Cagliari

²¹ This elaboration has excluded data biased by the call center campaign.

Figure 5 Percentage trend of irregular workers - Cagliari



Source: elaboration on labour department data – Cagliari

The cases of irregularities in nonstandard contracts have been found both through a normal procedure of the inspection activity programmed by the labour department and by an official “inspection request” claimed by workers to the labour department. Table 8 shows that the number of enterprises involved in irregularities in nonstandard work is 601 (9,27% of all irregular enterprises) and it has involved 4806 workers (27,51% of all irregular workers). Almost half of those have been found through an official denouncement of the workers.

In the specific cases provided by the law 124/2004, namely when there is no evidence of criminal offence and when objects of the irregularities are payment and social contributions issues (See Chapter 3, Section 2), the inspector must propose a procedure of conciliation between the employer and the worker(s). If the attempt of conciliation is not resolved positively, the inspector proceeds with the normal inspection procedure. The analysis of the content of the conciliation reports (see box 2 for details), which entails a declaration of the parties, has revealed that workers involved in those irregularities mostly claimed a loss of social contributions payments that have been not proportionated to their factual work performance. This would mean

therefore that in all cases concerning an official denouncement of workers (47,9%) there is an evidence of an imposition of the contractual irregularity by the employer. However, an accurate examination and verification of those denouncements have been possible only for the cases of conciliation practices (41%) through the analysis of the motivations of the parties contained in the conciliation reports.

Table 8 Cases of irregularities in nonstandard contracts from 2005 to 2009 - Cagliari

		total	Resolution by conciliation practice (%)	Resolution by normal inspection procedure (%)
Cases of irregularity in nonstandard contracts	enterprises	601 (Absolute value)	46,76	53,24
	workers	4806 (Absolute value)	26,53	73,47
Denounced by workers (%)	enterprises	47,92	41,26	6,66
	workers	33,37	18,77	14,61
Found by inspections (%)	enterprises	52,08	5,49	46,59
	workers	66,63	7,76	58,86

Source: elaboration of labour department data

3.1.3.2 Types of irregular contracts - Cagliari

This section focuses on the extent of irregularities in each type of contract. Table 9 presents two series of percentages, the firsts are those including the call center campaign of 2007 and 2008 and the seconds (in red) are those not biased by such campaign, showing a more linear percentage distribution. Considering the first percentage series, the false self-employment contracts resulted to be the most relevant with a total percentage of 78% (See Box 3). In these cases the employment relationship lacked the legal requirements provided by law for the implementation of the contract,

especially requirements of non-subordination and temporariness²². The other contracts appear to be less quantitatively relevant. However, the general picture change drastically if we consider the second percentage series excluding the call center campaign: while self employment contracts drops at 40,8%, quantitatively relevant becomes also cases of irregular part-time (23,1%), and irregular temporary agency workers (21,1%).

Table 9 Types of irregular contracts - Cagliari

Years	Irregular Nonstandard contracts (Absolute Value)	False self-employment (Co.co.pro/co.co.co)	Part-time	Irregular labour outsourcing	Irregular Apprenticeship	Occasional work	Fix term
2005	241	40,70% 40,70%	24,10% 24,10%	2,50% 2,50%	18,30% 18,30%	4,60% 4,60%	10,40% 10,40%
2006	331	64,30% 42,10%	11,4% 17,1%	12,6% 19%	10% 14%	40,7% 11,30%	6,6% 10%
2007	2397	92% 36,6%	3,6% 34,4%	1,6% 18,3%	2,3% 13,7%	0,6% 6,8%	0,5% 5,5%
2008	1278	76,3% 50,4%	7,3% 17,1%	13,3% 31%	2,2% 4,3%)	1,8% 3,6%	0,4% 1%
2009	559	42,3% 29,3%	24,3% 28%	18,3% 21%	5,2% 6%	12,30% 14,2%	2% 2,2%
Total	4806	78% 40,7 %	8,30% 23,1%	7,50% 21,1%	3,9% 9,1%	5,2% 8,1%	1,5% 4,4%

Source: elaboration of DPL data.

Notes:

- a) Percentages in red are those excluding irregular workers involved in the call center campaign of 2007-2008.
- b) The sum of all irregular workers split by type of contract overcome the hundred per cent: this is because in some case it was found that the same worker within the same year had worked irregularly under several nonstandard forms of contract. These cases affected more than one percentage representing the types of irregular contracts.

Official requests of inspection claimed by workers have occurred for an important extent in the cases of irregular part-time, false self-employment and irregular apprenticeship (Table 10).

²² for the definition of the different irregular contracts considered in the research see Chapter 3, Section 1.

A peculiar data emerge when considering worker's denouncement of illegal labour outsourcing, which represented only the 1% of the cases. This data may denote a widespread reluctance toward an official denouncement of such irregularity in the context of Cagliari. The reasons might be more connected to the dynamics of power in these specific form of employment, whereby the worker, in case of denouncement of the irregularity, would find himself in a dispute with more employers (the actual employer and the user firm) in a situation in which it would be rather difficult to provide evidence of the irregularity to labour inspectors.

Table 10 Cases of irregularities denounced by workers - Cagliari

	total	False self-employment	Part-time	Illegal labour outsourcing	Irregular apprenticeship	Occasional work	Fix term
Enterprises with irregular nonstandard work (absolute value)	601	202	238	86	71	31	36
Denounced by workers (%)	47,92	44,55	70,17	1,16	52,11	32,26	44,44
Found by inspections (%)	52,08	55,45	29,83	98,84	47,89	67,74	55,56

Source: elaboration on labour department data – Cagliari

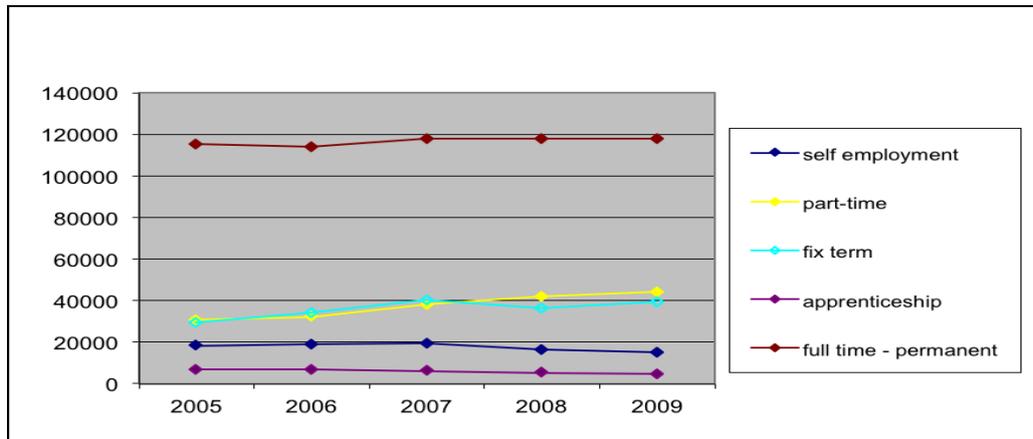
Following, to better contextualize our results we compare the trends of irregularities found by inspections with the trends of the number of nonstandard contracts in the territorial area provided by INPS from 2006 to 2009²³ (Figure 7 and 8). From the beginning of the financial crisis in 2007 the use of project work and

²³ National Institute of Social Security (INPS) database.
<http://www.inps.it/portale/default.aspx?iMenu=12&bi=03&link=DATI+E+BILANCI>

apprenticeship decreased while part-time and fix term contracts increased (figure 7). Nonetheless, irregularities in self-employment, part time and labour outsourcing increased while irregular fix-term, occasional work and apprenticeship decreased (Figure 8). It is therefore likely that false self-employment, which represents the most relevant phenomenon among irregular nonstandard within inspection activity, are effectively increasing as an effect of the crisis in the territorial area.

We cannot speculate the same hypothesis for the increased number of irregular part-time (Figure 8) given that it can be proportionated to the higher use of those contracts within the territorial area (figure 7).

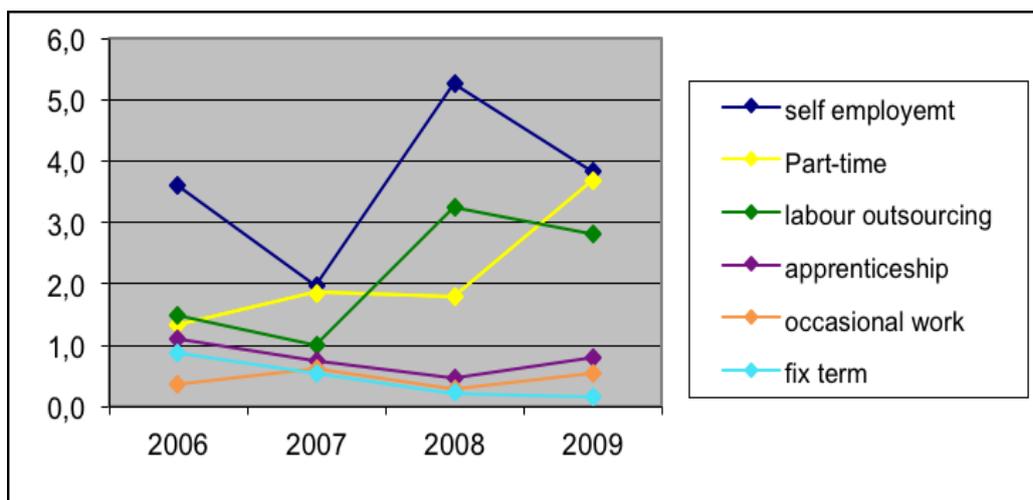
Figure 6 Trend of nonstandard contracts - Cagliari



Source: Elaboration from INPS data, 2005-2009.

Note: data on labour outsourcing and occasional work are missing in this elaboration

Figure 7 Trend of irregular contracts found by inspection - Cagliari



Source: Elaboration on labour department data – Cagliari

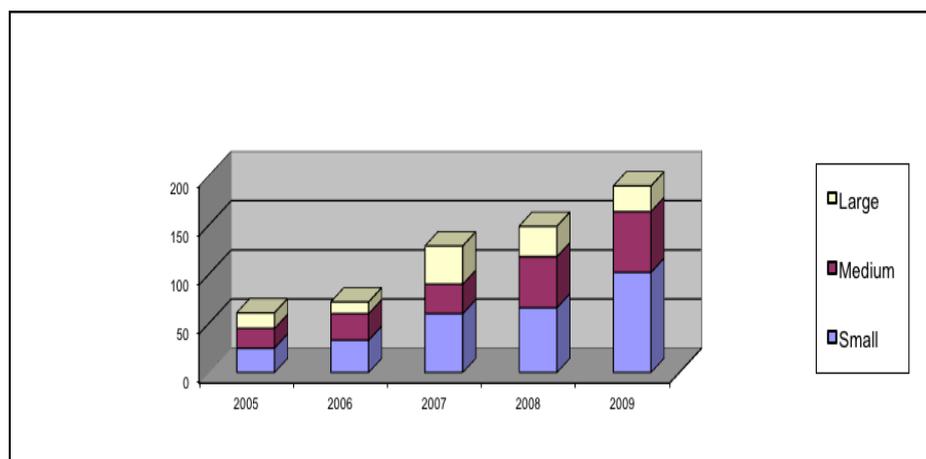
Note: percentage are calculated on the total workers involved in inspections every year and are not biased by the call center campaign.

3.1.3.3 Enterprises' size and sectors - Cagliari

A further analysis involves the enterprises' size with irregularities in nonstandard work and the sectors in which they operate. The most involved in this phenomenon are the small enterprises, with an upward trend over the years (Figure 9). The sector most affected is the Service sector (services for enterprises, call centers, personal service) followed by Business and Trade Activities (Retail and Wholesale trade). The phenomenon also affects for an important extent the sector of construction, while the agriculture sector seems only roughly involved (Figure 10).

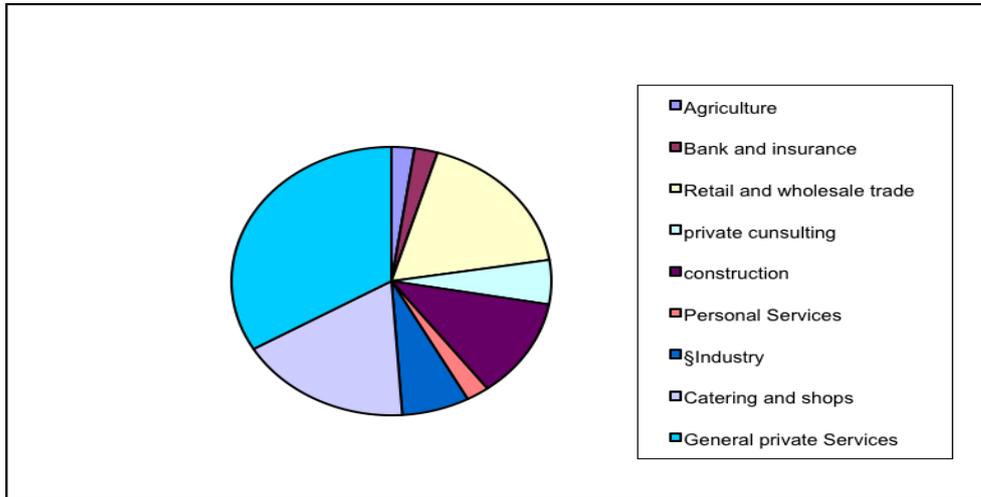
These results therefore are showing that irregularities in nonstandard employment represent a constitutive phenomenon of those sectors usually not affected by traditional types of irregular work (totally undeclared work). Conversely, the sectors of Agriculture and Construction, in which irregular work traditionally represents an endemic aspect, are comparatively less affected in this case.

Figure 8 Size of enterprises involved - Cagliari



Source: Elaboration from Labour department data - Cagliari

Figure 9 Sectors - Cagliari



Source: elaboration on laour department data – Cagliari

BOX 3: The abuse of self-employment contracts in the call center sector in Cagliari

A call center is a service network in which agents provide telephone-based services. In Sardinia, call center work is a widespread phenomenon. The number of operators in this sector was around 12,000 in 2010 in the entire region, 7,000 of which were present only in the province of Cagliari (Camera di commercio 2010).

Generally, call centers activities in Italy were characterized for the extensive use of project work contracts (co.co.pro.). For this reason, In June 2006, the Ministry of Labour Cesare Damiano issued a ministerial decree which included an inspection campaign in all call centers to detect the irregular use of the contracts applied to the call center operators¹. During the call centers Campaign in 2007-2008, the Labour Inspectorate of Cagliari has visited about 80 call centers and around 2800 project workers resulted to be irregular (they were working as collaborators, but in fact their work requirements were related to a subordinate employment relationship).

An interesting data emerging from the inspections is that more than half of Irregular enterprises had legal headquarter outside the region and have outsourced “outbound activities” to local call-centers.

Opinions of key institutional actors such as inspectors and trade unionists have been reported in order to better understand the mechanisms contributing to the spreading out of this phenomenon in the context of Cagliari. According to the interviews, two main factors are here outlined.

The first is a normative factor. From the opinion of most of inspectors one of the main reason for the abuse of self employment, is represented by the space of strategic action provided by the legislative framework: “The definition of the “project” in the written contract can be ambiguous and open to discretions in particular in the case of outbound activities, and this leaves space to employers to use project workers as very subordinated and typical employees” (Labour inspector).

The second is a contextual factor. The province of Cagliari has resulted to be particularly attractive for call-centers investors. This is because of the general low real estate cost in the province, which attracts also “outsiders” call centers investors. The choice to start a call center business in the area of Cagliari is likely due to a the presence of cheap large spaces, such as warehouses abandoned by industries, easy to be adopted to new activities such as call centers. The initial costs for allocation are almost insignificant and it can be easily faced by investors: rents in the wide and desolate hinterland of the province of Cagliari are cheaper than elsewhere” (Labour inspector).

From the supply side, “The high unemployment rate and the condition of young qualified people of being isolated induce them to accept such jobs is contributing to the spread of the phenomenon more than in any other places” (Labour inspector).

In this context, from what emerges by the interviews, local trade unions find themselves having a limited space of action in contrasting the phenomenon. Some unionists stated that tackling this type of irregularity still remains a very difficult issue. This is mainly due to the low union density among call centers work in the province. However, the collaboration between trade unions and the labour department has been recently intensified. From this collaboration in 2008 the CGIL-NIDIL has signed an agreement with two call centers involving hundreds of workers. “The agreement was especially aimed to the stabilization of project workers used irregularly as subordinated workers” (trade unionist, Cgil-Nidil Cagliari).

3.2 Case study 2 - Brescia

3.2.1 The Local economy

The province of Brescia is one of the most economically dynamic provinces in Italy (enterprises every 1000 inhabitants: Brescia 74,2, Lombardia 73,8, Italy 65,7 - Istat 2009) and presents a relatively good labour market performance (employment: Brescia 64,8, Lombardia 64,8, Italy 56,9; unemployment: Brescia, 5,3, Lombardy 5,4, Italy 8,3 – Istat 2010).

The local productive system is mainly composed of manufacturing industry, advanced tertiary sector and services for enterprises. A high number of industrial districts (9 industrial districts: 4 engineering, 4 textile, 1 rubber and plastic) constitute the main peculiarity of the economic context.

According to estimations provided by Istat, irregularity rate in the area of Brescia is particularly low (between 5,5% and 10,1%, Istat 2005) compared to the regional and national average (Lombardy 9%, Italy 10.5% - Istat 2010).

Nevertheless, the literature on undeclared work (Lucifora 2003, Isfol 2010) already mentioned that widespread forms of semi-irregular work, which are not included in the official estimations, are likely to prevail in the north of Italy. These phenomena are mostly related to the search of flexibility in a context of economic dynamism. In this perspective, we attempt to provide empirical evidence of the relevance such phenomena in Brescia and a descriptive framework underlining their characteristics.

Table 11 Context data - Brescia

productive context	Prevailing of Manufacturing industry, advanced tertiary sector and services for enterprises. 9 industrial districts: 4 engineering, 4 textile, 1 rubber and plastic.
Number of enterprises	103678 (Istat 2007)
Enterprises every 1000 inhabitants	Brescia 74,2, Lombardia 73,8, Italy 65,7 (Istat 2009)
Irregularity rate Lombardia	Total Economy 9%; Agriculture 24,8%, Industry 1,9%; Construction 6,9%, Services 9,1% (Istat 2009)
Irregularity rate Brescia	Total Economy 8%; Agriculture 18,6%; Industry 6%, Services 13% (Istat 2005)

Source: Istat 2005, 2007, 2009

3.2.2 The Labour department

Following the discursive logic adopted for the case study 1, we intend to provide here more details about the structure and the internal organization of the local labour department in order to better assess the quantitative data collected in the empirical research. The labour department of Brescia is currently composed as follows: 50 inspectors, organized in 1 operative units for ordinary inspections and 1 for technical inspections; no administrative support offices; 2 operators for statistical analysis; no special units for conciliation practices (all inspectors are assigned to conduct conciliation practices). The entire structure of the labour department in Brescia is provided of less resources for inspections (in term of number of inspectors and technical support) than in Cagliari. This gap becomes much relevant when considering the size of the productive context of the two provinces, which is much wider in Brescia than in Cagliari.

3.2.3 Research results

3.2.3.1 Irregular work in Brescia

A General framework of the results of inspection activity from 2005 to 2009 is shown in Table 12 below.

Main findings of the analysis on inspection activity is that irregular nonstandard workers represent in average the 7,23% of all detected workers and the 25,21% of all irregular workers²⁴. In average, the percentage of irregular nonstandard workers from 2005 to 2009 is higher than the percentage of totally undeclared workers (5,7% of all detected workers and 20,22 % of all irregular workers).

In Brescia the total number of irregular workers has increased from 2006 to 2008 and decreased in 2009. Moreover the number of enterprises employing totally undeclared work has increased.

²⁴ As regards to the Call center Campaign of 2007-2008, it didn't find a very high number of irregular workers (408 irregular workers) compared to those found in Cagliari.

Table 12 Results of inspection activity - Brescia

year	2005	2006	2007	2008	2009	Average
Enterprises involved in inspections	n.d.	1447	2599	2464	1717	
All irregular enterprises	n.d.	776	1557	1523	983	
Enterprises with irregular nonstandard workers	<i>n.d.</i>	<i>5,94</i>	<i>4,23</i>	<i>8,81</i>	<i>8,74</i>	<i>6,93</i>
	n.d.	11,8	7,6	14,25	15,26	11,91
Enterprises with totally undeclared workers	<i>n.d.</i>	<i>4,49</i>	<i>5,5</i>	<i>15,42</i>	<i>32,96</i>	<i>14,59</i>
	n.d.	8,38	9,18	24,95	57,58	25,02
Workers involved in inspections	n.d.	14325	23131	18234	12706	
All irregular workers	n.d.	3253	6150	6070	4229	
Irregular Nonstandard workers	<i>n.d.</i>	<i>6,67</i>	<i>6,14</i>	<i>9,04</i>	<i>7,06</i>	<i>7,23</i>
	n.d.	29,36	23,09	27,17	21,21	25,21
Totally undeclared Work	<i>n.d.</i>	<i>5,96</i>	<i>5,33</i>	<i>5,6</i>	<i>5,91</i>	<i>5,7</i>
	n.d.	26,25	20,05	16,82	17,76	20,22

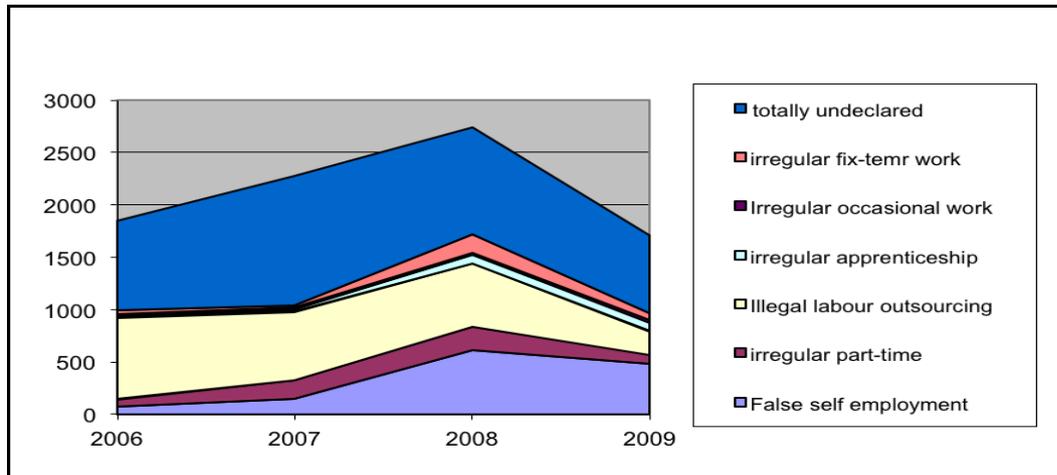
Source: elaboration on labour department data - Brescia

Note: percentages in *italic* are calculated on the total enterprises and workers involved in inspections every year. Those in **bold** are calculated on the total irregular enterprises and workers found by inspection.

Composition of irregular work (Figure 11) in Brescia is constituted for more than half of irregular nonstandard workers (excluding the call center campaign). An important phenomenon within the territorial area is the illegal labour outsourcing (somministrazione fraudolenta) in particular involving irregular cooperatives.

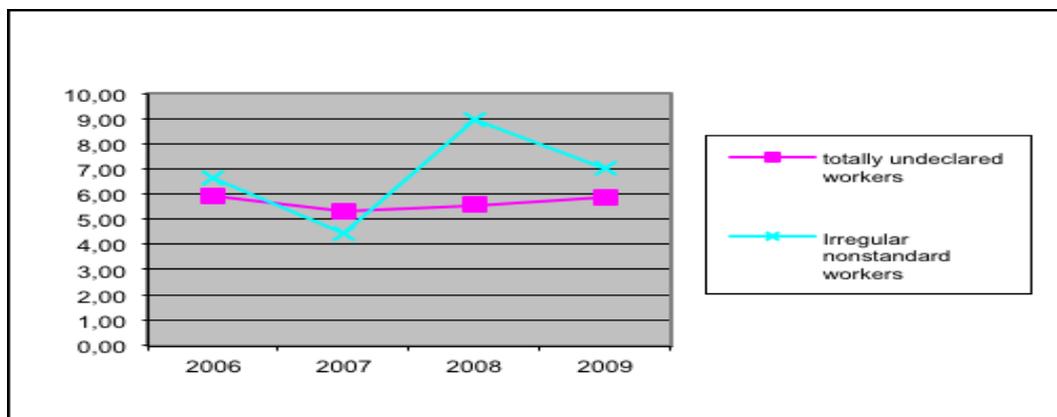
Normalizing the trend of irregular work for the yearly amount of inspections we find a stable trend for totally irregular workers while irregular nonstandard workers are slightly increasing (Figure 12).

Figure 10 Composition of irregular work - Brescia



Source: elaboration on labour department data - Brescia

Figure 11 Trend of irregular work - Brescia



Source: elaboration on labour department - Brescia

As shown by Table 13 the number of enterprises involved in irregularities in nonstandard work is 620 (11,9% of all irregular enterprises) and it has involved 5082 workers (25,21% of all irregular workers).

The percentage of enterprises found irregular through an official denouncement of the workers is the 60%. Accordingly, in a high number of cases workers were likely to be subject of an imposition of such irregularities by the employers. However, we could verify such imposition and explore the motivations of the disputes (through the analysis of the content of conciliation reports) only for the 21,94% of the cases.

Table 13 Cases of irregularities in nonstandard contracts from 2005 to 2009 - Brescia

		total	Resolution by conciliation practice	Resolution by normal inspection procedure
Cases of irregularity in nonstandard contracts	enterprises	620 (absolute value)	24,52	75,48
	workers	5082 (absolute value)	19,72	80,28
Denounced by workers	enterprises	60,00	21,94	38,06
	workers	56,83	17,55	39,28
Found by inspections	enterprises	40,00	2,58	37,42
	workers	43,17	2,16	41,01

Source: elaboration on labour department data - Brescia

3.2.3.2 Types of irregular contracts - Brescia

In Brescia irregularities in nonstandard contracts found by inspection activity (Table 14) are mostly concerning Illegal labour outsourcing (somministrazione irregolare e fraudolenta) which is prohibited by art. 27-28-29 of the legislative decree 276/2003. It concerns the illegal exchange of workers by two or more enterprises. According to that legislation, only authorized agencies may provide workforce and only these agencies are allowed to intermediate between the worker and the user of that

service. The phenomenon itself constitutes the 46% of all irregularities on non standard work and 12% of all irregular workers (See box 4).

In the case of Brescia the percentage of workers' denouncement (Table 15) mostly concerned false self-employment (65%), irregular part-time (63%) and irregular apprenticeship (58%). The cases of denouncement for illegal outsourcing, which is comparatively the most relevant phenomenon in the data, has been the 48%.

Table 14 Types of irregular contracts - Brescia

Years	Irregular Non Standard (Absolute Value)	False self-employment (Co.co.pro/co.co.co)	Part-time	Irregular labour outsourcing (somministrazione irregolare- fraudolenta)	Irregular Apprenticeship	Occasional work	Fix term
2005	151	18,50% 18,50%	16,60% 16,60%	33,10% 33,10%	8,60% 8,60%	11,90% 11,90%	8,60% 8,60%
2006	955	7,70% 7,70%	7,20% 7,20%	81,90% 81,90%	2,30% 2,30%	1,00% 1,00%	3,60% 3,60%
2007	1420	38,20% 20,40%	10,10% 13,00%	49,00% 63,20%	1,30% 1,60%	1,10% 1,40%	1,10% 1,50%
2008	1649	37,50% 36,90%	17,10% 17,20%	30,60% 30,90%	6,00% 6,00%	1,60% 1,60%	13,30% 13,40%
2009	897	53,80% 53,80%	9,90% 9,90%	24,60% 24,60%	9,10% 9,10%	2,50% 2,50%	6,90% 6,90%
Total	5072	35,00% 28,80%	11,40% 12,50%	46,00% 49,60%	4,20% 4,70%	1,50% 1,90%	6,00% 6,50%

Source: elaboration of DPL data

Note: percentages in red are those excluding irregular workers involved in the call center campaign

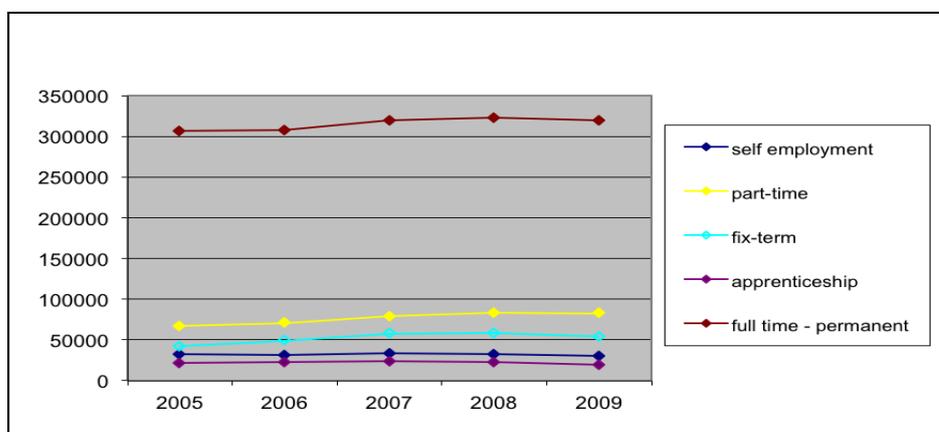
Table 15 Cases of irregularities denounced by workers - Brescia

	total	False self-employment	Part-time	Irregular labour outsourcing	Irregular Apprenticeship	Occasional work	Fix term
Enterprises with irregular nonstandard work (absolute value)	620	153	149	184	85	5	9
Denounced by workers	60,00	65,36	63,76	48,37	58,82	40,00	44,44
Found by inspections	40,00	34,64	36,24	51,63	41,18	60,00	55,56

Source: elaboration on labour department - Brescia

In Brescia, the effective use of self-employment and apprenticeship contracts decreased since the beginning of the crisis (Figure 13) while irregularities found by inspector activities over those contracts have increased (Figure 14). For this reason it is likely that in the territorial context there is an actual increase of the irregular use of those types of contracts. Accordingly, the increase of irregularities over part-time and fix-term contracts can be due to the wider use of those contracts in the territorial area in the last years (Figure 13).

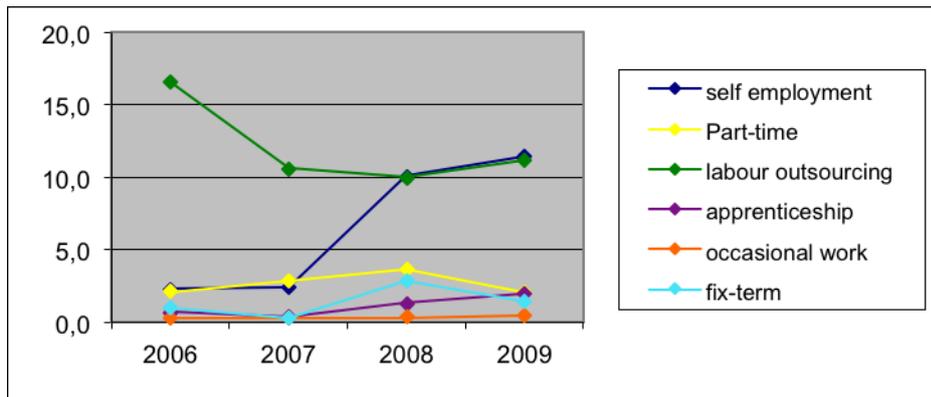
Figure 12 Trend of nonstandard contracts - Brescia



Source: Elaboration from INPS data, 2005-2009.

Note: data on labour outsourcing and occasional work are missing in this elaboration

Figure 13 Trend of irregular contracts found by inspection - Brescia



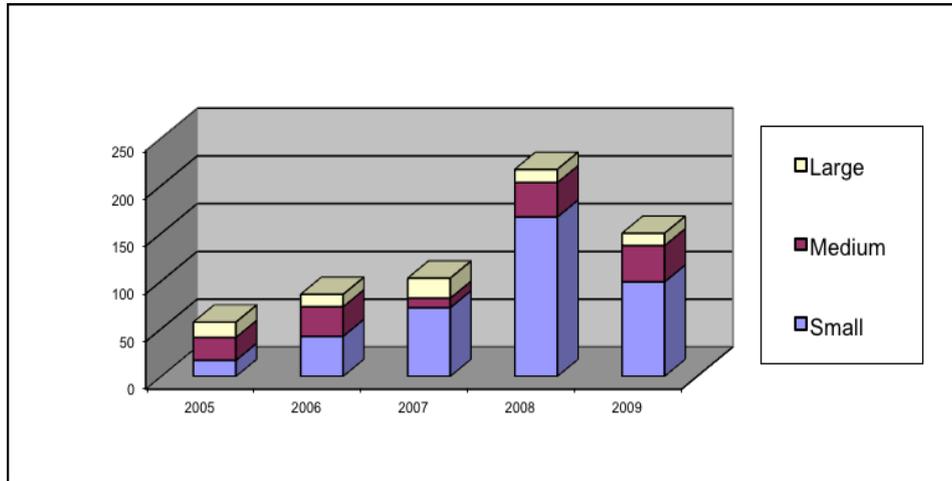
Source: Elaboration on labour department data – Cagliari

Note: percentage are calculated on the total workers involved in inspections every year and are not biased by the call center campaign.

3.2.3.3 Enterprise by size and sector - Brescia

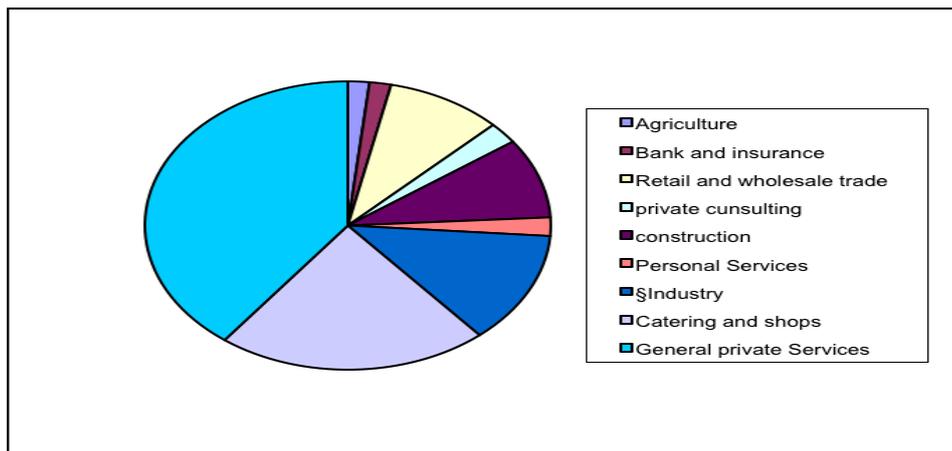
Similarly to the first case study, small enterprises are the most involved in these types of irregularities also in Brescia (Figure 15). The sectors (Figure 16) most affected are the service sector (general private services), Catering and Shops, and the Wholesale and Retail trade. A differentiated data compared to the case of Cagliari is that also the industrial sector is highly involved in these types of irregularities. This is likely to be due to the high number of industrial districts in the territory (see Table 11).

Figure 14 Size of enterprises - Brescia



Source: elaboration on labour department data – Brescia

Figure 15 Sectors involved - Brescia



Source: elaboration on labour department data - Brescia

BOX 4: Illegal labour outsourcing: the case of irregular cooperatives

The territorial area of Brescia is characterized of heterogeneous clusters of large and medium enterprises performing among 9 different industrial districts.

In this specific local area inspections have found a high irregularity rate among the practice of labour outsourcing. For the 50% illegal outsourcing have concerned irregular cooperatives providing general services to firms. What emerged from inspections is that in these cases the provision of services was actually translated into the illegal provision of the workforce to the user firm, whereby the worker ended up being directed and organized by the latter and not by the cooperative, in violation of the art. 29 of dlgs 276/2003 (see chapter 3, Section 1).

Opinions of inspectors have been particularly useful to draw a clearer analytical picture of the phenomenon. “Very often companies, in order to elude legislation on dismissal, chose the outsourcing option. This is not precisely because there is a real need to outsource, but because they attempt to avoid the obligations arising from hiring additional workers. In fact, being the worker essential to the company, he turns to be directed and organized by the user firm and not by the cooperative, and here, therefore, the violation of the art. 29 of dlgs 276/2003” (*inspection coordinator*). More specifically, “the irregular practice can be generated because of the following reasons: a) attempt to Circumvent the law on working time through the irregular use of cooperative workers b) Reasons related to the regional tax IRAP which can be discounted through an higher use of outsourced labour force, b) The difference between the possible gain and the penalty imposed is motivating: 12.50 Euro per day penalty for every employee” (*inspector*).

According to the opinion of the *union representative* (Cgil Brescia), around 30% of CGIL-NIDIL activity on irregular contracts in Brescia concerns illegal outsourcing. The phenomenon is due to manager’s wider space of action provided by the ambiguity of the law 276/2003, which substituted the previous law 1369/1960 on labour subcontracting”.

4 The relevance of the empirical findings

The empirical research has provided an analysis of characteristics and dimensions of irregularities in nonstandard contracts in the two case studies. The findings indeed contribute to a better understand of these particular forms of irregular work. This is basically for two reasons:

Firstly, even if the statistical results cannot be representative, they are based on original data, therefore many aspects and details of the findings on the two case studies are exclusive.

Secondly, The results seem to be in contrast with the common assumption that the increasing use of numerical flexibility through nonstandard contracts would discourage irregular work. Contrarily, our research findings suggest that that a wider use of nonstandard contracts may provide a more room in employment relations for the emergence of different types of irregularities.

What is more, we assume that the extent of these types of irregularities found by the inspection activity within the local contexts of Cagliari and Brescia is rather an underestimated dimension of the phenomenon. This is because of the difficulty for detective institutions to distinguish the legal use of some nonstandard contracts from the abuse, and, at the same time, to gather required evidence of those irregularities. Likewise, we may reasonable believe that the phenomenon is widespread in the whole Italian context, although in different dimensions among different territorial contexts (Lucifora 2003; Isfol 2010, Samek Ludovici and Zanzottera 2002). However, only further empirical researches could definitely confirm this assumption.

In the following sections, we will discuss the research findings and draw some conclusive statements on the base of the hypotheses discussed in chapter 3.

4.1 The paradox of the trade-off between flexibility and irregular work

Departing from the recent debate on the phenomenon of irregular work in Italy, our analysis questioned what in literature is often taken for granted, namely that the increased use of nonstandard work has always a positive effect on the reduction of irregular work. Conversely, the research findings show that nonstandard forms of employment may be de-facto characterized by many forms of irregularities.

The improper use of flexible contractual arrangements by employers, often aimed to lower labour costs and to conceal full-time subordinated employment, resulted as an important phenomenon in the two case studies. Irregularities in nonstandard contracts are quantitatively relevant in the both case (in average respectively 27,5% and 25,2% of the total irregular workers, and the 7,44 and 7,23 of all workers involved in inspections in Cagliari and in Brescia). Moreover, the trend of enterprises using irregular nonstandard workers increased from 2006 to 2009 in both cases (Tables 7 and 12).

The main theoretical outcome of the research is that an increasing number of nonstandard contracts may generate new rooms for the emergence of irregular employment practices. Therefore we can argue that irregular and nonstandard work can be seen as non-inversely proportionated as well as non-mutually exclusive spheres (according to the hypothesis 1, Chapter 3). The flexibility-irregularity nexus finds here some empirical support stressing that they can be linked by a complementary relationship in the Italian context.

Furthermore, consideration of the economic sectors affected by these kinds of irregularities lead us to draw a further theoretical implication in relation to the *theories of segmentation* between primary-formal and secondary-informal segments of the labour market (Doering and Piore 1971).

Our research revealed that irregularities are not just a constitutive part of the marginal and informal sectors of the economy, but are diffused also in the most advanced sectors such as in advanced service sector in the fields of advertisement and business (call centers).

As a conclusion, we may reject the hypothesis of a parallel economy when watching at the phenomenon of irregular work today. From our perspective a more fluid labour market has created more space for communication and interchange between primary and secondary segments of the labour markets. As a result, phenomena of irregularities in employment relations turned to be no longer only an exclusive feature of the secondary segment of the labour market. Primary labour markets in advanced sectors requiring high-skilled workers present also a high irregularity rate (within the inspection activity).

4.2 The importance of the local economy

The second finding of the research is that the flexibility-irregularity relationship assumes different form depending on the territorial contexts in which irregular work performs.

The general character of the phenomenon of irregular work in the two case studies is in line with the differentiation identified by the literature on undeclared work in Italy

(Bonolo and Lucifora 2002): a prevalence of semi-irregular work in the North and a dominance of totally undeclared work in the South (Figure 5 and 11). In addition, when looking more closely at the irregularities in nonstandard work, we find other important differences across territorial contexts.

The province of Brescia is constituted of a high number of industrial districts. Sector specialization and horizontal integration between small firms is highly developed, and the production is characterized of a decentralized process that requires a high level of collaboration between specialized subcontractors and buyer firms. In this context, irregularity of work is constituted in particular by the phenomenon of irregular labour outsourcing. A high number of local cooperatives originally aimed to provide various services to firms, turned to be in reality providing a certain amount of workforce to be directly and illegally organized and managed by the user firm.

In the province of Cagliari the most relevant type of irregularity among nonstandard work resulted to be the irregular self-employment, in particular related to the abuse of project-base employment. The research findings revealed that the phenomenon mostly concerned the activity in the call-center sector (especially in outbound activities), whereby a high number of project-base workers, despite being formally self-employees, were used as subordinate workers. According to the data collected at the Labour department and according to the opinion of the inspectors, the territory of the province of Cagliari resulted to be particularly attractive for call center investors. In line with Acquino's argument (2006), economically depressed areas and rural areas may represent a profitable locational factor for outsourcing call center activities. They generally find a positive attitude by the local institutions principally

because they may stimulate additional employment opportunities and new skills and competencies. Moreover, such economic activities in those regions easily match the labour supply increasingly represented of high-skilled but unemployed young people. The economic downturn in the province of Cagliari and the high unemployment rate among the youngest (45%, Istat 2011) might have therefore contributed to the diffusion of outbound activities, and consequently, to the abuse of the self-employment contracts among those activities.

4.3 New employers' strategies and workers' new social risks

Focusing on the behaviour of actors at the level of employment relations, our analysis opens new theoretical possibilities concerning the actors' strategies on the use of nonstandard contracts and the social consequences at the individual level.

As we already discussed in Chapter 2, sociological literature has stressed several possible disadvantages for the management of a broad use of nonstandard work, i.e. difficulties in relying on specific human resources with specific skills when needed; an increase of work force coordination and management costs; the risk that contingent or peripheral workers will be less committed to the firm and unreliable in their work; the risk that the quality of products or services will deteriorate. In this perspective, it has been mentioned the emergence of a dualistic model of work organization based on the internal segmentation between nonstandard workers employed from time to time in order to satisfy temporary needs of production, and a group of more stable workers, employed permanently in the firm (Rubery and Wilkinson 1994, Regalia 2006).

However, from what it has emerged by the content analysis of inspection reports and conciliation practices, often enterprises, in particular operating in service sector,

adopt improperly flexible workers within the core workforce with tasks and requirements of very subordinated and/or full time workers (project-base workers in call centers). Moreover, it may also happen that the core workforce is entirely constituted of nonstandard workers (such as in some cases of call centers).

The use of nonstandard workers as very subordinated and/or full time workers may correspond to a specific strategy allowing the management to maximize the advantages of the use of the numerical flexibility. Firstly, it allows the firm, to maintain those costs advantages directly linked to the properties of nonstandard contracts and, secondly, to enjoy the ‘free rider advantages’ by escaping from taxation duties.

At the same time, this strategy significantly reduces the disadvantages related to the negative effects of nonstandard employment on work coordination and management costs. An irregular use of nonstandard workers permits to have the maximum flexibility for immediate resources allocation given the constraints-avoidance in employing promptly workers with specific qualification and human resources when needed. Therefore, from the standpoint of the demand side, it is clear that irregular use of nonstandard employment represents indeed an alternative strategy to better balance the advantages and disadvantages of the use of external flexibility within the work organization.

On the side of workers, these forms of irregularities seem to represent a unintended outcome of their nonstandard contract. A high number of inspections and conciliation practices followed an official denouncement by workers involved in such irregularities (60% in Brescia and 47% in Cagliari, see Table 4 and 9). From the content analysis of conciliation reports it emerged that in most of cases of *those irregularities*

derived from an imposition by the employers in order to elude the payment of social security contributions (See box 1).

This has been mostly evident in the cases of false self-employment (45% in Cagliari and 65% in Brescia), irregular part-time (70% in Cagliari and 63% in Brescia) and irregular apprenticeship (52% in Cagliari and 58% in Brescia), as shown in Tables 10 and 15.

This denotes that nonstandard workers involved in such irregularities are subject to a twofold social risk. On the one hand, the risk related to the *non-reliability of the contracts applied*, in terms of lack of guarantees that the factual employment relationship will correspond to the characteristics of the nonstandard contract applied. This risk might be reflected in a general worsening of the working conditions, especially in terms of job satisfaction and work-life balance.

On the other hand it regards the *non-equivalence between the real work performance, which in many case assumed the form of typical-standard work, and the payment of contribution for social security*. The consequences on the individual profile of those workers involved in such irregularities is that they are excluded from full citizenship social rights and to those benefits (unemployment benefit and pensions) they would benefit if their activity was properly declared. This is indeed a relevant implication for the academic and political debate on the concept, dimensions and forms of precariousness (Barbieri 2008; Guy 2011; Sacchi et al 2010).

It has been discussed in the literature (Regalia 2004, Williams 2001) that irregular work is often based on mutual convenience of both employers and employees, given that it might provide both actors a certain profit in the short run by avoiding

institutional and tax-related constraints. This outlook might be particularly true for the case of totally undeclared work, but it doesn't appear realistic in the cases of irregularities in nonstandard work, which, instead, respond to a different logic. The research has revealed that these forms of irregularities mainly stem from a conflict position of the two actors, employers and workers. On the one hand, they represents a strategy for employers to gain further advantages in nonstandard employment relations, while, on the other hand, it denies workers to fully receive their social entitlements and it generates new forms of workers risks. As a consequence, they turns to be profitable for one actor, the employer, but not for them both.

Chapter 5 Implications for policies and practices: the challenges of fighting against irregular work

1 Introduction

This chapter intends to discuss the main policy implications of the research findings, with a critical approach to different recent policies issued at the European and the national level to tackle the phenomena of different forms of irregular work. As shown by the empirical research, irregularities in nonstandard employment have serious implications on the issue of the regulation of employment relations given the emergence of new social risks for workers involved. The topic is increasingly becoming relevant for institutional actors, such as the social partners, but also for policy makers.

Along the policy analysis we try to find out a) whether the issues of irregular work and nonstandard employment have ever been addressed together by an integrated policy approach and consequently b) whether policy strategies in Italy and in Europe have properly been dealing with the problem of irregularities in nonstandard employment.

To answer these guiding questions we have firstly looked at the policy measures adopted in Italy in the last two decades to tackle the phenomenon of irregular work (Section 2). This Section will be followed by a short assessment of the recent labour market reform (Riforma Fornero 2012), with a particular focus on the measures adopted to prevent the abuse of nonstandard contracts (Section 3). Following we transpose the

questions to the European level. We firstly provide an analysis of the policy strategies recommended by the European Commission aimed to contrast the phenomenon of undeclared work (Section 4). Then we look at our object of research from a perspective of the regulation of nonstandard employment relations with particular focus on the concept of European Flexicurity (Section 5). In the last Section we draw some conclusions on the various approaches to the issue of irregular nonstandard employment and will claim the need for an integrated and multilevel approach able to properly address the phenomenon.

2 Tackling irregular work in Italy: different phases and directions

The process of modernization and globalization of the economy, the process of flexibilization and deregulation of the labour market and, finally, the consideration of economic and social environment of different local contexts are the starting point for an analysis of policies aimed at combating the different forms of irregular work in Italy.

As mentioned in Chapter 2 Italy is one of the "worst" in Europe, as the incidence of the underground economy in 2007 was estimated at around 22.3% of GDP, second only to Greece (25.1% of GDP). Starting from the end of the eighties various phases of intervention have been adopted, at first mainly by initiative of the social partners, especially trade unions, and later by public policies.

In this section we provide a short assessment of national policies combating the phenomenon of irregular work from the perspective of this research. Mainly our argument is that policy approaches have been mainly focused on the emersion of the

traditional type of undeclared work, while overlooking the forms the phenomenon can assume within different ways of regulating employment relationships.

Policies combating undeclared work in Italy can be traced in four distinct phases, each having different outcomes.

- 1) 1989-2003: Direct policies. *Gradual alignment agreements (389/1989; 608/1996), Regularization campaign (383/2001);*
- 2) 2003-2006: A new framework. *The Biagi reform 276/2003 and reform of inspection activity 124/2004;*
- 3) 2006-2007: *The Bersani Decree*: an innovative approach to the phenomenon.
- 4) 2007-2012, *The Sacconi Reform* on inspection activity: a service-oriented approach.

Following, we deepen separately on each phase.

2.1 The Failure of direct emersion policies (1989-2003)

The first real direct instrument for the emersion of undeclared work in Italy was represented by the gradual alignment agreements (608/1996). Through a triangular exchange between companies, trade unions and public authorities, the measure tried to encourage the emergence of irregular work with a program of gradual regularization.

The system was based on agreements between the social partners at the territorial level intended to enable firms employing irregular work to adjust wages and social security contributions to the levels set by sectoral collective agreements, in exchange for tax credit to the employers for hiring of new employees.

The distinctive feature of these agreements was the importance given to the decentralized collective bargaining and the role of the unions. This strategy can be described as a way between a mere relaxation of normative rigidity and strategies intended to assign the unions a role of control and an enforcement of the standards set by collective agreements. At a local level the Trade Unions of each sector and the corresponding Employers' Associations were called to set up a starting wage and the way in which it will be realigned to the wage in the National Collective Agreement for that sector. However, the outcomes were moderately promising. Companies that have joined have not exceeded 2000 units and the employees involved have been around 12,698 (Semenza 2010).

In 2001 the law n.383 known as the "Regularization Campaign" was enacted. This law allowed employers and workers to regularize their position with respect to tax, labour safety and social security contributions. In exchange, employers paid reduced sanctions and reduced taxes and social contributions for three years, while the workers could pay reduced pensions contributions. In comparison to the realignment contracts the law didn't provide the mediation of the social partners. All employers had the opportunity to join the program bypassing the communication to trade unions.

The campaign was based on local level experiments intended to foster learning processes and encourage the devising of projects to boost local development, as well as to tighten local audits and sanctions. The program has produced unsatisfactory results: only 1029 companies, and 3854 workers involved.

The Law n.266/2002 has modified the program with the revitalization of the "Network" of the so-called local Committees for emersion (Cles) already constituted by the law 448/1998. The creation of these networks has enforced the fight against

irregular work in a more targeted and localized approach. The European Commission, in its document on undeclared work in 2004, has categorized such a measure as a good practice. According to the European Commission, the constitution of local boards dealing with the problem of undeclared work had the advantage of being more able to perform within contextualized socio-economic realities.

In this phase, while some measure presents some positive aspect to combat the underground economy, especially the construction of institutional coordinated Networks in 1998, the direct policies so far adopted, aimed to a gradual regularization of working positions through tax incentives and contribution, have not been effective in reducing irregular work. According to some authors (Lucifera 2003, Semenza 2010) the reason are the following:

a) The failure to address the causes of irregular work and the non-exhaustive consideration of environmental factors and social norms that regulate informal networks;

b) The widespread perception that tax incentives in the short term could be translated into a kind of self-report of undeclared tax contributions and other irregularities;

c) The opportunistic behaviour over realignment contracts by many employers who have chosen the gradual regularization for a temporary reduction in labour costs and to remedy situations of irregularity discovered by inspections.

d) The non-consideration of different categories of individuals involved in irregular work and their different needs.

2.2 A new framework (2003-2006)

In Italy the phenomenon of irregular work was particularly related to the difficulties of specific social group (mainly youngest, low educated and women) to enter in the labour market. The “Biagi Law” in 2003 has been proposed as a way to increase the employment chances of those groups traditionally less represented in the Italian labour market. Flexibilization of the labour market was expected to lower the high (youth) unemployment levels by eliminating the rigidities to enter into the labour market and easing the transition from school to work. This expectation was particularly strong for the South of Italy, where youth unemployment rates were among the highest in Europe.

Despite the reform, data available on the trend of irregular work in Italy show that the most recent decrease of the irregularity rate was observed in 2002 and 2003. This is almost entirely due to a reduction in the number of undeclared immigrant workers produced by the amnesty of immigrants introduced in 2002. Apart from such an amnesty, no clear declining trend in the size of irregular work has been registered at the national level (See chapter 3, Section 1).

Complementary to the Biagi law, a reform of inspection services was issued in 2004 (124/2004) to conform the role of inspections to the new rules.

Briefly, the main characteristics of the reform are the following:

- Increase control by local inspection units and coordination between the various audit institutions.
- Promotion and prevention in the field of labour and social security in the productive plants.

- In case of administrative violations the procedure provides a delay for sanctions (*diffida accertativa*), allowing the employer to regularize its position, within a certain time range.
- Introduction of conciliation practices, providing the possibility to resolve disputes through a conciliation agreement between the employer and the worker.

In this measure, while the first two points are undoubtedly an important step toward an improvement of the services also in logic of prevention, the last two presents some critical aspects. With regards to the third point, the possibility provided by the reform to rectify the irregularities without undergo any immediate sanctions implies a weakening of a deterrent function of inspections. As demonstrated by some empirical studies (Bonaventura 2005), from a perspective of the employer's economic payoffs, the option to irregular activity would increase with a decrease of the "weight" of sanctions. Such a choice doesn't appear to be a step towards the fight against irregular work also in light of the recommendations of the European Commission (see European commission communication on undeclared work 2007), which instead promoted a stronger deterrence approach and a strengthen of the effectiveness of sanctions²⁵.

As regards to the introduction of conciliation practice, we can have a twofold outcome. On the one hand, it has a positive impact on the propensity of workers to denounce irregularities, basically because it presents an easier and faster administrative procedure to resolve the disputes in comparison to the inspection procedure. This is also favourable for the emersion (in economic and statistical terms) of those irregularities that wouldn't be reported otherwise.

²⁵ European Commission Communication in 2007 (COM (2007) 628).

On the one hand, similarly to the previous point, the conciliation practice turns to be a weak deterrent in tackling irregularities in nonstandard contracts given that it allows employers to regularize the employees' position without being subject to administrative sanctions.

2.3 An innovative approach (2006-2007)

The changes in the labour market occurred by the Biagi law, the continuous increase of the trend of irregular work and at the same time the risks of a disproportionate abuse of the new contractual arrangement has lead the government in 2006 to introduce some measures (the so-called *Decreto Bersani 248/2006*) aimed to tighten the controls over the right application of employment law in the workplaces. As compared to the old law – which considered an irregular worker as an “*employee who is not recorded in the accounting and compulsory administrative books*” – the law extended the definition to self-employment and new forms of nonstandard work. *In particular, an irregular worker is one who is not registered in the firm's “wage” and accounting books and who is not known to the authorities* (INPS, INAIL and job centres) due to the non-notification of the employment relationship (which applies also to irregular nonstandard workers).

In addition the Decree has set that:

a) Work can be suspended and construction sites can be shut down in case the percentage of totally undeclared workers in a workplace is more than 20%, or in case of reiterated breach of legislation on working times.

b) The hiring of a new worker has to be communicated to the National Assurances for Work Injuries (INAIL) and to the National Institute of Social Security (INPS) the day before the worker starts the work activity (mainly to avoid the practice to officially hire the worker, in case of injury, the day the accident occurs);

c) The minimum “civil” penalty for the missing payment of social contributions in case of totally undeclared workers is set at EUR 3,000. This penalty has to be paid both to the INAIL and the INPS, in addition to the reimbursement of the whole amount of social contributions due for each irregular worker;

d) The firms condemned for irregularities in health and safety matters are excluded from contributions incentives.

In the same period a joint proposal to fight against irregular work has been advanced by the three main trade unions (CGIL, CISL, UIL). This proposal concerned a) the creation of a fund for the “emersion” of undeclared work (*Fondo nazionale per l'emersione*), with the aim of (partially) financing bonuses for regularizing workers and firms involved in local “emersion plans” (*Piani locali di sistema per l'emersione*); b) the financing of the “emerging” workers’ social contributions (*Piani di ricostruzione delle carriere contributive*); c) the construction of a unique database for incentives and facilities (local, national, communitarian) for firms who want to regularise their positions; d) a strengthening of coordination between local inspective departments, and greater economic and technological support for inspections; e) measures for immigrant workers: acknowledgement of the worker status to all immigrant workers and a residence permit for the irregular immigrant workers who denounce their employers; vi) a campaign to promote a culture of legality.

Overall, this phase has seen the development of a new “wave” for the fight

against irregular work. In particular, the Bersani decree indeed represented an important innovative measure. For the first time the new forms of irregularities were included into an integrated policy constituted of preventive and repressive actions and aiming to enhance the role of social partners and local actors.

2.4 A service-oriented approach (2007-2012)

A different approach has been adopted in the following “reform of the of inspection activity” (Direttiva Sacconi September 2008), which amended the institutional role of labour inspectors and certification procedures. The main aim of the reform was to readdress inspection activity toward a new preventive and promotional role and set up new guidelines for inspectors (Semenza 2010). Main features of the reform are the following:

- Inspections over non standard contracts are allowed only to the “non-certified contracts”;
- Non-admissibility of anonymous complaints by workers;
- Decentralization of inspection plans at the local level, which takes into account specific conditions and economic characteristics of the territorial context;
- Strengthening the role of conciliation practices: in case of “workers complaints” inspection can take place exclusively after the attempt of the conciliation procedure;
- Inspection’s disclaims of irregular contracts should not involve irregular micro-enterprise.

The reform has raised many criticisms within the academic and political debate. In particular, it has been underlined that the directive negatively affects the whole inspection activity and generates de facto a loosening of controls. The consequence is a shifting of the institutional role of inspections from a punishment-oriented to a *service-oriented logic* (Tiraboschi 2009, Rossi 2010).

Within the scientific and political debate it remains open the question whether such a more service-oriented approach is effective in combating the phenomenon of various forms of irregular work in different territorial context.

Our empirical research has revealed that the capacity of territorial labour departments to be effective on tackling irregular work depends for an important extent on the way the “service-oriented” activity, especially in regards to the conciliation service, is internally organized. As shown in Box 5, when conciliation practices are in charge by all inspectors and not organized in a specific administrative conciliation units (such as in the case of Brescia), it may negatively affect the overall inspection activity, in terms of amount of inspection conducted in the years and in terms of its capacity to be present in the territory as a deterrent institution.

We argue that a service-oriented approach, in order to maintain its capacity of intervention in a specific territorial context, should be first of all accompanied by strategic plans of efficient internal organization, which means more financial, technological and human resources. As promoted by the European Commission²⁶, a service-oriented approach needs to be complementary to an enforced deterrence approach (which was an important feature of the Bersani Decree in the previous phase) and not substitutive, as in this last phase.

²⁶ European Commission Communication in 2007 (COM (2007) 628).

Box 5: An assessment of the labour departments’ internal functioning.

The functioning of the DPL and its effectiveness on inspection activity depends on endogenous factors such as the internal organization as well as the normative orientation and ability of every single inspector. Following a more qualitative approach, the Table below summarizes some important feature of the two labour departments.

Functioning or Labour departments in Cagliari and Brescia

	Cagliari	Brescia
Awareness of inspectors on new workers risks and new irregularities.	high	high
Inspectors Specialization on new form of irregularities	Low	High (irregular outsourcing)
Impact of Conciliation practices on inspection activities	Inspection activities are not affected by the growing number of conciliation practices. A specific conciliation office has been set up, hence, inspectors are discharged from conducting conciliation practices. Inspections trend 2008-2009: +12%	Inspection activity is negatively affected by the growing number of conciliation practices. Any inspector is assigned to conduct conciliation practices. Inspections trend 2008-2009: -38%
	Conciliation practices have a low deterrent effect on tackling irregularities on non standard contracts, but they have a positive impact on the emersion of those irregularities.	
Statistical gathering of irregular nonstandard contracts:	Uneffective	Uneffective
	Software currently used: “Stinger”. It does not provide data on all irregular non standard contracts. New softwares (FATO in Cagliari and DB in Brescia) are currently available but not authorized by the central department.	

Based on the field study conducted inside the DPL and according to the interviews to the inspectors, a high level of awareness about new workers risks and new forms of undeclared work among the inspectors has resulted as a common feature of the departments of Cagliari and Brescia. Tackling the abuse of nonstandard contracts concern to a relevant extent the inspectors’ activity. However, specialization of inspectors on the type of irregularity most relevant in the province (illegal labour outsourcing in Brescia and irregular self employment in Cagliari) has not been pursued to the same extent in the two departments. While in Brescia a certain number of inspectors specialized in the resolution of illegal outsourcing disputes, in Cagliari inspectors’ activity continues to be variegated for all type of irregularities including those non directly related to the type of contracts (such as irregularity on payments and contributions).

Another very important issue directly affecting the quality and the amount of inspections is the internal organization and management of conciliation procedures. According to legislative decree 124/2004, conciliation practices should be conducted by inspectors as an ordinary activity of the labour department. This would affect the amount of inspections yearly planned by the DPL. Nonetheless, organization on conciliation practices presents crucial differences between the two structures. In Cagliari it has been set up a specific office designated to conduct conciliation practices, hence inspection activity is not affected. Conversely, in Brescia conciliation practices are conducted by all inspectors and this has negatively affected the inspection activity in particular after 2008 (in 2009 number of inspections decreased by 38%).

Issue of statistical gathering of new type of irregularities is of crucial interest for the labour department. The overall performance of the provincial department, which have to be yearly reported to the central departments at regional and national level, mainly depend on the extent to which the inspection activity is statistically reported. However, the statistics elaborated by the labour departments are much focused on the amount of taxes and social contributions recovered by inspections than the trends and the characteristics of the different types of irregularities.

New data input softwares (FATO in Cagliari and DB in Brescia) including systems of recording the new type of irregularities are available at the departments, but those softwares have not been authorized by the central department. As a result, internal statistic elaboration didn’t properly account for new type of irregularities so far.

3 The recent reform of the labour market: a step forward

The Fornero labour market reform (Law n.92/2012) has been approved after months of discussions, amendments and controversy in 28 June 2012. The new rules intend to govern in the first place the execution of the employment relationship and introduce new important features particularly into the legislative framework of nonstandard employment contracts.

Article 1 of the reform is based primarily on the concept of the "inclusive and dynamic" labour market in which the priority must be given to permanent work as a common form of employment relationship (so called "dominant contract"). Art. 1 gives also an explicit effort to the protection of flexible employment with the declared aim of combating the abuse of nonstandard contracts²⁷. This effort is particularly reflected in a framework providing a more strict regulation for those contractual arrangements that are particularly in risk of abuse. Following, we scroll separately the different changes provided in the reform in regard to the nonstandard contracts considered in this research.

Firstly, significant changes have concerned the *apprenticeship contracts*. The intention of the government is to make apprenticeship the dominant channel of access to the labour market for young people up to 29 years old. According to the law, this form of contract must have a minimum duration of six months, except for contracts for seasonal work. Other regulations concern the number of apprentices in a firm. From 1 January 2013 the total number of apprentices that an employer can hire (directly or through temporary work agencies) cannot exceed the ratio of 3 to 2 with respect to

²⁷ *Disegno di legge recanti disposizioni in materia di riforma del mercato del lavoro in una prospettiva di crescita* (DDL n. 5256/2012) Art 1. See specifically points C) and E).

permanent workers, while the ratio is 1 to 1 for enterprises with less than ten employees. Another new element is determined by the fact that the hiring of new apprentices is subject to stabilization of at least 50% of apprentices in the 36 months before the new hire. The apprentices taken in violation of the rule are considered employees for an indefinite period from the date of the constitution of the employment relationship (these constraints do not apply to employers who employ less than ten units)²⁸.

These new rules concerning the apprenticeship contracts seem to move toward a limitation of the abuse of apprenticeship contracts. This is particularly expressed by the numerical constraints to the use of apprentices and by the hiring process, which must respect a stabilization of a certain percentage of workers before hiring new apprentices.

However, the reform did not intervene on the risk that those apprentices could be still used as subordinate workers. The time range in which apprentices can be stabilized to allow new hires is three years. For a professional growth of the apprentices 3 years is a disproportionate and unjustified period, given that many types of job may present a very limited professional content, which in most cases it can be learn in few weeks. In this period, therefore, there is the risk that the apprentice can be assigned tasks usually related to “typical” work. This aspect appears to be totally contradictory with to the objectives of this reform, which in art. 1 states that the general form of employment relationship should be represented by the permanent-subordinate work (Tiraboschi and Rausei 2012).

The labour reform also has concerned the fighting against the improper use of *self-employment*. As regards the project-base work, the margins of use of this form of contract have been reduced through some amendments to the Legislative Decree no.

²⁸ *Disegno di legge recanti disposizioni in materia di riforma del mercato del lavoro in una prospettiva di crescita* (DDL n. 5256/2012) Art 5.

276/2003. In the new legislative framework, the so-called co.co.pro must be related to one or more projects (and no longer to a work program or one of its phases²⁹) determined by the client and managed independently by the employee. The project cannot involve the performance of purely executive or repetitive duties, but it shall be traceable to a final result that must be different from the general activity of the firm. Finally, the payment cannot be less than the minimum wage laid down by collective agreements for each sector of activity.

These amendments seem to represent an important contribute to the fighting against false self-employment. The project-base contract should be now qualified by the results that in any case must be different from the activity of the firm, and by the fact that the work performance must not imply repetitive and executive tasks. This may prevent to set up a project in an ambiguous and under-determined form.

Important changes have been made with regards to the *fixed-term contract*. The minimum interval between two fix-term contracts within the same enterprises has been increased from 10 to 60 days for contracts which duration is less than six months and from 20 to 90 days for longer contracts. Collective agreements can identify the specific conditions under which these minimum interval can be subject of a reduction.

A crucial issue of the labour reform was to determine the maximum duration of fixed-term contract, which was set at 36 months. The first contract of no longer than six months can be signed without the indication of the “objective reasons” (organizational and productive) for which this type of contract is applied. In this case, the contract cannot be subject of an extension.

²⁹ *Disegno di legge recanti disposizioni in materia di riforma del mercato del lavoro in una prospettiva di crescita.* (DDL n. 5256/2012) Art. 8.

The consequences of the amendments contemplated for fix-term contracts can be twofold. On the one hand the longer minimum intervals (60 days for contracts which duration is less than six months and 90 days for longer contracts) for the constitution of two contacts can be favourable in terms of prevention against the abuse of successive fix-term contracts. On the other hand, the legislation, liberalizing the first contract and eliminating the existing regulatory framework, has legitimized the use of fixed-term employment even in the absence of an objective reason, accepting the risk that this may derive an uncontrolled use of this type of contract. The consequence is that, the overall uncertainty may be significantly increased, with the increased risk of the abuse of fixed-term contracts, repeatable without limit for the same worker in another company or by changing the characteristics of its job. Moreover, in the case of a first contract not presenting “objective reason”, the worker can be fired without the need to indicate the precise reason (technical, productive and organizational) for the dismissal. Therefore, such openness can encourage a high turnover, by signing more contracts with different temporary workers, especially in relation to those professional positions that are not particularly qualified and do not require specific training.

As far as the *part-time* contracts are concerned, the legislation didn't seem to have gone forward to the fighting against the irregular use of part-time work. The text of the reform up to May 2012 had set the obligation of the preventive communication by the employer to the public authorities, in the event of a change in working hours of the employee, five days before the modification of the contract. This would have been undoubtedly beneficial for preventing an unjustified use of part-time workers outside the working-time schedule. In addition, it would have been favourable for the inspectors' activity when searching for the evidence of such irregularity. However in

the new text promulgated in August 2012 this clause has been removed. This decision has shown an unreasonable step backward of the legislation addressing the abuse on part-time work. It appears to be completely in contradiction with the purpose of the reform “to protect flexible employment with the declared aim of combating the abuse of nonstandard contracts“ stated in article 1.

Finally, for what concerns the issue of *irregular Labour outsourcing*, the most interesting aspects regards the judicial procedure with respect to the responsibility for irregular outsourcing. The new version of paragraph 2 art. 29 Legislative Decree n. 276/2003 provides that the client (the user firm) can be sued together with any other contractor and subcontractors. The worker may claim the whole of each debtor and therefore, hypothetically, he could sue only against the user firm without involve the contractor. This would represent a form of deterrence against the illegal inclusion of the outsourced workers within the organization and direction by the user firm.

With regard the methods and procedures for monitoring and verification, the legislation have left the social partners greater freedom to identify the tools and criteria that could be better suitable in each specific sector by collective agreements, also at the sub-national level. In this perspective, it would seem to be particularly beneficial the recourse to the certification of contracts (Title VIII, Chapter I, of Legislative Decree no. N. 276/2003), through which companies may submit to a concrete control their activities with respect to the procedures provided by collective bargaining.

Overall, we may reasonably argue that *the Fornero reform has relatively improved the legislative framework in the direction of preventing the abuses of nonstandard work*. From the point of view of this thesis, particularly appropriate seems

to be the amendments provided within the framework of self-employment, especially in the direction to prevent the abuse of project-base workers by the provision of more strict rules for the definition of the project contracts. However, many aspects still remain ambiguous and open to possible unintended consequences. The legislative framework for preventing irregular part-time work has been (inopportunately) unaltered, while some doubts may arise with respect to the new directives regarding fix-term and apprenticeship, which still present a wide room for employer's to abuse of such contracts.

4 Fighting irregular work at the European level: a weak strategy

The purpose of the present Section is to provide an analysis of the recent measures developed at the European level to contrast irregular work.

Irregular work is a complex phenomenon with multiple drivers and therefore calls for a balanced approach of prevention, law enforcement and sanctions. High levels of taxation and social security contributions and a heavy administrative burden are traditionally seen as the drivers of the phenomenon. Recently different forms of irregular work are also increasing in the whole Europe, especially forms of irregular sub-contracting and false self-employment³⁰. In addition, in certain Member States, the application of transitional arrangements towards workers of the new Member States (posted-workers) has exacerbated the recourse to irregular work (Cremers 2009).

³⁰ Recently there has been a joint conclusions and recommendations of the European social partners in the construction industry that raised the concerns on bogus self-employment in Europe.
http://www.mutual-learning-employment.net/uploads/ModuleXtender/Trscontent/46/Joint_paper_construction_industry_on_selfemployment.pdf

In recent years a comparative research on the composition and motivations of undeclared work in Europe has been promoted at the European level (Eurobarometer survey 2007). The results have shown that the extent and the nature of undeclared work differ among the Countries. In Central Europe undeclared work is estimated between 6% -7% of GDP, in Northern Europe is below the 5% GDP, while in Southern Europe the rate of undeclared work is higher, more than 16% of GDP. What emerges from the specific Eurobarometer survey (2007) is that in while in Central and Eastern and Southern undeclared work is mainly constituted of those workers that have difficulties to find a job in the regular labour market, in the Nordic countries and continental Europe it rather concerns self-employment workers often engaging in irregular work for convenience.

European level institutions has mainly used the term “Undeclared work” rather than Irregular work (see chapter 1), indicating "any paid activities that are lawful as regards their nature but not declared to the public authorities, taking into account differences in the regulatory system between Member States". In recent years, efforts at European level on the issue of undeclared work has intensified and has produced a series of reports and statements from the European Commission, of which we will mention the most important: The Delors report of 1993, the Flynn report 1998, the report "undeclared work in an enlarged union" of 2004, and the Communication of the European Commission in 2007.

These documents present a strong call for a stricter compliance with the rules, to raise social awareness and recognition that undeclared work is also the result of new patterns of work and organization of enterprises. However, until 2007 European strategy focused mainly on preventive and punitive policies, neglecting the importance

of measures and incentives that encourage local economic development, and the inclusion of institutional actors at various level.

A step forward was made with the communication of European Commission in 2007, which addressed the problem of undeclared work to be faced by the Member States for the achievement of the Lisbon Strategy goals.

In this communication five guidelines are identified:

- 1) Reduce the attractiveness of undeclared work with interventions also on social security systems and find a better balance between incentives for regular work and disincentives against undeclared work (through adequate means of income and contributions support);
- 2) Simplification of administrative procedures, including a simplification of labour law and the computerization of databases for information exchange between institutional actors;
- 3) Improvement of audits and increase sanctions, involving the social partners and improving cooperation between the bodies in charge of taxation, employment and immigration;
- 4) Cross-border cooperation within the EU to control the working conditions of posted workers;
- 5) Rising of public awareness both with respect to the risks related to irregular work as well as the positive effects of full payment of taxes.

The guidelines indeed seem to suggest the adoption of a policy strategy that is able to combine promotional and preventive interventions with repressive actions and sanctions. The aim was to identify a good combination of "mixed policies" to discourage undeclared work on the one hand, and to encourage forms of regular work

on the other hand. Certainly implementation of mixed policies will vary from state to state, as an appropriate strategy will depend very much on the socio-economic context in which the policy is applied (Renooy 2008).

After the communication in 2007, there have been no further relevant steps addressing the problem of undeclared work at the European level. The topic has also been excluded from the new strategy so-called "Europe 2020" announced in March 2010.

Although the new strategy seems to represent an important step toward the fight against undeclared work, it is far to represent an effective and strong tool to properly contrast the phenomenon. The European Commission has essentially adopted a persuasive approach, proposing guidelines and nonbinding opinions, avoiding to set minimum goals to be reached within a specified period of time (Semenza 2010).

Moreover, we argue that the approach is still bind to a broad-spectrum definition of the phenomenon and it neglected to properly look at the different forms of semi-irregular work emerging in the European labour markets. Consequently, it also overlook the opportunity to adopt diversified strategies for each case, taking into account the social and economic mechanisms representing the drivers for those forms of irregular work.

In this last Commission Communication, undeclared work is mainly understood as an "extreme case of labour market segmentation". As a consequence the Commission proposes to integrate concerns about undeclared work in the common principles for flexicurity currently being developed: "member States are invited to give due attention to undeclared work when deciding on the pathways they intend to follow in

implementing the common principles of flexicurity”³¹, which is considered the best tool to reduce labour market segmentation. In this view, combating undeclared work basically means implementing a policy strategies aimed to reduce the labour market segmentation between protected and non-protected workers. In particular a crucial role is assigned to flexicurity policies, supposed to be able to increase social inclusion and security for all.

Lately, in the communication of the European commission in 2010, “An Agenda for new skills and jobs: A European contribution towards full employment” it is mentioned that “Undeclared work, including misclassification by employers of employees as independent contractors, continues to expand and increasingly gains a cross-border dimension: further efforts are needed to strengthen cooperation at EU level between labour inspectorates and other bodies whose mission is to control the application of employment law”³².

For the first time, Undeclared work is here understood as a phenomenon also generated by a “misclassification by employers of employees as independent contractors”, which must be contrasted trough a further strengthen of controls toward the application of employment law. Besides this brief and concise statement, the issue of the various form of irregular work emerging with the continuous evolving of labour markets in Europe, still need to be insert into a integrated strategy at the European level.

³¹ European Commission Communication in 2007 (COM (2007) 628).

³² European Commission Communication in 2010 (COM (2010) 682 final)

5 Informal employment practices as a challenge for the European Flexicurity³³

In this Section we introduce the topic of Flexicurity as it has represented in recent years the main strategy adopted by the European Union to prevent the risks deriving from a more flexible labour market and combat segmentation and precariousness. We provide a critical assessment of the concept of flexicurity from the perspective of our research. We argue that the concept of Flexicurity, as it is conceived today, is not the appropriate solution to prevent the emerging of new social risks deriving from nonstandard employment. This is basically because it focuses on the macro-institutional framework but it neglects to properly look at the behaviours of individual actors in employment relations and the power gap between employers and workers in a context of conflicting interests, from which abuses and irregularities in nonstandard contracts may emerge. Following we introduce the concept of Flexicurity as developed at the European level, and successively we develop a conceptual critique.

5.1 The European strategy for balancing Flexibility and Security

In recent times, economic policy within EU have faced a tension between demands for greater labour market flexibility on the one hand and the need to provide adequate levels of social protection for workers on the other hand. Flexible labour

³³ This section has been developed during the period of study at the Amsterdam Institute for Advanced Labour Studies, University of Amsterdam (See Annex 12), under the supervision of prof. Maarten Keune. The period of study has yielded the working paper “An individual level perspective to the concept of Flexicurity” (forthcoming), and a review published in the CLR news series (4/2011) “The precarious nature of knowledge professionals in Italy?”.

markets are supposed to be beneficial for job creation and for needs of firms operating in a broader, more uncertain and more unstable economic context, but at the same time they tend to reduce the level of security that workers have traditionally enjoyed in the employment relations. Within the academic and political debate it has been broadly recognized that a widespread consequences of the processes of flexibilization and deregulation of labour markets has been the rise of different forms of insecurity for nonstandard workers and the so-called phenomenon of precariousness. Precarious work is rapidly becoming the biggest obstacle to the construction of a European Social Model. Every day, more and more workers find themselves in precarious jobs where they have no right even to join a union and are let alone to bargain collectively with their employer. Some are formally excluded because basic rights are denied in law. Others have rights on paper, but no rights in fact because laws are not enforced.

In this context, the concept of flexicurity - the balance between flexibility and security - has gained a prominent place in the European Policy debate as a solution against labour market segmentation and precariousness. Already since the mid-2000s, the European Commission included the concept of flexicurity in the European Employment Strategy under the general purpose to achieve full employment, improving quality and productivity at work and strengthening social cohesion in each Member states.

Wilthagen and Tros defined flexicurity as: ‘a policy strategy that attempts, synchronically and in a deliberate way, to enhance the flexibility of labour markets, work organization and labour relations on the one hand, and to enhance security – employment and social security – notably for weaker groups in and outside the labour market, on the other hand’ (Wilthagen and Tros 2004). The concept is based on the idea of efficient co-ordination and synchronization of employment and social policies.

Assuming that there can be a positive sum-game between regulations increasing flexibility and those reinforcing security in the labour market, it suggests that one or more types of flexibility can be positively combined with one or more types of security³⁴. Such combinations should lead to a win-win situations in which social partners in the labour market benefit from high levels of flexibility, which is expected to be crucial for economic dynamism and employment creation, accompanied by high levels of security for workers.

According to the principles of flexicurity stressed by the Commission in 2007³⁵, a flexicurity framework should include flexible contracts that would increase the performance of the labour market while effective Active Labour Market Policies (ALMPs) and Life-Long Learning programs (LLLPs) should help individuals to reduce their risk of unemployment and facilitate job-to-job transitions. Modern Social security provisions would simultaneously reduce the risk for nonstandard workers to completely lose a decent level of income.

According to this main view, flexicurity allows employers to enhance their competitiveness through rapid responses to the vicissitudes of the market, expanding and contracting the workforce with relative ease, while moderating the increased exposure of workers to the risks associated with the de-standardization of the labour market through rigorous labour market activation programs and effective social security provisions.

³⁴ Literature on flexicurity commonly subdivides mainly into four types of Flexibility: external numerical flexibility, internal numerical flexibility, functional flexibility, wage flexibility; and four type of security: Job security, employment security, combination security, income security (Wilthagen and Tros 2004).

³⁵ In June 2007 the Commission developed the so-called “common principles” of flexicurity: (i) flexible and reliable contractual arrangements; (ii) Comprehensive lifelong learning strategies (LLL); (iii) Effective active labour market policies (ALMPs); (iv) modern social security provisions; (v) social dialogue (European Commission, June 2007).

5.2 Shortcoming of flexicurity: disjunction between the institutional framework and the employment practices

We strongly question that the concept of flexicurity, as it is conceived today, could represent a real solution against the increase of workers' social risks and precariousness. Some authors have already argued that the Commission's interpretation of Flexicurity particularly emphasizes the increase of nonstandard arrangements while security is largely limited to employability measures, which are seen as the key for individuals to be able to make transitions from job to job, and from unemployment or inactivity to employment (Keune and Jepsen 2007, Tangian 2009).

From the perspective of the thesis, the mainstream view of flexicurity presents an important problematic aspect. Flexicurity is an institutional configuration of policies assumed to be able to transpose the balance between flexibility and security directly to the level of the individual employers-employees relationships. However, in our opinion, the effective functioning of the institutional framework of flexicurity may be strongly mediated by individual actors adopting strategic behaviours in employment relations.

Implementation of a flexicurity involves a necessary process of change in readjustment of employment practices. An Individual actor will formulate strategies exploiting a certain space of action and will attempt to use the institutional framework in a way to guarantee a certain advantage in employment relations *vis a vis* the other actor (Streeck and Thelen 2005).

In this perspective a re-interpretation of the rules by actors may be reflected in the emergence of informal practices among nonstandard employment relations. As we demonstrated by the empirical research on the irregular use of nonstandard contracts in Italy (see chapter 4), employers may strategically use flexible contractual arrangements

to gain further advantages in employment relations. This may undermine the effective access of workers to social security schemes (see chapter 4.4).

In a context of conflicting interests, the extent to which individuals can use the institutional framework to pursue their own interests will depend on their capacity to mediate the rules according to their power and their normative and cognitive preferences (see chapter 2.3). However, given the asymmetry of the bargaining power between employers and employees in employment relations, we argue that the final outcomes of flexicurity may result more favourable for employers rather than workers. On the one hand, employers may have the power to strategically adopt nonstandard forms of employment through informal practices to gain further advantages. On the other hand, institutional security provisions for workers may turn out to be ineffective if they do not have the power and the capabilities to “act out” those institutions (Keune and Burrioni 2011). As G. Schmid (2010) outlines, the concept of Flexicurity lacks of a clear normative orientation. Its usual appeal to a ‘win-win-game’ doesn’t consider the still existing power gap between the two main social partners. The metaphor of ‘balancing’ flexibility and security remains void without taking account of such differences.

The consequence, therefore, might be a *disjunction between the institutional and the micro level and at the same time an atomization of (formal and informal) employment practices within the same institutional framework*. Individual strategies in employment relations may create the conditions for a heterogeneous configuration of practices whereby actors dynamically combine formal and informal norms and exploit a number of possibilities within the same macro institutional framework.

A clear example is given by the multiform use by the employers of the so-called ‘project contract’ in Italy, showed by the empirical research presented in Chapter 4. In

fact, as we have seen in the previous chapters, the definition of the “project” in the written contract can be ambiguous and open to discretionary interpretation by individual actors. This leaves space for employers to strategically use project workers in different ways in each case according to their interests, sometimes also outside the sphere of the legal rules. As a consequence, an inconsistency between the type of contract applied and the factual employment relationship may emerge.

In this case, an institution increasing external flexibility represents a lever for the emergence of informal employment practices whereby the level of social security for workers will decrease to the extent that the factual employment relationship diverges from the formal contract and to the extent that contributions for Social Security are not proportionated to the effective work performance. In few words, the way a flexible regulative framework is implemented at the micro level may be different in each case depending on strategies of employers in employment relations and the social security framework may be not able itself to guarantee an appropriate level of social security to all workers under the same contractual regime.

Other two examples of strategic implementation of the institutional framework are provided by other empirical research shortly described in Box 6 and Box 7. The first is a research conducted by Sacchi, Berton and Richiardi in 2009 on the case of the (regular) use of temporary employment in Italy. The second is a research conducted by Hester Howing in 2011 on Temporary Agency Workers in the Netherlands. Both cases show a disjunction between the institutional framework and the behaviour of actors at the empirical level. Employers have a higher power to “address” the institutional framework in favour of their own interest than workers. As a consequence, the extent to

which nonstandard workers are able to access the institutional entitlements will depend on the effective mode they act at the empirical level.

In conclusion, we argue that flexicurity is not an appropriate and accurate solution to effectively loosen the tension between Flexibility of the labour market and workers' social risks emerging from a differentiated and unexpected use of nonstandard contracts. It is then unlikely that the institutional framework alone is able to guarantee nonstandard workers the effective access to their entitlements and rights, unless a balanced endowment of resources to both employers and nonstandard workers, including bargaining power and structural resources to enforce their "capability to act and interact", are at least formally provided.

Box 6 The temporary employment in Italy

The strategic use of temporary employment by employers undermines the access of employees to Social Security schemes in Italy. A system of Unemployment Benefits formally covers all types of temporary employment (including part-time and Fix-term workers). All employees have the right to Unemployment Benefits if they have paid at least a weekly contribution for UB at least two years before the unemployment (insurance requirement) and if they contributed for 52 weeks along the two years before the unemployment (contributive requirement). A unique regime for unemployment benefits contribution covers all subordinated employees including temporary employees, whereby 77% of those contributions are the burden of the employer¹. However, employers may strategically use vertical part-time, fixed-term and temporary agency work only in short periods in order to satisfy peaks of production and at the same time avoid the high costs for UB contributions. If this period is shorter than 52 weeks within two years before the period of unemployment the workers are likely to meet insurmountable obstacles in accessing the ordinary Unemployment Benefits. An empirical study conducted by Sacchi et al. (2009) shows that 30,3 % of Part Time workers and 57% of Fix term workers are excluded from Unemployment Benefits.

In this case it is clear that the access of employees to Social Security provisions provided by the Unemployment Benefit System depends only in part on the macro institutional setting. The strategic use of those temporary contracts applied by employers at the employment relation level directly affects the access of those employees to the National Security scheme.

Box 7 Temporary Agency Workers in the Netherlands.

Based on the introduction of the Flexibility and Security law (F&S law) in 1999, the Netherlands has recently been regarded as an example of Flexicurity (European Commission 2007). The F&S law contains a phase-system for Temporary Agency Workers. Phase A concerns a trial period of 26 weeks: once workers have completed 26 weeks with the agency they have a right to participate in a pension scheme. Moreover, the agency has to discuss the training needs of the worker (Phase B). After another six months, they will be offered a fixed-term employment contract. After 18 months of work at the same client firm or after 36 months of work at different client firms this contract will be converted into a permanent contract (Phase C). The original purpose of the law intended to guarantee a “stepping stone” process towards more stable employment for the employee. However, as explained by Hester Houwing (2010), the interaction of actors and strategic behaviours at the individual level among the actual application of the phase system has turned in peculiar outcomes. At this level, the use of Temporary Agency Workers has to be regarded in relation to a pure cost-benefits computation concerning the costs for employment risks, i.e. costs for dismissal and costs related to sickness and disability of employees. With the F&S Law both risks of absence of work and sickness are shifted from the user firm to the agency when an agency worker is in phase B or C, i.e. hired by the agency on the basis of a Fix-Term or open-ended contract.

As a consequence, strategies of the agency can be twofold:

a) When the agency worker is at the point of entitlement for a fixed-term or open-ended contract, the agency will evaluate the risks associated with offering the worker a contract. In this case, when the demand for agency work or work in general is low, the agency might be inclined to prevent workers to ever reach a phase B or C contract and prevent risks for themselves in the case that there is no more available work for the worker. In some cases, the user firms were also advised by the agency to replace a worker that was entitled to an FT-contract with another one that is in phase A.

b) Agencies ask a higher price to user firms for agency workers in phase B or C because of the increased risks they run. This may generate a break of the contract between the agency and the user firms, and often between the agency and the worker.

An empirical research regarding the termination of FT-contracts has shown that in about one-thirds of the cases, the employment relationship between the agency and the agency worker ended because an agency worker is entitled to a phase B (FT) contract. Furthermore, in almost 83% of the cases, the employment relationship ended because the FT-worker was entitled to a phase C (open-ended contract) (Knegt et al. 2007).

This case shows that both the agency and the user firms in the Netherlands may strategically apply the Phase System for TAWs to lower production costs. The consequence is that a decrease of security for TAW may occur. The extent to which the Phase System works as a “stepping stone” process towards more stable employment is not self-evident but it depends undeniably on strategic behaviour of the actors at the individual level.

6 Need for an integrated and multilevel policy approach

Overall, what has emerged from the policy analysis provided in the previous chapter is that irregularity and flexibility of the labour markets have been mainly considered separate. On the one hand the approach toward the fight against irregular work at the European level is still bind to a broad-spectrum definition of the phenomenon and neglected to properly address the phenomenon of different forms of semi-irregular work in nonstandard employment. On the other hand, we have argued that the flexicurity framework, as it is understood today, is not an appropriate solution to guarantee a broader protection to nonstandard workers for the risks emerging by the irregular application of nonstandard contracts.

Hence it seems that the problem of irregularities in nonstandard contracts still needs to be addressed by a proper policy strategy that opportunely tries to integrate flexibility and irregularity in the same analytical interface.

Some “lines” toward a development of such strategy is here proposed. Departing from the policy strategies previously analysed, we claim that they should be complemented by two further theoretical approaches.

First, they need to be accompanied by a *multilevel governance approach*. The term ‘governance’ is used to indicate the various means by which the behaviour of the actors within institutions is regulated (Burrioni and Crouch 2008; Crouch 2005; Hollingworth et al 2002). In this perspective, territorial disparities between regions as well as informal regulations must be taken in account. This approach emphasizes the

interaction of various mechanisms of regulation at the local level such as associations, market, firms, networks, community and the state (Crouch 2005).

Most important, a proper attention must be given to *the level of employment relations* and the individuals' space of action provided by the regulative framework. Considering the results of the empirical research showing the relevance of the abuse of nonstandard contracts in some territorial contexts in Italy, we may argue that an increase of regulative space in individual bargaining should be only carefully promoted unless a balanced endowment of bargaining resources to both employers and employees are provided. This means to take seriously in consideration the still existing power gap between the two actors, and develop a strategy to reinforce "capability to act and interact" of nonstandard workers.

Second, they need to be coordinated and included within a more *integrated approach*, able to put together into a common interface the problem of irregular work and the issue of Flexibility of the labour market.

In this regards, some elements of the theory of Transitional Labour Markets (Schmid and Gazier 2002), may here be worth for stepping up such a strategy. TLM theory redefines the social dimension of the labour market by focusing on solidarity through ex ante risk sharing instead of only compensating ex post the losers of market dynamics through more or less generous transfers. In this perspective, Active Social Securities – understood as legally guaranteed social rights to participate in decisions over work and employment arrangements and to share equally their fruits as well as their risks – are an essential condition for an increase of effective nonstandard workers security (Schmid 2006).

In conclusion, adopting an “*integrated and multilevel approach*” is here needed in order to properly look at the complexity of the issue of irregularity in nonstandard employment. This would mean to develop new policy strategies that simultaneously (and not separately) take into account the following advises:

- Provide positive incentives enhancing *interactional capabilities to individuals* in employment relations: endowment of more resources to strengthen nonstandard workers’ bargaining power, as well as their rights of information and participation at work.
- *Adjust the labour law* in the direction of preventing the abuse of nonstandard contractual arrangements.
- *Reinforce the enabling approach*: expand information campaigns aiming to condition individual’s normative orientation and encouraging compliant behaviour in specific sectors and territorial contexts.
- *Intensify the deterrence approach*: provide labour inspectorate more organizational and technological resources to better perform at the local level and enhance coordination between different audit institutions.

These “lines” are meant to be developed through a pattern of highly coordinated “mixed policies”, which are able to intervene horizontally in the fields of industrial relations, labour market, social policy and labour inspections. This Indeed would go far beyond the traditional policy approach on the fight against irregular work on the one hand, and the common understanding of the balance between flexibility of the labour market and security for nonstandard workers, on the other. A more integrated and multilevel approach, instead, may be reflected into the development of a more

sustainable and effective strategy to enhance social inclusion, adjust the discrepancies generated in a more volatile labour market and provide an effective response to the social risks emerging within nonstandard forms of employment.

Conclusive Remarks

Departing from the recent debate about the effects of the spread of nonstandard employment on the extent of Irregular work in Italy, our analysis questioned what in literature is often taken for granted, namely that the increased use of nonstandard work has always a positive effect on the reduction of undeclared work, considered as a phenomenon isolated and separated from the formal work regulation. Conversely, the research addressed the analysis on the close link between flexibility of the labour market and irregular work: specifically it focused on those nonstandard work situations *de-facto* characterized by different forms of irregularities.

The theoretical framework taken in consideration did not imply a unique field of studies, but involved different perspectives and approaches, due to the multidisciplinary character of the object of research. It has been necessary to assess, on the one hand, the literature dealing with the issue of irregular work, and on the other hand, the sociological literature focusing on the effects of labour market flexibilization on individual risks and opportunities. The link between flexibility and irregularity in employment relations has been studied only recently and still there remain considerable doubts about its nature. This is for the following reason. The literature has generally considered irregular work as a uniform phenomenon, generally constituted of those working positions entirely not declared to the public authorities. This outlook has led the literature to assume that an increase of flexibility of work would reduce the extent of irregular work, basically because it would represent an incentive for both the demand and the supply side to engage in the regular rather than irregular employment. In this

sense the two elements are considered as two separated spheres and never overlapping, and influenced by external mechanism determining their quantitative dimension.

However, The empirical research has shown that “unintended consequences” have emerged throughout the spreading of nonstandard contracts. Often the improper use of nonstandard contractual arrangements were aimed to conceal full-time subordinated employment, in order to lower labour costs in employment relations.

The development of these forms of irregularity in nonstandard employment definitely challenges the theoretical assumption of a trade-off between irregularity and nonstandard work. The main argument stressed in this research, is that the relationship between flexibility and irregularity in Italy is not only characterized by an inverse proportionality, meaning that an increase of nonstandard work would reduce the extent of irregular work. We argued that flexibility and irregularity may be complementary to each other, given that an increase of nonstandard contracts can imply an increase of different forms of irregularities.

Moreover, an important finding of the research is that the territorial factors are determinant in shaping the forms of irregular work. The empirical research on the two case studies has revealed that in Brescia irregular work has emerged mainly within the process of labour outsourcing while in Cagliari the abuse on the so-called project work, in particular in call center activities, resulted to be the most relevant type of irregularity among nonstandard work. These territorial specificities reflect the different organizational architecture of firms, the productive contexts and the regulatory mechanisms of the two different cases.

The research attempted to add some theoretical contribution within the debate on the consequences of flexibilization of the labour market in Italy. Focusing on the individual employment relation we underlined the emergence of new actors’ strategies

on the use and abuse of nonstandard contracts to gain further advantages in employment relations and reduce labour costs. This strategy is reflected in the rise of new social risks on the side of workers, in terms of difficulties to access to social security schemes and in terms of non-reliability of the contracts applied.

In Italy the phenomenon of new forms of irregularities in nonstandard employment is becoming an increasingly relevant issue especially for inspective institutions. Several endogenous factors may directly affect the effectiveness of inspection activity and the extent to which it is able to catch up irregularities in non standard contracts much depend on the administrative as well as political “directions” inspection activity is strategically given. The debate on the role of inspective institutions has been quite controversial especially with regards to the last reform in 2007 (Direttiva Sacconi), which shifted the role of inspections from a punishment-oriented to a service-oriented role, de facto weakening its deterrent function within the territory.

From an European level perspective, no doubts, irregular work in Europe appears to be an extremely relevant and problematic topic for what it concerns the issue of workers’ social risks, especially in the perspective of constructing an ‘European Social model’ of industrial relations.

The political as well as the academic focus on the mechanisms of irregular work linked only to unemployment, immigrants and the non-recorded workers, would explain only part of the story. As a consequence, policy solutions based on this misleading approach would be partially effective, while different forms of irregular work are emerging.

If there is growing recognition that the central issue for European policy makers is how to ensure better working condition at a time of rapid change of structures of production, deregulation of the labour markets and rising of new social risks of workers, there is nevertheless little or no consensus on the means by which this goal might be achieved. At the European level it has been often argued that Flexicurity policies would be the solution for ensure high employment rate and social integration and at the same time loose the tension between more flexible contractual arrangements for workers and the social risks deriving from it. In this thesis, we have emphasized that the implementation of flexicurity policies at the individual level may generate unintended outcomes. A strategic interpretation of rules by individual actors accompanied by an unbalanced bargaining power between employers and employees and specific individuals' normative orientation may create the condition for the emergence of informal employment practices in which flexibility, rather than security, is stressed at the individual level.

It is then highly improbable that “flexicurity” institutional arrangements alone will be able to effectively balance flexibility and security at the micro level, unless a balanced endowment of resources to both employers and nonstandard workers, including bargaining power and structural resources to enforce their “capability to act and interact”, are provided. In this context, the concept of Flexicurity is not an appropriate and accurate solution against the risks deriving from a widespread use (and often an abuse) of nonstandard contracts.

Our perspective proposes the idea that positive incentives to handle the unintended consequences of flexibilization of the labour market would come through other strategies that deeply take into account actors' preferences and behaviors in employment relations. This would mean to adopt a new integrated and multilevel

approach for policies enabling participation and consultation for workers, information campaigns positively encouraging compliant behaviour or affecting contextual normative orientation, and not least, an enforcement of inspective institutions. This perspective considers the opportunity that enhancing labour market flexibilization should not only be accompanied by ex post compensations for workers more at risk. Instead, more efforts to improve the quality of nonstandard employment by more guarantees and balanced opportunities should be promoted and brought forward. Finally, social cohesion and more job satisfaction can be intended as an important aspect, and not as a trade-off, of a better performance of the economy and the labour markets.

Annexes

Annex 1. The database structure

Cases: enterprises with irregular workers at the moment of inspection

Variables:

- Label Enterprise
- Number
- COLL: archive position
- REF: Reference number in the digital archive
- Name of inspector
- Date of inspection
- Date of certification
- Year of inspection
- CONC / ISP conciliation practice or inspection
- VIP / RI: official denouncement of workers or inspection programmed by the department
- size of enterprise
- sector
- activity of the enterprise
- Total number of irregular nonstandard workers involved
- self-employment
- part-time
- Labour outsourcing
- occasional work
- fixed-term contract
- apprenticeship

Annex 2. Inspections input-data prospect - Brescia and Cagliari

DIREZIONE PROVINCIALE DEL LAVORO DI BRESCIA											MODELLO UNICO REG: 08										
Denominazione& sede ditta ispezionata:				Data ispez:				Chiusura:													
MONITORAGGIO ATTIVITA' DI VIGILANZA																					
SETTORE DI INTERVENTO	PROSPETTO RIEPILOGATIVO DELLE AZIENDE ISPEZIONATE			PROSPETTO RIFERITO AI LAVORATORI			TIPOLOGIE LAVORO IRREGOLARE	CONTRIBUTI E PREMI	NUMERO SOSPENSIONI			SANZIONI IRROGATE									
	NUMERO AZIENDE ISPEZIONATE	NUMERO AZIENDE IRREGOLARI	DI CUI COOPERATIVE	POSIZIONI LAVORATIVE VERIFICATE	LAVORATORI CUI SI RIFERISCONO LE IRREGOLARITA' ACCERTATE	DI CUI NON RISULTANTI DALLE SCRITTURE O DA ALTRA DOCUMENTAZIONE OBBLIGATORIA			LAVORATORI MINORI	LAVORATORI EXTRACOMUNITARI IN POSSESSO DI PERMESSO DI SOGGIORNO	LAVORATORI EXTRACOMUNITARI SPROVVISTI DI PERMESSO DI SOGGIORNO	LAVORATORI CUI SI RIFERISCONO VIOLAZIONI IN MATERIA DI ORARIO DI LAVORO	intenzionalmente evasi	ART. 36 BIS L. 248/06	DI CUI REVOCATE	ART. 5 L. 123/07	DI CUI REVOCATE	SOMME PAGATE PER LA REVOCA	IMPORTO SANZIONI AMMINISTRATIVE PAGATE IN MISURA MINIMA (art. 13 D.LGS.124/04)	IMPORTO SANZIONI PAGATE IN SEDE AMMINISTRATIVA (art. 15 D.LGS.124/04)	IMPORTO SANZIONI PAGATE IN MISURA RIDOTTA (art.16 L. 689/81)
AGRICOLTURA																					
EDILIZIA																					
COMMERCIO																					
PUBBLICI ESERCIZI																					
ALTRI SETTORI																					
TOTALE																					
numero colonna nel programma																					
filoni d'attività																					
	parità	disabili	app. privati	app. pubblici	somministr.	contratti a progetto	contratti a P.T.	contratti a T.D.	contratti apprendistato												
aziende ispezionate																					
aziende irregolari																					

Annexes 3. List of interviews

Cagliari				
Type of interview	Name	occupation	Place of interview	Date
Non-structured	Persod Alessandra	Data Center Operator	Labour department Cagliari	January 2010
Non-structured	Scarteddu Stefania	Inspector	Labour department Cagliari	April 2010
Non-structured	Deplano Luciana	Inspector	Labour department Cagliari	April 1010
Non-structured	Pittalis Virgilio	Inspector	Labour department Cagliari	April 1010
Non-structured	D'arpino William	Inspector	Labour department Cagliari	June 1010
Non-structured	Marrocu Stefano	Inspector	Labour department Cagliari	June 1010
Non-structured	Cocco Valeria	Inspector	Labour department Cagliari	June 1010
Non-structured	Paolo Addis	Conciliation practices Officer	Labour department Cagliari	June 1010
Semi-structured	Marongiu Nicola	CGIL Cagliari	Telephone interview	November 2011
Semi-structured	Enrica Mulleri	ALAI-FELSA- CISL Cagliari	Telephone interview	November 2011

Brescia				
Type of interview	Name	occupation	Place of interview	Date
Non-structured	Loda Angelo	Data Center Operator	Labour department Brescia	Decembrer 2010
Non-structured	Papalia Rosa	Inspections Coordinator	Labour department Brescia	December 2010
Non-structured	Russo Antonella	Inspector	Labour department Brescia	Febrary 2011
Non-structured	Pezzulo Pia Maria	Inspector	Labour department Brescia	Febrary 2011
Non-structured	Lapenta Antonio	Inspector	Labour department Brescia	Febrary 2011
Non-structured	Ciaccia Giuseppe	Inspector	Labour department Brescia	Febrary 2011
Non-structured	Cafarella Antonio	Inspector	Labour department Brescia	Febrary 2011
Non-structured	Crapiz Mauro	Inspector	Labour department Brescia	Febrary 2011
Non-structured	Vitale Annamaria	Inspector	Labour department Brescia	Febrary 2011
Semi-structured	Cardin Simone	NIDIL-CGIL Brescia	Telephone Interview	November 2011
Semi-Structured	Pedrazzani Lucciano	CGIL Lombardia	Telephone Interview	November 2011

Annex 4. Semi-structured telephone interview - Questionnaire 1 (Italian).

Dallo studio empirico svolto attraverso l'analisi dei dati delle ispezioni del lavoro nella provincia di **Cagliari** emerge che la fattispecie contrattuale trovata irregolare dall'attività di vigilanza (cioè i lavoratori con un contratto di lavoro dichiarato non genuino e quindi disconosciuto dagli ispettori del lavoro e in molti casi convertito in contratto subordinato) che risulta essere quantitativamente più rilevante nella vostra provincia è il contratto a progetto. In proporzione, la percentuale di irregolarità di tale contratto è sostanzialmente superiore in comparazione alla provincia di Brescia, che rappresentava l'altro studio di caso della mia ricerca.

Il questionario che trova sotto è inteso a dare una interpretazione della diffusione di tale fenomeno.

Questionario.

- 1) Avete avuto delle vertenze o dei casi che riguardavano specificatamente i lavoratori parasubordinati irregolari?
- 2) Cosa in specifico, in questi casi, lamentavano i lavoratori?
- 3) Dalla mia ricerca empirica è emerso che le irregolarità sui contratti atipici più rilevanti nella provincia di Cagliari sono quelli riguardanti i lavoratori a progetto. Secondo lei quali sono i motivi per cui nella provincia di Cagliari il fenomeno dei parasubordinati irregolari è più diffuso che in altre provincie?
- 4) Tali irregolarità sono emerse soprattutto attraverso la “campagna di ispezioni della DPL sui call center nel 2007-2008”. In particolare, un dato interessante è che molte di queste aziende non avevano sede legale in Sardegna e avevano esternalizzato i servizi di call center a Cagliari. Secondo lei perché molte aziende avrebbero interesse a esternalizzare i servizi di Call center a Cagliari?
- 5) Avete un rapporto di tipo collaborativo con il servizio ispettivo della Direzione Provinciale del Lavoro?
- 6) Secondo lei quali strategie possono essere messe in campo per combattere il fenomeno dell'abuso dei contratti non-standard di lavoro e in particolare, a Cagliari, del lavoro parasubordinato?

Annex 5. Semi-structured telephone interview - Questionnaire 2 (Italian)

Dallo studio empirico svolto attraverso l'analisi dei dati delle ispezioni del lavoro nella provincia di **Brescia** emerge che l'irregolarità che risulta essere quantitativamente più rilevante nell'ambito dell'attività di vigilanza nella vostra provincia è la somministrazione irregolare e fraudolenta (molte cooperative prestavano irregolarmente la manodopera ad altre imprese). In proporzione, la percentuale di irregolarità di tale contratto è particolarmente superiore in comparazione alla provincia di Cagliari, che rappresentava l'altro studio di caso della mia ricerca empirica. Il questionario che trova sotto è inteso a dare una interpretazione della diffusione di tale fenomeno.

Questionario.

- 1) Avete avuto delle vertenze o dei casi che riguardavano specificatamente i lavoratori parasubordinati irregolari o i lavoratori somministrati irregolari?
- 2) Cosa in specifico, in questi casi, lamentavano i lavoratori?
- 3) Dalla mia ricerca empirica è emerso che le irregolarità sui contratti atipici più rilevanti nella provincia di Brescia sono quelli riguardanti i lavoratori somministrati. Secondo Lei quali sono i motivi per cui nella provincia di Brescia il fenomeno dei somministrati irregolari è più diffuso che in altre provincie?
- 4) Avete un rapporto di tipo collaborativo con il servizio ispettivo della Direzione Provinciale del Lavoro?
- 5) Secondo lei quali strategie possono essere messe in campo da parte del sindacato per combattere il fenomeno dell'abuso dei contratti non-standard di lavoro e in particolare, a Cagliari, del lavoro parasubordinato?

Annex 6. Inspection Report. Fac-simile



Ministero del Lavoro e delle Politiche Sociali
 Direzione Provinciale del Lavoro - Servizio Ispezione del Lavoro
 Via E. Pirastu n. 2 - 09125 Cagliari
 Telefono 070.6059 - 070.6059199 - 070.6059299
 Fax 070.6059331 - 070.6059329
 E mail: dpl-cagliari@lavoro.gov.it

Cagliari _____

Alla Ditta XXXX s.r.l.
 Via Cremona n. 2
 35010 Vigonza (PD)

VERBALE DI ISPEZIONE IN MATERIA CONTRIBUTIVA (ai sensi e per gli effetti dell'art. 116 della Legge n. 388/2000)

La sottoscritta **Cordedda Vanessa Maria**, in qualità di **Ispettore del Lavoro**, in servizio presso la Direzione Provinciale del Lavoro - Servizio Ispezione del Lavoro di Cagliari, a seguito degli accertamenti del giorno **15/01/2010** nei confronti della ditta XXXX s.r.l., esercente **call center** con sede legale in XXXX ha accertato che il Sig. XXXX, nato a Venezia il 17/01/70 residente in XXXX via Cremona n. 2 nella sua qualità di **socio unico**, è incorso nelle seguenti violazioni.

- Ha omesso di presentare le denunce obbligatorie all'INPS e all'INAIL e di versare i relativi contributi e premi dovuti in favore di n. **5** lavoratori, non registrati sui regolamentari libri obbligatori, per i periodi sotto riportati.
- Ha omesso di presentare le denunce obbligatorie all'INPS e all'INAIL e di versare i relativi contributi e premi dovuti in favore di n. **7** lavoratori, registrati sui regolamentari libri obbligatori con contratto Co Co Pro disconosciuto da questo Ufficio, per i periodi sotto riportati.

Si rappresenta che l'inadempienza sarà comunicata all'INPS e all'INAIL di Cagliari per le conseguenti sanzioni civili da applicare in relazione alle suestipite ipot

N.	COGNOME E NOME	LUOGO / DATA NASCITA	RESIDENZA
PERIODO		CCNL / QUALIFICA / LIV. ORARIO DI LAVORO SU BASE GIORNALIERA E SETTIMANALE	
DAL	AL		
1	XXX	n. Cagliari il 16/09/89	Via Tevere, 18 - Assemini
Periodo		CCNL Commercio Terziario Operaio liv. 6° - dal lun. al sab per 4 ore al giorno	Occupato in totale scoperta assicurativa nei gg. sottoindicati e con CoCoPro disconosciuto in quanto prestazione lavorativa svolta con le modalità del lavoro subordinato, nel periodo dal 16/01/09 al 13/02/09
24/11/08	13/02/09		
gg. 24/25/26/27/28/29 nov. 08; 01/02/03/04/05/06/09/10/11/12/13/15/16/17/18/19/20/22/23/24/27/29/30/31 dic. 08; 02/03/04/05/06/12/13/14/15 gen. 09 -			
2	XXX	n. Cagliari il 16/07/89	Via Manzoni, 6 - Dolianova
Periodo		CCNL Commercio Terziario Operaio liv. 6° - dal lun. al sab per 4 ore al giorno	Occupato con CoCoPro disconosciuto in quanto prestazione lavorativa svolta con le modalità del lavoro subordinato.
26/01/09	28/02/09		
3	xxxx	n. Cagliari il 18/05/88	Via Vico Dritta, - 8 Soleminis
Periodo		CCNL Commercio Terziario	Occupato in totale scoperta assicurativa nei gg.

Annex 7. Conciliation Report with positive resolution. Fac-simile



*Ministero del Lavoro, della Salute e delle Politiche Sociali
Direzione Provinciale del Lavoro
Servizio Ispezione del Lavoro
Linea Conciliazioni Monocratiche
Via Emilio Pirastu, 2 - 09125 Cagliari
Telefono 070.6059 - Fax 070.6059331/329
E mail: dpl-cagliari@lavoro.gov.it*

Rep. 412/09

PROCESSO VERBALE DI CONCILIAZIONE - ART. 11 D.LGS.124/2004

L'anno 2009, il giorno 15 del mese di giugno alle ore 9.30, presso la sede della Direzione Provinciale del Lavoro di Cagliari avanti al Rag. Paolo Carta, in funzione di Conciliatore monocratico, designato dal Direttore della Direzione Provinciale del Lavoro, sono comparsi:

Sig. xxxx

Sig. xxx- Lavoratore

Il presenti sono qui intervenuti, a seguito di rituale convocazione della Direzione Provinciale del Lavoro, per esperire il tentativo di conciliazione ai sensi dell'art. 11 D. Lgs. 124/2004, in riferimento alle richieste del lavoratore Sig. Casula William nei confronti della società succitata richieste che qui di seguito si riportano:

copertura assicurativa in qualità di lavoratore subordinato, corresponsione della retribuzione e del TFR per il periodo di occupazione dal 22/01/2009 al 17/03/2009.

Tanto premesso, il Conciliatore dichiara aperta la seduta e dà la parola alle parti.

Il lavoratore

Il datore di lavoro ...

Dopo ampia discussione, le parti si accordano sulla seguente proposta conciliativa:

Si conviene che in caso di mancato pagamento totale o parziale, anche di una sola rata, alle scadenze concordate, il lavoratore avrà facoltà di rivalersi sul datore di lavoro per l'intero ammontare delle spettanze rivendicate, fatte salve le somme già percepite.

Con la puntuale esecuzione di quanto concordato, le parti dichiarano di non aver più nulla a pretendere l'una dall'altra in riferimento al rapporto di lavoro oggetto della presente controversia e al periodo lavorativo riconosciuto da entrambe le parti.

Il Conciliatore dichiara concluso il tentativo di conciliazione **con esito positivo**; ai sensi del comma 3 dell'art.11 D. Lgs. 124/2004, al presente verbale, sottoscritto dalle parti, non si applicano le disposizioni di cui all'art. 2113 cod. civ., comma 1, 2 e 3.

In considerazione del fatto che per le medesime rivendicazioni avanzate nella richiesta d'intervento è pendente un'istanza di tentativo di conciliazione ex art. 410 c.p.c., il lavoratore in virtù dell'esito della presente conciliazione autorizza espressamente la D.P.L. ad archiviare la predetta istanza.

Ai sensi del comma 4 dell'art.11 D. Lgs. 124/2004, il versamento dei contributi previdenziali ed assicurativi, da determinarsi secondo le norme in vigore, in relazione al periodo lavorativo riconosciuto dalle parti nel presente atto, ed il pagamento delle somme dovute al lavoratore estinguono il procedimento ispettivo nei confronti del datore di lavoro, ferma restando la possibilità che nuovi diversi accertamenti siano avviati a seguito di altra denuncia ovvero di visita di iniziativa.

Conseguentemente, il datore di lavoro è tenuto a produrre a questa Direzione, entro il giorno **x**, ricevuta del pagamento delle spettanze retributive al lavoratore.

Entro lo stesso termine, il datore di lavoro dovrà esibire a questa Direzione la ricevuta dei versamenti previdenziali ed assicurativi (modelli F24 e Dm 10 INPS, denuncia dei salari e versamento premi INAIL, prospetti di paga). Diversamente, in caso di rateizzazione del debito previdenziale dovrà essere esibita comunicazione da parte degli Istituti competenti dell'effettiva ammissione al pagamento rateale del debito con attestazione dell'avvenuto versamento della prima rata.

Copia del presente atto viene trasmessa per la verifica dei versamenti previdenziali ed assicurativi agli Enti interessati.

La seduta è sciolta alle ore **x**.

Cagliari, 15/06/2009

Letto, confermato e sottoscritto.

Annex 8. Conciliation report with negative resolution – Fac-simile



Ministero del Lavoro e della Previdenza Sociale
Direzione Provinciale del Lavoro
Servizio Ispezioni Lavoro – Linea Conciliazioni Monocratiche
Via Emilio Pirastu, 2 - 09125 Cagliari
Telefono 070.6059 - Fax 070.6059331/329
E mail: dpl-cagliari@lavoro.gov.it

Rep. 417/07

**VERBALE DI MANCATO ACCORDO AL TENTATIVO DI CONCILIAZIONE
EX ART. 11 D.LGS.124/2004**

L'anno 2007, il giorno 15 del mese di novembre, alle ore 11.00, presso la sede della Direzione Provinciale del Lavoro di Cagliari avanti al Sig.xxx, in funzione di Conciliatore monocratico, designato dal Direttore della Direzione Provinciale del Lavoro, sono comparsi:

Datore xxx

Lavoratore xxx

Assiste il lavoratore xxx

I presenti sono qui intervenuti a seguito di rituale convocazione della Direzione Provinciale del Lavoro per esperire il tentativo di conciliazione, ai sensi dell'art. 11 D. Lgs. 124/2004, ai sensi dell'art. 12, 2° comma, del sopra citato decreto legislativo, a seguito della diffida accertativa per crediti patrimoniali irrogata dal personale ispettivo della DPL di Cagliari con nota del 09/08/2007, prot. 15.964/P, per non aver correttamente applicato il CCNL - nei confronti del lavoratore su indicato, crediti che di seguito si riassumono:

€. 2.912,00 (trattasi di importo lordo) per mancata corresponsione della retribuzione per n. 35 giorni lavorati a tempo pieno, comprensiva delle ore supplementari e/o straordinario per il periodo dal 13/08/2004 al 30/09/2004;
€. 5.106,34 (trattasi di importo lordo) per differenza retributiva tra le ore effettivamente lavorate (37,30 settimanali) e quelle registrate sul libro paga (25 settimanali) per il periodo dal 01/10/2004 al 30/04/2005.

Tanto premesso, il Conciliatore dichiara aperta la seduta e dà la parola alle parti.

Il rappresentante legale della su menzionata società dichiara che il Sig. xxxx è stato assunto in data 01/10/2004 con contratto di inserimento professionale part time di 25 ore settimanali trasformato a tempo pieno in data 02/05/2005.

Richiamando quanto dedotto nella richiesta presentata ai sensi dell'art. 12 del D.Lgs 124/04 in data 07/09/2007 afferma che il lavoratore in precedenza non ha mai lavorato alle dipendenze della Banca di Cagliari ma ha frequentato soltanto uno stage dal 13/04/2004 al 12/08/2004.

Pertanto ritiene che nulla sia dovuto relativamente ai periodi oggetto della diffida accertativa.

Il lavoratore conferma quanto dichiarato ai funzionari della Direzione Provinciale del Lavoro e ritiene dovute le somme indicate nella diffida accertativa, fatte salve le somme aggiuntive conseguenti al riconoscimento del livello superiore, cui ritiene di avere diritto, per il quale è in corso un'azione giudiziaria.

Il conciliatore preso atto delle posizioni espresse dalle parti e vista l'impossibilità di formulare una qualsivoglia proposta di conciliazione dichiara concluso il tentativo di conciliazione con **esito negativo**.

Al riguardo si richiamano le previsioni dell'art. 12 del D.Lgs. 124/2004 secondo cui, in caso di mancato accordo, il provvedimento di diffida acquista, con provvedimento del Direttore della DPL, valore di accertamento tecnico con efficacia di titolo esecutivo.

La seduta è sciolta alle ore 11,30.

Letto, confermato e sottoscritto.

Annex 9. Letter of Agreement Between the University of Milan and the Labour Department of Cagliari



DIPARTIMENTO DI STUDI DEL LAVORO E DEL WELFARE

VIA CONSERVATORIO 7 – 20122 MILANO

TEL. +39.02.503.21163/4/6/8 FAX.+39.02.503.21165/7

E-MAIL: dslw@unimi.it

IL DIRETTORE

**LETTERA DI ACCORDO FRA IL DIPARTIMENTO DI STUDI
DEL LAVORO E DEL WELFARE, FACOLTÀ DI SCIENZE
POLITICHE, UNIVERSITÀ DEGLI STUDI DI MILANO,
E LA DIREZIONE PROVINCIALE DEL LAVORO DI CAGLIARI**

Il Dipartimento di Studi del Lavoro e del Welfare, Facoltà di Scienze Politiche dell'Università degli Studi di Milano concorda con la Direzione Provinciale del Lavoro (DPL) di Cagliari quanto segue:

le Parti si impegnano ad avviare un'attività di collaborazione, che si espliciterà attraverso la consultazione della documentazione e dei dati inerenti alle irregolarità rilevate dalla Direzione Provinciale del Lavoro della Provincia di Cagliari durante le attività ispettive presso i luoghi di lavoro. A ciò farà seguito la predisposizione di un *data base* e la stesura di un *report* sui risultati dell'analisi dei dati, che siano di **interesse comune** e di rilevanza scientifica nell'ambito del dibattito corrente sul contrasto al lavoro irregolare.

Pertanto si chiede che

lo studente Antonio Firinu, dottorando in corso presso il PhD Programme in Labour Studies (LABS) della Graduate School of Social Economic and Political Studies, Facoltà di Scienze Politiche dell'Università degli Studi di Milano, che, sotto la supervisione della prof.ssa Renata Semenza, coordinatrice del corso di laurea magistrale in Scienze del lavoro (LAV), sta preparando un progetto di ricerca su "Il rapporto tra la flessibilità del lavoro e il lavoro irregolare"

possa utilizzare i dati messi a disposizione dalla DPL relativi alle irregolarità nei rapporti di lavoro rilevati per mezzo dell'attività ispettiva e i dati relativi alle pratiche di conciliazione delle controversie individuali e plurime per i seguenti obiettivi:

- individuazione dei dati rilevanti ai fini della ricerca;
- predisposizione di un *data base* di raccolta dei dati, riguardanti in particolar modo le irregolarità rilevate nei contratti "atipici";
- approfondimento, analisi dei dati, e stesura di un documento di sintesi che descriva i risultati della ricerca e il percorso progettuale seguito.

Firme

DPL di Cagliari

Tutor e coordinatrice LAV

Direttore del Dipartimento e
Coordinatrice PhD LABS

**Annex 10. Letter of Agreement Between the University of Milan and The Labour Department of
Brescia**



DIPARTIMENTO DI STUDI DEL LAVORO E DEL WELFARE

VIA CONSERVATORIO 7 – 20122 MILANO

TEL. +39.02.503.21163/4/6/8 FAX.+39.02.503.21165/7

E-MAIL: dslw@unimi.it

**LETTERA DI ACCORDO FRA IL DIPARTIMENTO DI STUDI DEL LAVORO E DEL
WELFARE, FACOLTA' DI SCIENZE POLITICHE DELL'UNIVERSITA' DEGLI STUDI DI
MILANO E LA DIREZIONE PROVINCIALE DEL LAVORO DI BRESCIA**

Il Dipartimento di Studi del Lavoro e del Welfare, Facoltà di Scienze Politiche dell'Università degli Studi di Milano, e la Direzione Provinciale del Lavoro di Brescia, si impegnano ad avviare un attività di collaborazione che si espliciterà attraverso la consultazione da parte del dott. Antonio Firinu, dottorando di ricerca alla Graduate School of Social, Economic and Political Sciences, delle pratiche e dei dati statistici inerenti le irregolarità sui contratti atipici di lavoro rilevati durante le attività ispettive presso i luoghi di lavoro dalla Direzione Provinciale del Lavoro di Brescia. A ciò farà seguito la predisposizione di un *data base* e la stesura di un *report* sui risultati dell'analisi dei dati, che siano di **interesse comune** alle parti.

DPL di Brescia

Tutor progetto di ricerca

Dipartimento Studi del Lavoro e del Welfare

Annex 11. Draft Communication Letter to the Data Protection Authority

All'attenzione dell'Autorità Garante dei dati Personali,

Nell'ambito della collaborazione tra la Direzione Provinciale del Lavoro di e l'Università degli Studi di Milano, Dipartimento di Studi del Lavoro e del Welfare, Facoltà di Scienze Politiche,

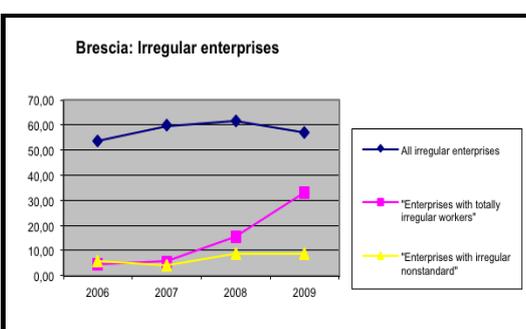
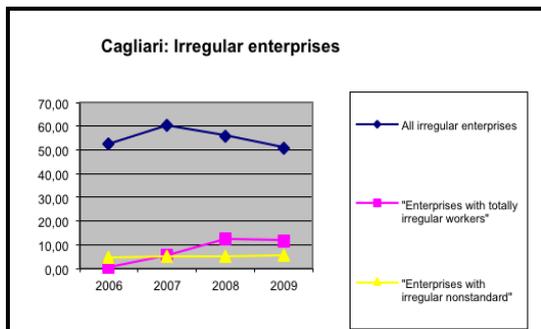
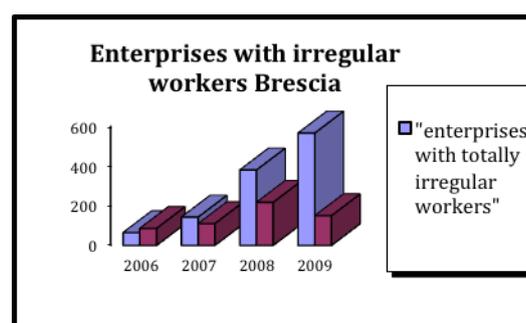
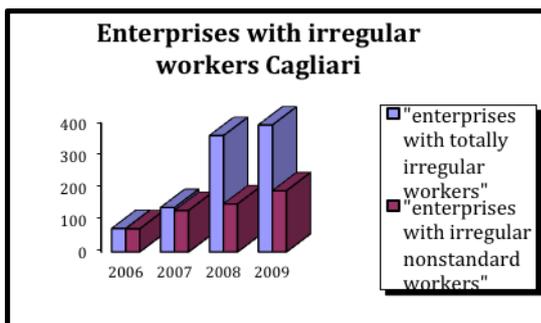
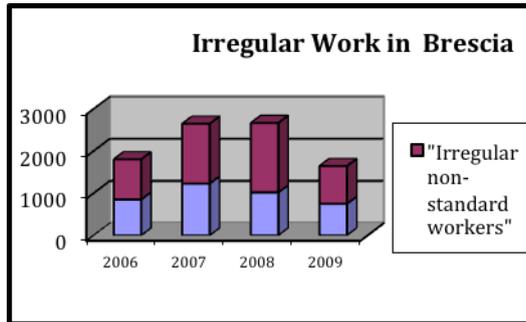
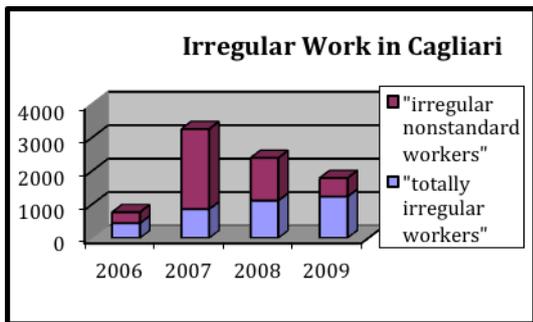
si comunica che il trattamento dei dati personali rilevati attraverso l'analisi del contenuto dei Verbali d'ispezione da parte del dott. Antonio Firinu, dottorando in Labour Studies alla Graduate School of Social Economic and Political Sciences, avverrà in conformità degli artt. 39 comma 1, 104 e 105 del d.lgs 196/2003.

Pertanto i dati personali utilizzati ai fini scientifici saranno trattati rigorosamente in forma anonima.

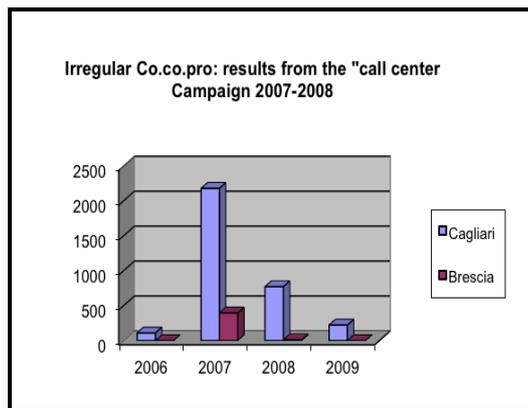
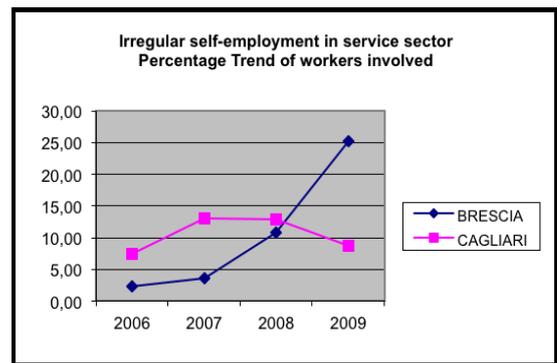
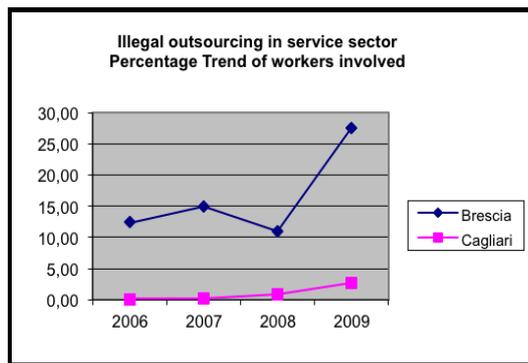
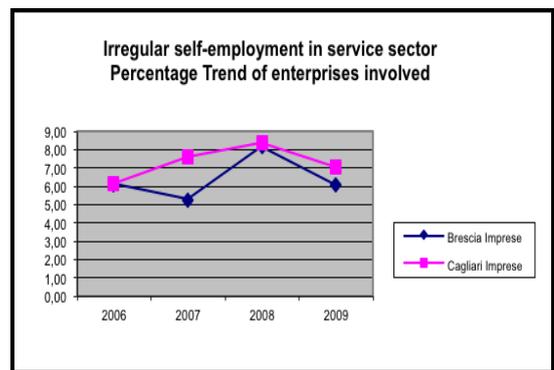
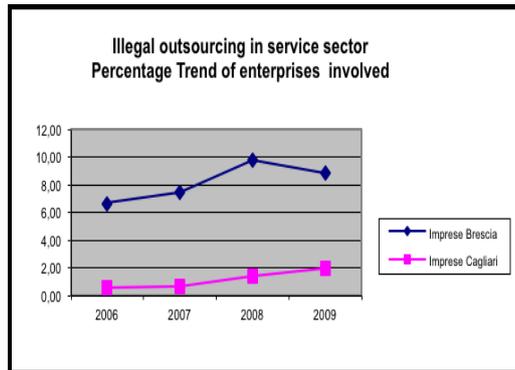
data

Direttore DPL

Annex 12 Figures. Elaboration of Labour departments data



Annex 13 Figures. Elaboration of Labour departments data



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