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**THE REFORM OF FIXED-TERM EMPLOYMENT
CONTRACTS IN ITALY**

In the last few months the Italian government has enacted legislation introducing various labour-related measures.

The Council of Ministers led by Prime Minister Giorgia Meloni, who won a majority in the general elections held on 25 September 2022, published Decree-Law no. 48 of 4 May 2023, with urgent measures for social inclusion and access to employment (the Labour Decree). The Decree came into force on 5 May 2023¹, and was converted with amendments by Law no. 85 of 3 July 2023².

The Labour Decree covered a range of subjects:

- the introduction of the national measure to counteract low incomes, fragility and social exclusion of the weaker segments of society through training and active labour market policies (inclusion allowances) from January 2024;
- changes to the discipline of the guaranteed minimum income, due to expire in December 2023;
- the strengthening of rules on safety in the workplace and the prevention of accidents;
- the simplification of information obligations on the part of the employer, as provided for by the Act on transparent and predictable working conditions enacted in 2022³;
- incentives for youth employment and incentives for the employment of people with disabilities;
- the increase to 3 000 euros of the fringe benefit threshold for the 2023 tax year for employees with dependent children, covering the range of measures put in place by the employer to improve workers living and employment conditions.

1 Official Journal of the Italian Republic, 4 May 2023, no. 103.

2 Official Journal of the Italian Republic, 3 July 2023, no. 153.

3 A. Mattei, « Some notes on the transposition of the transparency Directive and conciliation Directive in the Italian legal system », *Revue de droit comparé du travail et de la sécurité sociale*, no. 2022-3, p. 198.

This article focuses on a specific issue addressed by the « Labour Decree »: changes to fixed-term contracts. As noted in the literature, the issue of fixed-term contracts, perhaps more clearly than others, is one where the tension between the needs of companies and the expectations of workers comes to the fore. This tension has given rise to legal uncertainty **(I)**, which has led to numerous disputes before the labour courts⁴, and which is partly at the root of the 2023 reform **(II)**.

I - LEGAL DEVELOPMENTS IN FIXED-TERM CONTRACTS IN ITALY

The fixed-term contract in Italy has been the legal institution that has undergone the most legislative changes over the last 20 years, in general with a change of the legal framework following each election. This was the case also after the victory of the center-right coalition led by Giorgia Meloni in 2022. In particular, since the national transposition of the Council Directive 1999/70/EC of 28 June 1999, concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP⁵, there have been major shifts in the legislative regulation of fixed-term contracts in the Italian legal system. The marked shift towards flexibility (2014-2015) was followed by a more restrictive phase (2018) and intermediate solutions through the promotion of collective bargaining, in some cases controversially (2011).

There have been thirteen relevant legal interventions in just over 20 years, on average more than one every 2 years⁶. A brief overview of the reform of fixed-term contracts since 2001 would need to start from the legislation transposing the EU Directive that introduced the causal system for fixed-term contracts⁷. The cause is understood as the legal reason for which a fixed-term contract is concluded. Subsequently, in 2003 the system of « causal clauses » was extended to temporary work contracts⁸. In the intervening years, which coincided with the economic and financial crisis that hit the eurozone, a principle was introduced whereby the employment relationship is normally open-ended⁹ and the justification for the fixed-term contract should be based on the employer's day-to-day business¹⁰.

An important milestone in the regulation of fixed-term contracts occurred in 2011¹¹: with legislative support for « proximity » or decentralized collective bargaining, it is possible to conclude specific agreements on fixed-term contracts derogating from the provisions of the law and national collective agreements. Another move towards the liberalisation of fixed-term contracts occurred with the

4 M. Tiraboschi, « I contratti a termine tra intenzioni del legislatore e vincoli di sistema », *Contratti & contrattazione collettiva*, no. 6, 2023, p. 4; M. C. Cataudella, « Il contratto a termine dopo la conversione del c.d. Decreto Lavoro », *Lavoro e previdenza oggi*, no. 7-8, 2023, p. 459.

5 Confédération européenne des syndicats (CES), Union des confédérations de l'industrie et des employeurs d'Europe (UNICE), et Centre européen des entreprises à participation publique (CEEP).

6 G. Falasca, « Contratti a termine, riforma n. 13 », *Il Sole 24 Ore*, May 2 2023.

7 Legislative Decree no. 368 of 2001.

8 Legislative Decree no. 276 of 2003.

9 Law no. 247 of 2007.

10 Decree Law no. 112 of 2008 converted into Law no. 133 of 2008.

11 Decree Law no. 138 of 2011 converted into Law no. 148 of 2011.

labour market reform of 2012¹²: for the first 12 months the employment contract it became not required to specify a reason for the fixed term, but, on the other hand, a contribution surcharge of 0,5 % was envisaged for fixed-term contracts.

In 2014 the labour reform that preceded the « Jobs Act » further extended the scope of the system allowing for fixed-term contracts with no specific reason for up to 36 months. This was confirmed by the Jobs Act reforming extensions, renewals and the setting of limits on the use of fixed-term contracts¹³. A significant reduction in flexibility in the use of fixed-term contracts occurred with the 2018 reform¹⁴: fixed-term contracts with no specific reason could only be concluded for the first 12 months. For renewals and extensions after 12 months, a more restrictive system was adopted. Subsequently, during the Covid-19 pandemic in 2021, the option was introduced for collective bargaining to define the reasons, thus favoring flexibility where negotiated by collective agreement¹⁵.

II - THE 2023 REFORM

This brings us to the reform of 2023. Among the most significant interventions made by the Labour Decree is the one amending the legal regulation of fixed-term contracts. In particular, as of 5 May 2023, it is no longer necessary to specify the reasons justifying fixed-term contracts, or their extension or renewal during the first 12 months. Furthermore, the measures introduced in 2018 have been replaced with others that are less binding. According to the government led by Giorgia Meloni, the main priority is to respond to the flexibility needs of companies. In legislative terms, the Labour Decree is not an organic law reforming the legislation on fixed-term contracts, but rather a measure changing the provisions on atypical contracts regulated by the Jobs Act.

In particular, among the legislative measures envisaged, which raise some concerns in terms of legislative clarity, Article 24 amended the regulation of fixed-term contracts for private sector, changing the system of reasons (*il sistema delle causali*). The imposition of a fixed term may be justified by provisions laid down in collective agreements; in the absence of provisions in the collective agreements applicable in the company, and in any case by 30 April 2024 for technical, organisational or production requirements identified by the individual parties; for the replacement of other workers. Among the legislative measures envisaged, the amendments have excluded the application of the reasons for the renewals, as already provided in the case of extensions, if the total duration of the employment contract does not exceed 12 months. In other words, the system of reasons is provided if the contract exceeds that time limit.

The main focus of the legislative intervention is the easing of the reasons for which a fixed-term contract can be concluded for a duration exceeding 12 months. The legislator referred to the provisions of collective agreements under Article 51 of Legislative Decree no. 81 of 2015. In this way, it was intended to enhance the

12 Law no. 92 of 2012.

13 Legislative Decree no. 81 of 2015.

14 Decree Law no. 87 of 2018 converted into Law no. 96 of 2018.

15 Decree Law no. 73 of 2021 converted into Law no. 106 of 2021.

function of integrating the changes within the legislative framework of Decree no. 81 while favoring what is provided for in art. 51 of the Legislative Decree whereby « collective agreements are understood to mean national, territorial or company-level collective agreements entered into by comparatively more nationally representative trade unions and company-level collective agreements concluded by the company trade union company trade union representatives or by the unitary trade union representation ». It is clear that we are in the presence of a broad delegation on the part of the legislator to collective bargaining, which is responsible for determining the reasons justifying the imposition of the term to the contract.

As a result, it is important to identify the economic sector in which the parties can enter into a fixed-term contract. It is necessary to distinguish sector by sector and case by case. Reference may be made to sectors where collective bargaining determines the terms and conditions of employment: in the construction industry and the construction trades, certain types of fixed-term contract are widely adopted. On the other hand, in the metalworking sector there is no collective clause, so the individual parties can proceed autonomously. As has been observed, the burden is on the employment specialist to verify, sector by sector, the regulatory and contractual framework of reference and to adopt the fixed-term contract for the correct purpose¹⁶. On the other hand, it is up to the social partners to clarify the collective rules, so as to offer the individual parties reasonable criteria for action to avoid the improper use of a type of contract that is constantly undergoing reform.

16 M. Tiraboschi, « I contratti a termine tra intenzioni del legislatore e vincoli di sistema », *op. cit.*