A new open-ended work contract gradually raising employee protection

A legislation & policy project that is being discussed in Italy

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In Italy just one out of six are hired by open-ended contracts

<table>
<thead>
<tr>
<th>Contract types</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open-ended contracts</td>
<td>17.8%</td>
<td>17.5%</td>
<td>16.5%</td>
</tr>
<tr>
<td>Fixed-term contracts</td>
<td>62.9%</td>
<td>63.6%</td>
<td>68.0%</td>
</tr>
<tr>
<td>Apprenticeship</td>
<td>2.8%</td>
<td>2.7%</td>
<td>2.5%</td>
</tr>
<tr>
<td>Free-lance work contracts</td>
<td>8.5%</td>
<td>7.7%</td>
<td>7.0%</td>
</tr>
<tr>
<td>Other types of work contracts</td>
<td>8.0%</td>
<td>8.5%</td>
<td>6.0%</td>
</tr>
<tr>
<td><strong>All work contract types</strong></td>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
<td><strong>100%</strong></td>
</tr>
<tr>
<td><strong>percentages and figures</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td><strong>10,439,516</strong></td>
<td><strong>10,251,383</strong></td>
<td><strong>9,613,990</strong></td>
<td></td>
</tr>
</tbody>
</table>
In terms of stock: 1 over 8 fixed-term contracts especially concerns the younger

<table>
<thead>
<tr>
<th>Age</th>
<th>15-64</th>
<th>15-24</th>
</tr>
</thead>
<tbody>
<tr>
<td>UE-28</td>
<td>13.9</td>
<td>14.0</td>
</tr>
<tr>
<td>Ger</td>
<td>14.7</td>
<td>14.8</td>
</tr>
<tr>
<td>Italy</td>
<td>12.8</td>
<td>13.4</td>
</tr>
<tr>
<td>UK</td>
<td>6.0</td>
<td>6.0</td>
</tr>
</tbody>
</table>
The fixed-term contract in Italy especially concerns the younger - 2
Two explanations for the downward trend of open-ended contracts (in a situation of high severance costs)

I. **Increased uncertainty** about the short term outlook for the economy

II. **Growing gap** between the most and least efficient task performers (and increase in moral hazard)
I. Increasingly uncertain outlook
Since the late 1960s empl. contracts have offered workers increasing security

- Employers’ ability to dismiss has been restricted; enterprises have taken a higher part of the risk on themselves

- In the ’70s this led to a sort of *job property regime* (the work relationship in the private sector was more and more shaped on the civil service model)

- In the ’60s and ’70s, however, the future was more easily predictable by an entrepreneur
Such «insurance risk» has now become barely sustainable.

- Accelerated obsolescence of applied technologies ...
- ... shorter and shorter life-cycles of businesses and products ...
- ... have increased the risk for the entrepreneur/insurer: hence his/her tendency to escape from open-ended empl. contract (that we can observe in Italy since the late ’70s)
II. Growing gap between the most and least efficient task performers
The gap between the most and least efficient widens

• In a production unit in 1970, taking 100 as standard blue-collar work performance score, the poorest performance would have counted for 80, the highest for 140 at most

• Nowadays, even at lower professional levels, the gap between the highest and poorest performance has dramatically widened...

• ... therefore, applying a standard treatment (and the same coverage) to all employees is hardly possible
A further issue is the increasing difficulty to control employees’ effort

- Problems arise not just from peers having unequal skills ...

- ... but also from employees being free to modify significantly their performances from a very poor «enforceable bottom level» to a «reachable top level» with utmost diligence
Seeking a remedy in Italy: a contract type which is less binding initially and provides raising protection to employees over time
Contrasting dualism between high and no protection: spurious freelance are banned

Statute no. 92/2012 («Legge Fornero») reflects the view of scholars, who tend to apply labour law not just to *subordinate* workers, but to any worker in a position of *economic dependence* on the entrepreneur.
The new scope of labour law: the economic dependence

**Economic dependence** is identified by:

- the **durability** of a relationship
- **monocommissioning**: working for one and only one company
- medium-low **remuneration** (< €18,000 per year)
Conversely, fixed-term contracts have been liberalized

• Statute no. 92/2012 («Fornero Law»):
  – has liberalized first fixed-term contracts, provided that their duration is no longer than one year → high flow from freelance to fixed-term contract in 2013
  – has reduced the customary compensation for unfair dismissal (between 12 and 24 months of salary of the dismissed employee; no reinstatement)

• Decree no. 34/2014 («Poletti Decree»):
  – has further liberalized the first fixed-term contract and its renewals for a max duration of 36 months
  – has limited to 20% the percentage of allowed fixed-term contracts in a company
The further steps of the reform:

A) a **Simplified Labour Law Code**...

B) ... which provides an **open-ended work contract** gradually increasing the **employee protection**, as the standard form of utilization of manpower by companies
A) The **Simplified Labour Law Code**

- The EU recommendation: *Decalogue for smart regulation* (Stockolm, November 2009)

- The first edition of the code (November 2009): 70 short sections, easily readable by anyone and easy to render in English, replacing >100 old statutes

- the simplified Code (SLLC) is announced in the preamble of the Poletti Decree (May, 2014)
An example of excessive regulatory rigidity: part-time work

**Current law**


**13 articles, 3803 words**

The following is regulated in a over-detailed way:

- Form and content of contract
- Maximum overtime every week and every year
- Reasons for overtime
- Overtime pay
- Reduced time schedule
- “Flexible” and “elastic” clauses
- Convertibility of elastic clauses
- Related penalties

**The Simplified Code**

Paras 1-3, Art. 2108 Civil code, as replaced by the new Statute:

**3 paras, 117 words**

The following is regulated:

- Written form
- Non discrimination and proportional change in standards
- Reduced time schedule
B) Rather than a «single contract» type, a predominant type of contract

- If economic dependance (rather than subordination) is the key-concept for the application of labour law...

- ...the standard variety of contract types (open ended or fixed-term contracts, apprenticeship, free-lance, etc.) will no longer allow to cheat on labour law

- However, the SLLC goal is having a standard open-ended contract as the typical and most used way to engage someone (as is required by the European Directive n. 1999/70)
The solution proposed in the SLLC

• The same severance cost in case of open-ended and fixed-term contract

• in both cases severance costs shall be minimum for termination shortly after the engagement, and gradually increase over time subsequently

• this should narrow down the employer’s selection of relationships to be terminated to those actually foreseen to be loss-making ...

• ... thus incentivizing employers, rather than forcing them, to make relationships last
Protection increases as mutual trust grows.

The idea is that the protection granted to the employee should gradually strengthen with the confidence by the employer.
An essential complement to the reform, still missing in Italy so far

• We cannot lower the worker’s protection against dismissal without increasing his/her security in the labour market...

• ... but increasing security in the labour market could lengthen unemployment spells

• The SLLC foresees a trilateral agreement, among the worker, a PESO and a PEA, which strictly binds the unemployment benefit to the commitment of the employee to be available
From the third year of service, employees’ financial and career prospects shall be progressively assured

After 2y service an empl. shall become eligible for:

• **complementary unemployment benefits** (thus receiving 90% of his/her last wage rather than 75%) for proportional time to the length of service

• **more effective assistance** with job seeking, under an *Employee Reskilling and Repositioning Agreement* (ERRA) among him/her, the PESO, and a certified PEA of his/her choice
Diagram of severance cost increase over time

$X$-axis: length of service (months)
$Y$-axis: severance costs (weekly earnings - last wage)
How does an ERRA work

• A PESO profiles the employee and provides him/her with information on the agreement and its terms

• the employee is entitled to select the outplacement agency (PEA) to be appointed, which will be paid by the PESO by means of a voucher under condition of successful placing

• the obligations of the employee are set out in the agreement, and a tutor is assigned to check up on him/her …

• … and to report to the PESO any breach by the employee, to be penalized by benefit reduction or termination

• In case of disagreement between the employee and the tutor, an arbitrator shall decide on the dispute
Thank you for listening

These slides can be downloaded from the website www.pietroichino.it