

A new open-ended work contract gradually raising employee protection

A legislation & policy project
that is being discussed in Italy

Presentation by Pietro Ichino

Warsaw, 29th May, 2014

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

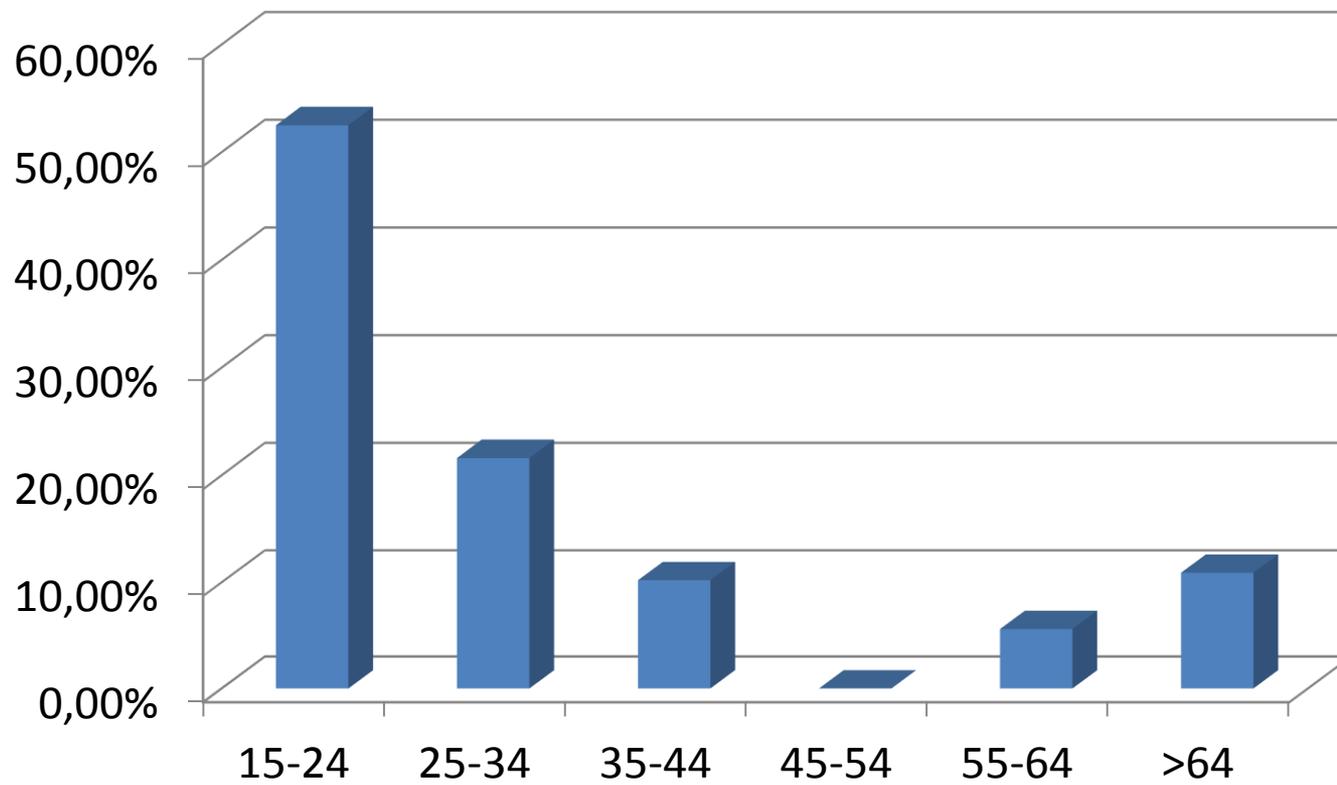
Contract types	2011	2012	2013
Open-ended contracts	17.8%	17.5%	16.5%
Fixed-term contracts	62.9%	63.6%	68.0%
Apprenticeship	2.8%	2.7%	2.5%
Free-lance work contracts	8.5%	7.7%	7.0%
Other types of work contracts	8.0%	8.5%	6.0%
All work contract types	100%	100%	100%
percentages and figures	10,439,516	10,251,383	9,613,990

In terms of stock: 1 over 8 fixed-term contracts especially concerns the younger

Age		15-64			15-24	
	2010	2011	2012	2010	2011	2012
UE-28	13.9	14.0	13.7	42.1	42.4	42.2
Ger	14.7	14.8	13.9	57.2	56.0	53.6
Italy	12.8	13.4	13.8	46.7	49.9	52.9
UK	6.0	6.0	6.2	13.7	13.5	14.9

The fixed-term contract in Italy especially concerns the younger - 2

Fixed-term contracts distribution by workers' age



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* (Stockholm, 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

Law 61/2000 (as modified in 2003, 2007 and 2012):

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

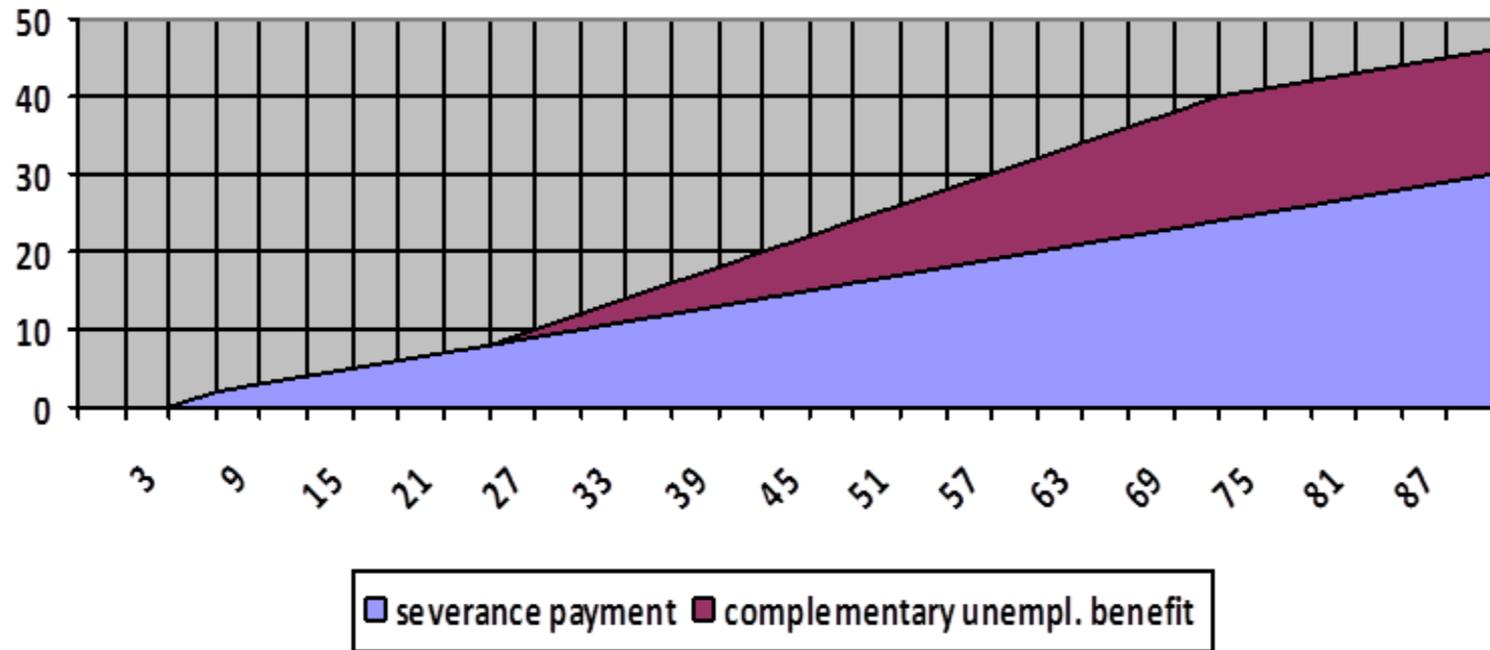
- We cannot lower the worker's protection against dismissal without increasing his/her security in the labour market...
- ... but increasing security in the labour market could lengthen unemployment spells
- The SLLC foresees **a trilateral agreement**, among the worker, a PESO and a PEA, which strictly **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