Some notes on the transposition of the transparency Directive and conciliation Directive in the Italian legal system

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In the last few months the Italian legal system has approved important acts on labour legislation which have a common root in that they originate from European Union labour law. On a political level, it can be noted that these are the last labour-related significant measures adopted by the Italian Government and Parliament before the dissolution of Chamber of Deputies and Senate prior to the general elections on 25 September, 2022.

Two employment law measures in particular are attracting the attention of labour law scholars and practitioners. First, the transposition of the Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU. This directive was implemented by the Italian legislative decree 30 June 2022, no. 105 (I).

Second, the transposition of Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union. This directive was implemented by the Italian legislative decree 27 June 2022, no. 104 (II).

I - THE TRANSPPOSITION OF DIRECTIVE (EU) 2019/1158

With the first Act on work-life balance, the new European Directive fully repeals and replaces the 2010 Directive (no. 18).

The general objective is to achieve the sharing of care responsibilities between men and women and to promote gender equality in work and family life. In particular, the aim is to encourage a fairer distribution of care responsibilities between men and

3 Ibid.
women, also in relation to parenting, in order to promote the early establishment of
the bond between father and child.4

At the national level, the legislative decree amends the rules on leave, permits
and other measures governed by legislative decree no. 151 of 2001 on maternity
and paternity leave; law no. 104 of 1992 on assistance, social integration and rights
of persons with disabilities; law no. 81 of 2017 on “agile” or remote work; and
legislative decree no. 81 of 2015, in particular the right to priority of requests for the
conversion of employment contracts from full time to part time.

In particular, the Italian legislation regulates compulsory paternity leave, which
may be taken from two months before the expected birth of the child until five months
afterwards, for a period of ten working days to be used also on a non-continuous
basis, not divisible into hours.

Concerning parental leave, the overall duration of the right to parental leave
for a single parent has been extended from ten to eleven months, with a view to
greater protection for single-parent households; the period of parental leave that is
compensated at 30% has been extended from six to nine months that can be taken
by both parents (three months for each and the last three months can be taken
alternatively) until the child is twelve years old.

In addition, action has been taken on alternative paternity leave, which is taken in
the physical or legal absence of the mother, providing for a criminal sanction in the
event of opposition, refusal or obstruction by the employer. Furthermore, a number
of changes have been made to the extraordinary leave for the care of family members
with disabilities, which have been extended to civil partners and de facto cohabitating
partners.

Concerning the Act on disabilities, the implementing decree includes a
special provision prohibiting discriminatory acts against workers who apply for or
take advantage of the benefits under law no. 104/1992 and legislative decree no.
151/2001, as amended by this decree.

Among the interventions made on this front, the scope of beneficiaries has been
extended: those who are part of a civil union and those who are de facto cohabiting
have been included. In addition, a right of priority of access to “agile” or remote
work or other forms of flexible work has been recognized in favor of workers taking
leave to care for disabled children or relatives. It should be noted that a common
element among the interventions concerns the consequences relating to sanctions:
conduct by companies that oppose the exercise of these rights is expressly defined
as discriminatory and prevents the employer from obtaining gender equality
certification.5

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4 For a first comment, see B. Massara, “Pari opportunità anche nella conciliazione tra vita
private e attività lavorativa”, Guida al Lavoro, no. 33-34, 26 August 2022, p. 25.
5 Art. 46 bis legislative decree no. 198 of 2006. See too B. Massara, “Pari opportunità anche
nella conciliazione tra vita private e attività lavorativa”, op. cit.
II - THE TRANSPOSITION OF DIRECTIVE (EU) 2019/1152

With the second Act on transparent and predictable working conditions, the new European Directive fully repeals and replaces the 1991 directive (no. 533)⁶.

In general, the aim of the Directive is to provide workers with greater protection through the implementation of measures that bring about an appropriate level of transparency and predictability with regard to working conditions. In particular, an obligation on the part of companies to provide information is envisaged.

The scope of application of the rules on employer disclosure obligations extends to: employment contracts, including agricultural contracts, of indefinite and fixed-term duration, including part-time; temporary employment contracts; intermittent employment contracts (i.e. on call working, zero hours contracts); coordinated and continuous collaboration contracts; occasional service contracts; employment relationships of employees of public administrations and those of public economic entities; maritime and fishing workers, without prejudice to the special rules in force on the subject; domestic workers.

The new information obligations have already given rise to doubts concerning the management of the employment contract⁷, similar to the implementation of the other decree requiring clarification from the National Social Insurance Agency (INPS)⁸.

In particular, when an employment contract is activated and prior to the starting of work, the employer is obliged to provide this information when they present to the employee with the employment contract or a copy of the notice of activation of the employment contract. All further mandatory information must be provided, either in hard copy or electronically, within seven days from the beginning of the employment, or within one month for particular types of information (e.g. the collective agreement that is applicable).

In general, the employment contract must include specific information (e.g. identity of parties, place of work, classification, type of contract, starting date of employment). Particular rules are applicable in cases in which automated decision-making or monitoring systems are used (e.g. the purposes and aims of the systems, their logic and operation) and if there is a posting abroad (e.g. any specific allowances for posting and arrangements for the reimbursement of travel, board and lodging expenses).

Further provisions are provided in the case of double duty⁹ and in relation to the trial period. In the event of non-compliance by the employer, the decree provides for a

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⁶ For a first comment, see G. Falasca and E. Evangelista, « Decreto trasparenza, nuove regole sulla gestione dei rapporti di lavoro », Guida al Lavoro, no. 33-34, 26 August 2022, p. 12.
⁷ Circ. National Labour Inspectorate, 10 August 2022, no. 4.
⁹ For a first comment, see F. Scarpelli, « Decreto trasparenza: disciplinato il diritto del lavoratore (privato) a svolgere un’altra prestazione lavorativa », Giustizia Civile.com, 23 August 2022; M. Marrucci, « Sulla moltitudine degli obblighi d’informazione ai lavoratori introdotti con l’attuazione della normativa comunitaria relativa a condizioni di lavoro trasparenti e prevedibili », Labor. Il lavoro nel diritto, 1 September 2022.
fine ranging from EUR 250 to EUR 1,500 for each employee concerned, without prejudice to the civil and compensatory effects in favor of the employee. The complaint can be submitted to the labour inspectorate by the employee or the trade union delegated by the employee.

In conclusion, these are two legislative acts that are certainly important for the Italian labour law system. They will require implementing plans and actions from the employers on the operational level, both in terms of management (transparency Directive) and in terms of operational clarification (conciliation Directive).