

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

# POLICY DEPARTMENT **C**

## CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



Constitutional Affairs

Justice, Freedom and Security

Gender Equality

Legal and Parliamentary Affairs

Petitions

# The impact of the crisis on fundamental rights across Member States of the EU

## Country Report on Italy

STUDY FOR THE LIBE COMMITTEE







**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND**  
**CONSTITUTIONAL AFFAIRS**

**CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

# **The impact of the crisis on fundamental rights across Member States of the EU**

## **Country Report on Italy**

### **STUDY**

#### **Abstract**

Upon request by the LIBE Committee, this study looks into the impact of the economic crisis and the austerity measures which were introduced as a response thereto, to the enjoyment of a set of selected fundamental rights by individuals in Italy. It also contains recommendations on how to make sure that the enjoyment of these rights is ensured in the future.

**DOCUMENT REQUESTED BY THE  
COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS**

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European Parliament, manuscript completed in February 2015. Given the continuously changing situation in the Member State under examination, the cut-off date for the data collection was set for 30 June 2014.

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## LIST OF ABBREVIATIONS

- ADICONSUM** CISL-sponsored consumer and environment protection association  
(Associazione Difesa Consumatori e Ambiente promossa dalla CISL)
- c.p.c.** Code of Civil Procedure
- CEDAW** Convention on the Elimination of All Forms of Discrimination  
against Women
- Cost.** Constitution of the Italian Republic
- CRC** Convention on the Rights of the Child
- CRPD** Convention on the Rights of Persons with Disabilities
- D.Lgs.** Legislative Decree
- DPR** Decree of the President of the Republic
- ECB** European Central Bank
- ECHR** European Convention on Human Rights
- ECJ** European Court of Justice
- ECSR** European Committee of Social Rights
- ECtHR** European Court of Human Rights
- EU** European Union
- GDP** Gross Domestic Product
- G.U.** Official Gazette of the Italian Republic  
(Gazzetta Ufficiale della Repubblica Italiana)
- ICCPR** International Covenant for Civil and Political Rights
- ICESCR** International Covenant on Economic, Social and Cultural Rights
- Istat** Italian National Institute for Statistics  
(Istituto Nazionale di Statistica)



**L.** Law

**MIUR** Ministry of Education, University and Research

(Ministero dell'Istruzione, dell'Università e della Ricerca)

**OECD** Organisation for Economic Co-operation and Development

**R&D** Research & Development

**RESC** Revised European Social Charter

**UDHR** Universal Declaration of Human Rights

**SME(s)** Small and medium-sized enterprise(s)

**WHO** World Health Organisation

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## EXECUTIVE SUMMARY

This study investigates the impact on selected fundamental rights of the main legislative and other measures introduced in Italy in relation to the economic crisis in the period from 2008 to 30 June 2014. The fundamental rights covered in this study are the right to education (section 2), the right to healthcare (section 3), the right to work (section 4) and the right to a pension (section 5). The study also considers the impact of the austerity measures on the right to access justice (section 6), the exercise of the freedom of manifestation and assembly to protest against austerity measures (section 7), the right to property (section 8) and the mechanisms available in Italy to monitor austerity measures' compliance with fundamental rights (section 9). A final section (section 10) attempts some tentative proposals for improving the enjoyment of relevant fundamental rights in Italy.

The economic crisis set Italy back by almost two decades. The country's GDP fell by 7.5% and its population got poorer as GDP per capita returned to 1996 levels. Unemployment remains high (12% in early 2014, up from 6% in 2008), especially among young people (40%).

Concerning the **right to education**, this study only covered compulsory education, to the exclusion of university education (therefore, it does not assess Law 240/2010 – the so-called *Riforma Gelmini*). Compulsory education was mainly affected by Decree-Law 112/2008 (*Decreto Brunetta*), which sought to slash spending on public schools by 8 billion euros, increase the number of students per teacher, and reduce schools' non-teaching staff. This and other measures in the sector are in line with Italy's long tradition of underinvestment in education: Italy is the only country in the OECD not to have increased expenditure per student since 1995; by comparison, spending in other OECD countries increased on average by 62%. Yet, there are clear indications that Italy's educational system needs improving: international tests show that Italy's population has the worst alphabetic skills in the whole OECD area and the second worst for numerical skills. While there were protests against the measures, our research does not confirm that the measures have significantly reduced the (already generally low, at least on average) quality of education in Italy. However, the merger of many smaller schools into larger ones may reduce access to education, particularly for students with a disability or in other conditions which make it more difficult for them to access schools located further from their homes.

Regarding the **right to healthcare**, austerity measures in the health sector were introduced through agreements between the State and the Regions (so-called 'health pacts'), through annual Finance Acts and through other specific legislative measures. A mechanism of mandatory regional correction plans and government interventions in case of violation thereof, appears to have succeeded in reducing the unsustainable budget deficits that several Regions were running. While budgetary constraints have limited the possibility for Regions to provide healthcare services beyond national basic service standards (*livelli essenziali di assistenza* or LEA), they have averted the financial collapse of the system. However, there are also indications that waiting times for medical services may be longer than acceptable and that reduced spending on pharmaceuticals may hinder or delay Italy's access to the most expensive, newer drugs.

The reform that had the greatest impact on the **right to work** was the Law 92/2012 (*Legge Fornero*) which in 2012 reformed the Italian labour market. Suggestions to change the rules on the hiring and dismissal of employees, while at the same time facilitating mobility through unemployment benefits and active government policy, had come a year earlier from the ECB (through a letter to the Italian Government which some scholars saw

as marking an intrusion by EU institutions in policy areas beyond their competence)<sup>1</sup>. The reform made it easier to dismiss workers. It also sought to limit the practice of using certain cooperation contracts that offer employees lower protection than the standard permanent employment contract. Evidence suggests, however, that the reform did not succeed in reducing the prevalence of precarious forms of work on the Italian labour market. Some argued that easier dismissals have actually resulted in people losing their jobs, without making access to the job market any easier for others. It has however been argued that the greatest impact on the right to work did not so much derive from the reform, but mainly from employers' gloomy expectations about the future growth prospects of their business and of the Italian economy at large.

The **right to pension** was significantly affected by Decree-Law 201/2011 (*Decreto Salva Italia* – Save Italy Decree) which changed the requirements for retiring and the calculation methodology of the retirement pension. The reform was necessitated by old demographic and economic vulnerabilities (ageing population, anaemic labour productivity cost, high labour costs, widespread tax evasion) which, worsened by the crisis, made the previous system (which cost over 15% of Italy's GDP – almost double the OECD average) unsustainable. The reform has made the Italian pension system sustainable and has, at least to some extent, restored inter-generational fairness by applying the same rules to all workers regardless of their working age. By changing the requirements for retiring, the reform has reduced access to the right to a pension. By changing the way in which the pension is calculated (the contribution-based system became more widely applicable than the earning-based one), it has reduced the amount of future pensions. Indeed, 'adequacy concerns on benefit levels were not addressed'<sup>2</sup>.

As the new calculation rules apply only to periods worked after the entry into force of the reform, they will be more detrimental to younger workers – who will work longer under the new rules – than to older ones. Under the new rules, young Italians would be well-advised to take out a complementary pension plan if they want to secure an income which permits a decent standard of living for their retirement.

The reform also created regrettable side-effects such as the so-called '*esodati*' issue. The *esodati* are workers that had decided to leave work earlier than the retirement age, on the basis of an (individual or collective) agreement with the employer, foreseeing that they would acquire the right to retire within a few years. Under some of these agreements, the incentive for an early exit consisted of the employer's commitment to hire (often on a part-time basis) a young member of the worker's family. However, when the retirement age was raised, these early leavers were faced with the prospect of living without wage or pension for longer than expected.

Another fundamental right – the **right to property** – has been affected by the late payment, by public authorities, of the goods, works and services they procure. Public authorities reportedly pay invoices 170 days late on average. This is in contrast with the requirements of Directive 2011/7/EU, which provides for a delay of 30 days (or 60 days in exceptional circumstances). Late payment contributes to reducing the availability of cash for enterprises, thus further worsening the effects of the crisis.

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<sup>1</sup> Calvano R. (RivistaAIC.it), "*The decree of urgency in the era of inclusive government*" (La decretazione d'urgenza nella stagione delle larghe intese), 02.05.2014, available at [www.rivistaaic.it/download/.../2-2014-calvano.pdf](http://www.rivistaaic.it/download/.../2-2014-calvano.pdf), accessed on 10.12.14.

<sup>2</sup> Natali D. and Stamati F., *Reassessing South European Pensions after the Crisis: Evidence from Two Decades of Reforms*, South European Society and Politics, Vol. 19, No 3, 2014, pp. 309-330.

The **right to manifestation and assembly** does not seem to have been limited during the crisis to any significant extent. However, there have been episodes of clashes between protesters and police.

The **right to access justice** (in the civil and administrative fields, which are the most relevant for the purposes of this study) was significantly affected by measures taken during the crisis. In particular, measures taken in the six-year period 2008-2014 resulted in application fees for civil courts increasing by 92% (against 15% in the six-year period to 2008). This percentage under-represents the actual increase in costs, as a host of specific new provisions reviewed in the study determine additional costs to the parties (e.g. appellants are required to pay the application fee twice if the appeal is dismissed or inadmissible). Increased application fees for administrative courts were contested before the European Court of Human Rights (cases not yet decided) and the European Court of Justice (case C-61/14, still pending). In addition to application fees, parties to a court case are required to pay duties for obtaining copies of the documents in the case dossier. These duties can be particularly high. For example, up to €306.97 may be charged for copies saved on a compact disk or a USB flash drive. Funding to legal aid increased during the crisis (by nearly 21%, much less than the growth in costs). However, it still remains below international averages (€2.57 per inhabitant in Italy, against an average of €8.63).

Further barriers to accessing justice were erected by a reform of the conditions for appealing civil judgments. Stricter formal requirements were introduced for appeals, and appeal judges were given the discretionary power to declare the appeal inadmissible where it does not have a "reasonable probability" (this is the vague wording of the law) of succeeding.

The number of courthouses was reduced by closing or merging 31 tribunals, 31 public attorney offices, 220 local sections of tribunals, and 667 offices of justices of the peace (out of approximately 850 such offices). This reform may bring justice further from citizens. At the same time, however, it can help achieve economies of scale, which (if implemented well) may increase productivity and allow the delivery of better services at a lower cost.

**Compliance with fundamental rights is monitored** mainly by the controls of constitutionality of laws carried out by the President of the Republic (ex ante control) and by the Constitutional Court (ex post control). However, a person may not directly challenge the constitutionality of a law before the Constitutional Court, even if that law is in violation of fundamental rights.

### **Recommendations**

Innumerable measures have been adopted to contain public expenditure in the wake of the crisis. Several of these measures have imposed horizontal, indiscriminate cuts which may have failed to specifically target wasteful uses of public resources. An **overarching recommendation** that this study makes is that any further spending review or significant reduction in public spending should be underpinned by sound, evidence-based and transparent evaluations of public expenditure. Future reforms should be based on equally solid and open prior assessments of the likely impacts of envisaged policy options. Both evaluations and assessments should include consultations of stakeholders and the public at large in order to increase the knowledge base, make sectoral interests visible and improve the legitimacy of the resulting policies.

### Specific recommendations

In relation to each fundamental right reviewed, this study puts forward the following recommendations:

Our recommendations regarding the **right to education** are for Italy to cease cutting funds to education – rather, Italy should invest more in its human capital, as OECD studies show that countries with low skill levels find it more difficult to be competitive in a world economy that is increasingly dependent on skills. We also suggest that Italy should improve the quality of its educational system by ensuring that limited resources are used as productively as possible, by monitoring the quality of each school and class based on comparable criteria and linking access to and permanence in headmasters' and teachers' posts to continuous quality improvements (rather than age, as is currently the case), while providing opportunities for life-long learning and training. We also recommend that, where schools are merged to save money, transport and other services should be provided and accessible, so as to ensure the full enjoyment of the right to education.

Our recommendation regarding the **right to healthcare** is that in order to make Italy's universal access system more financially sustainable, a higher share of the cost of services could be charged to better-off patients, while maintaining services free or inexpensive for the less privileged.

Our recommendations regarding the **right to work** are that Italy should ensure that minimum wages apply to all workers, do not discourage hiring and guarantee a decent standard of living. Moreover, public programmes could be made available for the continuous learning and training of workers, thus fostering the creation of skills crucial for the competitiveness of a modern economy.

Our recommendation regarding the **right to pension** is that Italy should apply the contribution-based methodology in relation to all periods of work (not only those after the reform) and to all workers equally, in order to ensure that the reform does not affect young workers more than older ones. In addition, Italy should intervene to reduce the amount of retirement pensions granted under previously applicable legal frameworks which permitted workers to retire at a young age and with a high pension. There are legal obstacles to such an intervention, but do not appear as insurmountable, as explained in more detail in the study.

Our recommendation regarding the **right to property** is for Italy to comply with the requirements of Directive 2011/7/EU on combatting late payment in commercial transactions.

Our recommendation regarding the **right to manifestation and assembly** is that Italy should swiftly adopt proposals to ensure that police personnel, and particularly riot police personnel, are individually identifiable by means of their name and qualification, or a unique code, made visible on their uniforms and helmets. This measure, which would strengthen police accountability, would be in line with the European Code of Police Ethics of the Council of Europe. Two bills for laws on the identification of police personnel – tabled before the Italian Parliament in June 2013 and in February 2014 – have not yet been adopted and are still pending.

Our recommendations regarding the **right to access justice** are that Italy should reduce application fees and other costs to access justice because they are not fit for the stated

purpose (reducing the congestion of the justice system) and hamper economic growth by making rights and contracts less secure (this may adversely affect micro, small and medium-sized enterprises by making it more difficult for them to obtain credit or investment). Moreover, we propose that, to improve the performance of the system without increasing cost, Italy should spend a higher share of the budget allocated to the justice system on computerisation (on which Italy spends 1.9% of the budget, against an international average of 3.9%) and on the training and education of staff (Italy: 0%, international average: 0.9%). Italy should also improve the quality of its laws and regulations as well as government integrity in order to reduce litigation, as these factors affect the quantity of litigation – barriers to access such as costs, in contrast, bear no clear relationship with the amount of litigation.

Our recommendations regarding **monitoring compliance with fundamental rights** are for Italy to ensure that proposals to establish a National Commission for the promotion and protection of human rights are swiftly adopted, thereby implementing UN General Assembly Resolution No 48/134. A bill to this effect was tabled in May 2011 but it was never approved and is still pending. Moreover, we recommend introducing an ex ante impact assessment process for all major legislative initiatives which allows the general public and interest groups to access relevant information (e.g. consultation documents, underlying data, impact assessment reports) and to submit their observations.

A general conclusion that emerges from our research and from stakeholder interviews is that the need for reforms in the areas covered by this study is widely acknowledged and accepted – which however does not mean the measures actually taken were seen as adequate or just. Although protests against austerity have featured strong slogans against the EU and (perhaps more worryingly) fellow European Member States, commentators mainly place the blame for the current economic and social situation in Italy on the Italian political class rather than on external factors.



## 1. IMPACT OF THE ECONOMIC CRISIS AND OVERVIEW OF THE MAIN MEASURES ADOPTED TO COPE WITH IT

### KEY FINDINGS

- In the period from 2008 to 2013, Italy's economy shrank by -7.5%, and thus took a significant step back, returning to 2000 levels. Italy's population got significantly poorer, with average incomes (GDP per capita) going back 18 years to 1996 levels.
- Unemployment exceeded 12% in 2014 (up from 6% in 2008). The difficulty in finding a job is particularly felt among young people, among which unemployment reaches 40%. Most of them (56.4%) are long-term unemployed; more than a quarter (26%) are neither in education, employment or training (NEET).
- One after another Italian governments have introduced innumerable measures to respond to the crisis, particularly from the year 2011, when the Cabinet headed by Mr Mario Monti took office. Many of these measures were adopted by means of Decree-Laws (legislative acts that the government may adopt in extraordinary circumstances of necessity and urgency without the prior approval of the Parliament) which increase the legislative powers of the government at the expense of Parliament.
- Our research indicates that the measures which mostly impact on the fundamental rights covered by this study are the Decreto Brunetta (right to education); the several 'health pacts', annual Finance Acts and other measures such as the so-called 'Spending Review' which have affected the right to healthcare; the Legge Fornero (right to work); and the Decreto Salva Italia (right to pension).

### 1.1. The impact of the crisis in Italy

Between 2008 and 2013, Italy's Gross Domestic Product (GDP) fell by about 7.5%<sup>3</sup>. In 2013, Italy's economy shrank by -1.9%, bringing the country's GDP back to 2000 levels (pro-capita GDP fell to 1996 levels)<sup>4</sup>.

Employment rates fell by 3.1% throughout the period 2008-2013<sup>5</sup>. While during the first years of the crisis, the main reduction in employment concerned worked hours, since mid-2012, the actual number of employed people started to fall – only in 2013, 478,000 workers lost their jobs<sup>6</sup>.

<sup>3</sup>Eurostat, GDP and main components – volumes (nama\_gdp\_k), 03.07.2014. Note that a decrease of -9% in GDP during the period of the crisis is reported in MEF, "The Economic and Financial Document 2014, Section III: National Reform Programme – Part I: National strategy and main initiatives" (*Documento di economia e finanza 2014 : Sezione III : Programma Nazionale di Riforma – Parte I : La strategia nazionale e le principali iniziative*), 2014.

<sup>4</sup>Istat, "Annual Report" (*Rapporto annuale*), 2014.

<sup>5</sup> Eurostat, Employment (main characteristics and rates) - annual averages (lfsi\_emp\_a), 10.04.2014.

<sup>6</sup>Istat, "Annual Report" (*Rapporto annuale*),

**Table 1: Italy's economy at a glance, 2008-13**

	2008	2009	2010	2011	2012	2013
GDP <sup>7</sup>	-1.2%	-5.5%	+1.7%	+0.4%	-2.4%	-1.9%
Unemployment <sup>8</sup>	6%	7.8%	8.4%	8.4%	10.7%	12.2%
Inflation <sup>9</sup>	3.5%	0.8%	1.6%	2.9%	3.3%	1.3%

Source: Eurostat

At the end of 2013, after nine trimesters of contraction, Italy came out of recession by achieving 0.1% growth, mainly thanks to exports. According to forecasts, Italy's economy should grow by 0.6% in 2014, by 1.0% in 2015 and by 1.4% in 2016, with internal demand becoming the main driver of growth<sup>10</sup>.

The unemployment rate stabilised over the first three months of 2014 at 12.7%, but expectations for the future are contradictory<sup>11</sup>. Unemployment, however, remains particularly high among young people (40.0%), a majority of which (56.4%) have been unsuccessfully searching for a job for longer than a year<sup>12</sup>. The share of young Italians between 15 and 29 years of age who neither are in education, employment or training (so-called NEETs) increased by 6% compared to pre-crisis levels, reaching 26%<sup>13</sup>.

The appointment by the President of the Republic of Mr Mario Monti as head of the Government and Finance Minister, with a Cabinet composed of technocrats, can be seen as a further consequence of the crisis<sup>14</sup>. The appointment 'was widely hailed as a welcome sign that Italy would tackle much-needed economic restructuring'<sup>15</sup> and, although not legitimised by a general election, it was welcomed by a great majority of Italians<sup>16</sup> and by

<sup>7</sup> Table compiled by Milieu based on Eurostat, GDP and main components – volumes (nama\_gdp\_k), 03.07.2014.

<sup>8</sup> Eurostat, Unemployment rate by sex and age groups - annual average, % (une\_rt\_a), 01.07.2014.

<sup>9</sup> Eurostat, HICP - inflation rate - Annual average rate of change (%) (tec00118).

<sup>10</sup> Istat "Annual Report" (*Rapporto annuale*), 2014.

<sup>11</sup> Ibid. In particular, positive expectations were recorded among employers in the sales sector, while expectations remained negative in the manufacturing, services and construction sectors.

<sup>12</sup> Ibid.

<sup>13</sup> Age between 15 and 29 years. Istat, "Bes Report 2014" (*Rapporto Bes 2014*), 26.06.2014, available at <http://www.istat.it/it/archivio/126613>, accessed on 25.07.2014.

<sup>14</sup> The appointment followed the fall of the fourth Berlusconi government. The President of the Republic himself, in a letter to the newspaper *Corriere della Sera*, summarised the events and considerations that led him to appoint Mr Mario Monti: the internal frictions to Berlusconi's party (whose cofounder, Mr Gianfranco Fini, abandoned the party, together with several members of Parliament) and government, the criticism of EU authorities (which culminated in a letter to the Government by Mr Trichet and Mr Draghi), the rejection by the Chamber of Deputies of the State's budget, the well-established expertise and Europeanism of Mr Monti, and the existence of a general consensus towards the appointment of Mr Monti as President of the Council of Ministers. See Napolitano G., "Monti was a resource. A plot? Just hot hair" (*Monti era una risorsa. Complotto? Solo fumo*), 10.02.2014, available at [http://www.corriere.it/politica/14\\_febbraio\\_10/monti-era-risorsa-complotto-solo-fumo-ae384d6a-9271-11e3-b1fa-414d85bd308d.shtml](http://www.corriere.it/politica/14_febbraio_10/monti-era-risorsa-complotto-solo-fumo-ae384d6a-9271-11e3-b1fa-414d85bd308d.shtml), accessed on 05.08.2014.

<sup>15</sup> Donadio R. and Povoledo E. (NYTimes.com), Facing Crisis, Technocrats Take Charge in Italy, 16.11.2011, available at <http://www.nytimes.com/2011/11/17/world/europe/monti-forms-new-italian-government.html>, accessed on 22.07.2014.

<sup>16</sup> A survey by Demos & Pi, a research institute, found that about 80% of Italian citizens approved of Mr Monti's appointment and hoped that his term in government could last until the end of the legislative term (March 2013), instead of only a few months (Mr Monti resigned in December 2012). However, about 65% of Italians considered that the appointment of the Monti government was only acceptable, insofar as justified, by a state of emergency. The results of the survey are available at <http://demos.it/a00652.php>, accessed on 22.07.2014.

the press<sup>17</sup>. Mr Monti's programme was essentially economic, aiming to help Italy restore growth and find a solution to the debt crisis<sup>18</sup>.

## 1.2. Overview of relevant measures

Since the beginning of the crisis, and especially since 2011, Italy has taken a number of legislative and other measures related to the crisis.

Many measures adopted since the introduction of the European Semester in 2010 are in close alignment to the economic and financial objectives set at European level. Annual Economic and Financial Documents ('Documenti di economia e finanza')<sup>19</sup> of the Italian Government for the years 2011-2014 include yearly National Reform Programmes describing, among other things, measures taken in light of priorities identified in the Annual Growth Surveys and to meet the Country Specific Recommendations issued by the European Council in the context of each European Semester.

Our research indicates that the measures adopted in Italy during the crisis which mostly affect the fundamental rights covered by this study are the following:

**Table 2: Most relevant measures concerning right to education, healthcare, work and pension**

Right	Most relevant measure(s)	Covered in
Education	<i>Decreto Brunetta</i>	Section 2
Healthcare	Health pacts Annual Finance Acts (notably: 2010) Other measures (notably: Spending Review)	Section 3
Work	<i>Legge Fornero</i>	Section 4
Pension	<i>Decreto Salva Italia</i>	Section 5

The table below offers a broader overview of the measures introduced in Italy to cope with the crisis and which may have an impact on the fundamental rights covered by this study.

<sup>17</sup>Spinelli B. (Repubblica.it), "The bet of a technician" (*La scommessa di un tecnico*), 16.11.2011, available at [http://www.repubblica.it/politica/2011/11/16/news/scommessa\\_tecnico-25078648/](http://www.repubblica.it/politica/2011/11/16/news/scommessa_tecnico-25078648/), accessed on 22.07.2014, dismisses the accusation of lack of democratic legitimacy as 'militant ignorance'. La Repubblica is a centre left-wing Italian daily newspaper. Panebianco A. (Corriere della Sera), "Who's afraid of the hour glass" (*Chi ha paura della clessidra*), 15.07.2012, available at [http://www.corriere.it/editoriali/12\\_luglio\\_15/chi-ha-paura-della-clessidra-editoriale-angelo-panebianco\\_28d1c820-ce43-11e1-9b00-18ac498483bd.shtml](http://www.corriere.it/editoriali/12_luglio_15/chi-ha-paura-della-clessidra-editoriale-angelo-panebianco_28d1c820-ce43-11e1-9b00-18ac498483bd.shtml), accessed on 22.07.2014, criticises political parties, suggesting that they have proven to be unable to take the necessary measures that Mr Monti's technocratic government can take.

<sup>18</sup>Donadio R. and Povoledo E. (NYTimes.com), Facing Crisis, Technocrats Take Charge in Italy, 16.11.2011, available at <http://www.nytimes.com/2011/11/17/world/europe/monti-forms-new-italian-government.html>, accessed on 22.07.2014.

<sup>19</sup> See the Economic and Financial Documents referenced in the footnotes below.

**Table 3: Main measures related to the crisis adopted by Italy, 2008-2014**

Year and category	Measure
<b>2014<sup>20</sup></b>	<b>(Planned measures<sup>21</sup>)</b>
Budget	<ul style="list-style-type: none"> <li>Spending review: Further cuts in public expenditure (€4.5bn in 2014, €17bn in 2015, €32bn in 2016)</li> </ul>
	<ul style="list-style-type: none"> <li>Income tax cut (€10bn), financed by reductions in public expenditure</li> <li>Additional €1,000/year (net) for employees with an income lower than €25,000</li> </ul>
	<ul style="list-style-type: none"> <li>Corporate tax cut (by 10%), financed by taxing financial activities</li> </ul>
Economy	<ul style="list-style-type: none"> <li>Reorganisation of the legal framework on local public services (waste, urban transport, street lighting and water)</li> </ul>
	<ul style="list-style-type: none"> <li>Programme for investments in small public works involving local SMEs</li> </ul>
	<ul style="list-style-type: none"> <li>Investment in large infrastructure projects in the transport sector</li> </ul>
	<ul style="list-style-type: none"> <li>Investment in innovation and R&amp;D by means of fiscal advantages, facilitating hiring researchers and renovating productive installations</li> </ul>
	<ul style="list-style-type: none"> <li>Support to SMEs by facilitating access to credit</li> </ul>
	<ul style="list-style-type: none"> <li>Increased contribution of institutional investors in Italian enterprises by means of "mini bonds" and credit funds</li> </ul>
	<ul style="list-style-type: none"> <li>Support for seed and venture capital</li> </ul>
	<ul style="list-style-type: none"> <li>Support for the internationalisation of Italian enterprises, particularly SMEs</li> </ul>
	<ul style="list-style-type: none"> <li>Implementation of the measures '<i>Destinazione Italia</i>' (Destination Italy) to enhance foreign direct investment</li> </ul>
Education	<ul style="list-style-type: none"> <li>Investment plan to improve the condition of buildings in the education sector</li> </ul>
	<ul style="list-style-type: none"> <li>Support to apprenticeship, internships and school-work programmes</li> </ul>
	<ul style="list-style-type: none"> <li>Improvement of technical education and training</li> </ul>
	<ul style="list-style-type: none"> <li>Enhancing English language teaching in lower grades</li> </ul>

<sup>20</sup> Unless otherwise noted, this section is based on MEF, "The Economic and Financial Document 2014, Section III: National Reform Programme – Part I: National strategy and main initiatives" (*Documento di economia e finanza 2014 : Sezione III : Programma Nazionale di Riforma – Parte I : La strategia nazionale e le principali iniziative*), 2014. Reference to specific legal measures is made only where available in the mentioned source.

<sup>21</sup> Measures presented as planned in the source referred to in MEF, *Documento di economia e finanza 2014* may or may not have been adopted at the time of publication of this report.

Year and category	Measure
Employment	<ul style="list-style-type: none"> <li>• More permissive conditions for the use of fixed and apprenticeship contracts</li> </ul>
	<ul style="list-style-type: none"> <li>• Reform of the legal framework for employment contracts</li> </ul>
	<ul style="list-style-type: none"> <li>• Reduction of the administrative burden for hiring workers</li> </ul>
Health	<ul style="list-style-type: none"> <li>• Investment in prevention to reduce recourse to healthcare services</li> </ul>
	<ul style="list-style-type: none"> <li>• Enhancement of electronic health records and IT in the healthcare sector</li> </ul>
Justice	<ul style="list-style-type: none"> <li>• Reform of the administrative justice system in order to facilitate decision-making at central and local level</li> </ul>
	<ul style="list-style-type: none"> <li>• Enhancement of alternative dispute resolution mechanisms to reduce the burden on courts of law</li> </ul>
	<ul style="list-style-type: none"> <li>• Reasoning of civil judgments at first instance will be provided only in summary form (parties will obtain the full judgment on request and subject to the advance payment of a share of the fee for appealing)</li> </ul>
	<ul style="list-style-type: none"> <li>• Limits to the right of appeal to the Court of Cassation</li> </ul>
Social	<ul style="list-style-type: none"> <li>• Reform of the social security system</li> </ul>
	<ul style="list-style-type: none"> <li>• Allocation of funds to support defaulting tenants</li> </ul>
	<ul style="list-style-type: none"> <li>• Reduction of taxes on housing rents</li> </ul>
	<ul style="list-style-type: none"> <li>• Financing of social housing</li> </ul>
<b>2013<sup>22</sup></b>	
Budget	<ul style="list-style-type: none"> <li>• Delegation to the Government to reform the fiscal system</li> </ul>
Economy	<ul style="list-style-type: none"> <li>• Quicker payment of debts by the Public Administration<sup>23</sup></li> </ul>
	<ul style="list-style-type: none"> <li>• Package of measures '<i>Destinazione Italia</i>' to attract foreign capital and improve the competitiveness of Italian businesses</li> </ul>
Education	<ul style="list-style-type: none"> <li>• Allocation of funds for scholarships, educational buildings, and the training of teachers<sup>24</sup></li> </ul>

<sup>22</sup> Unless otherwise noted, this section is based on MEF, "The Economic and Financial Document 2014, Section III: National Reform Programme – Part I: National strategy and main initiatives" (*Documento di economia e finanza 2014 : Sezione III : Programma Nazionale di Riforma – Parte I : La strategia nazionale e le principali iniziative*), 2014. Reference to specific legal measures is made only where available in the mentioned source.

<sup>23</sup> D.L. 35/2013, converted into L. 64/2013. D.L. 102/2013, converted into L. 124/2013.

<sup>24</sup> D.L. 104/2013, converted into L. 128/2013.

Year and category	Measure
Employment	<ul style="list-style-type: none"> <li>Financial incentives and tax reductions for the employment of vulnerable workers and the creation of new jobs<sup>25</sup></li> </ul>
	<ul style="list-style-type: none"> <li>Higher sanctions for, and enhanced monitoring of, irregular work</li> </ul>
Environment	<ul style="list-style-type: none"> <li>Simplification of environmental impact assessment (EIA), strategic environmental assessment (SEA) and industrial emissions (previously integrated pollution prevention and control – IPPC) permit procedures. Simplification of the legal framework in other environment areas<sup>26</sup></li> </ul>
Justice	<ul style="list-style-type: none"> <li>Re-introduction of mandatory mediation in a number of areas</li> </ul>
	<ul style="list-style-type: none"> <li>Cases concerning foreign investors attributed to selected business courts</li> </ul>
	<ul style="list-style-type: none"> <li>Merger and reduction in the number of courthouses</li> </ul>
Social	<ul style="list-style-type: none"> <li>Increase of financial resources for and scope of social security measures</li> </ul>
	<ul style="list-style-type: none"> <li>Higher taxes on high retirement pensions (over €90,000) to finance social protection</li> </ul>
<b>2012<sup>27</sup></b>	
Budget	<ul style="list-style-type: none"> <li>Constitutional reform: obligation of structural budget balance inserted into the Italian Constitution</li> </ul>
	<ul style="list-style-type: none"> <li>Spending review: reduction of expenditure by reforming public procurement, reducing staff and managers in the public sector, reorganisation of local autonomies, rationalisation of expenditure in the education and health sectors</li> </ul>
Economy	<ul style="list-style-type: none"> <li>Incentives for SMEs, notably as regards access to credit and finance</li> </ul>
	<ul style="list-style-type: none"> <li>Quicker payment of debts by the Public Administration</li> </ul>
	<ul style="list-style-type: none"> <li>Reduction of employment taxes and tax deductions for families</li> </ul>
Education	<ul style="list-style-type: none"> <li>Establishment of a fund to promote R&amp;D and innovation, and to strengthen Italian businesses, particularly at international level</li> </ul>
Employment	<ul style="list-style-type: none"> <li>Reform of social and employment security: extension of</li> </ul>

<sup>25</sup> D.L. 76/2013, converted into L. 99/2013. L. 147/2013 (Stability Law 2014).

<sup>26</sup> D.L. 69/2013, converted into L. 98/2013.

<sup>27</sup> Unless otherwise noted, this section is based on MEF, "The Economic and Financial Document 2013, Section III: National Reform Programme" (*Documento di economia e finanza 2013: Sezione III: Programma Nazionale di Riforma*), 2013. Reference to specific legal measures is made only where available in the mentioned source.

Year and category	Measure
	protection to young workers, institution of a scheme allowing companies to offer part-time contracts to older workers in conjunction with contracts with young workers
	<ul style="list-style-type: none"> <li>• Reform of Article 18 of the Employment Act on dismissals, making it easier to dismiss employees<sup>28</sup></li> </ul>
Health	<ul style="list-style-type: none"> <li>• Establishment of electronic health records and increased substitution of paper prescriptions with e-prescriptions</li> </ul>
	<ul style="list-style-type: none"> <li>• Free health services for the unemployed and their family members<sup>29</sup></li> </ul>
Justice	<ul style="list-style-type: none"> <li>• Minimum tariffs for professional services (including lawyers) abolished</li> </ul>
	<ul style="list-style-type: none"> <li>• Establishment of business courts, to speed up the handling of cases concerning businesses</li> </ul>
	<ul style="list-style-type: none"> <li>• Introduction of limitations on appeals and sanctions for inadmissible appeals</li> </ul>
	<ul style="list-style-type: none"> <li>• Shorter court deadlines for employment cases, only one judge on appeal (instead of three)<sup>30</sup></li> </ul>
Social	<ul style="list-style-type: none"> <li>• Increase of the retirement age to 67 (the highest in Europe<sup>31</sup>)</li> </ul>
<b>2011<sup>32</sup></b>	
Budget	<ul style="list-style-type: none"> <li>• Pension reform (see Section 5)</li> <li>• Spending review: Programme for the review and reorganisation of public expenditure, notably including the merger of public welfare bodies and the streamlining of the justice system</li> </ul>
	<ul style="list-style-type: none"> <li>• Blocking of salary increases and the hiring of new workers in the Public Administration</li> </ul>
	<ul style="list-style-type: none"> <li>• Termination, merger and reorganisation of public bodies such as ISPSEL (organisational health institute), Ipost (welfare institute for postal workers), and INPDAP (welfare institute for public sector workers)</li> </ul>

<sup>28</sup> Altalex, "Labour reform: the table of innovations, as of 14.08.2012" (*Riforma del lavoro: La tabella delle novità agg. al 14.08.2012*, available at <http://www.altalex.com/index.php?idnot=17810>, accessed on 10.07.2014.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> MEF, "The Economic and Financial Document 2013, Section III: National Reform Programme" (*Documento di economia e finanza 2013: Sezione III: Programma Nazionale di Riforma*), 2013.

<sup>32</sup> Unless otherwise noted, this section is based on MEF, "The Economic and Financial Document 2012, Section III: National Reform Programme" (*Documento di economia e finanza 2012: Sezione III: Programma Nazionale di Riforma*, 2012). 2012. Reference to specific legal measures is made only where available in the mentioned source.

Year and category	Measure
	<ul style="list-style-type: none"> <li>Increase of VAT<sup>33</sup>, introduction of a real estate tax also including first homes<sup>34</sup></li> </ul>
Economy	<ul style="list-style-type: none"> <li>Employers allowed to deduct expenditures for employees from taxes</li> </ul>
Education	<ul style="list-style-type: none"> <li>Mergers of schools with fewer than 1,000 pupils and capping of personnel</li> </ul>
	<ul style="list-style-type: none"> <li>National plan for modernising and streamlining buildings</li> </ul>
Employment	<ul style="list-style-type: none"> <li>Employers allowed to detract expenses on employees from corporate taxes<sup>35</sup></li> </ul>
	<ul style="list-style-type: none"> <li>Retirement pensions reform: more stringent age and contribution requirements for retiring, changes in the pension calculation method, higher contribution requirements on autonomous workers</li> </ul>
	<ul style="list-style-type: none"> <li>Tax advantages to incentivise researchers working abroad to return to Italy</li> </ul>
Health	<ul style="list-style-type: none"> <li>Reduction of expenditures on services and supplies in the health sector<sup>36</sup></li> </ul>
<b>2010<sup>37</sup></b>	
Budget	<ul style="list-style-type: none"> <li>Pension reform: stricter age and contribution requirements, particularly for public employees, automatic periodic adjustment of benefits and requirements to life expectancy<sup>38</sup></li> </ul>
Education	<ul style="list-style-type: none"> <li>School and university reform: integration of technical training with the labour market, reduction in the fragmentation of university courses, life-long training, expenditure cuts</li> </ul>
	<ul style="list-style-type: none"> <li>Research and SMEs: promotion of innovation through enterprise networks, pilot programmes and public-private cooperation</li> </ul>
Health	<ul style="list-style-type: none"> <li>Reduction in staff and pharmaceutical expenditure in the health sector</li> </ul>
Social	<ul style="list-style-type: none"> <li>Social security: less stringent requirements for accessing unemployment benefits and measures to protect atypical workers<sup>39</sup></li> </ul>

<sup>33</sup> D.L. 138/2011, converted into L. 148/2011. D.L. 201/2011, converted into L. 214/2011.

<sup>34</sup> D.L. 201/2011, converted into L. 214/2011.

<sup>35</sup> Altalex, Manovra Salva Italia: La tabella delle novità: Tabella agg. al 23.12.2011, available at <http://www.altalex.com/index.php?idnot=16432>, accessed on 10.07.2014.

<sup>36</sup> D.L. 98/2011, converted into L. 111/2011.

<sup>37</sup> Unless otherwise noted, this section is based on MEF, Economic and Financial Document: Section III: National Reform Programme, 2011.

<sup>38</sup> D.L. 78/2010, converted into L. 122/2010.

<sup>39</sup> L. 220/2010, amending D.L. 185/2008, converted into L. 2/2009.



Year and category	Measure
<b>2009<sup>40</sup></b>	
Economy	<ul style="list-style-type: none"> <li>• Simplification of procedures for starting up and conducting business</li> </ul>
	<ul style="list-style-type: none"> <li>• Public financial intervention to avoid job losses, extending coverage to apprentices and contract workers</li> </ul>
	<ul style="list-style-type: none"> <li>• Extension of the possibility to use fixed contracts and internships</li> </ul>
Education	<ul style="list-style-type: none"> <li>• Allocation of funds to finance scholarships and training courses, as well as testing and R&amp;D projects by SMEs</li> </ul>
	<ul style="list-style-type: none"> <li>• Personnel reduction: 42,100 teachers and 15,000 administrative staff</li> </ul>
Justice	<ul style="list-style-type: none"> <li>• Introduction of a class action for consumers<sup>41</sup></li> </ul>
Social	<ul style="list-style-type: none"> <li>• Economic benefits to low-income retirees and families<sup>42</sup></li> </ul>
<b>2008<sup>43</sup></b>	
Economy	<ul style="list-style-type: none"> <li>• Local public services to be procured, as a rule, via open procedures<sup>44</sup></li> </ul>
Justice	<ul style="list-style-type: none"> <li>• Establishment of a website allowing citizens free access to legislation<sup>45</sup></li> </ul>
Social	<ul style="list-style-type: none"> <li>• Establishment of a "store card" for parents of children under three years of age and for elderly people over 65 years of age, with publicly-financed credit to cover the cost of food, health and utilities</li> </ul>

**Source:** Multiple Sources (see footnotes)

Many of the measures listed above were adopted through Decree-Laws, which the Government may adopt in extraordinary circumstances of necessity and urgency and which expire after 60 days if not converted into Laws by Parliament<sup>46</sup>. It may be questioned

<sup>40</sup> Unless otherwise noted, this section is based on Presidenza del Consiglio dei Ministri, Dipartimento per le Politiche Comunitarie, "Lisbon Strategy for growth and employment: National Reform Programme for Italy 2008-2010 – state of implementation as of 2009 and the response to the crisis" (*Strategia di Lisbona per la crescita e l'occupazione: Programma nazionale di riforma dell'Italia 2008-2010: Stato di attuazione al 2009 e risposta alla crisi economica*), 2009.

<sup>41</sup> L. 99/2009.

<sup>42</sup> L. 2/2009.

<sup>43</sup> Unless otherwise noted, this section is based on Presidenza del Consiglio dei Ministri, Dipartimento per le Politiche Comunitarie, "Lisbon Strategy for growth and employment: National Reform Programme for Italy 2008-2010 – state of implementation as of 2009 and the response to the crisis" (*Strategia di Lisbona per la crescita e l'occupazione: Programma nazionale di riforma dell'Italia 2008-2010: Stato di attuazione al 2009 e risposta alla crisi economica*), 2009.

<sup>44</sup> L. 133/2008.

<sup>45</sup> D.L. 200/2008.

<sup>46</sup> Art. 77 Cost. Decree-Laws are temporary acts with force of laws that the Government may adopt in extraordinary circumstances of necessity and urgency. Decree-Laws cease to have effects if they are not converted into law by Parliament within 60 days from their publication on the Official Journal.

whether the recent six-year crisis constituted an extraordinary circumstance of necessity and urgency for the Italian economy<sup>47</sup>.

The abuse of Decree-Laws is not a new phenomenon created by the crisis or by the willingness to implement actions agreed at EU level. As early as 18 years ago, the Constitutional Court criticised the practice of adopting new Decree-Laws to prolong the validity of expired ones<sup>48</sup>. Other rulings of the same Court<sup>49</sup> censured the use of Decree-Laws where the extraordinary circumstances of necessity and urgency are not established<sup>50</sup>.

Following this and other criticism, the use of Decree-Laws decreased in the period from 2006 to 2011. Thereafter, it increased again, albeit not very significantly. The described trend is illustrated by monthly averages shown in the table below.

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<sup>47</sup> The question was raised, together with others, to the Constitutional Court in the context of administrative cases brought by university professors and researchers to six different Regional Administrative Tribunals concerning the freezing of salaries imposed by Article 9(21) of D.L. 78/2010. The Constitutional Court dismissed the argument that the need to control public finances does not constitute an exceptional circumstance of necessity and urgency, albeit with a very short motivation repeating the rationale stated in the challenged D.L. See *Corte Costituzionale*, 310/2013, paragraph 10. See also section 9.2.

<sup>48</sup> Constitutional Court, 360/1996. The case raised the question, among others, of whether the adoption of subsequent Decree-Laws laying down equivalent rules to the original one which had expired before being converted into Law was compatible with the requirements of extraordinary circumstances of necessity and urgency required by Art. 77 Cost. The Court answered in the negative, holding that Art. 77 Cost. foresees only two alternatives – conversion into Law within 60 days or expiry. The contested practice amounted to an unlawful circumvention of the temporary and extraordinary character of Decree-Laws, which resulted in an alteration of the form of government, under which legislative powers are attributed to the Parliament.

<sup>49</sup> Constitutional Court, 29/1995 and 171/2007. The latter ruling declared the unconstitutionality of provisions of a Decree-Law which did not relate to the extraordinary circumstance of necessity and urgency that the Decree-Law aimed to address.

<sup>50</sup> Di Cosimo G. (Osservatoriosullefonti.it), "The 'catchall' Government: The production of decrees of urgency in the XVI Legislature" (*Il Governo pigliatutto: la decretazione d'urgenza nella XVI legislatura*), 2013, available at [http://documenti.camera.it/bpr/23358\\_testo.pdf](http://documenti.camera.it/bpr/23358_testo.pdf), accessed on 08.08.2014.

**Table 4: Statistics on the use of Decree-Laws (D.L.)**

Period	May 1996 May 2001	May 2001 Apr 2006	Apr 2006 May 2008	May 2008 Nov 2011	Nov 2011 Mar 2013	Mar 2013 Jan 2014
Government(s)	Prodi 1 D'Alema 1 & 2 Amato 2 <sup>51</sup>	Berlusconi 2 & 3 <sup>52</sup>	Prodi 2 <sup>53</sup>	Berlusconi 4 <sup>54</sup>	Monti <sup>55</sup>	Letta, Renzi <sup>56</sup>
Total No of D.L.	204	216	48	80	38	25
Monthly average <sup>57</sup>	3.4	3.7	2.0	1.9	2.4	2.5
Converted into Laws	N/A	N/A	30 (62%)	69 (86%)	32 (84%)	N/A

**Source:** Chamber of Deputies

Today, about two and a half Decree-Laws are adopted on average each month, against about three and a half per month in the ten-year period 1996-2006 and about two per month in five and a half years 2006-2011. Even though the number of Decree-Laws has remained relatively stable recently and well below past peaks, concerns arise from the changing use of Decree-Laws.

Recent Decree-Laws, notably those adopted in relation to the crisis, have dictated far-reaching medium- and long-term policies<sup>58</sup>, rather than measures targeted to the specific emergency.

<sup>51</sup>Elaborated from data and information in Camera dei Deputati, Osservatorio sulla Legislazione, "Report 2012 on the legislation of Regions, State and the EU" (*Rapporto 2012 sulla legislazione tra Stato, Regioni e Unione europea*) Volume secondo: Tomo II, 23.11.2012, available at [http://leg16.camera.it/cartellecomuni/Leg16/documenti/Tomo\\_II.pdf](http://leg16.camera.it/cartellecomuni/Leg16/documenti/Tomo_II.pdf), accessed on 10.12.2014.

<sup>52</sup>Ibid.

<sup>53</sup> Elaborated from data and information in Camera dei Deputati, Osservatorio sulla Legislazione, "Report 2008 on the legislation of Regions, State and the EU" (*Rapporto 2008 sulla legislazione tra Stato, Regioni e Unione europea*)Tomo II, 10.10.2008, available at <http://www.camera.it/application/xmanager/projects/camera/file/documenti/RAPPORTO2008tomo2.pdf>, accessed on 10.12.2014.

<sup>54</sup> Elaborated from data and information in Camera dei Deputati, Osservatorio sulla Legislazione, "Report 2013 on the legislation of Regions, State and the EU" (*Rapporto 2013 sulla legislazione tra Stato, Regioni e Unione europea*) Volume secondo: Tomo II, available at [http://www.camera.it/application/xmanager/projects/leg17/file/documenti/TOMO\\_II\\_4\\_febbraio\\_2014.pdf](http://www.camera.it/application/xmanager/projects/leg17/file/documenti/TOMO_II_4_febbraio_2014.pdf), accessed on 10.12.2014.

<sup>55</sup>Ibid.

<sup>56</sup> Elaborated from data and information in Camera dei Deputati, Osservatorio sulla Legislazione, Appunti del Comitato per la legislazione: "Notes of the Committee for legislation: the production of legal acts in the XVII legislature as of 15.1.2014" (*Appunti del Comitato per la legislazione: La Produzione Normativa nella XVII Legislatura: Aggiornamento al 15 gennaio 2014*), available at <http://www.camera.it/application/xmanager/projects/leg17/attachments/documenti/pdfs/000/001/084/CL001.pdf>, accessed on 10.12.2014.

<sup>57</sup>Note that the periods of time of each cabinet term appearing in the second row are of different length. The length of office of each cabinet is indicated in the first row.

<sup>58</sup> Di Cosimo G. (Osservatoriosullefonti.it), Il Governo pigliatutto: la decretazione d'urgenza nella XVI legislatura, 2013, available at [http://documenti.camera.it/bpr/23358\\_testo.pdf](http://documenti.camera.it/bpr/23358_testo.pdf), accessed on 08.08.2014..

It is debatable whether the conditions of extraordinary circumstances of necessity and urgency existed which justified the adoption of recent Decree-Laws. At times, the conditions seem to have been artificially created. A good example is Decree-Law 201/2011, which, among other things, reformed rules on retirement pensions. The then Prime Minister Monti committed to enacting the reforms in a letter to the Presidents of the European Council and of the Commission. The European Council expressed appreciation in a statement of the Euro Summit of 26 October 2011<sup>59</sup>. The statement, in turn, appears to have contributed to establishing the necessity and urgency of the reform<sup>60</sup> (see section 5).

Another problem is that Decree-Laws often mandate executive authorities to adopt implementing measures, further reducing the legislative and oversight role of Parliament. For example, the main three Decree-Laws adopted during Monti's term in office foresaw as many as four hundred implementing measures, many of which have not yet been adopted<sup>61</sup>.

Table 4 above also shows a high (and rising) rate of conversion of Decree-Laws by Parliament, suggesting that Parliament increasingly limits itself to ratifying decisions made elsewhere<sup>62</sup>. One of the reasons for this is that the Government routinely tables questions of confidence (about 90% of the times in the period 2008-2013) to ensure Decree-Laws are converted<sup>63</sup>. Another reason may be found in the (reprehensible) practice of Decree-Laws regulating a number of heterogeneous matters, which entails that they are assigned to the Budget or Constitutional Affairs Committees of the Parliament, thus reducing the possibility of other Committees to input<sup>64</sup>.

The increased scope and impact of the Government's exercise of legislative powers has led some scholars to speak of a 'constitutional emergency'<sup>65</sup>. To make matters worse, recent Decree-Laws appear to reflect decisions taken outside of the Italian legislative system, thus raising the question of whether the resulting reforms are the result of free choice of the Italian Government or the Parliament<sup>66</sup>. An illustrative case is that of the ECB letter inviting the Italian Government to introduce reforms in policy areas which are not within the competences of the EU (see section 4).

Several measures adopted in relation to the crisis have raised doubts of unconstitutionality that were brought before the Constitutional Court<sup>67</sup>. The most recent and relevant constitutional judgments are included in the following sections. Information on cases in which the Government relied upon austerity measures to challenge the constitutionality of measures adopted by Regions concerning the rights covered by this study is also provided.

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<sup>59</sup>Euro Summit statement of 26 October 2011, available at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/125644.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/125644.pdf), accessed on 10.12.14, paragraph 6.

<sup>60</sup> Calvano R. (RivistaAIC.it), "The decree of urgency in the era of inclusive government" (La decretazione d'urgenza nella stagione delle larghe intese), 02.05.2014, available at <http://www.rivistaaic.it/download/DAMeCybud7Z69pZQpTxTlqniqARhzi1Sv2eC0CapEnY/2-2014-calvano.pdf>, accessed on 10.12.14.

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> The information is based on the texts of the judgements cited as well as on Fierro M. et al *The constraints of EU law in the constitutional jurisprudence in economic* (I vincoli derivanti dal diritto comunitario nella giurisprudenza costituzionale in materia economica), 2014, available at [http://www.cortecostituzionale.it/documenti/convegni\\_seminari/STU\\_263.pdf](http://www.cortecostituzionale.it/documenti/convegni_seminari/STU_263.pdf), accessed on 01.08.2014. The source covers judgements in the period 2012-2014.

## 2. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT TO EDUCATION (COMPULSORY EDUCATION)

### KEY FINDINGS

- The performance of Italian students in international tests is among the poorest in OECD countries.
- Italy has a long-term trend of underinvestment in education. Since 2008, Italy has further reduced spending in education. Most notably, Decree-Law 112/08 (Decreto Brunetta) aimed to slash spending on public schools by nearly 8 billion euros in four years (2008-2012). Other objectives were to increase the number of students per teacher; to slash schools' non-teaching staff; to reorganise schools, classes and curricula. The Decreto Brunetta referred generically to international and EU commitments to justify the cuts.
- Italy's teachers are the oldest among OECD countries (a majority is over 50 years of age) and among the worst paid (6% to 11% less than the OECD average). These indicators are likely to worsen significantly as a result of the freezing of teachers' salaries and turnover.
- The conclusion that can be drawn from our analysis is that recent cuts do not appear to have significantly lowered the (already generally low) quality of education.
- Access to education may have, however, been negatively affected by the merger of schools.

### 2.1. International and EU legal framework for the protection of the right to education

The right to education is defined as a universal entitlement to education, and is recognised as a right that includes the right to free, compulsory primary education for all, as well as an obligation to provide for a system of secondary education which is not necessarily free, but is available and accessible to all, while the material conditions of teaching staff shall be continuously improved in accordance with the International Covenant on Economic, Social and Cultural Rights (the 'ICESCR')<sup>68</sup>. In addition, the right to education encompasses the obligation to combat discrimination at all levels of the educational system and to set minimum standards and to improve quality of education. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities<sup>69</sup>. Education needs to be provided under the principles of: availability, accessibility, acceptability and adaptability<sup>70</sup>.

The right to education has been reaffirmed in the 1960 UNESCO Convention against Discrimination in Education, Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women (the 'CEDAW'), Articles 28 and 29 of the Convention on the Rights of the Child (the 'CRC') and Article 24 of the Convention on the Rights of Persons

<sup>68</sup>International Covenant on Economic, Social and Cultural Rights, General Assembly Resolution 2200A (XXI) of 16 December 1966, 1976, article 13.

<sup>69</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 13 – Right to education*, UN Doc. E/C.12/1999/10 (1999), §1.

<sup>70</sup>*Ibid*, §6.

with Disabilities (the 'CRPD'). Furthermore, it is also guaranteed by Article 2 of Protocol No. 1 to the European Convention on Human Rights (the 'ECHR').

The EU Charter guarantees the right to education and access to vocational and continuing training, with the possibility to receive free compulsory education<sup>71</sup>.

The scope of this study is limited to compulsory education. Higher levels of education, such as university, are not covered.

## 2.2. Right to education in Italy

The Italian Constitution guarantees both the right to educate (Article 33) and the right to education (Article 34).

The right to educate constitutes an expression of the freedom of expression, and is therefore inviolable, save for public control over e.g. the qualification of teachers and curricula<sup>72</sup>. The State is required to establish schools for levels of education<sup>73</sup>. Private persons have the right to establish and manage schools, without costs for the State<sup>74</sup>. The State lays down general provisions to ensure that minimum quality standards are guaranteed both by public and private schools<sup>75</sup>.

The right to education is solemnly enshrined in the Constitution, which states that 'schools are open to all'<sup>76</sup>. Compulsory education is both a right and a duty. As a right, it is accessible free of charge<sup>77</sup>. The free-of-charge provision is read as referring to public teaching and the availability of public school buildings, but not to other costs such as books, transport, canteens<sup>78</sup>. Several State or Regional laws provide for public funding to access such goods and services, but this support is not mandated by the Constitution<sup>79</sup>. As a duty, the Constitution foresees eight years of compulsory education<sup>80</sup>. Lower-ranking provisions have however extended it to at least 10 years<sup>81</sup>. There is no general constitutional right to education beyond compulsory education (e.g. access to university education). The Constitution only recognises such a right to those who are 'capable and deserving', even if they do not have the necessary financial resources<sup>82</sup>.

Primary education in Italy begins at the age of six and lasts five years. Thereafter, the child enters a first cycle of lower secondary education, which lasts three years. Subsequently, at the age of 14, an upper secondary education period begins, which lasts another five years<sup>83</sup>.

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<sup>71</sup> The EU Charter, Article 14.

<sup>72</sup> Onida V. and Pedrazza Gorlero M. (eds.), *Compendio di Diritto Costituzionale*, 2<sup>nd</sup> ed., 2011.

<sup>73</sup> Art. 33(2) Cost.

<sup>74</sup> Art. 33(3) Cost.

<sup>75</sup> Art. 33(2) Cost.

<sup>76</sup> Art. 34(1) Cost.

<sup>77</sup> Art. 34(2) Cost.

<sup>78</sup> Onida V. and Pedrazza Gorlero M. (eds.), *Compendio di Diritto Costituzionale*, 2<sup>nd</sup> ed., 2011.

<sup>79</sup> Onida V. and Pedrazza Gorlero M. (eds.), *Compendio di Diritto Costituzionale*, 2<sup>nd</sup> ed., 2011.

<sup>80</sup> Art. 34(2) Cost.

<sup>81</sup> Art. 1(1), Decree of the Minister of Education of 22.08.2007, No 139.

<sup>82</sup> Art. 34(3) Cost.

<sup>83</sup> See scheme of the Italian educational system available at [http://gpseducation.oecd.org/Content/MapOfEducationSystem/ITA/ITA\\_1997\\_EN.pdf](http://gpseducation.oecd.org/Content/MapOfEducationSystem/ITA/ITA_1997_EN.pdf), accessed on 04.08.2014.

According to statistics<sup>84</sup>, Italy's population has the worst alphabetic skills in the whole OECD area – less than a third of Italians have an acceptable level of alphabetic skills, nearly another third of them are not capable of summarising a piece of written information. For numerical skills, Italians were the second worst.

There are several causes for these results – inadequate schooling, scarce training opportunities offered by employers, and the prominence of the low-innovation sectors in the Italian economy<sup>85</sup>.

Italy is the only country in the OECD not to have increased expenditure per student in primary and secondary schools since 1995. By way of comparison, such expenditure increased on average by 62% in other OECD countries over the same period<sup>86</sup>. Since 2008, Italy has actually reduced public expenditure on primary and secondary education by more than 5%. Secondary education suffered the most significant cuts, with expenditure reduced by more than 8%<sup>87</sup>.

**Table 5: General government expenditure on selected levels of education in Italy, in million euro and percentage of GDP, 2008-2012**

	2008	% of GDP	2012	% of GDP	Change
<b>Pre-primary and primary</b>	24,129	1.5%	23,736	1.5%	<b>-1.6%</b>
<b>Secondary</b>	31,240	2%	28,681	1.8%	<b>-8.2%</b>
<b>Total</b>	<b>55,369</b>		<b>52,417</b>		<b>-5.3%</b>

Source: Eurostat<sup>88</sup>

### 2.3. Overview of relevant measures

The Italian Constitution gives both the State and the Regions legislative competences in the field of education. In particular, the State and the Regions have shared legislative competence on education<sup>89</sup>. The State, however, has exclusive competence to lay down general provisions in the field<sup>90</sup>.

<sup>84</sup>Istat, Rapporto Bes 2014, 26.06.2014, available at <http://www.istat.it/it/archivio/126613>, accessed on 25.07.2014, and sources cited therein.

<sup>85</sup> See, for instance, Pellizzari M. (lavoce.info), "The skills of Italians: we are the worst" (*Competenze degli italiani: Siamo i peggiori*), 08.10.2013, available at <http://www.lavoce.info/competenze-degli-italiani-siamo-i-peggiori/>, accessed on 28.07.2014. See also: OECD, Italy: Reviving growth and productivity, 2012, available at [http://www.oecd.org/about/publishing/2012%2009\\_Italy\\_Brochure\\_EN.pdf](http://www.oecd.org/about/publishing/2012%2009_Italy_Brochure_EN.pdf), accessed on 04.08.2014; European Commission, Recommendation for a Council Recommendation on Italy's 2014 national reform programme and delivering a Council opinion on Italy's 2014 stability programme, COM(2014) 413 final.

<sup>86</sup> OECD, Education at a Glance 2013: Country Note: Italy, available at [http://www.oecd.org/edu/Italy\\_EAG2013%20Country%20Note.pdf](http://www.oecd.org/edu/Italy_EAG2013%20Country%20Note.pdf), accessed on 28.07.2014.

<sup>87</sup>Eurostat, General government expenditure by function (COFOG) [gov\_a\_exp], 28.05.2014, accessed on 25.07.2014.

<sup>88</sup>Ibid.

<sup>89</sup> Art. 117(3) Cost.

<sup>90</sup> Art. 117(2)(n) Cost.

The main measure adopted in the field of education in the period covered by this study is L. 240/10 – the so-called *Riforma Gelmini*, named after the then Minister of Education– which represents the first general reform of the Italian university system since 1923<sup>91</sup>. As this study focuses on mandatory schooling, university education falls beyond its scope.

The main measures<sup>92</sup> affecting mandatory schooling since 2008 aimed to meet the savings and spending efficiency objectives set by Decree-Law 112/2008 (*Decreto Brunetta*)<sup>93</sup>, such as:

- Increasing the student-teacher ratio by 1%;
- Reducing schools' administrative, technical and auxiliary staff by 17%;
- Reorganising schools, classes and curricula; and
- Reducing public expenditure by at least €7.8bn by 2012<sup>94</sup>.

To justify the cuts in public expenditure on education as well as other public sectors, the Decree-Law makes express, if generic, reference to international and EU commitments to stabilise public finances<sup>95</sup>.

However, the reforms also aimed to enhance the teaching of Latin, foreign languages, maths and sciences, law and economics. They also sought to promote a better integration between school and work experiences<sup>96</sup>.

In addition, provision<sup>97</sup> was made to increase the size of school classes to the following:

- About 18 to 29 pupils in pre-primary school classes;
- About 15 to 27 pupils in primary school classes;
- About 18 to 28 pupils in lower secondary school classes;
- About 27 to 30 pupils in upper secondary school classes<sup>98</sup>.

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<sup>91</sup> Capano G. and Moscati R., "They're back on the Gelmini Reform" (*Tornano sulla Riforma Gelmini*), Il Mulino, Vol. 2, 2012, pp. 352-361.

<sup>92</sup> DPR 88/10, DPR 87/10 and DPR 89/09. See also Briguglio A. E., "From Minister Berlinguer to Gelmini Reform: notes to think about the paths of education and training in Italy" (*Dal Ministero Berlinguer alla Riforma Gelmini: Note cursorie per riflettere sugli itinerari della formazione e dell'istruzione in Italia*), Quaderni di Intercultura, 2011, pp. 1-25.

<sup>93</sup> D.L. 112/2008, converted into L. 133/2008. See also Cillo D., "Reform of Education – XVI Legislature (2008-2013): a sum-up of the state of play" (*Riforma Scuola - XVI Legislatura (2008 - 2013): Il quadro della situazione*), 18.04.2013, available at [http://www.edscuola.it/archivio/norme/programmi/riforme\\_scuola\\_xvi\\_legislatura.htm](http://www.edscuola.it/archivio/norme/programmi/riforme_scuola_xvi_legislatura.htm), accessed on 28.07.2014.

<sup>94</sup> Respectively Art.64(1), Art.64(2), Art. 64(4)(b)-(c)-(f-bis) and Art. 64(6) D.L. 112/2008, converted into L. 133/2008. In case 279/2012 before the Constitutional Court, a union and several members of a school's auxiliary staff argued, among other things, that the legislator exceeded its power by conferring the mandate to the public administration of reducing 17% of staff without setting the criteria for its exercise. They considered that this leaves unlimited discretion to the public administration in the adoption of implementing measures to limit public expenditure, for mere budgetary reasons, in contrast with the stated objective of D.L. 112/2008 to reorganise and improve services. They underlined that the D.L. does not require identifying inefficiencies or assess the quality of services and the possible options to reduce expenditure while preserving service quality. The Constitutional Court dismissed their claim by holding that the reduction objective is coherent with a combined reading of the whole D.L. The fact that the plan is itself adopted by the public administration did not seem to affect the Court's assessment. See also Constitutional Court, 200/2009 and 92/2011 and 283/2011.

<sup>95</sup> Recital 3 D.L. 112/2008, converted into L. 133/2008.

<sup>96</sup> Dagna P. (Altalex), "Reform of secondary schools" (*Riordino dei licei e riforma degli istituti tecnici e professionali*), 26.01.2010, available at <http://www.altalex.com/index.php?idnot=48866>, accessed on 28.07.2014.

<sup>97</sup> DPR 81/09.



With a view to implementing the budget goals, measures were taken to assign only one teacher (compared to the previous three) to primary school classes<sup>99</sup>. Moreover, reductions were made to teaching hours, subjects, and staff – both teachers and administrative, technical and auxiliary staff<sup>100</sup>. Finally, a number of schools (two-thirds in Sicily and Sardinia, for example) were merged<sup>101</sup>.

As a result, while the number of pupils increased by nearly 2% between the school years 2007/2008 and 2013/2014, the number of classes and teachers fell by more than 2% and 12%, respectively<sup>102</sup>. The following graph illustrates these changes:

**Figure 1: Percentage variation in pupils (top line), classes (middle line) and teachers (bottom line) compared to school year 2007/2008**



Source: Ministry of Education, University and Research (MIUR)<sup>103</sup>

The reduction of the student-teacher ratio was one of the objectives of the reform and aimed to bring that ratio more in line with European standards. The objective was thus more structural than motivated by the temporary need to cut spending<sup>104</sup>.

It is also worth noting that Italy has the oldest teaching force among OECD countries, with teachers older than 50 years representing 47.6% of teachers in primary schools, 61% of

<sup>98</sup> See Nocera S. (Associazione Italiana Persone Down), "Reorganisation of the school network and class assignment after the Gelmini Reform" (*Riorganizzazione della rete scolastica e formazione delle classi a seguito della riforma Gelmini*), 03.02.2014, available at [http://aipd.it/aipd\\_scuola/riorganizzazione-della-rete-scolastica-e-formazione-delle-classi-a-seguito-della-riforma-gelmini-dpr-8109/](http://aipd.it/aipd_scuola/riorganizzazione-della-rete-scolastica-e-formazione-delle-classi-a-seguito-della-riforma-gelmini-dpr-8109/), accessed on 28.07.2014.

<sup>99</sup> D.L. 137/2008 converted into L. 169/2008.

<sup>100</sup> See FLC CGIL, "Education, Implementing regulations: immediate cuts and destruction of primary schools" (*Scuola, Regolamenti attuativi: tagli e distruzione, da subito, della scuola primaria*), 18.12.2008, available at <http://www.flcgil.it/comunicati-stampa/flc/scuola-regolamenti-attuativi-tagli-e-distruzione-da-subito-della-scuola-primaria.flc>, accessed on 11.08.2014. See also FLC CGIL, "The result of the Gelmini-Tremonti plan: over 30.000 workers in education dismissed in September. The strong opposition of FLC Cgil" (*I risultati del piano Gelmini-Tremonti: a settembre licenziati oltre 30.000 lavoratori della scuola. La ferma opposizione della FLC Cgil*), 23.01.2009, available at <http://www.flcgil.it/scuola/i-risultati-del-piano-gelmini-tremonti-a-settembre-licenziati-oltre-30-000-lavoratori-della-scuola-la-ferma-opposizione-della-flc-cgil.flc>, accessed on 11.08.2014.

<sup>101</sup> IlSecoloXIX.it, "Education, the merging remain: 2100 structures in less than two years! (*Scuola, restano gli accorpamenti: 2.100 presidi in meno in due anni*)", 08.07.2014, available at <http://www.ilsecoloxix.it/p/italia/2014/07/08/ARMcOv6-presidi-restano-accorpamenti.shtml>, accessed on 11.08.2014.

<sup>102</sup> MIUR, Focus: "Locations, students, classrooms and teaching staff of public education for the year 2013/2014" (*Sedi, alunni, classi e dotazioni organiche del personale docente della scuola statale A.S. 2013/2014*), available at [http://www.istruzione.it/allegati/avvio\\_anno\\_scolastico2013\\_2014\\_10.pdf](http://www.istruzione.it/allegati/avvio_anno_scolastico2013_2014_10.pdf), accessed on 28.07.2014.

<sup>103</sup> Ibid.

<sup>104</sup> Interviews with a Director of the Ministry of Economy and Finance. The interviews were held on 17.10.2014 and on 20.10.2014.

those in slower secondary schools, and 62.5% of those in upper secondary schools<sup>105</sup>. This indicator is likely to worsen following the *de facto* freezing of staff turnover since 1999<sup>106</sup>.

Teachers' salaries in Italy are lower than in most other OECD countries. The starting salary for teachers in upper secondary schools in Italy is 6% lower than OECD average. The difference is even wider for experienced teachers – after 15 years, experienced teachers in upper secondary schools in Italy get paid 11% less than OECD average<sup>107</sup>. Law 122/2010 and DPR 122/2013 have contributed to this gap by freezing teachers' salaries since 2009<sup>108</sup>. Teachers' salaries are, however, in line with the national average and closer to OECD average than average wages in the wider economy<sup>109</sup>.

**Table 6: Teachers' salaries compared to OECD and national averages<sup>110</sup>**

	Italy	OECD	Difference
Average starting salary for teachers in upper secondary education <sup>111</sup>	€21,980	€23,422	-6.1%
Average salary for teachers in upper secondary education with 15 years of experience <sup>112</sup>	€27,591	€31,130	-11.4%
Average salary across all population <sup>113</sup>	€ 25,083	€ 30,641	-18.1%

Source: OECD

More recently, Decree-Law 104/2013<sup>114</sup> somewhat reversed the savings trend by earmarking €15m for wireless connectivity in secondary schools and €8m for the purchase of textbooks and e-books to be lent free of charge to underprivileged students, as well as other funds to prevent early school dropout, improve curricula and career counselling<sup>115</sup>. In addition, €10m were invested in the training of teachers and €450m for improving school buildings<sup>116</sup>.

<sup>105</sup> OECD, Education at a Glance 2013: Country Note: Italy, available at [http://www.oecd.org/edu/Italy\\_EAG2013%20Country%20Note.pdf](http://www.oecd.org/edu/Italy_EAG2013%20Country%20Note.pdf), accessed on 28.07.2014.

<sup>106</sup> Interview with the Secretary General of a Workers' Union. The interview was held on 07.10.2014.

<sup>107</sup> Ibid.

<sup>108</sup> OrizzonteScuola.it, "The DEF confirms wage freezes for teaching staff and Ata until 2018" (*Il DEF conferma il blocco degli stipendi del personale insegnante e Ata fino al 2018*), 11.04.2014, available at <http://www.orizzontescuola.it/news/def-conferma-blocco-degli-stipendi-del-personale-insegnante-e-ata-fino-al-2018>, accessed on 28.07.2014.

<sup>109</sup> OECD Better Life Index, available at <http://www.oecdbetterlifeindex.org/topics/jobs/>, accessed on 11.08.2014.

<sup>110</sup> Data in the sources is in US dollars. Conversion to Euro was done at the 11.08.2014 rate of USD 1 = EUR 0.75.

<sup>111</sup> OECD, Education at a Glance 2013: Country Note: Italy, available at [http://www.oecd.org/edu/Italy\\_EAG2013%20Country%20Note.pdf](http://www.oecd.org/edu/Italy_EAG2013%20Country%20Note.pdf), accessed on 28.07.2014.

<sup>112</sup> Ibid.

<sup>113</sup> OECD Better Life Index, available at <http://www.oecdbetterlifeindex.org/topics/jobs/>, accessed on 11.08.2014.

<sup>114</sup> D.L. 104/2013 converted into L. 128/2013.

<sup>115</sup> Altalex, "School: the coordinated text of the Law Decree 'Education to restart' in the Gazette" (*Scuola: il testo coordinato del Dl "L'Istruzione Riparte" in Gazzetta*), 12.11.2013, available at <http://www.altalex.com/index.php?idnot=64385>, accessed on 28.07.2014.

<sup>116</sup> Rossi-Doria M. (MIUR), "Work on progress: Financial Statement May 2013-February 2014" (*Lavori in Corso: Bilancio di mandato: Maggio 2013 - Febbraio 2014*).available at <http://www.edscuola.eu/wordpress/wp-content/uploads/2014/02/lavoriincorsodefinitivo-140221084346-phpapp01.pdf>, accessed on 28.07.2014.

## 2.4. The impact of the measures

The spending cuts introduced by the measures reviewed in the previous subsection worsened an already existing long-term trend: Italy spends less than other EU Member States on education<sup>117</sup>. The cuts have been particularly resented in some quarters, for example among unions of education employees, which see the measures as motivated by the notion that education should *not* be guaranteed for all<sup>118</sup>. To them, the measures do not represent a coherent reform, but only a slashing of funding for public schools which is seen as directly lowering the quality of education and as enslaving education to a purely economic logic<sup>119</sup>. Other experts, however, think that the measures did not significantly hamper the right to education – even though some organisational uncertainty, typical of all periods of change, may have somewhat affected students<sup>120</sup>.

With particular regard to the merger of schools, it should be noted that Italy has historically favoured the establishment of small local schools and universities which are close to students and their families. There is, however, a trade-off between accessibility and the quality of schooling. The merger of schools could help improve quality, even though there may be spill-over effects on ease of access<sup>121</sup>. Quality is indeed seen as a problem even by the unions, which are also concerned about the already high school drop-out rate<sup>122</sup>. In Italy, the school drop-out rate was 17% in 2013 – down from 18.2% in 2011, but still significantly higher than the EU average of 12%<sup>123</sup>. A study found that, in addition to the ‘traditional’ causes for dropping out of school, which are linked to social deprivation, new ones are emerging – a sense that studying and obtaining an educational qualification will not be rewarded<sup>124</sup>.

The spending cuts triggered protests in more than 100 Italian cities. Students contested reductions in expenditure on public schools and lamented that, while funds were cut for public schools, additional funds were granted to private institutions<sup>125</sup>. Indeed, it was public schools that were seen as mainly affected by the ‘costs and contradictions of the economic

<sup>117</sup>Interviews with a Director of the Ministry of Economy and Finance. The interviews were held on 17.10.2014 and on 20.10.2014.

<sup>118</sup>Interview with the Secretary General of a Workers’ Union. The interview was held on 07.10.2014.

<sup>119</sup>Ibid.

<sup>120</sup>Interviews with a Director of the Ministry of Economy and Finance. The interviews were held on 17.10.2014 and on 20.10.2014.

<sup>121</sup>Ibid.

<sup>122</sup>Interview with the Secretary General of a Workers’ Union. The interview was held on 07.10.2014.

<sup>123</sup>Istat, “Bes Report 2014” (*Rapporto Bes 2014*), 26.06.2014, available at <http://www.istat.it/it/archivio/126613>, accessed on 25.07.2014.

<sup>124</sup>ISFOL, “The dynamics of educational drop-out: from the analysis of paths at risk to the reactivation of supporting channels” (*Le dinamiche della dispersione formativa: dall’analisi dei percorsi di rischio alla riattivazione delle reti di supporto*), available at <http://bw5.cilea.it/bw5ne2/opac.aspx?web=ISFL&opac=Default&ids=18674>, accessed on 10.12.14.

<sup>125</sup>Corriere.it, “Students’ rights and the ‘no’ to the Gelmini Reform: schools on protest on Wednesday 17 in over 100 cities” (*Diritti degli studenti e no a ddl Gelmini: Mercoledì 17 scuola in piazza in 100 città*), 16.11.2010, available at [http://www.corriere.it/cronache/10\\_novembre\\_16/scuola-mercoledì-giornata-internazionale-studente-proteste-italia\\_a898c3dc-f191-11df-8c4b-00144f02aabc.shtml](http://www.corriere.it/cronache/10_novembre_16/scuola-mercoledì-giornata-internazionale-studente-proteste-italia_a898c3dc-f191-11df-8c4b-00144f02aabc.shtml), accessed on 28.07.2014. According to Ministerial Decrees published on the website of an organisation of catholic schools, the Italian State assigned to private (catholic and other) schools the following contributions: €252m in 2009, €245m in 2011, €237m in 2012, €276m in 2013, €223m in 2014. See Fidae, “Educational Equality - Funding” (*Parità scolastica (Finanziamenti)*) available at [http://www.fidae.it/asp/parita\\_finanziamenti.asp](http://www.fidae.it/asp/parita_finanziamenti.asp), accessed on 11.08.2014. Note that these figures only concern State expenditure (thus, they do not include expenditure by local governments) and cover both primary, secondary and pre-primary schools.

crisis and austerity policies'. However, the contribution to private schools from the State budget has not significantly changed during the crisis<sup>126</sup>.

The funding reductions also impacted on auxiliary services such as cleaning. It was reported that, in the North of Italy, school managers would have to choose which parts of the schools to clean, jeopardising minimum hygiene standards<sup>127</sup>.

The OECD gives a more favourable evaluation of the reforms, noting that the savings were mainly achieved by moderately increasing teaching time for teachers and reducing the time students spend in classes, and without negative effects on learning outcomes as assessed in PISA tests<sup>128</sup>.

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<sup>126</sup> Del Giudice F. (IlFattoQuotidiano.it), "Cuts to public education, exemptions for the Catholics. Why?" (*Tagli alla scuola pubblica, esenzioni alle cattoliche. Perché?*), 03.12.2012, available at <http://www.ilfattoquotidiano.it/2012/12/03/tagli-alla-scuola-pubblica-esenzioni-alle-cattoliche-perche/434176/>, accessed on 28.07.2014. A popular consultation against public contributions to private schools was held in Bologna in May 2013. Of the 85,934 people that casted their vote (28.7% of total eligible population), 50,517 voted to terminate the contribution (59% of voters, less than 17% of total eligible population). See Internazionale.it Bologna says no to private schools" (*A Bologna vince il no alla scuola privata*), 27.05.2013, available at <http://www.internazionale.it/news/italia/2013/05/27/a-bologna-vince-il-no-alla-scuola-privata/>, accessed on 11.08.2014.

<sup>127</sup> Lorenzini E. (Corriere.it), "Venice, cuts in cleaning for 65 schools: 'we reached the bottom, hygiene risk for children'" (*Venezia, pulizie tagliate in 65 scuole: «Siamo all'osso, rischio igiene per i bambini»*), 09.12.2013, available at <http://corrieredelveneto.corriere.it/vicenza/notizie/cronaca/2013/9-dicembre-2013/-pulizie-tagliate-65-scuole-rischio-igiene-bambini-2223769525788.shtml>, accessed on 28.07.2014.

<sup>128</sup> OECD, Education at a Glance 2013: Country Note: Italy, available at [http://www.oecd.org/edu/Italy\\_EAG2013%20Country%20Note.pdf](http://www.oecd.org/edu/Italy_EAG2013%20Country%20Note.pdf), accessed on 28.07.2014.

### 3. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT TO HEALTHCARE

#### KEY FINDINGS

- The most important recent reform of the Italian healthcare sector was Decree-Law 158/2012 (the so-called *Decreto Balduzzi after the then Minister of Health*). However, measures to reduce public spending in the sector were mainly introduced by annual Finance Acts, by agreements between the State and the Regions (health pacts) and by other measures.
- Regional budget deficits in the healthcare sector have been made subject to tight caps. Where a Region approaches or exceeds the cap, a correction plan must be established that is agreed by the Government and is binding upon the Region. As a result of this system, the Constitutional Court has struck down regional laws that, for example, granted reimbursement of medical expenses to cancer patients or failed to sufficiently reduce the number of hospital beds, because they were judged as contrasting with national and EU public finance objectives.
- Other measures required public healthcare bodies to renegotiate or terminate supply and service contracts that were significantly more expensive than average. Citizens began to be charged for certain health services that were previously free. Significant cuts were made on pharmaceuticals.
- There are indications of significant waste of public resources in the Italian healthcare system, which suggest that reductions in spending could be achieved without compromising service quality or the delivery of basic service standards.
- There are however concerns that access to public healthcare services may be hampered by higher prices to users, the reduction of hospital beds and the closure of small hospitals (which has not always been in step with the provision of alternative services). As a result, patients who do not have the wherewithal to pay for private healthcare may face longer waiting times and/or postpone or forgo non-urgent treatments. In addition, the cuts on pharmaceutical spending may reduce access to more expensive and/or newer drugs.

#### 3.1. International and EU legal framework for the protection of the right to healthcare

Article 12 of the ICESCR guarantees the highest attainable standard of health. This right is repeated in the Constitution of the World Health Organisation<sup>129</sup>. Right to health does not mean the right to be healthy, but contains different freedoms and entitlements, where the entitlements represent the right to a system of health protection, which provides equality of opportunity for people to enjoy the highest attainable standard of health. Nonetheless, a line must be drawn between the right to health and the right to healthcare. The right to health is broader and means that 'governments must generate conditions in which everyone can be as healthy as possible<sup>130</sup>'. This entails ensuring availability of health

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<sup>129</sup>Constitution of the World Health Organisation, preamble.

<sup>130</sup> WHO, *Factsheet 323 on the right to health*, available at: <http://www.who.int/mediacentre/factsheets/fs323/en/> (last accessed 23 October 2014).

services, healthy and safe working conditions, adequate housing and nutritious food. The right to healthcare, on the other hand, is limited only to the first component – the right to have access to health services. The right to health, and implicitly the right to healthcare, needs to meet the requirements of: availability, accessibility, acceptability and quality<sup>131</sup>. This entitlement indeed represents the right to healthcare. The right to health (or healthcare) has been re-emphasised in Article 12 the CEDAW, Article 25 of the CRPD, Article 24 of the CRC and Article 11 of both the European Social Charter and the Revised European Social Charter.

Article 35 of the EU Charter guarantees the access to preventive healthcare and the right to benefit from medical treatment under the conditions established by national laws and practices.

### 3.2. State and Regional competences in the healthcare sector

The Italian Constitution recognises health as a fundamental right of individuals and a collective interest of society. It guarantees free healthcare for the underprivileged<sup>132</sup>.

Healthcare is a legislative competence shared between the State and the Regions<sup>133</sup>: the State is competent for setting the basic service standards<sup>134</sup> that must be secured throughout the country<sup>135</sup>; the Regions organise the healthcare system to ensure delivery of (at least) those basic service standards<sup>136</sup>. The State and the Regions together determine, by means of agreements called Health Pacts (*Patti per la salute*), the level of public healthcare funding as well as relevant governance and monitoring arrangements<sup>137</sup>.

The Constitution also regulates the allocation of administrative<sup>138</sup> and financial<sup>139</sup> competences between the State and the regions – most notably, it allows the Government to intervene instead of the regions when necessary to ensure basic service standards are actually attained (compulsory administration)<sup>140</sup>.

The measures adopted in the field of healthcare since 2008 can be broadly divided into two groups: general measures reforming the organisation and governance of the healthcare system, and specific measures targeting the financial aspect of the system.

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<sup>131</sup>United Nations Committee on Economic, Social and Cultural Rights, 'General Comment No. 14 – The right to highest attainable standard of health', UN Doc. (E/C.12/2000/4).

<sup>132</sup> Art. 32(1) Cost.

<sup>133</sup> Art. 117(3) Cost.

<sup>134</sup>*Livelli essenziali di assistenza* or LEA.

<sup>135</sup> Art. 117(2)(m) Cost.

<sup>136</sup> MEF, "Monitoring the healthcare expenditure: Report n.1" (*Il monitoraggio della spesa sanitaria: Rapporto n. 1*), 2014, available at [http://www.rgs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Spesa-soci/Attivit-monitoraggio-RGS/2014/il\\_monitoraggio\\_del\\_sistema\\_sanitario.pdf](http://www.rgs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Spesa-soci/Attivit-monitoraggio-RGS/2014/il_monitoraggio_del_sistema_sanitario.pdf), accessed on 25.08.2014.

<sup>137</sup>Ibid.

<sup>138</sup> Art. 117(6) Cost. and Art. 118 Cost.

<sup>139</sup> Art. 117(2)-(3) Cost. and Art. 119 Cost.

<sup>140</sup> Art. Art. 120(2) Cost. Chirulli P. and D'Andrea P.I. (Federalismi.it), "The distribution of powers between State and Regions" (*Il riparto di competenze tra Stato e Regioni*), 06.02.2014, available at [http://www.federalismi.it/focus/sanita/focus\\_article.cfm?Artid=24115&content=Il+riparto+di+competenze+tra+S+tato+e+Regioni&content\\_author=P,+Chirulli,+P.I.+D'Andrea#.U\\_cQn7mKD7I](http://www.federalismi.it/focus/sanita/focus_article.cfm?Artid=24115&content=Il+riparto+di+competenze+tra+S+tato+e+Regioni&content_author=P,+Chirulli,+P.I.+D'Andrea#.U_cQn7mKD7I), accessed on 22.08.2014.

### 3.3. Decreto Balduzzi: a general reform of public healthcare

The latest wide-ranging reform of the public healthcare system was made by Decree-Law 158/2012 (so-called *Decreto Balduzzi* after the then Minister of Health)<sup>141</sup>. The Decree-Law aimed to improve the quality and responsiveness of the healthcare system by reducing hospitalisation, creating a local healthcare network of 'complex primary care units' integrating various healthcare professionals and providing round-the-clock services<sup>142</sup>. Moreover, the reform sought to reduce public healthcare spending by €8bn between 2012 and 2014. It sought to cut 7,000 hospital beds (from 4 to 3.7 beds per 1,000 inhabitants, from 18% to 16% hospitalisation rate<sup>143</sup>) and reform public procurement in the sector<sup>144</sup>. The following table provides a succinct overview of the provisions of the Decree-Law which are most relevant for the purposes of this study.

**Table 7: Overview of the main reforms introduced by the *Decreto Balduzzi***<sup>145</sup>

#### 'Defensive care' – limitation of doctors' civil and criminal liability

The term 'defensive care' refers to unnecessary medical exams prescribed by doctors in order to avoid civil liability for damages. With a view to curbing this practice, the Decree-Law provides that doctors are not (civilly or criminally<sup>146</sup>) liable for the damage they cause when acting in accordance with hospital guidelines and good practices<sup>147</sup>. In addition, the Decree-Law caps the amount of payable damages<sup>148</sup>.

#### Basic service levels

The Decree-Law re-determines basic service levels by also including rare and emerging diseases.

#### Medicines

The Decree-Law provides for measures to, inter alia, guarantee that innovative medicines are made available in all the Regions in a timely manner; update the national pharmacopoeia by deleting obsolete medicines and insert more innovative drugs; test new packaging for medicines which is customised to needs and avoids waste.

#### Provision of private medical services in public hospitals ('*intramoenia*')

The Decree-Law regulates the practice of hospital doctors providing priced medical services outside working hours but within public hospitals. It requires hospitals to review the availability of space for such activities and to record all services and payments in order to

<sup>141</sup>Converted into L. 189/2012.

<sup>142</sup>Petmesidou M. et al., South European Healthcare Systems under Harsh Austerity: A Progress–Regression Mix?, South European Society and Politics, Vol. 19, No 3, 2014, pp. 331-352.

<sup>143</sup>Ibid.

<sup>144</sup>Gugiatti A. and Longo F. (Lavoce.info), "Healthcare after the spending review" (*La sanità dopo la spending review*), 18.07.2012, available at <http://www.lavoce.info/la-sanita-dopo-la-spending-review/>, accessed on 27.08.2014.

<sup>145</sup> In addition to the specific sources mentioned in subsequent footnotes, the information in this table is from Altalex, "The Balduzzi Decree on healthcare in 14 keypoints" (*Decreto Balduzzi sulla sanità in 14 punti*), 06.09.2012, available at <http://www.altalex.com/index.php?idnot=58739>, accessed on 25.08.2014.

<sup>146</sup> The extension of the limitation to criminal liability was determined by Parliament when converting the *Decreto Balduzzi* into law. See Ferrando G. (Altalex), "Criminal medical liability after the Balduzzi reform" (*La responsabilità penale del medico dopo la riforma Balduzzi*), 08.10.2013, available at <http://www.altalex.com/index.php?idnot=64700>, accessed on 25.08.2014.

<sup>147</sup>Except where the damage resulted from intention or gross negligence.

<sup>148</sup> Capitani F. G. (IlSole24Ore.com), "The Balduzzi Decree and the medical liability: an update" (Il "Decreto Balduzzi" e la responsabilità medica: gli aggiornamenti), 19.10.2012, available at <http://www.diritto24.ilsole24ore.com/civile/responsabilita/primiPiani/2012/10/il-decreto-balduzzi-e-la-responsabilita-medica-le-linee-guida-ospedaliere.php>, accessed on 25.08.2014.

enable controls. Provision is made for a share of the revenues to accrue to the hospital.

### Local healthcare network

The Decree-Law mandates Regions to establish comprehensive health centres, which should be staffed with several doctors with different specialisations. The health centres should coordinate their services with hospitals in order to guarantee constant availability of primary health services while reducing hospitalisation<sup>149</sup>.

### More transparency in hospital managers' appointments

Candidates for hospital manager posts will be reviewed by a panel of independent experts. Each candidate's dossier should prove adequate managerial experience in the sector. Regional authorities will retain competence for appointing hospital managers, but they will have to choose from lists of candidates deemed suitable by the expert panel.

**Source:** Multiple sources (see footnotes)

## 3.4. Cutting spending: overview of austerity measures

While the *Decreto Balduzzi* brought about a systematic reform of healthcare, spending in the sector is primarily determined through the annual financial laws, State-Regions health pacts, and other measures. The latter mainly consisted of a high number of Decree-Laws<sup>150</sup>.

The following paragraphs provide an overview of the most notable austerity measures, some of which justified cuts by referencing the need to comply with EU obligations. However, these references are usually generic and do not specify their legal basis. For example, Art. 79(1) of D.L. 112/2008<sup>151</sup> refers to 'the purposes of ensuring compliance with EU obligations and the achievement of public finance objectives', without specifying which exact obligations the measure seeks to fulfil.

### 3.4.1. Mandatory deficit reduction and compulsory administration of the Regions

On the basis of a Health Pact<sup>152</sup>, the Finance Act 2010<sup>153</sup> introduced new measures to limit Regions' budget deficits in the healthcare sector to 5%<sup>154</sup>. Regions reaching or exceeding the cap have to establish a correction plan (*piano di rientro*)<sup>155</sup> to achieve budget equilibrium within, at most, three years, without compromising basic service standards. The correction plan is subject to the approval of the central Government and its implementation is periodically monitored.

<sup>149</sup>ADICONSUM, "The reform of Healthcare (Balduzzi Decree)" (*La riforma della sanità (Decreto Balduzzi)*), available at [http://www.adiconsum.it/files/guide\\_tematiche/RIFORMA%20SANITARIA.pdf](http://www.adiconsum.it/files/guide_tematiche/RIFORMA%20SANITARIA.pdf), accessed on 22.08.2014.

<sup>150</sup>Interviews with a Director of the Ministry of Economy and Finance. The interviews were held on 17.10.2014 and on 20.10.2014..

<sup>151</sup>converted into L. 133/2008.

<sup>152</sup>"Standing Conference for relations between the State, Regions and Autonomous Provinces of Trento and Bolzano, Pact on Health for 2010-2012" (*Conferenza permanente per i rapporti tra lo stato le regioni e le province autonome di Trento e Bolzano, Patto per la salute per gli anni 2010-2012*), 03.12.2009, available at <http://www.trovanorme.salute.gov.it/norme/dettaglioAtto?id=31789>, accessed on 25.08.2014.

<sup>153</sup> L. 191/2009. See, in particular, Art. 2(77 ff.).

<sup>154</sup>See Parliamentary issues: the control of healthcare expenditure" (*Temi dell'attività Parlamentare: Il controllo della spesa sanitaria*), available at <http://leg16.camera.it/465?area=8&tema=34&Il+controllo+della+spesa+sanitaria>, accessed on 22.10.2014.

<sup>155</sup> Correction plans date back to 1998 (see Art. 28(11)-(12) of L. 448/1998), i.e. long before the recent crisis.



If the correction plan is not submitted or approved, the Government exercises its constitutional prerogative to directly intervene to establish and implement it (compulsory administration, which is entrusted to the President of the Region). A number of effects are automatically triggered: raises in regional taxes; all voluntary transfers of funds from the State to the Region are suspended; director-generals and regional council members competent for the health sector are dismissed.

Once a correction plan is in place, its provisions bind the Region, which must repeal any existing measure (e.g. regional laws) and refrain from adopting new ones which run contrary to the plan. If the Region fails to comply, the Government can again exercise its constitutional prerogative to intervene directly to ensure compliance (compulsory administration, again entrusted to the President of the Region).

In addition, the following actions were taken to address specific cost drivers relevant to the delivery of basic service standards and investment in the healthcare sector:

**Table 8: Selected measures to contain expenditure on basic service standards and public investment in the healthcare sector**

Cost driver	Cost control measure
<ul style="list-style-type: none"> <li>Investment policies implemented without resources</li> </ul>	<ul style="list-style-type: none"> <li>Harmonisation of regional public healthcare accounts</li> <li>Implementation of harmonised accounting principles concerning regional healthcare investments</li> <li>Monitoring of investment costs</li> <li>Allocation of responsibility for investments without resources</li> </ul>

**Source:** Ministry of Economy and Finance<sup>156</sup>

The impact of Regional healthcare budget constraints can be better appreciated by considering some examples of litigation between the Government and the Regions before the Constitutional Court, whose case law holds that the State may lawfully constrain expenditure by Regions with a view to ensuring overall budget equilibrium in compliance with national and EU objectives.

For example, in case 104/2013, a regional law providing for the reimbursement of certain medical expenses to cancer patients was declared unconstitutional (see section 9.2 for further details). The reason was that the law granted patients residing in the Region a higher level of healthcare services than that prevailing at national level and, in so doing, it contrasted with budget objectives<sup>157</sup>. In another case<sup>158</sup>, the Region had agreed to a correction plan which led to the reduction of hospital beds but, with a subsequent law, the Region excluded hospital beds for certain patients<sup>159</sup> from the constraints of the plan. The

<sup>156</sup>MEF, Il monitoraggio della spesa sanitaria: Rapporto n. 1, 2014, available at [http://www.rgs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Spesa-soci/Attivit-monitoraggio-RGS/2014/il\\_monitoraggio\\_del\\_sistema\\_sanitario.pdf](http://www.rgs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Spesa-soci/Attivit-monitoraggio-RGS/2014/il_monitoraggio_del_sistema_sanitario.pdf), accessed on 25.08.2014.

<sup>157</sup> Equivalent conclusions were also reached in Constitutional Court judgements 79/2013 and 51/2013.

<sup>158</sup>Case 91/2012.

<sup>159</sup>So-called 'acuti', i.e. patients other than healthy babies, adults in rehabilitation or long-term hospitalisation. See Ministero della Salute, Glossario, available at [http://www.salute.gov.it/portale/temi/p2\\_6.jsp?lingua=italiano&id=3669&area=ricoveriOspedali&menu=vuoto](http://www.salute.gov.it/portale/temi/p2_6.jsp?lingua=italiano&id=3669&area=ricoveriOspedali&menu=vuoto) accessed on 22.10.2014.

government challenged the law before the Constitutional Court, which declared it was unconstitutional.

### 3.4.2. Public procurement: renegotiation or termination of supply and service contracts

D.L. 95/2012<sup>160</sup> (so-called *Spending Review*) required that public supply and service contracts in the healthcare sector which are priced over 20% higher than average<sup>161</sup>, to be renegotiated. In case the renegotiation does not lead to an agreement with the supplier or service provider, the contract may be unilaterally terminated by the contracting authority without incurring any liability<sup>162</sup>. The same Decree-Law further required pharmacies to apply a mandatory price reduction towards the public healthcare service.

Furthermore, the D.L. mandated Regions to reduce hospital beds from an average of 4 to 3.7 for every thousand inhabitants.<sup>163</sup>

Together with cuts on pharmaceuticals' spending, the renegotiation or termination of public supply and service contracts can be seen as one of the main measures that has led to significant deficit reductions (see Table 9 and Figure 2 below)<sup>164</sup>.

In addition, the following actions were taken to address specific drivers of public procurement expenditure:

**Table 9: Selected measures to contain expenditure on public procurement**

Cost driver	Cost control measure
<ul style="list-style-type: none"> <li>No centralised or electronic procurement</li> <li>Scarce monitoring of stocks, leading to more purchases than necessary</li> </ul>	<ul style="list-style-type: none"> <li>More centralised procurement</li> <li>Analysis of actual needs</li> </ul>

Source: Ministry of Economy and Finance<sup>165</sup>

### 3.4.3. Introduction of fares for medical services (so-called 'ticket')

D.L. 98/2011<sup>166</sup> required patients to pay €10 for specialised public ambulatory healthcare<sup>167</sup> and €25 for public hospital emergency healthcare not leading to hospitalisation<sup>168</sup>. The

<sup>160</sup>Converted into L. 135/2012, amending D.L. 98/2011 converted into L. 111/2011.

<sup>161</sup> Reference prices are determined by an observatory on public contracts.

<sup>162</sup> MEF, Il monitoraggio della spesa sanitaria: Rapporto n. 1, 2014, available at [http://www.rgs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Spesa-soci/Attivit-monitoraggio-RGS/2014/il\\_monitoraggio\\_del\\_sistema\\_sanitario.pdf](http://www.rgs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Spesa-soci/Attivit-monitoraggio-RGS/2014/il_monitoraggio_del_sistema_sanitario.pdf), accessed on 25.08.2014.

<sup>163</sup>Altalex, "The Spending Review Bis in 18 keypoints" (*Spending review bis in diciottopunti*), 17.08.2012, available at <http://www.altalex.com/index.php?idnot=18857>, accessed on 28.08.2014.

<sup>164</sup>Interview with a University Professor and President of a centre specialising in economic and organisational research in the field of healthcare. The interview was held on 14.10.2014.

<sup>165</sup>MEF, Il monitoraggio della spesa sanitaria: Rapporto n. 1, 2014, available at [http://www.rgs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Spesa-soci/Attivit-monitoraggio-RGS/2014/il\\_monitoraggio\\_del\\_sistema\\_sanitario.pdf](http://www.rgs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Spesa-soci/Attivit-monitoraggio-RGS/2014/il_monitoraggio_del_sistema_sanitario.pdf), accessed on 25.08.2014.

<sup>166</sup>Converted into L. 111/2011.

<sup>167</sup> Originally introduced by L. 296/2006, then temporarily abolished by D.L. 112/2008 converted into L. 133/2008, then reintroduced by D.L. 98/2011. Regions were given the option to apply equivalent alternative measures to ensure patients' contribution to covering the costs of the medical services they used.

<sup>168</sup> Note, however, that at least some regions have introduced higher fares for these services and that other fares apply on pharmaceuticals, which fall within regional competence. See Sabelli R. (Associazione per i Diritti degli

constitutionality of the measure was challenged before the Constitutional Court, which found the measure unconstitutional only to the extent that it empowered the Government to adopt regulatory acts to implement it. Other unconstitutionality challenges were instead dismissed<sup>169</sup>.

#### 3.4.4. Containing expenditure on healthcare staff

The Finance Act 2010 limited expenditure on healthcare staff in the years from 2010 to 2014 (later extended to 2015 by D.L. 95/2012) to 1.4% below 2004 levels. The Finance Act 2011<sup>170</sup> established pay and hiring freezes for healthcare personnel<sup>171</sup>.

In addition, the following actions were taken to address specific drivers of healthcare staff expenditure:

**Table 10: Selected measures to contain expenditure on healthcare staff**

Cost driver	Cost control measure
<ul style="list-style-type: none"> <li>• Increase in staff numbers</li> <li>• Contract renewals above inflation</li> <li>• Lack of control on contract renewals</li> </ul>	<ul style="list-style-type: none"> <li>• Total or partial block of turnover</li> <li>• Block of contract renewals</li> <li>• Regional control of hiring decisions</li> </ul>

**Source:** Ministry of Economy and Finance<sup>172</sup>

### 3.5. Data on public healthcare expenditure since 2008

It is difficult to reconstruct the ultimate impact of austerity measures on public healthcare spending by looking at the flurry of often temporary and subsequently amended austerity provisions. A more straightforward approach is to consider, ex post, the changes in macroeconomic indicators on public healthcare funding.

Table 11 provides a snapshot of public expenditure on healthcare in Italy since 2008. The data show that, while public healthcare expenditure increased slightly between 2008 and 2013 in absolute terms, it did so more slowly than inflation, leading to a decrease in real terms. Moreover, it is not established that the level of public funding was adequate in 2008 or in any subsequent year. Indeed, the subsequent paragraph of this Section suggests otherwise.

For the moment, it is relevant to note the trend followed by public healthcare expenditure over the period. The upward trend came to a halt in the years 2011-2012 and finally reversed into a decline in 2013. Also importantly, the healthcare budget deficit decreased over the period – in 2013 it was one and a half times smaller than in 2008.

As a percentage of GDP, public healthcare spending remained around 7% over the period. This is much lower than many other EU Member States: France, Germany, the Netherlands,

Utenti e Consumatori), "Prescription charges: a guide" (*Ticket sanitari: Una guida*), 24.09.2012, available at [http://sostonline.aduc.it/scheda/ticket+sanitari+guida\\_19377.php](http://sostonline.aduc.it/scheda/ticket+sanitari+guida_19377.php), accessed on 14.01.2015.

<sup>169</sup>Constitutional Court, 187/2012.

<sup>170</sup> L. 220/2010.

<sup>171</sup>Petmesidou M. et al. (2014), pp. 331-352.

<sup>172</sup>MEF, Il monitoraggio della spesa sanitaria: Rapporto n. 1, 2014, available at [http://www.rgs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Spesa-soci/Attivit-monitoraggio-RGS/2014/il\\_monitoraggio\\_del\\_sistema\\_sanitario.pdf](http://www.rgs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Spesa-soci/Attivit-monitoraggio-RGS/2014/il_monitoraggio_del_sistema_sanitario.pdf), accessed on 25.08.2014.

Denmark, and Belgium spend (significantly) more than 10% of GDP on healthcare; Sweden, Spain, Slovenia, Slovakia, Finland and the Czech Republic are at or above 8%<sup>173</sup>.

It is important to note that, in Italy, 77% of healthcare funding comes from public sources. But even where private healthcare spending is added, expenditure in Italy (equivalent to 9.2% of GDP) still remains below OECD average (9.3%) and lower than in the United States, the Netherlands, France, Switzerland and Germany<sup>174</sup>.

The graphs below (Figure 2) confirm these figures. In addition, they show that, in recent years, expenditure on pharmaceuticals in particular has fallen significantly.

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<sup>173</sup> Eurostat, European social statistics: 2013 edition, 2013, available at <http://bookshop.europa.eu/en/european-social-statistics-pbKSFP13001/>, accessed on 27.08.2014.

<sup>174</sup> OECD, OECD Health Statistics 2014: How does Italy compare?, 2014, available at <http://www.oecd.org/els/health-systems/Briefing-Note-ITALY-2014.pdf>, accessed on 27.08.2014.

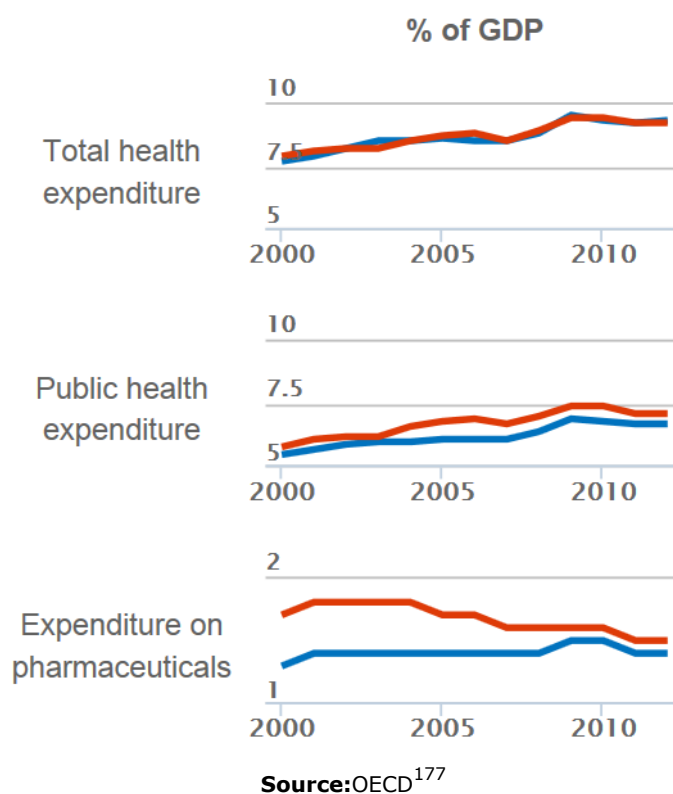
**Table 11: Public expenditure on healthcare<sup>175</sup> (in thousand euros)**

	2008	2009	2010	2011	2012	2013
<b>Healthcare expenditure</b>	98,948,382	109,409,923	110,573,889	110,414,178	110,391,990	110,391,990
<b>GDP</b>	1,575,143,875	1,519,695,116	1,551,885,608	1,579,946,416	1,566,911,583	1,560,023,803
<b>% GDP</b>	6.8%	7.2%	7.1%	7.0%	7.0%	7.0%
<b>Year-to-year variation</b>	+3.3%	+2.8%	+1.1%	-0.1%	0.0%	-1.0%
<b>Inflation rate</b>	+3.5%	+0.8%	+1.6%	+2.9%	+3.3%	+1.3%
<b>Budget deficit</b>	-4.847.783	-4.834.532	-3.924.219	-2.697.355	-1.983.462	-1.857.649

**Source:** Ministry of Economy and Finance<sup>176</sup>

<sup>175</sup>Spesa sanitaria corrente.

<sup>176</sup>MEF, Il monitoraggio della spesa sanitaria: Rapporto n. 1, 2014, available at [http://www.rgs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Spesa-soci/Attivit-monitoraggio-RGS/2014/il\\_monitoraggio\\_del\\_sistema\\_sanitario.pdf](http://www.rgs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Spesa-soci/Attivit-monitoraggio-RGS/2014/il_monitoraggio_del_sistema_sanitario.pdf), accessed on 25.08.2014. Data on inflation is annual data from Eurostat, HICP - inflation rate [tec00118], updated 24.06.2014, accessed on 27.08.2014.

**Figure 2: Comparisons in healthcare expenditure between Italy (red, top line) and OECD average (blue, bottom line)**

### Pharmaceutical spending: A -14% cut

OECD reports that the Italian government's efforts to reduce deficits during the crisis led to health spending falling in recent years. In particular, pharmaceutical expenditure went down by 14% in real terms between 2008 and 2012, mainly as a result of tighter budgets for regions, of reduced wholesale and pharmacy margins, and of price cuts on generics<sup>178</sup>.

Looking forward, the recent Health Pact 2014-2016 concluded on 10 July 2014, envisages that public healthcare funding will total about €109.9bn in 2014, €112.1bn in 2015 and €115.4bn in 2016 – i.e. no further cuts to public healthcare spending are envisaged<sup>179</sup>.

Because public healthcare funds are actually spent by regional healthcare systems, it is important to see how expenditure evolved over the period at regional level. The graph below shows rather clearly that the above-mentioned system of correction plans and

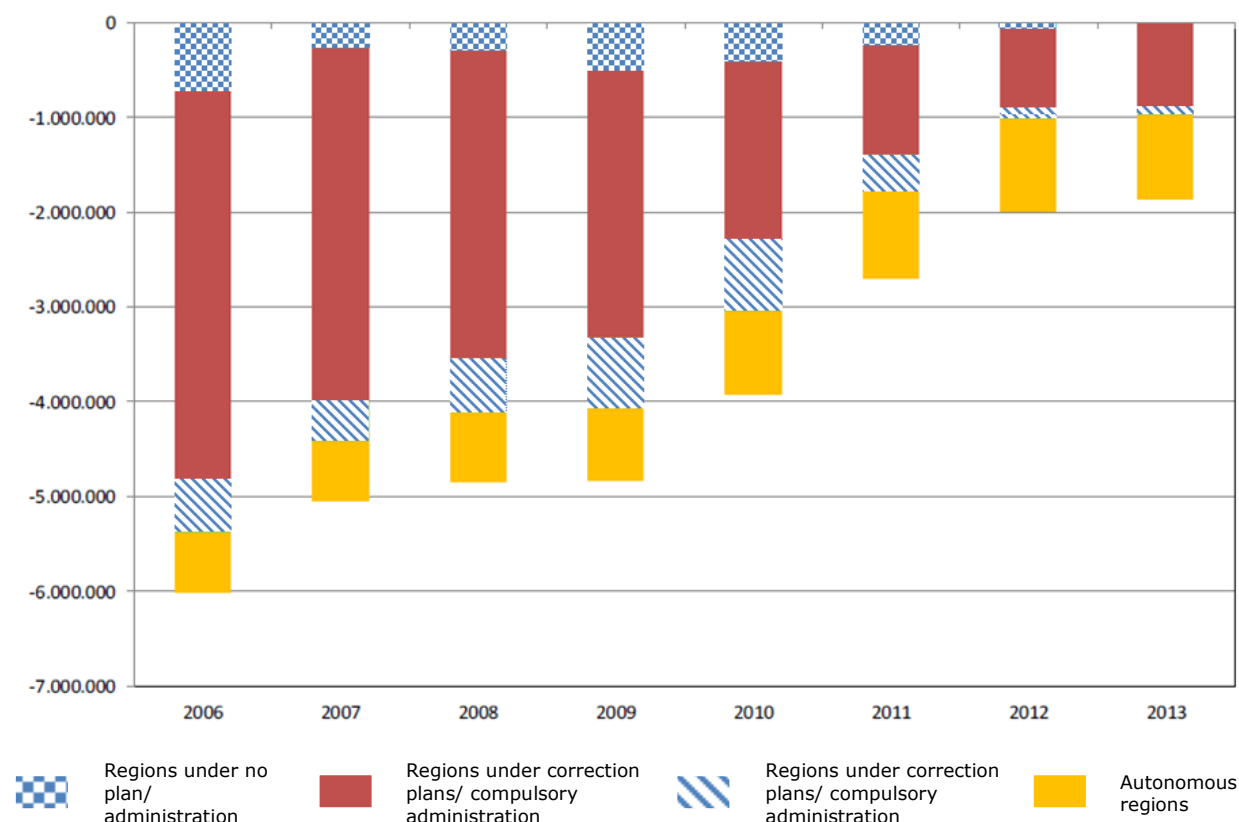
<sup>177</sup>OECD data available at <http://www.compareyourcountry.org/health?cr=oecd&cr1=oecd&lq=en&page=3>, accessed on 27.08.2014.

<sup>178</sup>OECD, OECD Health Statistics 2014: How does Italy compare?, 2014, available at <http://www.oecd.org/els/health-systems/Briefing-Note-ITALY-2014.pdf>, accessed on 27.08.2014.

<sup>179</sup>Standing Conference for relations between the State, Regions and Autonomous Provinces of Trento and Bolzano, Agreement ex art. 8, comma 6, law 131/2003, between the Government, the Regions and the Autonomous Regions on the new Pact on Health 2014-2016 ("Conferenza permanente per i rapporti tra lo stato le regioni e le province autonome di Trento e Bolzano, Intesa, ai sensi dell'articolo 8, comma 6, della legge 5 giugno 2003, n. 131, tra il Governo, le Regioni e le Province autonome di Trento e di Bolzano concernente il nuovo Patto per la salute per gli anni 2014-2016"), 10.07.2014, available at [http://www.statoregioni.it/Documenti/DOC\\_044351\\_82%20CSR%20PUNTO%20%2016%20ODG.pdf](http://www.statoregioni.it/Documenti/DOC_044351_82%20CSR%20PUNTO%20%2016%20ODG.pdf), accessed on 27.08.2014. See also Mirabelli S., "Health Pact 2014-16: commitments and deadlines" (Patto Salute 2014-16: impegni e scadenze), 30.07.2014, available at <http://www.regioni.it/it/show-2549/newsletter.php?id=2042&art=12844>, accessed on 27.08.2014.

compulsory regional administration has succeeded in reducing budget deficits. The deficits run by regions under some form of correction plan or compulsory administration (red and green parts of the bars) substantially decreased over recent years. In contrast, those of autonomous regions which benefit from an exemption from the system (in yellow) have generally kept increasing. Well-managed regions (in blue) have annulled their deficits.

**Figure 3: Budget deficits in regions under correction plans/compulsory administration, in regions under no such plan/administration and in autonomous regions**



Source: Ministry of Economy and Finance<sup>180</sup>

### 3.6. The impact of the measures

In the early years of the crisis, commentators welcomed the new controls on regional healthcare expenditure, seeing them as the continuation of an ongoing process helping avert the risk that the healthcare systems of certain Regions could experience a financial collapse<sup>181</sup>. Analysts saw the stringent financial constraints as an opportunity to reduce waste and increase efficiency rather than a threat to citizens' right to healthcare. They noted that better service was provided to patients in regions which spent less on

<sup>180</sup>MEF, Il monitoraggio della spesa sanitaria: Rapporto n. 1, 2014, available at [http://www.rgs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Spesa-soci/Attivit-monitoraggio-RGS/2014/il\\_monitoraggio\\_del\\_sistema\\_sanitario.pdf](http://www.rgs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Spesa-soci/Attivit-monitoraggio-RGS/2014/il_monitoraggio_del_sistema_sanitario.pdf), accessed on 25.08.2014..

<sup>181</sup>Lavoce.info, "Healthcare" (*Sanità*), 05.02.2008, available at <http://www.lavoce.info/sanita/>, accessed on 26.08.2014.

healthcare, than in those that spent more<sup>182</sup>. 'In Italy, the real problem is the crucial regional variation in the quantity and quality of the services provided, to the point that national averages are misleading'<sup>183</sup>.

Indeed, there were indications that, particularly in certain Regions, resources were being spent inefficiently. The Upper House of the Italian Parliament saw fit to set up a public enquiry commission to investigate the effectiveness and efficiency of the National Health Service.<sup>184</sup> The Lower House established another commission focusing on medical errors and regional budget deficits<sup>185</sup>.

Some suggested that a source of inefficiencies was the Regions' expectation that, whatever their debts, the Government would intervene to fill in the gaps. Indeed it seemed that the weakening, from 2004, of the supra-national constraints on public finances deriving from the Stability and Growth Pact was accompanied by increasing levels of inefficiency. All this suggested that there was indeed significant scope for savings to be achieved without reducing healthcare services<sup>186</sup>.

For example, in the field of public procurement of medical devices, an investigative report caused havoc by showing that the prices paid for the very same healthcare device varied by up to 30% from Region to Region. The report suggested that part of this variation could be due to corruption, citing earlier corruption court cases<sup>187</sup>. Certain hospitals even sought to recruit 'a manager of utmost integrity' expressly charged with the task of fighting corruption<sup>188</sup>. A book published in 2013 – revealingly titled 'The Trough' – dubbed the healthcare system as 'the biggest business in Italy'<sup>189</sup>.

Lack of transparency did not help allay concerns – Regions and contracting authorities routinely failed to publish or even disclose to other public authorities, including the Health

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<sup>182</sup> Mapelli V. (Lavoce.info), "The cross road of the healthcare system" (*Il bivio del sistema sanitario*), 27.07.2012, available at <http://www.lavoce.info/il-bivio-del-sistema-sanitario/>, accessed on 27.08.2014. However, others argued that 'assuming that the funding reduction will only hit waste and inefficiency...appears naïve'. See Dirindin N. (Lavoce.info), "Health needs major attention" (La salute va curata meglio), 08.01.2013, available at <http://www.lavoce.info/la-salute-va-curata-sanita-lobby-region/>, accessed on 27.08.2014.

<sup>183</sup> Petmesidou M. et al., (2014), pp. 331-352.

<sup>184</sup> Commissione parlamentare di inchiesta sull'efficacia e l'efficienza del Servizio sanitario nazionale, available at <http://www.senato.it/leg/16/BGT/Schede/CommissioniStoriche/0-00084.htm>, accessed on 27.08.2014.

<sup>185</sup> Composition of the Parliamentary Investigation Committee on mistakes in the healthcare sector and the causes of healthcare deficits" (*Composizione della Commissione parlamentare di inchiesta sugli errori in campo sanitario e sulle cause dei disavanzi sanitari regionali*), available at [http://leg16.camera.it/436?shadow\\_organoparlamentare=1628](http://leg16.camera.it/436?shadow_organoparlamentare=1628), accessed on 27.08.2014.

<sup>186</sup> Turati G. and Piacenza M. (Lavoce.info), "Healthcare: the wasteful" (*Sanità: Gli spreconi*), 21.05.2010, available at <http://www.lavoce.info/sanita-gli-spreconi/>, accessed on 27.08.2014. Note, however, that some analysts argued that price differentials could be due to well-founded reasons and considerations such as post-sale assistance or delays in the payment by different contracting authorities. Moreover, they considered that the €2bn expected savings was an unrealistic figure. See Gugiatti A. and Longo F. (Lavoce.info), "Price is not everything in healthcare", 06.07.2010, available at <http://www.lavoce.info/in-sanita-il-prezzo-non-e-tutto/>, accessed on 27.08.2014.

<sup>187</sup> Custodero A. (Repubblica.it), "Healthcare, this is how 2 billion a year are wasted: hospitals pay 30% more for products" (*Sanità, così si spreca due miliardi all'anno: Ospedali pagano i prodotti il 30% in più*), 21.05.2010, available at [http://www.repubblica.it/cronaca/2010/05/21/news/inchiesta\\_italiana\\_21\\_maggio-4230616/](http://www.repubblica.it/cronaca/2010/05/21/news/inchiesta_italiana_21_maggio-4230616/), accessed on 27.08.2014.

<sup>188</sup> Caporale G. (Repubblica.it), "Pescara, too many investigations on healthcare: the hospital looks for anti-corruption manager" (*Pescara, troppe inchieste sulla sanità: l'ospedale cerca manager anticorruzione*), 10.04.2013, available at [http://www.repubblica.it/cronaca/2013/04/10/news/pescara\\_ospedale\\_cerca\\_manager\\_anticorruzione-56359170/](http://www.repubblica.it/cronaca/2013/04/10/news/pescara_ospedale_cerca_manager_anticorruzione-56359170/), accessed on 27.08.2014.

<sup>189</sup> Bocci M. and Tonacci F., "The Manger: why healthcare becomes the biggest business in Italy" (*La Mangiatoia: Perché la sanità è diventata il più grande affare d'Italia*), 2013, available at <http://lamangiatoia.librimondadori.it/2013/09/09/litalia-e-al-sesto-posto-nel-mondo-per-spesa-farmaceutica/>, accessed on 28.08.2014.



Ministry, the prices paid for purchasing medical devices. Centralised procurement was touted as a possible solution to public procurement practices which led to the 'waste of two billion per year'<sup>190</sup>. Other press investigations found that costly medical equipment bought by and available in public hospitals was not actually being used at all<sup>191</sup>.

Regions, however, fought against spending cuts. For example, they complained that the Government's draft Health Pact 2010-2011 underestimated funding needs by more than €7bn<sup>192</sup>. As a sign of protest, they refused to even meet with Government representatives for months<sup>193</sup>. In the end, they managed to obtain the requested funds<sup>194</sup>.

What is more, the Regions obtained that in case they failed to establish, submit or comply with the correction plans described in earlier sections, the Region's compulsory administration must be entrusted to the President of the Region itself<sup>195</sup>. Commentators saw this as a paradox – compulsory administration should be a penalty, what is the point of entrusting the Region's compulsory administration to those who were responsible for the failure in the first place? The arrangement did not appear fair – while citizens were hit by the automatic tax increases triggered by the compulsory administration, administrators themselves got the additional and special powers of compulsory administration<sup>196</sup>.

The Government, for its part, was seen – at least at times – as treating healthcare only as expenditure, rather than as an area in which it should exercise its constitutional role of guarantor of basic service standards<sup>197</sup>. Many measures only sought to reduce spending rather than e.g. help the Regions invest resources properly<sup>198</sup>. Instead of identifying and targeting waste and governance failures, austerity measures indiscriminately cut expenditure, reducing funding equally for 'what is necessary (and costs little) and what is not necessary (and costs a lot)'<sup>199</sup>. The argument was made that the Government could not limit itself to 'providing', through laws, that Regions must guarantee basic service levels, when cuts of such magnitude are made that regional healthcare systems cannot adjust rapidly enough to preserve service levels<sup>200</sup>.

<sup>190</sup> Custodero A. (Repubblica.it) (2010).

<sup>191</sup> Repubblica.it, "Super machineries left in warehouses" (*Le supermacchine della sanità restano chiuse nei magazzini*), 04.04.2013, available at <http://palermo.repubblica.it/cronaca/2013/04/04/news/le-supermacchine-della-sanit-restano-chiuse-nei-magazzini-55928811>, accessed on 27.08.2014.

<sup>192</sup> Dirindin N. (Lavoce.info), "This pact is not really healthy" (*Questo patto non scoppia di salute*), 02.10.2009, available at <http://www.lavoce.info/questo-patto-non-scoppia-di-salute/>, accessed on 26.08.2014.

<sup>193</sup> Bordignon M. and Dirindin N., "Sacconi's Healthcare" (*La sanità di Sacconi*), 20.01.2009, available at <http://www.lavoce.info/la-sanita-di-sacconi/>, accessed on 26.08.2014.

<sup>194</sup> Dirindin N. (Lavoce.info), "Regions beat the government on healthcare" (*E sulla sanità le regioni battono il governo*), 03.11.2009, available at <http://www.lavoce.info/e-sulla-sanita-le-regioni-battono-il-governo/>, accessed on 26.08.2014.

<sup>195</sup> Art. 2(79) of L. 191/2009.

<sup>196</sup> Dirindin N. (Lavoce.info), "Regions beat the government on healthcare" (*E sulla sanità le regioni battono il governo*), 03.11.2009, available at <http://www.lavoce.info/e-sulla-sanita-le-regioni-battono-il-governo/>, accessed on 26.08.2014.

<sup>197</sup> Bordignon M. and Brusco S. (Lavoce.info), "Penalties for those responsible of taking healthcare into the red" (*Una penitenza per chi manda la sanità in rosso*), 12.02.2010, available at <http://www.lavoce.info/una-penitenza-per-chi-manda-la-sanita-in-rosso/>, accessed on 26.08.2014.

<sup>198</sup> Dirindin N. (Lavoce.info), "Regions beat the government on healthcare" (*E sulla sanità le regioni battono il governo*), 03.11.2009, available at <http://www.lavoce.info/e-sulla-sanita-le-regioni-battono-il-governo/>, accessed on 26.08.2014.

<sup>199</sup> Dirindin N. and Turati G. (Lavoce.info), "A year of government: Healthcare" (*Un anno di governo: Sanità*), 12.05.2009, available at <http://www.lavoce.info/un-anno-di-governo-sanita/>, accessed on 26.08.2014.

<sup>200</sup> Caruso E. and Dirindin N. (Lavoce.info), "If healthcare goes back to linear cuts" (*Se la sanità torna ai tagli lineari*), 10.07.2012, available at <http://www.lavoce.info/se-la-sanita-torna-ai-tagli-lineari/>, accessed on 27.08.2014.

<sup>200</sup> Dirindin N. (Lavoce.info), "Health needs major attention" (*La salute va curata meglio*), 08.01.2013, available at <http://www.lavoce.info/la-salute-va-curata-sanita-lobby-region/>, accessed on 27.08.2014.

Indeed, according to some analysts, healthcare was the sector most hardly hit by spending cuts intended to make general public finances sustainable. They denounced that austerity measures had already had a negative impact on citizens' health and that the healthcare system could not withstand further cuts<sup>201</sup>. Research carried out by leading universities reinforced these concerns. It showed that, in Regions subject to correction plans, the cost of healthcare was increasingly falling upon households<sup>202</sup>. It warned that further decreases in healthcare spending would have jeopardised some Regions' ability to cater for their citizens' needs<sup>203</sup>.

A national strike was staged by doctors on 22 July 2013. Among other things, the action sought to defend a healthcare system which should remain public and national, and to protest against indiscriminate funding cuts, the freezing of contract renewals and of staff turnover. Other union initiatives accompanied the strike<sup>204</sup>. Research suggests that freezing of healthcare personnel salaries and hiring could create big problems in the future as 30,000 (out of 105,000 doctors in the national healthcare system) will retire by 2021, with specific fields expected to experience particular personnel shortages (the number of paediatricians, surgeons and internal medicine specialists is foreseen to decrease by 25%)<sup>205</sup>.

Left-wing political leaders denounced (three days before the 2013 general elections) that 'citizens pay out of their own pockets €834m a year to pay fares for specialised care' – 'one of the most odious and unjust taxes because it falls upon the sick'. The proposal was to abolish the fares (discussed in Subsection 3.3.4 above), and it was supported by union leaders<sup>206</sup>.

Studies confirmed that the introduction of fares had reduced citizens' access to public healthcare services. Research indicated that co-payments rose from 2.5% to 3.5% of public health spending between the years 2009 and 2011<sup>207</sup>. It was estimated that 55% of patients now chose private clinics over public services because of the latter's fares and long

<sup>201</sup> Caruso E. and Dirindin N. (Lavoce.info), "Why should we further cut a sustainable healthcare? (*Perché tagliare ancora una sanità già sostenibile?*)" 18.04.2014, available at <http://www.lavoce.info/perche-tagliare-sanita-qi-a-sostenibile/>, accessed on 27.08.2014.

<sup>202</sup> IX Report on Healthcare "Tor Vergata: a summary" (*IX Rapporto Sanità "Tor Vergata": Sintesi*), 26.09.2013, available at [http://www.rapportosanita.it/sanita/public/file/IX-rapporto/sintesi\\_rapporto\\_colore.pdf](http://www.rapportosanita.it/sanita/public/file/IX-rapporto/sintesi_rapporto_colore.pdf), accessed on 28.08.2014.

<sup>203</sup> Repubblica.it, "The health budget gets better, but the assistance is insufficient in many regions" (*Migliora il bilancio della Sanità, ma in molte regioni l'assistenza è insufficiente*), 20.01.2014, available at [http://www.repubblica.it/economia/2014/01/20/news/migliora\\_il\\_bilancio\\_della\\_sanit\\_ma\\_in\\_molte\\_regioni\\_l\\_assistenza\\_insufficiente-76446080/](http://www.repubblica.it/economia/2014/01/20/news/migliora_il_bilancio_della_sanit_ma_in_molte_regioni_l_assistenza_insufficiente-76446080/), accessed on 28.08.2014. The report is freely accessible, subject to registration, on the website [http://www.cergas.unibocconi.it/wps/wcm/connect/Cdr/Centro\\_CERGASit/Home/Area+download+Rapporto+OASI+e+Mecosan/](http://www.cergas.unibocconi.it/wps/wcm/connect/Cdr/Centro_CERGASit/Home/Area+download+Rapporto+OASI+e+Mecosan/), accessed on 28.08.2014.

<sup>204</sup> Repubblica.it, "Healthcare, doctors on strike for four hours on 22 July" (*Sanità, medici in sciopero per quattro ore il 22 luglio*), 28.06.2013, available at [http://www.repubblica.it/salute/2013/06/28/news/sciopero\\_medici\\_8\\_luglio-62014656/](http://www.repubblica.it/salute/2013/06/28/news/sciopero_medici_8_luglio-62014656/), accessed on 27.08.2014. Pini V. (Repubblica.it), "Doctors on strike: 30.000 interventions deferred – against cuts and wage freezes" (*Sciopero medici, rinviati 30.000 interventi: "contro i tagli e il blocco del contratto"*), 21.07.2013, available at [http://www.repubblica.it/salute/medicina/2013/07/20/news/sciopero\\_dei\\_medici\\_-63366443/](http://www.repubblica.it/salute/medicina/2013/07/20/news/sciopero_dei_medici_-63366443/), accessed on 28.08.2014.

<sup>205</sup> Petmesidou M. et al., (2014), pp. 331-352 and sources cited therein.

<sup>206</sup> Repubblica.it, "Bersani: No to prescription charges on specialist examinations. 10 thousand people on the streets, Renzi in Palermo" (*Bersani: "No al ticket sulle visite specialistiche". 10mila in piazza, a Palermo c'è anche Renzi*), 20.02.2013, available at [http://www.repubblica.it/speciali/politica/elezioni2013/2013/02/20/news/bersani\\_abolire\\_ticket\\_su\\_visite\\_specialistiche-53044733](http://www.repubblica.it/speciali/politica/elezioni2013/2013/02/20/news/bersani_abolire_ticket_su_visite_specialistiche-53044733), accessed on 27.08.2014.

<sup>207</sup> Petmesidou M. et al., (2014), pp. 331-352 and sources cited therein.

waiting times<sup>208</sup>. Other research indicated that the introduction of fares for public healthcare services led to a reduction in demand by patients of up to -30% in some Regions.<sup>209</sup> The National Institute of Statistics reported that, in 2012, 11% of the population had forgone medical services despite needing them<sup>210</sup>. It would also seem that waiting times are significantly longer, and that patients will therefore choose private services rather than public ones if they can afford them<sup>211</sup>. Former Minister of Health Balduzzi expressed the belief that fares are unsustainable, for both citizens and the healthcare system<sup>212</sup>.

Other experts, however, took the view – supported by findings of the Italian Court of Auditors – that healthcare expenditure had not been substantially cut, particularly in comparison with other areas of public spending<sup>213</sup>. Indeed, some praised Italy's capacity to maintain the quality of its healthcare system, which remains one of the world's best<sup>214</sup>, while containing expenditure better than other countries – even in the context of generally bad conditions of Italy's budget and public finances<sup>215</sup>.

Indeed, some take the view that the Italian healthcare system does not waste public funds and that recent cuts were mainly justified by the need to reduce expenditure across the board, with the healthcare sector being relatively easy to target. As such, austerity measures in this sector do not appear as a direct result of EU constraints on public finances<sup>216</sup>.

It may be useful to quickly consider the specific impacts of and reactions to some notable aspects of the reforms.

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<sup>208</sup>Bocci M. (Repubblica.it), "Ssn, less and less services for the citizens: in 2012 cost-sharing charges on pharmaceuticals +40%" (Ssn, sempremenoservizi per icittadini: "Nel 2012 ticket farmaci +40%"), 19.03.2013, available at [http://www.repubblica.it/salute/medicina/2013/03/19/news/sanit\\_ticket\\_sui\\_farmaci-54900788](http://www.repubblica.it/salute/medicina/2013/03/19/news/sanit_ticket_sui_farmaci-54900788), accessed on 27.08.2014 and sources cited therein.

<sup>209</sup> RepubblicaBologna.it, "Prescription charges go up, medical examinations drop" (*Con l'aumento dei ticket crolla il numero delle visite*), 30.04.2013, available at [http://bologna.repubblica.it/cronaca/2013/04/30/news/con\\_l\\_aumento\\_dei\\_ticket\\_crolla\\_il\\_numero\\_delle\\_visite-57765415](http://bologna.repubblica.it/cronaca/2013/04/30/news/con_l_aumento_dei_ticket_crolla_il_numero_delle_visite-57765415), accessed on 27.08.2014 and sources cited therein. The findings were confirmed by Conte V. (Repubblica.it), "Healthcare at risk: the crisis has cut on checks and health tickets" (*Tenuta a rischio per la Sanità: la crisi ha tagliato visite e ticket*), 09.05.2013, available at [http://www.repubblica.it/economia/2013/05/09/news/ticket\\_sanit-58409450](http://www.repubblica.it/economia/2013/05/09/news/ticket_sanit-58409450), accessed on 27.08.2014 and sources cited therein.

<sup>210</sup> Repubblica.it, "Istat, the crisis affects the healthcare system. 11% of Italians renounces to medical treatments" (*Istat, la crisi colpisce anche la sanità. L'11 %degli italiani rinuncia alle cure*), 24.12.2013, available at [http://www.repubblica.it/salute/2013/12/24/news/istat\\_italiani\\_rinunciano\\_a\\_cure-74396933/](http://www.repubblica.it/salute/2013/12/24/news/istat_italiani_rinunciano_a_cure-74396933/), accessed on 28.08.2014.

<sup>211</sup> Interviews with a Director of the Ministry of Economy and Finance. The interviews were held on 17.10.2014 and on 20.10.2014..

<sup>212</sup> Repubblica.it, Due milioni in fugadalle cure non hanno soldi per il ticket, 25.04.2013, available at [http://inchieste.repubblica.it/it/repubblica/rep-it/inchiesta-italiana/2013/04/25/news/quattro\\_milioni\\_in\\_fuqa\\_dalle\\_cure\\_non\\_hanno\\_pi\\_i\\_soldi\\_per\\_il\\_ticket-57450028/](http://inchieste.repubblica.it/it/repubblica/rep-it/inchiesta-italiana/2013/04/25/news/quattro_milioni_in_fuqa_dalle_cure_non_hanno_pi_i_soldi_per_il_ticket-57450028/), accessed on 14.01.15.

<sup>213</sup> Mapelli V. (Lavoce.info), Sanità: nuovo Patto, vecchi standard, 01.08.2014, available at <http://www.lavoce.info/sanita-patto-per-la-salute-vecchi-standard/>, accessed on 27.08.2014. Petmesidou M. et al., South European Healthcare Systems under Harsh Austerity: A Progress-Regression Mix?, South European Society and Politics, Vol. 19, No 3, 2014, pp. 331-352.

<sup>214</sup> Interview with a University Professor and President of a centre specialising in economic and organisational research in the field of healthcare. The interview was held on 14.10.2014. See also Mapelli V. (Lavoce.info), "Healthcare system: prejudice and pride" (*Servizio Sanitario: Pregiudizio e orgoglio*) 03.05.2012, available at <http://www.lavoce.info/servizio-sanitario-pregiudizio-e-orgoglio/>, accessed on 27.08.2014, and sources cited therein. See also OECD, OECD Health Statistics 2014: How does Italy compare?, 2014, available at <http://www.oecd.org/els/health-systems/Briefing-Note-ITALY-2014.pdf>, accessed on 27.08.2014.

<sup>215</sup> Ibid.

<sup>216</sup> Interview with a University Professor and President of a centre specialising in economic and organisational research in the field of healthcare. The interview was held on 14.10.2014.

- **Reduction in hospital beds**

As noted above, provision was made to reduce hospital beds from an average of 4 to 3.7 for every thousand inhabitants. What this meant in practice is that, to give just some examples, the Region of Tuscany had to reduce hospital beds by 1,200 units, and was reported to scramble to find alternative ways to cater for patients who were not yet ready to return home<sup>217</sup>. The Lazio Region decreased hospital beds by 892 units, 750 of which were in the city of Rome alone<sup>218</sup>. The city of Bologna cut another 300 hospital beds<sup>219</sup>. There are indications that small hospitals do not always guarantee excellent services, while they entail significant costs. The concentration of services in fewer but better hospitals may be advantageous in terms of quality and cost. Nevertheless, access to the basic service standards must be guaranteed<sup>220</sup>.

- **Local healthcare network**

It was envisaged that comprehensive local health centres should be established to reduce recourse to hospitals. It was however noted that the reorganisation of hospitals was taking place before the health centres were actually created. In this way, citizens were left with lower hospital assistance and without local health centres to go to instead<sup>221</sup>.

- **New rules for the appointment of hospital managers**

In this regard, it was reported that the priorities of the central Government and of the Regions were different. The central Government wanted to ensure that appointments were based on qualifications, not party allegiance or other such criteria. The Regions saw Government action as an unwelcome interference in their constitutional prerogatives. The rationale behind the Regions' position, however, varied. Centre-northern Regions believed that the governance equilibrium they had achieved was the best possible; Southern Regions feared that Government's meddling would have led to a reduction in resources in a sector that represents a significant share of their GDP, with correspondingly fewer opportunities for redistribution of wealth<sup>222</sup>.

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<sup>217</sup> Bocci M. (Repubblica.it), "Healthcare, the plan is ready: cut of 1200 beds" (Sanità, pronto il piano: taglio a 1.200 posti letto), 19.04.2013, available at [http://firenze.repubblica.it/cronaca/2013/04/19/news/sanit\\_pronto\\_il\\_piano\\_taglio\\_a\\_1\\_200\\_posti letto-56963621/](http://firenze.repubblica.it/cronaca/2013/04/19/news/sanit_pronto_il_piano_taglio_a_1_200_posti letto-56963621/), accessed on 27.08.2014.

<sup>218</sup> Repubblica.it, "Healthcare, cuts of 892 beds. But no hospital will be shut down" (Sanità, 892 posti letto in meno: "Ma nessun ospedale chiuderà"), 05.12.2013, available at [http://roma.repubblica.it/cronaca/2013/12/05/news/sanit\\_892\\_posti letto\\_in\\_meno\\_ma\\_nessun\\_ospedale\\_chiuder-72781005/](http://roma.repubblica.it/cronaca/2013/12/05/news/sanit_892_posti letto_in_meno_ma_nessun_ospedale_chiuder-72781005/), accessed on 28.08.2014.

<sup>219</sup> Di Raimondo R. (Repubblica.it), "Hospitals, the long summer of cuts: 300 beds less" (Ospedali, la lunga estate dei tagli: via 300 posti letto), 24.04.2013, available at [http://bologna.repubblica.it/cronaca/2013/04/24/news/ospedali\\_la\\_lunga\\_estate\\_dei\\_tagli\\_via\\_300\\_posti letto-57334201/](http://bologna.repubblica.it/cronaca/2013/04/24/news/ospedali_la_lunga_estate_dei_tagli_via_300_posti letto-57334201/), accessed on 27.08.2014.

<sup>220</sup> Interviews with a Director of the Ministry of Economy and Finance. The interviews were held on 17.10.2014 and on 20.10.2014..

<sup>221</sup> Dirindin N. (Lavoce.info), La salutevacurata meglio, 08.01.2013, available at <http://www.lavoce.info/la-salute-va-curata-sanita-lobby-region/>, accessed on 27.08.2014.

<sup>222</sup> Tardiola A. (Lavoce.info), "Healthcare and politics: a difficult separation" (Sanità e politica: Separarsi è difficile), 03.01.2008, available at <http://www.lavoce.info/sanita-e-politica-separarsi-e-difficile/>, accessed on 26.08.2014.

## 4. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT TO WORK

### KEY FINDINGS

- The reform that had the greatest impact on the right to work in Italy was undoubtedly Law 92/2012 – the so-called *Legge Fornero*. There are clear indications that EU institutions, notably the ECB, specifically urged Italian authorities to reform the labour market.
- The *Legge Fornero* sought to limit the practice of using certain cooperation contracts with lower protection for employees than the standard permanent employment contract. It did so, for example, by raising the social contributions to be paid by employers when using fixed-term contracts. The reform also generalised unemployment protection, which was previously limited (somewhat unfairly) to certain groups of workers. It made dismissals easier, so long as they are not discriminatory.
- The reform does not appear to have reduced the prevalence of precarious forms of work on the Italian labour market. The removal of the requirement that short-term contracts could only be used where justified by technical, production or organisational reasons may have made the situation worse. Furthermore, easier dismissals seem to have only resulted in more unemployed, without having made access to the job market any easier.
- It has however been argued that the greatest impact on the right to work did not come from the reform, but rather from the employers' gloomy expectations about the future growth of their business and of the economy as a whole.

### 4.1. International and EU legal framework for the protection of the right to work

There is no blanket guarantee in the international law of the right to work, if understood as the right to have and maintain gainful employment. Article 6 of the ICESCR recognises the right to work in the sense of opportunity of everyone to gain their living by freely chosen or accepted work. In that regard, States Parties are expected to take appropriate steps to safeguard this right, including by providing vocational and technical training and economic policies aimed at steady economic development and full employment. This right, according to the ICESCR implies that the Parties must guarantee equal access to employment and protect workers from being unfairly deprived of their employment, including by preventing discrimination. This right depends on a number of interdependent and essential elements, implementation of which will depend on the conditions present in each State Party, which may be identified as: availability, accessibility, acceptability and quality, while the states have the general obligation to respect, protect and fulfil this right<sup>223</sup>. Moreover, the International Labour Organization (the 'ILO') has the right to work as the core of its activities, and numerous conventions have been adopted within its framework to protect and improve the enjoyment of the right to work.

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<sup>223</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 18 – Right to work*, UN Doc. E/C.12/GC/18 (2006).

Similarly, the EU Charter guarantees to everyone the right to engage in work and to pursue a freely chosen or accepted occupation<sup>224</sup>, which corresponds to the guarantee from the ICESCR. The EU Charter, furthermore, provides for a guarantee for everyone to a free placement service<sup>225</sup>, protection from unjustified dismissal<sup>226</sup> and the right to fair and just working conditions<sup>227</sup>.

## 4.2. Importance of work according to the Italian Constitution

The importance of work is recognised in the supreme provision of the Italian Constitution, according to which 'Italy is a democratic republic, founded on work'<sup>228</sup>. This fundamental principle of the Italian Constitution affirms the value of work in Italy's social life. Work is presented as both a right and a duty of citizens. The Constitution recognises the right to work and charges the republic with '*promoting the conditions to make this right effective*'<sup>229</sup> (emphasis added). Thus, it does not require the republic to guarantee that everyone should have a job. At the same time, it places a duty upon all citizens to contribute to the progress of society through their work<sup>230</sup>.

Other constitutional provisions concerning work can be found in Title III of Part I of the Italian Constitution. Most notably for the purposes of this study, Article 35 provides that the republic protects work and provides for the training and professional development of workers. Article 36(1) confers upon workers a right to 'a remuneration commensurate to the quantity and quality of their work and in any case such as to ensure them and their families a free and dignified existence'. Article 41 establishes freedom of enterprise, but indicates that this freedom encounters the limit of the common good and it may be oriented and coordinated for social purposes.

## 4.3. Overview of relevant measures

Law 92/2012 – so-called *Legge Fornero* after the name of the then Minister of Employment – brought about a major reform to the Italian labour market. The main objectives of the reform were already identified in the inaugural speech of Prime Minister Mario Monti<sup>231</sup>: (a) a more equal protection of workers regardless of the type of employment contract, and (b) more flexibility in hiring and dismissing workers.

The requests of EU authorities were explicitly mentioned in the inaugural speech. In particular, a letter dated 5 August 2011 and sent by ECB President Jean Claude Trichet and by Mario Draghi to the head of the Italian Government, invited the Government to reform, inter alia, labour regulations and policies in order to re-establish investor confidence. In particular, the letter called for changing the rules on the hiring and dismissal of employees,

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<sup>224</sup> The EU Charter, Article 15(1).

<sup>225</sup> The EU Charter, Article 29.

<sup>226</sup> The EU Charter, Article 30.

<sup>227</sup> The EU Charter, Article 31.

<sup>228</sup> Art. 1(1) Cost.

<sup>229</sup> Art. 4(1) Cost.

<sup>230</sup> Art. 4(2) Cost.

<sup>231</sup> The text of the speech is reported in Repubblica.it, "Monti at the Senate for the vote of confidence: the full text of his speech" (*Monti al Senato per la fiducia: il testo integrale del discorso*), 17.11.2011, available at [http://www.repubblica.it/politica/2011/11/17/news/monti\\_al\\_senato\\_per\\_la\\_fiducia\\_il\\_testo\\_integrale\\_del\\_discorso-25168289/](http://www.repubblica.it/politica/2011/11/17/news/monti_al_senato_per_la_fiducia_il_testo_integrale_del_discorso-25168289/), accessed on 23.07.2014.

while at the same time facilitating mobility through unemployment benefits and active government policy<sup>232</sup>. Some scholars saw the letter as 'dangerously crossing the boundary between influence and interference' in policy areas outside EU competence<sup>233</sup>. The press saw the approval of the *Legge Fornero* as a bargaining chip that the Italian Government could use in Brussels<sup>234</sup>.

The following table provides an overview of the main features of the reform. As the table shows, the most important measures introduced by the *Legge Fornero* sought to limit the abuse of cooperation contracts – independent services based on bogus VAT numbers, fixed-term contracts – which entail a lower level of protection for workers than the standard employment contract of indeterminate duration. It also generalised unemployment protection, previously (somewhat unfairly) granted only to certain groups. Another objective was to make the apprenticeship contract the main path into the job market for young people. Dismissals were also made easier, so long as they are not discriminatory<sup>235</sup>.

**Table 12: Main reforms introduced by the *Legge Fornero***

	Description of the reform
<b>Unemployment protection</b> <sup>236</sup>	<p>Creation of the social employment insurance (ASPI) as a generally applicable social safety net for employees who involuntarily lose their job. The ASPI substitutes several previously existing social safety nets.</p> <p>A reduced ASPI is also introduced for the unemployed who do not meet the full requirements for being eligible for the ASPI.</p> <p>Changes compared to previously applicable rules aiming at more favourable conditions for workers:</p> <ul style="list-style-type: none"> <li>• <b>General application:</b> the social safety net now covers all employees (including e.g. apprentices), with the exception of the public sector.</li> <li>• <b>Longer duration:</b> from 2016, 12 months for the unemployed</li> </ul>

<sup>232</sup> The text of the letter is reported on Il Sole 24 Ore, "The letter of the ECB to the Italian Government! (*Il testo della lettera della Bce al Governo italiano*), 29.09.2011, available at <http://www.ilsole24ore.com/art/notizie/2011-09-29/testo-lettera-governo-italiano-091227.shtml>, accessed on 23.07.2014.

<sup>233</sup> Calvano R. (RivistaAIC.it), "The decree of urgency in the era of inclusive government" (*La decretazione d'urgenza nella stagione delle larghe intese*), 02.05.2014, available at [www.rivistaaic.it/download/.../2-2014-calvano.pdf](http://www.rivistaaic.it/download/.../2-2014-calvano.pdf), accessed on 10.12.14.

<sup>234</sup> L'Unità, "The labour reform is law: a new storm on Fornero" (*La riforma del lavoro è legge: Nuova bufera su Fornero*), 27.06.2012, available at <http://www.unita.it/italia/alla-camera-la-riforma-lavoro-br-al-via-voto-per-la-terza-fiducia-1.424564>, accessed on 23.07.2014. A document by a confederation of workers' unions states that *Legge Fornero* was approved by Parliament 'so that the Italian Government could show up at the European Union summit of 28-29 June [2012] "with the homework done"; see CGIL, *La legge n°92/12 di riforma del mercato del lavoro: illustrazione e commento*, 06.09.2012, available at [http://www.cgil.it/Archivio/DOSSIER/RiformaLavoroFornero/Illustrazione\\_e\\_commento\\_legge\\_Fornero.pdf](http://www.cgil.it/Archivio/DOSSIER/RiformaLavoroFornero/Illustrazione_e_commento_legge_Fornero.pdf), accessed on 23.07.2014.

<sup>235</sup> Interviews with a Director of the Ministry of Economy and Finance. The interviews were held on 17.10.2014 and on 20.10.2014.

<sup>236</sup> Altalex, "Labour reform: the table of innovations, as of 14.08.2012" (*Riforma del lavoro: La tabella delle novità agg. al 14.08.2012*), 14.08.2012, available at <http://www.altalex.com/index.php?idnot=17810>, accessed on 23.07.2014; Liso F., "Aspi and the protection of older workers" (*Aspi e tutela dei lavoratori anziani*), Libro dell'anno del Diritto 2013, 2013, available at [http://www.treccani.it/enciclopedia/aspi-e-tutela-dei-lavoratori-anziani\\_\(Il\\_Libro\\_dell'anno\\_del\\_Diritto\)/](http://www.treccani.it/enciclopedia/aspi-e-tutela-dei-lavoratori-anziani_(Il_Libro_dell'anno_del_Diritto)/), accessed on 23.07.2014; INPS, "Unemployment subsidy Aspi" (*Indennità di disoccupazione Aspi*), available at <http://www.inps.it/portale/default.aspx?itemdir=8292>, accessed on 23.07.2014.

	Description of the reform
	<p>under 55 years of age and 18 months for others.</p> <ul style="list-style-type: none"> <li>• <b>Higher amount:</b> 75% of the average monthly salary over the last two years, up to a cap determined each year by law, and decreasing over time.</li> </ul>
<b>Apprenticeship</b> <sup>237</sup>	<p>Limited changes compared to previously applicable rules, aiming at promoting the use of this contract to hire young workers while at the same time avoiding abuses:</p> <ul style="list-style-type: none"> <li>• <b>Minimum duration:</b> 6 months.</li> <li>• <b>Limits:</b> no more than three apprentices for every two specialised employees.</li> <li>• <b>Conditions:</b> from mid-2015, the hiring of new apprentices is only possible if at least 50% of previous apprentices have been hired.</li> <li>• <b>Termination:</b> only possible if duly justified.</li> </ul>
<b>Dismissal</b> <sup>238</sup>	<p>Before the reform, the dismissal of an employee was lawful only if it was duly justified by:</p> <p>(a) a behaviour of the employee so grave as to impede the continuation of the employment for even a single day, justifying the immediate termination of the contract; or</p> <p>(b) a significant breach of contractual obligations by the employee, which justified the termination of the contract following a notice period; or</p> <p>(c) reasons concerning the employer, such as closure of a branch.</p> <p>Dismissal outside of these cases was unlawful and an unlawfully dismissed worker could resort to the judge and obtain both the payment of his wages since the day of the unlawful dismissal and the forceful reintegration in his previous post.</p> <p>These rules applied where the employer met certain size thresholds.</p> <p>The main changes introduced by the reform, whose stated objective included adapting the rules on dismissals to the new market realities<sup>239</sup>, are the following:</p> <ul style="list-style-type: none"> <li>• <b>General application:</b> the new rules protect all employees, regardless of the size of the employer;</li> <li>• <b>Mandatory reintegration is limited</b> to cases of:             <ol style="list-style-type: none"> <li>a. Discriminatory dismissal (e.g. political views, religious faith);</li> <li>b. Dismissal taking place just before or within one year from the employee's wedding;</li> <li>c. Dismissal of a female employee within a year from the birth of a child;</li> </ol> </li> </ul>

<sup>237</sup> Stucchi O. (LabLaw.com), "The apprenticeship contract after the Fornero Reform" (*Il contratto di apprendistato ai tempi della Riforma Fornero*), available at [http://www.lablaw.com/index.php/content/download/1791/13128/file/NL\\_OS%20febbraio.pdf](http://www.lablaw.com/index.php/content/download/1791/13128/file/NL_OS%20febbraio.pdf), accessed on 23.07.2014.

<sup>238</sup> Caponera S. (StudioCataldi.it), "Art. 18 before and after the Fornero Reform" (*L'art. 18 prima e dopo la riforma Fornero*), 12.05.2014, available at [http://www.studiocataldi.it/news\\_giuridiche.asp/news\\_giuridica\\_15766.asp](http://www.studiocataldi.it/news_giuridiche.asp/news_giuridica_15766.asp), accessed on 23.07.2014.

<sup>239</sup> Art. 1(1)(c) L. 92/2012.



	Description of the reform
	<p>d. Dismissal for illicit reasons or otherwise null by law; e. Oral dismissal.</p> <ul style="list-style-type: none"> <li>In the case of <b>disciplinary dismissal</b>, if the fact contested to the employee indeed took place, the judge, if he finds that the dismissal was nevertheless unlawful, may no longer order the reintegration of the employee in his post, but only the payment of an indemnity by the employer to the unlawfully dismissed employee.</li> </ul>
<b>Bogus VAT numbers</b> <sup>240</sup>	<p>The reform aims to address the fraudulent use by employers of contracts with seemingly independent workers, who thus have registered VAT numbers, but in fact work as employees. The use of such contracts is advantageous for employers because they do not have to pay the workers' social security contributions. Furthermore, workers are not entitled to paid annual or sickness leave, among other entitlements.</p> <p>The reform introduces, with some exceptions, three conditions for the use of such contracts:</p> <ul style="list-style-type: none"> <li><b>Limited duration:</b> the cooperation between the worker and a specific employer may not last longer than eight months each year;</li> <li><b>Limited share of income:</b> the cooperation between the worker and a specific employer may not contribute more than 80% of the worker's annual income;</li> <li><b>Separation:</b> the worker may not have a permanent workstation at the employer's premises.</li> </ul> <p>The infringement of at least two of the three conditions triggers the presumption that a different type of contract exists between the employer and the worker.</p>
<b>Fixed-term contracts</b> <sup>241</sup>	<p>Before the reform, fixed-term employment contracts could only be concluded when justified by technical, production or organisational reasons. Moreover, fixed-term contracts could be indefinitely renewed insofar as at least 10 or 20 days passed between the previous and the next contract.</p> <p>The reform aimed to simplify the rules on fixed-term contracts, while at the same time promoting stable employment relationships<sup>242</sup> by providing that:</p> <ul style="list-style-type: none"> <li>The use of <b>short</b> (up to one year) fixed-term contracts <b>no longer requires justification</b>.</li> <li>Where there is no justification, the fixed-term contract <b>may not be prolonged</b>.</li> </ul>

<sup>240</sup> LaStampa.it, "VAT Identification in the Fornero Reform" (*La partita Iva nella riforma Fornero*), 28.09.2012, available at <http://www.lastampa.it/2012/09/28/economia/finanza/finanza-educational/la-partita-iva-nella-riforma-fornero-puKd8mYTEvOFRunAMSaYZL/pagina.html>, accessed on 23.07.2014.

<sup>241</sup> Maroscia A. (Lavoroediritti.com), Fixed-term contracts after the labour reform" (*Il contratto a tempo determinato dopo la riforma del lavoro*), 12.07.2012, available at <http://www.lavoroediritti.com/2012/07/il-contratto-a-tempo-determinato-dopo-la-riforma-del-lavoro/>, accessed on 23.07.2014.

<sup>242</sup> Art. 1(1)(a) L. 92/2012.

	Description of the reform
	<ul style="list-style-type: none"> <li>• <b>Longer cooling off periods</b> between one fixed-term contract and the next (60 or 90 days).</li> <li>• <b>Higher social contributions</b> to be paid by the employer, with certain exceptions. The additional contributions are given back to the employer if the employee is subsequently hired on a permanent basis.</li> </ul>

**Source:** Multiple sources (see footnotes)

Subsequent legislative measures further intervened to modify employment regulations. In particular, Decree-Law 34/2014<sup>243</sup> introduced, among others, the following reforms<sup>244</sup>:

- **Liberalisation of fixed-term employment contracts**, the use of which no longer requires justification.
- **Maximum duration of fixed-term contracts**, which may not exceed 36 months (inclusive of any prolongation and renewal), save for certain exceptions.
- The number of employees on a fixed-term contract may be **no more than 20%** of the number of employees on a permanent contract.

The Decree-Law was part of a 'Jobs Act'<sup>245</sup> which should be completed by the adoption, later in 2014, of a Law delegating the Government to introduce legislative measures to reform:

- Social safety nets, with a view to achieving universal coverage of the unemployed;
- Employment services, to rationalise and improve the effectiveness of public "active employment" services throughout the country;
- Employment procedures, to simplify and rationalise procedures and reduce the administrative burden;
- Employment contracts, to introduce an organic law regulating contracts; and
- Reconciliation of work-time and family-time for parents, to avoid women having to choose between having a job and becoming mothers<sup>246</sup>.

<sup>243</sup> D.L. 34/2014 converted into L. 78/2014. Concerning the traditional abuse of Decree-Laws, section 1.2.

<sup>244</sup> Labour Consultants Study Foundation (*Fondazione Studi Consulenti del Lavoro*) No 13 of 12.06.2014, available at [http://www.consulentidellavoro.it/files/PDF/2014/FS/circolare\\_13\\_2014.pdf](http://www.consulentidellavoro.it/files/PDF/2014/FS/circolare_13_2014.pdf), accessed on 23.07.2014.

<sup>245</sup> No official text of the 'Jobs Act' has been found. However, information published on the personal website of the President of the Council of Ministers gives the first indication of the future content of the Jobs Act, which admittedly remains to be written. See Renzi M., eNews 381, 08.01.2014, available at <http://www.matteorenzi.it/enews-381-8-gennaio-2014/>, accessed on 04.08.2014. More details about the content of the Jobs Act are set out in a communication from the Council of Ministers of 12.03.2014 available at [http://www.governo.it/Governo/ConsiglioMinistri/testo\\_int.asp?d=75126](http://www.governo.it/Governo/ConsiglioMinistri/testo_int.asp?d=75126), accessed on 04.08.2014.

<sup>246</sup> Rai News, "Jobs Act, Poletti speeds up: Ddl on employment by 2014 and immediate start" (*Job Act, Poletti accelera: "Ddl lavoro entro il 2014 poi subito a regime"*), available at <http://www.rainews.it/dl/rainews/articoli/Poletti-accelera-ddl-lavoro-entro-anno-ae73339e-6f87-4b53-8f9c-9dbcee97f101.html#sthash.bb7MyTvm.dpuf>, accessed on 23.07.2014.

## 4.4. The impact of the measures

This section reports examples of reactions on the *Legge Fornero*, the main recent reform of the labour market. Decree-Law 34/2014 is not considered here, due to its very recent adoption and limited scope.

The CGIL, an Italian trade union, submitted a complaint to the European Commission denouncing that the reform infringes EU law<sup>247</sup> because, among other things, it eliminates the requirement for a justification to use short-term employment contracts and, by so doing, 'translates into a wide broadening of the unjustified use of short-term contracts'<sup>248</sup>. Similar allegations were raised to the European Court of Justice in the case *Mascolo*<sup>249</sup> (still pending at the time of writing) concerning the use of short-term contracts to meet essentially permanent needs in the Italian public education sector. According to Advocate-General Szpunar:

'[I]t emerges clearly...that the use of such contracts is abusive...insofar as it aims to meet structural needs for teaching personnel. These structural needs are caused by the significant number of personnel which has been placed in a situation of precarious work over more than ten years'.

The Advocate-General continues by stating that, in his opinion, 'a good part of these posts could have been permanently fulfilled through contracts of indefinite duration'. He concludes by suggesting that the European Court of Justice should state, in essence, that the national legislation contested is not in line with EU law<sup>250</sup>.

An analysis<sup>251</sup> of the Ministry of Economy and Finance presented in February 2014 concluded that 'the *Legge Fornero* has not contributed to reducing market fragmentation or mitigate the impact of the economic crisis on the labour market'. It added that 'flexibility in Italy continues to act like a trap which blocks in a permanent state of job insecurity the workers who enter the market with atypical contracts' and that the *Legge Fornero* did not modify market dynamics or increase the transition from temporary to permanent employment. The study suggests that incentives for the use of contracts offering better guarantees was too weak to overcome negative employers' expectations caused by the crisis.

Similar conclusions are reported in the press<sup>252</sup>. The year of the reform saw an increase in the dismissal of workers of 11% on a yearly basis. Of the workers who got hired, about

<sup>247</sup> Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

<sup>248</sup> CIGL, "The complaint of CGIL to the Commission over the new rules on fixed-term contracts" (*Denuncia della Cgil alla Commissione Europea contro la nuova disciplina sul Contratto a tempo determinato*), available at [http://www.cgil.it/Archivio/politiche-lavoro/TipologieImpiego%5CAbstract\\_ricorsoCGIL\\_Commissione\\_Eu\\_contro\\_DL\\_34-2014.pdf](http://www.cgil.it/Archivio/politiche-lavoro/TipologieImpiego%5CAbstract_ricorsoCGIL_Commissione_Eu_contro_DL_34-2014.pdf), accessed on 11.08.2014.

<sup>249</sup> Joined cases C-22/13, C-61/13 to C-63/13 and C-418/13.

<sup>250</sup> Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

<sup>251</sup> Di Domenico G. and Scarlato M. (MEF), "Assessment of reform interventions in the labour market through quantitative instruments" (*Valutazione di interventi di riforma del mercato del lavoro attraverso strumenti quantitativi*), 2014, available at [http://www.dt.tesoro.it/export/sites/sitodt/modules/documenti\\_en/analisi\\_progammazione/brown\\_bag/DiDomenico\\_Scarlato\\_13022014.pdf](http://www.dt.tesoro.it/export/sites/sitodt/modules/documenti_en/analisi_progammazione/brown_bag/DiDomenico_Scarlato_13022014.pdf), accessed on 23.07.2014.

<sup>252</sup> Palombi M. (IlFattoQuotidiano.it), "The Fornero Reform: after nine months more dismissed and more precarious workers" (*Riforma Fornero: dopo nove mesi più licenziati e più precari*), 17.03.2013, available at <http://www.ilfattoquotidiano.it/2013/03/17/lavoro-piu-licenziamenti-piu-precariato-dopo-9-mesi-di-riforma-fornero/532613/>, accessed on 23.07.2014.

two-thirds had fixed-term contracts and less than a fifth had permanent contracts. Only 5% of temporary workers obtained a permanent contract. In contrast, 22% had an even worse contract. The use of apprenticeship contracts was limited – only 2.5% of total workers hired. Other flexible contracts were down by about a 20-25%. At the same time, a significant increase in “bogus VAT numbers” and dismissals of over-50 workers was made easier after the repeal of the obligation to reintegrate workers unlawfully dismissed in their posts.

It cannot however be excluded that the greatest impact on the right to work did not come from the reforms in this sector, but rather from the crisis itself – if employers do not hire workers with long-term contracts, this may be due more to concerns for the future growth of their business and the economy as a whole, than to labour market regulation<sup>253</sup>.

The feature of the Italian labour market that most needed reforming (yet was the most politically difficult to reform) was the uneven social protection for the unemployed. The reform seems to have tackled and resolved (at least) this issue<sup>254</sup>.

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<sup>253</sup>Interviews with a Director of the Ministry of Economy and Finance. The interviews were held on 17.10.2014 and on 20.10.2014.

<sup>254</sup> Liso F., “Aspi and the protection of older workers” (*Aspi e tutela dei lavoratori anziani*), *Libro dell'anno del Diritto* 2013, 2013, available at [http://www.treccani.it/enciclopedia/aspi-e-tutela-dei-lavoratori-anziani\\_\(Il\\_Libro\\_dell'anno\\_del\\_Diritto\)/](http://www.treccani.it/enciclopedia/aspi-e-tutela-dei-lavoratori-anziani_(Il_Libro_dell'anno_del_Diritto)/), accessed on 23.07.2014.

## 5. IMPACT OF THE AUSTERITY MEASURES ON THE RIGHT TO PENSION

### KEY FINDINGS

- The right to a pension was significantly affected during the crisis by Decree-Law 201/2011 (*Decreto Salva Italia* – Save Italy Decree) which changed the age and contribution requirements to retire, as well as the methodology for calculating the amount of retirement pensions.
- As a result of the new age and contribution requirements, fewer workers have retired (a third to over a half less than previously). The new methodology for calculating the amount of pensions generally results in more meagre pensions. The future pensions of today's young people may be particularly low if they only work irregularly during their working life. It thus appears that the reform has adversely affected the right to a pension to a significant extent.
- At the same time, there is evidence that the reform was necessitated both by demographics and by the unsustainability of the previous system, which cost over 15% of Italy's GDP (almost double the OECD average). It appears that the new rules have made the pension system sustainable, if less generous.
- A particularly regrettable side-effect of the new rules on retirement age and contribution requirements was the so-called *esodati* issue – workers who had agreed with their employers to leave their post to their children, accepting to resign earlier than retirement age but with the expectation, under then applicable laws, to acquire the right to pension within a few years. When the retirement age was increased, they found themselves without a job or pension for much longer than they had envisaged.
- Insofar as the impact of the new calculation methodology is concerned, the reform extends the application of the new methodology – which had already been introduced in 1995 but made applicable to younger workers only – to all workers.

### 5.1. International and EU legal framework for the protection of the right to pension

There is no internationally guaranteed right to pension. However, pensions, including the contributory pensions, as well as the so-called social pensions (in so far as provided by applicable legislation), have been observed through the lenses of the right to property. Namely, having developed the doctrine of pensions as acquired rights, the European Court of Human Rights has observed pensions through the lenses of the right to property as guaranteed by Article 1 of Protocol No. 1 to the ECHR<sup>255</sup>.

With this understanding, Article 17 of the EU Charter guarantees the right for everyone 'to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under

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<sup>255</sup> See e.g. *Gaygusuz v. Austria*, case no. 17371/90, judgment of 16 September 1996, §41. For a full list of references to the regime of 'acquired rights' see *Grudić v. Serbia*, case no. 31925/08, judgment of 17 April 2012, §72.

the conditions provided for by law, subject to fair compensation being paid in good time for their loss.'

## 5.2. National legal framework

The Italian Constitution affirms the value of work<sup>256</sup>. In line with the general duty of social solidarity<sup>257</sup>, the Constitution charges the republic with removing the economic and social obstacles which limit *de facto* the freedom and equality of citizens, thus impeding the full development of the human being and his participation in the political life of the country<sup>258</sup>.

The objective of freeing individuals from need is pursued in two different ways. Workers have a right to be provided with means *adequate* to their needs in case of accidents, illness, disability, old age, and involuntary unemployment<sup>259</sup>. Others have a right to receive the means *necessary* to live, provided they are *unable to work*<sup>260</sup>. The State must establish or support bodies entrusted with ensuring the delivery of these benefits<sup>261</sup>, though private assistance is allowed<sup>262</sup>.

This section only covers contributory old age pensions. All other benefits fall beyond its scope.

## 5.3. Overview of relevant measures

Between 2009 and 2010, the Berlusconi cabinet had already intervened on pensions by tightening age requirements in order to achieve short-term savings<sup>263</sup>. However, it was in 2011 that the Italian legal framework for retirement pensions underwent a major reform, when the Italian government of Mr Mario Monti adopted the *Decreto Salva Italia* (Save Italy Decree)<sup>264</sup>. The use of a Decree-Law was justified by the extraordinary necessity and urgency to improve public finances to ensure the economic and financial stability of the country<sup>265</sup>.

The *Decreto Salva Italia* expressly states that the pension reform aims at guaranteeing compliance with international and EU commitments<sup>266</sup>, as well as budget constraints, financial and economic stability, and long-term sustainability of the pension system<sup>267</sup>.

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<sup>256</sup> See section 4.

<sup>257</sup> Art. 2 Cost.

<sup>258</sup> Art. 3(2) Cost.

<sup>259</sup> Art. 38(2) Cost.

<sup>260</sup> Art. 38(1) Cost.

<sup>261</sup> Art. 38(4) Cost.

<sup>262</sup> Art. 38(5) Cost.

<sup>263</sup> Natali D. and Stamati F., Reassessing South European Pensions after the Crisis: Evidence from Two Decades of Reforms, *South European Society and Politics*, Vol. 19, No 3, 2014, pp. 309-330.

<sup>264</sup> D.L. 201/2011, converted into L. 214/2011.

<sup>265</sup> Recital 2, D.L. 201/2011, converted into L. 214/2011, refers to '...the extraordinary necessity and urgency of making provision for the stabilisation of public accounts, with a view to ensuring the economic and financial stability of the country in the current exceptional situation of international crisis and in compliance with the principle of equity, as well as of adopting provisions for promoting growth, development and competitiveness'.

<sup>266</sup> The reform of pension systems was identified as one of the priorities for fiscal consolidation in the Commission's Annual Growth Survey 2011. See European Commission, Annual Growth Survey: advancing the EU's comprehensive response to the crisis, COM(2011) 11 final.

<sup>267</sup> Art. 24(1), D.L. 201/2011, converted into L. 214/2011.

The reform affected both the age and contribution requirements for pensions and the calculation methodology for the amount of certain pensions. This is in line with a wider pattern of reform seen across Southern Europe whereby cost containment is pursued by increasing retirement age, limiting access to early retirement, make indexation less generous, strictly applying means-testing for the provision of basic pensions and introducing strict links between contributions and pension benefits<sup>268</sup>.

### 5.3.1. Requirements for pensions before and after the reform

Under the previous regime<sup>269</sup>, the worker could obtain the old-age pension (*'pensione di vecchiaia'*) after reaching 20 years of contributions and a certain age – 65 years for men, between 60 and 65 years depending on the sector of activity, for women. The retirement pension (*'pensione di anzianità'*) was based on a quota system whereby the worker had to achieve a certain sum of years of age plus years of contribution to retire. In addition to reaching the quota, a certain minimum age was required in all cases in which the worker did not have at least 40 years of contribution<sup>270</sup>.

According to the OECD, this system was the most expensive of all OECD member countries, costing 15.4% of Italian GDP (almost double the OECD average). With the 2011 reform, Italy made a major step for securing the sustainability of its pension system<sup>271</sup>.

Under the new regime, the old-age pension requires 66 years of age (rising to at least 67 years of age in 2021) for all workers, regardless of gender and sector of activity<sup>272</sup>. The early retirement pension (*'pensione anticipata'*, which has replaced the *'pensione di anzianità'*) can be obtained, regardless of age, with little over 42 years of contribution for men and 41 years of contribution for women. However, workers who decide to benefit from the early retirement pension before 62 years of age will have the amount of the pension reduced by 1% for each of the two years before 62, and by 2% for each year before 60. Requirements for both types of pensions are set to increase over time to reflect life expectancy<sup>273</sup>.

<sup>268</sup> Natali D. and Stamati F., *Reassessing South European Pensions after the Crisis: Evidence from Two Decades of Reforms*, *South European Society and Politics*, Vol. 19, No 3, 2014, pp. 309-330.

<sup>269</sup> L. 247/2007.

<sup>270</sup> ITAL UIL, , "Save-Italy decree: a first look at the main interventions on social security" (Decreto « Salva Italia » : Prima informativa sui principali interventi in materia previdenziale), 02.01.2012, available at [http://www.italuil.it/UserFiles/file/LI\\_1\\_del\\_02gennaio2012.pdf](http://www.italuil.it/UserFiles/file/LI_1_del_02gennaio2012.pdf), accessed on 14.07.2014. Falasca G. (IISole24Ore.com), "Pensions, what changes from 1 January" (*Pensioni, ecco che cosa cambia dal 1° gennaio*), 01.01.2012, available at <http://www.ilsole24ore.com/art/norme-e-tributi/2012-01-01/tutte-novita-riforma-pensioni-161914.shtml?uuid=AamukrZE>, accessed on 14.07.2014.

<sup>271</sup> OECD, *Pensions at a Glance 2013 : Italy*, available at <http://www.oecd.org/els/OECD-PensionsAtAGlance-2013-Highlights-Italy.pdf>, accessed on 14.07.2014.

<sup>272</sup> Female workers benefit from a transitional period during which the minimum retirement age increases gradually until 2018 to 66 years of age.

<sup>273</sup> ITAL UIL (2012). Falasca G. (IISole24Ore.com) (2012). INPS, "The reform of pensions" (*La riforma delle pensioni*), <http://www.inps.it/portale/default.aspx?itemdir=7815>, accessed on 14.07.2014. Ministry of Labour and Social Policy, "The reform of pension schemes: objectives and tools, new rules and temporary measures" (*La riforma delle pensioni : Obiettivi e strumenti, nuove regole, misure temporanee*), 2012, available at [http://www.lavoro.gov.it/Priorita/Documents/Guidasintetica\\_riforma\\_pensioni.pdf](http://www.lavoro.gov.it/Priorita/Documents/Guidasintetica_riforma_pensioni.pdf), accessed on 14.07.2014. Natali D. and Stamati F., *Reassessing South European Pensions after the Crisis: Evidence from Two Decades of Reforms*, *South European Society and Politics*, Vol. 19, No 3, 2014, pp. 309-330.

**Table 13: Overview of the requirements for pensions before and after the DecretoSalva Italia**

	Old age pension		Retirement pension, now early retirement pension	
	Age	Contribution		Age
<b>Old regime</b>	60 to 65 years	20 years	Old regime	60 to 65 years
<b>New regime</b>	66 years (67 from 2021)*	As above	New regime	66 years (67 from 2021)*

\* Automatically increasing in accordance with life expectancy, with effect from 2021

**Source:** See previous footnotes

More favourable conditions apply in relation to workers engaged in 'arduous work', i.e. work which demands a 'particularly intensive and continuous mental or physical effort, caused by factors that cannot be prevented by taking appropriate measures'<sup>274</sup>.

### The 'esodati' issue

The design of the pension reform caused 'unintended consequences' leaving 130,000 people (referred to as 'esodati') without a pension for a longer period than they had anticipated. In many cases (about 30,000 according to some estimates<sup>275</sup>), this was the result of individual or collective agreements with companies freely entered into by workers or their representatives<sup>276</sup>.

For example, the press reported the story of Maria, a 58 year-old postal worker who 'believed to have finally settled down her whole family' by signing an agreement with the Poste Italiane Group (a fully State-owned postal service company) whereby, in exchange for her retiring early, the Group would have hired her son on a part-time contract of 15 days per month and a monthly net salary of €670. After retiring, Maria expected to spend five years without salary or pension, the right to which would have matured at the end of the period. Workers' unions reportedly reassured her that her son's part-time contract 'would have been transformed into a full-time position because no company, usually, keeps a high number of workers on a part-time basis'. The 2011 pension reform, however, changed the situation. Under the new rules, Maria would have been able to retire only in 2023, thus remaining for a very long period with neither pension nor salary. At the same time, her son's contract has remained part-time, therefore ensuring an income of only €670 a month<sup>277</sup>.

<sup>274</sup>EUROFOUND, Arduous work, available at <http://www.eurofound.europa.eu/emire/ITALY/ARDUOUSWORK-IT.htm>, accessed on 14.07.2014. Also see D.Lgs. 374/1993.

<sup>275</sup>Ichino, P., "True and False of the esodati issue (and how to sort it out)" (*Vero e falso sulla questione degli "esodati" (e come risolverla)*), 18.06.2012, available at <http://www.pietroichino.it/?p=21812>, accessed on 22.07.2014. The figure encompasses (a) 6,890 workers who terminated their employment contract before 31 December 2012 on the basis of individual or collective agreements concluded before 4 December 2011, and (b) 24,500 workers for which an individual or collective agreement concluded before 4 December 2011 stipulated that the employment contract would terminate after 31 December 2011. The total figure may be higher if a more recent source was available.

<sup>276</sup> OECD, OECD Economic Surveys: Italy, May 2013, available at [http://www.keepeek.com/Digital-Asset-Management/oecd/economics/oecd-economic-surveys-italy-2013\\_eco\\_surveys-ita-2013-en](http://www.keepeek.com/Digital-Asset-Management/oecd/economics/oecd-economic-surveys-italy-2013_eco_surveys-ita-2013-en), accessed on 15.07.2014.

<sup>277</sup>Panorama, "Esodati: the story of Maria, 5 years without salary and a retirement coming in 2023" (Esodati: storia di Maria, per 5 anni senza stipendio e in pensione nel 2023) 07.08.2013, available at <http://economia.panorama.it/lavoro/esodati-poste-storia-maria>, accessed on 15.07.2014.



Two and a half years after the pension reform, a number of measures have been adopted to address the *esodati* issue, with the aim to allow *esodati* to retire in accordance with pre-reform rules<sup>278</sup>.

### 5.3.2. Calculation of the pension before and after the reform

In addition to age and contribution requirements, the *Decreto Salva Italia* also reformed the methodology for calculating the amount of the pensions.

The previous regime distinguished between workers who, at the end of 1995, (a) had achieved at least 18 years of contributions, (b) had contributions of fewer than 18 years, and (c) had no contributions. The pension of workers who had at least 18 years of contribution (group a) was proportional to earnings in the last years of work (earnings-based system). The pension of workers who had contributions of fewer than 18 years (group b), was calculated partly in accordance with the earnings-based system, and partly in accordance with the contributions actually paid (mixed system). The pension of workers who did not have any contribution at the end of 1995 (group c) was calculated only based on contributions actually paid (contribution-based system)<sup>279</sup>.

The *Decreto Salva Italia* extends the contribution-based system to all workers in relation to periods worked after the entry into force of the decree (pro rata)<sup>280</sup>. In practice, the reform affects those workers whose pensions were, under the previous regime, calculated exclusively by the earnings-based method (group a). All others (groups b and c) were already subject, for the relevant periods of work, to the contribution-based system<sup>281</sup>.

## 5.4. The impact of the measures

The earnings-based system guaranteed very high pensions (80% of the worker's salary in the last years of activity, i.e. when the salary was typically highest) and resulted in a system which was financially unsustainable and socially inequitable, as workers retiring in the 1980s and 1990s benefitted from much better pensions than those that could be paid to future retirees<sup>282</sup>. The Ministry of Employment and Social Policy stated in 2012 that the previous regime systematically gave older generations a 'present' at the expense of younger generations<sup>283</sup>.

<sup>278</sup> Il Sole 24 Ore, et's shed light on the 'esodati'" (*Tempo di chiarire tutto sugli esodati*), 12.07.2014, available at <http://www.ilsole24ore.com/art/commenti-e-idee/2014-07-12/tempo-chiarire-tutto-esodati--103728.shtml>, accessed on 15.07.2014.

<sup>279</sup> INPS, "The types of pensions" (*Pensioni: le tipologie*), available at <http://www.inps.it/portale/default.aspx?sID=%3B0%3B8186%3B&lastMenu=8432&iMenu=1&p4=2>, accessed on 14.07.2014. INPS, Calcolo della pensione, available at <http://www.inps.it/portale/default.aspx?itemdir=4806>, accessed on 14.07.2014.

<sup>280</sup> Ministry of Labour and Social Policy, "The reform of pension schemes: objectives and tools, new rules and temporary measures" (*La riforma delle pensioni : Obiettivi e strumenti, nuove regole, misure temporanee*), 2012, available at [http://www.lavoro.gov.it/Priorita/Documents/Guidasintetica\\_riforma\\_pensioni.pdf](http://www.lavoro.gov.it/Priorita/Documents/Guidasintetica_riforma_pensioni.pdf), accessed on 14.07.2014.

<sup>281</sup> FLC CGIL, "A structural reform that changes retirement rules" (*Una riforma strutturale che cambia le regole per le pensioni*), available at <http://www.flcgil.it/files/pdf/20111229/scheda-flc-cgil-interventi-sulle-pensioni-decreto-monti-27-dicembre-2011.pdf>, accessed on 14.07.2014.

<sup>282</sup> Galasso V. (Lavoce.info), "Who's paying for the pension reform" (*Chi paga per la riforma delle pensioni*), 11.01.2013, available at <http://www.lavoce.info/chi-paga-per-la-riforma-delle-pensioni/>, accessed on 14.07.2014. Lavoce.info is a website offering independent expert analysis of current affairs.

<sup>283</sup> Ministry of Labour and Social Policy, "The reform of pension schemes: objectives and tools, new rules and temporary measures" (*La riforma delle pensioni : Obiettivi e strumenti, nuove regole, misure temporanee*), 2012,

Statistics showed that, mainly as a result of higher age and contribution requirements, the pension reform reduced access to new pensions by 32% for retirement pensions and early retirement pensions (*'pensione di anzianità'*/*'pensione anticipata'*) and by 57% for old age pensions (*'pensione di vecchiaia'*)<sup>284</sup>.

Unions also strongly criticised the *Decreto Salva Italia*<sup>285</sup>. Among other things, unions complained about not being given the opportunity to participate in the reform as had been the case with the previous pension reform of 1995 (however, others argued that the younger generations ended up bearing the brunt of the 1995 reform precisely because of pressure from the unions<sup>286</sup>). Unions considered 'intolerable' that workers who had already paid the contributions required under the new rules also had to reach the minimum age of 62 to retire. In their view, this requirement discriminated against those who started working earlier in their lives. In addition, unions found it unfair that the "quota" system should be so quickly replaced by the new rules. Two reasons were given: first, workers face a sudden change of rules which postpones their retirement and, second, companies will end up keeping workers longer, thus leading to fewer young people being hired. However, unions did acknowledge that certain aspects of the reform were necessary. This was particularly the case for the extension of the contribution-based calculation methodology.

Others praised the reform. For instance, it has been said that 'Mr Monti's Government had two weeks to do to pensions what earlier governments would have had since 1995 to do'<sup>287</sup>. Indeed, research identified the main determinants of the pension reform in ageing population, anaemic labour productivity growth, high labour costs and widespread tax evasion<sup>288</sup> – thus, 'the crisis provided a formidable stimulus for rationalisations' by worsening Italy's pension prospects<sup>289</sup>. In other words, reform was necessary more because of the underlying demographic and economic vulnerabilities of the country than because of pressure from EU institutions<sup>290</sup>. In addition, evidence suggests that it does not appear, at least in Italy, that the crisis has increased inequality or compressed pensions down the income scale<sup>291</sup>.

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available at [http://www.lavoro.gov.it/Priorita/Documents/Guidasintetica\\_riforma\\_pensioni.pdf](http://www.lavoro.gov.it/Priorita/Documents/Guidasintetica_riforma_pensioni.pdf), accessed on 14.07.2014.

<sup>284</sup> Corriere.it, "Pensions, 43% is below 1000euros" (*Pensioni, il 43% è sotto i mille euro*), 15.07.2014, available at [http://www.corriere.it/economia/14\\_luglio\\_08/pensioni-43percento-sotto-mille-euro-f8e5c5b0-06a5-11e4-892c-55b032fa482c.shtml](http://www.corriere.it/economia/14_luglio_08/pensioni-43percento-sotto-mille-euro-f8e5c5b0-06a5-11e4-892c-55b032fa482c.shtml), accessed on 15.07.2014. IlFattoQuotidiano.it, "INPS, in 2013 the debt reaches 9.9 billion of euros. 'But the system works'" (*Inps, il rosso nel 2013 è arrivato a 9,9 miliardi di euro: "Ma il sistema tiene"*), 08.07.2014, available at <http://www.ilfattoquotidiano.it/2014/07/08/inps-il-rosso-nel-2013-e-arrivato-99-miliardi-di-euro-ma-il-sistema-tiene/1053250/>, accessed on 15.07.2014.

<sup>285</sup> Petriccioli M. (CISL), "Pensions reform: new challenges for trade unions" (*Riforma delle pensioni : nuove sfide per il sindacato*), available at [http://www.cisl.it/SitoCisl-Temi.nsf/\(Previdenza2\)/2E0F38E85B82DE87C12579BA0043B3E1](http://www.cisl.it/SitoCisl-Temi.nsf/(Previdenza2)/2E0F38E85B82DE87C12579BA0043B3E1), accessed on 15.07.2014. The Italian Confederation of Workers' Trade Unions (CISL) is a Christian-democratic trade union,

<sup>286</sup> Natali D. and Stamati F., *Reassessing South European Pensions after the Crisis: Evidence from Two Decades of Reforms*, South European Society and Politics, Vol. 19, No 3, 2014, pp. 309-330.

<sup>287</sup> According to Pietro Ichino, 'a professor of Labour Law, former unionist and member of the national direction of the centre-left Democratic Party between 2009 and 2012', Pietro Ichino, *Chi sono (e checosahofatto)*, available at [http://www.pietroichino.it/?page\\_id=6](http://www.pietroichino.it/?page_id=6), accessed on 22.07.2014. See also Pietro Ichino, *Vero e falso sulla questione degli "esodati" (e come risolverla)*, 18.06.2012, available at <http://www.pietroichino.it/?p=21812>, accessed on 22.07.2014.

<sup>288</sup> Natali D. and Stamati F., *Reassessing South European Pensions after the Crisis: Evidence from Two Decades of Reforms*, South European Society and Politics, Vol. 19, No 3, 2014, pp. 309-330.

<sup>289</sup> Ibid.

<sup>290</sup> Interviews with a Director of the Ministry of Economy and Finance. The interviews were held on 17.10.2014 and on 20.10.2014..

<sup>291</sup> Natali D. and Stamati F., *Reassessing South European Pensions after the Crisis: Evidence from Two Decades of Reforms*, South European Society and Politics, Vol. 19, No 3, 2014, pp. 309-330.

There is however a risk that, in the future, the new system will result in low pensions for today's young people who will only work irregularly during their working life. It will likely be necessary, for these people, to take out a complementary retirement pension plan<sup>292</sup>. Indeed, the pension model may be assuming a new character – an 'unintentional residualism' due to more meagre protection through public pensions and the (scarce) take up of supplementary funds<sup>293</sup>. This is particularly worrying as, at least in Italy, '[a]dequacy concerns on benefit levels were not addressed, while the focus on cost containment further worsened the pension prospects of future retirees'<sup>294</sup>.

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<sup>292</sup> Interviews with a Director of the Ministry of Economy and Finance. The interviews were held on 17.10.2014 and on 20.10.2014.

<sup>293</sup> Natali D. and Stamati F., *Reassessing South European Pensions after the Crisis: Evidence from Two Decades of Reforms*, *South European Society and Politics*, Vol. 19, No 3, 2014, pp. 309-330.

<sup>294</sup> Natali D. and Stamati F., *Reassessing South European Pensions after the Crisis: Evidence from Two Decades of Reforms*, *South European Society and Politics*, Vol. 19, No 3, 2014, pp. 309-330.

## 6. IMPACT OF AUSTERITY MEASURES ON THE RIGHT OF ACCESS TO JUSTICE

### KEY FINDINGS

- The ability to institute court proceedings is the main instrument available to citizens who have suffered a violation of their fundamental rights. It is in the context of court proceedings that citizens may question the constitutionality of measures affecting their rights.
- Measures taken during the crisis have reduced the number of courthouses, closing or merging 31 tribunals, 31 public attorney offices, 220 local sections of tribunals, and 667 offices of justices of the peace (out of approximately 850 such offices). This reform may bring justice further from citizens (especially if it is not accompanied by the provision of e-justice services). At the same time, however, it can help achieve economies of scale, which may increase productivity and allow the delivery of better services at a lower cost.
- Access to justice is likely to be hampered by higher court application fees and other costs. Measures taken in the six-year period from 2008 to 2014 resulted in application fees for civil courts increasing by 92% (against 15% in the six-year period to 2008). This percentage underrepresents the actual increase in costs, as a host of specific new provisions reviewed in the study determine additional costs to the parties (e.g. requiring the application fees to be paid twice when an appeal is dismissed). Increased application fees for administrative courts were questioned before the ECtHR and the ECJ. In addition to application fees, parties to a court case are required to pay duties for obtaining copies of the documents in the case dossier, which can be particularly high. For example, up to €306.97 may be charged for copies saved on a compact disk or a USB flash drive.
- Funding to legal aid increased during the crisis, growing by nearly 21% (much less than the growth in costs) between 2010 and 2012. However, it remains below the international average: in 2012, Italy allocated €2.57 per inhabitant to legal aid, against the international average of €8.63.
- Further barriers to accessing justice were erected by a reform of the conditions for appealing civil judgments. Stricter rules were introduced on the formal requirements of the appeal, and appeal judges were given the discretionary power to declare the appeal inadmissible where it does not have a “reasonable probability” of being substantiated.

### 6.1. International and EU legal framework for the protection of the right of access to justice

While access to justice has not been explicitly guaranteed by international human rights law as such, it has however figured highly in the general requirements of the respect of rights of individuals. Hence, the UDHR, ICCPR, or ECHR, while guaranteeing procedural rights by means of the right to a fair hearing (or trial), do not make a reference to access to justice. The absence of a guarantee of the right of access to justice, has not prevented the ECtHR to effectively provide protection of this right by expanding the guarantee from Article 6 of the right to a fair trial to also mean the guarantee of the right to access to a court.

Furthermore, Article 13 of the ECHR guarantees the right to legal remedy, which is also an important element of access to justice.

More recently, however, the Convention on the Rights of Persons with Disabilities<sup>295</sup> guarantees the right of people with disabilities on access to justice on an equal basis with others.

Access to justice is guaranteed by Article 47 of the EU Charter, which guarantees the right of everyone to an effective remedy before a tribunal established by the law, by means of a fair and public hearing within a reasonable time, with access to legal aid, if necessary. However, even though it is seen to typically mean 'having a case heard in a court, it can more broadly be achieved or supported through mechanisms such as national human rights institutions, equality bodies and ombudsman institutions, as well as European Ombudsman at the EU level<sup>296</sup>.'

## 6.2. National legal framework protecting access to justice

The principle of equality under the law is one of the fundamental principles of the Italian Constitution<sup>297</sup>. Every person has the fundamental right to access a court of law to protect his rights and legitimate interests<sup>298</sup>, including against the acts of public bodies<sup>299</sup>. The right of defence is declared as inviolable at all stages of court proceedings<sup>300</sup>, which are governed by the due process of law<sup>301</sup>. The right of appeal to the Court of Cassation is always recognised to challenge judgments or other measures which limit individual freedoms in violation of the law<sup>302</sup>. This right is also guaranteed against the decisions of the Council of State and the Court of Auditors when their jurisdiction is challenged<sup>303</sup>. Such a strong recognition of the right of defence is completed by the requirement that the less privileged should be provided with means to access the courts<sup>304</sup>.

Interested persons have no direct recourse to the Constitutional Court for challenging the constitutionality of Laws, Decree-Laws or Legislative Decrees. Only the judge may, including on request from the parties, in the context of a court case pending before him, ask the Constitutional Court to control the constitutionality of such acts<sup>305</sup>. The central Government and the Regions may, for protecting their prerogatives, directly access the Constitutional Court to challenge national or regional acts<sup>306</sup>.

The main mechanism available to natural and legal persons for enforcing the rights covered by this study is to institute court proceedings<sup>307</sup>. In employment cases, Italian law used to

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<sup>295</sup> CRPD, Article 13.

<sup>296</sup> FRA, Themes: Access to justice, available at: <http://fra.europa.eu/en/theme/access-justice>

<sup>297</sup> Art. 3(1) Cost.

<sup>298</sup> Art. 24(1) Cost.

<sup>299</sup> Art. 113 Cost.

<sup>300</sup> Art. 24(2) Cost.

<sup>301</sup> Art. 111(1) Cost.

<sup>302</sup> Art. 111(7) Cost.

<sup>303</sup> Art. 111(7) Cost.

<sup>304</sup> Art. 24(3) Cost.

<sup>305</sup> Art. 1 Constitutional L. 1/1948.

<sup>306</sup> Art. 127 Cost. and Art. 134 Cost.

<sup>307</sup> Relevant cases would fall either within the jurisdiction of ordinary courts (which include civil sections and specialised employment sections) or within the jurisdiction of administrative courts.

impose a pre-trial conciliation procedure<sup>308</sup>. At present<sup>309</sup>, the conciliation procedure is no longer mandatory<sup>310</sup> but only voluntary<sup>311</sup>. The conciliation procedure, which takes place before a conciliation commission or in accordance with collective contracts<sup>312</sup>, sees the participation of representatives of employers and workers appointed by the unions<sup>313</sup>.

### 6.3. Overview of relevant measures

Several measures adopted in the period 2008 to 2014 impacted on the right to access justice. In particular, the number of courthouses was reduced, the cost of accessing justice increased, and new rules made it more difficult to appeal civil judgments. Funding for legal aid increased over the period, but still remains below international average. This section provides an overview of the main measures adopted, with a focus on civil justice.

#### 6.3.1. Reduction of courthouses

Measures taken in 2012<sup>314</sup> determined the closure of 31 tribunals, 31 public attorney offices, 220 local sections of tribunals, and 667 offices of justices of the peace (out of approximately 850 such offices<sup>315</sup>). The closures were challenged before the Constitutional Court, which upheld their constitutionality and stated, inter alia, that they are 'in line with the objective of guaranteeing that each tribunal' may 'achieve an average size as close as possible to the ideal model of a law office'<sup>316</sup>. Nine Regions have promoted a referendum to repeal the measures providing for the closure of law offices<sup>317</sup> and lawyers' unions called a two-day strike to protest against the cuts<sup>318</sup>.

#### 6.3.2. Cost of accessing justice

In Italy, the lodging of a court application or an appeal must be accompanied by the payment of an application fee. In addition, parties have to pay duties for obtaining copies of documents held in the case dossier.

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<sup>308</sup> In other civil cases, if certain conditions are met, the judge attempts the conciliation of the parties (Art. 185-bis c.p.c.; Art. 320 c.p.c.; Art. 350 c.p.c.). In addition, the parties themselves may ask the judge to attempt conciliation (Art. 185 c.p.c.; Art. 322 c.p.c.).

<sup>309</sup> L. 183/2010.

<sup>310</sup> However, pursuant to Art. 420(1) c.p.c., the judge is required to attempt conciliation at the hearing and, if a party refuses his conciliation proposal without justified reason, he may take the party's behaviour into account in deciding on the case.

<sup>311</sup> Art. 410 c.p.c.

<sup>312</sup> Art. 410 c.p.c. and Art.412-quater c.p.c.

<sup>313</sup> Art. 410(3) c.p.c.

<sup>314</sup> D.Lgs. 155/12 and D.Lgs. 156/12.

<sup>315</sup> Lorenzi B. (Altalex), "Cuts in courts: where the State draws back, local authorities go forth" (*Taglio dei tribunali: dove lo Stato arretra, avanzano i comuni e gli enti locali*), 03.08.2012, available at <http://www.altalex.com/index.php?idnot=58398>, accessed on 01.08.2014.

<sup>316</sup> Altalex, "Court cuts: the Constitutional Court confirms the constitutionality of the reform" (*Taglio tribunali: la Consulta ribadisce la costituzionalità della riforma*), 01.04.2014, available at <http://www.altalex.com/index.php?idnot=67051>, accessed on 01.08.2014. The source cites Constitutional Court Ordinance 59/2014. See also Constitutional Court judgement 237/2013 and ordinance 15/2014.

<sup>317</sup> Altalex, "Cuts to courts: green light of the Cassation for the referendum" (*Taglio dei tribunali: via libera della Cassazione al referendum*), 13.11.2013, available at <http://www.altalex.com/index.php?idnot=65252>, accessed on 01.08.2014.

<sup>318</sup> Altalex, "Lawyers on strike on 29 and 30 May against the court-cut Decree" (*Avvocati in sciopero il 29 e 30 maggio contro il decreto taglia-tribunali*), 23.04.2013, available at <http://www.altalex.com/index.php?idnot=62646>, accessed on 01.08.2014. Altalex, "Lawyers strike of 29-30 May: a report" (*Sciopero avvocati 29-30 maggio: il resoconto*), 29.05.2013, available at <http://www.altalex.com/index.php?idnot=63125>, accessed on 01.08.2014.

Between 2008 and 2014, a dozen measures were taken to amend application fees. In an attempt to provide an indication of the impact of those measures, the table (Table 14) below reports fees applicable, in total, for the three instances of a civil court case.

To increase comprehensibility, the table is based on general rules, without taking into account exceptions and special provisions applicable to different types of proceedings. It is, however, worth noting that measures adopted in 2011<sup>319</sup> extended the requirement to pay an application fee to previously excluded areas, notably welfare and employment cases (€43<sup>320</sup> and €21.50<sup>321</sup>, respectively, for each instance of the case)<sup>322</sup>.

It is worth underlining that, of twelve measures introduced between 2008 and June 2014 to amend application fees, only three<sup>323</sup> expressly refer, in their recitals, to the objectives of stabilising public finances and containing public expenditure. Only two of them<sup>324</sup> also refer to the need to comply with commitments made at EU level. Moreover, these measures do not only concern application fees, but are broader in scope and affect different areas of public expenditure. Judging from the recitals to the measures, therefore, evidence of the causal link between the crisis and the measures is somewhat anecdotal.

To help verify whether or not fee amendments relate to austerity, the table compares fee changes in the six-year period covered by this study (2008-2014) with changes occurred over the previous six-year period (from 2002, when application fees were introduced, to 2008). The table shows that, before the crisis, application fees grew “only” by 15% on average. Since 2008, they increased on average by 92%.

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<sup>319</sup> D.L. 98/11, converted into L. 111/11.

<sup>320</sup> Art. 9(1-bis) and Art. 13(1)(a), DPR 115/02.

<sup>321</sup> Art. 9(1-bis) and Art.13(3), DPR 115/02.

<sup>322</sup> Fees only apply where the applicant has a declared annual income above €34,107.72. See Art. 9(1-bis) and Art. 76 of DPR 115/02, read in conjunction with Decree of the Minister of Justice of 01.04.2014, *Adeguamento dei limiti di reddito per l'ammissione al patrocinio a spese dello Stato*, published on G.U. No. 169 of 23.07.2014.

<sup>323</sup> D.L. 78/10, converted, with amendments, into L. 122/10, D.L. 98/11, converted, with amendments, into L. 111/11, and D.L. 138/11, converted, with amendments, into L. 148/11.

<sup>324</sup> D.L. 98/11, converted, with amendments, into L. 111/11 and D.L. 138/11, converted, with amendments, into L. 148/11.

**Table 14: Indicative amount of court application fees for civil cases of different value, for three instances, as applicable in the years 2002, 2008 and 2014**

Value of the case (in €) <sup>325</sup>	2002 <sup>326</sup>	2008	% change 2002-2008	2014 <sup>327</sup>	% change 2008-2014
0>~1,100	€0	€90	N/A	€166	+84%
~1,100>5,200	€186	€210	+13%	€382	+82%
~5,200>26,000	€465	€510	+10%	€927	+82%
~26,000>52,000	€930	€1,020	+10%	€2,025	+99%
~52,000>260,000	€1,242	€1,500	+21%	€2,970	+98%
~260,000>520,000	€2,016	€2,400	+19%	€4,752	+98%
> ~520,000	€2,790	€3,330	+19%	€6,597	+98%
<b>Average % change</b>			<b>+15%</b>		<b>+92%</b>

Source: DPR 115/02<sup>328</sup>

In administrative cases, application fees differ depending on the subject-matter of the case. For example, if the dispute concerns the rights of citizenship, residence, entrance and permanence in the territory of the State – which are relevant for fundamental rights – the fee for lodging an application with a court is €300<sup>329</sup> (20% higher than in 2008, when it was €250<sup>330</sup>). However, fees are higher in public procurement cases, as mentioned further below.

New provisions adopted in the period covered by this study further added to the costs reported above. Law 228/12 required appellants to pay the application fee for the appeal a second time where their appeal is dismissed in its entirety or declared inadmissible<sup>331</sup>. This measure, which is the annual Stability Law for the year 2013, does not contain recitals. Thus, it does not expressly put forward the need to cope with the crisis as part of the rationale of the reform. However, it can be argued that this measure – like the others reported in this section – aims at discouraging “excessive” litigation in the hope of improving the overall performance of the justice system. Indeed, research shows that well-

<sup>325</sup> The values in this column are shown as approximate because they have slightly changed over the relevant period.

<sup>326</sup> Fees for the year 2002 correspond to the sum of the fees due for each of the three possible instances of a civil court case. Fees applicable at first instance are €0, €62, €155, €310, €414, €672, €930 for each of the case value brackets indicated in the left-hand column of the table, respectively. Art. 9 of DPR 115/02 as enacted and in force on 01.07.2002 provided that the fees are due for each instance. Therefore, fees have been multiplied by 3 in the table.

<sup>327</sup> Fees for the year 2014 correspond to the sum of the fees due for each of the three possible instances of a civil court case. Fees applicable at first instance are €37, €85, €206, €450, €660, €1,056, €1,466 for each of the case value brackets indicated in the left-hand column of the table, respectively. L. 183/11 provided that fees are raised by half for appeals and that they are doubled for proceedings before the Court of Cassation.

<sup>328</sup> The table was made by Milieu Ltd based on the text of Art. 13(1) of DPR 115/02 as in force on 01.07.2002 (original text entered into force on that date), on 01.07.2007 (consolidated version) and on 01.07.2014 (consolidated version). Original and consolidated versions are available at <http://www.normattiva.it/>.

<sup>329</sup> Art. 13(6-bis)(a), DPR 115/02.

<sup>330</sup> Art. 13(6-bis), DPR 115/02, as in force on 01.07.2008.

<sup>331</sup> Art. 13(1-quater), DPR 115/02.



performing justice systems support economic growth<sup>332</sup>. Decree-Law 98/11<sup>333</sup> stated that the application fee is raised by half if the lawyer omits to indicate his e-mail address, fax number or national registration number<sup>334</sup> in the application; another rule<sup>335</sup> provided that, if the application does not indicate the value of the case, the application is presumed to fall within the highest value bracket – in these cases, the applicant ends up paying for the (formal) mistakes of his lawyer. Moreover, applicants are required to advance, on behalf of the State, the duties and expedition expenses for notifications to the counterparty, for the amount of €27<sup>336</sup> (275% higher than in 2008, when the sum due was €8<sup>337</sup>; in 2002, it was less than €5<sup>338</sup>). Although this sum is later reimbursed, it does add to the upfront cost of accessing justice.

Application fees are not the only costs faced by parties to a court case. They are also required to pay a duty for each copy of documents in the case dossier they wish to make. The table below reports applicable duties. Following the structure of the law, it distinguishes between paper copies and copies in other specified formats.

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<sup>332</sup> See Alesina A. and Giavazzi F., "Slow justice, small enterprises" (*Giustizia lenta, imprese piccole*), 05.06.2011, available at [http://www.corriere.it/editoriali/11\\_giugno\\_05/una-giustizia-piu-veloce-per-far-crescere-le-imprese\\_2bd6aa10-8f40-11e0-a515-0265176cef92.shtml](http://www.corriere.it/editoriali/11_giugno_05/una-giustizia-piu-veloce-per-far-crescere-le-imprese_2bd6aa10-8f40-11e0-a515-0265176cef92.shtml), accessed on 09.01.2015. See also Palumbo G. et al. (OECD), *Judicial performance and its determinants: a cross-country perspective*, 2013, available at <http://www.oecd-ilibrary.org/docserver/download/5k44x00md5g8.pdf?expires=1420810569&id=id&accname=guest&checksum=6C107B046D4A95B72D5BC8E4375ADA28>, accessed on 09.01.2015.

<sup>333</sup> Converted into L. 111/11.

<sup>334</sup> Art. 13(3-bis), DPR 115/02.

<sup>335</sup> Art. 13(6), DPR 115/02.

<sup>336</sup> Art. 30(1), DPR 115/02.

<sup>337</sup> Art. 30(1), DPR 115/02, as in force on 01.07.2008.

<sup>338</sup> Art. 30(1) and Annex 1, DPR 115/02, as originally enacted and in force on 01.07.2002.

**Table 15: Duties for extracting copies of documents in the case dossier, paper and other formats**

<b>Paper copies</b>		
<b>Number of pages</b>	<b>Duty for simple copies</b>	<b>Duty for certified copies</b>
<b>1&gt;4</b>	€0.92 (€1.38*)	€7.37 (€11.05*)
<b>5&gt;10</b>	€1.84 (€2.76*)	€8.60 (€12.90*)
<b>11&gt;20</b>	€3.68 (€5.52*)	€9.82 (€14.73*)
<b>21&gt;50</b>	€7.37 (€11.05*)	€12.28 (€18.42*)
<b>51&gt;100</b>	€14.73 (€22.09*)	€18.42 (€27.63*)
<b>&gt;100</b>	€14.73 (€22.09*) + €6.14 (€9.21*) for every 100 pages or fraction thereof	€18.42 (€27.63*) + €7.37 (€11.05*) for every 100 pages or fraction thereof
	Urgency: where the party wishes to receive the copy within two days, duties are multiplied by 3. <sup>339</sup>	
<b>Copies in other formats</b>		
<b>Type of format</b>	<b>Duty</b>	
<b>Compact cassette of up to 60 minutes</b>	€3.68	
<b>Compact cassette of up to 90 minutes</b>	€5.52	
<b>Videotape of up to 102 minutes</b>	€6.14	
<b>Videotape of up to 180 minutes</b>	€7.37	
<b>Videotape of up to 240 minutes</b>	€9.21	
<b>Floppy disk of 1.44 MB</b>	€4.31	
<b>Compact disk</b>	€306.97	

\* 50% higher duty provisionally applicable pursuant to Art. 4(5), D.L. 193/09, converted into L. 24/10. See next paragraph.

**Source:** DPR 115/02<sup>340</sup>

A measure adopted during the crisis foresaw that duties for paper copies should be set at a level at least 50% higher than digital copies<sup>341</sup>. It does not appear that the implementing measures necessary to make the rule operational have been adopted yet. The same measure provided that, pending the adoption of those measures, duties for paper copies

<sup>339</sup> Art. 270, DPR 115/02.

<sup>340</sup> Decree of the Ministry of Justice of 10.03.2014, Adeguamento degli importi del diritto di copia e di certificato, ai sensi dell'articolo 274 del decreto del Presidente della Repubblica n. 115/2002, published on G.U. No 91 of 18.04.2014.

<sup>341</sup> Art. 4(4), D.L. 193/09, converted into L. 24/10.

are increased by half (to the values shown in brackets in the table)<sup>342</sup>. At the same time, the measure provided that duties for digital copies of documents already held in digital form at the registry, and for which it is possible to calculate the number of pages, are the same as the duties for paper copies<sup>343</sup> – if the two conditions are not met, however, duties for copies in formats other than paper continue to apply (e.g. €306.97 for a compact disk).

The table does not provide information on duties applicable to copies saved on more modern formats such as USB flash drives. There are indications that at least some courthouses are, in these cases, charging the (high) duty set for compact disks<sup>344</sup>.

### 6.3.3. Legal aid

Application fees and other costs may hinder the right to access justice. Legal aid can help mitigate this effect. In Italy, legal aid is available to persons with a declared household annual income of no more than €11,369.24<sup>345</sup>. The threshold is adjusted every two years based on changes in the consumer price index as elaborated by Istat<sup>346</sup>. In Italy, legal aid covers only the costs related to a court case (e.g. representation by a lawyer). It does not cover the cost of legal advice.

No austerity measures have been found in relation to legal aid. Rather, between 2010 and 2012, the budget allocated to legal aid increased by nearly 21%. Nevertheless, it remained significantly below international averages: in 2012, for example, Italy allocated €2.57 per inhabitant to legal aid, against an average of €8.63<sup>347</sup>.

### 6.3.4. Stricter procedural rules for appealing civil judgments

In 2012, a reform<sup>348</sup> of the code of civil procedure tightened the conditions for appealing civil judgments. The reform allegedly aimed to make appeals more efficient, based on the idea that the problem of the excessive duration of proceedings could be ameliorated by reducing the number of appeals<sup>349</sup> – only 30% of which are, statistically, successful<sup>350</sup>. Again, excessive duration of proceedings has shown to hamper competitiveness<sup>351</sup>.

<sup>342</sup> Ibid.

<sup>343</sup> Ibid.

<sup>344</sup> See, for example, information provided on the website of the Office of the Public Attorney at the section of Sassari of the Court of Appeal of Cagliari (Sardinia), available at <http://www.procuragenerale.sassari.it/news.aspx?id=3862>, accessed on 07.01.2015.

<sup>345</sup> Art. 76(1) and (2) and Art. 77, DPR 115/02 and Decree of the Minister of Justice of 01.04.2014, Adeguamento dei limiti di reddito per l'ammissione al patrocinio a spese dello Stato, published on G.U. No 169 of 23.07.2014.

<sup>346</sup> Art. 77, DPR 115/02. At the time of the enactment of DPR 115/02, Art. 76 set the threshold at €9,296.22.

<sup>347</sup> European Commission for the Efficiency of Justice (CEPEJ), Report on European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice, available at [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport\\_2014\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf), accessed on 08.01.2015. See, in particular, figures 2.15 and 2.17.

<sup>348</sup> Art. 54, D.L. 83/12, converted into L. 134/12.

<sup>349</sup> Note, however, that the new rules only apply to new appeals, so that the reform does not actually address the backlog of pending cases which are seen as causing the inefficiency in the first place.

<sup>350</sup> Serretti F. (Altalex), "The obstacle course in appeal: the new double filter" (*La corsa ad ostacoli in appello: il nuovo doppio filtro*), 26.11.2013, available at <http://www.altalex.com/index.php?idnot=65410>, accessed on 07.01.2015. Stilo A. (LaNuovaProceduraCivile.com) "The first ruling on the appeal filter" (*I primi orientamenti giurisprudenziali sul filtro in appello*), 05.05.2014, available at [http://www.lanuovaproceduracivile.com/wp-content/uploads/2014/05/stilo\\_filtro\\_appello\\_orientamenti\\_giurisprudenza.pdf](http://www.lanuovaproceduracivile.com/wp-content/uploads/2014/05/stilo_filtro_appello_orientamenti_giurisprudenza.pdf), accessed on 07.01.2015.

<sup>351</sup> On the impact of judicial performance on the economy and competitiveness, see Alesina A. and Giavazzi F., "Slow justice, small enterprises" (*Giustizia lenta, imprese piccole*), 05.06.2011, available at [http://www.corriere.it/editoriali/11\\_giugno\\_05/una-giustizia-piu-veloce-per-far-crescere-le-imprese\\_2bd6aa10-8f40-11e0-a515-0265176cef92.shtml](http://www.corriere.it/editoriali/11_giugno_05/una-giustizia-piu-veloce-per-far-crescere-le-imprese_2bd6aa10-8f40-11e0-a515-0265176cef92.shtml), accessed on 09.01.2015. See also Palumbo G. et al. (OECD), Judicial performance and its determinants: a cross-country perspective, 2013, available at

The reform introduced two major changes. The first was the introduction of stricter formal requirements for appeals. It became necessary to specifically and expressly identify which parts of the ruling are contested, what error was committed by the judge, and how else the case should be decided. If the appeal does not meet these requirements, it is dismissed as inadmissible.<sup>352</sup>

The second change was the attribution of the power, to the judge of the appeal, having heard the parties, to declare the appeal inadmissible where the appeal 'does not have a reasonable probability of being substantiated'<sup>353</sup>. The judge must state the reasons for the inadmissibility decision, but only summarily<sup>354</sup>. The judge's decision regarding the admissibility or inadmissibility of the appeal is discretionary, as it cannot be challenged before a higher judge<sup>355</sup>. If the appeal is declared inadmissible, the appellant may only challenge the first instance decision before the Court of Cassation<sup>356</sup>, but not the decision declaring the appeal inadmissible. However, because general rules<sup>357</sup> limit the grounds of appeal to the Court of Cassation violation of law, the review of the findings of fact remains precluded.

## 6.4. The impact of the measures

The measures summarised in this section did not receive widespread coverage in national media, perhaps because of their rather technical nature. However, several experts commented on them and on their possible impact. A certain contrast in views appears to emerge between jurists and economists.

Starting from jurists, the president of the National Lawyers' Council (*Consiglio Nazionale Forense*), the institutional body representing Italian lawyers, called for a U-turn in the direction of justice reforms. He expressed concern that access to justice has become ever more costly and difficult, and declared that the Government's main preoccupation seems to be to cut costs. He decried the erratic nature of reforms, which in his view were not based on any coherent strategy. With specific relation to the individual measures reviewed, he criticised the closure of many courthouses, which took justice further from citizens; the increase in application fees, which improperly aimed to reduce judicial backlogs; and stricter appeal rules, which impaired citizens' rights to access justice<sup>358</sup>.

The National Lawyers' Association (*Associazione Nazionale Forense*), an association of lawyers, lamented the drastic fall of revenue for lawyers, due in part to higher application

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<http://www.oecd-ilibrary.org/docserver/download/5k44x00md5q8.pdf?expires=1420810569&id=id&acname=quest&checksum=6C107B046D4A95B72D5BC8E4375ADA28>, accessed on 09.01.2015.

<sup>352</sup> Art. 342 c.p.c. See Serretti F. (2013).

<sup>353</sup> Art. 348-bis c.p.c.

<sup>354</sup> Art. 348-ter(1) c.p.c.

<sup>355</sup> Court of Cassation, Section VI, Order 17.04.2014 No. 8940, Azienda Sanitaria Locale di Novara v M.R., A.F. has confirmed that the decision of inadmissibility cannot be challenged, thus overruling a contrasting precedent set by Court of Cassation, Section VI, Order 27.03.2014 No. 7273, AGEA - Agenzia per le Erogazioni in Agricoltura v Azienda Agricola Molaro Giancarlo e Nicola.

<sup>356</sup> Art. 348-ter(3) c.p.c.

<sup>357</sup> Art. 360 c.p.c. Note, however, that the grounds of review are further limited in the certain cases pursuant to Art. 348-ter(4) and (5) c.p.c.

<sup>358</sup> Altalex, "Forensic Congress, Alpa: u-turn needed on the judicial reform" (*Congresso forense, Alpa: invertire la rotta sulle riforme in materia di giustizia*), Comunicato Consiglio Nazionale Forense, 23.11.2012, available at <http://www.altalex.com/index.php?idnot=60234>, accessed on 08.01.2015.

fees. In a press release it stated that citizens, because of the high cost of accessing justice, are giving up enforcing their rights in court<sup>359</sup>.

Jurists also contested the discretionary power vested on judges to decide whether or not appeals have a reasonable probability of being substantiated. It was argued that this clause is too vague to constitute a criterion for deciding, and that it will be left to judges themselves to determine what criteria to actually follow<sup>360</sup>.

Economists focused more on the high number of court cases, seen as 'the source of all evils in civil justice'<sup>361</sup>. They identified the causes of the problem in the failure to internalise the negative economic externalities of bringing court cases: because the majority of the costs of providing the justice service fall upon the State rather than parties to the dispute, frivolous proceedings may be brought (e.g. to delay executing a contract). In order to address this failure, it was proposed that the losing party should pay the full cost of the provision of the justice service<sup>362</sup>.

Other economists saw the decision to close smaller courthouses as a positive step towards reducing the costs of the justice system, while at the same time improving the quality of services to citizens by exploiting economies of scale. In particular, merging smaller tribunals into larger ones would enable judges to specialise, thus enhancing quality and productivity. Moreover, support services (e.g. registries, archives, documentation and IT services) could be better organised at reduced cost, perhaps even fostering the digitalisation of tribunals which is progressing only very slowly in Italy<sup>363</sup>.

A consumer association denounced that the increase in application fees, not accompanied by any increase<sup>364</sup> in the maximum income threshold for qualifying for legal aid, ends up discouraging citizens' access to justice. However, the reorganisation of courthouses and the closure of the smaller ones were seen as a way to reduce waste and inefficiency in the use of public resources<sup>365</sup>.

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<sup>359</sup> Associazione Nazionale Forense (ANF), "Justice, the National Forensic Association cries out an economic emergency for lawyers: dramatic fall of incomes, not only for the crisis but also for the current parameters" (Giustizia, per l'ANF è emergenza economica per gli avvocati: calo drastico dei redditi categoria non solo per la crisi ma anche per i parametri vigenti), 27.03.2013, available at <http://www.associazioneforense.it/2013/03/27/giustizia-per-lanf-e-emergenza-economica-per-gli-avvocati-calo-drastico-dei-redditi-categoria-non-solo-per-la-crisi-ma-anche-per-i-parametri-vigenti/>, accessed on 08.01.2015.

<sup>360</sup> Stilo A. (2014). Finocchiaro G. (IlSole24Ore.com), "Green light to the appeal 'filter', judges to decide on admissibility" (*Al via il "filtro" in appello, al giudice la valutazione sull'ammissibilità*), 11.09.2012, available at <http://www.diritto24.ilsole24ore.com/quidaAlDiritto/civile/civile/primiPiani/2012/09/giudice-dominus-del-filtro-in-appello.php>, accessed on 07.01.2014.

<sup>361</sup> Clementi L. (Lavoce.info), "Ten proposals to reduce the amount of proceedings" (*10 proposte per ridurre il numero di processi*), 29.11.2011, available at <http://www.lavoce.info/archives/27311/10-proposte-per-ridurre-il-numero-di-processi/>, accessed on 08.01.2015.

<sup>362</sup> D'Urso L. (Lavoce.info), "Too much (moral) gambling in the civil justice" (*Troppi azzardi (moral) nella giustizia civile*), 06.07.2012, available at <http://www.lavoce.info/archives/2683/troppi-azzardi-moral-nella-giustizia-civile/>, accessed on 08.01.2015. It may be worth noting that delaying the time when the payment is due from the lodging of an application to the final decision of the case would provide an incentive for public authorities to reduce the length of proceedings. See Palermo P. (Rivista della Scuola superiore dell'economia e delle finanze), "Proceeding fees and unified contribution" (*Sui tributi giudiziari e in particolare sul contributo unificato*), 01.05.2006, available at <http://www.rivista.ssef.it/site.php?page=20041102111002319&edition=2006-05-01>, accessed on 08.01.2015.

<sup>363</sup> Muraro G. (Lavoce.info), "Less courts, more justice" (*Meno tribunali, più giustizia*), 10.07.2012, available at <http://www.lavoce.info/archives/2666/meno-tribunali-piu-giustizia/>, accessed on 08.01.2015.

<sup>364</sup> Other than adjustment to inflation as required by the law.

<sup>365</sup> Cittadinanzattiva, "The budget law and the blow to the right to justice" (*La manovra finanziaria e la stangata (quasi) agostana sul diritto alla giustizia*), 21.07.2011, available at [http://www.cittadinanzattiva.it/newsletter/2011\\_07\\_21-204/files/manovra\\_2011\\_gd.pdf](http://www.cittadinanzattiva.it/newsletter/2011_07_21-204/files/manovra_2011_gd.pdf), accessed on 08.01.2015.

The high cost of accessing justice led to at least two complaints being filed with the ECtHR<sup>366</sup> with specific regard to public procurement. The cases do not appear to have been decided yet. In the beginning of 2014, the Regional Tribunal of Administrative Justice of Trento asked the European Court of Justice to rule on the question of whether the high application fees for accessing administrative proceedings – again in the public procurement field – are compatible with Council Directive 89/665/EEC<sup>367</sup> on procedures for the review of the award of public supply and public works contracts. The case is still pending at the time of writing<sup>368</sup>.

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<sup>366</sup> Two complaints were reportedly made to the ECtHR, one by the Associazione Veneta degli Avvocati Amministrativisti (a regional lawyers' association), and one by ANCE Ragusa (a local branch of a national association of building developers). See LeggiOggi.it, "Unified contribution for procurement, administrative lawyers appeal to the Cedu" (*Contributo unificato appalti, gli avvocati amministrativisti ricorrono alla Cedu*), 10.10.2013, available at <http://www.leggioggi.it/2013/10/10/aumento-contributo-unificato-appalti-si-ricorre-alla-cedu/>, accessed on 08.01.2015. The text of the complaint submitted by the Associazione Veneta degli Avvocati Amministrativisti is available, in French, at <http://www.lexitalia.it/vari1/Ricorso%20Corte%20Europea.pdf>, accessed on 08.01.2015.

<sup>367</sup> Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended.

<sup>368</sup> Case C-61/14, Request for a preliminary ruling from the Tribunale Regionale di Giustizia Amministrativa di Trento (Italy) lodged on 7 February 2014 — Orizzonte Salute - Studio Infermieristico Associato v Azienda Pubblica di Servizi alla persona 'San Valentino' and Others, OJ C 135 05.05.2014, p.21.

## 7. RIGHT TO FREEDOM OF EXPRESSION AND ASSEMBLY: PROTESTS AGAINST AUSTERITY MEASURES

### KEY FINDINGS

- From our research, it does not appear that the right to manifestation and assembly was limited by measures adopted in relation to the crisis. Clashes with the police did occur during certain protests, but they did not amount to a significant limitation of those rights.
- Several protests have featured slogans and other shows of dissatisfaction at the European Union in general and at the German government in particular, which were seen as backing the austerity agenda. They can be seen as a testimony of growing bitterness towards the European project, EU policies and priorities, and – perhaps more concerningly – the governments of other EU Member States.

### 7.1. International and EU legal framework for the protection of the freedom of expression and assembly

Freedoms of expression and assembly are guaranteed by Articles 20 and 23 of the UDHR, Articles 21 and 22 of the ICCPR, Article 8 of the IESCR, Articles 10 and 11 of the ECHR and Articles 5 of both ESC and RESC. Article 11 of the EU Charter guarantees the right of freedom of expression and information, while Article 12 provides for the protection of freedom of assembly and association.

Indeed, freedom of expression and freedom of assembly are two separate rights. The former guarantees the 'right to hold opinions and to receive and impart information and ideas without interference by public authority'<sup>369</sup>, whereas the latter provides for the protection of the 'right to freedom of peaceful assembly'<sup>370</sup>. However, in the context of this particular study, they are being observed at the same time, and in relation with the same events – the protests in the Member States which were provoked by the austerity measures, and which at the same time served to express their opinions, however quite often by means of collective public assembly, through protests and other forms of manifestations, hence calling for the protection from either or both of these guarantees.

Like all other rights dealt with in the present study, these two rights are not absolute. In other words, they are guaranteed, but only under certain conditions. In that regard, one important element has to be present – the assembly needs to be peaceful. As soon as the assembly loses this attribute, the State has not only the right, but also the duty to intervene, in order to protect the rights and freedoms of others. At the same time, the opinion needs to be expressed without interference by a public authority, unless such an interference is 'necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'<sup>371</sup>.

<sup>369</sup> ECHR, Article 10 and EU Charter, Article 11.

<sup>370</sup> ECHR, Article 11 and EU Charter, Article 12.

<sup>371</sup> ECHR, Article 10.

## 7.2. Right of assembly in Italy and measures concerning this right

The right of assembly is recognised by the Constitution, which also sets some conditions for its exercise: the assembly must be pacific and unarmed, and may be forbidden on demonstrated security or public safety grounds<sup>372</sup>.

Measures that could have reduced the exercise of the right to protest were proposed in April 2014 by the Minister of Interior. In particular, a 'special plan for Rome' on security and urban decorum was envisaged that included 'more precise restrictions on the use of the city centre for protests'<sup>373</sup>. The measures were part of a more general plan to improve public safety and decorum in the central area of Rome<sup>374</sup>. However, it could not be verified whether the measures were actually adopted or implemented.

## 7.3. Protests against austerity measures

A number of protests have been staged, since 2008, against austerity measures, cuts in public spending and precarious work. At times, protesters directly contested the European Union: 'we protest against the Treaties and the diktat of the European Union'<sup>375</sup>. A general strike in October 2013 brought to the streets, for three days, tens of thousands of teachers, lawyers, firefighters, unions and 'black blocks', among others. The German embassy 'of the hated Merkel' – which was seen as a symbol for backing the austerity agenda – was attacked<sup>376</sup>. In November 2012, protests in 87 Italian cities saw some violent clashes between protesters and the police<sup>377</sup>. Earlier that year, students protested in various cities

<sup>372</sup> Art. 17 Cost.

<sup>373</sup> The plan also sought to 'clean up' the city from drug dealers and other criminals, as well as illegal street vendors. See [ILSole24Ore.com](http://www.ilssole24ore.com), Sicurezza, Alfano: un piano speciale per Roma. Marino: obiettivi condivisi, 22.04.2014, available at <http://www.ilssole24ore.com/art/notizie/2014-04-22/sicurezza-alfano-piano-speciale-roma-marino-obiettivi-condivisi-155950.shtml>, accessed on 05.02.2015.

<sup>374</sup> Jerkov B. ([ILMessaggero.it](http://www.ilmessaggero.it)), "Alfano: Safety, here's the plan for Rome" (*Alfano: «Sicurezza, ecco il piano per Roma»*), 22.04.2014, available at [http://www.ilmessaggero.it/roma/cronaca/roma\\_sicurezza\\_piano\\_alfano\\_intervista\\_governo/notizie/645681.shtml](http://www.ilmessaggero.it/roma/cronaca/roma_sicurezza_piano_alfano_intervista_governo/notizie/645681.shtml), accessed on 30.07.2014.

<sup>375</sup> Repubblica.it, "To Rome from all over the country for the antagonists parade: stop to austerity, no to EU policies" (*A Roma da tutta Italia per il corteo degli antagonisti: "Basta austerity e no alle politiche dell'Europa"*), 28.06.2014, available at [http://roma.repubblica.it/cronaca/2014/06/28/news/sabato\\_il\\_corteo\\_degli\\_antagonisti\\_manifestanti\\_in\\_arrivo\\_d\\_a\\_tutta\\_italia-90213293/](http://roma.repubblica.it/cronaca/2014/06/28/news/sabato_il_corteo_degli_antagonisti_manifestanti_in_arrivo_d_a_tutta_italia-90213293/), accessed on 30.07.2014.

<sup>376</sup> Repubblica.it, "October protests, safety risks: three protests in Rome in one week" (*Manifestazioni di ottobre, allarme sicurezza: A Roma tre cortei in una settimana*) 22.09.2013, available at [http://roma.repubblica.it/cronaca/2013/09/22/news/manifestazioni\\_di\\_ottobre\\_allarme\\_sicurezza-67056714/](http://roma.repubblica.it/cronaca/2013/09/22/news/manifestazioni_di_ottobre_allarme_sicurezza-67056714/), accessed on 30.07.2014. LaStampa.it, "Roma is armoured for Cobas protests: tomorrow at risk of black bloc" (*Roma blindata, sfilano I Cobas: Domani il pericolo «black bloc»*) 18.10.2013, available at <http://www.lastampa.it/2013/10/18/italia/cronache/roma-blindata-per-giorni-di-proteste-trovato-furgone-con-armi-cinque-fermi-Atmt9pAgH87TrMMuGuvh2K/pagina.html>, accessed on 30.07.2014. LaStampa.it, "Fights and baton charges by the police in Rome for the siege of Ministries" (*Scontri e cariche a Roma per l'assedio ai ministeri*), 19.10.2013, available at <http://www.lastampa.it/2013/10/19/italia/cronache/roma-blindata-per-il-corteo-la-manifestazione-in-diretta-3TixLI8FO6fTV9Bt78RwK/pagina.html>, accessed on 29.07.2014.

<sup>377</sup> Repubblica.it, "Eight arrests in Rome, injured demonstrators in Turin and Milan. Grillo: 'It's war, police should join the protest'" (*Otto arresti a Roma, feriti a Torino e Milano: Grillo: "E' guerra, polizia si unisca a protesta"*), 14.11.2012, available at [http://www.repubblica.it/scuola/2012/11/14/news/cortei\\_e\\_proteste\\_in\\_tutta\\_italia\\_guerriglia\\_a\\_roma-46657854](http://www.repubblica.it/scuola/2012/11/14/news/cortei_e_proteste_in_tutta_italia_guerriglia_a_roma-46657854), accessed on 30.07.2014. Repubblica.it, Cgil on strike and protests in four cities: fights on the Lungotevere" (*Sciopero Cgil e quattro cortei in città: Scontri sul lungotevere*), 14.11.2012, available at [http://roma.repubblica.it/cronaca/2012/11/14/news/scuola\\_sciopero\\_cgil\\_e\\_proteste\\_quattro\\_cortei\\_in\\_citt\\_rischi\\_o\\_parali-46603294/](http://roma.repubblica.it/cronaca/2012/11/14/news/scuola_sciopero_cgil_e_proteste_quattro_cortei_in_citt_rischi_o_parali-46603294/), accessed on 30.07.2014.



'against the government and the European Union, which together deprive millions of young people of the right to education, employment and the future'<sup>378</sup>.

On 9 December 2013, during protests, several policemen took off their helmets. While the government denied this was to show solidarity to the protesters, a policemen union stated that the gesture was for the government to understand that 'also for policemen, enough is enough'<sup>379</sup>.

Based on the information reviewed, it seems to us that, although clashes between protesters and the police did take place, the right of manifestation and assembly was generally respected.

It is however relevant to note that, in 2013, authorities in several cities forbade protests of the "pitchfork movement" – a grass roots group of farmers, breeders, lorry drivers, unemployed, immigrants, and others. The reason was probably that earlier protests by the same outfit led to roadblocks, threats and acts of vandalism which caused fuel and food shortages throughout the country<sup>380</sup>.

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<sup>378</sup>Repubblica.it, "Students, protests all over Italy. Profumo: 'Open to dialogue, no violence'" (*Studenti, proteste e scontri in tutta Italia: Profumo: "Pronto al dialogo, ma no violenza"*), 05.10.2012, available at [http://www.repubblica.it/scuola/2012/10/05/news/studenti\\_protestano\\_in\\_tutta\\_italia\\_nel\\_mirino\\_monti\\_crisi\\_e\\_austerit-43899225/](http://www.repubblica.it/scuola/2012/10/05/news/studenti_protestano_in_tutta_italia_nel_mirino_monti_crisi_e_austerit-43899225/), accessed on 30.07.2014.

<sup>379</sup>La Repubblica, "Policemen take off the helmets. For the Questura is not a gesture of solidarity" ("*Poliziotti, via i caschi. E loro li levano: La Questura: non è stato per solidarietà*"), 09.12.2013, available at [http://torino.repubblica.it/cronaca/2013/12/09/foto/poliziotti\\_via\\_i\\_caschi\\_e\\_gli\\_agenti\\_li\\_tolgono-73129096/1/](http://torino.repubblica.it/cronaca/2013/12/09/foto/poliziotti_via_i_caschi_e_gli_agenti_li_tolgono-73129096/1/), accessed on 30.07.2014. See also Repubblica.it, "The 'pitchforks' on protest, guerrilla in Turin. Protests all around the country: indefinite strikes" (*Protestano i "forconi", guerriglia a Torino. Presidi in tutta Italia. "Avanti a oltranza"*), 09.12.2013, available at [http://www.repubblica.it/cronaca/2013/12/09/news/sciopero\\_dei\\_forconi\\_l\\_italia\\_si\\_ferma\\_manifestazioni\\_e\\_presidi\\_in\\_tutte\\_le\\_citt-73095919/](http://www.repubblica.it/cronaca/2013/12/09/news/sciopero_dei_forconi_l_italia_si_ferma_manifestazioni_e_presidi_in_tutte_le_citt-73095919/), accessed on 30.07.2014.

<sup>380</sup>Catalano S. (Repubblica.it), *The protest of self-employed drivers: trucks stop throughout Sicily*" (*Protestano gli autotrasportatori: tir fermi in tutta la Sicilia*), 16.01.2012, available at [http://palermo.repubblica.it/cronaca/2012/01/16/news/protestano\\_gli\\_autotrasportatori\\_tir\\_fermi\\_in\\_tutta\\_la\\_sicilia-28226895/](http://palermo.repubblica.it/cronaca/2012/01/16/news/protestano_gli_autotrasportatori_tir_fermi_in_tutta_la_sicilia-28226895/), accessed on 04.08.2014; AffariItaliani, "The revolution of the 'pitchforks' blocks Italy: foreseen lack of milk, fruit and vegetables" (*La rivoluzione dei Forconi blocca l'Italia. "Mancheranno latte, frutta e verdura"*), 23.01.2012, available at <http://www.affaritaliani.it/cronache/blocco-tir-strade-in-tilt-in-tutta-italia230112.html>, accessed on 04.08.2014; Spica G. (Repubblica.it), "Pitchforks, blocks are prohibited. 'We'll be arrested. Shocking flyer: Go mafia'" ("*Forconi, blocchi vietati. "Ci faremo arrestare": Trovato un volantino shock: "Viva la mafia"*"), 07.12.2013, available at [http://palermo.repubblica.it/cronaca/2013/12/07/news/scritta\\_choc\\_viva\\_la\\_mafia\\_viva\\_i\\_forconi\\_le\\_prefetture\\_siciliane\\_vietano\\_i\\_blocchi-72957281/?ref=search](http://palermo.repubblica.it/cronaca/2013/12/07/news/scritta_choc_viva_la_mafia_viva_i_forconi_le_prefetture_siciliane_vietano_i_blocchi-72957281/?ref=search), accessed on 04.08.2014.

## 8. OVERVIEW OF THE IMPACT OF THE AUSTERITY MEASURES ON OTHER FUNDAMENTAL RIGHTS IN ITALY

### KEY FINDINGS

- Our research and stakeholder interviews confirm that the rights covered by earlier sections of this study are those that were most immediately affected by measures taken to cope with the economic crisis.
- The failure of Italian public authorities to settle their debts towards private enterprises in a timely manner is a long-standing problem. The crisis has increased the delay with which public authorities pay their debts, thus further impinging on the right to property. The Commission has started an infringement procedure against Italy for violation of Directive 2011/7/EU on combatting late payment in commercial transactions, which requires public authorities to pay their invoices in 30 days (or 60 under certain conditions). At the end of 2011, public authorities had accumulated €90bn in debts for commercial transactions (equivalent to 6% of GDP), half of which were collectable. Most of the debt is in Regions and their healthcare systems.
- A number of measures were adopted during the crisis to pay the debts accumulated by public authorities towards enterprises and to reduce the delay of payments. About €50bn were made available to settle accumulated debts. Credits towards public authorities became certifiable, in order to make them transferable to banks and financial institutions. The latter were given public money to encourage the take up of certified credits from SMEs. Creditors were allowed, under certain conditions, to use certified credits to balance mutual debts with public authorities. Officials who incurred new debt are held responsible for making sure public finance rules and budget allocations are respected.
- The measures amount to the greatest length to restart the economy in recent decades. About €32.5bn had been paid in 2014. Payment delays began to decrease in 2013, though they remain one-and-a-half times longer than EU average. The macroeconomic impact of the payments was surely positive, if difficult to quantify.
- While the allocation of funds aimed at settling existing debt constituted an important step forward, the possibility to certificate credits, transfer them to banks and financial institutions, and to set-off mutual debts with public authorities were barely used.
- The measures taken sought to deal with the results of a number of structural, old problems, but only partially addressed the underlying causes. Positive steps were taken to make the Internal Stability and Growth Pact more flexible and render public officials responsible for violating public finance and budgeting rules. But the maladministration of budgets, the lack of technical control over budgets, and the possibility for public authorities to spend beyond their resources 'if necessary and urgent' – thus continuing to accumulate debt to avoid bearing the brunt of resource limitations – do not appear to have been resolved or even addressed.

## 8.1. The right to property

Our research and the views expressed by all stakeholders interviewed confirm that the fundamental rights covered by earlier sections of this study are the ones most affected by austerity measures.

However, as the table below indicates, the crisis has contributed to worsening the already existing problem of public authorities' failure to pay their debts towards enterprises in a timely manner, which adversely affects the right to property. Measures taken to cope with the crisis have sought to resolve the issue, thereby contributing to strengthening that right.

In 2014, Italian public authorities took 165 days – 37 more than in 2009 – to pay their invoices. While peak delays were reached earlier in the period covered by this study, average payment times in Italy remain significantly longer than EU average.

**Table 16: Average payment times by public authorities and in the private sector (days)**

	2009	2010	2011	2012	2013	2014
<b>Italy</b>	128	186	180	180 <sup>381</sup>	170	165
<b>EU average</b>	67	63	65	65	61	58
<b>Difference</b>	61	123	115	115	109	107

**Source:** CGIA Mestre<sup>382</sup>

In specific sectors, delays are even worse than average figures provided in the table. Enterprises with public contracts for the procurement of works report being paid seven months late, with peak delays reaching two years<sup>383</sup>.

Payment delays are hardly compatible with the EU law requirement that public authorities must pay their invoices within 30 days (or 60 under certain conditions)<sup>384</sup>. Following the submission of a number of complaints, on 18 June 2014, the Commission announced the start of an infringement procedure against Italy<sup>385</sup>.

<sup>381</sup> Other sources indicate that payment times in the year 2012 were about 190 days on average. See Banca d'Italia, "Financial Bulletin n.2" (*Bollettino Economico Numero 2*), 2014, available at [http://www.bancaditalia.it/pubblicazioni/bollettino-economico/2014-2/boleco\\_2\\_2014.pdf](http://www.bancaditalia.it/pubblicazioni/bollettino-economico/2014-2/boleco_2_2014.pdf), accessed on 18.12.2014.

<sup>382</sup> CGIA Mestre, "Our Public Administration pays its debts with 100 days delay over EU average. Bortolussi: "We need to speed up the e-invoicing" (*La nostra PA paga i suoi debiti con oltre 100 giorni di ritardo rispetto alla media UE: Bortolussi: "Bisogna accelerare sul fronte della fatturazione elettronica"*), 18.06.2014, available at <http://www.cgiamestre.com/wp-content/uploads/2014/06/cs-INFRAZIONE.pdf>, accessed on 17.12.2014. The source quotes data by Intrum Justitia.

<sup>383</sup> Associazione Nazionale Costruttori Edili (ANCE), "Implementation of the new EU Directive n Late Payments in Italy: report of the National Association of Constructors to the Vice-President of the EU Commission on the implementation of Directive 2011/7/UE 16 February 2011 on combating late payment in commercial transactions" (*Attuazione della nuova direttiva europea sui ritardi di pagamento in Italia: Relazione dell'Associazione Nazionale dei Costruttori Edili al Vice-Presidente della Commissione Europea sull'attuazione della Direttiva 2011/7/UE del 16 febbraio 2011 relativa alla lotta contro i ritardi di pagamento delle transazioni commerciali*), 03.02.2014, available at <http://www.astrid.eu/I-CREDITI-/Studi--ric/Relazione-Ance-al-Vice-Presidente-Tajani-Febbraio-2014.pdf>, accessed on 17.12.2014.

<sup>384</sup> This is required by Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions, OJ L 48, 23.2.2011, p. 1–10. The directive was transposed in the Italian legal order by D.Lgs. 192/12.

<sup>385</sup> European Commission, Press release: Late payments: Commission seeks clarifications from Italy and Slovakia, 18.06.2014, available at [http://europa.eu/rapid/press-release\\_IP-14-689\\_en.htm](http://europa.eu/rapid/press-release_IP-14-689_en.htm), accessed on 17.12.2014.

It is difficult to measure the total amount of debts for commercial transactions accumulated by Italian public authorities. A rough estimate by the Bank of Italy places it at about €90bn at the end of 2011 (equivalent to nearly 6% of Italy's GDP), half of which was deemed to be collectable<sup>386</sup>. About half of the debt concerns Regions and local health authorities<sup>387</sup>. About a quarter of all Italian enterprises have credits towards public authorities<sup>388</sup>.

The late payment of debts by public authorities worsens the liquidity of enterprises and creates larger spill over effects on the economy<sup>389</sup>. Individuals and enterprises that have procurement contracts with public authorities tend to pay their invoices later than average (35.5 days against 20.5), in spite of the fact that they are generally given longer payment deadlines (66 days against an average 53.3)<sup>390</sup>. Enterprises with credits towards public authorities find it more difficult than others to obtain loans (16% report such difficulties, against the general average of 12%)<sup>391</sup>. Overall, payment delays by public authorities have been identified as one of the main reasons for the record of 14,200 bankruptcies in 2013 – 14.5% more than in 2012, 52% more than in 2009<sup>392</sup>.

Research indicates that payment delays negatively impacted on employment. This research suggests that, because of late payments, one in five Italian enterprises was forced to dismiss workers (EU average: 26%), while 39% avoided hiring new employees (EU average: 40%)<sup>393</sup>. About 41% of enterprises decided to forego making new investments, while a fifth delayed the payment of taxes or social contributions<sup>394</sup>.

The annual Government report to Parliament for the year 2013 identified the payment of debts by public authorities as a way to input liquidity into the economy and, by so doing, fuel economic growth<sup>395</sup>. Experts concurred that, if public authorities paid their debts, the financial conditions of many enterprises would improve. Increased certainty of cash flows would stimulate growth<sup>396</sup>.

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<sup>386</sup>Banca d'Italia (2014). Also see Commissioni speciali per l'esame di atti del Governo riunite della Camera dei Deputati e del Senato della Repubblica, "Hearing on the examination of the Parliamentary Report approved by the Council of Ministers 21 March 2013: the witness of the Director for Economic Research and International Relations of the Banca d'Italia Daniele Franco" (*Audizione in merito all'esame della Relazione al Parlamento approvata dal Consiglio dei Ministri il 21 marzo 2013: Testimonianza del Direttore Centrale per la Ricerca economica e le Relazioni internazionali della Banca d'Italia Daniele Franco*), 28.03.2013, available at [https://www.bancaditalia.it/pubblicazioni/interventi-vari/int-var-2013/franco\\_280313.pdf](https://www.bancaditalia.it/pubblicazioni/interventi-vari/int-var-2013/franco_280313.pdf), accessed on 18.12.2014.

<sup>387</sup>Commissioni speciali per l'esame di atti del Governo riunite della Camera dei Deputati e del Senato della Repubblica, (2013). However, government sources indicate that less than 5% of debt concern central government bodies. See MEF, "The payment of public debts to the creditors" (*Pagamento debiti della PA ai creditori*), available at [http://www.mef.gov.it/primo-piano/article\\_0118.html](http://www.mef.gov.it/primo-piano/article_0118.html), accessed on 18.12.2014.

<sup>388</sup>Ibid.

<sup>389</sup>Romano G. (lavoce.info), "Delays of public payments: it's a knock-on effect" (*Ritardo nei pagamenti della Pa: l'effetto è a catena*), 20.12.2013, available at <http://www.lavoce.info/pagamenti-della-pa-stato-pessimo-pagatore-ritardo-effetti-sui-fornitori/>, accessed on 22.07.2014.

<sup>390</sup>Ibid.

<sup>391</sup>Commissioni speciali per l'esame di atti del Governo riunite della Camera dei Deputati e del Senato della Repubblica, (2013).

<sup>392</sup>Repubblica, "Record of bankruptcy due to the debts of the PA. Cgia: enterprises still miss 100 billion" (*Fallimenti record per colpa dei debiti Pa. Cgia: alle imprese mancano ancora 100 mld*), 03.02.2014, available at [http://www.repubblica.it/economia/2014/02/03/news/fallimenti\\_record\\_per\\_colpa\\_dei\\_debiti\\_pa\\_cgia\\_alle\\_imprese\\_mancano\\_ancora\\_100\\_mld-77592615](http://www.repubblica.it/economia/2014/02/03/news/fallimenti_record_per_colpa_dei_debiti_pa_cgia_alle_imprese_mancano_ancora_100_mld-77592615), accessed on 18.12.2014.

<sup>393</sup>CGIA Mestre, "One out of 5 enterprises forced to dismissals due to delayed payments" (*Un'impresa su 5 costretta a licenziare a causa dei ritardi dei pagamenti*), 24.05.2014, available at <http://www.cgiamestre.com/wp-content/uploads/2014/05/debiti-impres.pdf>, accessed on 18.12.2014.

<sup>394</sup>ANCE (2014).

<sup>395</sup>Camera dei Deputati, Servizio Studi, "The D.L. on the payments of debts of the Public Administration" (*Il decreto-legge per il pagamento dei debiti della Pubblica Amministrazione*), 07.05.2013, available at <http://documenti.camera.it/Leg17/Dossier/Testi/NOTST001.htm>, accessed on 17.12.2014.

<sup>396</sup>Commissioni speciali per l'esame di atti del Governo riunite della Camera dei Deputati e del Senato della Repubblica (2013).

The main reason for public authorities failing to pay their debts is reported to be the Internal Stability and Growth Pact<sup>397</sup>, which Italy uses to implement the Stability and Growth Pact agreed upon at EU level<sup>398</sup>. According to some estimates, in 2012, the Internal Stability and Growth Pact prevented public authorities from settling €4.7bn of debts, despite having the necessary financial resources<sup>399</sup>. Indeed, the unavailability of funds is identified as a reason for failure to pay in only 32% of cases; the insolvency of local governments in only a tenth of cases<sup>400</sup>.

## 8.2. Overview of relevant measures

In the period covered by this study, several measures were introduced to address the problem of public authorities' debts towards private enterprises, most of which were adopted by Decree-Law.

In particular, measures<sup>401</sup> were taken to ensure the payment of €40bn of debt over a period of 12 months starting in mid-2013. A further €7.2bn were added in 2013<sup>402</sup>, and €0.5bn in 2014<sup>403</sup>. Public authorities were required to identify creditors and verify if funds were available for the payments. In case of insufficient funds, creditors should be paid in chronological order, starting from older debts<sup>404</sup>. The Government expected this measure to result in a GDP increase of 1.2 points over the three years 2013-2015<sup>405</sup>.

Furthermore, provision was made for allowing debts to be settled, on request from the creditor, through the assignment of State bonds, up to a maximum total ceiling of €2bn<sup>406</sup>.

The possibility was introduced for debts towards (certain) public authorities to be certified, enabling creditors to transfer their certified credits (either with or without recourse, i.e. with or without remaining liable for the future payment) to banks and financial institutions<sup>407</sup>. The latter were given €2bn in public money specifically to encourage them to purchase certified credits from SMEs. Another €10bn were made available based on an agreement between the government, banks and enterprise associations<sup>408</sup>. An online

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<sup>397</sup>ANCE (2013).

<sup>398</sup>See MEF, General Accounting Office (*Ragioneria Generale dello Stato*), "The Internal Stability Pact: what it is" (*Patto di stabilità interno: Cosa è il Patto di stabilità interno*), available at: <http://www.rgs.mef.gov.it/VERSIONE-I/e-GOVERNME1/Patto-di-S/CosaeilPatto/>, accessed on 18.12.14.

<sup>399</sup>Associazione Nazionale Costruttori Edili (ANCE), "Late payments of the Public Administration: almost 5 billion of euros for payments of local authorities available yet frozen by the internal stability pact" (*Ritardati pagamenti della Pubblica Amministrazione: Quasi 5 miliardi di euro di pagamenti degli enti locali disponibili ma bloccati dal Patto di stabilità interno*), 14.02.2013, available at <http://www.ance.it/docs/docDownload.aspx?id=11268>, accessed on 18.12.2014.

<sup>400</sup>ANCE (2014).

<sup>401</sup>D.L. 35/13, converted into L. 64/13.

<sup>402</sup>D.L. 102/13, converted into L. 124/13. See MEF, Pagamento debiti della PA ai creditori, available at [http://www.mef.gov.it/primo-piano/article\\_0118.html](http://www.mef.gov.it/primo-piano/article_0118.html), accessed on 18.12.2014.

<sup>403</sup>L. 147/13. See MEF, "The payment of public debts to the creditors" (*Pagamento debiti della PA ai creditori*), available at [http://www.mef.gov.it/primo-piano/article\\_0118.html](http://www.mef.gov.it/primo-piano/article_0118.html), accessed on 18.12.2014.

<sup>404</sup>Altalex, "Debts of the Public Administration: the decree on payments to enterprises" (*Debiti Pa: il decreto per i pagamenti alle imprese*), 10.06.2013, available at <http://www.altalex.com/index.php?idnot=62370>, accessed on 17.12.2014.

<sup>405</sup>Camera dei Deputati (2013).

<sup>406</sup>Ibid.

<sup>407</sup>This possibility was originally introduced by D.L. 185/2008, converted into L. 2/2009. See Camera dei Deputati (2013).

<sup>408</sup>See Il pagamento dei debiti commerciali delle amministrazioni centrali e locali, available at <http://www.camera.it/leg17/1049?tema=801&il+pagamento+dei+debiti+commerciali+delle+amministrazioni+centrali+e+locali>, accessed on 17.12.2014.

platform was created to facilitate the certification process<sup>409</sup>. A further Decree-Law provided for the State to guarantee certified credits<sup>410</sup>.

Creditors were allowed, under certain conditions, to use certified credits to balance mutual debts with public authorities<sup>411</sup>.

Rules were introduced to make officials who adopted acts creating additional debt responsible for ensuring compliance with public finance rules and budget allocations<sup>412</sup>.

### 8.3. The impact of the measures

The measures taken in order to tackle the problem of public authorities' failure to pay their debts in a timely manner possibly constitute 'the greatest measure to restart the economy taken in recent decades'<sup>413</sup>.

Government sources indicate that, in 2014, public authorities had paid €32.5bn of their debts. Total funds made available for such payments were €40.1bn. Requests for the certification of debts totalled 84,608<sup>414</sup>.

The measures taken appear to have inverted the upward trend in payment delays that prevailed in the period 2009 to 2012. Starting from 2013, payment delays began to decrease, even though they remain more than two-and-a-half times longer than EU average<sup>415</sup>.

In spite of budgetary allocations, payments did not always take place according to schedule. At the end of March 2013, creditors had reportedly received €23.5bn – less than the €27bn that the government had promised would be paid by the end of 2013<sup>416</sup>.

The macroeconomic impact of the payment of debts by public authorities was considered as 'certainly positive', even though its actual significance is difficult to estimate. This is because the ultimate effects will depend on factors such as the timing of the payment, the specific conditions of the enterprises receiving the payments, and their effects on the expectations of businesses and financial markets. For example, payments were expected to represent a noticeable stimulus for enterprises with cash flow difficulties but good growth

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<sup>409</sup>Piattaforma per la certificazione dei crediti, available at

<http://certificazionecrediti.mef.gov.it/CertificazioneCredito/home.xhtml>, accessed on 17.12.2014.

<sup>410</sup> D.L. 66/14, converted into L. 89/14. See MEF, "The payment of public debts to the creditors" (*Pagamento debiti della PA ai creditori*) available at [http://www.mef.gov.it/primo-piano/article\\_0118.html](http://www.mef.gov.it/primo-piano/article_0118.html), accessed on 18.12.2014.

<sup>411</sup> This possibility was originally introduced by D.L. 78/10, converted into L. 122/10. See Il pagamento dei debiti commerciali delle amministrazioni centrali e locali, available at <http://www.camera.it/leg17/1049?tema=801&il+pagamento+dei+debiti+commerciali+delle+amministrazioni+centrali+e+locali>, accessed on 17.12.2014.

<sup>412</sup>ANCE (2014).

<sup>413</sup> Hamoui R. and Bordignon M., Debiti della Pa, il diavolo sta nei dettagli, 03.04.2013, available at <http://www.lavoce.info/archives/8264/debiti-della-pa-il-diavolo-sta-nei-dettagli/>, accessed on 14.12.2014.

<sup>414</sup>See MEF, "The payment of public debts to the creditors" (*Pagamento debiti della PA ai creditori*), available at [http://www.mef.gov.it/primo-piano/article\\_0118.html](http://www.mef.gov.it/primo-piano/article_0118.html), accessed on 18.12.2014.

<sup>415</sup> See section 6, table 12. See also, concerning 2013, ANCE (2014).

<sup>416</sup> Jones G. and Fonte G. (Reuters), Dossier: Renzi's battle to reduce public expenditure" (*Dossier: La battaglia di Renzi per ridurre la spesa pubblica*), 14.07.2014, available at: <http://it.reuters.com/article/topNews/idITKBN0FJ0YR20140714>, accessed on 15.07.2014.

prospects – those enterprises could use the money to finance investments and enhance productivity<sup>417</sup>.

The allocation of responsibility to officials who incur debt for ensuring compliance with public finance rules and budget allocations has led authorities, particularly at local level, to introduce organisational measures to contain the creation of new debt. However, as a side effect, authorities appear to have reduced the number of calls for tenders issued and contracts signed after the publication of the calls<sup>418</sup>.

As regards the measures allowing the certification of credits towards public authorities, a certain delay in implementation was registered. The online certification platform took a year to become operational, and sanctions for public authorities that failed to register were introduced only in April 2013. In August 2013, 19,650 public authorities were registered<sup>419</sup>. The effectiveness of the measures was also limited by the absence of sanctions for officials who failed to grant certificates. In some extreme cases, enterprises waited longer than eight months for their credits to be certified<sup>420</sup>. However, other commentators report that a significant amount of debts are not certified because, even if they are claimed by enterprises, public authorities do not acknowledge them<sup>421</sup>.

The take-up of the opportunity to transfer certified credits from enterprises to banks and financial institutions was very limited. Only 13% of enterprises transferred certified credits without recourse, and only 5% with recourse. A possible reason for the limited success of this initiative lies in transaction costs being placed upon enterprises<sup>422</sup>. However, experts also argued that the margin of profit left to banks is often too large compared with the risk involved and the small guarantee offered by the State (€150m)<sup>423</sup>.

The success of the possibility for creditors to balance mutual debts against public authority was also very limited – only 8% of enterprises used it – mainly because of delays in the implementation of relevant rules and because of the stringent conditions under which such a set-off is permitted<sup>424</sup>.

Some commentators noted that the measures taken deal with past debts, but do not adequately address their causes. In this way, they are not capable of preventing the same problems from arising in the future (or continuing to arise in the present)<sup>425</sup>. Underlying causes which do not appear to have been addressed include the following:

- Public authorities have overestimated their future earnings, because of failures or outright absence of control over budgeting<sup>426</sup>.
- There is a lack of institutionalised technical control structure over budgeting<sup>427</sup>.

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<sup>417</sup> Commissioni speciali per l'esame di atti del Governo riunite della Camera dei Deputati e del Senato della Repubblica, (2013).

<sup>418</sup> ANCE (2014).

<sup>419</sup> Ibid.

<sup>420</sup> Ibid.

<sup>421</sup> Fubini F. (Repubblica.it), Public debts, banks to hinder (*Debiti dello Stato, le banche frenano*), 30.03.2014, available at [http://www.repubblica.it/economia/2014/03/30/news/debiti\\_pa\\_rimborsi\\_banche-82309134](http://www.repubblica.it/economia/2014/03/30/news/debiti_pa_rimborsi_banche-82309134), accessed on 18.12.2014.

<sup>422</sup> ANCE (2014).

<sup>423</sup> Fubini F. (2014).

<sup>424</sup> ANCE (2014).

<sup>425</sup> Pisauro G. (Lavoce.info), "The debts of the Public Administration: what to expect for the future" (*Debiti della Pa: che succederà in futuro?*), 09.04.2013, available at <http://www.lavoce.info/archives/8425/debiti-delle-amministrazioni-che-succederà-in-futuro/>, accessed on 14.12.14.

<sup>426</sup> Ibid.

- There have also been behaviours in violation of budget rules<sup>428</sup>. According to some commentators, 'many public administrations avoid recognising debts because they have committed irregularities in concluding supply contracts'<sup>429</sup>. For example, reference is made to a practice by public authorities of procuring works, services and supplies 'informally', with the promise of regulating and payment 'when the budget difficulties will allow'<sup>430</sup>.
- Public authorities are permitted to spend beyond their budgets 'if necessary and urgent', so that they can continue accumulating debt in order to avoid bearing the brunt of budget limitations<sup>431</sup>.

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<sup>427</sup> Ibid.

<sup>428</sup> Commissioni speciali per l'esame di atti del Governo riunite della Camera dei Deputati e del Senato della Repubblica (2013).

<sup>429</sup> Jones G. and Fonte G. (2014).

<sup>430</sup> Pisauro G. (2013)

<sup>431</sup> Ibid.



## 9. MONITORING COMPLIANCE OF NATIONAL MEASURES WITH FUNDAMENTAL RIGHTS

### KEY FINDINGS

- The main mechanisms for controlling that measures such as those covered by this study respect fundamental rights are the controls of constitutionality carried out (ex ante) by the President of the Republic and (ex post) by the Constitutional Court.
- No supranational case law relevant for the purposes of this study has been found. The Italian Constitutional Court has heard numerous cases involving the impact of austerity measures on fundamental rights. In extreme summary, it appears that the Constitutional Court has accepted that public finances must be kept under control, while at the same time holding that basic service standards (notably in the healthcare sector) must be guaranteed throughout the country.
- The European Committee of Social Rights has adopted several conclusions in the fields covered by this study. The Committee has found that Italy is not in conformity with the European Social Charter insofar as its employment policy efforts do not appear adequate in combatting unemployment and promoting job creation; minimum wages do not guarantee a decent standard of living; waiting times for medical services do not appear acceptable; the level of minimum pensions, unemployment benefits and disability allowances are manifestly inadequate.

### 9.1. Monitoring compliance at national level

From the research conducted for the purposes of this study, it emerges that the main mechanisms for monitoring compliance of relevant measures with fundamental rights at national level are the controls of constitutionality carried out by the President of the Republic (prior to the government tabling a bill before Parliament<sup>432</sup>; and before the promulgation of legislative or regulatory measures<sup>433</sup>) and by the Constitutional Court (after promulgation)<sup>434</sup>. A bill to establish a National Commission for the promotion and protection of human rights, thereby implementing UN General Assembly Resolution No 48/134<sup>435</sup>, was tabled in May 2011 but it was never approved and is still pending<sup>436</sup>.

The President of the Republic promulgates and controls the constitutionality of laws<sup>437</sup>, including Decree-Laws<sup>438</sup>, notably as regards compliance with the constitutional

<sup>432</sup> Art. 87(4) Cost.

<sup>433</sup> Art. 87(5) Cost.

<sup>434</sup> Art. 134 Cost.

<sup>435</sup> United Nations General Assembly Resolution A/RES/48/134: National institutions for the promotion and protection of human rights, 20.12.1993, available at <http://www.un.org/documents/ga/res/48/a48r134.htm>, accessed on 12.01.2015.

<sup>436</sup> Camera dei Deputati, La Commissione nazionale per i diritti umani, available at <http://leg16.camera.it/465?area=14&tema=846&La+Commissione+nazionale+per+i+diritti+umani>, accessed on 12.01.2015. Also see Senato della Repubblica, Istituzione della Commissione nazionale per la promozione e la protezione dei diritti umani, available at <http://www.senato.it/leg/16/BGT/Schede/Ddliter/37199.htm>, accessed on 12.01.2015 and Openparlamento, "The establishment of the National Committee for the promotion and protection of human rights" (*Istituzione della Commissione nazionale per la promozione e la protezione dei diritti umani*), available at [http://parlamento16.openpolis.it/singolo\\_atto/73127](http://parlamento16.openpolis.it/singolo_atto/73127), accessed on 12.01.2015.

<sup>437</sup> Art. 74 Cost. Martines T., "Constitutional law: edition for basic academic course" (*Diritto Costituzionale : Edizione per i corsi universitari di base*)2011, pp. 189-191.

<sup>438</sup> Already in 1996 the Constitutional Court lamented the abuse of Decree-Laws. See *Corte Costituzionale*, 310/2013, paragraph 8. The number of Decree-Laws adopted during the XVI legislative term (April 2008 – March

norms on fundamental rights and freedoms. The President may send the law back to Parliament, explaining the reasons for his refusal to promulgate it and asking for a new deliberation<sup>439</sup>. Once the law is promulgated, the control of constitutionality is exercised ex post by the Constitutional Court<sup>440</sup>.

## 9.2. Constitutionality of austerity measures

No supranational court decisions on other Italian austerity measures were found. The following table summarises the main judgments of the Italian Constitutional Court on austerity measures.

**Table 17: Main judgments of the Italian Constitutional Court on other austerity measures**

88/2014	Constitutional L. 1/2012 (balanced budget) L. 243/2012 (implementing the balanced budget rules)	General
<p>A Region and an Autonomous Province contested the constitutionality of L. 243/2012, which implemented the balanced budget rules introduced into the Constitution by Constitutional L. 1/2012. The complainants argued that L. 243/2012 infringed their areas of autonomy.</p> <p>The judgment recalls that Constitutional L. 1/2012 was adopted to meet Italy's commitment at EU level to introduce measures for the sustainability of public finances. Italy was free to choose how to do so, provided the type of measure utilised was binding, sufficiently strong, and that it also applied at sub-national level. Constitutional L. 1/2012 requires the adoption of an implementing law which must apply equally to all Regions and Autonomous Provinces. Therefore, the fact that L. 243/2012 sets out detailed budget and finance rules does not infringe the Constitution<sup>441</sup>.</p> <p>The Constitutional Court underlined that 'public finance constraints, even if immediately referred to the State, concern all institutions that contribute to the State budget' and that 'the responsibility...lies not only with the institution but with each citizen vis-à-vis another, including those of future generations'. However, the Court also noted that 'the need to guarantee...budget rigour cannot be dissociated from the no less important one of guaranteeing essential service levels and the exercise of fundamental functions concerning civil and social rights.'</p>		

2013) is similar to that in the previous term (April 2006 – April 2008) and significantly lower than the earlier two terms (April 1996 – April 2006). While the crisis has not led to an increase in the number of Decree-Laws, the Decree-Laws adopted during the XVI legislative term consisted of longer, more complex texts than was previously the case, suggesting that they are now being used, particularly in the economic and financial field, as an instrument for laying down medium- to long-term policies rather than facing emergencies. As a consequence, the Parliament is further marginalised in the legislative process. See Di Cosimo G. (2013).

<sup>439</sup> In 2010, the President of the Republic refused to promulgate a draft Law on employment. See Altalex, "Collegato Lavoro" (Law Draft 1167B/2010): The President of the Republic sends the draft back to the Parliament" (*Collegato lavoro: il Presidente della Repubblica rinvia il testo alle Camere*), 01.04.2010, available at <http://www.altalex.com/index.php?idnot=169>, accessed on 22.07.2014.

<sup>440</sup> Art. 134 Cost.

<sup>441</sup> Equivalent conclusions were also reached in Constitutional Court judgements 44/2014 and 40/2014.

<b>59/2014</b>	<b>D.L. 138/2011 and D.Lgs. 155/2012 ("cut smaller courts")</b>	<b>Justice</b>
<p>The Constitutional Court was requested to review the constitutionality of D.L. 138/2011, converted into L. 148/2011 and of D.Lgs. 155/2012, which provided for the closure of certain small courthouses.</p> <p>The Court declared that the measures were constitutional. The Court saw the closure of certain courthouses as aiming to guarantee that each courthouse should, to the extent possible, be of an optimal size. Such optimal size was determined by means of objective standards of efficient resource allocation, taking into account local demand for justice and a fair sharing of judicial work burdens.</p>		
<b>310/2013</b>	<b>D.L. 78/2010 converted into L. 122/2010 (three-year salary and career progression freeze)</b>	<b>Employment</b>
<p>In the context of cases introduced by university professors and researchers, several regional administrative courts sought a constitutionality ruling on D.L. 78/2010 converted into L. 122/2010, which provided for a three-year salary and career progression freeze for certain university professors, researchers and other academic staff.</p> <p>The judgment held that the application of the freeze for a period of three years is not at odds with the conditions of extraordinary necessity and urgency which justify the use of Decree-Laws. In support of this conclusion, the judgment recalls that Directive 2011/85/EU on Member States budgetary frameworks underlines that a one-year perspective does not represent a sufficient basis for sound budget policy. The limitations to public expenditure needed to achieve a balanced budget 'imply significant sacrifices...which are justified by the situation of economic crisis'. Such sacrifices necessarily regard periods which, while well-defined, are longer than those upheld by the Constitutional Court in its previous jurisprudence.</p>		
<b>104/2013</b>	<b>Regional L. 33/2012 (reimbursement of expenses to cancer patients)</b>	<b>Health</b>
<p>The central Government challenged Regional L. 33/2012 of Abruzzo, which provided for reimbursement of expenses to residents of the Regions affected by cancer, for creating additional costs for the healthcare system and for guaranteeing those residents services above the national level, in violation of the correction plan agreed by the Region. This violation was alleged to breach fundamental principles of public finance aiming to limit healthcare expenditure.</p> <p>The Constitutional Court declared the unconstitutionality of the regional provision, recalling its case law to the effect that legislative competences of the regions may be limited in light of public finance objectives, taking into account that regions have agreed that containing expenditure is indeed necessary.</p>		
<b>187/2012</b>	<b>D.L. 98/2011 (patients' contribution to healthcare service costs – so-called <i>ticket</i>)</b>	<b>Health</b>
<p>The Regions Friuli-Venezia Giulia and Veneto challenged a provision of D.L. 98/2012, converted into L. 111/2011 mandating the Government to adopt a regulatory act to</p>		

determine the contribution by patients to the cost of healthcare services used (so-called *ticket*).

The Court considered that the contested provision concerned two areas – the basic service levels, on which the State has exclusive legislative competence, and healthcare, on which legislative competence is shared with the Regions. Because the State only has regulatory competence in the areas where it enjoys exclusive legislative competence, the Court declared the provision unconstitutional.

The Court, however, also stated that providing for such a contribution at national level (albeit not by regulatory act) would not infringe the competence of the regions, as it pursues the objective of containing public expenditure while at the same time ensuring to all citizens equal access to basic service levels<sup>442</sup>.

### 9.3. Monitoring compliance at supranational level

The European Committee of Social Rights (ECSR) has adopted several conclusions concerning Italy's compliance with the European Social Charter<sup>443</sup> in the fields covered by this study. The table below provides an overview of instances in which the ECSR found that Italy was not in compliance with the Charter's relevant provisions. The table covers conclusions issued since the year 2008.

It should be stressed that no case has been found in which the ECSR identified a violation of the principle of non-regression, which forbids diminishing previous national standards.

**Table 18: Selected conclusions of the European Committee on Social Rights**

Document		Field
<b>2012/def/ITA</b>		
	<ul style="list-style-type: none"> <li><b>Full employment</b></li> </ul>	<b>Employment</b>
<p>'[T]he situation in Italy is not in conformity with Article 1§1 of the Charter on the ground that it has not been established that employment policy efforts have been adequate in combating unemployment and promoting job creation.'</p>		
	<ul style="list-style-type: none"> <li><b>Vocational guidance and training</b></li> </ul>	
<p>'[T]he situation with regard to the vocational guidance and vocational training of workers (Articles 9 and 10§3), as well as on education and training for persons with disabilities (Article 15§1), is in conformity with the Charter.'</p>		
	<ul style="list-style-type: none"> <li><b>Long term unemployment</b></li> </ul>	
<p>'The Committee notes...that several programmes involving long term unemployed are in</p>		

<sup>442</sup> QuotidianoSanità.it, "Constitutional Court: stop to the new 2014 prescription charges. 'The State cannot take decisions alone'" (*Corte Costituzionale. Stop ai nuovi ticket del 2014. "Lo Stato non può decidere da solo"*), 17.07.12, available at [http://www.quotidianosanita.it/governo-e-parlamento/articolo.php?articolo\\_id=10020](http://www.quotidianosanita.it/governo-e-parlamento/articolo.php?articolo_id=10020), accessed on 11.12.14.

<sup>443</sup> See [http://www.coe.int/t/democracy/migration/bodies/ecsr\\_en.asp](http://www.coe.int/t/democracy/migration/bodies/ecsr_en.asp), accessed on 01.08.2014.

Document		Field
		place...In 2009, out of a total of 963 000 long term unemployed, 291 000 had found a job, while 672 000 had not a job. The activation rate of long term unemployed in 2009 therefore was 30.2%.' 'The Committee concludes that the situation in Italy is in conformity with Article 10§4 of the Charter.'
	<ul style="list-style-type: none"> <li>• <b>Protection against dismissal</b></li> </ul>	
		'[T]he situation in Italy is not in conformity with Article 24 of the Charter on the ground that employees undergoing the probationary period of 6 months are not adequately protected against dismissal.'
<b>2010/def/ITA</b>		
	<ul style="list-style-type: none"> <li>• <b>Sufficiency of minimum wage</b></li> </ul>	<b>Employment</b>
		'[T]he situation in Italy is not in conformity with Article 4§1 of the Revised Charter on the ground that it has not been established that the minimum wage can guarantee a decent standard of living.'
<b>2009/def/ITA</b>		
	<ul style="list-style-type: none"> <li>• <b>Waiting time</b></li> </ul>	<b>Health</b>
		'[T]he situation in Italy is not in conformity with Article 11§1 of the Revised Charter on the ground that it has not been established that waiting time does not exceed a medically acceptable period having regard to the patient's condition and clinical needs.'
	<ul style="list-style-type: none"> <li>• <b>Pensions</b></li> </ul>	<b>Employment</b>
		'[T]he situation in Italy is not in conformity with Article 23 of the Revised Charter on the ground that the level of the minimum contributory old age pension and the social allowance for low income elderly persons are manifestly inadequate.'
	<ul style="list-style-type: none"> <li>• <b>Social security</b></li> </ul>	<b>Employment</b>
		'[T]he situation in Italy is not in conformity with Article 12§1 of the Revised Charter on the grounds that: <ul style="list-style-type: none"> <li>• it has not been established that the amount of the minimum unemployment benefit is adequate;</li> <li>• the minimum level of contributory old age pension is manifestly inadequate as is the survivor's pension calculated on the basis of the latter;</li> <li>• the monthly allowance paid for a permanent disability assessed at 100% is manifestly inadequate'.</li> </ul>

**Source:** European Social Charter<sup>444</sup>

<sup>444</sup> Source: European Social Charter Document collection, available at <http://hudoc.esc.coe.int/esc2008/query.asp?action=page&page=6&view=searchform>, accessed on 01.08.2014.

## **10. CONCRETE PROPOSALS FOR IMPROVING THE RESPECT OF FUNDAMENTAL RIGHTS IN TIMES OF ECONOMIC CRISIS**

### **KEY FINDINGS**

- An overarching recommendation is that any further spending review or significant reduction in public spending should be underpinned by sound, evidence-based and transparent evaluations of public expenditure. Future reforms should be based on equally solid and open prior assessments of the likely impacts of envisaged policy options. Both evaluations and assessments should include consultations of stakeholders and the public at large in order to increase the knowledge base, make sectorial interests visible and improve the legitimacy of the resulting policies
- Concerning the right to education, Italy should cease cutting funds to education – rather, it should invest more in its human capital. Furthermore, Italy should improve the quality of its educational system by ensuring that limited resources are used as productively as possible, by monitoring the quality of each school and class based on comparable criteria and linking access to and permanence in headmasters' and teachers' posts to continuous quality improvements (rather than age, as is currently the case), while providing opportunities for life-long learning and training. Where schools are merged to save money, transport and other services should be provided and accessible, so as to ensure the full enjoyment of the right to education.
- Concerning the right to healthcare, in order to make Italy's universal access system more financially sustainable, a higher share of the cost of services could be charged to better-off patients, while maintaining services free or inexpensive for the less privileged.
- Concerning the right to work, Italy should ensure that minimum wages apply to all workers, do not discourage hiring and guarantee a decent standard of living. Moreover, public programmes could be made available for the continuous learning and training of workers, thus fostering the creation of skills crucial for the competitiveness of a modern economy.
- Concerning the right to pension, Italy should apply the contribution-based methodology in relation to all periods of work (not only those after the reform) and to all workers equally, in order to ensure that the reform does not affect young workers more than older ones. In addition, Italy should intervene to reduce the amount of retirement pensions granted under previously applicable legal frameworks which permitted workers to retire at a young age and with a high pension. There are legal obstacles to such an intervention, but do not appear as insurmountable, as explained in more detail in the study.
- Concerning the right to property, Italy must ensure compliance with the requirements of Directive 2011/7/EU on combatting late payment in commercial transactions.
- Concerning the right to manifestation and assembly, Italy should swiftly adopt pending law proposals ensuring that police personnel, and particularly riot police personnel, are individually identifiable by means of their name and qualification, or a unique code, made visible on their uniforms and helmets. This measure, which would strengthen police accountability, would be in line with the European Code of Police Ethics of the Council of Europe. Two bills for laws on the identification of police personnel – tabled before the Italian Parliament in June 2013 and in February

2014 – have not yet been adopted and are still pending.

- Concerning the right to access justice, Italy should reduce application fees and other costs to access justice because they are not fit for reducing the congestion of the justice system and hamper economic growth by making rights and contracts less secure. Moreover, in order to improve the performance of the system without increasing cost, Italy should spend a higher share of the budget allocated to the justice system on computerisation and on the training and education of staff. Italy should also improve the quality of its laws and regulations as well as government integrity in order to reduce litigation.
- Concerning monitoring compliance with fundamental rights, Italy should ensure that pending law proposals to establish a National Commission for the promotion and protection of human rights are swiftly adopted, thereby implementing UN General Assembly Resolution No 48/134. Moreover, an ex ante impact assessment process could be introduced for all major legislative initiatives, allowing the general public and interest groups to access relevant information (e.g. consultation documents, underlying data, impact assessment reports) and to submit their observations.

The analysis conducted for the purpose of this study and the input collected from stakeholders interviewed allow us to put forward a few tentative proposals that could help improve the enjoyment of the fundamental rights covered by this study in Italy. These proposals, necessarily preliminary, could be further developed through more in-depth research, analysis and ex ante impact assessment.

#### General recommendations

Spending cuts should not be horizontal – they should be based on detailed evaluation of the effectiveness, efficiency, relevance and added value of public expenditure, which should include a public consultation. It does not appear from our research that the spending cuts introduced during the crisis were specifically targeted to wasteful use of public resources. Rather, it seems that many measures imposed horizontal, indiscriminate cuts across the policy areas they targeted. While the alleged urgency of reducing public spending during the peak of the crisis may justify such rough measures, the use of public resources and any further cut should undergo more systematic evaluations which should also include an opportunity for stakeholders and the public to transparently contribute to the process.

#### Specific recommendations

##### **Right to education**

- Italy should stop cutting funds to education and invest more in its human capital.  
Italy's long tradition of underinvestment in education is perhaps one of the reasons for the poor results of Italian students in international assessment tests. Italy should reverse this underspending trend, as research indicates that countries with low skill levels risk finding it more difficult to be competitive in a world economy that is increasingly dependent on skills<sup>445</sup>.
- Italy should improve the quality of its educational system by ensuring that limited resources are deployed as productively as possible.

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<sup>445</sup> See OECD, Skills Outlook, 2013, available at <http://skills.oecd.org/skillsoutlook.html>, accessed on 19.12.14.

Italy's approach to education reforms should not be merely quantitative (amounts of savings to achieve, staff reduction targets, pupils per class...) but also qualitative: measures should be taken to ensure that limited resources that are indeed available are used as productively as possible. To this end, the quality of each school and class should be subject to ongoing monitoring on the basis of appropriate criteria which allow comparisons among schools and classes. Results for each school and class should be made public. Headmasters and teachers should be made responsible for progressive improvements in the quality of schools and classes, respectively. Access to and permanence in headmasters' and teachers' posts should be based on quality, not on age as is currently the case. Life-long learning and training opportunities should be made available for headmasters and teachers to improve the quality of their services.

- Italy should ensure that the merger of schools does not reduce access to education.

The merger of small schools into larger ones (already undertaken in Italy) may help deliver equivalent services at reduced cost. In order to ensure the right to education is not significantly hampered, however, the availability of affordable school transport and other relevant services should be guaranteed. This is particularly important for children with disabilities or in other conditions which make it more difficult for them to access schools located further from their homes.

### **Right to healthcare**

- Italy could increase the contribution of wealthier patients to service costs, while maintaining the service free for the less privileged.
- While a system already exists that requires patients to participate in covering the cost of healthcare services (so-called 'ticket'), this system could be further strengthened to require a higher contribution from wealthier patients. Less expensive services may even be fully priced to patients. Exemptions should be maintained for the less privileged in order to ensure that public healthcare remains universally (if not always freely) accessible.

### **Right to work**

- Italy should ensure that minimum wages apply to all workers, do not discourage hiring, and are sufficient to guarantee a decent standard of living.

The European Committee of Social Rights has concluded that minimum wages in Italy may not be sufficient to ensure a decent standard of living<sup>446</sup>. Unless this situation is corrected, workers' fundamental rights may be violated.

- Italy should establish public programmes for the continuous learning and training of workers.

Our research indicates that the lack of continuous learning and training on the workplace in Italy lowers the level of education and competitiveness of the Italian population. Public programmes could be established to ensure the continuous learning and training of workers. In order to allow participants to balance work with

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<sup>446</sup> See, in particular, European Committee on Social Rights, conclusions 2010/def/ITA, referred to in section 9.3 of this study.



training, a certain number of paid leave days could be granted to participants, with an obligation upon employers to recognise such additional paid leave.

### Right to pension

- Italy should apply the contribution-based methodology in relation to all periods of work (not only those after the reform) and to all workers equally, in order to ensure that the reform does not affect young workers more than older ones.
- Italy should intervene to reduce the amount of retirement pensions granted under previously applicable, unsustainably generous conditions.

The Italian Constitution requires that retirement pensions should be *adequate* to the workers' needs. Fundamental rights protection only covers the essence of that right, without entitling a person to a specific, unmodifiable amount<sup>447</sup>.

### Right to property

- Italy should comply with the requirements of Directive 2011/7/EU on combating late payment in commercial transactions<sup>448</sup> by ensuring that public authorities pay for the goods and services that they procure in a timely manner.

### Right to freedom of expression and assembly

- Italy should swiftly adopt proposals to ensure that police personnel, and particularly riot police personnel, are individually identifiable by means of their name and qualification, or a unique code, made visible on their uniforms and helmets.
- Although it does not emerge from our research that the right to manifestation and assembly have been limited to any significant extent in relation to the crisis, the accountability of the police should be strengthened by making police officers individually identifiable. This measure would be in line with paragraph 45 of the European Code of Police Ethics of the Council of Europe<sup>449</sup>, according to which 'police personnel shall, during intervention, normally be in a position to give evidence of their police status and professional identity'<sup>450</sup>. Indeed, 'without the possibility of identifying the individual police man/woman, personal accountability, seen from the perspective of the public, becomes an empty notion'<sup>451</sup>.

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<sup>447</sup> ECtHR, *Ásmundsson v. Iceland*, No 60669/00, 12.10.2004 and case-law cited therein.

<sup>448</sup> Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions.

<sup>449</sup> Council of Europe, Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics, 19.09.2001, available at <https://wcd.coe.int/ViewDoc.jsp?id=223251>, accessed on 12.01.2015.

<sup>450</sup> Professional identity refers to police personnel being identifiable 'as an individual member of the police'. 'The requirement that police personnel normally should give evidence of their professional identity before, during or after intervention is closely linked to personal police responsibility for action or omission'. See The European Code of Police Ethics: Recommendation Rec(2001)10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001 and explanatory memorandum and explanatory memorandum, 19.09.2001, available at [http://polis.osce.org/library/details?doc\\_id=2687& ru=/library/details?doc\\_id=2658](http://polis.osce.org/library/details?doc_id=2687& ru=/library/details?doc_id=2658), accessed on 12.01.2015.

<sup>451</sup> The European Code of Police Ethics: Recommendation Rec(2001)10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001 and explanatory memorandum and explanatory memorandum, 19.09.2001, available at [http://polis.osce.org/library/details?doc\\_id=2687& ru=/library/details?doc\\_id=2658](http://polis.osce.org/library/details?doc_id=2687& ru=/library/details?doc_id=2658), accessed on 12.01.2015.

- Two bills for laws on the identification of police personnel – tabled in June 2013<sup>452</sup> and in February 2014<sup>453</sup> – are still pending.

### Right of access to justice

- Italy should reduce application fees and other costs of accessing civil and administrative justice because they are not fit for the stated purpose of reducing the congestion of the justice system and they hamper economic growth. Doing so does not require increasing the justice spending.

In order to reduce the congestion of its justice system, Italy has reduced access to justice, notably through high application fees and other duties. These measures are not fit for purpose because research shows that there is no clear relationship between private costs of trial and litigation<sup>454</sup>.

While the impact of cost increases on the work burden of the courts may not be significant, it may cause some citizens and enterprises to give up litigating if not justified by the high value of the dispute, thus creating a feeling of impunity and mistrust in the enforcement of the rule of law. This increases the perceived risk involved in giving credit or concluding contracts with individuals and SMEs, preventing enterprise growth<sup>455</sup>. In the public procurement field, it means that, unless tenders are of very high value, enterprises will not challenge unlawful acts of contracting authorities, reducing control on the behaviour of public officials and worsening the business climate for SMEs<sup>456</sup>.

There also appears to be no proven relationship between the budget allocated to the justice system and its performance – Italy spends as much of its GDP on justice as does the Czech Republic (0.2%), but trials last on average 135 days in the Czech Republic, and four times as long in Italy<sup>457</sup>. If reducing application fees and other costs is impossible without budget cuts to the justice system, Italy could perhaps tolerate some such cuts without worsening services, so long as other more effective measures than cost barriers are taken to improve performance.

- Italy should spend a higher share of the budget allocated to the justice system on computerisation and on the training and education of staff, in order to improve the performance of the system without increasing costs.

Better judicial performance would in turn enhance economic growth. Research shows that the performance of justice systems is more strongly affected by

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<sup>452</sup>See Senato della Repubblica, Disposizioni in materia di identificazione degli appartenenti alle Forze dell'ordine, available at <http://www.senato.it/leg/17/BGT/Schede/Ddliter/41265.htm>, accessed on 12.01.2015.

<sup>453</sup>Ibid.

<sup>454</sup> Palumbo G. et al. (OECD), Judicial performance and its determinants: a cross-country perspective, 2013, available at <http://www.oecd-ilibrary.org/docserver/download/5k44x00md5g8.pdf?expires=1420810569&id=id&accname=guest&checksum=6C107B046D4A95B72D5BC8E4375ADA28>, accessed on 09.01.2015.

<sup>455</sup>Alesina A. and Giavazzi F., "Slow justice, small enterprises" (*Giustizia lenta, imprese piccole*), 05.06.2011, available at [http://www.corriere.it/editoriali/11\\_giugno\\_05/una-giustizia-piu-veloce-per-far-crescere-le-impresе\\_2bd6aa10-8f40-11e0-a515-0265176cef92.shtml](http://www.corriere.it/editoriali/11_giugno_05/una-giustizia-piu-veloce-per-far-crescere-le-impresе_2bd6aa10-8f40-11e0-a515-0265176cef92.shtml), accessed on 09.01.2015.

<sup>456</sup> D'Alessandro N. (Lexitalia), "The loss of sovereignty and the Italian cunning" (*La perdita di sovranità e la furbizia italiana*), available at [http://www.lexitalia.it/articoli/dalessandro\\_stabilita.htm](http://www.lexitalia.it/articoli/dalessandro_stabilita.htm), accessed on 09.01.2015.

<sup>457</sup> Palumbo G. et al. (OECD), Judicial performance and its determinants: a cross-country perspective, 2013, available at <http://www.oecd-ilibrary.org/docserver/download/5k44x00md5g8.pdf?expires=1420810569&id=id&accname=guest&checksum=6C107B046D4A95B72D5BC8E4375ADA28>, accessed on 09.01.2015.

computerisation, monitoring and active management of case flow, sound management of courthouses, and judges' specialisation than by the erection of barriers to access justice. Yet, Italy spends 74.5% of its justice budget on staff salaries (international average: 65.4%) and only 1.9% on computerisation (international average: 3.9%) and 0% on training and education (international average: 0.9%)<sup>458</sup>.

Improving the performance of the judiciary would enhance economic growth by better securing property rights, which gives incentives to save and invest, and by improving the enforcement of contracts, which encourages transactions by reducing opportunistic behaviours and transaction costs<sup>459</sup>.

- Italy should improve the quality of its laws and regulations as well as government integrity in order to reduce litigation.

More than barriers to access justice, other factors influence the amount of litigation, which is seen as a critical factor for the Italian justice system. These include the quality of laws and regulations, as complex and inconsistent legislation causes uncertainty, which produces litigation and increases the rate of appeals, as unclear rules may be differently interpreted by other judges<sup>460</sup>. The presence of corruption has also been shown to increase litigation by reducing the transparency and certainty of the business environment<sup>461</sup>.

### **Monitoring compliance with fundamental rights**

- Italy should swiftly adopt proposals to establish a National Commission for the promotion and protection of human rights.

A bill to establish a National Commission for the promotion and protection of human rights, thereby implementing UN General Assembly Resolution No 48/134, was tabled in May 2011 but it was never approved and is still pending<sup>462</sup>.

- Italy should introduce an ex ante impact assessment procedure for all major legislative initiatives which allows the general public and interest groups to access relevant information (e.g. consultation documents, underlying data, impact assessment reports) and to submit their observations.

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<sup>458</sup> Ibid.

<sup>459</sup> Palumbo G. et al. (OECD), *Judicial performance and its determinants: a cross-country perspective*, 2013, available at

<http://www.oecd-ilibrary.org/docserver/download/5k44x00md5q8.pdf?expires=1420810569&id=id&accname=quest&checksum=6C107B046D4A95B72D5BC8E4375ADA28>, accessed on 09.01.2015.

<sup>460</sup> Ibid.

<sup>461</sup> Palumbo G. et al. (OECD), *The economics of civil justice: new cross-country data and empirics*, 14.08.2013, available at

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<sup>462</sup> Camera dei Deputati, *La Commissione nazionale per i diritti umani*, available at <http://leg16.camera.it/465?area=14&tema=846&La+Commissione+nazionale+per+i+diritti+umani>, accessed on 12.01.2015. Also see Senato della Repubblica, *Istituzione della Commissione nazionale per la promozione e la protezione dei diritti umani*, available at <http://www.senato.it/leg/16/BGT/Schede/Ddliter/37199.htm>, accessed on 12.01.2015 and Openparlamento, "The establishment of the National Committee for the promotion and protection of human rights" (*Istituzione della Commissione nazionale per la promozione e la protezione dei diritti umani*), available at [http://parlamento16.openpolis.it/singolo\\_atto/73127](http://parlamento16.openpolis.it/singolo_atto/73127), accessed on 12.01.2015.

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### **List of stakeholders consulted**

- University Professor and President of a centre specialising in economic and organisational research in the field of healthcare, 14.10.2014.
- Secretary General of a Workers' Union, 07.10.2014.
- Director of the Ministry of Economy and Finance, 17.10.2014 and on 20.10.2014.

**ANNEX - OVERVIEW OF RELATED STUDIES**

<b>Name of the Study</b>	<b>PE number</b>	<b>ISBN number</b>
The impact of the crisis on fundamental rights across Member States of the EU - Comparative analysis	<b>PE 510.021</b>	<b>978-92-823-6598-4 print edition</b> <b>978-92-823-6599-1 online edition</b>
The impact of the crisis on fundamental rights across Member States of the EU Country Report on Belgium	<b>PE 510.015</b>	<b>978-92-823-6553-3 print edition</b> <b>978-92-823-6552-6 online edition</b>
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