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Overcoming Natural and Environmental Disasters: The Role of Industrial Relations and Some Reflections on the Italian Case

Michele Tiraboschi *

1. Framing the Issue

Natural disasters have had a major emotional impact on European public opinion, due to the deadly and psychological consequences they have on people and tremendous damage to buildings and facilities. Whereas environmental disasters are caused, either directly or indirectly, from human behaviour, natural ones are often unpredictable.

This partly explains why the public and the media only rarely move on from the dramatic “image” of such disasters, disregarding the serious effects on the economic and productive system, and hence on the labour market. This is also due to the difficulty to quantify these effects. The same holds for institutions and experts that prioritise the damage caused

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by such events, overlooking the direct effects on the economy and the functioning of the labour market.

Yet this is an issue that has been given increasing relevance lately. A recent study carried out by the European Environment Agency – EEA¹ – pointed out that European countries are experiencing a growing number of natural hazards and technological accidents caused by geophysical, technological, and socioeconomic changes. According to the report, the largest disasters due to natural hazards caused, overall, a loss of about €150 billion in the 32 EEA member countries between 1998 and 2009. These figures rise to €200 if smaller hazardous events are factored in. During the same period, 928 major events have been reported that caused 99,000 fatalities.

When the seriousness and the number of victims are considered, earthquakes rank second among the type of hazards. The victims were mostly workers on duty; considerable damage was caused to property assets and many working activities were temporarily suspended.

The European Environment Agency monitoring activity included the period between 1998 and 2009 and clearly indicated that the seriousness of the effects of natural disasters and hazards depends on the population vulnerability. If properly implemented, some special steps can reduce the impact of such occurrences on people safety and national economy. These measures should come along with adequate and reliable institutions that should be able to prevent these disasters and manage them once they occur.

Consequently, this paper sets out to assess the role of industrial relations in preventing and dealing with natural disasters, in terms of national safety and economic stability and of the safeguards provided to employers and the local community.

In this sense, the earthquake that has recently hit the Emilia Romagna region can provide some useful insights into the question. The violent quakes registered in May and June 2012 pointed out a crucial aspect, which was not taken into consideration at the time, concerning the prevention and management of natural disasters. Stuningly, fatalities mostly include workers who did not die during the earthquake but a few days later, when they were recalled to duty and started the rebuilding

¹ *Mapping the Impacts of Natural Hazards and Technological Accidents in Europe - An Overview of the Last Decade*, EEA Technical Report No 13/2010, Luxembourg, 2010 (see in <http://www.eea.europa.eu/publications/mapping-the-impacts-of-natural>).

process. Perhaps more effective dialogue between employers and trade unions would have avoided these deaths.

Likewise significant is the fact that many of the modern industrial plants based in one of the richest and most productive Italian areas collapsed due to quakes of moderate intensity.

It is past experience, more specifically the earthquake that took place in the Umbria region between 1997 and 1998, which highlights the major role held by the industrial relations system in warding off and dealing with natural disasters. On that occasion, the “Single Insurance Contribution Payment Certificate” (*Documento Unico di Regolarità Contributiva - DURC*) was issued to ensure that only employers who comply with anti-seismic regulations were involved in rebuilding. DURC was intended as a tool to select compliant employers to be engaged in reconstruction and indirectly safeguard workers and individuals operating in the areas hit by the disaster.

Originally an industrial relations practice, DURC was implemented through national legislation² and emerged as a major tool against irregular work, especially in those industries where contracting and subcontracting were widespread phenomena. Drawing on DURC, Italian legislation made provision to include within the Consolidated Act on Occupational Health and Safety of 2008 (*Testo unico di salute e sicurezza sul lavoro*³) a modern procedure to single out the market operators and, albeit indirectly, safeguard workers and people, more generally. The selection procedure consists of a system of qualification according to which only qualified employers with technical and professional expertise specified in the collective agreement are allowed to operate in certain markets. To this end, suitable employers need to meet some criteria concerning contractual requirements – especially in contracting out tasks and activities – related for instance to aspects of health and safety at work.

This system was intended for the most dangerous sectors and activities and now applies to confined spaces (e.g. tanks)⁴ although its implementation can be pondered in the event of other types of natural hazards (mine collapses, marine oil spills, industrial pollution and land contamination).

Based on these considerations, this paper investigates social dialogue and the industrial relations system considering their role during natural (earthquakes and floods), and environmental disasters.

² Law No. 266/2002 and Decree Law No. 276/2033.

³ Legislative Decree No. 81/2008.

⁴ Decree of the President of the Republic No. 177/2011.

2. The Prevention and Management of Natural Disasters: The Legal Framework

Over time, Italy has been affected by earthquakes, landslides, and floods which unavoidably impacted on the work organization and productive processes of the areas involved. This state of affairs prompted Italian lawmakers to enforce binding rules to ensure compliance with the measures to be taken in the event of such occurrences. A critical issue concerns the low levels of effectiveness of these provisions and limited monitoring on the part of public authorities.

The foregoing measures include guarantees that the facilities are safe and that individual health and safety is safeguarded, alongside reassurances that workers will maintain their jobs. When faced with these events, compliance with building codes should be given high priority. In the event of earthquakes, such compliance should be evaluated, particularly in the case of manufacturing plants. The same applies for public estate (hospitals, schools, universities, and so forth) where both users and workers must be protected.

With a view of restoring production activity and normal working and living conditions in a safe environment, a seismic certificate of compliance must be issued to the employer and then sent to the relevant municipality, after an expert has verified that the facility complies with the safety standards set out by law⁵.

The employer – who is supported by the “prevention and protection service manager” on organizational and technical issues – assists the expert and notes the results of the inspection in order to comply with possible shortcomings at a later stage. Pursuant to the Consolidated Act on Occupational Health and Safety of 2008⁶, managers, workers, and supervisors must be apprised of such activities, as it concerns their health and safety at work. As empowered with medical surveillance, the competent health authority must also be informed of the outcome of the inspection. Workers’ health and safety representatives must be involved in the inspection as well.

As far as workers’ health and safety is concerned, compliance with relevant legislation must be analyzed considering three major aspects:

⁵ For some technical insight, see Decree of the President of the Republic No. 380/2001, laying down the *Testo Unico delle Disposizioni Legislative e Regolamentari in Materia Edilizia*.

⁶ Art. 36 of Legislative Decree No. 81/2008.

managing an emergency situation, handling health and safety issues when returning to work, and preventing or mitigating the risks arising from such events on one's state of health in the medium and long term. On the last point, traditional rules might prove ineffective, so employers are called on to look for new solutions in terms of organisation and best practices.

As for risk and emergency management, Italian legislation places an obligation upon the employer – who should be supported by workers' health and safety officers and the competent health authorities – to raise knowledge and awareness of the risks and to promote safe behaviour.

Special requirements are demanded of employers and management to deal with any kind of emergency. Pursuant to the Consolidated Act on Occupational Health and Safety of 2008⁷ employers, and management more generally, are required to appoint workers in charge of risk management (evacuation in the event of immediate and serious danger, rescue, and first aid). Fines are issued for failing to fulfill with this obligation. They should also take steps in terms of risk monitoring and instruct workers to leave the dangerous area and the workplace in the event of serious, inevitable and immediate danger. The Consolidated Act on Occupational Health and Safety of 2008⁸ also sets forth that employers should appoint workers in charge of implementing measures to prevent and manage possible risks. These workers should be adequately trained and equipped based on the size of the productive unit and the relating risks. Most importantly, workers should be also instructed not to resume work if a situation of serious and immediate danger persists.

The 2008 Consolidated Act on Occupational Health and Safety⁹ clearly specifies the workers' rights in the event of serious and immediate danger. Workers leaving their workstation and/or a dangerous area in the event of serious, imminent and unavoidable danger may not be placed at any disadvantage because of their action and must be protected against any harmful and unjustified consequences. Further, where the immediate superior responsible cannot be contacted, workers should take the appropriate steps in light of their knowledge and the technical means at their disposal, to avoid the consequences of such danger.

As seen, management must issue and make available to all those concerned an emergency plan, which should contain the procedures and behavior in case such events occur. Employers should appoint those in charge of dealing with emergencies through appropriate measures, while

⁷ Art. 18 of Legislative Decree No. 81/2008.

⁸ Art. 43 of Legislative Decree No. 81/2008.

⁹ Art. 44 of Legislative Decree No. 81/2008.

workers have the right to leave the workstation and return to work only if the safety of the facility has been assessed by the fire brigade or Civil Defence (*Protezione Civile*).

Immediately after the occurrence, the employers' focus should be on guaranteeing the safety of those returning to work and on mitigating and preventing possible future risks. The first step concerns a new risk assessment¹⁰ or an update of the company risk assessment document¹¹. The latter is necessary to re-evaluate risks and safety in the workplace and the effectiveness of individual and collective protection devices in light of such new developments.

Consequently, the risk assessment allows employers to pinpoint, plan, and improve the necessary preventive measures as well as evaluating their effectiveness. Moreover, it is essential to review the company risk assessment document after an earthquake or a natural disaster in order to test the safety measures already in place or amend them whereas inadequate.

A thorough risk assessment is possible only through the active participation of all those concerned, particularly the staff, in order to gain an awareness of work-related issues. For this reason, straight after the event, the promotion of training and information activities should involve all workers, not only those appointed to deal with emergency situations¹².

¹⁰ Art. 28 of Legislative Decree No. 81/2008.

¹¹ Pursuant to Art. 29 of Legislative Decree No. 81/2008, paragraph 3, "*The risk assessment must be revised immediately in accordance with the procedures referred to in paragraphs 1 and 2, in the event of changes to the production process or the organization of work relevant for the health and safety of workers, or in relation to technical evolution, prevention or protection measures or as a result of significant injuries or when the results of health surveillance deem it necessary. As a result of this restructuring, the prevention measures must be updated. In the cases referred to above, the risk assessment document should be revised in accordance with the procedures referred to in paragraphs 1 and 2, within thirty days*".

¹² In order to support the employers in these delicate phases, the European Agency for Safety and Health at Work has developed a series of good management practices and suggestions for coping with disasters at the EU level. In detail, the agency recommends employers develop effective modes of communication and exchange of information among workers based on coordination. In addition, it emphasizes the opportunity to organize a safety management cycle based on the examination of the risks the company can face in the event of disasters, on the analysis of appropriate action to address them and their implementation at the workplace. Within the European Agency for Safety and Health at Work, the National Research Institute of Fire and Disaster (NRIFD) was set up to deal with research on issues related to events such as fires, earthquakes or natural disasters in general, thus providing further tools to improve the management of these tragic events.

However, the natural hazards that have hit Italy of late have pointed out the limitations of the many regulations in force. This is true if one considers their presumed effectiveness at a theoretical level, which clashes with major shortcomings in practical terms and certain difficulty to deal with a wider and more dynamic notion of “risk”. Safeguards are still overly concerned with safety and prevention within the productive system, thus failing to consider external factors (e.g. earthquakes) which can be certainly prevented in some areas. Internal and external factors – that is those under the employer’s control and those originating by force majeure events – are still treated as two distinct elements in terms of employer’s requirements and liability.

3. The Welfare System: Initiatives to Help Resume Production

3.1. Financial Aid to Employers: Taxes and Contributions

In order to deal with the consequences of natural and environmental disasters on the labour market and promote the resumption of production activity, the Italian welfare system provides a range of both structural and extraordinary measures.

For instance, soon after the earthquakes that hit the Abruzzi and the Emilia-Romagna regions, a decree law was passed which acknowledged the state of emergency in those areas and relieved businesses of some legal obligations¹³.

Among other things, the numerous decree laws enforced following natural hazards set forth the exceptional and temporary suspension of fiscal obligations (which include levies, taxes and contributions to be paid to the State or local authorities) and contributions for social security purposes. Thanks to this suspension, those market actors who cannot operate due to unforeseeable circumstances are relieved of an additional tax burden.

Aside from these emergency measures, further provisions are implemented at a national and local level, which are intended to help restart production by means of economic incentives and other forms of financial support, either directly or indirectly (e.g. tax credits and breaks in case of delocalization).

¹³ In this respect, for the emergency cases cited, suspension was provided Decree-Law of 6 June 2012, No. 74 issued after the earthquake that occurred in Emilia Romagna and the Decree-Law of 28 April 2009, No. 39 for the earthquake in the Abruzzi.

At regional level, financial resources have been made available by the European Social Fund through Operative Programmes (OP) that aim at re-launching economic activity by favouring the recruitment of new staff. In this case, economic incentives are provided when a new worker is hired.

Further initiatives concern the involvement of local universities by way of financial support to research, and the development of businesses located in the areas affected by the seismic event. The aim here is not simply to favour the resumption of the facilities that have been damaged, but to promote a thorough review of the area from a modern perspective, also taking account of future developments.

Local authorities at the Emilia-Romagna Region made a pledge to support industrial research of the businesses based in the areas stricken by the earthquake, in order to boost their competitive re-launch. Among the many initiatives are: the technological advancement of productive processes and businesses' organizational systems, the diversification of production also through the recourse of innovative technology, the sustainable development of firms which takes account of energy resources to be used in an efficient and rational way, while considering the safety of the work environment and territory, as well as consumers' health.

3.2. Workers' Income Support

Pursuant to Italian legislation, the scope to provide income support measures for workers (e.g. ordinary or extraordinary wage guarantee funds) is possible in the event of suspension of production. The duration and amount of the funds are dependent upon the productive sector, the size of the company and the reasons for suspension. These forms of income support are fundamental in case natural disasters occur. Indeed, problems related to the suspension of production add to the impossibility to speed up workers' reinsertion into the productive process. This is because of the uniform impact of natural disasters, which does not allow for making a quick and reliable evaluation of the time to recover and to resume production. Further, all workers are involved, not only those in salaried employment. It is as though the labour market they know disappeared all of a sudden.

In November 2012, following the earthquake that struck the Emilia-Romagna region in May of the same year, over 40,000 workers – for a total of 4,000 productive sites – in the manufacturing and trading sector faced suspension of production and had to apply for safety net measures.

More generally, the statistics supplied by the Emilia-Romagna region estimated that 4,800 jobs were lost in salaried employment in the private sector¹⁴ because of the seismic event. Before that, Italy had to cope with another emergency, to wit the quakes that shook the Abruzzi region on 6 April 2009.

In both circumstances, the Government's immediate response was to collect extraordinary financial resources to support the income of the workers involved and instruct local authorities in the allocation of this funding, to be used as safety-net measures. The expression "safety-net measures" refers to different forms of income support, among which are unemployment benefits (ordinary and extraordinary funds in the construction industry and agriculture), wage guarantee funds (both ordinary and extraordinary), special unemployment schemes and alternative forms of support afforded by autonomous productive sectors and joint bodies.

The measures put in place to overcome the consequences of the earthquakes mainly concerned those provided in case of suspension of production. Among others are unemployment benefits granted to workers in salaried employment who remained unemployed and met certain contribution requirements; ordinary wage guarantee funds, which are allocated in the event of temporary events which are not attributable to the employer or the worker; extraordinary wage guarantee funds, which are granted in cases of company crisis regarded as relevant at sectoral and local level; and an unemployment scheme which financially supports workers made redundant as a result of collective dismissals (*indennità di mobilità*).

Alternatively, Italian legislation also gives the opportunity to access funding to employers who do not meet the foregoing statutory requirements, provided that these funds are paid on a regular basis.

The system put in place to support the workers affected by natural disasters is characterized by some very specific stages. First, certain income support measures available to workers in salaried employment are extended also to those who are not usually entitled to these benefits (the self-employed and those in quasi-subordinate employment),¹⁵ by paying

¹⁴ Data provided by the Emilia Romagna Region in 2013 report "*Un Anno Dopo*".

¹⁵ This result was achieved, in the Abruzzi, through a decree-law adopted by the Council of Ministers No. 46 of 23/04/2009, which initially granted an extension of unemployment benefits and of the allowance for self-employed and quasi-subordinate employees forced to suspend their activities. This provision was partially laid down also in the Agreement of 17/04/2009 between the Ministry of Labour and the Abruzzi

them an allowance on a one-off basis, which are special forms of wage guarantee funds called *cassa integrazione in deroga*.

Subsequently – and as soon as possible during the state of emergency – the areas benefitting from extraordinary interventions and income support measures will be singled out. Finally, the government will plan the resources available, the funding to be allocated, and the necessary procedures to be implemented by local actors to apply for the funds, extending financial aid to those workers who are usually excluded from this entitlement (e.g. apprentices and agency workers).

Evidently, local institutions and trade unions play an important role, for they are in charge of the planning and the allocation of resources in the shortest possible time, and of implementing stages and bureaucratic procedures for which timing is essential.

A suitable example is to be found in the minutes of the meeting held on 27 April 2009 by the “Emergency Committee in Businesses and Sectoral Crises” (*Comitato di intervento per le crisi aziendali e di settore, C.I.C.A.S.*), which specified that workers themselves can apply for *cassa integrazione in deroga* if employers show unwillingness to do so.

Region and was confirmed in the Framework Agreement between the Region and the Trade Unions of 27/04/2009. This also establishes exceptional income support for temporary layoffs, extension of mobility schemes and recourse to short time work schemes for enterprises with up to 15 employees for 13 weeks. These schemes were re-financed (also in those cases where the recourse to such schemes was not expressly linked to the earthquake) through Ministerial Decree No. 64127 of February 1, 2012.

As for the Emilia-Romagna region and other areas affected by the earthquake of May 20 and 29, 2012, paragraph 2 of art No. 15 of the Decree Law No. 74 of 6 June 2012 provides for an allowance for workers under coordinated and continuous work arrangements, for commercial agents, self-employed, including business people and professionals registered to any form of compulsory pension and social security scheme who had to suspend their activities because of the earthquake, to be financed through the European Social Fund. Already on 25 May 2012 in the Region of Emilia Romagna “a table for a Pact on Smart, Sustainable and Inclusive growth” was convened, which set out as the possibility to benefit from an exceptional income support for temporary layoffs in case of a “transient event not attributable to the entrepreneur and due to the earthquake” as well as of “company crisis resulting from a sudden and unexpected event and due to the earthquake”. In addition, a list of the companies that cannot access ordinary income support schemes for temporary layoffs was drawn up, and it was established that they could benefit of a special form of income support. The list included companies that are member of bilateral bodies, and for these, this special scheme replaced the usual income support scheme, where benefits in case of temporary layoffs are partly paid by bilateral bodies. To all this, it followed a rapid adoption of various collective agreements.

In practical terms, it is worth noting that the allocation of resources through safety-net measures to salaried employees went smoothly, as the system is well-established. The same cannot be said of the €20 million¹⁶ destined to the self-employed and workers in quasi-subordinate employment involved in the earthquake in the Emilia-Romagna Region, which are yet to be assigned. This is because their allocation is dependent on the enactment of a provision of the Ministry of Labour and Social Policies and the Ministry of Economic Affairs and Finance, which was never implemented¹⁷.

4. Conversion of Production and Workers' Retraining

Aside from causing fatalities, natural and environmental disasters have serious economic consequences, either in terms of direct costs (e.g. rebuilding) and indirect costs (e.g. a lower contribution to economy and the production of goods and services, the suspension of activity following the seismic event, and loss of production during reconstruction).

The strategies to mitigate the effects of natural disasters might give rise to a process of production reconversion towards new markets (e.g. green economy) – which might contribute to creating new productive processes and retraining workers. In this sense, the notion of “ecological conversion” is making inroads as a process to help overcome environmental issues in Italy and elsewhere, namely climatic changes, drought, water shortage and resource depletion, and natural disasters. Arguably, it will also boost employment, favouring the hiring of new personnel and promoting the wealth of skills of technical staff.

Post-disaster reconstruction can favour this process, most notably through the building of renewable energy plants (wind energy, solar energy, geothermic energy, biomass energy, water energy and so forth), the provision of mechanical and electronic tools to promote efficiency in the use of energy, the recourse to sustainable and shared methods of

¹⁶ Art. 15, paragraph 2, of Decree Law 6 June 2012 No. 74, modified by law of 1 August 2012, No. 122.

¹⁷ While waiting for activities of the Ministry of Labour and Social Policy, a working group comprising Region, Province, ABI (Italian Banking Association) and bank delegates at the local level, in order to evaluate the possibility to anticipate the allowance in a one-off payment while waiting for the release of the funds. On the issue of fund granting, it was submitted to the Senate in May 2013, a proposal to commit the Government to release the funds, and if necessary to increase them.

transport and systems of resource recovery (waste recycling). Further benefits include developing know-how to protect and regenerate the territory, environmental friendly farming for which high-qualified workers are needed, as well as restoring decommissioned facilities and providing technical and maintenance skills to make use of goods to the full, also by means of workshops. Through recycling, the lifecycle of numerous goods and items can be rescheduled in order to recoup efficiency in terms of resources and energy. A shortening of their productive cycle (in terms of raw materials, transformation, manufacturing, and the use of final product) could decrease energy waste and minimize the impact on environment. It is not coincidence that a rise in the number of green jobs has been reported, that is “those occupations that contribute to a large extent to preserving or restoring the quality of environment in agriculture, industry, services or administration”¹⁸. The green economy can affect different sectors and aspects in our lives (transport, renewables, communications, finance, waste management, agriculture, the building sector), with important implications on the labour market.

Identifying new job profiles and reviewing existing ones considering an ecologic perspective call for different and more defined skills that are closely related to the organisation and different stages of production.

Once these new professions are defined, a qualitative evaluation is necessary concerning aspects such as work organisation, remuneration, and professional growth considering emerging factors like health and safety issues.

In order to generate new green jobs and making existing ones more sustainable in different sectors, it is pivotal to fill the skills gap concerning the green economy, which today acts as a hindrance to technology progress, hampering the establishment of sustainable behaviour and carbon low emission strategies.

Arguably, inadequate competence and little attention paid to the foregoing issues on the part of the industrial relations actors can be seen as the underlying causes prompting a vicious cycle of low productivity and incomes that exclude workers from active participation in economic and social growth.

¹⁸ United Nations Environment Programme - UNEP, 2010.

5. The Role of the Industrial Relations System and DURC: An Instance of Good Practice

Italian legislation has set forth an up-to-date set of rules to prevent and manage natural and environmental disasters, partly due to the requirements imposed by its membership to the EU.

In the same vein, the welfare system supports employers and workers either under normal or extraordinary circumstances, for example by guaranteeing remuneration to the latter in case of suspension of production.

Yet the Italian experience shows that in those areas where institutions are lacking, laws are poorly implemented – if violated at all – and economic incentives and income support are inadequate and not used as a means to overhaul the areas and sectors affected by the disaster.

An egregious example is the way some areas of Southern Italy marked by a weak system of industrial relations and poor social dialogue between community actors dealt with the earthquake, particularly when compared with the positive approach taken in other regions (Emilia-Romagna and Umbria), where effective social dialogue among institutions allowed for production and other activities to quickly resume.

Further compounding the Italian picture is the absence of a sound system to monitor the trend of the labour market and the inefficiency of the public employment services, which do not permit evaluating the impact of natural disasters on the functioning of the market. This is an important aspect to consider, not so much in terms of job losses, as in terms of a mismatch between labour demand and supply and the adequacy of the emergency measures put in place concerning employment-related issues.

Although with some intrinsic differences in terms of scope and effectiveness, the institutional and legal framework seems to be apt to cope with the direct and immediate consequences of natural and environmental disasters. What is missing is forward planning on the restoration of facilities and resumption of activities and production sectors. When this happened, it was thanks to a sound system of industrial relations that is effective dialogue among institutions, employers and trade unions, which transformed the disaster into an opportunity for growth, thus moving on from the emergency state.

5.1. Implementing DURC following the Earthquake in Umbria: From an Emergency Measures to Established Regulations

Reconstruction and reclamation after natural or environmental disasters are very complex processes calling for modern laws as well as active cooperation between public institutions and other stakeholders, such as employers, workers and citizens, more generally. Particularly important in this respect is a well-functioning industrial relations system, which in some cases proved to be more effective than the legislation in supplying quick and appropriate solutions to emergencies.

A case in point is the “Single Insurance Contribution Payment Certificate” (*Documento Unico di Regolarità Contributiva* - DURC), which certifies the regular payment of social security contributions on the part of the employer. Introduced subsequent to the earthquake in Umbria in 1997, DURC was first adopted by social partners and then included in national legislation to ensure workers’ protection of health and safety, as well as the regular payment of social security contributions, concurrently preventing non-compliant employers in the construction sector from winning procurements for construction or reconstruction works. It represented a major breakthrough in administrative procurement control procedures, making sure that the regular payment of contributions on the part of employers and becoming increasingly important in the Italian legal system.

In particular, by means of a regional provision¹⁹, the Umbria region introduced DURC as a mandatory document to certify the regular payment of contributions on the part of the contractor for workers employed in the reconstruction activities. Subsequently, a memorandum of understanding regarding the certification of regular payment of social security and insurance contributions was agreed between the Umbria region, social security institutions (INPS and INAIL) and the Construction Industry Fund (*cassa edile*), while a one-stop shop for the issuance of DURC was set up for the purpose²⁰.

The DURC was initially designed to simplify certification procedures regarding the regular payment of contributions to INPS and INAIL and then to the Construction Industry Fund, but the scope of relevant legislation was gradually expanded, making it an essential tool for singling

¹⁹ Regional Law No. 30/1998.

²⁰ Resolution of the Regional Council No. 560/1999.

out the employers who are entitled to be involved in the reconstruction process²¹.

Since 2002, DURC has become a necessary precondition to take part in public procurements and it should be submitted to the procurement authority under penalty of revocation of the procurement contract. In 2003, it was required only in the case of private contracts in the building sector, and the law, provided that the procurement authority or the entity in charge of the construction works should require a certification stating the regular payment of contributions, issued by INPS, INAIL and by the Construction Industry Fund. Further, and for the purpose of DURC, these three entities concluded a special agreement²².

Subsequent reforms provided that to access EU subsidies, employers from all sectors were required to submit DURC²³ and that they could apply only for EU subsidies made available for investments²⁴. The following year²⁵ it was decided that regulatory and economic incentives statutorily provided for employment-related and social matters, could be granted only if DURC was regularly submitted, and in compliance with “other legal obligations” and “collective agreements at the national as well as regional, local or company level where existing, concluded by comparatively most representative trade unions and employers’ associations at the national level”.

Finally, the Consolidated Act on Occupational Health and Safety of 2008²⁶ provided for the obligation to produce DURC both in the case of public works contracts, public supply contracts, public service contracts, as well as in the case of private contracts for construction works, that is, in all those cases of “temporary or mobile construction sites” where “building or civil engineering works are conducted”.

In the Consolidated Act – but also in other provisions of law – DURC seems to play a role that goes well beyond that of merely certifying the

²¹ On the evolution of the legislation on DURC see D. Papa, P. Pennesi, *Il Contrasto al Lavoro Nero e Irregolare e il DURC*, in M. Tiraboschi, L. Fantini (eds.), *Il Testo Unico di Salute e Sicurezza sul Lavoro dopo il Correttivo (d.lgs. n. 106/2009)*, Giuffrè, Milan, 2009, 525-534.

²² In particular as a result of Article 86, Section 10 of the Legislative Decree No. 276 of 2003, which amended the legislative decree No. 494 of 1996.

²³ With Article 10, paragraph 7, of Law Decree No. 203 of 2005 (ratified by Law No. 248 of 2005) laying down measures to combat tax evasion and urgent provisions in taxation and financial matters.

²⁴ Art. 1, paragraph 553, of Law No. 266 of 2005 (Budget 2006).

²⁵ Art. 1, paragraph 1175, of Law No. 296 of 2006 (Budget 2007).

²⁶ Legislative Decree No. 81/2008, and as already provided by Legislative Decree 163 of 2006.

regular payment of contributions. It is an essential tool to assess the “technical and professional suitability of service providers, contractors and self-employed workers in relation to the functions or to the works to be carried out²⁷”.

From the above it is clear that DURC is crucial at the time of singling out the employers entitled to operate in the market, since only those that have been issued with DURC can legitimately operate in the construction sector where irregular and illegal work are notoriously more widespread phenomena than elsewhere.

Drawing on that, a structured and modern procedure for selecting market operators (thus indirectly providing increased protection to workers and citizens) known as “employer’s qualification system” was included in the Consolidated Act on Occupational Health and Safety of 2008. This system gives access to certain markets only to qualified employers, ensuring possession of the required technical and professional skills, and compliance with the relevant collective agreement, also by conforming to certain contractual general and specific standards in public procurements and private contracts, particularly those concerning health and safety procedures. This system, introduced by law in those sectors considered at high risk, is now operational in the case of working activities in confined spaces and plays a role in all types of natural and environmental disasters (collapses of mines, oil spills due to releases of crude oil from tankers, pollution and environmental contamination from industrial activities).

5.2. The Role of Bilateral Bodies

In Italy, bilateral bodies have increasingly played an important role in cases of environmental and natural disasters. The Italian law²⁸ defines them as “bodies set up at the initiative of one or more of comparatively most representative associations of employers and workers, as a privileged tool for the regulation of the labor market, promoting legal and high-quality employment, a better match between labour demand and supply, the planning of training activities and implementation of in-company vocational training, good practices against discrimination and the inclusion of disadvantaged workers, while encouraging the shared management of training and income-support funds, the certification of employment contracts as well as compliance with tax and social security

²⁷ Art. 90 of Legislative Decree No. 81 of 2008.

²⁸ Art. 2, paragraph 1, letter h), of Legislative Decree No. 276/2003.

contributions. Finally, they promote best practices in the field of health and safety at work, performing additional functions as provided by law or as assigned by the relevant collective agreement”.

Not only do they provide services and benefits for workers and employers, but they also serve as a catalyst for encouraging social partners to efficiently deal with and prevent the consequences of disasters. New functions have been attributed to bilateral bodies over the years, too.

With regard to their operational functions and with specific reference to the protection of health and safety in the workplace, these functions are defined by law and aim at providing technical support to employers.

In particular, the Consolidated Act on Occupational Health and Safety of 2008²⁹ defines joint bodies (referring to bilateral bodies) as “bodies set up at the initiative of one or more of the comparatively most representative associations of employers and workers’ organisations at the national level, as privileged tools for the planning of training activities and the introduction of good practices for prevention purposes, the development of actions related to health and safety at work; assistance to companies in complying with the relevant obligations; any other activity or function assigned to them by law or by the relevant collective agreement regulating their functions³⁰”.

Among these functions, particularly relevant are those related to training, counseling in dispute resolution, technical and organizational support for employers. They thus play a crucial role in the aftermath of crisis events (dispute settlement and technical and organizational support to companies) as well as in the medium to long term, putting in place measures to prevent natural and environmental disasters (training and, again, technical and organizational aid).

Among the broad category of bilateral bodies, *joint bodies* are the ones specialized on health and safety. The feature of being *joint*, which is typical of bilateral bodies in general and implies that the body is jointly managed as agreed through collective bargaining, is explicit by their very name. The setting up of joint bodies and their functions are established through collective agreements, without prejudice to bilateral entities already existing and set up in inter-confederation, sectoral, national, local or company-level agreements. Generally, these bodies operate at the national, regional and provincial level, but not at the company level, unlike in other European countries. Their presence at the local level is, in turn,

²⁹ Art. 2, paragraph 1 letter ee), of Legislative Decree No. 81/2008.

³⁰ See in this regard Art. 30 e 51 of Legislative Decree No. 81/2008.

particularly favorable for the acquisition of new functions, enhancing dialogue between social partners, and between social partners and institutions³¹.

Mention should also be made of the powers of bilateral bodies relating to labour market protection in areas affected by disasters. In the case of a suspension of the working activities due to sudden and unexpected events, bilateral bodies manage sectoral funds that can be used as income support for employees facing temporary crises caused by force majeure events beyond the employer's control. These funds, among other things, can help firms resume production, and encourage processes such as the reorganization and relocation/redevelopment of the activities.

The labour market reform of 2012³² further enhanced the role of bilateralism, primarily by granting access to specific unemployment benefits (Aspi), partly paid (at least 20%) by bilateral funds on the part of workers suspended from work for business or employment crises meeting specific requirements in terms of insurance and social security contributions for the years 2013 to 2015.

Further,³³ special bilateral funds (*fondi bilaterali di solidarietà*) have been set up to deal with crisis situations in those sectors where wage guarantee funds do not apply (*cassa integrazione guadagni*). In these cases, allowances are paid by these funds, if the crisis is due to one of the reasons envisaged by law that grant access to ordinary and extraordinary wage guarantee funds (*cassa integrazione guadagni ordinaria e straordinaria*).

In addition to this operational role, bilateral bodies play a promotional role encouraging the conclusion of agreements between social partners with a view to taking steps to support employers affected by events of considerable magnitude.

Many examples could be given in this respect. Among the most recent ones, particularly relevant was the agreement reached by national bilateral bodies linked to Confesercenti and Unicredit, establishing that employers and workers in the areas affected by the earthquake of May 2012 in Emilia Romagna can access credit at very advantageous conditions, especially in the case of a first request of financial support for the resumption of their activities. More in details, the agreement provides that employers can be granted a 12-month interest free loan with no additional fees, payable

³¹ For an overview of the role of Joint Bodies in the field of health and safety see M. Lai, "Gli Organismi Paritetici", in M. Tiraboschi, L. Fantini, *Il Testo Unico di Salute e Sicurezza sul Lavoro Dopo il Correttivo (d.lgs. n. 106/2009)*, Giuffrè, Milan, 2009, 493-501.

³² Art. 3, paragraph 17, of Law No. 92/2012.

³³ Art. 3, paragraph 4, of Law No. 92/2012.

outright at maturity, thanks to the direct involvement of bilateral bodies connected to Confesercenti that bear these costs³⁴.

It is therefore clear that the development of bilateralism can only be seen positively, as an out-of-company channel of communication favouring consultation and participation procedures at the workplace – ensuring immediate response to crisis situations, as well as enabling medium to long run solutions to events that may affect workplace safety as well as labour market stability in the afflicted areas.

5.3. Evolutionary Perspectives: The Employers' Qualification System

5.3.1. Rules Governing the Qualification of Employers

The need to effectively manage and prevent the negative effects of emergency situations on the workplace and workers' health and safety led Italian lawmakers to ultimately introducing in the existing system of formal safeguards – essentially based on compliance with bureaucratic requirements and on the development of a complex sanctioning system – a series of tools that made it possible for the “upward” selection of employers and economic operators entitled to operate in the market, based on their organizational and managerial standards, both in terms of production and employment arrangements. This is particularly relevant in those sectors characterized by high levels of risks and work-related accidents, which operate in markets particularly exposed to social

³⁴ Mention should be made of the bilateral body of the Region Lazio for the Artisan sector that, in the event of extreme weather conditions or natural disasters that cause an interruption of the production cycle it ensures a wage subsidy in the amount of 40% of the net hourly pay for the first 4 weeks of suspension, up to 160 hours per year.

Also bilateral bodies of Varese provide a one-off contribution for companies that have incurred expenses as a result of the damages caused by exceptional events arising from “natural causes” that led to a partial or total suspension of production activity of the company in the six months after the event, for a first resumption of the production cycle, as well as to make up for the damages caused to property, plants, equipment, materials and products. The subsidy is granted to the extent of 15% of the full amount and cannot exceed a maximum of € 1,000.00. The bilateral body of the Artisan Sector of Tuscany has allocated a budget of 1 million 200 thousand Euros to support an emergency intervention in favour of businesses and self-employed artisans affected by the recent floods that have plagued many areas in the provinces of Grosseto, Massa Carrara, Lucca and Siena. In addition, at the initiative of trade unions CGIL, CISL and UIL other 300,000 Euros were allocated for interventions in favor of employees of small-sized businesses affected by flooding.

dumping, or that provide services in fields of particular importance, where also the health and safety of end users must be protected (catering services, sterilization services for hotels and hospitals, and so on)³⁵.

The purpose is, on the one hand, to encourage and reward those employers and self-employed workers adopting high standards, and, on the other hand, to induce competitors and other players to adapt to these standards in order not to be excluded from the market or from public or private contracts.

This is the rationale behind the idea of a qualification system for employers and self-employed workers, a regulatory tool which at first addressed only public works contracts³⁶, and that it was then enhanced and remodeled to ensure health and safety in the workplace as provided in the Consolidated Act of 2008, especially in the light of the amendments made in 2009³⁷.

Actually, the criteria established in the enabling provision issued by Parliament for the drafting of the Consolidated Law provisions referred to the introduction of “a qualification system for employers and self-employed workers” focusing on the technical expertise or the skills and knowledge in the field of health and safety at work “acquired through targeted training programs”³⁸.

A complex rule³⁹ was introduced which expressly provided that, within the Standing Advisory Commission on health and safety at work (a tripartite advisory body established by the Ministry⁴⁰) and following the

³⁵ For an overview of the evolution of the qualification system for companies and self-employed workers, see M. Tiraboschi, “Il Sistema di Qualificazione delle Imprese e dei Lavoratori Autonomi”, in M. Tiraboschi, L. Fantini (a cura di), *Il Testo Unico di Salute e Sicurezza sul Lavoro dopo il Correttivo (d.lgs. n. 106/2009)*, Giuffrè, Milan, 2009, 119-128.

³⁶ With certification, supervision and verification procedures introduced by Law No. 109 of 1994 and Legislative Decree No. 163 of 2006, as amended and supplemented by Legislative Decree No. 152 of 2008 laying down the Code of public works contracts, public supply contracts, public service contracts, implementing Directives No. 2004/17/EC and No. 2004/18/EC.

³⁷ Legislative Decree No. 106/2009, amending Legislative Decree No. 81/2008.

³⁸ Art. 1, paragraph 2, letter m), of Law No. 123/2007.

³⁹ Art. 27, of Legislative Decree No. 81/2008.

⁴⁰ The role and powers of the Commission are laid down in Article 6 of Legislative Decree No. 81/2008. Reference to the activities of the Commission regarding the qualification of businesses, was deleted recently with Article 32, paragraph 1, lett. a-bis of Decree-Law No. 69/2013 to accelerate and simplify the regulatory process of qualification.

advice of joint bodies⁴¹, the sectors should be identified, including the sector of textile and surgical instruments sanitation, to which the qualification system applies, as well as a series of criteria for the development of a system of qualification of employers and self-employed workers that ensures protection of health and safety at work. Certification is granted depending on the expertise and knowledge acquired through targeted training, upon compliance with certain contractual and organizational standards in the case of contracts for works and services and flexible working arrangements and on whether employment contracts have been certified⁴².

In relation to participation in public procurement⁴³, being awarded qualifications ensuring compliance with the relevant requirements constitutes a preferential criterion for the participation in tenders for public contracts and subcontracts as well as to have access to public subsidies, loans and contributions related to the same contracts or subcontracts.

The same criteria⁴⁴ provided the basis for a review of the requirements of technical and professional suitability of contractors and self-employed workers. This assessment used to be carried out by the commissioning body in the case of public procurements or private contract works and, up to that moment, consisted in a mere evaluation of a series of documents. This regulation is even more significant when considering that the Legislator has indicated⁴⁵ only by way of example a number of “pilot” sectors for the introduction of this selection mechanism, including for instance the sector of textile and surgical instruments sanitation and the construction sector. More specifically, with respect to the building sector, the Legislator – also by developing a points-based system for the qualification of market operators – expressly provides that qualification takes place through a tool which enables continuous monitoring of the suitability of employers and self-employed workers, of compliance with provisions and with all other requirements, including training in health and safety as well as those imposed by surveillance authorities. Employers and self-employed workers are allocated an initial score according to their degree of suitability that is reduced in the case of proven violations of

⁴¹ Reference to joint bodies was repealed through Art. 32, paragraph 1, lett. a-bis, of decree law No. 69/2013, converted into Law No. 98/2013.

⁴² According to Title VIII, paragraph I, of legislative decree 10 September 2003, No. 276

⁴³ Art. 27, paragraph 2, of Legislative Decree No. 81/2008.

⁴⁴ According to Art. 26, paragraph 1, of Legislative Decree No. 81/2008.

⁴⁵ Art. 27, paragraph 1 e 1-bis of Legislative Decree No. 81/2008.

health and safety regulations. When zero is reached due to repeated violations, employers or self-employed workers may be prevented from continuing to carry out their activities in the construction industry. The Legislator has provided that the mechanisms devised for the construction industry may be extended to other business sectors identified through one or more inter-confederation agreements concluded at the national level by most representative trade unions and employers' associations.

5.3.2. Sectors and Qualification Criteria

In addition to the sectors identified by law, the foregoing Standing Advisory Commission for health and safety at work extended to other sectors the recourse to the qualification system, paving the way towards the adoption of a specific Decree of the President of the Italian Republic containing the relevant regulations broken down by, not yet adopted so far.

Eight additional sectors have been identified for the introduction of a qualification system that could be extended to other sectors, such as catering and call centers, with specific reference to project-based workers, occasional workers and those self-employed having a single-client relationship, the transport sector, confined spaces; agency work, private security services, public health services, music, movie and theater performances; and trade fairs.

In addition, a series of mandatory requirements and preferential criteria applicable to all sectors for the recognition of the qualification have been identified. Mandatory requirements include:

- a) compliance with legal provisions relating to information, education and training of workers and, in particular, training and information as required by law⁴⁶;
- b) with reference to family-run businesses and self-employed workers, proven compliance with the law⁴⁷;
- c) compliance with the legislative provisions on DURC;
- d) the presence of at least 30% of the workforce with at least three years of expertise in the field, regardless of the type of the employment contract concluded. Business owners and/or employers directly involved in the work/production must be included in the foregoing 30% calculation;

⁴⁶ According to Art. 34, 36 e 37 of Legislative Decree No. 81/2008, and with reference to family-run businesses and self-employed workers, the activities listed in art. 21, paragraph 2, of Legislative Decree No. 81/2008.

⁴⁷ Of what is provided in Art. No. 21, paragraph 2, of Legislative Decree No. 81/2008.

e) the suitability to perform the relevant activities. Assessment is carried out taking into account compliance with the provisions on risk assessment, health surveillance, emergency management measures, supply, possession, proper use and maintenance of personal protective equipment and work equipment;

f) no sanctions on health and safety at work in the two years preceding the contract or the granting of public incentives, loans and contributions or full payment of the sanction (maximum one) imposed in the same period;

g) the full application of collective agreements, including the payment of contributions to the relevant bilateral fund, concluded with comparatively most representative workers' organizations at the national level or with their local branches according to the law and to inter-confederation agreements in force.

Preferential criteria include:

a) the certification of individual contracts of employment, including flexible employment contracts and individual contracts for works and services or subcontracts in accordance with the provisions of the law⁴⁸;

b) the adoption and effective implementation on the part of businesses of organizational models and management complying with the law⁴⁹;

c) any other element expressly provided for to this purpose in inter-confederation agreements or collective agreements concluded with comparatively most representative workers' organizations at the national level;

d) the application of codes of conduct codes of ethics, as well as social responsibility initiatives.

Mandatory requirements and preferential criteria will operate in accordance with the relevant provisions and following sector-specific criteria.

Particularly relevant is the case of confined spaces, marked with high rates of fatal accidents over time. The sector has long had a well-structured regulatory framework, which was not properly enforced. It was therefore necessary to increase effectiveness of safeguards also through the "upward" selection of market operators. To be allowed to operate in the market, employers must give evidence of appropriate training, expertise and technical knowledge to prevent risks and handle emergency situations.

⁴⁸ According to Title VIII, Capo I, of Legislative Decree 276/2003 and within the limits laid down in Art. No. 27 of Legislative Decree No. 81/2008.

⁴⁹ As laid down in Art. No. 30 of Legislative Decree No. 81/2008.

This led to the adoption of a specific piece of legislation in 2011⁵⁰, which extends the application of the mandatory requirements discussed above to any entity involved in the “supply chain”, including subcontractors.

Subcontracting is allowed in confined spaces only if expressly authorized by the contractor (that must, therefore, verify the subcontractors’ compliance with mandatory requirements) and if contracts are certified⁵¹.

Moreover, in case of contracts, it must be ensured that:

- before entering the workplace, all workers involved in the activity (including, where applicable, the employer) must be promptly and fully informed by the principal of all the risks that may be arise in the work area (including those related to any previous usage). This activity should have the duration that is deemed necessary and appropriate, and in any case, no less than one day;
- the employer must appoint a representative, who is adequately trained, instructed and informed of all risks existing in the workplace, who oversees the activities that take place in such environments;
- during all working phases in possibly polluted environments or in confined spaces, a working procedure specifically aimed at eliminating or minimizing the risks inherent in such activities must be adopted and effectively put in place.

With specific regard to the construction sector, and based on the foregoing “points-based system”, a set of specific requirements was additionally introduced for all firms belonging to the construction sector for the purpose of social security, including but not limited to, employers who perform the following operations: construction, hydraulic works, construction of roads, of transmission lines and distribution systems, pipelines, plants.

5.3.3. The Preparation to and Management of Natural Disasters: What Prospects for the Future?

In light of this framework, it is easy to immediately appreciate the potential role of a qualification system in terms of substantial protection, especially if properly implemented in the most vulnerable sectors, which can be developed for the management of any form of emergency, including those related to environmental and natural disasters, but even more for the “upward” prevention of the devastating effects that such

⁵⁰ Decree of the President of the Republic No. 177/2011.

⁵¹ According to Art. 75 et seq. of Legislative Decree No. 276/2003.

events may have on industrial plants, workers' safety and labour market in the affected areas. This is possible thanks to prevention measures, the proper use of employment contracts and the regular payment of social security contributions, i.e. the criteria on which the qualification system is based.

This process is all the more important if one considers that, thanks to social dialogue and industrial relations, a provision⁵² was enforced to extend the application of a qualification system to any productive sector. This measure very much relies on parties' self-regulation, which through agreements concluded by most representative employers' associations and workers' organisations can play a role in the participatory management of emergencies as well as in controlling productive activity in the medium and long run.

However, in foregoing sectors (except for confined spaces) the regulation on qualification has not yet been finalized, and therefore far from being enforced.

Nevertheless, it is true that recently the Legislator⁵³, faced with the need to eliminate unnecessary restrictions to boost production in times of crisis and to simplify procedures for employers, has confirmed the crucial importance of a sound qualification system for employers and self-employed workers to increase health and safety at work and to ensure compliance with the law in both organisational and contractual terms.

Also in this case, a legal vacuum may provide a good opportunity to develop and put in place, through collective bargaining, a valuable tool to ensure protection in the face of environmental and natural disasters.

⁵² Art. 27, paragraph 2 of Legislative Decree No. 81/2008.

⁵³ Here, reference is made to Decree law No. 69/2013, converted into Law No. 98/2013, which simplified the procedure for the approval of the relevant regulation with a view to coming to a quick enforcement.



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