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# The decision of the Italian Constitutional Court on the possible Referendum on the so-called “*Jobs Act*”

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On January 11<sup>th</sup> 2017 the Italian Constitutional Court ruled on the application submitted by CGIL, one of the largest and most important Italian Trade Unions, for a referendum to repeal some parts of the recent labour market reform, or “*Jobs Act*”.

The referendum applied for concerned three questions on different aspects of Italian labour legislation: **(i)** the reform of the rules as to the consequences in the event of unfair dismissal; **(ii)** the repeal of the rules regulating casual work (in Italian “*lavoro accessorio*”) contained in the so-called “*Jobs Act*” reform of 2015; and **(iii)** the reform of the legislation on the joint liability of the customer and the contractor in the event of contracts for work and services (in Italian “*responsabilità solidale in caso di appalto*”).

The most important referendum question (also from an economic perspective) concerned the proposed **reform of the rules governing the consequences of unfair dismissal**. According to this question, the new rules on unfair dismissal introduced by Mr. Renzi in 2015 (the so-called “*Jobs Act*”), would - in the event of a “Yes” vote in a referendum – have been repealed. Furthermore, this question was also aimed at repealing the reform of the unfair dismissal rules introduced by Mr. Monti’s Government in 2012 (the so-called “*Riforma Fornero*”) and, above all, at extending the protection granted to employees by the original text of Article 18 of the 1970 Employment Law (*i.e.* the reinstatement of dismissed employees in their previous job positions) to workers employed by companies having more than five employees.

In fact, according to the original legislation on unfair dismissal, as laid down by Article 18 of Law no. 300 of May 20<sup>th</sup>, 1970 (the Employment Law or “*Statuto dei Lavoratori*”), where the dismissal of an employee working for an employer having more than fifteen employees was ruled as unfair for whatever reason, the employee concerned was always entitled to be reinstated in his previous job position. This rule was first amended by the so-called “*Riforma Fornero*” in 2012, which made it possible for the Court to grant the unfairly dismissed employee a mere compensation for his unfair dismissal instead of the reinstatement in his previous job position. Then, in 2015, the “*Jobs Act*” introduced (for employees hired as from March 7<sup>th</sup>, 2015 only) new rules in case of unfair dismissal, limiting an unfairly dismissed employee’s right to reinstatement in the previous job position to only a few specific cases (*e.g.* discrimination).

As to the question proposing the repeal of the newly introduced legislation on **casual work**, the referendum is aimed at eliminating this form of working arrangement (involving the use of a so-called “*voucher*” to pay casual workers), which is considered to be a way for employers to bypass the application of the rules on employment contracts. In fact, according to CGIL the increasing use of this kind of arrangement caused an increase in the number of casual workers and therefore their impoverishment. So, with the proposed repeal of this legislation CGIL aims at extending the application of standard employment agreements even to very short-term casual jobs (*e.g.* for only one day or a few hours).

It may be noted, however, that casual workers are still only a small percentage of the overall Italian workforce and, according to the Italian press, this kind of arrangement is widely used by CGIL itself.

The question on the matter of **joint liability of the customer and the contractor in contracts for work and services** is aimed at cancelling some limitations to the liability of the customer provided by the existing legislation. In other words, in the event of a “Yes” vote on the referendum question submitted by CGIL, both the customer and the contractor would have full liability *vis-à-vis* employees working on the contract.

The Italian Constitutional Court allowed the proposed referendum only as to the questions on irregular work and joint liability of the customer and the contractor, while it did not allow the question on the review of the unfair dismissal legislation. The reasons for such decision will be disclosed by the Court in the course of the next few weeks. However, it is reasonable to surmise that the question about the reform of the unfair dismissal legislation was not allowed because it would have implied not only a mere repeal of the recent laws on this topic (*i.e.* “*Riforma Fornero*” and “*Jobs Act*”), but also an extension of the protection granted to employees by the original text of the “*Statuto dei Lavoratori*”. Such extension would involve the introduction of new legislation (*i.e.* the application of reinstatement rights also for employees of companies having between 5 and 15 employees) and not only the repeal of existing legislation. According to the Italian Constitution, a repealing referendum cannot introduce new legislation but only repeal existing laws. Therefore, probably this is the reason why this question was not allowed by the Italian Constitutional Court.

The decision of the Italian Constitutional Court to reject the question about the proposed review of the unfair dismissal legislation was received as a good news by the parliamentary majority of the Democratic Party of Mr. Renzi as well as by most Italian economists. In fact, since the “*Jobs Act*” reform was enacted (March 2015), hiring in permanent positions has increased remarkably, supporting consumer confidence and, with that, household spending. Indeed, private consumption has been the most important driver of the modest economic recovery, which gained some momentum in 2015. According to many Italian (and foreign) economists, the repeal of a major set of reforms designed to improve Italy’s competitiveness by promoting job creation, increasing productivity and flexibility would have had a significant negative impact on Italy’s economic growth. Furthermore, a rejection of the latest labour market reforms would have given a very negative message about Italy’s willingness to press ahead with reforms, which is a very important indicator for foreign (and domestic) investors.

The decision of the Italian Constitutional Court to reject the above question was criticised by CGIL, on the other hand, who promised to continue its fight against the latest reforms of the Italian labour markets also by resorting to the Court of Justice of the European Union.

The date of the referendum on the questions allowed is still to be fixed but it will probably be in the month of June 2017.