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Age Discrimination in Italy

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Abstract.

The Framework Directive on Equal Treatment in Employment and Occupation (2000/78/EC) included age as one of its prohibited grounds of discrimination. Member States were required to transpose this Directive by December 2003. In Italy age discrimination was explicitly regulated by means of Legislative Decree no. 216, 9 July 2003. The Decree introduced the new specific prohibition of discrimination, defining its application, exceptions and remedies.

The purpose of this paper is to explore, in a contextual way, the implementation of the age aspects of the Framework Directive in Italy taking into account how age discrimination express itself in the Italian labour market.

* Forthcoming in Malcom Sargeant (eds) "The Law on Age Discrimination in the EU", Kluwer Law International BV, The Netherlands, 2007 pp 111-133.

Olga Rymkevitch is responsible for the following sections: Introduction; Current legal framework; Age and dismissals; Transposition of Directive 2000/78.

Claudia Villosio is responsible for the following sections: Characteristics of the Italian labour market for different age groups; Other forms of discrimination against older workers; Employability and active labour market policies; Issues about retirement and pensions; Conclusion.

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Introduction

Against the backdrop of major demographic changes, the problem of an ageing population and age discrimination has become a key issue in every part of the world. During certain phases of social evolution, terms such as sexism, racism, and classism became prevalent in modern languages. Now, the neologism “ageism” is recognised as well.¹ Ageism stems from the increasingly negative perception of ageing, a characteristic of modern times. However, the situation was not always this way. Historically elderly people were respected as wise custodians of history and traditions.² In fact, in the past, a very low life expectancy was the rule and not the exception.³ Increased life expectancy and the industrial revolution contributed to this shift in attitudes towards the aging population as a burden for society rather than a valuable resource.

The effects of an aging population are more pronounced in Italy than in most other European countries.⁴ After the baby boom of the 1960s and early 1970s, the total fertility rate declined sharply, falling below the replacement rate of 2.1 at the beginning of the 1980, and reaching 1.24 in 2000. At the same time, life expectancy is amongst the highest in the world (approximately 79 years). Even though a slight recovery in fertility rates is expected in the future, the new demographic structure will have a profound impact on the labour market and society in general. According to ISTAT (the National Statistical Office) forecasts, in the next two decades, the baby boom generations will reach retirement age, and they will be replaced by new cohorts roughly half the size.

Currently, Italy has the second highest dependency ratio (individuals over 65 in relation to the population aged 20-64), among the OECD countries. Only Sweden has a higher ratio. In Italy, this ratio reached almost 30% in 2000 and is expected to more than double by 2050. Only Japan is expected to have a higher ratio by 2050.⁵ According to the statistics for 2006, in Italy, 19.8% of the population were over the age of 65. In addition, those over 80 have increased to 5% of the population.⁶

An additional concern is the employment rate of older people. The employment rate for those aged 55-64 in Italy was 31.4% in 2005, about 10 percentage points below the European average and far below the Stockholm target of 50%. The situation is even worse for older women, for whom the employment rate is 20.8%, the lowest in the EU.

Age discrimination in the labour market presents itself in various ways. Some are explicit, such as the exclusion of older workers from training or the inclusion of age-limits in recruitment advertisements. Other ways are more subtle, such as dealing with job redundancies by means of early retirement. In Italy, young people also experience serious difficulties entering the labour market and obtaining stable employment. This has an impact on fundamental choices such as the propensity to start a family or to relocate in hopes of finding better employment. In 2000, 8.6 million people between the ages of 18-34 (60.2% of this age group) were still living with their parents, thus postponing the transition to adult

¹ S. Cuomo, “Le discriminazioni di età nella letteratura manageriale”, in *Over 45, Quanto conta l'età nel mondo del lavoro*, M. C. Bombelli and E. Finzi (eds), p. 157.

² T. D. Nelson, “Ageism: Prejudice Against our Feared future Self”, *Journal of Social Issues*, Vol. 61, No. 2, 2005, p. 207.

³ S. Cuomo, *op.cit.*, p. 157.

⁴ A. Russo, R. Salomone, M. Tiraboschi, “Invecchiamento della popolazione, lavoratori “anziani” e politiche del lavoro: riflessioni sul caso italiano, giuridico in una prospettiva comparata per la gestione “flessibile” del personale”, in *Collana ADAPT*, Working Paper, n. 7, 2002.

⁵ OECD (2004), “Ageing and Employment Policies - Italy”, Paris.

⁶ ISTAT (2006).

life.⁷ Scarce employment opportunities in the South led people to move to the North or abroad therefore influencing the balance between the older and younger populations, in favour of the former. In fact, in 2006, the index for people over the age of 65 on those below the age of 15 in the Southern regions is greater than 110%.⁸

With regard to the notion of age discrimination, first of all it is necessary to stress the ‘uncertain and shifting nature of ‘age groups’. As the age structure of the workforce changes, both employees and companies change their expectations. The task of proving discrimination on grounds of age is often complicated. At the same time the use of age as a proxy for characteristics such as incapacity, ill-health or immaturity is highly questionable.⁹ One important consideration is that age discrimination does not concern only people above a particular age but it affects many age groups in different ways, with the strongest implications for the youngest and oldest individuals. Moreover, the impact of age discrimination is greater for older women,¹⁰ people with disabilities, people of non- traditional sexual orientation and people from an ethnic minority background, giving rise to a phenomenon known as multiple discrimination.¹¹ In many instances, people do not suffer only one form of discrimination in just one particular sector but rather multiple discrimination according to different reasons in different forms and in different fields.

Discrimination

The most widespread forms of discrimination relate to gender and disability. At present in Italy there are 2.6 million-people with disabilities (5% of the population over the age of 6).¹² The most significant problem is the integration of these people into the labour market. According to ISTAT 2005¹³ only 26.5% of people with disabilities were employed, and 32% were affected by serious forms of disability. Some 82% were employed on open-ended contracts and most (56.1%) were employed in the private sector. Some 14.6% reported acts of discrimination at the workplace, whilst 13.5% of people with disabilities between 15 and 67 have never worked. The unemployment rate of people with disabilities is higher than amongst other people and multiple discrimination affects women twice as much as men.¹⁴

As for gender discrimination, according to ISTAT data for 2006, in spite of the recent increments in employment for both males and females, there is still a wide gap between the two sexes. Whereas the inactivity rate for men is about 25.6% that of women is about 49.9%, reaching 63.8% in the South.¹⁵ Women in Italy are penalised from the point of view of income, access to stable employment, and career advancement. According to a 2004 study which took into consideration the 35-44 age group, single women have the highest employment rate (86.5%), followed by women with partners but without children (71.9%)

⁷ ISTAT (2000), *Indagine multiscopo, Aspetti della vita quotidiana, Famiglie, abitazioni e sicurezza dei cittadini*, Roma..

⁸ ISTAT (2006), *La popolazione*, cap. 2, p. 147.

⁹ C. O’Cinneide, *Age discrimination and European Law*, DG for Employment, Social Affairs and Equal Opportunities, April 2005, p. 6.

¹⁰ For more information on older women see M. T. Marziali, *Quality of life and management of living resources. Key action 6: the ageing population and disabilities*. MERI- mapping existing research and identifying knowledge gaps concerning the situation of older women in Europe, Italy, 2004.

¹¹ E. d’Orazio, *Rapporto sulla discriminazione in Italia per causa di età, Age platform, Ancescao*, Fipac, Fipac, 50 and più Fenacom, seminario nazionale italiano “La discriminazione basata sull’età”, Roma 31 ottobre 2003.

¹² Data taken from the report to the Parliament on the state of enactment of disability policies in Italy for 2004-2005, <http://www.disabilitaincitre.it/questionari/paginainiziale.asp>.

¹³ “L’integrazione sociale delle persone con disabilità”, ISTAT, 2005, <http://www.disabilitaincitre.it/documenti/indaginedisabilita.pdf>, p. 7.

¹⁴ Italia, Piano nazionale per l’anno europeo 2007, strategie e priorità, 2007.

¹⁵ ISTAT, rilevazione sulle Forza lavoro, III trimestre 2006, 2006 at www.istat.it.

and finally by women who are part of a couple with children (51.5%). In the last group the highest employment rate (63.8%) is among women with only one child and the lowest (35.5%) for women with 3 or more.¹⁶ The presence of women in leading positions in enterprises both in the public and the private sector is still limited. The number of women in Parliament is less than 20%. In particular, in the Chamber of Deputies women account only for 17.1% whilst in the Senate the corresponding figure is just 13.5%.¹⁷

Discrimination on the basis of sexual orientation is also widespread in Italy, particularly in the South. The most hostile setting is the workplace, where only a minority of those interviewed (24.1%) do not conceal their sexual orientation, compared to 37.3% who prefer to keep quiet in this regard.¹⁸

In order to ensure a comprehensive approach to discrimination, legislative measures should concern all target groups, and attempt to strike a proper balance to avoid possible distortions in the labour market.

In Italy, age discrimination and the social inclusion of older people attract less attention than other issues, such as the high levels of unemployment among young people and in the South. The unemployment rate for 2006 in the 15-24 age group was 21.6%, more than three times the overall unemployment rate (6.8%), and in the South it amounts to 34.3%. In this respect the position of young women is even more difficult since their unemployment rates are 25.3% and 40.5% in the South. On the other hand the low employment rate of older Italian workers is mainly attributable to the direct transition from employment to retirement rather than to unemployment. Therefore, the main concern in the Italian labour market has been how to promote the employment of younger people even if this is to the detriment of older workers. For instance promoting early retirement schemes is generally not considered by trade unions as discriminatory and in fact for many decades they have been extensively used in economic restructuring, based on a broad social consensus.

There is limited statistical data on the existence of age discrimination in Italy also because the themes of discrimination, conflict and harassment are very recent research topics. Moreover the available data reveal a contradictory picture. The 2006 Kelly Global Workforce Index of over 70,000 workers in 28 countries (including Italy) provides insight into workforce discrimination on account of age (both young and old). In Italy, more than half (58%) of workers reported acts of discrimination during their job search, a figure which was amongst the highest in the 28 countries analysed. On the basis of these findings, age is the most important factor associated with discrimination (28%), followed by gender (13%), race (2%) and disability (2%). In particular, 72% of workers aged between 45 and 54, and 63% of those aged under 20, encountered discrimination while applying for a job. On the other hand, according to the survey conducted in 2006 by ISFOL, the national agency for training¹⁹, Italy, with Bulgaria, is the European country where discrimination practices are least frequent in the workplace. In the previous survey conducted in 2002²⁰ the most widespread forms of discrimination were linked to age (7.5%), political opinion (5.5%) and gender (4.9%). In general, men reported discrimination at the workplace more frequently than women, and older people were more aware of it than younger people. Only in relation to sexual discrimination

¹⁶ L. L. Sabbadini, ricerca di ISTAT- Ministero Pari Opportunità, Roma, 2004, p. 124 cited in Italia, Piano Nazionale per l'Anno Europeo 2007, pp.4-5.

¹⁷ See CAMERA DEI DEPUTATI- SENATO DELLA REPUBBLICA (servizio statistiche) www.camera.it, www.senato.it.

¹⁸ Italia, Piano Nazionale per l'Anno Europeo 2007, p. 8.

¹⁹ ISFOL, 2006, II Indagine su "La qualità del lavoro in Italia" 2006 – Press release http://www.isfol.it/BASIS/web/prod/document/DDD/us_com090107.htm

²⁰ ISFOL, 2004, La qualità del lavoro in Italia, *Temi & Strumenti*, Isfol, Rome http://www.isfol.it/isfol/download/pub_temstru2%20qualita%20lavoro.pdf

do women report more cases than men. Younger respondents report discrimination concerning religion and sexual orientation more frequently than older people. Age discrimination is more frequently reported by temporary workers, who are more at risk of marginalisation than workers in more stable employment. Finally, according to Paulli and Tagliabue²¹, there is widespread discrimination in Italy against older workers with regard to job recruitment and training courses, in particular for low-skilled workers.

Characteristics of the Italian labour market for different age groups

The labour market situation for workers belonging to different age groups presents peculiar features in Italy: the employment rate for those aged over 55 is still much too low by EU standards (31.4% compared to the average 42.5% for the EU25 and far below the Stockholm target of 50%), but the employment rate of people under 25 is also much too low (25.7% compared to the average of 36.8% for the EU25). Throughout the 1980s young cohorts entered the Italian labour market at the expense of older cohorts that were removed from the labour force, the so-called 'young-in, old-out' process. For all sectors of industry, from 1985 to 1990 large numbers of young people under the age of 25 were hired (nearly one million mainly on two-year work training contracts). From the age of 21 and up to 40 all workers' cohorts 'thinned out' by about 2% per year (260,000 in the five-year period, probably the least qualified). Between the ages of 40 and 45 the 'thinning out' figure halved, while by the age of 45 the net expulsion rate reached 6% per year, climbing above the 10% mark by the age of 50.²² Since the early 1990s, however, there has been a severe shrinkage of the employment inflows of young entrants and large outflows of older workers. In the 1990s the employment rate in the 20-24 age group decreased by six percentage points, while the rate in the 50-64 age group decreased by two percentage points. In a period where other countries such as Ireland and the Netherlands managed to generate more jobs for both categories of workers, Italy generated fewer jobs for both older and younger workers.²³ The belief that younger workers can simply substitute older ones and that early retirement creates vacancies for young workers is not supported by the data. It is now widely recognised that forcing older workers into retirement in order to stimulate employment among the young does not work and may even be counter-productive. Certain recent empirical studies show that this type of policy usually fails to produce the desired results²⁴.

In the same decade a significant proportion of new entries to the labour market took the form of fixed-term or temporary contracts, subordinate labour disguised as self-employment, staff leasing, atypical contracts of various sorts, all aimed at reducing labour costs and making work flexible in connection with the progressive opening of the markets and the rapidly increasing competition from low-cost countries. According to Eurostat data²⁵ the share of temporary jobs among young workers (15-24 years old) increased from nearly 15% at the beginning of the 1990s to more than 34% in 2004. At the end of the 1990s only one in four new entries in the labour market started work on an open-ended contract, a typology considered as standard only a few years before²⁶. The results of these trends are greater income inequality, which increased from the early 1990s especially among workers on the

²¹ Paulli, A. and M. Tagliabue, "Active Strategies for Older Workers in Italy", in Jespen *et al.* (eds.), *Active Strategies for Older Workers*, European Trade Union Institute (ETUI), Brussels, 2002.

²² B. Contini and F. Rapiti, "Young In, Old Out revisited: New Patterns of Employment Replacement in the Italian Economy", *International Review of Applied Economics*, vol. 11, no. 3, 1999.

²³ OECD (2006), *Ageing and Employment Policies - Italy*, Paris.

²⁴ P. Pestieau, "Ageing, retirement and pension reforms" *The World Economy*, vol. 26, Number 10, November, 2003, pp. 1447-1457(11).

²⁵ EUROSTAT Labour Force Data (2005).

²⁶ See "L'economia delle nuove forme di lavoro", 2007, in CeRP, LABOR and URGE (eds.) "Le nuove forme di lavoro in Italia e in Piemonte: nuove opportunità o discriminazione?" Rapporto di ricerca commissionato dalla Fondazione CRT, forthcoming.

margins of the labour market²⁷, with a polarisation between good and bad jobs and an increasing risk for young people of being trapped in low-wage jobs. Among those with a temporary contract in 2004, more than half still had a temporary job one year after, and only a quarter had moved on to an open-ended contract (the other transitions being into self employment, 3.5%, and unemployment, 19.7%). The likelihood of moving on to an open-ended contract is higher for men, for workers in the 24-34 age group compared to younger and older ones, and for workers in northern and central Italy compared to those in the South²⁸. In general the increase in fixed-term contracts concerned mostly individuals below the age of 40.²⁹

Early withdrawal from the labour market

Whereas for young workers there have been an increase in precarious employment, the other side of the coin is the early withdrawal from the labour market of older workers. This premature expulsion of able workers results in a waste of human resources and knowledge that could be productively employed, with advantages for the economy and society at large, for the morale and self-esteem of the great majority of those who are forced to retire while still in possession of their intellectual capacities and physical fitness, and, last but not least, for the well-being of their partners who must otherwise bear with their frustrations.

Even if age discrimination can be encountered at any age, labour market statistics show that major discrimination is to be found with respect to older workers. This is evident if we analyse data from advertisements seeking employees; for example, of the 5189 advertisements published between 1993 and 2004, 42.4% included explicit age requirements. The most requested age in 86.9% cases was below 44, and only 13.1% of the advertisements sought a person over the age of 45. The average age required is 24.8 to 34.2 years old.³⁰ Male participation rates are still quite high (85%) for the 50-54 age group, but drop to 56% between the ages of 55 and 59 and even more dramatically (28%) for those aged 60 to 64. The situation is even worse for women, for whom the participation rate is 49% in the 50-54 age group, and 31% after age 55. There are also important geographical differences: the participation rates for older men in the South are about 15 percentage points higher than those in northern Italy, while participation rates for older women are higher in the centre and lower in the South. These differences depend above all on the geographical composition of employment by sector: the high incidence of employment in the agricultural sector in southern Italy, and the high level of female public-sector employment in central Italy.³¹

Low employment rate of older workers

The low employment rate of older workers is partly explained by their low level of educational attainment compared to younger cohorts, which is aggravated by limited training opportunities throughout their careers. As in most other OECD countries, employment rates in Italy are closely linked to levels of educational attainment, especially for older people. In the 55-64 age group, 67% of individuals with a high-school diploma are still active in the labour force as compared to a mere 44% of those who finished grade school and 22% of those with elementary schooling. Those with a high-school diploma are mainly white-collar workers, and possibly managers, whilst those with elementary schooling are often manual

²⁷ A. Brandolini, P. Cipolline, P. Sestito, "Earnings Dispersion, Low Pay and Household Poverty in Italy, 1977-1998", Roma, Banca d'Italia, Temi di Discussione, n. 427, 2001.

²⁸ Banca d'Italia (2006), *Relazione annuale*.

²⁹ ISTAT (2006), Rilevazione sulla forza lavoro, III trimestre.

³⁰ A. Mapelli and D. Sanavio, "Le inserzioni per la richiesta del personale", in *Over 45, Quanto conta l'età nel mondo del lavoro*, op. cit., pp. 77-97.

³¹ Laboratorio Revelli, *Scelte lavorative e di pensionamento degli anziani in Italia*, Studio per il Ministero del Lavoro e delle Politiche sociali, a cura di LABORatorio, CeRP, R&P, 2003.

workers, whose working life may have begun at age 15 in jobs that were physically demanding. This gap is even larger for women as the employment rate of highly educated women aged 50-64 is more than three times the rate of their less educated counterparts.

The second explanation for the low employment rates of older workers in Italy is to be found in the retirement provisions and labour market policies that have a strong bias towards early retirement. During the 1980s and the early 1990s, early retirement funded by the National Social Security, more or less voluntary, often accompanied by company incentives, was widespread: in the private sector, pensions for early retirements were approximately 8% of total pensions provided by the social security system in the 1980s and dropped to 1% at the end of the 1990s³². Collective layoffs by large companies, aimed at still able workers in their fifties, were massive. In the two year period 1993-1994 collective layoffs were twice as high as at the beginning of the 1980s and they were especially high in firms with more than 100 employees³³. Moreover in those years, people aged 50 or over had entered the labour market at a young age during the economic boom of the late 1950s and had thus accrued enough seniority rights to claim a seniority pension (for which a reduced age threshold and seniority requirement apply).

In addition, more specifically for women, the low employment rate observed today is the result of past habits of seeking work within the family rather than in the labour market. The female activity rate was slightly above 30% in the 1970s, more than 10 percentage points below the European average and about 20 percentage points below the rates recorded in the US in the same period.

Current legal framework

As for the legal framework concerning anti-discrimination policies, a general principle of equality is laid down in Article 3 of the Italian Constitution, whilst Article 37 safeguards equal treatment and mentions age only as a minimum limit for salaried workers. This general principle is enshrined in two ordinary laws, namely in the *Statuto dei lavoratori* (Worker Statute - Act no. 300/1970, Article 15) and Legislative Decree no. 216 of 9 July 2003 transposing the European Directive 2000/78/EC which establishes a general framework for equal treatment in employment and occupation.

The *Statuto dei lavoratori* initially prohibited discrimination on grounds of political orientation, religion, race, language and sex, and later it was amended with the introduction of provisions of non-discrimination on grounds of age, disability, sexual orientation and personal beliefs by Legislative Decree no. 216/2003. From the formal point of view, these pieces of legislation are compatible and complementary to each other. Both the *Statuto* and the Decree comply with the general principle laid down by the Constitution, the provisions of which prevail over other laws. By integrating the norm of the *Statuto* (Article 15), Legislative Decree no. 216 widened the scope of application of the principle of prohibition of discrimination. In addition, the *Statuto* provides sanctions in the event of non-compliance with its provisions.

It is also worth mentioning legislative decree No. 276 of 2003 (the Biagi law) which reduced certain elements of rigidity in Italian labour legislation, and introduced specific provisions concerning the prohibition of various types of discrimination with reference to access to employment. In addition, it removed some constraints in the Italian labour market with regard to fixed-term contracts, part - time and temporary agency work. New contractual schemes are intended to facilitate the entry or return to the labour market primarily of disadvantaged

³² INPS (National Social Security) data

³³ P. DeLuca and I. Ganoulis, "Legislazione, sindacato e licenziamenti collettivi. Un'analisi su dati aziendali" CSC, working paper no. 12, 1997.

groups including young and older people. For instance, for older people provision is made for “access-to-work contracts” (*contratti di inserimento*) while eligibility for apprenticeship schemes was extended to people up to 29 years of age (and in some cases up to 32).

Flexible forms of employment

The flexible forms of employment provided by the Legislative Decree and aimed at encouraging the hiring of disadvantaged groups include the following:

On-call or zero-hours contracts (Article 34 (2)) can be concluded on an experimental basis with unemployed persons up to the age of 25 and workers aged over 45 who are excluded from the productive cycle and covered by mobility schemes. The age factor is important for access to this type of contract.

The age requirement is decisive also in the case of *apprenticeship contracts*. Section VI of the Decree makes provision for three types of apprenticeship contract according to the age and the objective the employee wants to achieve:

- *Apprenticeship contracts for exercising the right and duty to take part in education and training* (Article 48) can be stipulated in all sectors of the economy with those over the age of 15 for a maximum of three years;
- *Vocational apprenticeship contracts* (Article 49) can be stipulated in all sectors of the economy with people between 18-29 years old for a period from two to six years;
- *Advanced apprenticeship contracts* can be stipulated in all sectors of the economy with people between the ages of 18 and 29. The duration of these contracts is left to the discretion of the Regions in agreement with employers associations and trade unions at territorial level, universities and other educational institutions. Apprenticeship contracts provide an institutional channel for access to the labour market for young people³⁴.

Access-to-work contracts (contratti di inserimento) (Article 54) are employment schemes with financial incentives targeted at disadvantaged groups. This type of contract replaced the old work training contract (*contratto di formazione e lavoro*). It is intended to promote individual plans for the adaptation of the vocational skills of the worker to a specific workplace in order to facilitate access or re-entry to the labour market of the following categories: young people between 18-29 years old; those in long-term unemployment between the ages of 29 and 32; unemployed persons over the age of 50; workers who intend to return to employment but have been unemployed for more than two years, women of all ages resident in a geographical area with a low female employment rate, and people with a recognised serious physical, mental or psychological disability. The contract is non-renewable and may last from six to 18 months (or 36 months in the case of severe physical, mental or psychological disability).

The essence of flexible contractual schemes is to create employment possibilities albeit of a discontinuous nature, in favour of individuals who are entering the labour market for the first time or who have dropped out of the labour market, or who have difficulty in maintaining stable employment. Such a goal is achieved by means of financial incentives for employers but also by lowering the requirements for working conditions for those in disadvantaged groups, which resulted in strong criticism of this legislative reform. Further criticism arose from the fact that the legislator reserved the right to define the categories of disadvantaged workers who could benefit from the integration policies.³⁵

³⁴See more about apprenticeship contracts in M. Tiraboschi, “Productive employment and the evolution of training contracts in Italy”, *The International Journal of Comparative Labour Law and Industrial Relations*, no. 4, 2006.

³⁵Pursuant to EU law, people up to the age of 25 can be considered as a disadvantaged category while people older than 45 do not belong to such a category so the Italian legislator exercised a degree of discretion in this matter.

Intermittent work (Article 34) is another contract intended to promote the employment of groups with particular difficulties in terms of labour market access. It can be stipulated with persons up to the age of 25 and over the age of 45. The possibilities to derogate from the legislative provisions in the case of older people are contained in the Article 10 (7)(d) Legislative Decree no. 368, 6 September 2001, which introduces the right to stipulate fixed-term contracts with those over the age of 55 without limitations imposed by law.

Mention should be made of the *Mangold* case as due to its innovative character it has considerable implications for national legislation. In particular this ruling implies the duty to revise national provisions contemplating differential treatment. In the case of Italy, especially after the adoption of Legislative Decree no. 276/2003, it concerns special contracts which make explicit reference to age. It does not automatically make these contracts unlawful, but rather introduces the need to subject them to the proportionality test. In particular, this is the case with access-to-work contracts making provision for workers to be hired at an entry level two levels below their qualification, which may be stipulated with unemployed workers between the ages of 18 and 29, and those over the age of 50. It is also the case with intermittent contracts which, as in the case of fixed-term contracts in Germany, can be concluded with persons up to the age of 25 or over 45. It is also the case with the provision laid down in Article 13 of Legislative Decree no. 276/2003 which allows temporary work agencies to derogate from the principle of equal treatment in the case of disadvantaged workers, including those up to the age of 25 and those over the age of 50 who are or are about to become unemployed.³⁶

As a result, it may be argued that until recently only a general principle prohibiting discrimination existed in Italy. Age as a possible ground of discrimination was added a few years ago in order to adapt Italian legislation to European standards and time is needed in order to verify the efficiency of the corresponding legal provisions. However, in light of the abrogation of discriminatory provisions some positive changes have already taken place. For instance, in the case of public administration, the clauses that established preferential rights for younger candidates in cases of the same credits during public competitions were eliminated and currently law 127/1997, art. 6 provides that there can be no limitation based on age in certain public competitions except some derogations in connection with the type of work.

Age and dismissals

The statistics on hiring and firing indicate that the mobility of older workers is not negligible. In 1999 Gross Worker Turnover was 75% for the working population as a whole and 48% for older workers. However, a great variation is shown according to firm size: turnover rates of older workers employed in small firms (with no more than 10 employees, representing about 80% of total firms) amounts to 90%, while in very large firms (1000+ employees, the 0.04% of total firms) they are just over 30%. High turnover rates are not a sign of discrimination against older workers *per se* provided that older workers who are laid off have similar chances to younger workers in finding new jobs. However, considering the time span for returning to salaried employment, workers up to the age of 50 have a much higher rate of re-entry into the labour market than older ones. A large proportion of older employees remain excluded from the regular labour market or have irregular patterns of employment that have a serious negative impact on their future earnings and pensions. About one out of four older workers makes the transition from employment to retirement with periods of unemployment and they receive unemployment benefits in only half of all cases. In this connection gender and geographical differences are substantial: 77.8% of men start retirement directly from work, as opposed to 59.3% of women. In northern Italy, the direct transition from

³⁶ O. Bonardi, "Le clausole di non regresso e il divieto di discriminazione per motivi di età secondo la corte di giustizia", *Rivista italiana di diritto di lavoro*, no. 2, 2006, p. 266.

employment to retirement is more frequent, while irregular patterns are more common in central Italy and even more in the South. The contrast between the prosperous north west and the South is sharp. In the north west of Italy, 80% of workers retire directly from employment and only 17.8% retire after a period of unemployment. In the South, these percentages are 58.4% and 37.2% respectively. Moreover, the percentage of individuals laid off in the course of large restructuring processes is about twice as high as in the South as in northern Italy³⁷.

Dismissals on the grounds of age represent a significant proportion of the number of cases brought to court. Traditionally older people are the first to be dismissed and often the only criterion is proximity to retirement. There is without doubt a cultural factor, in particular a widespread assumption that the exit from the labour market of older people will generate employment for younger people.³⁸ Older workers face a range of prejudices such as the view that they have lower productivity rates coupled with high wages and a reluctance to innovate. According to *Confindustria* (the principal employers' association representing mainly industrial firms), the current strategy of Italian firms is to favour younger workers who are believed to be more willing to adapt to production and technological innovation³⁹. *Confindustria* stresses the need to improve the human capital of older workers, through lifelong learning but also by promoting employability by means of part-time contracts, flexible retirement schemes and lower social contributions. By doing so the employers believe it will be possible to conciliate the demand for competitiveness of firms and the need to extend working lives. However, the 2004 OECD report highlights the fact that small firms have a different perception of older workers. *Confcommercio* (an employers' organisation representing small businesses in the service sector) reports that its affiliates wish to keep older workers in employment in order to enable them to transfer their skills to younger workers, along the same lines as *Confartigianato* (representing self-employed workers and tradesmen) which supports the use of older workers as instructors for younger ones.

It is hard to say if this line of reasoning has influenced policy choices but it has considerably influenced labour market stakeholders. The strengths of older workers based on their experience are not adequately recognised in a situation where certain beliefs about the advantages of youth in the workplace are combined with financial incentives almost exclusively aimed at young people. Together these tendencies produce a preference for early exit on the part of older workers from the labour market in many cases by means of early retirement schemes. These schemes were introduced for the first time by Act no. 1115/1968 (see below), and from then until 1991, when the "mobility lists" were introduced, "emergency" laws on early retirement for different groups of workers followed one after another. These laws were justified by the needs of firms to proceed with collective layoffs because of restructuring or production crises. This exit strategy also reflects the fact that unemployment benefits are extremely modest, while early retirement schemes are supported by the welfare system. This means that a displaced young worker can rely on the welfare system much less than an older one; as a result union opposition to redundancy for young workers is considerable, generating higher costs for companies implementing redundancy schemes.

According to the results for Italy from the ACTIVAGE project⁴⁰ it is workers over the age of 50 who pay the highest price at a time of economic crisis and staff cuts, as in some cases they are subjected to harassment at work, and then, after resigning, do not manage to find

³⁷ B. Contini and R. Leombruni, "From work to retirement: a tale of bumpy routes", *Review of Political Economy*, Vol.18, n. 3, 2006, pp. 359-378

³⁸ S. Porcari, M. L. Mirabile, "Invecchiamento e lavoro. Elementi per un profilo meridionale" in Isfol, *Monografie sul mercato del lavoro e le politiche per l'impiego*, no. 6, 2004.

³⁹ Confindustria (2002), *Il lavoro degli anziani e i connessi profili previdenziali e sanitari*, Audizione della Confindustria davanti alla Commissione Lavoro, Previdenza Sociale del Senato della Repubblica

⁴⁰ <http://www.iccr-international.org/activage/en/index.html>

employment with other companies. For a long time the legislator ignored this situation. Often this issue was used in political debates. The first intervention of the legislator excluded older people from its application, as the prevailing opinion was that they could benefit from alternative sources of income

Wage Guarantee Fund

The legal framework in this context is provided by the norms relating to the *Cassa Integrazione Guadagni* or Wage Guarantee Fund introduced by Legislative Decree no. 788/1945. In the case of collective dismissals⁴¹, workers have access to this redundancy scheme which may amount to 100% or 80% of the worker's last salary and is paid for a period that varies according to the worker's age. Act no. 1115/1968 introduced into this framework a bonus for redundant older workers which could be considered as a kind of early retirement scheme as it was aimed to ensure that benefits were paid before the dismissed worker had accrued all the necessary requisites for retirement. In this way, this scheme, designed as a wage supplement for temporary layoffs, became a sort of early retirement programme. Similar results were achieved by Act no. 223/91 which introduced "mobility lists" (*liste di mobilità*). This is a mixed scheme for individuals laid off from firms in "structural crisis", that grants a rebate to firms who re-employ workers on the list, and unemployment benefit to the workers, who are entitled to 100% of their salary for a period of up to 12 months. For older workers this period is further extended until the individual becomes eligible for retirement, known as "long mobility" (*mobilità lunga*), with a rebate in the benefit.

Although, in point of fact, workers of all ages may be covered by these mobility schemes, they mainly cover older employees, not least because these workers are the most expensive for employers due to annual increments based on seniority. Despite the fact that the regulation was adopted to protect older workers (who are at greater risk of long-term unemployment), mobility lists are often used by companies to facilitate early departure for workers who are close to retirement.

As for case law, the Constitutional Court has upheld the right of the social partners to adopt impending retirement as a legitimate criterion for dismissal (Article 5, Act no. 223/23 July 1991) legitimising the "young in, old out" policy. The legitimacy of this criterion was explained by particular difficulties of young people in search of employment.⁴² However, after the adoption of Legislative Decree no. 216/2003 the situation is likely to change, though the courts have diverging opinions on this issue. In some cases the Supreme Court ruled that it is legitimate for employers to place workers on a mobility list basing the decision on a criterion of retirement age or impending retirement.⁴³ A difference stance was taken by the Tribunal of Milan which ruled that such an approach was inadmissible as it was in contrast with the provisions of Legislative Decree no. 216/2003. The court ruled that "the adoption of such a criterion represents indirect age discrimination resulting in a disadvantage for older people". According to the Milan court, workers close to retirement should have the same level of protection as other employees. It was further stated that the criterion of retirement age should be overturned only in cases where it is applied independently of the job description

⁴¹ At present there are two forms of earnings integration fund: the ordinary wage guarantee fund can be requested only by industrial enterprises in cases of 'transitory events' to be followed by 'resumption of normal production activity'; the extraordinary wage guarantee fund is reserved to employees of industrial enterprises with more than 15 employees, and commercial enterprises with more than 200 employees, in cases of 'severe situations of labour surpluses' (e.g. restructuring, bankruptcy).

⁴² F. Basenghi, "Età e perdita dell'impiego", *Diritto delle relazioni industriali*, no. 4, 2005, pp. 1100-1115.

⁴³ Judgment 9866, 24 April 2007.

and qualifications because in this case it puts older people at a particular disadvantage compared to their younger colleagues.⁴⁴

In a case examined by the Milan Tribunal on 7 January 2005⁴⁵ the plaintiff contested his dismissal based on a staff reduction implemented in compliance with the provisions of Act no. 223/1991. The criterion for dismissal and enrolment on the mobility list was proximity to retirement age with the entitlement to receive a pension within the mobility period. The plaintiff claimed partial nullity of the collective agreement concerning staff reduction that provided for the dismissal of employees with job profiles different from those foreseen in the procedure. It was argued that the adoption of the criterion of retirement age was in contrast with EU legislation on collective dismissals and represented a discriminatory act (at least indirect) prohibited by Article 2 (1)(b) of Legislative Decree no. 216/2003. In fact after the adoption in Italy of the non-discrimination principle (direct and indirect) based on age, which is valid also in the case of dismissals, the adoption of this criterion represents an act of discrimination giving rise to a situation of particular disadvantage for older persons compared to younger ones. It was assumed that older redundant workers were less disadvantaged than younger ones as they could apply for a retirement pension. This reasoning was not upheld as any employee entitled to a retirement pension should have the same rights and legal protection in terms of stability of employment as other employees. Moreover, Act no. 223, 23 July 1991, provides benefits also in the case of younger unemployed people. As a result, the adoption of the criterion of proximity to retirement by the parties to the agreement was considered null and void and the dismissal was held to be unlawful.⁴⁶

The intention of the Italian legislator to limit legal protection against the dismissal of older people in view of the availability of retirement pensions is evident from the provisions of the Act no. 108/1990 (Article 4) which declares that the provisions of Act no. 604/1966 (Article 2) are not applicable to people over the age of 60. However, the legislator left them an option to continue in employment pursuant to the provisions of Act no. 54/1982, according to which an employee must inform the employer about his decision six months prior to the date of the acquisition of the right to a retirement pension. As a result in the judgment of 6 February 2006⁴⁷ the courts recognised the legitimate nature of the dismissal in view of the plaintiff's failure to exercise this right. However, the prohibition of age discrimination gives rise not only to the need to reconsider new contractual provisions, but also existing provisions relating to salaried employment such as Article 4.1. of Act no. 108/1990, which excludes workers over the age of 60 from protection against dismissal. It is also the case of the criterion of impending retirement in the event of collective dismissals.⁴⁸

Considering that age discrimination was explicitly prohibited only recently, it is not surprising that there is not a lot of case law on this topic. In fact, claims regarding discrimination are quite rare and amount to less than 10% of the cases before the courts. As a rule, these cases regard dismissal based on proximity to retirement.

Other forms of discrimination against older workers

Another form of age discrimination in employment consists of the indirect exclusion of older workers from training opportunities. It could be argued that their participation in continuous training should be more extensive than for prime-aged workers and even more so in Italy where the differences in initial education levels are greater than in many other countries.

⁴⁴ Judgment 21541/067, Cassazione, Sezione lavoro.

⁴⁵ Judgment of 7 January 2005, Milan tribunal.

⁴⁶ Il lavoro nella giurisprudenza, n. 12/2005, pp. 1165-1174.

⁴⁷ Judgment 2472, 6 February 2006, cass.sex.lav.

⁴⁸ O. Bonardi, "Le clausole di non regresso e il divieto di discriminazione per motivi di età secondo al corte di giustizia", *op. cit.*, p. 266.

In Italy, older workers usually receive little training especially if they have lower qualifications. Even though about 50% of older workers are employed in firms that run training courses, less than 15% of them attend the courses. Moreover only 7% of older workers with low qualifications receive training with respect to the 20% of the high qualified workers in the same age group.⁴⁹ According to ISFOL in 1999, with a rate of participation in training of 24%, Italy was third from the bottom among the EU15, far below the European average of 62%. Data from the 2000 ECHP similarly indicate that Italy is far below its European counterparts. The number of Italian workers who answered affirmatively the question “Have you been in training since January of last year?” is by far the lowest in every age category for both men and women and is strikingly low in comparison to Denmark, Germany and the U.K. where among those over the age of 55, many more report that they have attended a training session or seminar (Denmark 33%- 40%, Germany 22%-34% and the U.K. 15% -25%), as compared to Italy’s 1.8% for men and 1.8% for women.

There are a number of potential barriers to older workers obtaining more training. Employers may be reluctant to provide training for older workers because they do not expect these workers to remain long enough to earn a sufficient return on their training investment. Older workers, in turn, may be reluctant to engage in training because existing training programmes are not well adapted to their needs or because the opportunity costs of investing in further training are too high in relation to the expected financial returns. In fact, there is some evidence that the relatively low incidence of training among older workers is primarily due to a lack of demand for training by older workers⁵⁰. Also with regard to off-the-job vocational training, older workers are widely excluded as the focus has long been on younger workers, who can expect to work for more years to recoup the cost of the investment.

A major step forward is the improvement made by Act no. 236/1993, which explicitly stipulates that vocational training should be aimed at older workers (45-64 years). This is one of the most important measures for financing vocational training in Italy as it sets up a fund supporting company and individual training programmes as well as projects run by the social partners at various levels.

Apart from Act no. 236/1993, there is no policy measure at the national level aimed at lifelong learning for a specific age target. However, some specific initiatives are to be found at regional and provincial level.

Another recent initiative worth mentioning in this context is the allocation of public funds for disadvantaged workers to take temporary leave in order to take part in training. The eligible categories include older workers and individuals with no more than elementary education.

The pension system prevalent for older workers, a defined-benefit system, can be seen as another source of discrimination since it represents a barrier to working part-time⁵¹. The contribution-based pension system introduced in the 1990s gives rise to fewer disincentives to part-time work as pension benefits are calculated over the entire period of contributions. However, the new system is to be phased in over a long period and, therefore, over the next few years, access to part-time jobs is likely to remain limited for older workers. As a result in Italy part-time work is not as widespread as in the other European countries, particularly among older workers (11.3% of active older workers compared to a European average of 19.6%).

⁴⁹ A. Russo, R. Salomone, M. Tiraboschi, *op. cit.*

⁵⁰ OECD (2003), *Beyond Rhetoric: Adult Learning Policies and Practices*, Paris.

⁵¹ In the case of part-time work, while one year of part-time work counts as one equivalent year of full-time work in order to reach the seniority eligibility thresholds, it only counts for half a year in the accumulation of the number of years which (up to a maximum of 40) are multiplied by pensionable earnings in order to determine the actual pension.

In addition, certain regulatory constraints have tended to discourage employers from offering part-time work. For instance, until recently part-time work had to be strictly laid down in advance, a provision that was modified by Legislative Decree no. 276/2003 (the Biagi Law). Moreover, there are currently no particular incentives for part-time work. The 1995 pension reform introduced the option of moving from full-time to part-time work for workers approaching retirement age, but this option has been little used so far. According to Paulli and Tagliabue⁵², the main reasons are the high cost of part-time work, the opportunity for highly-skilled older employees to retire and then work on a self-employed basis for their former employer, and the fact that it is easier to retire officially and work illegally.

The same consideration holds with regard to other flexible forms of employment such as temporary work or quasi-salaried employment (*collaborazione a progetto*), a particular type of contract between salaried employment and self-employment, which is not widespread among older workers (4.6% of total temporary contracts). In addition flexible arrangements that have made the labour cost of younger workers more attractive compared to older workers may have created another barrier to the employment (or re-employment) of older workers.

Finally, when analysing the employment situation of different age groups, it should be borne in mind that the Italian labour market is traditionally based on a seniority system. Wage differentials between younger and older workers have widened since the early 1990s in Italy and in Europe as a whole (with higher returns based on experience and human capital), also as a result of programmes aimed at facilitating access to the labour market for younger people. In 1985 the gross pay of workers under 25 was 71% that of their colleagues aged 45 or older; in 1996 the figure had fallen to 60%. The actual labour cost differential increased even more, as a result of the reduction of social security contributions and the additional built-in flexibility of programmes introduced in recent decades to facilitate access to the labour market for young people. Such a wide differential is a key factor in the large outflows of older workers since the 1980s, as the prospects for large manufacturers in the traditional sectors began to deteriorate⁵³.

Transposition of Directive 2000/78

In Italy age discrimination was explicitly regulated only with the transposition of the European directive 2000/78/EC by means of Legislative Decree⁵⁴ no. 216, 9 July 2003.⁵⁵ The Decree introduced the new specific prohibition of discrimination, defining its application, exceptions and remedies.⁵⁶

Article 1 of the Decree contains provisions promoting equal treatment of people regardless of their religion, personal convictions, disability, age, and sexual orientation in occupation and employment, providing measures to prevent these factors giving rise to discrimination, and

⁵² A. Paulli and M. Tagliabue, "Active Strategies for Older Workers in Italy", in Jespen *et al.* (eds.), *Active Strategies for Older Workers*, European Trade Union Institute (ETUI), Brussels, 2002.

⁵³ B. Contini and R. Leombruni, *op. cit.*, 2006, pp. 359-378.

⁵⁴ The legislative decree is a legislative act which although issued by the Government (on the basis of a delegation contained in a Delegating Act approved by Parliament) ranks at the same level of an Act of Parliament. In this case, Act no. 39 of 1 March 2002 (European Community Act 2001) delegated powers to the Government to implement the Framework Directive.

⁵⁵ The Act implementing directive 2000/78/EC was published in the Official Journal no. 187 of 13 August 2003 and came into force on 28 August 2003.

⁵⁶ S. Fabeni, *Summary of chapter 11 on Italy in Combating sexual orientation discrimination in employment: legislation in fifteen EU member states*, Report of the European Group of Experts on Combating Sexual Orientation discrimination. About the implementation up to April 2004 of Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, p. 60.

taking into account the different impact that various forms of discrimination may have on men and women. The Decree also provides definitions of direct and indirect discrimination. According to these definitions, direct discrimination occurs when a person who professes a particular religion or ideology, or with a disability, or of a particular age or sexual orientation is treated less favourably than another has been or would be treated in a comparable situation. Indirect discrimination occurs when an apparently neutral provision or practice would put persons who profess a particular religion or ideology, or with a disability, or of a particular age or sexual orientation, at a particular disadvantage compared with others. The prohibition on discrimination applies to both the public and private sectors (Article 3 (1) of the Decree). It covers access to employment, self-employment and occupation (including selection criteria and recruitment conditions), and all the aspects concerning occupation and working conditions, including career development, dismissals and pay. The prohibition applies to all natural and legal persons, not only the employer, but also trade unions and employers' organisations.

Legislative Decree no. 276/2003 together with Article 15 of the *Statuto dei lavoratori* extends the provision to employment agencies (Article 10 (1) of the Decree) prohibiting investigation, processing of personal data or selection based on the listed discriminatory grounds, and data not inherent to employment tasks.⁵⁷

However, the Decree was severely criticised for partial and minimalist transposition of the provisions of the European directive. The Italian trade unions initially were very proactive and in 2003 the CGIL (one of the three leading Italian trade union confederations) launched a campaign in favour of legislation transposing the directive. However, they were dissatisfied with the results. In particular, the CGIL defined the legislation as “technically mediocre [...] and not satisfactory”. It was criticised as a missed opportunity to create an adequate legislative framework ensuring protection for workers against discrimination⁵⁸.

Among the main points attracting criticism, mention should be made of the *burden of proof principle*. From this point of view the Decree does not appear to fully comply with the provisions of the Directive, Recital 29 of which states that “Persons who have been subject to discrimination based on religion or belief, disability, age or sexual orientation should have adequate means of legal protection” while Article 10 (1) of the Directive clearly states that “it shall be for the respondent to prove that there has been no breach of the principle of equal treatment”. Just to compare the formulation provided by the Decree: “In order to demonstrate the existence of discriminatory behaviour, the plaintiff can make use of statistical data, and elements of proof that the judge evaluates according to the Article 2729 (1) of the Civil Code” (Article 4 (4) of Legislative Decree no. 216/2003). The reversal of the burden of proof is crucial because of the difficulties a discriminated employee may face proving discrimination considering the reluctance of colleagues to testify against the employer, and the lack of documentary proof.

Second, the Decree does not contemplate the possibility for associations other than trade unions, such as NGOs, to provide a legal defence for discriminated workers. This is in contrast with the EU provision, in particular with Article 9 (2) of the Directive that states that: “Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.”

⁵⁷ The sanctions are laid down in Article 18 (5) of the same Decree.

⁵⁸ See more information at <http://www.cgil.it/org.diritti/homepage2003/indexdir.htm>

In this connection Article 6 of the Directive concerning the justification of differences in treatment on grounds of age is particularly important. The corresponding provision of the Decree (Article 3(3)) states:

“in full respect of principles of proportionality and reasonableness, within employment relationships or in private enterprises, differences in treatment due to religion, personal convictions, disability, age or sexual orientation, when due to the nature of the work or the context in which it is carried out, are characteristics that constitute an essential and determining requirement in order to carry out the activity”.

The evaluation of these characteristics does not constitute discrimination in the case of service in the armed forces, police, prison service etc. In practical terms this means, for example, that individuals can be excluded from the armed forces due to their sexual orientation. This matter appears to be at the discretion of civil servants or private employers, if compared to the provisions of the EU Directive. According to Article 3(6) of the implementing decree, “differences in treatment, which, even though they turn out to be indirectly discriminatory, are justified by legitimate aims pursued by appropriate and necessary means” do not constitute acts of discrimination. The vagueness of this formulation makes it hard to challenge acts of indirect discrimination, even though this was formally included in the Italian decree. Also Article 3(4) of the decree concerning the verification of suitability for work goes beyond the provisions of the directive which allowed them only in relation to age. The general provisions of the Decree concerning suitability for work may open the way to discrimination.

The provisions laid down in the directive concerning dialogue with social partners and consultation in the case of grievances are missing from the implementation decree, thus weakening workers’ protection.⁵⁹ Finally, there is no mention in the decree that all the norms in contrast with the principle of non-discrimination as laid down in the Directive should be abrogated, including the provisions of collective agreements, individual employment contracts, enterprise regulations, and provisions regulating autonomous employment.

Employability and active labour market policies

The OECD⁶⁰ has identified the mobilisation of the potential labour supply of older people as essential to attenuating the negative impact of population ageing on economic growth. With respect to this challenge a key action has been identified by international organisations in extending of working life. In Italy, the extension of working life faces several obstacles. Some are on the supply side: many older workers, especially those who have spent their lives on the assembly line and have no more than elementary schooling, are eagerly looking forward to retirement. There are obstacles also on the demand side. As already mentioned, firms may want to get rid of older workers, primarily, but not only, because of their higher cost. When this happens, re-employment of older individuals may turn out to be problematic. Moreover, Italian firms are ill-equipped to deal with the challenge of keeping older people at work, and probably show a lack of foresight. Part-time work is scarcely utilised; the co-habitation of young and older workers may result in problems due to different work habits, cultures, loyalty, and union membership (higher among older workers). Furthermore the labour cost of older workers is high and increasing compared to young people on flexible contracts.

The positive initiatives that can be encountered amongst Italian firms are in general in favour of all employees, including older persons, who enjoyed the same benefits as others. In general, companies are aware that the older age cohorts will increase in the future, but action to address the issue is rarely taken. Few employers wish to keep their older workers in order

⁵⁹ <http://www.cgil.it/org..diritti/direttiva/unita.htm>

⁶⁰ OECD (2006), *Live longer, work longer*, Paris.

to ensure that they hand down firm-specific skills and corporate values to younger workers or think that older workers should be used as instructors for younger ones.

It is also a matter of concern that the spread of good practices concerning older workers among firms is limited. Most companies have done little or no planning for this inevitable development. Most have human resource planning schedules focusing on the short term (one or two years at most) and on issues which they consider to be more immediate⁶¹.

The policy debate so far has focused on proposals to raise the legal retirement age, and the evaluation of policies relating to older workers has mainly focused on their effects on public pension expenditure, while little has been done to develop work practices in a manner that ensures that older workers can retire later. In Italy, most active labour market programmes are targeted at young people. Moreover, even when programmes are not specifically targeted at specific age groups, they tend *de facto* to favour youth employment. As Marano and Sestito⁶² have pointed out, practically all new hiring of young people (up to the age of 25) tends to be covered by financial incentives while only one out of seven new hires of older workers receive subsidies. In addition there is a lack of lifelong learning and retraining programmes. However some examples of positive initiatives in this field can be found at a local level. Several Italian Regions are promoting the employment of older workers in “social solidarity services”, *i.e.* services to support the local community and proximity services. Demand for such services is growing rapidly, partly due to the process of population ageing. In some Regions, financial incentives for encouraging the employment of older workers in these services are available. This may take the form of voluntary work, telework or home work, as well as other arrangements which help older workers reconcile work and family life⁶³. Some of these initiatives include a project providing socially useful jobs that targets the unemployed or laid off workers in the autonomous Province of Trent, the Action Plan for Older Person (2002) in the Emilia Romagna Region, and the Action Plan in the Region of Liguria for IT training and the volunteer services for older people⁶⁴.

For the moment there are no other explicit references to older workers in national legislation; in 2003 a proposal⁶⁵ aimed at facilitating the placement of workers aged over 45 who have been prematurely forced out of the labour market, was presented in Parliament but it has not yet been debated. This proposal provides incentives for companies who recruit permanent staff; incentives for self-employment; measures to promote the recruitment of older workers; the abolition of the age limit for civil service applications (currently in Italy only those under the age of 40 can apply) and for vacancy notices in general; and measures for continuous training. Considering that the role of older workers in the labour market is influenced by the interaction of demographic factors and pension entitlement rules, the future participation rate of older workers is expected to increase: the cohorts now in their fifties entered the labour market later because they continued longer in full-time education. In addition pension reforms

⁶¹ Results from two projects on the identification of good practice on age management:

i) European Foundation for the Improvement of Living and Working Conditions “Employment and labour market policies for an ageing workforce and initiatives at the workplace. National overview report: Italy” <http://eurofound.europa.eu/publications/htmlfiles/ef07058.htm>
ii) European Commission, 2006, “Ageing in Employment: Identification of Good Practices to Increase Job Opportunities and Maintain Older Workers in Employment”.
http://ec.europa.eu/employment_social/emplweb/news/news_en.cfm?id=178

⁶² A. Marano and P. Sestito, “Older Workers and Pensioners: the Challenge of Ageing on the Italian Public Pension System and Labour Market”, Centre for Research on Pensions and Welfare Policies (CERP), Working Paper 32/04, Turin, 2004.

⁶³ OECD (2004), “Ageing and Employment Policies - Italy”, Paris.

⁶⁴ Country Report Italy (2004), The ACTIVAGE project
<http://www.iccr-international.org/activage/en/index.html>

⁶⁵ Proposta di legge no 1957/2003,
<http://www.camera.it/dati/leg14/lavori/stampati/pdf/14PDL0050990.pdf>

in the 1990s increased the minimum age requirement and the seniority threshold for pensions, and the female labour supply has increased over the last 30 years.

Issues about retirement and pensions

In Italy, the pension system has long been favourable to early retirement, by contrast there is little use of unemployment or invalidity benefits as pathways out of the labour market.

Over the past few decades the effective age of retirement has fallen significantly. Between the early 1960s and the mid-1990s, the effective retirement age of Italian men fell nearly five years to reach the age of 59. For Italian women, the effective retirement age fell from almost 62 in the mid-1980s to 57 in the mid-1990s. The fall recorded until the mid-1990s is the result of policies undertaken in previous decades when early retirement was used to support companies in difficulty and to favour the employment of younger workers⁶⁶.

Since the early 1990s the Italian pension system has been substantially reformed and due to stricter age and contributions requirements, the general trend towards early retirement seems to have been reversed. However, the current effective age of retirement in Italy is still low in comparison to other OECD countries, especially for men.

The most recent measure in a decade of pension reform is Act no. 243/2004, which starting in 2008 increases the retirement age (which currently varies from 57 to 65 years), to 65 for men and 64 for women. Moreover, it will become compulsory to have reached the age of 57 and to have paid a minimum of 40 years of contributions; currently, eligibility for seniority pensions includes a mixed criterion which combines contribution years with age (57 years of age and 35 years' contributions for most workers). It will still be possible until 2015 to retire with a minimum of 35 years' contributions and 57 years of age, but in this case workers will face a penalty.

In this connection it is also worth mentioning the incentive scheme introduced to induce some groups of workers to postpone retirement, the so-called "superbonus". Workers who fulfil the current requirements for seniority pensions but decide to postpone retirement for at least two years and continue to work are granted a tax-free incentive equal to their contribution to social security (32.7% of gross wages). This provision applies to the period 2004-2007. By mid-January 2005 about 10% of the eligible workers had applied to postpone their retirement and about half of the applications were accepted. However, according to Brugiavini and Boeri⁶⁷ (2005) workers applying for this programme are mainly those who have already decided not to retire, especially workers with above average salaries, as they are those who benefit most in terms of tax relief.

Conclusion

There is not yet a consolidated anti-age discrimination tradition in Italy, which like other industrialised countries reacted slowly to the need to adopt legal mechanisms to combat discrimination. Undoubtedly, the adoption of specific legislation prohibiting discrimination on various grounds, is one of the essential measures to combat discrimination, however, the problem of age discrimination cannot be limited merely to the legal aspects. As we see from the analysis proposed in this chapter, the problem is far more complicated having deep cultural, historical, and sociological roots. First, it is linked with changes in organisational structure imposing speed, efficiency and the continuous search for innovative solutions in order to remain competitive on the labour market. Normally these characteristics are associated with young people. However, in view of progressive population ageing where

⁶⁶ OECD (2004), *Ageing and Employment Policies - Italy*, Paris.

⁶⁷ http://www.lavoce.info/news/view.php?id=13&cms_pk=1844&from=index.

young people constitute just a small share, the employers will be forced to change their attitude towards aged labour force.

Strong cultural barriers and prejudices regarding people under or above a certain age still exist in the Italian labour market. From a legal and political point of view a lot must be done including initiatives aimed at dissemination of information on antidiscrimination policies, reinforcing social dialogue and encouraging social partners to promote equal treatment and ensure the monitoring of practices at the workplace, collective agreements and codes of conduct. It is however essential to intervene also from the cultural point of view in order to dismantle the simplified and generalised stereotypes which imply that older people are a burden on our society instead of a potential resource and a testimony of the improvement of living and working conditions leading to greater longevity.