LIGHTS AND SHADOWS IN RECENT DEVELOPMENTS OF EFP IN ITALY

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Marco Cilento

1. Lights…

Recent developments in the implementation of EFP in Italy reflect the main features of the Italian industrial relation system.

If EFP is a large suitcase with several instruments therein, such instruments can be of use for helping employees and companies in identifying mutual interests. Collective bargaining can transform this mutual interests in long-standing agreements. That is why EFP tools are generally framed in collective agreements and why the law-makers tend to create conditions for collective bargaining to make larger use of EFP but not imposing it. However, EFP has progressed in Italy in recent years but in a stop-and-go process that has hampered the setting up of a comprehensive legal and policy framework.

In Italy, gain and profit-sharing appears in collective bargaining platforms for three decades. But only during the crisis it has become central in pinpointing a new system of labour relations. Collective bargaining reforms, dated 2008 and 2011, are radically changing the wage formation system. Trade unions and employers have accepted a further decentralisation of collective bargaining with the aim to better suit the specific needs of the single companies. Productivity gains are now largely paid off in company-based collective agreements. But we all know that unions have a major interest in ensuring equality among workers, pursuing a more balanced distribution of wealth. So, at the climax of the Italian recession, accepting to decentralise collective bargaining they have claimed for and obtained to counterbalance factors: one is a favourable tax regime for the amounts paid under profit/gain sharing schemes (fairer distribution of wealth). Second factor is a larger involvement of employees in company management and especially for obtaining information, for being consulted on strategic decisions of companies and ensure transparency of strategic decisions.

The above mentioned reforms have also suggested trade unions to review their strategies and structures. First of all trade unions have shifted power and resources to the periphery. In their view it will offer greater chances to govern processes within the company or in smaller territories. The central offices will negotiate the sector national agreement and will coordinate decentralised negotiations.

In CISL, the coordination of collective bargaining includes a larger and more sophisticated monitoring of negotiations. The OCSEL database currently collects 2,360 thousand agreements signed in the framework of the national sector agreements (second level negotiations) between 2009 and 2011. Half of the censed agreements add a variable component on top of the salary paid to the employee in framework of the sector national collective agreement.

About 1600 agreements implement a diversified range of gain/profit sharing schemes. In these agreements, the parties have decided to opt for labour performance-based incentives in 48% of the cases and company-performance targets in 28% of the cases.

In 8% of the cases, the awarding schemes refer to both performance of labour and business profitability. The amount paid under the scheme is distributed in equal parts among all employees in half of the cases. It happens more frequently in operations with lower specialisation of the workforce. In the remaining cases, the schemes award groups or workers, teams or individuals on the basis of the performances or the professional skills they have actually expressed.

The observatory can show that social partners are able to elaborate sophisticated indexes for calculating their performance-related remuneration schemes. It also implies a greater capacity to master the business. The search for competitiveness remains a top priority while granting employees their share of 'success' normally measured in gains in productivity and profitability of the business.

The number of agreements dealing with EFP becomes lower in companies with less than 250 employees. But it is physiological. Nonetheless SMEs represent 99% of the Italian companies an half of the employed population. When company based bargaining is not possible or not efficient, the new collective bargaining structure gives greater role to multiemployer negotiations (in a given area, industrial district or territory) to achieve a greater coverage of SMEs. About 100 agreements concluded at territorial level introduce profit and gain sharing schemes for all SMEs of the region. Most of them cover the SMEs of a specific sector in a given territory.

These agreements are too recent to allow a reliable assessment of how many SMEs actually apply the territorial agreement and how many employees in SMEs actually benefit from a surplus of salary coming from the application of a profit-gain sharing schemes. Anecdotic evidences show that, thanks to the reforms introduced in 2008 and 2011, this number is increasing. It is also thanks to the fact that the Italian Government has stuck with the engagement to ensure tax relieves for amounts paid under an awarding scheme agreed in company/territorial collective agreements. In 2013, the Government has allocated 950 million euro for applying a flat rate of 10% on remuneration received under a profit/gain sharing scheme for employees whose global gross income does not exceed 40.000euro. It must be said that the benefit is accessible to the largest part of employees even though it taps some few hundred euros per year. It is not a lot but it reverses a trend of tough austerity and soaring fiscal pressure on all labour income sources.

The entire reform of collective bargaining has been a reaction to the disruptive effects of the crisis on the Italian economy. The first years of the reform have deployed during a pronounced fall in the GDP and with a persistent negative economic outlook of the Country.

It is easy to predict that the first aggregate figures on payments delivered under such schemes, when available, will show limited benefits gains for employees. During the last three years, the second-level collective bargaining has been mostly compelled by crisis restructuring, re-qualification of the workforce, increased mobility of work and flexibilisation of the labour market. Nonetheless, the focus on flexible components of remuneration has pushed social partners to enrich the analysis and quantify the economic and social effects of the company strategies. It is assumed that EFP schemes will survive to the contingencies and will trigger stronger distributive effects when the economy will recover.

This approach has been confirmed in the recent interprofessional agreement setting Guidelines to Enhance Productivity and Competitiveness in Italy, signed by all social partners (except CGIL) on the 16 November 2012. In Chapter 4 on Employee participation, parties engage themselves in starting talks to encourage employee share ownership.

This measure deserves few words of explanation. In June 2012, the Italian Parliament, adopting a controversial reform of the labour market, decided that it was time to introduce a legal framework to encourage employee participation in the company governance, including forms of employee involvement in equity capital of companies. For that reason the Parliament gave mandate and 9 months time to the Government to issue a Governmental Decree.

The requirements which the Government had to transform into a law included a balanced mix of measures enhancing information and consultation of employees, employee involvement in corporate governance including the presence of employee representatives in the supervisory board, when existing and employee share ownership. Collective aspects of Employee share ownership had to be privileged with the specific aim to grant employees greater chances to be influential on the General Assembly or to achieve the appointment of a representative of employee-shareholders representatives in the company boards.

The law of the Parliament would have been worthy to be further analysed if it did not reach the deadlock provoked due to the premature end of the Government at the very beginning of this year (2013) (with great happiness of some of the social partners which considered the Parliament's initiative interfering with the autonomy of the social partners).

The above mentioned interprofessional agreement signed in June 2012, certifies that the path opened by the Italian Parliament was now on a dead track and brought the ball back in the hands of the social partners. The future of the agreement - and the engagement to open talks on employee share ownership - relies on the results of the next national elections and the coalition that will rule the Country for the next 5 years.

Few words must be also spent for SMEs. About 360 thousand companies have closed down in 2012 (so much as have been created). In the last two years, SMEs have suffered of the credit crunch and the decline of the internal demand. Employment in SMEs has declined fast and the outlook stands negative.
According to an optimistic view, the crisis should have imposed a natural selection creating conditions for the survival of more competitive companies. This selective process should lead to a more sustainable growth once the economy will recover.

Support to SMES is thus at the core of the recent Decree for Economic Development issued by the Italian Government in the last autumn 2012.

The Decree of the Government entitled Growth 2.0 introduces the legal entity called Innovative Start-Up. It goes in application of the engagements taken in the EU2020 Strategy. The legal features of the entity Innovative Start-up reflects the recurrent features of the economic concept of a start-up in which the innovation is linked to some criteria including for instance that at least a third of the workforce is composed by high qualified workforce with a doctorate, a PHD or university diploma with at least three year of experience in the field of advanced scientific research.

Some derogations in company law make easier for Innovative Start-Ups to transmit rates of the equity capital to their employees.

All kind of securities issued by the Innovative Start-Ups used to remunerate employees are exempt from taxation and any other social contributions linked to the taxable labour income. The capacity of the employees to be involved in their own company is also encouraged by a provision ensuring tax benefits for three consecutive years to those who invest in an innovative start up.

In a nut shell, the Italian legislator combines three key words that stands as three strategic factor of economic strength: innovation, human capital and employee participation.

2. …Shadows

The economic crisis has amplified some structural weakness of the Italian economy. The Italian champions are passing over into foreign hands without a clear-cut strategy to preserve the industrial fabric of the Country. It would enough to mention the recent acquisitions of Bulgari by LVHM, Parmalat by Lactalis, the Alitalia/Airfrance affair, Fiat Industrial who transferred the head office in the Netherlands merging with Cnh, Fiat Automotive with the uncertain destiny of its “Italianity” when the merger with Chrysler will be complete, the alienation of higher technological branches of Finmeccanica in foreign hands, just to mention few.

In many of these cases, EFP instruments would have helped keeping (part of) the control of these important global players in Italy in a logic of social economy but well anchored to market dynamics.

But Italy still needs to progress in term of industrial policy and corporate governance transparency. Let’s start with the latter. Scandals which are genuinely due to poor governance rules and a guilty connivance of the political and financial *elites* are the routine in detriment of savers prerogatives and great outrage of the public opinion. Only in 2012, financial scandals (like FonSai, Banca Popolare di Milano and Monte dei Paschi di Siena) have dramatically hit the credibility of the Italian financial institutions and the bill is for employees, minority shareholders and other stakeholders.

Industrial policies cannot be credible if s fair balance of powers in corporations is not correctly restored. Recent event make shortages in company law and corporate governance rules evident. In the Parmalat case, manipulation of the basic market rules has been perpetrated by politicians in the awkward attempt to take the right hand on the abundant cash reserves stored in the dairy company. The Alitalia affair shows the intricate knots entangling the business elite with the political world, nearly to the blackmail.

The MPS case, the oldest bank player of the Country, happens today after that only few years ago the Italian bank system was devastated by a large scandal involving the head of the Italian national bank, Banca d'Italia.
It is well known that a well-regulated and largely applied employee share ownership can mitigate the effects of this disruptions or prevent them form happening. It must also be said that employee share ownership may be helpless or highly risky for employees if the corporate governance environment in Italy remains weak. An employee owned bank, BPM, has not been saved from the effects of the connivance between financial institutions and political parties.

An Italian TV programme, recently presented three cases of companies at risk of closure. There, politicians were called upon for giving solutions to the employees keen to save their jobs.
The first one was a US based multinational company operating in high advanced IT communication devices going for the delocalisation of its Italian branch. The employees boasted a high professional workforce and considered the closure unjustified because of the profitability of the Italian operations. The second case concerned a company whose troubles were due to bad financial management of the business being the brand well known and appreciated worldwide. The third case was of a company producing buses for local transport, whose problem was a lack of competitiveness on the international market and an excessive dependence from public tendering (in time of austerity).

Through these cases, candidates to the next elections were confronted with three of the most recurrent dysfunctions of the Italian economy: little negotiation power with multinationals, lack of global competitiveness, poor corporate governance and effects of austerity measures on internal demand. Exception made for the bus-maker, there was a general agreement on the fact that two companies had their business potential untouched. It is meaningful that employee-buy-out or other forms of employee involvement were not even considered as an option to safeguard both businesses and jobs.
On the contrary, politicians invited employees to hope in the intervention of a 'serious' new investor. No hints of policies for development, pooling resources or safeguard of the workforce. Why should long for a 'business angel' or the 'white night'? Why not to help employees to become holders of their own destiny?
In Italy, cases like these are routine. EFP is well present on the agenda of political and economic players but barely considered as strategic option for companies. It also happens when strategic assets of the Italian economy are at stake. The cases of Alitalia and Parmalat are overwhelming.
In the Parmalat case, the company was retaining a large amount of liquidity. Threaten by an hostile take over bid from a French company (Lactalis), a misplaced intervention of politicians paved the way to the controversial offer of the French-owned company Lactalis to succeed. Also in that case, politicians showed greater interest in the liquidity embodied in Parmalat rather than to the future of the company itself. On the contrary, the available liquidity and the cashflow potentials were ideal for a defensive strategy involving employees in the company equity.
When the state-owned Alitalia reached the edge of bankruptcy, AirFrance was ready take over the business with all its debts. But the electoral interest of some political

forces, that would have won the approaching election round, was to keep Alitalia 'Italian' at all costs. The Government decided to discharge liabilities on the State budget (at expenses of taxpayers) and to offer a group of Italian investors a new-co cleaned up of structural liabilities. After few months, it came up that Italian investors had been more or less blackmailed (all of them had a stake in retaining the good will of the Government to protect their actual businesses) and did not hold a real interest in the carrier and its business. Today, the Italian carrier suffers from evident problems of profitability and its future is uncertain again. AirFrance controls one third of the capital without having paid any extra price for its influential position in Alitalia and it is now in the position to extract its own profits having a privileged position in providing Alitalia with different kind o services.
Why this operation, paid out by all citizens, has not involved employees in the ownership? AirFrance were familiar with his schemes, and the employees would have been represented a counterbalance in the company governance and a link with the Italian territory. A lost occasion again.

We could carry on raising many other cases. In Italy hundred thousand companies die every year. A wave of privatisation will bring a wide range of fundamental services in the private market area. But EFP is largely debated but not sufficiently mainstreamed to make it a permanent policy option.

3. Final Remarks
So the Italian approach to Employee financial participation is made of lights and shadows.
While a general ideological resistance hinders an open dialogue among social partners, institutions and other stakeholders, EFP is imposing itself as flexible tool to adjust the Italian social economic fabric to the challenges driven in by the crisis and the achieve the all-desired growth. Several tools belonging to the concept of EFP as profit and gain sharing schemes and employee share ownership (although limited to the specific category of Innovative Start-Up) have been the object of extensive rules and facilitations that should bring at an increasing use of this instruments.
On the contrary the attempt for a more extensive legislation on EFP could not find a way forward stopped by sudden backlashes of well-defined groups of interests (including trade unions, business associations, financial institutions and politics).

This legal framework can be desirable just looking at the expansion of the EFP practices. EFP with all its instruments is not a panacea and it delivers its positive effects on the whole economy if framed in clear political objectives, if regulated in clear rules and risks managed in way to balance interests and positions of those who take part in.

But the debate remains alive and the little progresses shortly described above can pave the way to a more organic intervention from the law and likely collective agreements according to the eradicated tradition of industrial relations in Italy.