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Vocational Training and Employment Relationship: Insights from the Italian Legal System

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1. The strategic role of vocational training: the perspective of the employment relationship. 2. Vocational training in the Italian legal system: Article 2103 c.c. 2.1. The *repêchage* obligation. 2.2. Article 11, D. Lgs. No. 104/2022. 3. Vocational training in Italian industrial relations. 4. Conclusions. The new common interests of the parties within the employment contract as a flexible and resilient tool.

Abstract

This contribution addresses the strategic role of employees' training in the actual socio-economic context. Adopting the perspective of the individual employment contract and the evolution of the parties' interests, it points out that training is one of the main common interests on which mutual expectations of employers and employees can converge. Analysing the protection of training within the Italian legal system and industrial relations is necessary to assess whether a sufficient legal foundation exists to consider training as an integral part of the employment contract structure.

Keywords: Vocational Training; Employment Contract; Italian Labour Law; Legal System; Industrial Relations.

1. The strategic role of vocational training: the perspective of the employment relationship.

The world of work changes according to the transformations and survival needs of the capitalistic system. Globalisation, technological progress, environmental, climate and demographic changes can be considered no longer as external shocks but as a part of the economic system that shapes the current features of work. Consequently, labour law should deal with the ongoing transformation of work in order to protect work and social needs in balance with economic interests.[1]

Among the various effects that actual changes are expected to have on work, one of the main aspects is the transformation of workers' professionality and, thus, the centrality

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[1] In this regard, *see* Deakin S., Markou C., *The law-technology cycle and the future of work*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 158, 2018, 2, 445-462; Tiraboschi M., *Mercati, regole, valori*, Relazione AIDLaSS, Giornate di studio AIDLaSS, Persona e lavoro tra tutele e mercato, Udine, 2019, 7; Caruso B., Del Punta R., Treu T., *Manifesto per un diritto del lavoro sostenibile*, in *WP CSDLE "Massimo D'Antona".IT*, 2020, 1-7.

of vocational training[2] as the natural tool for the protection and promotion of workers' professionality.

In a knowledge- and technology-driven economy, employers increasingly require a workforce that is highly-skilled, motivated to leverage their expertise to solve problems, and adaptable—prepared for broad, flexible roles that can evolve quickly.[3]

From the employees' perspective, training is viewed as a "new" fundamental right because their skills need to be maintained, updated or improved in order to perform current demanding job, to navigate internal organisational changes more effectively, as well as to be prepared for future job requirements and, thus, employable across a broad range of sectors.

In this regard, several prevalent concerns in the labour market include the risk of technological unemployment and professional obsolescence for workers, the evidence of a skills mismatch,[4] rising inequalities and widening polarisations between high-qualified jobs and low-qualified jobs.[5] Evidently, access to decent and quality work increasingly relies on knowledge; consequently, addressing the alignment and improvement of skills within both the working- and non-working population is essential for preventing the exacerbation of the social divide and a significant loss of jobs.

The strategic importance of training is widely recognised by institutions and scholars at both international and national levels. In recent years, the European Union has promoted the concept of lifelong learning to foster a smooth twin transition towards digitalization and sustainability.[6] Additionally, this approach aligns with flexicurity policies,[7] where training emerges as a central element in enhancing workers' employability and adaptability and, thus, the social security side of flexicurity.

[2] On the use of this term, as English translation of the Italian "formazione professionale", commonly and briefly understood as the training in skills and knowledge in relation to a particular job, occupation, or trade, *see* Manzella P., *The Words of (Italian) Labour Law. Le parole di diritto del lavoro in lingua inglese: un percorso di lettura,* Adapt University Press, Bergamo, 2019, especially 47-52 for the section on *Formazione professionale. Vocational Training.*

[3] *See* the concept of 'the flexible employee' back in 2001: Collins H., *Regulating the Employment Relation for Competitiveness*, in *Industrial Law Journal*, 30, 1, 2001, 17-47.

[4] Cedefop, *Insights into skill shortage and skill mismatch, skill shortage and skill mismatch. Learning from Cedefop's European skills and job survey*, Publications Office of the European Union, Luxembourg, 2018, and *World Economic Forum*, *Towards a Reskilling Revolution, A Future of Jobs for All*, World Economic Forum, 2018.

[5] Carrieri M., *Capitalismi fragili. Lavoro e insicurezza in una società divisa in due*, Fondazione Giangiacomo Feltrinelli, Milano, 2022; Brollo M., *Introduzione: "PRIN" sui bisogni dei lavoratori poveri e dintorni*, in *Lavoro Diritti Europa*, n. 1, 2022.

[6] Training is evoked under the label of social sustainability by digital and industrial policies of EU in the last decade: in this sense the 2016 communication "Digitising European Industry Reaping the full benefits of a Digital Single Market", the 2020 communication "Shaping Europe's Digital Future", the strategy "2030 Digital Compass: The European way for the Digital Decade" launched in 2021 can be considered as emblematic documents. *See* Mattei A., *Categorie dei prestatori di lavori e professionalità*, Giappichelli, Torino, 2023, 86 ff.

[7] On the importance of training under the flexicurity policies, especially in the so-called second phase of flexicurity which bets on internal flexibility characterised by investments in human capital and job retention *see* Treu T., *Una seconda fase della flexicurity per l'occupabilità*, in *Diritto delle Relazioni Industriali*, 3, 2017, 597-633; on the topic, concerning the macro-theme of professionality, *see* Mattei A., *ibid.,* 86 ff.

In summary, several clear and interconnected elements underscore the growing interest in vocational training within the context of labour law.[8]

This contribution intends to focus on vocational training from the private contractual dimension.

This discussion aims to highlight the interests of the typically opposing parties—employers and employees— which find a synthesis in the employment contract and could potentially evolve in the same direction. Traditionally, both employees and employers have favoured the standard open-ended and full-time employment contract. Employees seek income security, job security and options that allow for flexibility in working time and career opportunities. Employers prioritise authority, the flexible management of human resources, reliability, the delivery of high-quality services, and the reduction of transaction costs associated with the use of open-ended contracts.

However, demands for exit options and work–life balance from employees increase their interest in temporary and part-time contracts as well as, on the side of employers, the uncertainty of return on investment outcomes, the easier accessibility of specialised skills and project-oriented work increase their willingness to offer non-standard work opportunities.[9]

Against this background, the thesis of this essay is that training could be considered as a new common interest on which mutual expectations of employees and employers converge, especially within a "renewed" standard employment relationship.[10]

Translating this argument into a labour law standpoint, the question is to see how training is positioned in the employment relationship or, in other words, how the employer and the employee and their respective obligations stand with respect to training. Therefore, the aim of the essay is to understand the role performed by training in the employment contract in the current Italian legal system, whether it can be considered a structural and permanent part of the exchange between the parties in the contract. In fact, the legal question mentioned here requires re-evaluating the contractual *synallagma*—the mutual exchange of obligations. In the Italian legal system, the exchange between work performance and salary only includes training as an additional component in contracts specifically designed for training purposes, such as apprenticeships.

[8] In Italy *see*, *ex multis*, Caruso B., *Strategie di flessibilità funzionale e di tutela dopo il Jobs Act: fordismo, post fordismo e industria 4.0*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 157, 1, 2018, 81-125; Brollo M., *Quali tutele per la professionalità in trasformazione*, in *Argomenti di Diritto del Lavoro*, 2019, 495-509; Alessi C., *Alcune osservazioni sul Progetto di ricerca "WOORKING POOR N.E.E.D.S.: New Equity, Decent work and Skills"*, in *Lavoro, Diritti, Europa*, n. 1, 2022; Ciucciovino S., *Professionalità, occupazione e tecnologia nella transizione digitale*, in *Federalismi*, 9, 2022, 129-148.

[9] Schmid G., *The future of employment relations. Goodbye 'Flexicurity' welcome back transitional labour markets?*, AIAS Working Paper 10-106, University of Amsterdam, 2010.

[10] On the adaptability of the standard employment relationship to cope with contextual transformations and meet the interests of both managers and employees, *see* Aloisi A., De Stefano V., *Regulation and the future of work: The employment relationship as an innovation facilitator*, in *International Labour Review*, 159, 1, 2020, 47-69.

The doctrinal debate whether employers are obligated to provide training for workers has existed for a long time[11] and was reopened following the 2015 reform of Article 2103 of the Civil Code.

In this regard, the paper analyses the legal protection of training within the standard employment relationship in private companies, by analysing first the most important and recent legal provisions on training (see Article 2103 c.c. and Article 11, D. Lgs. No. 104/2022) and then, the trends in the fundamental dimension of collective bargaining.

2. Vocational training in the Italian legal system: Article 2103 c.c.

As a part of the *Jobs Act* reform, Legislative Decree No. 81/2015, explicitly aimed at promoting the standard employment contract as the common form of employment,[12] modifies Article 2103 c.c. concerning the employer's *ius variandi*—the unilateral managerial power to assign employees to different tasks. To make the standard employment contract more adaptable—and therefore more advantageous for employers—Article 3 enhances the employer's *ius variandi,* widening the scope for internal workforce mobility through three categories: horizontal, descending and vertical mobility.

This reform emphasizes functional flexibility[13] in human resources management and encourages a dynamic and complex professionality,[14] which evolves in response to organisational and technological needs and advancements.

In this new framework, collective bargaining assumes a pivotal role, serving as the benchmark for all mobility types and being responsible for managing the balance between the employer's extended *ius variandi* and the effective promotion of professionality.

[11] The debate over the existence of such an obligation has drawn on constitutional principles, such as articles 4 and 35 of the Constitution, or general civil code provisions such as Art. 1375 c.c. on good faith, labour civil code provisions like Article 2087 c.c. on the duty of safety and protection of each worker's physical integrity and moral personality, Article 2094 c.c. on subordinate work, Article 2103 c.c. on work tasks, Article 2104 c.c. on the duty of diligence. *See* Napoli M., *Disciplina del mercato del lavoro ed esigenze formative*, in *Rivista Giuridica del Lavoro e della Previdenza Sociale*, I, 1997, 263-271; Galantino L., *Lavoro atipico, formazione professionale e tutela dinamica della professionalità del lavoratore*, in *Diritto delle Relazioni Industriali*, 1998, 317 ff.; Guarriello F., *Trasformazioni organizzative*, Jovene, Napoli, 2000; Alessi C., *Professionalità e contratto di lavoro*, Giuffrè, Milano, 2004; Loffredo A., *Diritto alla formazione. Realtà e retorica*, Cacucci, Bari, 2012.

[12] The reference is to Article 1 of the D. Lgs. No. 81/2015; At this regard *see* Carinci F., *Forma contrattuale comune (art. 1)*, in Carinci F. (ed.), *Commento al d.lgs. 15 giugno 2015, n. 81: le tipologie contrattuali e lo jus variandi*, ADAPT University Press, Bergamo, 2015, 4-7.

[13] Functional flexibility refers to the flexibility in the division of labour, allowing employers to redeploy employees quickly and smoothly between tasks. It relates to adaptability and versatility, making it particularly suitable for the core group of workers— the full-time permanent career employees—who have employment security in return for accepting functional flexibility in the short and long term. *See* Atkinson J., *Manpower Strategies for Flexible Organisations*, in *Personnel Management*, 16, 8, 1984, 28-31.

[14] In the Italian legal system, the protection of workers' professionality comes with limitations on the managerial prerogative in workforce deployment established by Article 2103 c.c.: in this regard, it has traditionally been protected as a stable set of knowledge and experience. On the centrality of Article 2103 c.c., when talking about professionality, *see*, *ex multis*, Magnani M., *Organizzazione del lavoro e professionalità tra rapporti e mercato del lavoro*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 101, 2004, 177; on the dynamic professionality as the asset protected by the new Art. 2103 c.c. *see* Brollo M., *La disciplina delle mansioni dopo il* Jobs Act, in *Argomenti di Diritto del Lavoro*, n. 6, 2015, 1156-1185.

It is worth noting that the third paragraph of Article 2103 c.c. introduces an important new provision regarding training related to changes in work tasks, stating that: "The change of duties is accompanied, where necessary, by the fulfilment of the training obligation, the non-fulfilment of which does not, however, determine the nullity of the act of assignment of the new duties".[15]

Can this provision be considered the legal foundation for recognising employees' right to training and the corresponding obligation for the employer, thereby incorporating training into the contractual exchange?

The explicit mention of training in the mobility regulation can be welcomed for obvious reasons.

Training is a necessary countermeasure to the expansion of managerial internal flexibility and the resulting enlargement of the employees' responsibilities. When assigning new tasks with different professional content, the employer must enable the employees to acquire the adequate skills and to fulfil their obligations.[16] Clearly, this provision supports the new understanding of dynamic professionality as the object of protection under Article 2103 c.c., which must be protected and promoted by training.

However, it was inevitable that specific criticisms arose regarding the structure of the provision and the weaknesses of the training approach outlined. Doubts emerged regarding the nature of the subjective legal situation (obligation or burden) resulting from the provision, the party responsible for fulfilling the training requirement (employer or employee),[17] and the consequences in case of non-compliance.

The party responsible for providing training can be considered the employer, as the training requirement is closely tied to their decision to change the employees' tasks. At the same time, the employee has the duty to participate with diligence in any training provided by the employer.

Non-compliance with the training obligation does not invalidate the act of assigning new tasks, as stated literally in the provision. However, as interpreted by legal scholars, the provision has its legal relevance in terms of breach of contract. If the employer breaches the obligation under Article 2103 c.c., the employee may challenge the contractual breach or the incorrect performance. Consequently, the employee may ask for compensation for damages, but this comes with the complex burden of proof. Additionally, if the employee is unable to perform the new tasks due to the lack of necessary training, they may refuse to perform and raise an exception of non-performance under Article 1460 c.c. On the other hand, the

[15] English translation of the original text: "*Il mutamento di mansioni è accompagnato, ove necessario, dall'assolvimento dell'obbligo formativo, il cui mancato adempimento non determina comunque la nullità dell'atto di assegnazione delle nuove mansioni*".

[16] On training as the necessary corollary of the new protection technique of professionality provided by Art. 2103 c.c., *see* Pisani C., *Dall'equivalenza all'inquadramento: i nuovi limiti ai mutamenti "orizzontali" delle mansioni*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 149, 1, 2016, 156.

[17] For the employer as the obliged party *see*, *ex multis*, Brollo M., nt. (14), 1169-1170, while according to Liso F., *Brevi osservazioni sulla revisione della disciplina delle mansioni contenuta nel decreto legislativo n. 81/2015 e su alcune recenti tendenze di politica legislativa in materia di rapporto di lavoro*, in *WP CSDLE "Massimo D'Antona". IT*, n. 257, 2015, 13, the obliged party is the employee. For detailed references to the doctrinal debate on the topic *see* Corti M., *Jus variandi e tutela della professionalità dopo il "Jobs Act" (ovvero cosa resta dell'art. 13 dello Statuto dei lavoratori)*, in *Variazioni su Temi di Diritto del Lavoro*, n. 1, 2016, 39-67.

employee may not refuse new tasks if training is provided. Certainly, the employee cannot be penalised disciplinarily for non-performance of the work obligation if the lack of (the necessary) training impacts their performance. The employee, instead, may face sanctions if they refuse to undergo the provided training or perform it negligently.

The training obligation is required "where necessary", which clearly involves discretion and a reasonable evaluation of whether the worker's existing skills and knowledge are sufficient to carry out the newly assigned tasks. The responsibility for determining the need for training in relation to new tasks seems to rest with the employer. However, to avoid any logical inconsistency, it would be preferable for this to be considered a responsibility of collective bargaining. This interpretation aligns with the role generally recognised for social partners under the revised Article 2103 c.c. Accordingly, when establishing professional classification systems, collective bargaining should have the authority to determine when certain job transitions require training and when they do not.

In light of the above considerations, it is unlikely that a subjective right to training for the employee can be supported based on Article 2103, paragraph 3, c.c. Such an extensive right, one that would expand the scope of the contractual exchange, should be grounded in explicit, precise and comprehensive legislation.[18]

In contrast, the third paragraph of Article 2103 c.c. establishes a training obligation (or burden), that is both specific and conditional. It is specific because it is directly tied to changes in work tasks, and conditional because it depends on an assessment of its necessity. Moreover, the provision does not establish explicit penalties in the event of non-compliance.

Although purposely limited in scope, the "training obligation" under Article 2103 should not be underestimated, as it holds significant meaning. As noted by prominent doctrine,[19] the provision opens a window onto a subjective position that can be seen as emblematic of next-generation rights, as it aims to actively engage the employer in shaping the worker's professional future. Despite the blurred legal contours of this right, it represents an important step forward in the right direction.

From this perspective, the training provision under analysis can be interpreted as recognition of vocational training as a shared interest between the contractual parties.[20] On one hand, the employer is required—and has an interest—to enable employees to perform their work with the necessary professionality; on the other hand, the employee must—and benefits from—maintaining and developing their professional skills through training. As a shared interest, training is well-suited to joint management by the employer (who exercises *ius variandi* authority and flexibly organises human resources) and by social partners, which, with insight into the specific industry or company and by mediating between the expectations

[18] According to Liso F., *ibid*, nt. (13), the wording of the provision is inadequate to manage the complication caused by the introduction of such an institution in the contractual relationship. Probably, the lawmaker assumes that the issue will be managed by collective agreements.

[19] Del Punta R., *Un diritto per il lavoro 4.0*, in Cipriani A., Gramolati A., Mari G. (eds.), *Il lavoro 4.0. La Quarta Rivoluzione industriale e la trasformazione delle attività lavorative*, Firenze University Press, Firenze, 2018, 234.

[20] Skeptical about interpreting professionality as a shared asset based on the new Article 2103 c.c. is Falsone M. (*La professionalità e la modifica delle mansioni: rischi e opportunità dopo il Jobs Act*, in *Professionalità Studi*, 1, 2018, 32-33), although he considers that collective consensual instruments should be promoted in that regard.

of both parties, are positioned to determine when and under what circumstances training is necessary.

2.1. The *repêchage* obligation.

The lack of a general obligation for employers to provide training under the current legal system is further emphasized by case law concerning the scope of the so-called *repêchage* obligation in case of dismissal for economic or objective reasons—that is the duty of the employer to prove the impossibility of redeploying the employee elsewhere within the organisational structure—and its relationship with the revised Article 2103 c.c.

The question is whether the new regulation of *ius variandi,* in cases of dismissal for economic reasons, entails an extension of the employer's obligation to reallocate employees such as to include an additional duty to provide training that would enable them to perform other tasks within the company structure.[21]

Under the previous regulation, the scope of enforceability of *repêchage* coincided with the scope of enforceability of tasks. Consequently, the majority of case law excluded from the *repêchage* those tasks that were incompatible with the employee's professional background and required additional training. In fact, the employer is not obligated to provide further or specialised training to the employee in order to safeguard their job.[22]

Under the revised Article 2103 c.c.,[23] the majority case law remains consistent, by excluding from *repêchage* the training obligation.

This reading seems a reasonable compromise between the parties' interests. To better understand it, it seems appropriate to consider the concept of vocational training as a shared interest and to distinguish between the physiological phase of the employment relationship—namely, the flexible management of human resources regulated by Article 2103 c.c. as a necessary dynamic element in a long-term contractual relationship—and its pathological phase, that is, dismissal.

The training obligation under Article 2103, par. 3, c.c. specifically applies to cases of functional flexibility in workforce management. It represents a cost that the employer bears in view of the exercise of their *ius variandi* over workers they intend to retain within the

[21] A part of the legal doctrine supports extending the obligation of reassignment to include tasks that the employer may assign under the Article 2013 c.c. currently in force, as well as training requirements, in line with the provisions of collective agreements about the extension of the debt of the employees. *See* Carinci M.T., *L'evoluzione della nozione di repêchage nel licenziamento individuale per gmo di tipo economico,* in *Lavoro Diritti Europa*, 1, 2024, 1-11. *See* also Gramano E., *Jus variandi e formazione nel rapporto di lavoro subordinato*, in *Labor*, 2021, 259-275. For an intermediate position, which conceives training as a reasonable accommodation, *see* Calcaterra L., *L'obbligo di formazione ex art. 2103, terzo comma, c.c. come accomodamento ragionevole,* in *Lavoro Diritti Europa*, 1, 2024. For those positions not favourable to an ancillary training obligation within the context of reassignment *see* Pisani C., *L'ambito del repêchage alla luce del nuovo art. 2103 cod. civ.*, in *Argomenti di Diritto del Lavoro*, 3, 2016, 540; Dallacasa M., *La formazione del lavoratore tra ius variandi e motive oggettivo di licenziamento*, in *Lavoro Diritti Europa*, 1, 2024, 1-11; Amoriello L., *Riflessioni sull'ampiezza dell'obbligo di repêchage a seguito della modifica dell'art. 2103 c.c. ad opera del d.lgs. 81/2015*, in *Lavoro Diritti Europa*, 1, 2024, 1-16.

[22] *See*, *ex multis*, Cass., 11 Marzo 2013, No. 5963; Cass., 3 Dicembre 2019 No. 31520; Cass., 23 Febbraio 2022, No. 5981; all in *DeJure.*

[23] With reference to the revised Article 2103 c.c., *see* Cass., 20 Giugno 2024, No. 17036, in *DeJure.*

organisation. As a result, the employer has an interest in investing in training to achieve outcomes beneficial to the company, such as increased productivity of workers, advanced professionalities with a view to future projects. Clearly, employees also expect to receive—and engage in—training to effectively fulfil their duties and, consequently, ensure job security. Therefore, training can be seen as a shared interest between employers and employees, aimed at the continuation of the employment relationship and the effective management of human resources in coordination with social partners.

The employer's interest in training human resources changes and/or disappears in the case of an economic dismissal when the employer decides to eliminate a specific position and terminate the employment relationship for economic or organizational reasons. The training obligation that arises in the case of a change in duties cannot be broadly extended to such a pathological situation, as it would impose additional training costs during an already challenging phase, such as business reorganization. The consequences would be an excessive restriction on dismissals for economic reasons, thereby undermining the private economic enterprise constitutionally protected by Article 41 of the Constitution.

This jurisprudence indirectly confirms that, under the current Italian legal system, employees do not have a general right to training, nor do employers have a broad obligation to provide it. In effect, training has been included within the scope of *repêchage*, meaning that if an employee's skills become outdated due to company reorganization, the employer must assess both the impossibility of *repêchage* and the infeasibility, or at least the economic impracticality, of vocational retraining, in line with the principles of good faith and fairness.[24] However, the Court has stated that, in general, the employer is not obligated to provide vocational training to enable the employee to perform their job correctly. This ruling is significant as it affirms that training is not part of the contractual exchange and should only be considered in the context of dismissal if it aligns with the economic interests of the business.[25] In other words, training may represent an interest for the employer even at this stage, but it must be carefully evaluated.

2.2. Article 11, D. Lgs. No 104/2022.

Within the employment relationship, training is subject to regulatory provisions concerning transparent and predictable working conditions.

The European Directive No. 2019/1152, which aims to ensure that workers are fully informed about their essential working conditions, guarantees their right to be informed about any training entitlement provided, if any (Article 4, par. 2, letter h). Additionally, Article

[24] Trib. Lecco, 31 Ottobre 2022, No. 159, in *Il Lavoro nella Giurisprudenza*, 5, 2023, 499 ff., with a comment by De Falco M., *Il diritto alla riqualificazione professionale per la conservazione del posto di lavoro*. On this decision *see* also Bellini D., *L'estensione dell'obbligo di repêchage tra gli obblighi formativi e il principio di ragionevolezza. Brevi note alla sentenza del Tribunale di Lecco del 31 ottobre 2022*, in *Lavoro Diritti Europa*, 2023, 1; Bebber A., *L'obbligo di repêchage si estende alla formazione del lavoratore? Un altro obiter dictum*, in *Argomenti di Diritto del Lavoro*, 4, 2023, 821.

[25] Garofalo D., (*I licenziamenti economici tra scelte legislative e incursioni ideologiche*, in *Argomenti di Diritto del Lavoro*, 2023, 1) does not infer from this judgement the existence of a training obligation for the employer, rather a tendency to include within the area of *repêchage* the professional updating of employees.

13 ensures that workers have the right to cost-free training, which counts as working time, when training is mandatory because the employer "is required by Union or national law or by collective agreements to provide training to a worker to carry out the work he or she is employed".

Clearly, the Directive does not impose a training obligation on the employer, but rather outlines specific enforcement modalities when such an obligation or right exists under national law.

The Italian legislature literally implements the Directive through the legislative decree No. 104/2022.

Article 11, paragraph 1, D. Lgs. No. 104/2022, on mandatory training confirms that, when the employer is required by law or by individual or collective agreement to provide workers with training for the work for which they are employed, training must be provided free of charge to worker, shall be considered as working time and take place during the same.

This statement necessarily refers to Article 2103, paragraph 3, c.c., thereby pertaining to training that is in the employer's interest.

As explicated by paragraph 2, this obligation does not apply to vocational training or training necessary for the worker to obtain, maintain or renew a vocational qualification, unless the employer is required to provide it by law or collective bargaining.

It is clear that the legislature intends this to refer to training that serves only the employee's interests, specifically in relation to maintaining the employee's professional skills as outlined in Article 6 of Law No. 53/2000 concerning continuous training leave.[26]

The second paragraph may prove unclear or lead to unconvincing interpretations. Specifically, the phrase "vocational training or training necessary for the worker to obtain, maintain or renew a vocational qualification" could refer to training necessary to carry out work and, thus, also in the interest of the employer. In this sense—and in contrast with Article 2103 c.c.—a literal interpretation of the paragraph could lead to considering that the employee must bear the burden of a training that is aimed to maintain a qualification after the occurrence of *ius variandi*.[27]

As for the Directive, Article 11 cannot be leveraged to expand the scope of the contractual exchange, as it only clarifies the implementation methods for training when mandated by law or collective agreements.[28] However, it is a significant provision confirming that, when training serves the mutual interests of both employer and employee, it should not impose a financial burden on employees and should be considered working time.[29]

[26] Garofalo D., *ibid.*; Brollo M., *Le dimensioni spazio-temporali dei lavori. Il rapporto individuale di lavoro*, Relazione AIDLaSS, Giornate di studio AIDLaSS, *Le dimensioni spaziotemporali dei lavori*, Campobasso, 25-26 maggio 2023, 83-84.

[27] *See* Garofalo D., Tiraboschi M., *L'impatto sulla disciplina del rapporto di lavoro del d.lgs. n. 104/2022 (emanato in attuazione della direttiva UE n. 2019/1152)*, in Garofalo D., Tiraboschi M., Filì V., Trojsi A. (eds.), *Trasparenza e attività di cura nei contratti di lavoro. Commentario ai decreti legislativi n. 104 e n. 105 del 2022*, ADAPT University Press, Bergamo, 2023, 19-20; Stamerra F., *La formazione obbligatoria ai sensi dell'art. 11 del d.lgs. n. 104/2022*, *ibid.*, 345-346.

[28] Garofalo D., Tiraboschi M., *ibid.*; Garofalo D., nt. (25).

[29] On the qualification of training required by the employer as working time *see* a recent judgement by the Court of Justice of 28 October 2021 (Case C-909/19, BX v Unitatea Administrativ Teritorială D.), and the comments by Altimari M., *Sulla formazione obbligatoria rientrante nella nozione di orario di lavoro: l'interpretazione della Corte di*

3. Vocational training in Italian industrial relations.

Considering training as a shared interest between the parties—aligned with current business and labour market conditions[30]—supports regulation through collective bargaining and, specifically, through participative industrial relations.[31]

Clearly, collective agreements are well suited to ensure a balance between the interests of employees and employers, as they are regulatory instruments closely aligned with the specific organisational context and, consequently, flexible enough to implement measures tailored to the needs of both the company and the workers.

The centrality of social actors in regulating vocational training is reinforced by numerous references in the law to collective bargaining. In addition to Article 2103 c.c., the Decree of 4 May 2018 implementing the 4.0 training tax credit entrusts its regulation to decentralised collective bargaining. Article 88 of the Decree Law. No. 34/2020 allows company-level or territory-level collective agreements to establish specific agreements for rescheduling working hours, allocating part of them to training courses funded by the New Skill Fund.

In this regard, the cross-industry agreement signed by Confindustria, Cgil, Cisl and Uil on 28 February 2018, along with recent national and corporate collective agreements confirm the growing importance that trade unions attribute to training. Therefore, social partners are gradually expanding their protective role beyond the traditional and fundamental wage claim.

Focusing briefly on recent trends in collective bargaining regarding training, various regulatory approaches can be observed—applicable also to company-level agreements. Alongside clauses on skills' certification and registration and agreements on the remodulation of working time according to the new skills fund, a usual distinction emerges.

This distinction lies between programming clauses—which outline general principles on the strategic value of training and establish entities responsible for studying, informing and implementing training measures—and clauses that grant workers training rights or benefits.[32]

In this latter sense, the 2021 national collective bargaining agreement for metalworkers stands out for its innovations in training[33] and serves as a model example of industrial

Giustizia, in *Argomenti di Diritto del Lavoro,* 4, 2022, 827-833; Poso V.A., *La Corte di Giustizia chiarisce che la formazione professionale imposta dal datore di lavoro rientra sempre nella nozione di orario di lavoro*, in *Labor*, 25 Gennaio 2022; Valenti C., *La "messa a disposizione" del lavoratore oltre il normale orario di lavoro: quando la formazione obbligatoria deve essere remunerata*, in *Diritto delle Relazioni Industriali*, n. 2, 2022, 362.

[30] For similar considerations *see* Occhino A., *Organizzazione dell'impresa e del lavoro*, in Zilio Grandi G. (ed), *Organizzazione dell'impresa e qualità del lavoro*, ADAPT University Press, Bergamo, 43-48.

[31] *See* Faioli M., (*Mansioni e macchina intelligente*, Giappichelli, Torino, 2017, 227 ff.) regarding a "problem-solving bargaining", as opposed to the traditional "positional bargaining", which provides solutions or multiple options to meet reciprocal interests and is suitable for managing topics like professionality, work organisation and artificial intelligence. *See* also Ciucciovino S., nt. (8), 137, for the idea of training as a shared asset between the parties rather than as a right to which a duty/burden corresponds, which should be treated by participative industrial relations. As well as, less recently, Napoli M., nt. (11), 265.

[32] Piovesana A., *Il contratto collettivo come strumento per una formazione dinamica*, in Bavaro V., Cataudella M.C., Lassandari A., Lazzeroni L., Tiraboschi M., Zilio Grandi G. (eds.), *La funzione del contratto collettivo. Salari, produttività, mercato del lavoro*, ADAPT University Press, Bergamo, 2023, 71-94; more broadly, Impellizzieri G., *La formazione dei lavoratori nei contratti collettivi tra vecchi e nuovi modelli*, in *Il Lavoro nella Giurisprudenza*, 3, 2023, 247 ff.

[33] Mostarda A., *Formazione professionale*, in Zilio Grandi G., (ed.), *Commentario al CCNL Metalmeccanici 5 febbraio 2021*, Giappichelli, Torino, 2021, 123-133; Ciucciovino S., *La formazione continua nel settore metalmeccanico: dal diritto*

relations' response to—and mastery of—technological changes.[34] It provides a subjective right to 24 hours of training per person over three years, conducted during working hours and primarily focused on training initiatives jointly defined by companies and union representatives.

Other recent agreements, such as NCBA *elettrici* of 18 July 2022, NCBA *gas e acqua* of 30 September 2022, NCBA *occhialeria* of 28 April 2023, provide dedicated training hours for workers.

Contrary to the positive trend in collective bargaining concerning training, it should be acknowledged that, to date, social partners cannot yet be seen as the key actors for managing the training obligation within mobility paths, as implicitly required by the revised Article 2103.[35]

4. Conclusions. The new common interests of the parties within the employment contract as a flexible and resilient tool.

At this point, it is possible to draw some conclusions.

The current legal framework does not provide a solid legal foundation for establishing the obligation/right to training within the employment contract purpose.

Strictly speaking, within the standard employment relationship, a specific obligation or burden for the employer to provide training arises only in the case of *ius variandi* under Article 2103 c.c.—and provided that collective agreements make this obligation effective by defining professional pathways.

However, vocational training has become a priority in collective bargaining, to the extent that several collective agreements begin to recognise it as a subjective right.

In this sense, training does not become a permanent part of the employment contract through legislation, but rather filters into it through the provisions of those collective agreements[36] that regulate vocational training. In this regard, the contractual *synallagma* is extended and rebalanced only through the mediation of the relevant collective agreement.

As a result, vocational training is increasingly legitimized as a shared interest, to be managed by a mutually agreed regulation between the parties.

Given the ongoing evolution of the organisation, the labour market, and the changing characteristics of the work itself, the interests of the contracting parties are evolving and are becoming less opposed. This shift suggests that both parties can find common ground in

soggettivo alla formazione al sistema dell'apprendimento permanente, in Treu T.(ed.), *Commentario al contratto collettivo dei metalmeccanici*, Giappichelli, Torino, 2022, 83-96; Di Noia F., *Art. 7. Formazione continua*, in Bavaro V., Focareta F., Lassandari A., Scarpelli F. (eds.), *Commentario al contratto collettivo nazionale dei metalmeccanici*, Futura Editrice, Roma, 2023, 662-670.

[34] The reference is to *Metapprendo*, a platform for managing and recording training activities in a digital dossier for each worker, using blockchain technology.

[35] *See* Ciucciovino S., nt. (8), 134.

[36] For similar considerations *see* Focareta F., *Un nuovo vessillo sindacale: la formazione nell'orario di lavoro?*, Presentation at the seminar *Woorking poor e formazione per l'occupabilità*, 20 April 2022.

adapting and promoting their professionality through vocational training, as well as in achieving greater flexibility in the workplace.

Thus, the socio-economic context and the consequent modern characteristics of work support a revised conception of employment contract exchange, challenging the traditional view of the subordinate contract as a mere exchange between work subject to the employer's powers of management and a time-based remuneration.[37] Instead, they suggest a less hierarchical and more cooperative employment relationship, in which personal trust, autonomy, adaptability, organisational skills, professionality, knowledge and expertise are fundamental.

As stated, this modern conception of the contractual exchange can currently only be supported by a shared innovative regulation, both collective and individual.[38] At the collective level, constructive rather than conflictual relations could be developed in sectors and companies that prioritise the social sustainability of their economic activity,[39] as opposed to those segments of the labour market where worker exploitation remain prevalent. In this regard, even though some positive experiences exist, social partners could do much more to position themselves as the true interpreters and implementers of vocational training as a shared interest.

To conclude, enhancing the common interests of the contracting parties—such as vocational training— requires a renewed employment contract, one that is relational and dynamic.[40]

Despite the evidence that the standard employment contract is declining due to the rise of new contractual models governing temporary work relationships, both employers and employees have an interest in renewed open-ended contracts that offer new securities and flexibilities, such as work-life balance, human capital development, firm-specific and transferable training, up-skilling, career and networking opportunities, flexible human resource management, workforce autonomy and versatility. These interests can be effectively synthesized within the standard employment contract, as it is characterised by a flexibility dimension that allows for better alignment of interests between employee and employer. In other words, the full exercise of managerial prerogatives, functional flexibility in workforce management, investments in long-term vocational training and skills development, as well as the trust and identity built between the parties make the standard employment contract an adaptable and, thus, resilient tool capable of meeting the interests of both managers and employees, while adapting to ongoing transformations.[41] Ultimately, embracing a cooperative

[37] Caruso B., Del Punta R., Treu T., nt. (1).
[38] On the potential of individual agreements under Article 2103, paragraph 6, in a promotional sense for professional development, *see* Ciucciovino S. nt. (8), 134.
[39] Caruso B., Del Punta R., Treu T., *"Manifesto". Il diritto del lavoro nella giusta transizione. Un contributo "oltre" il manifesto*, csdle.lex.unict.it, 2023, 59.
[40] Caruso B., nt. (8), 106-109, 111-112.
[41] Aloisi A., De Stefano V., nt. (10).

employment relationship means accepting the consequent extension of both parties' contractual obligations.[42]

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[42] In terms of future directions of the research, it would be advisable to explore further legal and institutional spaces for a cooperative broadening of the contractual exchange, for example in terms of variable remuneration and the evaluation of the worker's performance results.

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