Work Package 5: Case Study on Industrial Relations during Covid-19

Fighting the "contractual dumping" along the air transport value chain: the case of art. 203 D.L. n. 34/2020 (so called Relaunch Decree)

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Introduction

The case study we are going to explore is dedicated to Article 203 Law Decree 19 May 2020 No. 34, converted with modifications into Law 17 July 2020 No. 77 (so-called Relaunch Decree). It is worth noting right away that, unlike what happened in other case studies of this WP, the case concerned does not deal with an industrial relations practice, being quite focused on the theoretical analysis of a legislative text. This is a particular but understandable choice, considering the great relevance of Article 203 for the study of Italian industrial relations in the air transport value chain during Covid-19 and beyond.

In order to ensure minimum wage standards along this chain, Article 203 Relaunch Decree requires the employers – carriers operating in Italy, companies (paragraph 1) and their subcontractors (paragraph 2) – to guarantee wages not lower than the minimum provided for under the sectoral collective agreement at the national level signed by the comparatively most representative employers and trade union organizations (so called "leader collective agreement" – from now on Air Transport CBA). According to the article, ENAC is in charge of the compliance with the rule by the employers under penalty of revocation of the concessions, authorizations and certifications issued to them by the ENAC itself or of an administrative sanction, in case of concession, authorizations and certifications issued by foreign authorities (paragraph 3, 4, and 5).

Precisely because of this content and its potential hard impact on the typical low-cost business model as well as on the industrial relations and working conditions in the value chain, Article 203 Relaunch Decree immediately emerged as one of the most important and controversial rules in the pandemic and beyond.

The importance of Article 203 Relaunch Decree basically depends on its innovativeness. Firstly it is worth noting that, in line with an established e well known case-law[1], its rules aim at fighting the "contractual dumping" phenomenon enhancing the concept of "home base" as the criterion for determining the application of national wage protection for flight crew and cabin crew members[2]. In this case, given the absence of a statutory framework on adequate minimum wages in Italy, Article 203 Relaunch Decree identifies this minimum by referring to the leader collective agreement in the sector at the national level[3]. Such a mechanism is not new in the legislation of the country (*see Section III, The*

[1] Court of Justice EU, 14 September 2017, C-168/16 e C-169/16; Cass., 21 July 2021, No. 20819; Trib. Busto Arsizio, 25 October 2019, No. 359; Trib. Rome, 23 August 2019; App. Brescia, 24 July 2019, in *Rivista giuridica del lavoro*, in *Rivista giuridica del lavoro*, 2020, I, 157 ff., commented by G. Frosecchi; Trib. Bergamo, 30 March 2018, No. 1586, in *Rivista italiana di diritto del lavoro*, 2018, II, 545 ff., commented by V. Protopapa; Trib. Rome, 18 June 2015 and Trib. Pisa, 25 September 2014, both in *Rivista giuridica del lavoro*, 2016, II, 104 ff.

[2] About the relevance of the "home base" criterion for the identification of the national social security system applicable to the personnel, see ILO (2023), *Towards a Green, Substainable and Inclusive Recovery for the Civil Aviation Sector*, Sectoral Policies Department, Geneva, 40, https://www.ilo.org/sector/Resources/publications/WCMS_873059/lang--en/index.htm.

[3] R. Santucci (2020), *Salario minimo legale: l'auspicio che la montagna desideri partorire e non sia un topolino*, in *Lavoro Diritti Europa*, No. 2, 5.

mechanism of minimum wage protection) but it is important to secondly note that, in Article 203 Relaunch Decree, this mechanism seems to be conceived as a way to extend minimum wage standards to all the air transport personnel so that some fundamental protections can be ensured along the entire value chain.

In the light of this, it is easy to understand that the controversial nature of the article precisely depends on its extreme incisiveness and pervasiveness. In particular, after the fall of the so called "Conte 2" Government, the risk of a destabilizing impact on the sector and on its widespread subcontracting system has finally discouraged the application of the rule or in any case suggested a more minimalist interpretation of it. Today, the ineffectiveness is the problem that really affects Article 203 Relaunch Decree, but it is also the reason why the scholars should be particularly interested to it.

Section I: Context, aims and relevant actors

The Covid-19 pandemic is the precise context in which Article 203 Relaunch Decree has its roots. Such context was already well described in the previous steps of this research project, especially for its heavy effects on the economy and primarily on the air transport sector, affected by huge restrictions as a response of government administrations to the spread of the virus (*see all the previous WPs*).

Since the beginning, the measures taken by the Italian State to deal with the pandemic have been based on concertation procedures between the State and trade unions. This methodological choice allowed the Government – maybe the first authentically pro-labour Government since the advent of neo-liberalism – to adopt public policies aimed at ensuring employment protection and social dialogue in the workplaces as well as social protection mechanisms in the economic recovery.

The regulation of aviation during Covid-19 represents a paradigmatic example of these policies. Article 203 Relaunch Decree is in fact only a part of a more comprehensive intervention designed to protect companies and employment with a view to relaunching the sector and contrasting, at the same time, low-wage labour. From this point of view Article 203 has to be read in a close union with other articles, such as Article 198, instituting a specific fund for the compensation of the damages from Covid-19 suffered by the sector, Article 204, providing additional funding to the Air Transport Sector Solidarity Fund (a wage guarantee fund available only to workers in the sector) and, first and foremost, Article 202, authorizing the founding of ITA Airways.

Article 203 requires companies operating in the air transport sector to comply with a minimum wage. By doing so, it aims at preventing a business (unfair) competition, essentially based on the labour costs, spread in the sector as effect of the low-fare airlines. Such a goal is very understandable, especially if we consider the investment in a new legacy carrier made by the Government. Maybe it is not a case that the rule has been the result of a common action among various Ministers, first of all, the Ministry of Transports (and secondly the Minister of Economics and the Minister of Labour and Social Welfare). Then, in order to identify the amount of the minimum wage for the air transport personnel, the article takes in account as a benchmark not any agreement but only the national collective agreement of the sector, signed by most representative actors. Such indirect legislative support to the national collective bargaining, which already covers the entire value chain (*see WP4*), is equally very relevant. This is true both in terms of flight services, where a certain tendency towards contractual decentralization has developed recently, and of ground services, where the application of national collective agreements belonging to different sectors is quite common as a result of the subcontracting system.

It is also undeniable that this legislation has the potential to cause a great impact on industrial relations and its main players. Prove is that, as soon as Article 203 Relaunch Decree was issued, the major low-fare airlines operating in Italy immediately proceeded to set up AICALF, an association in charge of representing the interests of these companies at a supra-enterprise level (*see WP4*). It cannot be excluded that, following the implementation of Article 203, AICALF aims at bargaining its own national collective agreement, fostered by a possible symmetrical interest of some professional trade unions, that are still outside the Air Transport CBA and, maybe, any of most representative actors, former signatory of Ryanair

collective agreements. At this point, it could be worth asking which national collective agreement would be leader in the sector. The answer to the question could not be so easy, considering the great ambiguity still affecting the concept of "comparatively most representative employers and trade union organizations" (paragraph 1, Article 203) (*see Section III, The relevance and the selection of the sectoral collective bargaining*).

Finally, supported by legislation, the minimum wage protection of national leader collective agreement along the entire value chain could throw collective bargaining and union organizations towards a supply chain structural dimension. As far as collective bargaining is concerned, it would be important to introduce some minimum forms of coordination among agreements applied in the value chain (especially for wages and personnel classifications). Regarding the social actors, it should be noted that the presence, in big trade union confederations, of different sectoral federations representing the air transport workers along the value chain risks to hinder an effective consolidation of the interests of such workers. It is no coincidence, in fact, that the last ones strike actions, called by two of the three most representative confederations and aimed at claiming the effective implementation of Article 203, have involved only the transport federations (Filt-Cgil and Uiltrasporti), not instead also those of them which organize workers employed in other parts of the value chain (think about Filcams-Cgil or Uiltucs-Uil for surveillance or cleaning workers employed in airports), although the application of Article 203 to those workers is uncertain: *see Section II - Fighting the "wage dumping" along the value chain*).

Section II: Field of application and minimum wage protection along the value chain

Field of application

Although inspired by the commendable goal of tackling the wage dumping in the air transport sector, Article 203 Relaunch Decree is affected by some interpretative doubts which so far did not facilitate the implementation of its standards.

This is already clear starting from the first paragraph of the article, aiming at determining the field of application of the rule. In particular, under the paragraph, "The air carriers and companies that operate and employ personnel on the Italian territory and that are subjected to concessions, authorizations or certifications provided for by the EASA legislation or by the national legislation as well as to the control of ENAC according to the current provisions" have to apply minimum wages "to their employees, with home base in Italy pursuant to European Commission Regulation No 965/2012".

According to a first interpretation of the legislation, the paragraph would aim at essentially compelling the air carriers, in order to fight the wage dumping especially pursued by the low-fare airlines through salaries not complied with the air transport collective agreement at the national level. According to this opinion, the exclusive mention, in the paragraph 1, to personnel with "home base in Italy" would provide evidence in this sense.

Such interpretation of the rule is intriguing, but can raise some concerns[4]. In fact, starting from the heading of Article 203, it is not improbable, at the opposite, that the article, according to a second and different opinion, aims at extending the minimum wage to the "air transport personnel" as a whole (pilots, cabin crew, ground services, etc.), so that it can be considered a general principle for the entire sector. This seems to be confirmed by the part of the paragraph 1 that, referring to the employers obliged to pay minimum wages, explicitly mentions not only the airlines – precisely "the air carriers (…) that operate and

[4] About the ambiguous formulation of paragraph 1 of Art. 203, see Demetra Centro Studi (2020), *L'Articolo 203 del cd. "Decreto Rilancio" in materia di Trattamento economico minimo per il personale del trasporto aereo*, in *Nota informativa*, No. 5, 5 ff., https://www.demetracentrostudi.it/wp-content/uploads/2020/06/Demetra-Nota-informativa-n.-5-2020.pdf.

employ personnel on the Italian territory and that are subjected to (…) authorizations (…) provided for by the EASA legislation or by the national legislation as well as to the control of ENAC according to the current provisions"[5] – but also all other companies operating and employing workers in the same way.

Among them, are to be surely included companies "that are subjected to certifications provided for by the EASA legislation or by the national legislation as well as to the control of ENAC according to the current provisions", such as the ground handling companies[6]. After all, they had already been the object of attention by ENAC in the early 2000s, when ENAC itself – following the free access to the ground-handling market required by Directive n. 96/67/CE and its Italian transposing act (Legislative Decree n. 18/1999), as well as at the light of a specific agreement signed at the time by trade unions representative of airport workers and Assohandlers – had tried to impose on handlers the application of working conditions provided for in Assoaeroporti collective agreement, instead of the conditions foreseen in Assoaereo collective agreement, as claimed by the handlers themselves. However, it is worth noting that in such case the operation had not been successful, since ENAC had ended up imposing on the handlers the application of a specific collective agreement of the sector, and not only the minimum wage there provided for – as now demanded by Article 203 – resulting in the violation of Italian Constitution, Article 39, paragraph 1, on the right of freedom of association, according to the case-law[7].

Finally, it is probable that also airports should be included in the field of application of Article 203, because these are managed by companies "subjected to concessions (…) by the national legislation as well as to the control of ENAC according to the current provisions", according to paragraph 1 of the article. It follows that they seem equally obliged to apply wages to their employees not lower than those provided for by to the Air Transport CBA.

Fighting the "wage dumping" along the value chain

Also paragraph 2 Article 203 concerns the field of application of the minimum wage protection. According to this paragraph "the provisions of the first paragraph (of that Article) must be applied also to personnel hired by third parts and employed by the air carriers as well as by the companies mentioned in the paragraph 1 itself".

As it is easy to observe from the reading of the statement once cited, paragraph 2 supports and emphasize even more the dimension of the supply chain of the air transport. In fact, this is just the dimension made by the Air Transport CBA, consisting of an inclusive platform with a common "general part" and six different, independent sub-agreements, specific to each sector, negotiated with the respective employer association (*Assaeroporti, Assaereo, Assocontrol, Assohandling, Federcatering* and *Fairo*)[8].

Paragraph 2 substantially intends to prevent, at least for the minimum wage protection, that unity and

[5] See, in particular, the letter sent by ENAC on 7 August 2020, https://www.enac.gov.it/news/emergenza-covid-19-misure-di-esenzione-linee-guida-note-informative-enac, inviting all air carriers operating in Italy to communicate to ENAC within 15 October 2020 their compliance with the rule of Art. 203.

[6] In fact, see Art. 7, paragraph 6, ENAC Regulation 22 July 2021, No. 6 on Certification of ground handling airport service providers, https://www.enac.gov.it/sites/default/files/allegati/2021-Lug/Reg_handling_210721.pdf, according to which the certification application submitted by the provider must contain the commitment to comply with the provisions of Art. 203.

[7] Cons. Stato, VI section, 8 June 2009, No. 3489; T.A.R. Lazio, III section – Rome, 9 December 2012, No. 1295; T.A.R. Lazio, 30 January 2012, No. 982; T.A.R. Lombardia, IV section – Milan, 7 May 2008, No. 1329.

[8] As the Italian WP3 Report underlines, "the first Air Transport CBA was signed in 2010 by only three employers' associations (Assaeroporti, Assohandlers and Assocatering). In 2013 signatories expanded to include all employers' associations (*Assaeroporti, Assaereo, Assocontrol, Assohandling, Federcatering* and *Fairo*), with the first renewal signed in 2019. The general part of the platform is signed by the Union Federations (Filt-Cgil, Fit-Cisl, Uiltrasporti and UGL – Trasporti) affiliated with the main national Union Confederations and, on the company side, a negotiating team made up of the six sector-specific employers' organizations".

cohesion of the value chain, ensured by the leader collective bargaining at the national level, can be broken by business models based on outsourcing of air transport services or personnel to third parts.

Such models surely affected low-fare carriers, such as Ryanair, that employs flight staff provided for by Crewlink, a temporary work agency, specialized, as known, in recruitment, training and employment of cabin crew for Europe's low cost airline groups[9].

However, the system of contracting out is also spread in the handling companies. They are generally linked to the air carriers as suppliers of their ground services, especially since the Legislative Decree No. 18/1999 has transposed the European principle of free access to the ground-handling market in the major airports and limited the control of such suppliers by them. Due to Article 203, as seen, both the air carriers and the handling suppliers are subjected to the provisions of paragraph 1. Therefore, also handling workers have the right to the minimum wage according to the Air Transport CBA, whether they are directly hired by the handler (paragraph 1) or indirectly employed by third-part contractors (paragraph 2)[10]. From this point of view, the Article should represent a defense against low-wages phenomena, which already occurred years ago in the handling, caused by the application to the workers of collective bargaining agreements others than the Air Transport CBA either directly by the handlers or indirectly through subcontracting part of the services to cooperatives[11].

Finally, the inclusion of the airport operators in the field of application Article 203, paragraph 1 has led to assume that, in the light of the following paragraph 2, these operators should require the Air Transport CBA minimum wage enforcement from all their eventual suppliers, including those involved in services that are far or even outside from their core business, such as private surveillance (for example the service facilitating the access to the security checks by the customers), cleaning services or travel retail in airports. If such a thesis were accepted (and Article 203 was implemented), also contractual clauses such as Article 9 of the "general part" and Article G4bis of the Airports Operators "specific part" of the Air Transport CBA[12], or Protocols signed by the trade unions in some airports and aimed at compelling third contractors to apply own sectoral leader collective bargaining agreement (CBA) at the national level to their workers[13] (see, in WP5, the Case study on Bologna Airport-Italy), would no longer be enough. In fact Article 203, at least for the minimum wage, does not settle for any sectoral (leader) CBA, more strictly requires the application of the Air Transport (leader) CBA to the third contractors' personnel.

In the light of this, such a thesis sounds too extensive to be followed. This is sure for the companies

[9] About the increasing use by airlines of contracting models based on intermediary organizations, see ILO (2023), *Towards a Green, Substainable and Inclusive Recovery for the Civil Aviation Sector*, cit., 39.

[10] In this sense, see again the letter sent by ENAC on 7 August 2020, inviting air carriers to communicate the application of a remuneration not lower than the minimum established by Air Transport CBA not only to their workers, but also "to the employees of third parties used to carry out their activities". Moreover, the letter extends the application of Art. 203 to the workers employed in "wet leased aircrafts" too. In particular, according to it, "The same carriers are invited to forward, pursuant to art. 203, paragraph 4 (…), together with the application for authorization for the use of wet lease aircrafts, the communication of the commitment to guarantee to the personnel referred in paragraphs 1 and 2 of the aforementioned article, the total remuneration not lower than the minimum established by National Collective Agreement of the sector stipulated by the most representative employers and trade union organizations at national level"; about the possible "opacity of employment standards" lead by the use of wet leases, see ILO (2023), *Towards a Green, Substainable and Inclusive Recovery for the Civil Aviation Sector*, cit., 40.

[11] See Commissione di garanzia dell'attuazione della legge sullo sciopero nei servizi pubblici essenziali (2021), *Appalti e conflitto collettivo: tendenze e prospettive*, in *Boll. Adapt*, 30 June, https://www.bollettinoadapt.it/appalti-e-conflitto-collettivo-tendenze-e-prospettive/?pdf=164960; the increasing of the subcontracting in the ground handling services is well underlined by ILO (2023), *Towards a Green, Substainable and Inclusive Recovery for the Civil Aviation Sector*, cit., 41.

[12] Article G4bis applies to airports operators and their employees the clause included in Article 9 of the Air Transport CBA "general part", according to which the thirds contractors must apply to the personnel the collective bargaining agreements at the national level signed by the comparatively most representative employers and trade union organizations.

[13] See, for instance, the Protocol with regard to contracting signed between AdB Bologna Airport, Cgil, Cisl, Uil, Ugl, Municipality of Bologna and Metropolitan City of Bologna, 26 September 2018.

operating in the travel retail of the airport, whose employees cannot be qualified as air transport personnel and benefit from the application of Article 203, paragraph 2, simply because they are outside of value chain for how it is outlined by the Air Transport CBA. Probably the same it can be said for cleaning and perhaps also for those services of surveillance in charge, for instance, of facilitating the access of the people to the checks. Such job profiles – cleaning, controls – are included in the specific part of the Air Transport CBA addressed to the airports operators[14], maybe for the case in which some small airports should directly manage such services with own employees. However we know that these activities are not properly and necessarily incorporated in the direct organizational tasks of an airport, according to the law, that encompasses a modern vision of the air transport and the airport operator, attributing to the latter one a general responsibility regarding the management of the airport infrastructure as well of the coordination and control of the private operators' activities as a whole (Article 705 Italian Navigation Code). Starting from this, it is perhaps to be excluded that services as those above mentioned are part of the air transport value chain as such – except for the residual case of small airports that directly managed them – and so that they can be subjected to the application of Article 203, paragraph 2.

Section III: Mechanism of minimum wage protection, role of the industrial relations and collective bargaining, penalty system

The mechanism of minimum wage protection

The reference to the wages set by the national collective agreement of the sector present in Article 203 Relaunch Decree is rooted in the issue of minimum wage in Italy.

Although Article 36 Italian Constitution claims that "Workers have the right to a remuneration commensurate to the quantity and quality of their work and in any case such as to ensure them and their families a free and dignified existence", a legal minimum wage, as already said, lacks in Italy. Therefore, wages are set by collective agreements in this country, depending on the dynamics of collective bargaining. However, collective agreements have not *erga omnes* effects in Italy, because the constitutional mechanism aimed at giving collective agreements general effects, provided by Article 39, paragraphs from 2 to 4, Italian Constitution[15], has never been implemented. For this reason, even if the high rate of Trade Union representativeness guarantees a wide collective bargaining coverage, there could be the case where the specific labour relationship may be not covered by a collective agreement, as the employer and the worker are not members of any employers organisation or Trade Union. Thus, here the wages collectively negotiated could be not applied. As a result they would be set in fact unilaterally by the employer in the individual relationship with the employee[16].

To grant all employees a minimum wage, jurisprudence uses Article 2099, paragraph 2, Italian Civil Code which lets the judge to determine the wage when it is not set by the employment contract. Now, this wage for case-law must be "fair", according to the principles of proportionality and adequacy established by Article 36 Italian Constitution, and the reference parameter to decide the "fair wage" is considered the wage set by national collective agreements of the sector at stake in the specific case, whose minimum wage is therefore extended to all employees of the sector concerned[17].

Although the Italian minimum wage system is mostly a "jurisprudential creation", there are some legal

[14] See, in particular, Art. G6 Airport Operators "specific part" of the Air Transport CBA referring to surveillance, security, control of airport infrastructures, specialized gardener, from one side, and as cleaning staff, from another one, as professional jobs included in the 5th level or, respectively, 8th level of the contractual classification of the personnel.
[15] As seen above, Paragraph 1 of Article 39 Italian Constitution declares instead the freedom of association.
[16] M. Tufo (2018), *The minimum wage in Italy during the eurozone crisis age and beyond*, in *IUSLabor*, No. 1, 209.
[17] E. Menegatti (2017), *Il salario minimo legale. Aspettative e prospettive*, Giappichelli, Torino, 66 ff.

provisions that have been developed since the beginning of the new millennium – also thanks to the European Union action - to grant a minimum level of remuneration in some sensitive sectors, especially connected to outsourcing and atypical jobs.

A first example concerns cooperative societies. According to Article 7, paragraph 4, Law Decree n. 248/2007, 31 December 2007, converted in Law No. 31/2008, 28 February 2008, cooperative societies must apply wages conditions not lower than those fixed in collective agreements signed by the most comparatively representative social partners at national level, in presence of a plurality of collective agreements of the same category. Another case regards platform work. Article 47-*quater* Legislative Decree No. 81/2015 provides that riders cannot be paid on delivery but only on hourly bases according to the minimum wage set by the collective agreements signed by the most comparatively representative social partners at national level in similar sectors. A similar disposition applies to workers transnationally posted in Italy[18] and to workers employed in the so-called third sector[19], whose wages must be not lower than those set by the Italian collective agreements concluded by the most comparatively representative Trade Unions at national level. Finally, some rules on minimum wage refer to public procurement. Article 36 Workers Statute provides that employers have to insert in procurement contracts social clauses, obliging them to apply working conditions (wages included) not lower than those set in collective agreements in force for the same category or geographical area. If this rule is violated, the public authority can revoke the benefits granted to the employer and exclude the latter from public benefits or procurement up to five years in the most serious cases. This rule has been confirmed more recently by Article 30, paragraph 4, Legislative Decree n. 50/2016 (so-called Public Procurement Code), implemented Article 18 EU Directive No. 2014/24, which binds directly the employer (without the previous insertion of a social clause in the contract) to apply the collective agreement of national and geographical level in force in the sector and in the area where the activities are performed, signed by the most comparatively social partners at national level and the collective agreements whose scope of application is strictly connected with the procurement or concession activity mainly carried out by the enterprise[20]. More recently, the new Public Procurement Code (Legislative Decree No. 36/2023) - that will be fully effective from July 2023 – reiterates the same rules[21] and provides that the contracting authority, on the one hand, excludes operators from the procedure when they seriously breach obligations established by collective agreements and, on the other hand, could not award the contract to the bidder that has presenting the most economical offer if the offer does not respect the obligations established by collective agreements[22]. Even if the mentioned rules of the old and new Public Procurement Code do not specifically concern minimum wage, their reference to collective agreements recalls all the parts of them, wages included.

The legal framework described has been adopted to fight social dumping practises facilitated by the lack of a legal minimum wage and, especially, by the absence of collective agreements with *erga omnes* effects. On the one hand, these rules aim at limiting the so-called "pirate" collective bargaining, i.e. the negotiation of collective agreements signed by not representative social partners setting working conditions (wages included) worse than those fixed by the most representative Trade Unions in a specific sector[23]. On the other hand, the legislator has tried to contrast social dumping also in the transnational dimension (for posted workers) and in the supply chain (in the context of procurement law), recalling the wages negotiated (in Italy) at national level in the specific sector by the most comparatively social partners.

As seen above (*see Section I*), similar intentions emerge from Article 203 Relaunch Decree[24]. The

[18] See Article 2, paragraph 1, let. e, and Article 4, paragraph 1, let. c, Legislative Decree No. 136/2016, implementing EU Directive No. 2014/67.
[19] See Article 16 Legislative Decree No. 117/2017.
[20] The same rule is provided in case of subcontracting (see Article 105, paragraph 14, Legislative Decree No. 50/2016).
[21] See Articles 11 and 119, paragraph 12, Legislative Decree No. 36/2023.
[22] See Articles 95 and 107 Legislative Decree No. 36/2023.
[23] This is the function of the concept of "comparative representation" used in the dispositions mentioned (see below).
[24] The anti-social dumping function of Article 203 is claimed by G. Orlandini (2020), *Clausola sociale per i lavoratori del trasporto aereo: un freno al dumping delle compagnie low cost*, in *Diritti & Lavoro Flash*, No. 4, 27.

fragmentation of industrial relations in air transport sector; the large presence of low cost carriers (LLCs) in the Italian market, which do not apply the national collective agreements but their company collective agreements; the transnationality of the sector, that facilitates social dumping through law shopping; the frequent use of outsourcing, both for flight and for ground activities; all these factors seem to justify the provision of extending to all air transport companies levels of wages not lower than those set by the national collective agreement. In particular, the issue of social dumping is faced by Article 203 by means of a mechanism similar in part to that designed by Italian procurement law provisions. Indeed, as in those cases, the demand or holding of public concessions, authorisations or certifications realised by the public authority of air transport sector is conditioned to the carriers declarations of applying levels of wages not lower than those set by the national collective agreement (for the sanctioning system *see below "The penaly system and its compliance with EU principles"*). However, here the obligation is much onerous for companies than in procurement law, as the concessions, authorisations and certifications cited are essential for the existence of air transport sector companies[25].

The relevance and the selection of the sectoral collective bargaining

As already seen, Article 203 Relaunch Decree refers to the minimum wages set by the national collective agreement negotiated by the comparatively most representative social partners at national level in the air transport sector. Therefore, identifying the collective agreement referred to in Article 203 is pivotal to define the minimum wage in the sector.

As already shown in this research project and above (*see Section I*), there is only one national collective agreement in air transport sector, divided in a General Part, signed by the Union Federations (Filt-Cgil, Fit-Cisl, Uiltrasporti and UGL – Trasporto Aereo) affiliated with the main national Union Confederations and, on the company side, by a negotiating team made up of the six sector-specific employers' organisations (Assaeroporti, Assaereo, Federcatering, Assocontrol, Assohandlers and Fairo), and six different specific parts for each sector (airport operators, carriers, handling, catering, air traffic management), negotiated by the same trade unions with the respective employer association. The General Part sets some common rules on the industrial relations system, social protections, labour market, employment relationship and social security but the working conditions related to the specific sector, wages included, are defined in the specific sectoral part. Thus, when Article 203 Relaunch Decree refers to the minimum wages of the national collective agreement of the sector, the reference is to the wages set by the specific sectoral part of the air transport sector national agreement.

The fact that there is only one national collective agreement in the air transport sector undermines the requirement of the "comparative representativeness" of the signing trade unions. This criterion has been introduced by the Italian legislator to identify the collective agreement that has the characteristic asked by the aims of the specific disposition among a plurality of collective agreement, also in a particular sector, excluding the collective agreement concluded by the less representative trade unions with dumping purposes[26]. Now, the trade unions signing the national collective agreements at stake are the Union Federations of the Confederations traditionally considered the most representative in Italy (Cgil, Cisl and Uil). However, if another national collective agreement was concluded by other parties, it would be not sure that the existing national collective agreement would be selected as a parameter of Article 203, particularly referring to carriers.

This possibility is not far from reality. The "specific part" of the Air Transport CBA is shaped on the organisational model of ITA Airways, the new Italian flagship carrier, and this seems to be one of the reasons why LCCs do not joined Air Transport CBA, preferring to conclude only their company agreements.

[25] Cfr. G. Orlandini (2020), *Clausola sociale per i lavoratori del trasporto aereo: un freno al dumping delle compagnie low cost*, cit., 28.
[26] Cfr. M. Ferraresi (2021), *Criteri di applicazione del contratto collettivo di categoria. Art. 2070,* in *Il Codice Civile. Commentario*, Giuffrè, Milan, 107-108.

In other words, the specific carriers part of the Air Transport CBA applies today only to ITA Airways - as a member of Assaereo – which was also the first to negotiate at company level a reduction of the minimum wage level set by the CBA up to the 40%[27]. Moreover, the existing Air Transport CBA has never been signed by the professional unions (ANAC and ANPAV) which are largely representative among pilots and cabin crews in all carriers, due to the reluctance of national unions confederations, and this weakens the CBA even more. But the major risk for the selection of wages set by the existing Air Transport CBA as a parameter of Article 203 Relaunch Decree stems, as already shown (*see Section I*), from the birth of the new employers association of LCCs in Italy (Blue Air, Vueling, Volotea, Norwegian, EasyJet and Ryanair), AICALF (Associazione Italiana Compagnie Aeree Low Fares). As already seen before and explained in the WP4 report[28], the new association arose in reaction to Article 203 in the perspective of negotiate a new national CA setting different minimum wages in competition with the existing Air Transport CBA, if Article 203 was implemented. Nowadays, this option seems to be no more on the table, as Article 203 is still awaiting full implementation[29]. However, the conclusion of a LCCs national collective agreement, with lower wages, is always formally possible and the exclusion of professional unions from the existing Air Transport CBA and their proximity to the LLCs industrial relations system could lead them to sign the new LLCs national collective agreement. Similarly, the negotiation of a new LLCs national collective agreement could also result in breaking the unity of the Union Confederations, Cgil, Cisl and Uil, as Cisl could decide to be a party of the new collective agreement, being already a party of the controversial Ryanair company collective agreement together with ANAC and ANPAV. As a consequence, the existing Air Transport CBA would be further undermined with its minimum wages and the aim of Article 203 would be frustrated.

In this context, the requirement of "comparative representativeness" would be not able to select the national collective agreement referred to by Article 203, as this concept does not define specifically the criteria to measure the social partners representativeness. In other words, a law on representativeness lacks in Italy and this creates uncertainties in identifying which is the real most comparatively Trade Union in presence of a plurality of collective agreements of the same level. Actually, in 2014 Confindustria, Cgil, Cisl and Uil (and from 31 July 2015 also Usb – Unione Sindacale di Base) signed the so-called *Testo Unico sulla Rappresentanza*, an agreement that sets a measuring system of the social partners representativeness in order to select those entitled to collective bargaining. After an experimental phase, in 18 January 2023 the same parties has concluded a joint declaration aimed at implementing within July 2024 the first certification of the trade unions representativeness in respect of some sectors[30]. However, the air transport sector is not mentioned among them so that even the system established by the *Testo Unico sulla Rappresentanza* cannot help, in a short time, to find a solution in searching the most comparative trade unions in the sector.

As seen above, Article 203 obliges air transport companies to apply the wages set by the Air Transport CBA, without clarifying nothing about the application of the specific sectoral parts of the national collective

[27] Cfr. P. Campanella, D. Dazzi, M. Hancock, M. Tufo (2022), *Work Package 4: Impact of COVID-19 on working conditions and industrial relations in the air transport sector in Europe. National report: Italy*, 15-16; however, see here https://www.filtcgil.it/notizie/2150-ita-airways-filt-cgil-accordo-su-retribuzioni-e-buon-risultato.html some news about the last collective agreement, signed by ITA Airways and trade unions on February 2023, aiming at increasing labour cost by 30%, substantially recovering the wage gap of ITA personnel, compared to one employed by other European air careers.

[28] Ivi, 12-13.

[29] For some first steps towards an implementation of the rule, see the Note of the National Labour Inspectorate: INL Note 21 July 2020, No. 468, http://www.lavorosi.it/fileadmin/user_upload/PRASSI_2020/inl-nota-n-468-2020-novita-conversione-decreto-rilancio.pdf, the ENAC letter on 7 August 2020, cit., as well as the ENAC Regulation 22 July 2021, No. 6, cit.

[30] See, in particular, the Joint Statement of Intent signed by Confindustria and Cgil, Cisl, Uil on 18 January 2023, http://www.lavorosi.it/fileadmin/user_upload/PRASSI_2023/inl-certificazione-rappresentanza-sindacale-.dichiarazione-congiunta-intenti-07-03-2023.pdf and the related Note of the National Labour Inspectorate: INL Note 6 March 2023, No. 1638, http://www.lavorosi.it/fileadmin/user_upload/PRASSI_2023/inl-nota-n-1638-2023-certificazione-rappresentanza-sindacale.pdf.

agreement. For this reason, Article 203 does not prevent companies to apply a specific part of the CBA different from the one related to the specific activity effectively performed. This complies with the principle of freedom of association stated in Article 39, paragraph 1, Italian Constitution, according to which the employers are free to choose which collective agreement to apply due to the *inter partes* effects of Italian collective agreements. For this reason, according to the Italian case-law, the collective agreement to be applied to the employment contract – if the employer is not a member of the employer organisation which concluded the collective agreement at stake - is identified through the research of the real parties' will. Therefore, the fact that the employer belongs to a specific professional category[31] does not have any relevance unless to determine the "fair wage" when the employer does not apply any collective agreement or the wage cannot be considered "fair" according to Article 36 Constitution[32]. This is not the case of Article 203 that refers only to the minimum wage set by the Air Transport CBA without any specification about its specific parts, so that if a company complies with one of the minimum wages set by any specific part of CBA this suffices to not breach Article 203, even if the applied part does not refer to the activity performed by the employer.

An example of the freedom to apply a specific part of the Air Transport CBA, regardless the activity effectively performed, related to the handlers Swissport. As already shown before in this research project[33], when ITA Airways was created, Alitalia activities were divided. While the carrier was acquired by ITA, handling and mantainance are today performed by Swissport and Atitech respectively. Under Alitalia, the specific carrier part of the existing national collective agreement was applied to handling. Therefore, after the transfer of handling activities to Swissport, this company would have continue to apply the specific carrier part and not the more onerous specific handling part of the national collective agreement to their employees. However, while Filt-Cgil, Fit-Cisl, Uiltrasporti and Ugl Trasporto aereo fastly negotiated with Swissport a collective agreement maintainig employment as well as the application of the specific part of the Air Transport CBA signed by Assohandlers in Fiumicino Rome Airport, the situation has been more difficult in Linate Milan Airport where the handler applied at first the less generous specific airport operator part of the Air Transport CBA signed by Assaereo. But, as a consequence of some collective actions, Swissport has recently committed itself to apply the specific part of CBA signed by Assohandlers also at Milan Linate Airport by the 1st June 2023. Indeed, generally speaking, there are no particular critical issues about the application of the existing Air Transport CBA – with their specific parts and wages – to handlers and the other sectors of air transport (if we exclude the possibility to apply the Article along the whole value chain, see above *Section I, Fighting the "wage dumping" along the value chain*). Actually, according to our interviewed, the doubts about the compliance with Article 203 regard mainly the carriers and especially the LCCs, as they do not apply the Air Transport CBA but just their own company collective agreements.

Looking for the minimum wage

Another issue linked to Article 203 is about the concept of "minimum rates of pay" contained in Article 203 itself. Indeed, as a law on minimum wage lacks in Italy, it has been again the jurisprudence to select the specific components of collective agreements wages to be considered in determining the minimum wage. The consolidated case-law refers to three fundamental voices, which are basic salary, cost of living

[31] Article 2070 Italian Civil Code claims that the professional category of an employer with the aim of identifying the applicable collective agreement is defined on the basis of the activity effectively performed by him. However, this Article was made during the fascism, when the Italian collective agreement had *erga omnes* effects while nowadays the professional category is defined by the collective agreement itself. In other words, the professional category cannot exist before the conclusion of a collective agreement which defines it, according to the freedom of association stated by Article 39 Constitution.

[32] See for example Court of Cassation 10 June 2021, No. 16376.

[33] Cfr. P. Campanella, D. Dazzi, M. Hancock, M. Tufo (2022), *Work Package 4: Impact of COVID-19 on working conditions and industrial relations in the air transport sector in Europe. National report: Italy*, cit., 20.

allowances and 13th months of pay, excluding generally additional remunerations. However, the court is always free to set the minimum wage in a measure different from that of the sectoral collective agreements, as for the jurisprudence the "fair wage" has to be defined case by case (so that even additional remunerations could be included in the specific case), depending on the social and economic context where the worker is placed as well as the dimension and the geographic location of the undertaking.

The lack of a universal concept of minimum wage and the wide discretion of the judges in defining the components of the "fair wage", due to its close relationship with the specific case, make it difficult to deny the LCCs declarations (especially by Ryanair and Wizzair) about the compliance of their wages with the minimum rates of pay set by the Air Transport CBA. Actually, according to some trade unions, there are some doubts that Ryanair and Wizzair respect that minimum level of wages because of the different system of calculation of wages used by LLCs and ITA Airways. On the one side, the Air Transport CBA provides that wages grow not only depending on seniority (with a range from 0 to 24) but also on flight hours performed by cabin crews and pilots. In addition, wages are higher for those who work on long-haul flights than those working on short and medium-haul flights. On the other side, LLCs (especially Ryanair) company level collective agreements basic salaries are the same for all cabin crews and pilots, being calculated according to a flat rate, regardless the seniority, the flight hours and the haul distance. In the light of this, although LLCs basic salaries are apparently higher than those set by the Air Transport CBA, this is true only comparing the LLCs basic salaries with the Air Transport CBA basic salaries at the level of zero for seniority and flight hours, that is clearly a hypothetical case, due to the fact that no pilots or cabin crews remain at zero flight hours after a month of work and that their seniority physiologically grows through the years.

The mechanism of Article 203 and its constitutional compliance

The mechanism of recalling "wages not lower than those set by the national collective agreement signed by the most comparatively employers and unions organisations at national level" (so-called "rinvio mobile") used by Article 203 Relaunch Decree is not new in Italian labour law. As we have seen, the Italian legislator has employed this mechanism to contrast social dumping in other sectors such as cooperative societies, platform work, transnational posting, third sector and public procurement. However, some doubts have been raised about the constitutionality of this mechanism. As already said, Article 39, paragraphs from 2 to 4, Italian Constitution establishes a system through which it would be possible to give collective agreements erga omnes effects but this disposition has never been implemented for historical reasons. Consequently, Italian collective agreements have only inter partes effects but this does not deprive Article 39, paragraphs 2-4, to operate. Therefore, any law directed to give collective agreements general effects is considered unconstitutional if does not comply with the mechanism set by Article 39 Constitution.

The legal technic of "rinvio mobile", used also by Article 203 Relaunch Decree, has been examined by Italian jurisprudence as well to assess its compliance to Article 39 Italian Constitution. In particular, in 2015 the Italian Constitutional Court[34] ruled that Article 7, paragraph 4, Legislative Decree No. 248/2007, using the mechanism concerned for workers in cooperative societies, complies with Article 39 Constitution as it does not generally extend the effects of national collective agreements signed by the most comparatively social partners at national level to all workers in the sector but recalls those collective sources only as "an external parameter" that judges have to apply to define the "fair wage" according to Article 36 Constitution and following the Italian jurisprudential system of minimum wage (*see above "The mechanism of minimum wage protection"*). After all, the Constitutional Court concluded that also the selection of the wages set by the national collective agreements signed by the most comparatively social partners at national level is justified, as these wages are considered by the Italian jurisprudence the most complying to

[34] Constitutional Court 1 January 2015, No. 51.

the principles of proportionality and adequacy expressed by Article 36 Italian Constitution[35].

Therefore, as Article 203 Relaunch Decree is inspired to Article 7, paragraph 4, Legislative Decree No. 248/2007, some scholars have no doubts on its constitutionality in respect of Article 39 Italian Constitution[36].

The penalty system and its compliance with EU principles

As already mentioned, Article 203, paragraph 3, Relaunch Decree provides a sanction mechanism inspired by public procurement law. Carriers and companies operating in Italy had to notify ENAC a declaration claiming that they apply the wages set by national collective agreements signed by the most comparatively social partners at national level under penalty of the withdrawal of the concessions, authorisations or certifications released by the Italian air transport sector public authority[37]. In the same way, according to paragraph 4 of Article 203, demands directed to obtain concessions, authorisations or certifications has to contain a declaration committing air transport companies to apply the above mentioned wages, otherwise the demand is rejected. Differently, when concessions, authorisations or certifications are not released by the Italian authority, Article 203, paragraph 5, punishes carriers or companies violating the "minimum wage" rule with a fine between 5.000 and 15.000 Euros per workers employed on the Italian territory.

Firstly, this system seems to be in compliance with Italian Constitution. As seen above, Article 203 replicates a mechanism already used in other sectors of Italian labour law – the so-called "rinvio mobile" –, declared constitutional by the Constitutional Court. This mechanism is not in contrast with the Italian administrative jurisprudence that dealt with air transport sector collective agreements in the past. It is worth recalling (*see above Section I, Field of application*) that, after the liberalisation of handling services[38] through Legislative Decree No. 18/1999, implementing Directive 96/67/EC, and before the conclusion of the existing air transport national collective agreement, ENAC tried to impose (also by means of a specific regulation) the application of the airport operators national collective agreement signed by Assoaeroporti instead of the carriers national collective agreement signed by Assaereo under penalty of withdrawing or refusing to release public certifications necessary to exercise handling activities. The administrative courts stated that the imposition was against the freedom of association and especially of collective bargaining provided by Article 39 Constitution, as ENAC was a foreign entity in respect of industrial relations where only social partners through collective bargaining could find the balance between the employers and the employees needs. For this reason, ENAC could not impose the application of a specific collective bargaining and handlers were free to apply the national collective agreement they prefer. In other words, the sanctioning system established by ENAC was (and would be also today) against Article 39 Constitution[39]. But the administrative jurisprudence is not in conflict with the sanctioning system designed by Article 203 Relaunch Decree. Indeed, as already mentioned, Article 203 does not impose the application of the (whole) national collective agreement, giving it erga omnes effects, but indicates to the judge only the parameter to assess if the wage agreed by the parties in the specific case is "fair" according to Article 36 Constitution. In this sense, the freedom of air transport companies, and especially handlers, of applying a collective agreement different than the national signed by the comparatively most representative social partners at national level is not touched, as long as the wages set by this specific contract are not lower than those

[35] See for example Court of Cassation 4 August 2014, No. 17583 recalled by Constitutional Court No. 51/2015.
[36] G. Orlandini (2020), *Clausola sociale per i lavoratori del trasporto aereo: un freno al dumping delle compagnie low cost*, cit., 27.
[37] See again the ENAC letter on 7 August 2020, cit.
[38] The free access to the handling market regards airports with a high traffic of passengers and goods, according to the requirements set by Article 4 Legislative Decree No. 18/1999.
[39] Cons. Stato, VI section, 8 June 2009, No. 3489, cit.; T.A.R. Lazio, III section - Rome, 9 December 2012, No. 1295, cit.; T.A.R. Lazio, 30 January 2012, No. 982, cit.; T.A.R. Lombardia, IV section – Milan, 7 May 2008, No. 1329, cit.

negotiated in the collective agreement referred to by Article 203[40].

Scholars have faced the possible non-compliance of the mechanism of Article 203 Relaunch Decree (also concerning its sanctions regime) with EU principles, with particular regard to Article 56 TFEU on the freedom to provide services in the EU, developed especially in the field of transnational posting of workers. According to Article 3 Directive 96/71 employers must guarantee posted workers "the minimum rates of pay" set by law, regulation or administrative provision, and/or by collective agreements or arbitration awards with *erga omnes* effects. The EU Court of Justice has interpreted this disposition in a "minimalist"[41] way, excluding from the notion of "minimum rates of pay" the wages set by Social Partners through non-universally applicable collective agreements[42]. In other words, obliging a foreign company to apply the wages set by *inter partes* collective agreements, like those concluded in Italy, to workers posted in Italy, would be against Article 56 TFEU, on which the Directive 96/71 is based[43]. On this basis, even a disposition, such as Article 203, binding foreign companies to apply the wages set by Italian collective agreements of air transport sector without *erga omnes* effects could not comply with the EU principles mentioned.

However, some reasons lead to exclude the violation of EU legislation by Article 203.

Firstly, the more recent Directives on the award of concession contracts (No. 2014/23) and on public procurement (No. 2014/24) claim that "Member States shall take appropriate measures to ensure that in the performance of concession contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by [...] collective agreements [...]"[44]. These dispositions seem to be favourable to "save" national sources – collective agreements with *inter partes* effects included – in respect of EU legislation[45]. Indeed, thanks to this principle and as already seen, Article 30, paragraph 4, Legislative Decree No. 50/2016 on public procurement contracts (implementing Article 18 Directive 2014/24) binds companies to apply the collective agreement of national and geographical level in force in the sector and in the area where the activities are performed signed by the most comparatively social partners at national level and the collective agreements whose scope of application is strictly connected with the procurement or concession activity mainly carried out by the enterprise. Since this Article has set a more onerous obligation on companies than Article 203, namely the application of the whole collective agreement and not only its wages, Article 203 would be undoubtedly in compliance with EU legislation, as Article 30 Legislative Decree No. 50/2016 implements EU law. As a consequence the provision of heavy sanctions in Article 203, such as the withdrawal or the denial of authorisations, concessions and certifications by ENAC, does not lead to doubts about the compliance of Article 203 with EU law. After all, as seen above, also procurement law provides the same sanctions when procurement contracts do not include a social clause obliging the economic operator to apply working conditions (wages included) not lower than those set in collective agreements in force for the same category or geographical area[46] and similar sanctions were also applied by the administrative jurisprudence in case of violation of Article 30, paragraph 4, Public Procurement Code. Moreover, this thesis is confirmed by the new Public Procurement Code above mentioned (that incorporates the previous jurisprudencial solution at this regard), according to which the contracting authority, on the one hand, excludes operators from the procedure when they seriously breach obligations established by collective agreements and, on the other

[40] The opposing view is claimed by Demetra Centro Studi (2020), *L'Articolo 203 del cd. "Decreto Rilancio" in materia di Trattamento economico minimo per il personale del trasporto aereo*, cit., 5-6.
[41] G. Orlandini (2008), *Autonomia collettiva e libertà economiche: alla ricerca dell'equilibrio perduto in un mercato aperto e in libera concorrenza*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, No. 2, 249.
[42] C-346/06, Rüffert, 3 April 2008; C-319/06 Commission v. Luxembourg, 19 June 2008; C-341/05, Laval, 18 December 2007.
[43] F. Borgogelli (2016), *Appalti pubblici e dumping salariale: un caso di subordinazione dell'autonomia collettiva?*, in *Lavoro e diritto*, No. 4, 990.
[44] See Articles 30, paragraph 3, and 18, paragraph 3, respectively.
[45] F. Borgogelli (2016), *Appalti pubblici e dumping salariale: un caso di subordinazione dell'autonomia collettiva?*, cit., 991.
[46] Article 36 Workers' Statute.

hand, could not award the contract to the bidder that has presenting the most economical offer if the offer does not respect the obligations established by collective agreements[47].

However, scholars recommend to adopt a more cautious approach because it is not clear the scope of the 2014 Directive mentioned and this raises doubts about the compliance of Italian procurement law itself with EU legislation[48]. In any case, this reasoning about the possible application of Italian collective agreements (with their wages) to foreign companies could be not invoked speaking of the air transport sector, at least with reference to Directive 2014/23, if this act is read verbatim, as it does not explicitly apply "to concessions for air transport services based on the granting of an operating licence within the meaning of Regulation (EC) No. 1008/2008"[49].

Secondly, Article 203 is not considered against the EU principles of proportionality and discrimination. Indeed, the obligation of applying the "minimum wages" set by the "leader" national collective agreement is extended to all carriers and companies in the whole sector, without distinctions, so that there could be not different (and less favourable) treatments among them. After all, according to the ECJ, the proportionality principle is violated when the rates of pay imposed is higher than the minimum generally applied in the specific sector[50]. But Article 203 requires the application of the minimum wages themselves practised in air transport sector, therefore it would comply with EU law, as it appear to be justified in view of protecting workers[51].

The third reason which lead to consider the mechanism of Article 203 Relaunch Decree complied with EU legislation is the fact that the ECJ jurisprudence recalled above is about posting of workers. Now, Article 203 does not refer to posting, as workers of air transport sector (flight crew included) involved by Article 203 have to be considered permanently employed in Italy due to the ECJ decisions on the criteria of applicable law to air transport sector employment, according to the "home base" concept, recalled above (*Introduction*)[52]. As a consequence, wages could be not lower than those set by those determined by national collective agreements signed by the comparatively most representative social partners at national level because the only applicable law would be the Italian.

From another point of view, it is interesting to note that, according to Article 203, paragraph 6, Relaunch Decree, the amount of money paid by foreign air transport companies as fines for the violation of Article 203 itself are allocated to the Solidarity Fund of the Air Transport Sector (*Fondo di Solidarietà per il Trasporto Aereo*) (FSTA) in the percentage of 80 and to ENAC activities for the remaining 20%. As already explained during this research project[53], the FSTA is a social shock absorber aimed at granting workers of air transport sector supplementary measures when the activity is reduced or suspended or when their contracts are terminated, supplementing the wage supports already granted to them for these reasons. This social shock absorber is financed partly by employers and partly by workers and through a municipal tax charged to each passenger ("*addizionale comunale sui diritti d'imbarco di passeggeri sulle aeromobili*"), whose contribution to the Fund was however reduced to 50% in 2019, until its repeal from 2020. Due to the crisis of the sector during the pandemic, related to the reduction of air transports, Article 204 Relaunch Decree recovered the transfer of 50% of the tax to FSTA from 1 July 2021. In this sense and following a systematic interpretation, the provision of Article 203, paragraph 6, Relaunch Decree seems to be related

[47] See Articles 95 and 107 Legislative Decree No. 36/2023.
[48] G. Orlandini (2020), *Clausola sociale per i lavoratori del trasporto aereo: un freno al dumping delle compagnie low cost*, cit., 28.
[49] Article 10, paragraph 3, Directive 2014/23. Orlandini (2020), *Clausola sociale per i lavoratori del trasporto aereo: un freno al dumping delle compagnie low cost*, cit., 28.
[50] C-115/14, RegioPost, 17 November 2015, point 74; Rüffert, points 38-40.
[51] G. Orlandini (2020), *Clausola sociale per i lavoratori del trasporto aereo: un freno al dumping delle compagnie low cost*, cit., 28.
[52] G. Orlandini (2020), *Clausola sociale per i lavoratori del trasporto aereo: un freno al dumping delle compagnie low cost*, cit., 28.
[53] P. Campanella, D. Dazzi, M. Hancock, M. Tufo (2022), *Work Package 4: Impact of COVID-19 on working conditions and industrial relations in the air transport sector in Europe. National report: Italy*, cit., 9.

to Article 204, adding a financial source to FSTA with the aim of limiting the impact of the pandemic on employment levels to relaunch the sector.

Actually, a systematic interpretation of Article 203 in the context of Relaunch Decree allows also to identify a further (implicit) sanction limited to the period of the pandemic. Indeed, as already seen in our previous national report[54], in May 2020 Article 198 Relaunch Decree sets aside a fund of 130 million euros to compensate airlines excluded from the financial support provided by Article 79 Cure Italy Decree in March 2020 for damages due to Covid-19 for 2020 and of 16 million euros for 2021. In particular, only the Italian carriers (i.e. those authorised to operate by ENAC)[55] which at that time applied to their employees, as well as to third parties employees working for them, wages not lower than those set by national collective agreements signed by the most comparatively social partners at national level were allowed to access the fund[56]. In this sense, the application of these minimum wages, at the time of the pandemic, was not only pivotal for the existence of the Italian carriers, according to Article 203, but also to benefit from the State financial support. Some scholars questioned the coordination between the two Articles as if the application of those minimum wages was a condition to operate in air transport sector, Article 198 would have been useless[57]. However, these doubts are no more relevant today, due to the limited temporal effectiveness of Article 198.

Conclusion

The considerations that have been made so far show that Article 203 Relaunch decree certainly is a relevant and ambitious provision. First of all, it deals with an issue, such as that of wages, that is still crucial in the debate on the phenomenon of in-work poverty as well in the discussion about the growing unattractiveness of aviation in today's labour market[58]. Moreover, it offers a support to collective bargaining which is fundamentally consistent with the indications of the EU Directive No. 2022/2041 on minimum wage. Furthermore, the support of Article 203 to the sectoral collective bargaining at national level is in line with the most recent indications of the European Commission on the strengthening of the social dialogue also through a central role of the Member States. From this side, Article 203 could be a good example to take into consideration in order to develop some final recommendations that aim at strengthening the protections of air transport workers by supporting social dialogue. The sanctioning mechanism provided for by Art. 203 is also of some interest due to the fact that it links the penalties, resulting from the violation of its rules, to the financing of the wage fund for air transport sector which already had a certain relevance in pandemic economic crisis.

Nonetheless, Article 203 is a rule that is still waiting its full implementation. This fact is certainly a result of a political choice after the fall of the so called Conte 2 Government, as shown by the long silence of the public institutions regarding the request for implementation of the rule during the recent strikes by flight personnel of Filt-Cgil and Uiltucs-Uil[59]. It is equally certain, however, that the ineffectiveness of Article 203 is also the effect of its lexical ambiguity and technical imperfection.

From a subjective point of view, the main problem of the rule deals with its field of application, that should cover the entire transport value chain and its personnel, but reasonably leaving out some of its

[54] P. Campanella, D. Dazzi, M. Hancock, M. Tufo (2022), *Work Package 4: Impact of COVID-19 on working conditions and industrial relations in the air transport sector in Europe. National report: Italy* cit., 4.
[55] Therefore with the exclusion of foreign air carriers.
[56] Mascolo (2020), *The impact on the Air Transport of the Provisions of Italian Law Decrees No. 34/2020 and No. 10 4/2020*, in *The Aviation & Space Journal*, No. 3, 16.
[57] G. Orlandini (2020), *Clausola sociale per i lavoratori del trasporto aereo: un freno al dumping delle compagnie low cost*, cit., 29.
[58] About this issue, see also ILO (2023), *Towards a Green, Substainable and Inclusive Recovery for the Civil Aviation Sector*, cit., 29.
[59] However, about a first attempt of implementing a joint discussion about Art. 203 between ENAC and unions, see the news reported in https://www.filtcgil.it/aria/104-tutte-le-news-trasporto-aereo.html?page=8.

extreme offshoots. From an objective point of view, the principal issue is about the assessment of compliance with the principle of minimum wage, which should take into consideration criteria aimed at guaranteeing amounts not lower than those of the leader collective agreement, but without sacrificing employers' union freedom in the sector. On both points it would be important to take decisive steps forward. In fact, the current decision not to implement Article 203 cannot exclude its effectiveness in absolute terms, and today's situation could turn into a "boomerang" if one or more workers asked the judge for its application.

It is worth noting that much could be done by industrial relations in facilitating the implementation of the rule. In the field of the sectoral collective bargaining at national level, social partners could firstly try to identify more precisely the borders of the value chain, eventually updating the job profiles included in the sector (with a particular attention, for instance, to the job classification of personnel employed in airports); then they could find some useful criteria to compare the minimum wage of the (leader) Air Transport CBA and one provided for in different collective agreements in the sector (also at company level). Finally, in a more general dimension, social partners could be also part of a tripartite social dialogue with public institutions. Such a profitable dialogue could be stimulated by the Government itself, considering that it is precisely the mutual support between the law and collective bargaining the real challenge of Article 203 in order to ensure a minimum wage protection in the air transport value chain.