

Industrial Relations and Transnational Entrepreneurial Strategies: The Case of FIAT-Chrysler

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1. Introduction.

FIAT is the leading vehicle manufacturer in Italy,¹ and it is widely held view that what happens at FIAT foreshadows general developments at national level, both in the economic and the political arena, and in particular with regard to industrial relations. In support of this claim reference may be made to the conflict in 1980, when a harsh dispute that led to a 35-day strike by blue-collar workers at the Mirafiori plant (Turin) was eventually defeated thanks to the support given to the management by the white-collar employees. The issue at stake at that time was collective redundancy, but the historical significance of the event goes far beyond that particular issue. The events of 1980 are seen as a milestone in the progressive loss of power in Italy on the part of blue-collar workers and the unions and political parties traditionally closest to their interests.

At the same time, it must be pointed out that the main features of FIAT as both an enterprise and an employer are clearly different from those generally to be found in the Italian metalworking sector. The company is significantly larger than any other in the sector,² and the management attitude towards employees and unions has traditionally been authoritarian, in a context of cooperative, or at least pragmatic, labour relations enhanced by the limited size of the employers. Furthermore, FIAT has long been characterized by a network of strong institutional and political links. In addition to its central role in the employers' association, Confindustria, which in recent times has been governed twice by a FIAT chairman (Gianni Agnelli in 1974-76, and Luca Cordero di Montezemolo in 2004-2008), since its foundation in 1899 the company has always been associated with politics and government, irrespective of the political party in power. This is due to the fact that FIAT is the main private-sector employer in Italy, and is thus considered a strategic national asset, influencing industrial and transport policies and the allocation of public funding. This relationship is symbolized by the appointment of two FIAT chairmen as Senators (Giovanni Agnelli in the 1920s and his grandson, Gianni Agnelli, in the 1990s), and the appointment of other members of the Agnelli family, the main shareholders, to public office (Susanna Agnelli served as Minister of Foreign Affairs in 1995-96).

The current interest in FIAT's affairs coincides with a major breach in the company tradition. With the onset of the economic downturn, the Agnelli family stepped aside from their leading role in management, and the close relationship between the national interest and FIAT also began to loosen at the initiative of the new Italo-Canadian CEO, Sergio Marchionne. Marchionne made it clear that if FIAT was to survive the global crisis, it had to become a global player, and more particularly one of the six world-class manufacturers capable of producing and selling six million vehicles per year. For this reason, a profound reorganization of internal governance and productive processes was needed, along with a strategic alliance with other car manufacturers around the world. The implication of this strategy was that FIAT could no longer tie its own interests with those of its home country, unless all the players involved (employees, trade unions, the Government and the employers' association itself)

1 According to 2010 data, FIAT Group employs 199,924 employees worldwide, of whom 81,353 in Italy, 47,080 in the rest of Europe, 51,584 in Latin America and 11,423 in North America. See www.fiatspa.com/it-IT/sustainability/social_responsibility/persona/dipendenti_cifre/Pages/default.aspx, consulted on 4 February 2012.

2 98% of Italian metalworking companies employ fewer than 200 workers. See F. Carinci, Introduzione, in F. Carinci (ed.), *Da Pomigliano a Mirafiori: la cronaca si fa storia*, Ippsoa-Kluwer, Milan, 2011, XXI.

were prepared to comply with the company's requirements. Thus, in the public discourse of the CEO, the exit option, i.e. the scenario of FIAT moving its plants to sites with lower labour costs in Eastern Europe or elsewhere, became feasible.³ The joint venture with the US manufacturer Chrysler in 2009, which, after the acquisition of a majority share by FIAT, should be considered to be a merger, marks the achievement of the status of global player by the company (hereinafter, FIAT-Chrysler, or the Group). This is also what captures the attention of the legal and IR scholars, because of the major challenge for the foundations of the Italian industrial relations system and its legal framework.

The company's expansion strategy has been associated with a major rethinking of both productive processes and managerial practices, with an impact on Italian labour practices that has been much greater than in the other countries where FIAT-Chrysler operates.

From the perspective of the productive process, a new system was introduced embodying the principles of World Class Manufacturing (WCM). This system relies on two main conditions: the intensive use of assembly lines, that are required to reach saturation point, and absolute managerial control of the means of production, including the labour force. This means that the employer needs to prevent or minimize the effects of any interruption of production due to employee conduct (from sick leave and absenteeism to strikes), and hence to ensure the enforceability of the provisions of collective bargaining aimed at discouraging any opportunistic behaviour on the part of the employees.

It has been argued that such a productive model requires an attitude on the part of the workforce that goes beyond the common cooperative approach. Indeed, the strategic role assigned to any employee in implementing the different stages of production requires a complete identification of the workers' interests with those of the company. Such a revitalization of the "institutionalist" conception of the enterprise⁴ goes hand-in-hand with a process, rooted in globalization, in which corporate strategies on the part of MNCs tend to become self-referential, i.e. independent from the economic and regulatory constraints of the country in which they operate. This leads to the establishment of several parallel "organization-based employment systems", each incorporating its own corporate values and goals, challenging the traditional reliance on shared concepts of collective interest and solidarity among employees working in different companies.⁵

In terms of managerial practices, the establishment of a single production model throughout the Group leads to a standardization of the production process that makes the performance of various plants more comparable, in line with earlier periods of internationalization in the automotive sector.⁶ This enables management to make "coercive comparisons" in which production sites are benchmarked and played off against each other, making the threat of disinvestment a concrete one and placing pressure on employees to make concessions.

This element seemed clear in the public discourse that accompanied the reorganization of

3 See Marchionne, è giallo sul futuro Fiat. "Via dall'Italia? Vendiamo ovunque", *La Repubblica*, 2 December 2011; Fiat Industrial Considers Move to US, *Wall Street Journal*, 5 December 2011.

4 By virtue of the linkage between quality, competitiveness and income growth required by World Class Manufacturing: see V. Bavaro, Rassegna giuridico-sindacale sulla vertenza Fiat e le relazioni industriali in Italia, *Giornale di Diritto del Lavoro e Relazioni Industriali*, 2011, 2, 313.

5 E. Ales, Dal "caso FIAT" al "caso Italia". Il diritto del lavoro "di prossimità", le sue scaturigini e i suoi limiti costituzionali, WP C.S.D.L.E. "Massimo D'Antona".IT – 134/2011. In a similar vein S. Sciarra, Notions of Solidarity in Times of Economic Uncertainty, *Industrial Law Journal* (2010) 39 (3): 223-243.

6 I. Greer, M. Hauptmeier, Political Entrepreneurs and Co-Managers: Labour Transnationalism at Four Multinational Auto Companies, *British Journal of Industrial Relations* 46: 1 March 2008, 76-97.

FIAT-Chrysler plants in Italy. Indeed, several commentators have argued that whereas the productive strategy for the Italian plants (advertised as “Fabbrica Italia”) has never been made clear by the Group’s management, it has repeatedly been claimed that the plants, as well as the headquarters (“the brain” to use the jargon of the mass media), would have been moved elsewhere in the event of failure to reorganize production sites.⁷

Such a bold attitude on the part of management, along with the information asymmetries on the economic strategies of the Group (penalizing the employee side) are probably the reason for the long duration and the problematic nature of the collective bargaining carried out in Italy in relation to the new contractual arrangements proposed by the management in return for a substantial investment plan. Whereas on the management side a take-it-or-leave-it approach was adopted, which according to some analysts may have infringed ILO principles on multinational enterprises,⁸ on the employee side conflict broke out not only between management and the unions, but above all among the unions themselves. In fact, the unions adopted two contrasting approaches: on the one hand a “pragmatic” attitude, embodied by FIM, UILM, UGL and FISMIC, aimed at accepting a share-the-pain deal in order to achieve continuity of employment in the Italian plants. On the other hand, a more intransigent attitude, adopted by FIOM (currently the main union in the sector on the basis of the number of union members), which stated that it was unwilling to negotiate the concession of rights supposedly based on constitutional grounds. The outcome has been that collective bargaining has focused more on the identity and the power relations of the players involved than on the concrete issues at stake for workers.⁹

A central role in the negotiations has been played by the comparison between the Italian and the American contexts, both in terms of the economic performance and the IR environment. The Group CEO made no attempt to conceal his appreciation for the efforts made by the UAW in the attempt to rescue Chrysler from bankruptcy. The concessions made on wages, the Chrysler jobs bank, supplemental employment benefits and retirement provisions, along with the acquisition of a 55% share of the company by the UAW Voluntary Employee Beneficiary Association (VEBA), both developments representing a major break in American automotive unionism,¹⁰ were presented by Marchionne to their Italian counterparts and to the Italian public as evidence of the willingness of American employees to join forces with the employer in a mutual challenge in the global market, and to play the role of a reliable and responsible partner with the primary aim of producing and earning rather than thinking about

7 A. Perulli, Delocalizzazione produttiva e relazioni industriali nella globalizzazione. Note a margine del caso Fiat, *Lavoro e Diritto*, 2/2011, 343; S. Sciarra, Automotive e altro: cosa sta cambiando nella contrattazione collettiva nazionale e transnazionale, *Giornale di Diritto del Lavoro e Relazioni Industriali*, 2011, 2, 345.

8 See in particular D. Gottardi, La Fiat, una multinazionale all’assalto delle regole del proprio paese, *Lavoro e Diritto*, 2/2011, 381, with reference to paragraph 53 of the 2006 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, where it is stated: “Multinational enterprises, in the context of bona fide negotiations with the workers’ representatives on conditions of employment, or while workers are exercising the right to organize, should not threaten to utilize a capacity to transfer the whole or part of an operating unit from the country concerned in order to influence unfairly those negotiations or to hinder the exercise of the right to organize; nor should they transfer workers from affiliates in foreign countries with a view to undermining bona fide negotiations with the workers’ representatives or the workers’ exercise of their right to organize”.

9 G.P. Cella, Pomigliano e Mirafiori: incertezze e “fallimenti” nelle culture sindacali, *Giornale di Diritto del Lavoro e Relazioni Industriali*, 2011, 1, 103.

10 G. Berta, *Fiat-Chrysler e la deriva dell’Italia industriale*, Il Mulino, Bologna, 2011.

income distribution.

Along with the better economic outcomes achieved by the Group in the USA, this sharpened the bargaining process in Italy, leading some commentators to argue that an “Americanization” of the Italian business environment and industrial relations was in sight as the only way that could persuade management not to leave the home country.¹¹ Such a peremptory analysis has been rejected on technical grounds by the majority of Italian labour lawyers and IR scholars. In this vein, apart from recalling Sir Otto Kahn-Freund’s lessons about the misuses of comparison in legal research, it has been pointed out that many factors distinguish the Italian experience in the FIAT-Chrysler restructuring from the American case.

First of all, the demands put forward by the Group to the unions as well as the role intended for the unions following the reorganization seem to differ in the two cases, as explained in the next section. Second, the role played by the Government has been different. Whereas the Obama administration, by means of a substantial loan to Chrysler that was eventually repaid, acted as a concerned stakeholder investing much of its political capital in the success of Marchionne’s attempt to turn the company round, the Berlusconi administration was initially silent, pursuing a neo-liberal abstentionist approach avoiding any intervention, either by questioning the management about the details of the investment plan, or by facilitating the bargaining process in order to help the parties reach an inclusive agreement.¹² Only at a later stage, once the collective agreement was signed, did the Italian Government intervene, at the request of the Group, in order to enhance its enforceability by granting legal recognition for the agreement, thus taking a subordinate stance towards the company.

However, aside from any consideration about a supposed “Americanization” of IR processes, the Group’s transnational strategy has brought considerable pressure to bear on Italian industrial relations. In the following we investigate the extent to which the FIAT-Chrysler experience represents a move away from the Italian tradition, and particularly whether it represents a structural change in the national industrial relations paradigm resulting from globalization and transnational corporate strategies.

In addition, we investigate whether this experience might lay the ground for the development of a response to corporate strategies in the form of labour transnationalism, which, as some have critically argued,¹³ has so far been absent from the scenario despite the existence within the Group of transnational bodies, such as the European Works Council.

2. The FIAT-Chrysler case in the Italian context

In 2009, faced with the need to undertake a restructuring programme for the Italian production sites, FIAT offered the labour unions a deal that consisted of a few non-negotiable conditions: on the one hand the company would make a commitment to investing in an upgrade of the plants, thereby safeguarding continuity of employment; on the other hand, a plant-specific regulation of certain issues would be adopted concerning work organization (such as overtime, shifts, and sick leave) with a commitment on the part of the employees and unions to implement the commitments undertaken, regardless of any dissent on specific

11 G. Berta, *Fiat-Chrysler e la deriva dell’Italia industriale*, Il Mulino, Bologna, 2011.

12 Although it continued to provide public funding in the form of income support (Cassa integrazione guadagni) whilst production was interrupted.

13 S. Sciarra, Uno sguardo oltre la Fiat. Aspetti nazionali e transnazionali nella contrattazione collettiva della crisi, *Rivista Italiana di Diritto del Lavoro*, 2011, III, 169.

points of the agreement or on the way the agreement was implemented. This commitment was to be protected by providing management with the instruments that would guarantee the enforcement of company's rights in the case of breach of the agreement.

The management requests, consistent with the aim of organizing the plant on the basis of the principles of World Class Manufacturing, were presented as a response to several anomalies that had been observed in certain plants, such as the site of Pomigliano d'Arco (in southern Italy), mainly to do with absenteeism.¹⁴

A better understanding of the impact of these requests on bargaining at company level, as well as the side-effects for the national system, gives rise to the need for clarification of the main legal and procedural features of Italian industrial relations.

The first of these features is the pluralistic nature of employee representation. This means that, on the grounds of the constitutional right to trade union freedom (Article 39, par. 1), different unions can coexist in the same bargaining unit (at national, sectoral, local or plant level). The right to trade union freedom consists of two pillars: the positive freedom (i.e. the right to organize and/or join a union) and the negative freedom (i.e. the right of an employee to refuse the application of a collective agreement in cases in which he or she is not a member of a signatory union, and more generally his or her right not to be discriminated against on the grounds of his or her refusal to support or join a union).

This pluralistic scenario was established in the 1950s, in the years immediately after the adoption of the Italian Constitution, and was consolidated over the years thanks to two factors: the behaviour of the social partners and the support provided to them by the legal system.

The social partners, leaving aside the differences between them,¹⁵ have normally acted as a single player vis-à-vis their bargaining counterparts, at least as far as the main national unions were concerned (i.e. those belonging to the three confederations CGIL, CISL and UIL, together representing the absolute majority of the workforce in every sector). In this way, it was possible to prevent disagreements on the employee front that might jeopardize the effectiveness of negotiations.

The overall framework supported the balance struck by the social partners by means of legislation that dates back to the 1970s, the high-water mark of which was the *Statuto dei lavoratori* or Workers' Statute.¹⁶ In a nutshell, it granted the above-mentioned trade unions a privileged form of representation in the workplace (such as the right to call for an employee consultation in the form of a ballot, or to receive financial contributions from the workers), on the grounds of their undisputed representativeness, that was taken as an established fact. These rights were meant to enable the three confederations to act as bargaining agents at the workplace (i.e. company or plant) level, and in this way a sort of single channel of representation was established linking two bargaining levels: the national/sectoral and the

14 It has been argued that in 2009 the Pomigliano d'Arco plant had been used at 14% of its capacity, whereas the Mirafiori plant, located in northern Italy, utilised 64% of capacity; the Melfi plant (southern Italy) 65% and the Tichy plant (Poland) 98%. See R. De Luca Tamajo, *Accordo di Pomigliano e criticità del sistema di relazioni industriali italiane*, *Rivista Italiana di Diritto del Lavoro*, 2010, I, 797.

15 Which have to do with their different political backgrounds and their ideological vision of trade unionism, like in many other systems belonging to the "Mediterranean model". See T. Gualtieri, *Le relazioni industriali e il modello mediterraneo*, *Quaderni di Rassegna Sindacale*, 2011, 73.

16 Legislation drafted by the late Gino Giugni (probably the most influential labour law scholar in the post-war period) under the influence of the American experience dating back to the New Deal era.

company level.¹⁷

This consideration leads on to an examination of the second main feature of the Italian system: the structure of collective bargaining. Traditionally, it has relied on the assumption of the central role played by the national level, differentiated by sector or industry. This was a way of promoting solidarity and providing a defence against unfair competition (that was particularly important for employers, due to the limited size of Italian companies), by means of standardized working conditions in each sector.

This system was supported by the legal framework following the enactment of the Workers' Statute. The unions entitled to special representation rights pursuant to that legislation were characterized by their affiliation to an intersectoral body (confederation), in addition to operating mainly at national level. Hence the support provided to them by the State was meant to encourage the establishment of a union movement based on solidarity that operated at the primacy of national bargaining at sectoral or industry level, within an intersectoral framework dedicated to the regulation of issues deemed to be of common interest to the workforce as a whole.

According to this pattern, decentralized bargaining at company level was still allowed, though the limited size of Italian companies did not favour its proliferation. Nonetheless, the system was designed in a way that tried to facilitate coordinated bargaining, particularly because of the single channel of representation, that implied the affiliation of the signatory parties at the two levels to the same unions. This coordination was rooted in the prevalence of the national agreement in the bargaining hierarchy, and its power to delineate the scope of company agreements.

Some scholars argue that the prevalence of national agreements is required on constitutional grounds,¹⁸ but apart from this typically domestic dispute, what is commonly considered as a necessary feature of the Italian system of collective bargaining is the existence of a set of criteria for the coordination of the two levels.¹⁹

This matter is linked with the third main feature of the Italian industrial relations system: the use of civil law for regulating the nature and legal effects of collective agreements. It may be said that collective bargaining has built its essential regulatory role upon an ambiguity: on the one hand, the assumption of a *de facto* general application of collective agreements to the entire workforce involved, be it at company or sectoral level;²⁰ on the other hand, a legal framework which, lacking any specific rule on the effect of collective agreements, implied strictly speaking that agreements should be applicable only to employees (and employers) affiliated to the signatory unions (and employer associations), by virtue of the contractual representation applicable under civil law.

The smooth functioning of the system, despite the ambiguity mentioned above, was the result of the cohesion among the main trade unions, which, as already mentioned, was supported by a general consensus among the workforce about the provisions of the agreements. Legal

17 P. Bellocchi, *Rappresentanza e diritti sindacali in azienda*, paper presented at the Congress of the Italian Labour Law and Social Security Association held in Copanello on 24-25 June 2011.

18 G. Ferraro, *L'efficacia soggettiva del contratto collettivo*, QFMB Saggi 2.VI. An opposite view has been expressed by M. Persiani, *Osservazioni sulla revisione della dottrina del diritto sindacale*, *Argomenti di Diritto del Lavoro*, 1/2011, 1.

19 Of the utmost importance for this purpose, before the most recent developments, was the intersectoral agreement signed on 23 July 1993.

20 G.F. Mancini, *Libertà sindacale e contratto collettivo "erga omnes"*, in *Rivista Trimestrale di Diritto e Procedura Civile*, 1963, 570.

scholars, who refers to this matter with the phrase “effectiveness principle”, pointed out that cohesion in itself was not enough to maintain such an equilibrium, unless two complementary conditions were met. The first one was the existence of a set of criteria for the internal coordination of collective bargaining, as described above. The second one was the existence of a “filter” which, considering the pluralism on the trade union side ensuing from the constitutional right to trade union freedom, nonetheless aimed to recognize as legitimate actors in bargaining only those unions that had an effective claim to represent the workforce.²¹ Only by means of those two conditions, it was argued, was it possible to avoid the strict application of civil law to collective bargaining, minimizing the effects of dissent within the workforce or the trade union movement.

Within this conceptual frame, an essential element for guaranteeing the right to trade union freedom was the right to strike, which, rooted in the Constitution but lacking a general legislative regulation, has traditionally been interpreted as a right granted to individual employees. This means that strikes have served as the main means by which workers and unions who did not consider themselves to be represented by the leading labour unions could express their voice.

The crisis of this system, as highlighted by the FIAT-Chrysler case, dates back to the 1990s. At that time, the need to boost competitiveness by means of more flexible and firm-specific solutions and, as some have argued, the failure of national collective bargaining to fulfill its role of promoting solidarity,²² resulted in pressure towards greater decentralization of collective bargaining, but the system did not seem prepared to respond.²³ At the same time, the effective representativeness of the actors supported by the Workers’ Statute and the successive legislation, once taken as an established fact, was called into question, with the Constitutional Court urging the legislator to identify a more reliable criterion. This led to a referendum at national level that brought about a major change in the Workers’ Statute, pursuant to which special representation rights in the workplace are now granted only to those unions that are signatories of a collective agreement that is applied in the bargaining unit.²⁴

The turning point in this crisis was the breakdown in the cohesion of the union front. Especially in the metalworking sector, the most recent bargaining rounds have seen the unions adopting divergent approaches, leading the most important of them in terms of the number of union members (FIOM) to refuse to sign the 2009 sectoral collective agreement. In this new scenario, civil law turned out to be unsuitable for governing this matter. The paradoxical effect of the FIOM opt-out was the coexistence in the metalworking sector of two equally lawful collective agreements: the 2009 agreement, binding on employees who were affiliated to the signatory parties, and the previous one, signed in 2008 by all of the

21 B. Caruso, La rappresentanza negoziale irrisolta. Il caso Fiat tra ideologia, tecnica... e cronaca, *Rivista Italiana di Diritto del Lavoro*, 2011, III, 265. In a similar vein F. Carinci, Al capezzale del sistema contrattuale: il giudice, il sindacato, il legislatore, WP C.S.D.L.E. “Massimo D’Antona”.IT-133/2011.

22 R. Del Punta, Contrattazione separata, in F. Carinci (ed.), *Da Pomigliano a Mirafiori: la cronaca si fa storia*, Ipsoa-Kluwer, Milan, 2011, 72.

23 F. Carinci, Al capezzale del sistema contrattuale: il giudice, il sindacato, il legislatore, WP C.S.D.L.E. “Massimo D’Antona”.IT-133/2011.

24 At the same time the intersectoral agreement of 23 July 1993 provided for the establishment of unitary works councils (*rappresentanza sindacale unitaria-RSU*) based upon an elective system, with the aim of enhancing the effective representativeness of these bodies.

unions, including FIOM, and still in force with regard to FIOM members. This situation gave rise to complications for employers who were required to apply different contractual arrangements in the workplace according to the union affiliation of the employee. A further result was the increase in judicial disputes, resulting in rulings that have been harshly criticized by legal scholars for the misuse, on the part of the judges, of civil law rules as well as special labour rules such as Article 28 of the Workers' Statute on "unfair labour practices".²⁵

The situation was no better as far as the decentralization of collective bargaining was concerned. In 2009 the social partners concluded an intersectoral agreement with a set of conditions that would allow collective agreements at company level to opt out of regulations adopted at national level. However, this agreement, that was later implemented separately in each sector, including the public administration, did not really undermine the central role traditionally played by the national level. On the one hand the national agreement was given the task of identifying the conditions that allowed for an opt-out; on the other hand, it was stated that the waivers stipulated at company level required approval by the signatories of the national agreement.

Furthermore, the 2009 intersectoral agreement failed to deal with the question of representativeness, i.e. the criteria for selecting the unions entitled to negotiate waivers at company level, thus leaving room for looser coordination between the two levels and giving rise to considerable uncertainty.

Finally, the agreement was not signed by the main national confederation, the CGIL, emphasising the weak legal basis for its implementation, just like all the other cases in which cohesion between the social partners had broken down.

All these elements contributed to a scenario that might be said to discourage FIAT-Chrysler from committing itself to any collective agreement. On the one hand it was not clear whether the firm-specific regulations requested by the company would meet the conditions laid down in the 2009 intersectoral agreement on opt-out clauses. On the other hand, the strong opposition by FIOM to any negotiation on the take-it-or-leave-it basis put forward by the management raised doubts about the effective enforceability, on legal grounds, of an agreement that was not signed by the most important union in terms of membership.

Management tried to test the effective consensus on the proposed agreement by means of a ballot amongst employees that was promoted by the signatory unions. However, the outcome was rather disappointing: although it was approved by the majority of employees (63.4% at Pomigliano d'Arco; 54% at Mirafiori), the number of workers voting against the proposed agreement largely exceeded the percentage of employees who were members of the only dissenting union.

Some legal scholars have argued that this disappointment is what compelled management to the drastic move it made. In fact, at the end of a troubled bargaining process, the Group decided that the only way to adopt an enforceable contractual arrangement was to terminate its affiliation to the employers' association, Confindustria.

Such an unprecedented move (considering the traditionally strong relationship between FIAT and the employers' association) was meant to cut the red tape that would have prevented management from achieving its productive goals. In fact, on the one hand the Group, no

²⁵ FIOM claimed that the application of the 2009 agreement and the refusal to apply the 2008 agreement on the part of the employer represented an unfair labour practice, and several judges upheld the claim.

longer bound to the contractual commitments undertaken on its behalf by Confindustria by virtue of the mandate implied by membership of the association, was free to adopt a company-level agreement that would not need to be harmonized with the sectoral agreement. On the other hand, thanks to the legislation in force, making the right to workplace representation conditional on the union having signed a collective agreement applicable to the bargaining unit, management succeeded in overruling the dissenting union, FIOM. As a result, since 13 December 2011 the only collective agreement in force for the Group employees has been the “specific first-level collective agreement”. This unquestionably represents a major break with the traditional patterns of Italian industrial relations, showing that Fiat-Chrysler is “no company for old men”.²⁶ Among the elements in support of this claim, the following should be highlighted:

- a) the fact of moving from the traditional sectoral or industry benchmarks to the company-level, thus overturning the common bargaining framework for collective interests;²⁷
- b) the establishment of a closed shop environment, as the agreement stipulates that the accession of other parties to the agreement is conditional on the approval of the original signatory parties;
- c) the establishment of employee representation at the workplace to be implemented by means of an electoral procedure in which only unions signing the agreement can take part;
- d) a series of clauses aimed at discouraging the exercise of the right to strike, both at individual and collective levels, as it is forbidden on constitutional grounds to deny such a right. For this purpose, the unions undertake not to call any strikes that would prevent the fulfilment of the commitments laid down in the agreement and concerning working time, overtime and other WCM-related issues linked to the achievement of production targets. Individual employees are threatened with disciplinary action in the case of breach of their contractual duties. Such a provision would seem to be redundant as it is self-evident that they have contractual duties, and as a result some scholars have argued that what it is really meant to do is threaten employees in case they intend to strike. On the other hand, it is generally assumed that it cannot apply to the right to strike since such a right cannot be a matter for negotiation by individuals in a contract.²⁸ Furthermore, cooling off and arbitration procedures are provided in cases in which collective disputes arise;
- e) cooperation between management and the workforce and employee participation are assumed as the appropriate tools for the achievement of the “common goals” consisting in “the enhancement of working conditions and the Group’s competitiveness”. This model of participation is enacted by means of a series of joint commissions or panels, that are given the task of dealing with matters such as: dispute resolution, equal opportunities, health and safety, monitoring of production and absenteeism. These panels mainly deal with information and consultation, and although they are allowed to make proposals, they have no decision-making powers.

It is a view widely held among legal scholars that the agreement is characterized by a

26 S. Sciarra, *Automotive e altro: cosa sta cambiando nella contrattazione collettiva nazionale e transnazionale*, *Giornale di Diritto del Lavoro e Relazioni Industriali*, 2011, 2, 345.

27 F. Carinci, *Al capezzale del sistema contrattuale: il giudice, il sindacato, il legislatore*, WP C.S.D.L.E. “Massimo D’Antona”.IT-133/2011.

28 R. De Luca Tamajo, *I quattro accordi collettivi del Gruppo Fiat: una prima ricognizione*, *Rivista Italiana di Diritto del Lavoro*, 2011, III, 113,

unilateral and self-referential approach. Such an approach is evident in both the bargaining process, that was based on the take-it-or-leave-it proposal put forward by the management, and in the provisions of the agreement, in which only duties on the part of the employees seem to have been taken into account. Similarly, the agreement seems to take into account only the possibility of a breach of contract by the employees,²⁹ apparently considering management commitments to be fulfilled by means of the capital investment.

The acceptance of such restrictive conditions on the part of the employees is a reflection of the balance of power favourable to the management³⁰ or perhaps cultural deficiencies on the union front.³¹ In either case, although these conditions are prompted by general factors such as globalization, they seem to be company-specific and thus not applicable beyond this specific context, with the possible exception of the Italian automotive sector.³² This exception, however, is specific to the Italian context, as the Group is by far the most important player in the sector, the remainder of which is made up of satellite companies and suppliers. This helps to explain why on 22 December 2011 a special agreement for the automotive sector was signed as a supplement to the national agreement for metalworkers, basically transposing the clauses of the FIAT Group agreement on working time.

As a result, any generalization about the supposed “Americanization” of industrial relations at FIAT-Chrysler, or even in the wider Italian context, seems to be untimely to say the least. Some elements of the agreement, such as the adoption of single-layer bargaining model at company level, alongside the closed-shop-like representational setting and the limitations on the right to strike, might point in that direction. However, as some scholars have argued, the differences between the US and the Italian contexts still seem to prevail within the Group. Evidence of this can be found in the employee participation models adopted in Italy and the US. Whereas the UAW, by means of its VEBA, has acquired a stake in the company, establishing a strong participation arrangement, the joint commission model adopted in the Italian plants represents a much weaker form of participation. Furthermore, as some have argued, the organizational model for the Italian plants appears to be somewhat authoritarian, for the reasons outlined above, thus contradicting the assumptions of WCM, the implementation of which requires a genuine commitment on the part of the employees that cannot be secured just by means of disciplinary measures and strict contractual arrangements.³³

Moreover, major differences subsist in the legal frameworks of the two countries, that seem to prevent any future assimilation between them. In this connection, the right to trade union freedom should be highlighted, as it seems to operate differently in the two contexts. The closed-shop arrangement laid down in the Italian FIAT Group agreement has been criticized for the paradoxical effect of excluding the most representative trade union (in terms of the number of members) simply on the grounds of not having signed the agreement. Although permitted by the legislation in force, such an outcome has a negative impact on the

29 More precisely, it aims make the employees responsible for interruption of the production process, either due to personal reasons or to external reasons, requiring employees to make up the lost time.

30 R. De Luca Tamajo, *Riforme (im)possibili nel diritto sindacale*, *Diritti Lavori Mercati*, 1/2011, 1.

31 G.P. Cella, Pomigliano e Mirafiori: incertezze e “fallimenti” nelle culture sindacali, *Giornale di Diritto del Lavoro e Relazioni Industriali*, 2011, 1, 103.

32 R. Salomone, *Verso un nuovo regime collettivo per l’auto?*, in F. Carinci (ed.), *Da Pomigliano a Mirafiori: la cronaca si fa storia*, Ipsoa-Kluwer, Milan, 2011,

33 B. Caruso, *La rappresentanza negoziale irrisolta. Il caso Fiat tra ideologia, tecnica... e cronaca*, *Rivista Italiana di Diritto del Lavoro*, 2011, III, 265.

constitutional right to trade union freedom, both in its positive and negative expressions.³⁴ As a result, many commentators have called for new legislation on the matter and for the Constitutional Court to overrule the law that allows such a paradoxical outcome, whereas a judicial ruling has established that the denial of trade union rights to FIOM represents an unfair labour practice.³⁵

3. Italian industrial relations beyond FIAT-Chrysler.

It has been argued that the FIAT-Chrysler experience could become the new paradigm for Italian industrial relations.³⁶ This appears to have been the view of the Berlusconi administration, when in the summer of 2011 it enacted a measure (Article 8 of Act no. 148) allowing collective agreements at decentralized level (either company or local) to waive the provisions of national agreements and even legal provisions, with the sole exception of the Constitution and international conventions.

Such decentralized agreements are applicable by law to the entire workforce, thus overcoming the legal constraints that in the past, as in the case of FIAT-Chrysler, gave rise to uncertainty over the legal enforceability of agreements that were not signed by some of the most important unions. Furthermore, the possibility of circumventing the legal and contractual frameworks is intended to meet the demand for company-specific arrangements put forward by the Group.

This measure breaks with the “effectiveness principle”, at least in the sense so far considered as the premise for the effective functioning of the system. In fact, no coordination between the central and the decentralized bargaining levels is required by this law, which on the contrary seems to overturn the traditional hierarchy between the two levels. Furthermore, the actors permitted to take part in this collective bargaining are selected on the basis of vague criteria, thus raising doubts about their ability to represent the consensus of the workforce.³⁷ The outcome seems to be a shift towards an uncoordinated system of collective bargaining,³⁸ the balance of which is left to the balance of power between the players. This kind of legislation appears to contradict the aims of the previous legislation, dating back to the Workers’ Statute, to the extent that it tends to favour a split in the union front and takes no account of the need to counterbalance the power relations between the social partners, normally favourable to the management side.

It should be pointed out that the new provision is not intended to be obligatory, leaving the social partners free to avoid using the regulatory opportunities it lays down.³⁹ Indeed, the

34 In addition to denying FIOM trade union rights at the workplace that embody positive freedom, it infringes negative freedom by discouraging the right to refuse to sign a collective agreement, since the signature is the condition for enjoying the right.

35 G. Ferraro, Il contratto collettivo dopo l’art. 8 del decreto n. 138/2011, WP C.S.D.L.E. “Massimo D’Antona”.IT-129/2011.

36 V. Bavaro, Rassegna giuridico-sindacale sulla vertenza Fiat e le relazioni industriali in Italia, *Giornale di Diritto del Lavoro e Relazioni Industriali*, 2011, 2, 313; F. Carinci, Al capezzale del sistema contrattuale: il giudice, il sindacato, il legislatore, WP C.S.D.L.E. “Massimo D’Antona”.IT-133/2011.

37 G. Ferraro, Il contratto collettivo dopo l’art. 8 del decreto n. 138/2011, WP C.S.D.L.E. “Massimo D’Antona”.IT-129/2011.

38 F. Traxler, E. Mermet, Coordination of Collective Bargaining: The Case of Europe, *Transfer*, 2003, 9: 229-246.

39 E. Ales, Dal “caso FIAT” al “caso Italia”. Il diritto del lavoro “di prossimità”, le sue scaturigini e i suoi limiti costituzionali, WP C.S.D.L.E. “Massimo D’Antona”.IT – 134/2011.

social partners seem to have chosen a different way to deal with the matters of representativeness and decentralized collective bargaining.

On 28 June 2011 an intersectoral agreement was signed between the main employers' association, Confindustria, and the three main confederations CGIL, CISL and UIL. Despite the innovations it puts forward, the agreement appears to conform more closely to the traditional patterns of the Italian system than with the above-mentioned legislation. On the one hand, collective agreements at company level are allowed to waive bargaining provisions laid down at national level, and they can be extended to cover the entire workforce concerned, but their material scope is narrow and the bargaining process is controlled by sectoral agreements, thus reaffirming the prevalent role of the national level. On the other hand, the unions entitled to operate as signatory parties are identified (more clearly than in Article 8 mentioned above) as the majority of the union representatives elected by the employees or appointed by the national unions (in this case with the subsequent approval of the workforce by means of a ballot). The outcome is a scheme in which the demand for greater decentralization is taken into account without giving up the traditional guarantees of solidarity within the workforce and the coordination of collective bargaining. In addition the case for a collective agreement not signed by all the main trade unions is taken into account, without setting aside the need to ascertain the representative status of the signatory parties. The agreement of 28 June 2011 seems to show that claims about a general extension of the FIAT-Chrysler model to the entire Italian system of industrial relations are ill-founded.⁴⁰ In fact, the system does not seem to be moving consistently towards that model. More realistically, a multi-faceted system seems to be emerging, the structure of which might differ according to the specific needs of each sector or company.

As a result, cases in which the size of the company, along with other factors such as power relations in the workplace, attitudes between management and unions, and the strength to handle dissent, allows for the establishment of a self-sufficient industrial relations system rooted in an independent company agreement, will most likely rely on Article 8, following the FIAT-Chrysler model.

On the other hand, situations where an external general framework is needed for the purpose of fair competition, or because the actors do not have the expertise for carrying out their own bargaining process, or because of further sector or company-specific reasons, will stick to the agreement of 28 June 2011, in line with the more traditional patterns of the Italian system. There is a clear trend towards a progressive diversification of the system, that will need to manage problems relating to an emerging situation where there is a split between those unions that are prepared to make concessions in the bargaining arena and others that are more intransigent. In this connection, the need for a minimal legislative framework has been pointed out, in order to provide players with a degree of certainty about the enforceability of bargaining arrangements. This minimal regulation needs to deal with two main topics: trade union representativeness and the right to strike.

With regard to representativeness, it must be underlined that in the given legal framework only a legislative provision – preferably negotiated in advance with the social partners – can lawfully allow collective agreements that are not signed by all the trade unions present in the workplace to be applicable in relation to the entire workforce. As for the right to strike, some

40 See B. Caruso, La rappresentanza negoziale irrisolta. Il caso Fiat tra ideologia, tecnica... e cronaca, *Rivista Italiana di Diritto del Lavoro*, 2011, III, 265; G.P. Cella, Pomigliano e Mirafiori: incertezze e “fallimenti” nelle culture sindacali, *Giornale di Diritto del Lavoro e Relazioni Industriali*, 2011, 1, 103.

scholars argue that by itself the legal regulation of representativeness will not work if the signatory unions and their members remain free to stop production by means of industrial action. Consequently, it is argued that the exercise of the right to strike should be made conditional upon a prior authorization by the trade unions, who as a result might negotiate (with a commitment not to call a strike) on behalf of individual employees,⁴¹ although it is disputed whether such a regulation would be acceptable on constitutional grounds.⁴² However, other scholars argue that, more than a change in regulatory provisions, a cultural change is needed if the social partners intend to maintain their role in a context where globalization seems to be shifting the balance of power towards an overwhelming supremacy of employers. On the one hand, it is argued that the unions should focus on matters related to production and competitiveness, alongside with their more traditional concerns for income distribution.⁴³ On the other hand, a change of attitude on the part of employers' associations has been advocated, in order to fill the perceived gap between the high-level negotiations between the government and social partners and the real needs and feelings of entrepreneurs.⁴⁴ In the background there are opportunities for the labour movement in the transnational bargaining arena, though in the case of FIAT-Chrysler case these opportunities have so far been disregarded.

4. Towards labour transnationalism?

Globalization is placing increasing pressure on national industrial relations and labour law systems,⁴⁵ giving rise to the need to rethink traditional paradigms and power balances between the social partners. Each transnational operation inevitably gives rise to new challenges for the traditional systems of industrial relations. The fact that the FIAT-Chrysler merger has coincided with the economic downturn has made the inconsistencies of the domestic systems of industrial relations much more evident. The Italian system has not been able to rise to all the challenges posed by international competition in the context of a European and global economy founded on the free movement of people and capital and without state aid. In order to meet these challenges the national system must be effective for business and democratically representative for workers. The Italian system, like other national systems, needs to reconcile these two objectives.⁴⁶

Legal inconsistencies in the national system of labour law and industrial relations, in particular in relation to the scope of application of collective agreements, relations between the different levels of collective bargaining, and the ill-defined legal framework of strike regulation and cooling off periods have deprived trade unions of important bargaining

41 R. Del Punta, Contrattazione separata, in F. Carinci (ed.), *Da Pomigliano a Mirafiori: la cronaca si fa storia*, Ipsoa-Kluwer, Milan, 2011, 72.

42 B. Caruso, La rappresentanza negoziale irrisolta. Il caso Fiat tra ideologia, tecnica... e cronaca, *Rivista Italiana di Diritto del Lavoro*, 2011, III, 265.

43 F. Liso, Appunti su alcuni profili giuridici delle recenti vicende Fiat, *Giornale di Diritto del Lavoro e Relazioni Industriali*, 2011, 2, 331.

44 G. Berta, *Fiat-Chrysler e la deriva dell'Italia industriale*, Il Mulino, Bologna, 2011.

45 E. Ales, Dal "caso FIAT" al "caso Italia". Il diritto del lavoro "di prossimità", le sue scaturigini e i suoi limiti costituzionali, WP C.S.D.L.E. "Massimo D'Antona".IT – 134/2011.

46 M. Pallini, R. Pedersini, L. Solari, Mirafiori e dintorni: cosa cambia per l'Italia?, DSLW Working Paper 2/2011.

instruments.⁴⁷ On the other hand, the lack of solidarity at national level has further undermined their position in the face of FIAT's threats to transfer production and even the company headquarters abroad. It is therefore not surprising that FIAT management has taken advantage of this situation. In order to gain more freedom of manoeuvre in management decisions, FIAT decided to sever its long-standing connection with the employers's association, Confindustria, and adopt enterprise-level bargaining, enabling it to set aside certain conditions laid down in the national collective agreement in its production facilities. The exclusion of the dissenting unions from plant-level representation further reinforced the management position.

In this connection the question posed by many scholars and lawyers is whether this operation might lead to the transformation of Italian industrial relations. The question arises as to whether it might lead to the progressive Americanization of national industrial relations with the establishment of US-style labour/management relations in which the interests of labour are aligned with those of management. Others ask whether it might lead to the Germanization of the national system due to the opt-out clauses institutionalized by the agreement of January 2009. It seems that none of these scenarios will be realized. In relation to the possible Americanization, as mentioned above, the role of labour unions and the government and their involvement in the Fiat administration is very different in Italy from the USA. As for the second scenario, it could be argued that opting out in the Italian context is very different from opting out in the German context, where worker participation mechanisms (in particular, *Mitbestimmung*) are clearly regulated by law. FIAT is highly unlikely to promote such a model as it would be in contrast with his primary aim of implementing unilateral management-oriented strategies.

However, the future development of the newly created multinational remains an open question. There are a number of studies dedicated to the problems of relations between American and European systems.⁴⁸ It is self-evident that each merger is a particular process depending on a number of factors. In other words it is a process in which certain factors, at first glance insignificant, may play a crucial role. As a result it is difficult to forecast the final outcome of the merger process. The DaimlerChrysler merger led to some extent to the Germanization of industrial relations in the new company leading to the failure of the entire process.⁴⁹ The final point regarding this type of failure relates not only to the different industrial relations structures, but also to the different cultural values and human resource

⁴⁷ M. Pallini, R. Pedersini, L. Solari, Mirafiori e dintorni: cosa cambia per l'Italia?, DSLW WORKING PAPER 2/2011.

⁴⁸ J. Zeitlin, Americanization and Its Limits: Reworking US Technology and Management in Postwar Europe and Japan, in J. Zeitlin and G. Herrigel (eds.), *Americanization and Its Limits: Reworking US Technology and Management in Postwar Europe and Japan* (Oxford University Press, 2000), P. Marginson, G. Meardi, Europeanising or Americanising? EU Enlargement and the FDI Channel of Industrial Relations Transfer, paper Presented at the Second Pan-European Conference Standing Group on EU Politics, Paper No. 140, Bologna, 24-26 June 2004.

⁴⁹ P. Pedersen, Intercultural communication: Achieving acculturation in mergers and acquisitions with special reference to the DaimlerChrysler merger and the current merger between Chrysler and Fiat (thesis), Department of Language and Business Communication, Aarhus School of Business, Aarhus University, Denmark, 2010.

management approaches.⁵⁰ These differences, often underestimated, may in practice result in the failure of transnational mergers and acquisitions.⁵¹ It is significant that “soft areas of human resource factor regulation” have been disregarded for a long time in favour of merely financial and strategic aspects, but they are now attracting increasing attention. As a result there is no general rule and it is impossible to predict whether a particular transnational merger will be successful or to identify in advance the most effective integration strategy.⁵² However, careful consideration of such differences and potential areas of conflict at the pre-merger stage as well as an examination of the outcomes of previous mergers of other global actors might be useful in planning merger strategies, adapting them to the specific needs of particular cases.

In our opinion, at least at present, in the case of Fiat Chrysler it is too soon to talk of an Americanization or Germanization of the system of the Italian industrial relations that has developed over the post-war period. Rather, it is possible to envisage the development of a sort of a stateless hybrid multinational structure which nevertheless will not remain isolated from the political and economic influence of the states where it operates. In the case of Italy, in particular it will depend on the response of the unions and on whether it is possible to return to a scenario of labour union solidarity. In conclusion, the FIAT Chrysler merger seems unlikely to transform industrial relations in Italy. Rather it seems likely to lead to a transitional industrial relations scenario within the boundaries of the existing structures in a historical phase characterized by recession.

However, this merger touches upon important questions of union solidarity, not only at national but above all at international level. In the context of increasingly globalized and borderless labour markets and the progressive weakening of labour unions, extensive transnational coordination and reinforcement of transnational solidarity may be the sole means for unions to reaffirm their identity.

The recent formalization of the global trade union network of all the FIAT-Chrysler production facilities⁵³ is significant in this regard. It is especially relevant in light of the general weakening of the unions and lack of solidarity in the context of increasing international competition.⁵⁴ The aim of this network is to provide a constant information exchange as well as the definition of a common labour union strategy. Clearly only future

⁵⁰ C. Brewster, European perspectives on human resource management, *Human Resource Management Review*, 2004, 14, 365–382.

⁵¹ R. A. Weber, C. F. Camerer, Cultural Conflict and Merger Failure: An Experimental Approach, *Management Science*, 2003, 49, 4, 400–415.

⁵² P. Pedersen, Intercultural communication: Achieving acculturation in mergers and acquisitions with special reference to the DaimlerChrysler merger and the current merger between Chrysler and Fiat (thesis), Department of Language and Business Communication, Aarhus School of Business, Aarhus University, Denmark, 2010.

⁵³ On 23-24 June 2011 the representatives of Italy (FIM, FIOM, UILM), USA (UAW), France, Germany, Spain, Poland, the Czech Republic, Serbia and other countries with the exception of Canada and South America met in Turin at the International Centre of the ILO to formalize the initiative.

⁵⁴ V. Pulignano, Still ‘Regime Competition’?: Trade Unions and Multinational Restructuring in Europe”, *Relations industrielles / Industrial Relations*, 2006, 61, 4, 615-638

developments will show whether the unions will be able to use this network to influence corporate decisions at the transnational scale. However, this initiative can provide an important opportunity for the social partners to rethink their roles, strategies and relations with their counterparts.