

Editorial

Labour law today is increasingly facing the challenge of conciliating business competitiveness and social policy, a challenge that becomes even more crucial in the context of globalisation and demographic changes. Legislators, social partners and policy makers at all levels are trying to find solutions to deal with these pressures while taking account of national requirements. In many cases they devise innovative and experimental approaches that need to be put to the test in practical terms. This is the case of Italy, as discussed in the opening paper in this issue by Michele Tiraboschi, providing an overview of the recent reform generally known as the Biagi law,¹ named after the architect of the reform and Managing Editor of the Journal who tragically lost his life in a terrorist attack three years ago. The paper outlines the reasons for the reform and the initial results, followed by a survey of the implementation of the reform. The author sounds a cautious note in that two years it is too short a period to permit a real assessment. The reform is inspired by the intention to modernise the Italian labour market, aiming to promote a proactive approach to employment based on the four pillars of the European Employment Strategy while striking a balance between business interests and fundamental employee protection. The reform makes use of innovative regulatory techniques such as more flexible contracts and soft laws, combining them with mandatory legal provisions. The idea is to reflect best European practice while carefully adapting it to national circumstances, thus avoiding a blind transplantation of legal norms to the national context.

In this connection the dangers of mere transplantation are examined in the paper by Colin Fenwick and Evance Kalula. The authors present a comparative overview of the South African and East Asian systems of labour law and industrial relations, as these countries have much in common in terms of history and legal traditions. In light of the teaching of the leading authorities in the field, starting from Sir Otto Kahn-Freund, the authors highlight the danger of a simple transposition of legal norms from one system to another and argue that the outcome of such a process will depend on the coupling of the norms concerned with other legal institutions and in particular with the relevant national social systems.

1 Further documentation about the reform is available at <<http://www.csmb.unimo.it>>.

A similar concern is to be seen underlying the paper by Martine Vranken, who investigates how the transfer of undertakings in Australia and New Zealand is affected by the broader industrial relations context. In spite of the fact that these countries share a similar history and traditions of labour law and industrial relations, they adopt different approaches towards the regulation of the transfer of undertakings. Whereas New Zealand has chosen a more Europe-oriented path, Australia has updated its statutory regime without specific reference to European experience.

The article by Gaby Ramia, Anna Chapman and Marco Michelotti investigates the reconciliation of social policy and industrial relations in the Australian context examining the provisions for sole parents, a vulnerable group with a relatively high level of dependence on social security. Analysing the problem of sole parenthood, the authors conclude that labour law lags behind social protection and a significant reform in this field is needed.

Katell Berthou deals with the problems of social policy from the point of view of the need to eliminate religious discrimination. Her paper explores religious issues in the workplace in France, and in particular the wearing of headscarves. The author comes to the conclusion that in France the law still lacks an in-depth understanding of the concept of discrimination.

The paper by Ann Branch examines the challenges and opportunities presented by the shift towards greater autonomy of European social dialogue. Together with the social partners, the European legislator is constantly searching for new regulatory techniques that at times diverge from the standard legislative procedure outlined in the EU Treaty. Autonomous social dialogue, that has led to agreements on telework and work-related stress, is one example of this innovative approach. Of course the test of time is needed to prove its viability but the initial outcomes seem to be quite promising.

This issue closes with reference once again to the Biagi reform in the speech by Luca Cordero di Montezemolo, president of Confindustria, the most important employers' association in the industrial sector in Italy, delivered at the conference on *The Italian labour market one year after the Biagi reform* held in Modena on 22-23 October 2004. The speaker stresses that Confindustria intends to contribute to the achievement of the objectives of the project for which Marco Biagi paid so high a price.

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