

LEGISLATION AND COLLECTIVE BARGAINING ON AGE MANAGEMENT IN THE ITALIAN DIGITAL TRANSITION*

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1. Introductory remarks on the research track. The phenomenon of the «ageing population»¹ has become a major demographic trend in recent years². Data show that, over several decades, the number of older individuals in the population has risen globally while birth rates have fallen. According to demographic studies, by 2050, the number of persons aged 65 years or older is expected to double, surpassing 1.6 billion globally³. Even though the population age distribution is shifting steadily upward in all regions of the world, it is happening at different speeds and to different extents. Statistical data indicate that the trend towards ageing populations is more advanced in Europe⁴, Northern America, Australia and New Zealand, and in the majority of East and South-East Asia. In most

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¹ It is an inevitable consequence when the extension of the average life span is accompanied by a declining fertility rate. According to the World Population Prospects (2022 Revision) written by the United Nations, global fertility is projected to fall from 2.3 children per woman in 2021 to 2.1 in 2050: see <https://www.un.org/en/global-issues/population#:~:text=Fertility%20rates,2021%20to%202.1%20in%202050>.

«Demographic transition stems from longer lives and smaller families»: United Nations, *Leaving No One Behind In An Ageing World. World Social Report*, UN Publications, 2023, 29. In some countries data are even more alarming: according to ISTAT, that is the Italian Statistical Institute, in 2022 there was a negative record for birth rate (only 393,000 births). The average number of children per woman dropped to 1.24 (Istat Report 26.10.2023).

² United Nations, *World Social Report 2023*, cit., 2. A. Samorodov, *Ageing and labour market for older workers*, ILO publications, 1999, 2, wrote that «the next century will be known as an era of population ageing».

³ United Nations, *World Social Report 2023*, cit., 3.

⁴ The EU Ageing Report 2021, 19, attests that the ageing process is already advanced in the EU.

countries in these regions, the proportion of older persons exceeds 10% and, in some cases, 20% of the total population. At the top of the list is Japan, with 28% of the population aged over 65, followed by Italy at 23%⁵.

Italy is one of the most «silver» countries in the world and the «greyest» in Europe⁶, taking on the difficult role of precursor in facing the unprecedented consequences of this demographic transformation⁷. Indeed, an ageing population has a significant impact on society and the economy⁸, with relevant policy implications. It also influences the labour market, affecting the size, characteristics, and composition of the workforce⁹.

It is necessary to consider that this «irreversible»¹⁰ global trend is happening concurrently to the digital transition, another relevant social transformation. They both play essential roles in every area of economic and social life, including in the organisation of work.

In light of the above, this research aims to examine how Italy is addressing age management in public and private workplaces and what are the most effective tools and the best practices in order to valorise the «age» factor, i.e. the abilities, skills, and sense of belonging of older workers, and, at the same time, promote adequate measures to guarantee their health and safety.

Even though new technologies could be seen as a threat to older workers because this category of employees appears to be less flexible and less adaptable to change, especially where the use of digital devices is concerned, it is relevant to try to understand if and how digitalisation may be an opportunity for improving age management. Technological applications at work could not only embody the aim of facilitating work-life balance but could also be a sort of «reasonable accommodation»¹¹ for the elderly, through the identification of appropriate measures to improve access, participation or advancement in employment, or to receive adequate training.

Since the question addresses a current and developing issue, the analysis will be based on the most recent Italian legislation and collective agreements on the matter in order to identify the regulated measures for the effective and sustainable inclusion of older workers in the labour market and if they are adequate to achieve this goal.

2. Italian legislative news on age management and the role of digitalisation. The great interest in this new demographic phase is evidenced by the significant changes that have occurred over the past two years in terms of policies in favour of the elderly.

Law no. 33/2023 is a legislative milestone in the field and is considered a sort of bill of rights for the elderly. It empowers the government to promote measures for active ageing, prevention of frailty, assistance and care for the elderly. To implement this law, legislative decree no. 29/2024, was issued. Its 43 articles regulate a wide array of aspects relating to the promotion of dignity, autonomy, and social inclusion of the elderly population.

An analysis of legislative decree no. 29/2024 reveals three key points for this research on age management: the definition of older person (and, consequently, older worker), the most

⁵ Population Reference Bureau 2019, in <https://www.prb.org/resources/countries-with-the-oldest-populations-in-the-world/>.

⁶ The old-age index in Italy reached an all-time high on January 1, 2023, with 193 elderly people for every 100 young people. Population ageing is higher in the North, with Genoa reaching a peak of 273 elderly people for every 100 young people: see <https://www.silvereconomyforum.it/la-rete-delle-citta-della-longevita-sicurezza-salute-e-ambiente/>.

⁷ CNEL, *Rapporto 2024. Demografia e forza lavoro*, 18.12.2024, in www.cnel.it.

⁸ Due to the increase in social spending.

⁹ United Nations, *World Social Report 2023*, cit., 53; CNEL, *Rapporto 2024*, cit., 1.

¹⁰ United Nations, *World Social Report 2023*, cit., 17.

¹¹ Art. 5, Directive 2000/78/EC.

effective technological tools for age management and the need for digital literacy for seniors. These key issues reveal that demographic transformation and digital transition are interconnected and show the contribution that new technologies can make to implement active ageing policies.

2.1. Identifying «older persons» and «older workers». Art. 2 sets a definition for the term «older person», which is a significant novelty. The terms «older persons», «elderly persons», «aged persons» have been frequently used in UN and EU documents, as well as in national demographic reports, but they seldom specify the age range included, which can cause confusion and misunderstandings.

Identifying when a person is «old» is a critical measurement problem, since the benchmarks may be different depending on the country¹².

Furthermore, even though the ageing process is primarily a biological reality – which has its own dynamic that is largely outside human control – the term is also subject to public perception of what constitutes as being old, which can differ widely. For example, in most developed countries, 60 to 65, usually corresponding to the age of retirement, is generally considered the beginning of old age¹³. With this approach, physical decline and social and/or professional roles are strongly related to each other.

Some studies highlight the difficulties in identifying a unique parameter that defines old age and, in this perspective, the attempt to group all the possible biological and socioeconomic factors into five conceptual categories¹⁴ is noteworthy. Even though the attempt to classify the «age» factors into chronological¹⁵, functional¹⁶, psychosocial¹⁷, organisational¹⁸ and lifespan¹⁹ categories is an interesting approach, it is not enough to solve the legal issues relating to the identification of the characteristics of elderliness. The addition of a sixth category, that of «legal criterion», i.e., the age group expressly defined as «elderly» by the legislation in force at the time, could be useful.

Moreover, it is interesting to underline that, over the last ten years, the UN Department of Economic and Social Affairs changed its mind on the concept of old age. In 2013 the UN report on world population ageing considered «elderly» persons who were aged 60 years or older²⁰, while the 2023 report used – «by convention» – those «aged 65 years or older»²¹.

¹² For instance, according to the World Health Organisation (WHO), older people in developed States are commonly defined as those aged 65 years or more, but this definition – at least until now – does not fit for the African situation, because in the last decades African persons had shorter life expectancies. According to UN, Department of Economic and Social Affairs, *World Population Ageing 2019, 2020*, although the number of persons aged 65 or over in sub-Saharan Africa will triple over the next 30 years, it will remain relatively small as a share of the total population; sub-Saharan Africa is still relatively young, with close to half of its population under age 20.

¹³ M. Gorman, *Development and the rights of older people*, in VV.AA., *The ageing and development report: poverty, independence and the world's older people*, London, 3, 1999.

¹⁴ H. L. Sterns, D. Doverspike, *Ageing and the training and learning process*, in I.L. Goldstein (edited by), *Training and development in organizations*, San Francisco, 1989, 299; J. McCarthy, N. Heraty, C. Cross, J. N. Cleveland, *Who is considered an 'older worker'? Extending our conceptualisation of 'older' from an organisational decision maker perspective*, in *Human Resource Management Journal*, vol. 24, 4, 374, 2014.

¹⁵ It simply refers to the actual calendar age of the person.

¹⁶ It involves biological changes (both physical and mental) due to age.

¹⁷ It considers both the other people perception about the age of an individual and their perception of themselves.

¹⁸ It concerns the length of time that workers have been involved in a specific occupation.

¹⁹ It takes into consideration individuals' changes in behaviour at different stages across the life cycle.

²⁰ UN 2013, 11.

²¹ UN 2023, 3.

In light of the above a preliminary clarification is necessary, and art. 2 of legislative decree no. 29/2024 establishes that an «older person» is «a person who has reached the age of 65», while a «very old person» is «a person who has reached the age of 80». Even though art. 2, par. 1, specifies that these definitions are used for the purposes of this decree, adopting a set standard is an important step in circumscribing policies for older people.

Like the term «older person», the very notion of «older worker» varies based on each country's demographic profile and life expectancy. Furthermore, this category includes non-homogeneous groups²² because there may be significant differences between individuals of the same age in terms of functional capacities, abilities, and skills²³.

The ILO's Older Workers Recommendation no. 162/1980²⁴ and, more recently, in 2022, the guidelines²⁵ of the eleventh session of the General Assembly of the Open-ended Working Group for the purpose of strengthening the protection of the human rights of older persons highlighted the necessity of defining the category of «older workers»²⁶, but Member States have not followed this recommendation, since they have not adopted a precise definition of older workers²⁷.

In the absence of a legal definition of older workers and specific parameters for identifying them, the term «old» is evanescent and vague. Furthermore, every time protections or arrangements are provided for older workers it is necessary to identify exact benchmarks and age ranges for which they are applicable, increasing the risk of a proliferation of legislative provisions on the matter.

Regarding the above, art. 2 of the legislative decree no. 29/2024 is decisive: even though it is not directly related to work, from the letter and spirit of the regulatory provision, it is possible to deduce that the definition of «older person» (aged 65) can also be applied to the older worker. Consequently, Italy, although 44 years late, appears to have complied with the 1980 ILO recommendation.

However, this solution raises numerous questions: is the 65-year definition set by art. 2 an appropriate age to consider a worker elderly? Or is 65 too old? Does this parameter exclude a group of slightly younger workers who would also benefit from such protections?

Previous Italian regulatory provisions have considered workers over 50 or over 55 as elderly

²² It is very complex to categorize older people's identities, needs and wants. The term «aged workforce» is heterogeneous, as it encompasses not only people who are enthusiastic and motivated about their work, but also those who find it stressful in that phase of their life, and still others who are detached. On the topic see J. Manthorpe, A. Chiva, *Introduction*, in A. Chiva, J. Manthorpe (edited by), *Older workers in Europe*, New York, 2009, 7.

²³ See Guiding questions for defining the normative content of the issues examined at the eleventh session of the General Assembly of the open-ended working group for the purpose of strengthening the protection of the human rights of older persons in https://social.un.org/ageing-working-group/documents/twelfth/INPUTS%20UNS/ILO%20comments%20on%20Guiding%20Questions_Normative_OEWG_11topics.pdf.

²⁴ In the ILO Older Workers Recommendation no. 162/1980, the first section titled «general provisions» states that it applies to all workers «who are liable to encounter difficulties in employment and occupation because of advancement in age», but it does not specify age categories. It establishes that, in giving effect to the Recommendation, «a more precise definition of the workers to whom it applies, with reference to specific age categories, may be adopted in each country, in a manner consistent with national laws, regulations and practice and appropriate under local conditions».

²⁵ Issued on 22.02.2022.

²⁶ At least for statistical and measurements purposes, as specified by the guidelines issued in 2022.

²⁷ An isolated case of an express regulatory provision on the specific age of the «older worker» can be found in the section no. 631, on age limits, of the Age Discrimination in Employment Act (ADEA) of 1967. It establishes that discrimination against workers who are 40 years old and over is forbidden, so, in the U.S., workers are considered «old» from 40 years of age.

and deserving of protection mechanisms²⁸. Furthermore, art. 28 of the legislative decree 9.04.2008, no. 81, the so-called Consolidated Text on occupational safety and health, includes age, without further specification, among the factors to be considered in the risk assessment. Since the retirement age in Italy is set at 67 years old²⁹, defining an older worker as a person aged 65 and over risks restricting the scope of preventive measures relating to the age risk factor.

2.2. The most effective measures for active ageing in the workplace. Even if the scope of the legislative decree is general, art. 5 is expressly dedicated to measures to promote health and active ageing in the workplace.

Active ageing policies³⁰ generally concern three broad aspects: employment, social participation, and independent living. They consist of a set of measures and initiatives to promote and optimize the contribution that older people can make to society. Active ageing policies are aimed not only at guaranteeing that older employees are safeguarded against all kinds of age-based discrimination but also at introducing positive measures to increase their inclusion and participation.

According to the first paragraph of art. 5, employers are required to comply with the risk assessment and prevention obligations contained in the consolidated law on health and safety in the workplace³¹, taking into account the Workplace Health Promotion model recommended by the World Health Organization and the indications contained in the National Prevention Plan³². These guidelines provide for the activation of processes and interventions aimed at making the workplace an environment suitable for older people through appropriate organisational changes.

Ensuring worker safety and investing in their health are essential elements in creating workplace well-being. To achieve this goal, it is a priority to increase awareness of the importance of well-being at work and promote educational interventions dedicated to it. Therefore, the pillars of the prevention strategy are life-long learning, risk assessment, and monitoring. Nevertheless, in order to effectively address health determinants and contribute to well-being in the workplace, it is necessary to promote and stimulate collaboration and programmatic integration between the competent central institutions by (for instance) also involving the Ministry of Labour and Social Policies in the drafting of a plan for active ageing at work.

Furthermore, it is important to note the numerous references to new technologies and the contribution they can make to the prevention of occupational risks and the promotion of safety and health at work, even if they have not been expressly reported in the first paragraph of art. 5 of the legislative decree no. 29/2024.

The second paragraph of art. 5 establishes agile work as an effective tool for age management: «the employer shall adopt all kinds of initiatives aimed at assisting older people

²⁸ For instance, art. 4, par. 8, of the Law no. 92/2012, so-called Fornero Law, grants a 50% reduction in social security contributions, for a period of twelve months, to employers who hire workers aged at least 50 years. Moreover, in order to facilitate the hiring of older people, among the subjective requirements of the zero-hour contract (in Italy it is called «lavoro intermittente») is being at least 55 years old: see art. 13, par. 2, legislative decree no. 81/2015.

²⁹ Art. 24, par. 9, of the decree law no. 201/2011, converted by the law no. 214/2011.

³⁰ Included in the EU agenda since the 90s and, consequently, implemented by the Member States, including Italy. The 1994 EU summit underlined the need to improve employment opportunities for older workers: see European Commission, *Population ageing in Europe. Facts, implications and policies*, Bruxelles, 2014, 9; Eurostat, *Active ageing and solidarity between generations. A portrait of the European Union*, Luxembourg, 2011, 7.

³¹ Legislative decree no. 81/2008.

³² It was drawn up by the Ministry of Health for the five-year period 2020-2025.

in carrying out, even partially, their work in an agile manner, in compliance with the provisions set forth in the current national collective sector agreements».

Agile work³³ – or more commonly called smart work – was introduced in law no. 81/2017, art. 18 and after, and is one of the clearest examples of technology applied to work. It is not a new form of employment relationship, it is just a way of carrying out subordinate work, established by an agreement between employer and employee. The work is «agile» or «smart» because it is not bound by two of the typical characteristics of subordinate work: place and time. Agile workers perform their jobs, partly within company premises and partly outside, without a fixed location, within the maximum duration of daily and weekly working hours, using technological tools.

Until 2020, it applied to very few employees, but during the COVID-19 emergency, agile work boomed in Italy because it was specifically considered an effective measure to continue carrying out work activities without the risk of contagion in the workplace.

The massive use of agile work – even in its emergency version – has allowed for the in-depth exploration of its potential and its critical issues.

At first glance, agile work might seem like an obstacle to age management, as it is linked to the use of new technologies and a more dynamic organisation of work activity, but agile work could prove to be an effective tool to combine personal and professional needs in a flexible way, while avoiding some age-related stressors³⁴, such as long commute times and overcrowded environments.

Moreover, the specific agreement between employer and employee lays down all the most relevant modalities to be implemented when the smart worker is offsite³⁵. This kind of flexibility allows parties to tailor working methods to the needs of the business and the worker for mutual satisfaction.

In addition, both from a psychological and practical point of view, the use of blended working modes (the mixture of remote work and presence in the workplace) may represent a gradual accompaniment to retirement for older people through a readjustment of work rhythms and a loosening of interaction with colleagues, resulting from the alternation between days at the office and days outside³⁶. It may be a soft way to move slowly toward retirement «by shifting their emphasis more toward leisure time and nonwork activities»³⁷ or, conversely, by continuing to work after retirement.

All that glitters is not gold, and the dark side of agile work³⁸ is challenging. Therefore, careful

³³ On the topic see, *ex multis*, M. Martone, *Il lavoro agile nella l. 22 maggio 2017, n. 81: un inquadramento*, in G. Zilio Grandi, M. Biasi (edited by), *Commentario breve allo Statuto del lavoro autonomo e del lavoro agile*, Milano, 2018, 461; C. Spinelli, *Tecnologie digitali e lavoro agile*, Bari, 2018; M. Tufo, *Il lavoro digitale a distanza*, Naples, 2021; M. Russo, *Il datore di lavoro agile. Il potere direttivo nello smart working*, Naples, 2023.

³⁴ M. Brollo, *Lavoro agile: prima gli anziani?*, in V. Fili (edited by), *Quale sostenibilità per la longevità? Ragionando degli effetti dell'invecchiamento della popolazione sulla società, sul mercato del lavoro e sul welfare*, Bergamo, 2022, 67.

³⁵ Art. 19 Law no. 81/2017. On the great relevance of the agile work agreement see the Directive signed by the Italian Minister for Public Administration on 29.12.2023.

³⁶ «Losing your job or ending it due to retirement is a sort of mourning [...]. If this process stops abruptly and not gradually, the chances of adaptation are lower. It is known that many people arrive at retirement apparently happily and then the new situation emerges as a trauma»: see I. Romano, *Smart working e over 60: un ponte verso il pensionamento?*, in *www.spazio50.org*, 4.08.2020.

³⁷ N. W. Van Yperen, B. Wörtler, *Blended Working and the Employability of Older Workers, Retirement Timing, and Bridge Employment*, in *Work, Aging and Retirement*, 1, 102, 2017.

³⁸ It is not possible to deal with the topic in detail here, so please refer to the doctrine on the topic: see, *ex multis*, J.E. Ray, *Grande accélération et droit à la déconnexion*, in *Droit social*, 11, 912, 2016; E. Dagnino, *Il diritto alla disconnessione nella legge n. 81/2017 e nell'esperienza comparata*, in *Diritto delle relazioni industriali*, 4, 1024, 2017; R. Zucaro, *Il diritto alla disconnessione tra interesse collettivo e individuale. Possibili profili di tutela*, in *Labor & law. issues*, 2, 215, 2019; M. Russo, *Esiste il diritto alla disconnessione? Qualche spunto di riflessione alla ricerca di un equilibrio tra tecnologia,*

attention and adequate training are required in order to avoid possible physical³⁹ and, above all, psychosocial risks⁴⁰.

2.3. Bridging the digital divide. The age-based digital divide, which consists of longstanding inequality in access to new technologies and in skills for utilising digital devices, is not a new issue. However, the massive use of technological tools – especially during the Covid-19 pandemic – increased the negative effects of the digital divide on the elderly workforce, who were sometimes unable to make use of the digital measures put in place⁴¹. The difficulties in participating in the forced digitalisation of society and work have further contributed to the exclusion of older people⁴².

In this perspective, reducing the generational digital divide is essential to promote full access to digital services, technological devices, and improved age management⁴³.

Art. 19 and 20 of legislative decree no. 29/2024 are devoted to computer literacy and promote activities to train the digital skills of elderly people and support them in the use of new technologies. This effort towards digital literacy among the elderly may also be useful for older workers. Through improved digital skills, they could take advantage not only of the new and flexible agile working modality but also of wearable technology, which may represent a viable means to prevent professional diseases and injuries.

Wearable technology is a term that encompasses accessories and garments made up of, or enhanced with, electronics and can be divided into two categories: wearable devices – such as smartwatches and smartglasses – and smart textiles, i.e. fabrics that sense and react to the environment⁴⁴.

These kinds of digital devices could promote well-being in workplaces through the constant monitoring of individual workers, for example, by measuring heart rate and perspiration as well as physical strain and environmental conditions by verifying exposure to noise, hazardous substances, or excessive heat and cold.

In addition, wearables – depending on their level of accuracy – can provide contextual information about occupational safety risks, resource allocation, equipment failure, and predictive maintenance while also supporting decision-making⁴⁵. Therefore, they might help employers and employees in the workplace by reducing risks to health and safety and boosting well-being at work.

lavoro e vita privata, in *Diritto delle relazioni industriali*, 3, 682, 2020; M. Biasi, *Individuale e collettivo nel diritto alla disconnessione: spunti comparatistici*, in *Diritto delle relazioni industriali*, 400, 2019.

³⁹ Working through digital devices can cause ergonomic problems, such as muscle strain and musculoskeletal disorders, due to the posture necessary when spending many hours in front of the computer, and vision problems.

⁴⁰ Hyperconnectivity can lead to isolation, overworking, burnout, mental disorders: see Eurofound, ILO, *Working anytime, anywhere: The effects on the world of work*, Luxembourg, and the International Labour Office, Geneva, 2017, 37 ss. See also European Parliament resolution 21.01.2021 with recommendations to the Commission on the right to disconnect no. 2019/2181. The massive use of digitalisation can bring a lot of risks for human persons and for the human rights: see L. Di Majo, *The human person in the “silicon universe”*, in *MediaLaws*, 1, 74, 2024.

⁴¹ G.M. Van Jaarsveld, *The Effects of COVID-19 Among the Elderly Population: A Case for Closing the Digital Divide*, in *Frontiers in Psychiatry*, 11, 1, 2020.

⁴² A. Rosales, J. Svensson, M. Fernández-Ardèvol, *Digital ageism in data society*, in A. Rosales, M. Fernández-Ardèvol, J. Svensson (edited by), *Digital ageism. How it operates and approaches to tackling it*, New York, 1, 2023.

⁴³ See M. Russo, *Digitalisation and age management. Elderly-centered policies and tools at work*, in C. Di Carluccio, A. Festa (edited by), *Il lavoro tra transizione ecologica e digitale. Esperienze europee a confronto*, Naples, 2024, 313.

⁴⁴ K. Maltseva, *Wearables in the workplace: The brave new world of employee engagement*, in *Business Horizons*, 63, 493, 2020.

⁴⁵ V. Patel, A. Chesmore, C.M. Legner, S. Pandey, *Trends in Workplace Wearable Technologies and Connected-Worker Solutions for Next-Generation Occupational Safety, Health, and Productivity*, in *Advanced Intelligent Systems*, 4, 1, 2022.

However, since wearables collect and process a lot of personal data, their introduction in workplaces risks creating conflict between employees' rights to privacy and data protection and employers' legal duty of care. Consequently, the only way to legally take advantage of these kinds of digital devices is by guaranteeing compliance with privacy and data protection laws⁴⁶. In this perspective, health data processed by employers through wearables should be dealt with lawfully, fairly, and transparently⁴⁷, used only for specified purposes⁴⁸, for instance safeguarding workers' health. Moreover, the treatment of personal data should be «adequate, relevant and limited to what is necessary in relation to the purposes», according to the data minimisation principle⁴⁹. Furthermore, the use of wearables should comply with art. 4 of the Workers' Statute⁵⁰ regarding remote monitoring of employees. In particular, given that wearable devices can be considered work tools because they are used by workers to carry out their working performance⁵¹, it is necessary to provide employees with adequate information on how to use these tools and how checks are executed.

In addition, if employers want to use wearables at work, they must meet the requirements set out in the EU AI Act⁵², entered into force on August 1st, 2024⁵³, since this Regulation provides for fines up to € 35 million or 7% of annual global turnover for serious breaches. Nevertheless, in order to use these types of digital devices correctly, it is fundamental to promote initiatives aimed at improving older workers' computer skills and levels of digitalisation. Therefore, lifelong learning is essential. Unfortunately, it is precisely older workers that both have the greatest need for technological training and who also do not attend courses organised in their company. Sometimes, this nonattendance is a personal choice, but frequently it is a business decision because investing in the professional development of employees close to retirement is considered a waste of money and time⁵⁴. The implementation of lifelong learning is a sort of Achilles' heel worldwide because it is lacking, as attested by the Open-ended Working Group on Ageing at the UN⁵⁵ and the current situation in the EU, which is essentially split in two: Northern European countries have already been engaged in the ongoing training of workers for several years⁵⁶, achieving good results in the inclusion of older people in the job market; whereas in Southern European countries, this issue is still in its infancy and needs to be promoted and implemented. Accordingly, the normative provisions of art. 19 and 20 of legislative decree no. 29/2024 can be considered a good starting point for bridging the digital divide.

3. Promoting digital active ageing policies for older employees through collective bargaining. The role of collective bargaining in promoting the employment conditions of older workers in the midst of the digital transition is essential because it may concretely

⁴⁶ In particular, the General Data Protection Regulation (GDPR) no. 2016/679. On the topic, P. Collins, S. Marassi, *Is That Lawful? Data Privacy and Fitness Trackers in the Workplace*, in *International Journal of Comparative Labour Law and Industrial Relations*, 1, 65, 2021.

⁴⁷ Art. 5, par. 1, lett. a), GDPR.

⁴⁸ Art. 5, par. 1, lett. b), GDPR.

⁴⁹ Art. 5, par. 1, lett. d), GDPR.

⁵⁰ Law no. 300/1970.

⁵¹ See art. 4, par. 2, law no. 300/1970.

⁵² AI Act no. 2024/1689.

⁵³ It does not require any further implementation by EU member states.

⁵⁴ T. Tikkanen, *The lifelong learning debate and older workers*, in T. Tikkanen, B. Nyhan (edited by), *Promoting lifelong learning for older workers. An International overview*, Luxembourg, 19, 2006.

⁵⁵ See <https://social.un.org/ageing-working-group/>.

⁵⁶ A. Antikainen, *Is lifelong learning becoming a reality? The case of Finland from a comparative perspective*, in *European Journal of Education*, 3, 379, 2001.

provide for the effective and broad integration between active ageing measures and the proper use of new technologies. In the Italian labour law system, collective agreements are often used to further regulate more technical aspects of the implementation of laws and resolve management issues.

From this perspective, not only do trade unions play a key role in improving the labour conditions of older workers through collective bargaining⁵⁷, but also their involvement in training is essential. Helping employees make the best possible use of the digital technologies that are introduced should be one of the most relevant tasks of trade unions, as highlighted in the European Social Partners Agreement on Digitalisation⁵⁸.

As agile work has grown exponentially across many sectors since the Covid-19 pandemic, it is increasingly necessary to regulate it carefully in order to guarantee the fundamental rights of employees, including the elderly. If not collectively negotiated and adequately implemented, the use of agile work might compromise older workers due to the digital divide. Therefore, the role of social partners is essential to respond to this new form of work organisation, by defining and implementing policies related to agile work and negotiating strong provisions in collective bargaining agreements to ensure older workers' rights and conditions.

Agile work is not the only possible age management measure, given that other areas of intervention may concern multiple aspects of the employment relationship, including recruitment, training and lifelong learning, the flexibility of working hours, the promotion of health and safety in the workplace, the process of recareering in later life or gradual accompaniment to retirement⁵⁹.

Therefore, it is useful to analyse whether and how collective bargaining regulates this matter in Italy and, to do so, some samples of national collective labour agreements from both the public and private sectors will be examined.

3.1. Age management in the collective agreement for public central functions.

Regarding the public sector, the collective agreement of central functions – which regulates the employment relationships of employees in ministries, tax agencies, and non-economic public bodies – generally plays a driving role because it is the model followed by the other three public sectors⁶⁰. This is also the case regarding age management, as attested by the collective agreement signed by ARAN (Agency for the representation in negotiations of the Public Administration) and some trade unions on January, 27th, 2025.

Compared to the collective agreement previously in force in the public sector of central functions⁶¹, the recently signed agreement presents some significant innovations on the age management front.

First, in the third section (devoted to the employment relationship) the expression «age management» appears, which did not exist in the 2019-2021 agreement. More precisely, art. 27, entitled «Age management objectives and tools», pays particular attention to the increase in the average age of workers and invites administrations to adopt targeted strategies for the personal development of employees throughout their entire professional career. It also

⁵⁷ At European level, in addition to the Framework agreement of 2002, see, lately, the Joint work programme 2022-2024, signed by the European social partners on 28.06.2022. On the topic, see D. Mangan, *Agreement to discuss: the Social Partners Address the Digitalisation of Work*, in *Industrial Law Journal*, 4, 689, 2021.

⁵⁸ Signed in June 2020. In doctrine, see T. Treu, *La digitalizzazione del lavoro: proposte europee e piste di ricerca*, in *Federalismi*, 9, 190, 2022.

⁵⁹ ISFOL, *L'age management nelle grandi imprese italiane. I risultati di un'indagine qualitativa*, Rome, 2015, 62.

⁶⁰ Local functions, health, and education and research.

⁶¹ Collective agreement 2019-2021, signed on 9.05.2022.

promotes the best possible health conditions and the prevention of occupational diseases and injuries at work.

The first of the proposed tools⁶² to concretely achieve these objectives is very interesting. It seeks to boost the active role of the most experienced personnel within the administration because they represent a precious heritage of skills and knowledge to be passed on to new workers. Therefore, administrations would work to promote intergenerational dialogue through adequate forms of support for new hires and peer-to-peer training sessions aimed at encouraging the exchange of skills between different generations, thus reducing the risk of isolation and facilitating the integration of new resources. This intergenerational dialogue reinforces the exchange of knowledge provided in more simplistic mentoring scenarios and promotes so-called reverse mentoring because it fosters the exchange of knowledge and skills between older and younger workers.

Another key point is the introduction of greater flexibility in task management⁶³, for example, through the promotion of remote working methods (also in the form of agile work), part-time options, and the definition of timetables that facilitate a healthy work-life balance. Regarding the privileged access to remote working modalities, art. 27 does not seem to find confirmation in the articles of the same collective agreement on regulation of agile work⁶⁴ and remote work⁶⁵. Indeed, the list of priorities for access to both smart work and remote work does not include any reference to employee age, but is focused on other categories of workers, such as those who have documented health needs or who assist family members with disabilities in serious situations pursuant to law no. 104/1992, and workers who are parents. Nevertheless, in addition to the categories expressly listed, the third paragraph of art. 13 (on agile work) refers to «the priority rights established by the regulations in force from time to time». Therefore, the question is: did art. 5, paragraph 2, of legislative decree no. 29/2024, introduce a priority⁶⁶? An affirmative answer is not that simple.

The third aspect taken into account by the second paragraph of art. 27 of the collective agreement is the constant monitoring of environmental conditions and worker health⁶⁷ since the promotion of the occupational safety of older employees has always been one of the most important active ageing measures. While there is no express reference to the possibility of using digital tools (for instance, wearable technology) to carry out this monitoring, this topic could be addressed in the future through supplementary collective bargaining (at the level of the individual administration).

The last measure considered in the second paragraph of art. 27 is the review of training and lifelong learning methods with the aim of delaying or eliminating the risk of staff skill obsolescence. Unfortunately, especially in southern European countries, lifelong learning is still in its infancy and needs to be promoted and implemented. Furthermore, it is precisely older workers who frequently do not attend training and updating courses. Sometimes, this is a personal choice of the individual worker, but often it is actually a business decision, as it can be seen to be a waste of money and time to invest in the professional development of

⁶² See lett. a) of the second paragraph of art. 27.

⁶³ Lett. b) of the second paragraph of art. 27.

⁶⁴ Art. 13 of the collective agreement.

⁶⁵ Art. 15 of the collective agreement.

⁶⁶ «The employer shall adopt all kinds of initiatives aimed at assisting older people in carrying out, even partially, their work in an agile manner, in compliance with the provisions set forth in the current national collective sector agreements».

⁶⁷ Art. 27, paragraph 2, lett. c).

employees close to retirement⁶⁸.

In order to reverse this trend, art. 26 of the collective agreement establishes that, with equal scores, older workers should be preferred in the ranking for the granting of paid leave for study reasons (150 hours per year)⁶⁹.

According to the last paragraph of art. 27, each administration has the task of carrying out annual monitoring of the results obtained by the implemented age management policies. The fruits of this monitoring activity will be discussed with trade unions. If carried out correctly, this annual report may take on great practical relevance for improving age management within public administrations.

Another interesting measure was introduced by art. 22 of the collective agreement, regarding leave for medical visits and treatments. In addition to what is provided for all employees (18 hours per year, including travel time to and from the workplace), workers over 60 are granted an additional 2 hours per year. With this measure, the collective agreement has effectively recognised the veracity of the Latin phrase «senectus ipsa est morbus»⁷⁰ (meaning old age itself is a disease) and granted extra protections for elderly workers.

3.2. A quick overview of private sector collective agreements. Unlike the collective agreement of public central functions, which expressly addresses age management, the latest agreements signed for the private sector⁷¹ do not contain equally interesting ideas on the matter.

First, there is no express reference to age management or the need for particular attention and protection for older workers. Consequently, the references to seniority (for example for salary purposes⁷²) refer to years of service and not to chronological age.

Some of the latest collective agreements signed do refer to workers over 50; however, they do so only to derogate from the quantitative limitations for hiring fixed-term employees⁷³. Actually, this is not something new introduced by the collective bargaining because art. 23, paragraph 2, lett. f), of legislative decree no. 81/2015 establishes this faculty.

In the regulation of agile working methods, some recent collective agreements refer to the national protocol on agile working, signed on December, 7th, 2021 by the social partners and the Minister of Labour. This trilateral agreement is the fruit of intense work carried out during the most critical phases of the Covid-19 pandemic emergency. It does not contain express references to older workers or age management. By forcing a literal interpretation, older workers may be considered under the category of «fragile workers» addressed in art. 10, and for whom the agile working modality would represent a reasonable accommodation capable of facilitating access to work. Potentially, older workers could also be read to fall within the scope of art. 11 of the national protocol, which promotes agile work as a corporate tool for inclusion.

Eventually, it is worth noting that the collective agreements that are generally the driving force of collective bargaining in the private sector, such as the one for the metalworking sector⁷⁴, are rather dated and have not yet been renewed. Therefore, it is urgent to fill this

⁶⁸ T. Tikkanen, *The lifelong learning debate and older workers*, in T. Tikkanen, B. Nyhan (edited by), *Promoting lifelong learning*, cit., 19.

⁶⁹ Art. 26, paragraph 7, of the collective agreement.

⁷⁰ P. Terenzio, *Phormio*, 160 a.C.

⁷¹ Just think of the collective agreement for construction workers, signed on February, 21st, 2025.

⁷² See art. 216 of the collective agreement for trade, signed on 22.03.2024.

⁷³ See art. 88, paragraph 2, lett. f), of the collective agreement for training institutions, signed on 31.10.2024; art. 60, table 1, no. 5, of the collective agreement for social and healthcare services, signed on 26.07.2024.

⁷⁴ Signed on 5.02.2021.

gap and address the issue in the best possible way also in the private sector.

4. Critical issues and prospects. Careful and balanced age management is necessary to face the current demographic transformation of the labour market and the concurrent digital transition.

In this perspective, promoting digital active ageing policies – which consist of the application of technological tools to promote the inclusion and participation of older workers in the labour market – can be the most suitable approach. Indeed, the use of digitalisation in workplaces might have positive effects from multiple points of view. On the one hand, it can improve the inclusion of the elderly in the field of employment and their working conditions throughout the professional career; on the other hand, it can promote the sustainability of social security systems through the reduction of absences and injuries and more conscious retirement choices, as older workers will not be forced to retire prematurely to settle new personal or health needs.

At the end of this brief analysis of legislation and collective bargaining on both age management and the digital transition, the question is the following: is Italy ready on this front? The answer is not yet satisfactory.

It is worth noting that as Italy has the largest ratio of elderly people in its population compared with other European countries, it finds itself facing the challenge first. While new legislation that addresses the matter has been introduced, it will take time to implement it completely, as shown by the spotty implementation in collective regulation and the nearly inexistent steps made in the private sector.

Furthermore, legislative decree no. 29/2024 dedicates only one article to the employment relationship and addresses only two⁷⁵ of the many aspects in which age management could be developed in the workplace.

In addition, even though the relevant role of digitalisation is taken into consideration⁷⁶, there is no reference to wearable technology, which could be very useful for the inclusion of older workers.

Another weak point of the current legislation is the age to be considered as elderly, i.e., 65 years based on art. 2, par. 1, lett. a) of legislative decree no. 29/2024, which dramatically reduces the range of action of active ageing policies in workplaces since the Italian retirement age is 67 years.

Even though the collective agreement on public central functions is very interesting and offers various tools for age management within administrations, it is worth remembering that it has not been signed by some of the most important Italian trade union organisations⁷⁷ and it may be a problem for its effective implementation. Furthermore, for now this public collective agreement is an isolated case⁷⁸, given the nearly inexistent steps made in the private sector.

In conclusion, while there is certainly buzz on demographic issues and age management, digital active ageing policies in the workplace are still taking their first steps, and there is still a long way to go.

Abstract. Italy is one of the most «silver» countries in the world, taking on the difficult role of precursor in facing this demographic transformation. This global trend is happening

⁷⁵ Promotion of health and safety at work and valorisation of agile work.

⁷⁶ As seen, in art. 5, 19 and 20 of legislative decree no. 29/2024.

⁷⁷ For example, CGIL.

⁷⁸ In the public sectors of local functions and health draft collective agreements are now being discussed that include provisions on age management.

concurrently to the digital transition, another relevant social change. They both play essential roles in every area of economic and social life, including in the organisation of work.

In light of the above, this paper aims to analyse how Italy is addressing age management in public and private workplaces and if digitalisation can be an opportunity for improving tools and practices to valorise the «age» factor.

The analysis will be based on the most recent Italian legislation and collective agreements on the matter, in order to identify the regulated measures and the digital tools for the inclusion of older workers in the labour market and if they are adequate to achieve this goal.

Abstract. L'Italia è uno dei Paesi più «anziani» nel panorama internazionale, assumendo così il difficile ruolo di precursore nell'affrontare la trasformazione demografica, che si sta manifestando in concomitanza con un altro rilevante cambiamento sociale, ossia la transizione digitale. Entrambe giocano un ruolo essenziale in ogni ambito della vita economica e sociale, organizzazione del lavoro compresa.

Alla luce di ciò, il presente contributo intende analizzare come l'Italia stia gestendo e valorizzando il fattore «età» negli ambienti di lavoro pubblici e privati e se la digitalizzazione possa diventare un'opportunità per migliorare strumenti e prassi.

L'indagine si fonda sulle più recenti disposizioni normative e sulla contrattazione collettiva pubblica e privata, al fine di individuare le misure presenti e le applicazioni tecnologiche adottate per favorire l'inclusione dei lavoratori anziani nel mercato del lavoro, nonché la loro efficacia per raggiungere i risultati attesi.

Parole chiave. Lavoratori anziani – age management – digitalizzazione – divario digitale – politiche digitali di invecchiamento attivo.

Key words. Older workers – age management – digitalisation – digital divide – digital active ageing policies.