

THE NEW RULES OF THE SOCIAL SECURITY SYSTEM¹

ANNUAL REPORT - 2011 - ITALY

(March 2011)

Prof. Loredana GIANI – Dr. Giovanna FILONI

INDEX

- 1. PREMISE**
 - 2. THE RATIONALIZATION OF SOCIAL SECURITY BODIES**
 - 3. THE PARAMETERS OF ACCES TO BENEFITS**
 - 4. REGISTRATION OF THE SELF EMPLOYED WITH THE INPS
(NATIONAL SOCIAL SECURITY INSTITUTE)**
 - 5. THE BENEFITS REGISTER**
 - 6. INPS' POWERS OF COLLECTION: THE NOTICE OF
DISHONOUR**
 - 7. THE CHANGES IN DISABILITIES SUPPORT REGULATIONS**
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¹ Sections 1, 2, 3, 4, 5 and 7 are by L. Giani; Section 6 is by G. Filoni.

1. PREMISE

The social security system has undergone a radical change that has led, especially in recent years, to a rewriting of the regulatory framework in relation to both administrative labour law and social security and insurance regulations.

With reference to the latter aspect, the turning point can undoubtedly be identified in the reform of the labour market and the special types of contracts, introduced by Legislative Decree No. 276/2003 in Law No. 30/2003 followed, a few years later, by the Protocol on Social Security, Employment and Competitiveness of 23rd July 2007, and transposed to Law No. 247/2007 with which were redesigned the broad outlines of the social security relationship.

The reforming process continued in the following years through regulatory interventions aimed at increasing the level of workers protection; “to encourage employment by companies”; to simplify labour relations through the reform of national collective bargaining; to face up to the crisis through the strengthening and the widening of the instruments of income protection in case of temporary or long term unemployment, thus offering income support to those categories of workers excluded from traditional insurance coverage.

The most important reform in terms of impact on the system was as a result of Legislative Decree No. 78/2010 “Urgent measures for financial stabilization and economic competitiveness” and converted into Law No. 122/2010, then partly amended by Law No. 183/2010 and by Law No. 220/2010.

With the abovementioned provisions the organization of the public bodies which operate in the system has been changed, as well as their organization and areas of interest and, in the case of INPS, the powers granted to it. Other substantial interventions that will only be mentioned in passing here concern the recalculation of the parameters for access to social security, insurance and invalidity benefits and other aspects such as those regarding criminal proceedings connected to the failure to pay the national insurance contributions of

the so called short term employed (contract for a regular ongoing collaboration) and similar which have still not been launched because of a lack of the appropriate ordinance on the part of INPS.

2. THE RATIONALIZATION OF SOCIAL SECURITY BODIES

With reference to the subjective aspects of the aforementioned decree, the legislature intended to reorganize social security through the elimination of some of them in order to achieve the rationalization for savings targets, as expressly mentioned in the text (Article 7). The ESPEMA (Marine Insurance Board) and the ISPELS (Institute for Prevention and Safety at Work) have been abolished and their functions have been assigned to INAIL (Industrial Injury Compensation Board).

In the same act, for identical reasons, have been suppressed IPOST (Institute for Postal and telegraph workers) whose functions were transferred to INPS (Article 7, par. 3); ENAM (National board for the workers in education) with its functions allocated to INPDAP (National social insurance institute for civil service employees) (Article 7, par. 3 *b*); IAS (Institute for social affairs) which will be replaced by ISFOL (Institute for the development for vocational training for workers) whose structure, according to changes made in the conversion, is unaffected and will also be used for providing research and support in the development of social policies (Article 7, par. 15); ENAPPSMSAD (National Pension and Insurance Funds for Sculptors, Musicians, Writers and Playwrights) which joins ENPALS (National Welfare and Assistance Body for Workers in Show Business) (Article 7, par. 16) wherein was established separate fund for assistance and insurance with separate accounting.

In line with the same philosophy the medical Commissions, working within the Ministry of economy and finance for invalidity controls, have also been ended including those present in regional capitals and autonomous provinces which through protocol of

understanding between the Ministry and the Regions will be provided free by local health boards or the health structure of the defence Ministry in the area.

The alterations in the organizational set up do not regard only social security institutions but also their organization and not just in terms of increased staff numbers, thanks to the arrival of the personnel from the closed institutions. In fact, it is foreseen that the management boards of the social security institutions will also be suppressed and their functions, in the plan described in Article 7, par. 7, will be taken over by the President of the body.

3. THE PARAMETERS OF ACCES TO BENEFITS

Having taken into account the parameters for access to benefits, the criteria for the ascertaining of the right to insurance and social security benefits relating to income allowed for by Law No. 14/2009, stemming from Legislative Decree No. 207/2008, have been recalculated. If on the one hand it is confirmed that in the case of a first pay-off the income referred to must be that of the ongoing year, declared in advance in line with what is required by Article 35, par. 9, of the aforementioned discipline, in other cases, on the other hand, reference will have to be made to the income earned the previous year, while for the services which come with an obligation to be reported to the Central Pensioner Registry, in line with Article 35, par. 2, of the abovementioned norm, in the modified text of Article 13, par. 6, of Legislative Decree No. 78/2010, what has to be considered is the income in the same year.

Furthermore it is expected that the recipients of benefits related to income should inform tax authorities of any changes in their income and failing this they will have to provide income data to the social security bodies providing the service. In the absence of the required notices, at paragraph 10 b, of Article 35 of Law No. 14/2009, introduced by Article 13, par. 6, of Legislative Decree No. 78/2010, the suspension of the service during the next year to the one in which the declaration should have been made is foreseen, or

even the revoking of the same in the case in which in the 60 days following the communication of the suspension the person concerned does not provide the required communication with consequent recovery of the sums provided during the year.

Then, the parameters for access to retirement benefits were rewritten for both private and public sector. Without changing the personal and contributory requisites for the right to pension foreseen in current legislation, for all those who attain the abovementioned requirements in 2011 and for those employees who on the 30th of June 2010 had not initiated the period of prior notice (Article 12, par. 4), the so called exit windows were redefined which among other things are no longer fixed but depend on the effective maturity of the requirements.

With reference to the old age pension (65 for men and 60 for women in the private sector, while in the public sector the higher age applies as established by Legislative Decree No. 78/2009, converted with Law No. 102/2009) the right to the commencement to the pension is granted to employers (AGO – compulsory general insurance - and supplementary or additional allowances members) begun 12 months before the date of the maturing of the requisites, which rises to 18 months for the self-employed.

The same windows have also been foreseen for those who access the contributory old age pension according to the system of quotas and retirement pension¹.

¹ Possible exemptions to the general discipline are considered in paragraphs 4 and 5 of Article 12.

4. REGISTRATION OF THE SELF EMPLOYED WITH THE INPS (NATIONAL SOCIAL SECURITY INSTITUTE)

A further novelty involves INPS membership for the self employed.

As is noted the question, that of the double insurance for the carrying out of various independent activities subject to different forms of obligatory I.V.S. (invalidity, old age and survivors) Insurance, has been studied by the Joint Divisions of the Supreme Court of Cassation which have already pronounced in the sentence No. 2340 of 12th February 2010, ending a judicial disagreement, established, as regards the insurance regime of a partner in a limited company that carries out commercial or advanced tertiary activity in the same and at the same time also fulfils the role of manager (including single), the application of the rule of membership of the insurance program foreseen for the activity to which he or she personally dedicate primarily their professional activity.

In the opinion of the judges, in fact, the choice of membership in the management referred to Article 2, par. 26, of Law No. 335/1995 or the management of participant in commercial activities (under the provision of Article 1, par. 203, Law No. 662/1996) is the responsibility of INPS according to the characteristic of the insurance and the contribution is measured exclusively on the basis of income from the main activity and under the current rules of the management of competences.

The normative intervention contains an authentic interpretation of paragraph 208 of Article 1 of Law No. 662/1996, specifying that “autonomous activities which come under the principle of being subject to the insurance foreseen for the principal activity are those exercised in the form of the business of shop keepers, craftsmen and farmers” (Article 12, par. 11).

For such activities the insurance in the corresponding INPS section comes into operation with the exclusion of labour relationships for which is obligatory membership of a separate system.

5. THE BENEFITS REGISTER

Particular relevance in the framework of the reform is assumed by a number of dispositions aimed at rationalising, through an increase of the power granted to INPS, the system of benefits provided throughout Italy.

For example Article 13 stands out which foresees the establishment within INPS of the so called “Casellario dell’assistenza” (Benefits Register) whose aim is to gather, conserve and manage data on incomes and other information relative to subjects entitled to benefits; a single and general database of the benefits supplied throughout Italy in which are involved other than INPS, State administrations, local bodies and non-profit organisations, as well as the organs who supply obligatory types of benefits and assistance, who are obliged to transmit electronically to the Register the data and information relating to all the positions contained in the archives and databases, according to criteria and modes of transmission established by INPS.

6. INPS’ POWERS OF COLLECTION: THE NOTICE OF DISHONOUR

Of great importance, in the framework of the reform, is the strengthening of the processes of collection for all ascertained INPS credits from 1st January 2011 – even for periods prior to 2011, including those resulting from checks and those in the form of sanctions, added sums and interest – which, starting from 1st January 2011, will be based on a new instrument having the value of an executive order known as “avviso di addebito” (notice of dishonour).

This norm is one of the dispositions aimed at greatly reducing the times between the appearance of credit being noticed by the institute and the moment in which the warrant officer can launch, in line with the regulation concerning tax roll collection, the recovery also referring to missing periodic payments (on the part of companies or self employed).

For activities carried out until 31st December, the recovery system will remain entrusted to the tax roll, that is to the list of debtors that the credit body draws up and hands over to the collector (the equivalent of the warrant officer) and that, reproduced in the income tax form, is rendered executive by the creditor and thus constitutes an executive title for the collection of payments by a warrant officer who is thus legitimised to act on the goods of the debtor (collective executive order).

From 1st January 2011 the periodic sums omitted by employers and self employed and the sums ascertained through inspections will be requested by means of a notification of a notice of dishonour with the value of an executive order and no longer through the income tax form.

The warning shall be given as a priority by registered email or by convention between municipality and INPS by town council messengers or municipal police officers or by registered post.

The notice of dishonour which INPS will send directly to a tax payer must include, on pain of nullity, all the useful elements for identifying the demand as specified in INPS Circular No. 168 of 30/12/2010 as for the subjective aspect of the notice to pay (such as details of the tax payer; competent INPS office) and the temporal and objective ones. Furthermore it has to contain the formal placing in default of the tax payer.

Paragraph 14 of Article 30 has established that all references contained in current Laws to the tax roll to sums registered into the tax roll and to the tax return form are considered to refer to, with the aim of recovery the sums owed in any way to INPS, at the executive order emitted by the same institute (notice of dishonour).

Departing from the discipline of the tax roll (Legislative Decree No. 46/1999), with the Decision of the INPS President No. 72 of 30 July 2010 were defined the means and terms for the delivery of the warning to the tax collector.

The warning has to be sent to the tax collector at the same time as it is sent to the tax payer electronically according to the technical protocol agreed with Equitalia s.p.a. (Equitalia ltd).

The delivery of the warning is carried out monthly:

- By the 25th of the month, for credits whose deadline for the issue of the warning falls between the 1st and the 15th of the month;

- by the 10th of the month, for credits whose deadline for the issue of the warning falls between the 16th and the 31st of the previous month;

To improve the recovery action, if necessary further electronic means can be defined for the transfer of information from INPS and Equitalia s.p.a.

The notice to pay has as its object:

- The sums owed as insurance payments whose monthly or periodic deadlines have been totally or partly omitted; or paid late;

- The credits ascertained by the offices or by the controlling bodies;

- Any other sums of any type owed to INPS.

The sections involved are:

- The fund for employees. These are sums owed as national insurance payments for employees. The contributions are communicated monthly by the UNIMIENS (an integrated system) declarations;

- The craftsmen section of the self-employed inscribed in the register of craft businesses. The contributions concerned are the shares owed on the minimal contribution, the deadline is quarterly;

- The commercial section for the self-employed identified by Law No. 613/1966 and Law No. 662/1996;

The separate section – purchaser and joint venture. These are the contributions owed for relationship of coordinated and continuous and assimilated collaboration, as well as the contributions for relationships of joint venture based only on labour. The deadline for the contribution is monthly.

- The self-employed agricultural workers;

- Agricultural employers.

7. THE CHANGES IN DISABILITIES SUPPORT REGULATIONS

A reference at the end of this quick overview on some of the principal innovations introduced in the benefit sector should be made to Article 10 of Legislative Decree No. 78/2010 which brought various changes to the framework of invalidity, with the aim of reducing the number of beneficiaries and fighting the phenomenon of “false invalids”.

To achieve the first objective the percentage of invalidity for the granting of the monthly check for partial invalids changed in 1st June 2010 from 74% to 85%. To the benefits for invalidity, blindness, deafness, handicaps and disabilities, as well as to the invalidity benefits paid by INPS, a number of other dispositions have been applied that are already in force for other type of benefits (Article 19, par. 2). In particular, Article 9 Legislative Decree No. 38/2000 is applied which allows the institute to rectify errors of any type committed in stating the right to the benefit, paying it or paying it back, within 10 years starting from the date of the original mistaken benefit, except in cases of a wilful misconduct or gross negligence of the subject involved which has been established judicially.

From the point of view of fighting the phenomenon of false invalids, the legislator has provided dispositions aimed on the one hand at intensifying the verification of invalidity with a consequent provision for the recovery of the sums paid as benefits that turn out not to have been due in the case of lack of merit because of fraud or in case of a wilful misconduct or gross negligence of the subject involved. In application of the provisions contained in Article 55, par. 5, Law No. 88/99; on the other, to increase the level of responsibility of the individual operators. From this point of view can certainly be included the dispositions contained in Article 10, par. 2 and 3, of Legislative Decree No. 78/2010 which contemplate respectively the charge for the failed recovery of the sums wrongly paid out to the responsible functionary who acted fraudulently or wrongly and the responsibility of the health workers who falsely attested or certified a state of illness or handicap. In this last case it is foreseen that the health worker should repay to the body the financial damage for a sum equal to “the payment that corresponds to the economic treatment”. For the abovementioned invalidity “in the periods for which was ascertained the enjoyment of the relative benefit, as well as the damage to image of the administration”. This is a compensatory action that has to be added to those aimed at establishing criminal, disciplinary and fiscal damage.