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Welfare State and Financial crisis

The debate on welfare state models

Finance for older homeowners: the Italian equity release product

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Introduction

This thesis has a double objective. On the one hand, it analyzes the content of the debate on welfare state models after the 2007-2008 great financial crisis, with particular reference to the Italian situation and to the assumption of transition from an 'occupational' model to a 'universalistic' model. On the other, given that in Italy a significant part of the real estate belongs to older homeowners over 65, the thesis analyzes mortgage loans offered by banks to these individuals. Indeed, the interest in this kind of loans has increased as they can contribute - together with the welfare state tools - to finance the needs of the elderly (*i.e.*, retirement funding).

The thesis is structured in five parts.

Parts I and II outline, respectively, the characteristics of different schemes of the welfare state and an analysis of the 2007-2008 great financial crisis. They discuss, in particular, the crisis effects on the public debt of OECD countries (which, at the end of 2014, compared to the wealth produced, has reached the same level recorded at the end of World War II, but in 'peace time'), on the economic thought, on the need to redefine a new 'market law', on the economic theory and on the new systemic risks generated by international regulation introduced by public institutions to face the crisis.

Part III analyzes the economic and legal elements of the debate on public welfare models. The analysis of Professor Stiglitz on the US welfare state is preliminarily considered. He studies the effects of the Internet crisis – broken out in US at the

beginning of the third millennium – on the American economy, as originating from welfare changes introduced by the US government during the nineties of last century, and the risks arising from the welfare system dependence on financial markets. Then, it proposes a debate on Italian public welfare according to the analysis carried out by Professor Pessi (as per the article ‘Rethinking welfare’ published in the ‘Rivista del Diritto della Sicurezza Sociale’ in 2013). In particular, the question is whether in this historic cycle, where *emergency becomes the system*, it is necessary to rethink the Italian welfare model passing from the current ‘employment’ model to a ‘universalistic’ model. At the end, considerations on Italian welfare are highlighted, as recently proposed by the International Monetary Fund (IMF), the Organisation for Economic Co-operation and Development (OECD) and the Istituto Nazionale della Previdenza Sociale (INPS).

Part IV discusses the characteristics of market-based products for the elderly, both at international and national levels. In particular, it outlines the equity release products (as in the UK) and the reverse mortgage products (as in Australia, Canada and US) offering an older homeowner the opportunity to monetize his house by keeping the right to live in there as long as he is alive.

Part V develops a legal and financial analysis of the Italian equity release product, so called ‘Prestito Ipotecario Vitalizio’ (PIV). The PIV was introduced in Italy in 2005 by Law 203/2005, and was later modified on May 6, 2015 by Law 44/2015 in order to re-launch it as a financing tool for older homeowners. According to experts, the too expensive financial conditions applied by banks are one of PIV's most critical aspects. Therefore, I have developed a technical analysis of the Italian ‘Prestisenior’ product by Monte dei Paschi di Siena, using the tools of financial mathematics. I have set up a

comparison between the PIV and the sale of the bare ownership and I propose a possible technical solution to improve the economic attractiveness of this mortgage loan type.

Part I

The Welfare State

1 General elements

Definition

A welfare state “is a concept of government in which the state plays a key role in the protection and promotion of the economic and social well-being of its citizens. It is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for a good life. The general term may cover a variety of forms of economic and social organization”¹. The welfare state is a feature of the modern state, based on the principle of equality.

The welfare state originated and was consolidated in the Western countries during the XIX and XX century, together with the history of industrial civilization. Its evolution can be divided into three following stages.

- A first, elementary form of welfare state or more precisely of Social Assistance State was introduced in England in 1601 with the promulgation of laws on poor people (Poor Law). These laws provided assistance to poor people if the families were not able to do so. Besides having in itself a clear philanthropic content, its

¹ See: *Welfare state*, Britannica Online Encyclopedia.

considerations were based on the fact that reducing the poverty rate, the negative connected phenomena such as crime would be reduced too.

- The second phase, instrumented by constitutional conservative monarchies or by liberal thinkers, goes back to the first industrial revolution and to the English law of 1834. The extension to the European continent took place only in the period between 1885 and 1915. Also in this case, the assistance forms are to be considered as individual and as addressed solely to those belonging to a socially disadvantaged class (minors, orphans, poor people etc.) and in this context the first social insurances, that guaranteed workers against accidents at work, illness and old age, arose. At first these were voluntary, but later on they became compulsory for all workers. The reasons for the breakthrough at this stage were the search for social peace by reconciling the claims for greater protection of proletarian workers (we can only speak of the middle class as of the second industrial revolution) and the manpower demand at the lowest possible cost by industrialists. Still in England, a step forward was accomplished with the establishment of workhouses and reception with the aim to combat unemployment and keep, in this way, a low labor cost. However, these turned into forced detention places; the permanence in these public centers was equivalent to the loss of civil and political rights in exchange of government assistance.

In 1883, this time in Germany, social insurance arose. It was introduced by Chancellor Otto von Bismarck to help reduce mortality and accidents in workplaces and to establish an initial form of social security. According to some scholars, it was the 'capital' that pushed for compulsory payments for their

workers in order to not have to bear the entire cost of workers social security anymore.

- The third phase, the current welfare one, started in the postwar period. 1942 was the year when, in the United Kingdom, Social Security made a decisive step forward thanks to the so-called Beveridge Report, compiled by the economist William Beveridge, who introduced and defined the concepts of public health and social pension for citizens. These proposals were carried out by Labour minister, Clement Attlee, who became Prime Minister in 1945.

In 1948 Sweden was the first country to introduce the popular pension based on birthright, therefore a universalistic welfare model that equaled the civil and political rights acquired, in fact, at birth. In the same period the economy experienced an exponential growth of the GDP while the newborn welfare state was the basis for the increase in public expenditure. The situation, broadly speaking, managed to remain in substantial balance for a few decades. In fact, in the period that goes from the fifties until the eighties and nineties, public expenditure grew significantly, especially in Countries that adopted a universalistic welfare model, but the situation remained normally under control thanks to the simultaneous generally widespread. rapid GDP growth . However in the eighties and nineties the welfare systems entered a crisis for economic, political, social and cultural reasons to the point that today we speak of a real *welfare state crisis*.

On the economic side, the welfare state involves a transfer of funds from the state to the services provided (i.e., healthcare, education, etc.), as well as directly to individuals ('benefits'). It is funded through redistributionist taxation and is often referred to as a type of 'mixed economy'. Such taxation usually includes a larger income tax for people

with higher incomes, called a progressive tax, helping to reduce the income gap between the rich and poor.

Historical references

Otto von Bismarck , the first Chancellor of *Germany*, created the *modern welfare state* by building on a tradition of welfare programs in Prussia and Saxony that began as early as the 1840s, and by winning the support of business. Bismarck introduced *old age pensions, accident insurance and medical care* that formed the basis of the modern European welfare state. His paternalistic programs won the support of German industry because its goals were to win the support of the working class for the German Empire and reduce the outflow of immigrants to the United States, where wages were higher but welfare did not exist.

In the *United Kingdom* the welfare state started to emerge with the Liberal welfare reforms of 1906–1914 under Liberal Prime Minister Herbert Asquith . These included the passing of the Old-Age Pensions Act in 1908, the introduction of free school meals in 1909, the 1909 Labour Exchanges Act, the Development Act 1909, which heralded greater Government intervention in economic development, and the enacting of the National Insurance Act 1911 setting up a national insurance contribution for unemployment and health benefits from work².

December 1942 saw the publication of the Report of the Inter-Departmental Committee on Social Insurance and Allied Services, commonly known as the Beveridge Report after its chairman, Sir William Beveridge. The Beveridge Report proposed a series of measures to aid those who were in need of help, or in poverty and

² See: Bentley G., *David Lloyd George: Land, the Budget, and Social Reform*, American Historical Review, 1976.

recommended that the government find ways of tackling what the report called "the five giants": Want, Disease, Ignorance, Squalor, and Idleness. It urged the government to take steps to provide citizens with adequate income, adequate health care, adequate education, adequate housing, and adequate employment, proposing that "All people of working age should pay a weekly National Insurance contribution. In return, benefits would be paid to people who were sick, unemployed, retired, or widowed". The Beveridge Report assumed that:

- the National Health Service would provide free health care to all citizens;
- a Universal Child Benefit would give benefits to parents, encouraging people to have children by enabling them to feed and support a family.

The report stressed the lower costs and efficiency of universal benefits. Beveridge cited miners' pension schemes as examples of some of the most efficient available and argued that a *universal state scheme* would be cheaper than a myriad of individual friendly societies and private insurance schemes and also less expensive to administer than a means-tested government-run welfare system for the poor.

The Liberal Party, the Conservative Party, and then the Labour Party all adopted the Beveridge Report's recommendations. Following the Labour election victory in the 1945 general election many of Beveridge's reforms were implemented through a series of Acts of Parliament. On July 5, 1948, the National Insurance Act, National Assistance Act and National Health Service Act came into force, forming the key planks of the modern UK welfare state. The universal system that was to be called National Insurance, in which the rich paid in and the state paid out to the rich just as to the poor, was justified on the grounds of both fairness and lower cost. Universal benefits,

such as the Universal Child Benefit, were particularly beneficial after the Second World War when the birth rate was low, and may have helped drive the 1950s baby boom.

Before 1939, most health care had to be paid for through non-government organisations, through a vast network of friendly societies, trade unions, and other insurance companies, which counted the vast majority of the UK working population as members. These organizations provided insurance for sickness, unemployment, and disability, providing an income to people when they were unable to work. Following the implementation of Beveridge's recommendations, institutions run by local councils to provide health services for the uninsured poor, part of the poor-law tradition of workhouses were merged into the new national system. As part of the reforms, the Church of England also closed down its voluntary relief networks and passed the ownership of thousands of church schools, hospitals and other bodies to the state.

Welfare systems continued to develop over the following decades. By the end of the 20th century parts of the welfare system had been restructured, with some provision channelled through non-governmental organizations which became important providers of social services.

Although the *United States* lagged far behind European countries in instituting concrete social welfare policies, the earliest and most comprehensive philosophical justification for the welfare state was produced by the American sociologist Lester Frank Ward (1841–1913) whom the historian Henry Steele Commager called ‘the father of the modern welfare state’. Reforms like those instituted by Bismarck in Germany were strongly opposed by conservative thinkers such as the very influential English philosopher and evolutionary theorist Herbert Spencer, who argued that coddling the poor and unfit would simply allow them to reproduce and delay social

progress. Ward set out to systematically dismantle Spencer's arguments which he saw as delaying and paralyzing progressive government action. Central to Ward's theories was his belief that a *universal system* of education was necessary if a democratic government was to function successfully. Ward's writings had a profound influence on a young generation of progressive thinkers and politicians whose work culminated in President Franklin D. Roosevelt's New Deal welfare state policies of the 1930s.

The United States was the only industrialized country that went into the Great Depression of the 1930s with no social insurance policies in place. In 1935 Franklin D. Roosevelt's New Deal instituted significant social insurance policies. In 1938 Congress passed the Fair Labor Standards Act, limiting the work week to 40 hours and banning child labor for children under 16, over stiff congressional opposition from the low-wage South³.

The Social Security law was very unpopular among many groups - especially farmers, who resented the additional taxes and feared they would never be made good. They lobbied hard for exclusion. Furthermore, the Treasury realized how difficult it would be to set up payroll deduction plans for farmers, for housekeepers who employed maids, and for non-profit groups; therefore they were excluded. State employees were excluded for constitutional reasons (the federal government in the United States cannot tax state governments). Federal employees were also excluded. Many textbooks, however, falsely indicate that the exclusions were the product of southern racial hostility toward blacks; there is no evidence of that in the record⁴.

³ See: Trattner W.I., *From Poor Law to Welfare State, 6th Edition: A History of Social Welfare in America*. Free Press, 2007.

⁴ See: DeWitt L., *The Decision to Exclude Agricultural and Domestic Workers from the 1935 Social Security Act*, Social security bulletin, 2010.

By 2013 the U.S. remained the only major industrial state without a uniform national sickness program. American spending on health care (as percent of GDP) is the highest in the world, but it is a complex mix of federal, state, philanthropic, employer and individual funding. The US spent 16% of its GDP on health care in 2008, compared to 11% in France in second place. Some scholars argue that labor-union weakness in the Southern United States undermined unionization and social reform throughout the United States as a whole, and is largely responsible for the anaemic U.S. welfare state.

2 Welfare States models

Modern schemes

Modern welfare programs are chiefly distinguished from earlier forms of poverty relief by their universal, comprehensive character⁵. The institution of social insurance in Germany under Bismarck was an influential template. Some schemes were based largely on the development of autonomous, mutualist provision of benefits. Others were founded on state provision. The term was not, however, applied to all states offering social protection.

The sociologist T.H. Marshall, in an influential essay, "*Citizenship and Social Class*" (1949), identified the welfare state as a distinctive combination of *democracy, welfare* and *capitalism*, arguing that citizenship must encompass access to social, as well as to political and civil rights⁶. Examples of such states are Germany, all of the Nordic countries, the Netherlands, Uruguay and New Zealand and the United Kingdom in the 1930s. In particular, Nordic countries such as Iceland, Sweden, Norway, Denmark, and

⁵ See: https://en.wikipedia.org/wiki/welfare_state.

⁶ See: Marshall, T. H., *Citizenship and Social Class: And Other Essays*. Cambridge University Press, 1950.

Finland employ a system known as the *nordic model*. Since that time, the term welfare state applies only to states where social rights are accompanied by civil and political rights.

Changed attitudes in reaction to the world-wide Great Depression, which brought unemployment and misery to millions, were instrumental in the move to the welfare state in many countries. During the Great Depression, the welfare state was seen as a *middle way* between the extremes of *communism* on the left and unregulated *laissez-faire* capitalism on the right. In the period following World War II, many countries in Europe moved from partial or selective provision of social services to relatively comprehensive "cradle-to-grave" coverage of the population.

The activities of present-day welfare states extend to the provision of both *cash welfare benefits* (such as old-age pensions or unemployment benefits) and *in-kind welfare services* (such as health or childcare services). Through these provisions, welfare states can affect the distribution of wellbeing and personal autonomy among their citizens, as well as influencing how their citizens consume and how they spend their time.

Types of welfare state models

Broadly speaking, welfare states are either *universal*, with provisions that cover everybody, or *selective*, with provisions covering only those deemed most needy. The danish sociologist Gøsta Esping-Andersen (in his 1990 book, *The Three Worlds of Welfare Capitalism*) further identified three subtypes of welfare state models⁷. Though increasingly criticised, these classifications are still used as a starting point in analysis

⁷ See: Esping-Andersen, Gøsta, *Social Foundations of Postindustrial Economies*, Oxford University Press, 1999.

of modern welfare states and remain a fundamental heuristic tool for welfare state scholars. Esping-Andersen's welfare classification acknowledges the historical role of three dominant twentieth-century Western European and American political movements: Social Democracy, Christian Democracy (conservatism); and Liberalism.

The *Social-Democratic welfare state model* is based on the principle of *universalism*, granting access to benefits and services based on citizenship. Such a welfare state is said to provide a relatively high degree of citizen autonomy, limiting reliance on family and market. In this context, social policies are perceived as “politics against the market”.

The *Christian-Democratic welfare state model* is based on the principle of *subsidiarity* (decentralization) and the dominance of social insurance schemes, offering a medium level of decommodification and permitting a high degree of social stratification⁸.

The *Liberal model* is based on *market dominance* and private provision; ideally, in this model, the state only interferes to ameliorate poverty and provide for basic needs, largely on a means-tested basis. Hence, the decommodification potential of state benefits is assumed to be low and social stratification high.

Based on the decommodification index, Esping-Andersen divided 18 OECD countries into the following groups:

- *Social Democratic*: Denmark, Finland, the Netherlands, Norway and Sweden;

⁸ The *decommodification* is the strength of social entitlements and citizens' degree of immunization from market dependency. Decommodification is the process of viewing utilities as an entitlement, rather than as a commodity that must be paid or traded for. An example of decommodification would be the removal of tolls from a toll road. Welfarism is a form of consequentialism. The term *welfarism* is usually associated with the economic conception of welfare. Economists usually think of individual welfare in terms of utility functions and social welfare can be conceived as an aggregation of individual utilities or utility functions. Welfarism is contrasted to other *consequentialist* theories, such as classical utilitarianism, which takes utility among agents as directly accessible and measurable. Welfarist views have been especially influential in the law and economics movement. Steven Shavell and Louis Kaplow have argued in an influential book, *Fairness versus Welfare* that welfare should be the exclusive criteria by which legal analysts evaluate legal policy choices

- *Christian Democratic*: Austria, Belgium, France, Germany, Spain and *Italy*;
- *Liberal*: Australia, Canada, Japan, Switzerland and the US;
- *Not clearly classified*: Ireland, New Zealand and the United Kingdom.

Since the building of the decommodification index is limited, this typology could be also criticized. Nevertheless, these 18 countries can be placed on a continuum from the most purely social-democratic, Sweden, to the most liberal, the United States.

Swedish professor of political science Bo Rothstein points out that in *non-universal* welfare states, the state is primarily concerned with directing resources to “the people most in need”. This requires tight bureaucratic control in order to determine who is eligible for assistance and who is not. Under *universal* models such as Sweden, on the other hand, the state distributes welfare to all people who fulfill easily established criteria (e.g. having children, receiving medical treatment, etc.) with as little bureaucratic interference as possible. This, however, requires *higher taxation* due to the scale of services provided. This model was constructed by the Scandinavian ministers Karl Kristian Steincke and Gustav Möller in the 1930s and is dominant in Scandinavia⁹.

Sociologist Lane Kenworthy argues that the Nordic experience demonstrates that the modern social democratic model can "promote economic security, expand opportunity, and ensure rising living standards for all . . . while facilitating freedom, flexibility and market dynamism"¹⁰.

Finally, scholars have also proposed to classify welfare regimes using 'outcomes', such as inequalities, poverty rates, response to different social risks, rather than simply

⁹ See: Rothstein B., *Just Institutions Matter: the Moral and Political Logic of the Universal Welfare State*, Cambridge University Press, 1998.

¹⁰ See: Kenworthy L., *Social Democratic America*. Oxford University Press, 2014.

focusing on institutional configurations¹¹. American Political Scientist Benjamin Radcliff has also argued that the universality and generosity of the welfare state (i.e. the extent of decommodification) is the single most important societal-level structural factor affecting the quality of human life, based on the analysis of time serial data across both the industrial democracies and the American States. He maintains that the welfare state improves life for everyone, regardless of social class (as do similar institutions, such as pro-worker labor market regulations and strong labor unions).

Over recent years, faced with the welfare state crisis and, particularly in Italy, with the middle class crisis, some economists have argued the need to reduce the public expenditure and the tax levy, while supporting new models of sociability based on the management according to scale economies and high use of information technology for the services to be provided to the citizen. In this way, services would be more efficient and less expensive¹². They sustain both the idea to entrust, in whole or in part, to private operators services such as pensions (through private pension funds), health and education.

However, the problems of social justice and equity, as well as the reduced role of the state in the wealth redistribution, which would result from such choices, shall not be insignificant, in my opinion, even after the 2007-2008 financial crisis.

¹¹ See: Ferragina E., *The Four Worlds of 'Welfare Reality' – Social Risks and Outcomes in Europe*, Social Policy and Society, 2015.

¹² See: Masulli I., *Chi ha cambiato il mondo?*, Laterza, 2014.

3 Empirical evidence

The table below shows the social expenditure as a percentage of GDP for some OECD member states and GDP per capita in 2013¹³.

Nation	Social expenditure (% of GDP)	Year	GDP per capita
France	31.9	2014	\$36,907
Finland	31.0	2014	\$38,251
Belgium	30.7	2014	\$40,338
Denmark	30.1	2014	\$42,764
Italy	28.6	2014	\$34,303
Austria	28.4	2014	\$44,149
Sweden	28.1	2014	\$43,533
Spain	26.8	2014	\$32,103
Germany	25.8	2014	\$43,332
Portugal	25.2	2014	\$25,900
Netherlands	24.7	2014	\$43,404
Greece	24.0	2014	\$25,651
Slovenia	23.7	2014	\$28,298
Luxembourg	23.5	2013	\$90,790
Japan	23.1	2011	\$36,315
Hungary	22.1	2014	\$22,878
Norway	22.0	2014	\$65,461
United Kingdom	21.7	2014	\$35,760
Ireland	21.0	2014	\$43,304
New Zealand	20.8	2013	\$34,826
Poland	20.6	2014	\$23,275
Czech Republic	20.6	2014	\$27,344
Switzerland	19.4	2014	\$53,672
United States	19.2	2014	\$53,143
Australia	19.0	2014	\$43,550
Slovakia	18.4	2014	\$26,114
Canada	17.0	2014	\$43,247
Iceland	16.5	2014	\$39,996
Estonia	16.3	2014	\$25,049

¹³ See: http://stats.oecd.org/Index.aspx?DataSetCode=SOCX_AGG (unit of money expressed in USD).

Nation	Social expenditure (% of GDP)	Year	GDP per capita
Israel	15.0	2013	\$32,760
Turkey	12.5	2013	\$18,975
South Korea	10.4	2014	\$33,140
Chile	10.0	2013	\$21,911
Mexico	7.9	2012	\$16,463

Empirical evidence suggests that taxes and transfers considerably reduce *poverty* in most countries whose welfare states constitute at least a fifth of GDP¹⁴.

Country	Absolute poverty rate (1960–1991) (threshold set at 40% of US median household income)		Relative poverty rate (1970–1997)	
	Pre-welfare	Post-welfare	Pre-welfare	Post-welfare
Sweden	23.7	5.8	14.8	4.8
Norway	9.2	1.7	12.4	4.0
Netherlands	22.1	7.3	18.5	11.5
Finland	11.9	3.7	12.4	3.1
Denmark	26.4	5.9	17.4	4.8
Germany	15.2	4.3	9.7	5.1
Switzerland	12.5	3.8	10.9	9.1
Canada	22.5	6.5	17.1	11.9
France	36.1	9.8	21.8	6.1
Belgium	26.8	6.0	19.5	4.1
Australia	23.3	11.9	16.2	9.2
United Kingdom	16.8	8.7	16.4	8.2
United States	21.0	11.7	17.2	15.1
Italy	30.7	14.3	19.7	9.1

As far as economic performance is concerned, researchers have found very little correlation between economic performance and social expenditure¹⁵. They also see little evidence that social expenditures contribute to losses in productivity.

¹⁴ See: Kenworthy L., *Do social-welfare policies reduce poverty? A cross-national assessment*, Social Forces, 1999; Bradley D., Huber E., Moller S., Nielson F., Stephens J. D., *Determinants of relative poverty in advanced capitalist democracies*, American Sociological Review, 2003.

¹⁵ See: Atkinson A. B., *Incomes and the Welfare State*. Cambridge: Cambridge University Press, 1995.

Nor have social expenses contributed significantly to *public debt*. According to the OECD, social expenditures in its 34 member countries rose steadily between 1980 and 2007, but the increase in costs was almost completely offset by GDP growth. More money was spent on welfare because more money circulated in the economy and because government revenues increased. In 1980, the OECD averaged social expenditures equal to 16 percent of GDP. In 2007, just before the financial crisis kicked into full gear, they had risen to 19 percent – a manageable increase¹⁶.

A Norwegian study covering the period 1980 to 2003 found welfare state spending correlated negatively with *student achievement*.

4 The Italian welfare

The Italian Constitution – Article 38 of the Italian Constitution rules (i) the right of “every citizen unable to perform a job and who lacks of the necessary means for survival” to be granted support and social assistance (paragraph 1); in particular, disabled people also have the right to receive an adequate education and an introduction to the world of work (paragraph 3); (ii) the right of workers to “to be assisted and to be secured means adequate to maintain their quality of life in case of injury, disease, disability, elderly and voluntary unemployment” (paragraph 2); and states that the realization of the mentioned duties happens through “Entities and institutions established by or supported by the State” (paragraph 4), given that “Private assistance is free” (paragraph 5)¹⁷.

¹⁶ See: Martin Eierman, *The Myth of the Exploding Welfare State*, The European, October 24, 2012.

¹⁷ See: Pessi R., *Lezioni di diritto della previdenza sociale*, Padova, CEDAM, 2012.

Given this fundamental rule, some experts have distinguished *Social Assistance* from *Social Insurance*, where the former refers to all citizens while the latter only to workers. Yet, both represent the expression of the Italian Welfare State, because they solve all citizens' states of need, as a guarantee for the exercise of their fundamental political and civil rights.

As already mentioned, the extent of social protection depends on the welfare model adopted by a state. A line must be drawn between two types of models, a universal model and a residual, marginal or occupation one.

In universalistic model, the state acts by granting economic and social performances so to free all individuals from their state of need. Those benefits are not limited to workers but are extended to the whole community. Such an extensive level of protection requires high public spending, which may be possible in a system of progressive taxation (a greater tax rate for a greater imposable income). In the residual, marginal or occupational model instead, the State intervenes only in situations of drastic need of the individual, ensuring a basic level of services provided.

In the historical and economical literature, welfare state models are essentially two: the Beveridgian one and the Bismarckian one. The Beveridgian model dates from the Beveridge Report (in England in 1942), which postulates, similar to a universalistic model, State intervention in the provision of benefits to citizens (not only workers) that are in a state of need. In this model the performance is financed by the entire community through the tax levy.

In the Bismarckian model (named by Chancellor Bismarck who promoted the adoption of the first form of social insurance in Germany, in the late 19th century). Similar to the occupational model, it uses, under the aegis of the State, the private insurance

technique for the prevention and protection of risks that workers are subjected to in the course of their job. In this model, unlike the Beveridgian model, services are financed through contributions from interested parties.

It is not easy to say whether the welfare system in Italy is to be collocated in a universalistic model or in an occupational one, also because of historical reasons.

Historical references - In Italy, the first form of social insurance was provided by Law n. 80 (March, 17, 1898) that introduced compulsory insurance against accidents at work for industrial workers. In the same year Law n. 350 (July 17, 1898) was promulgated which established the National Fund for insurance against old age and disability for workers, organized with a voluntary contribution in which also the State participated. From now on development of the social security legislation continued, even during the First World War. The system created in this historical phase was faithful to the insurance model, because contribution was charged to stakeholders (workers and employers). It was therefore a system fit for liberal ideology, based on the neutrality of the State compared with the needs of citizens. Even if the State intervened providing mandatory forms of social insurance, these insurances still had private character. The imposition of compulsory insurance fell on the employer, with its burden of contributions, and was based on the so called 'theory of professional risk', according to which since employers took advantage from workers, they had to bear the risks for workers. During the Fascist period, the Italian laws on social insurance developed remarkably, mainly because of industrial development, which caused an increasing amount of workers, and also because of the Nation's ideology typical of fascism. The *corporative system* was established, which extended insurance

even to risks not strictly related to work such as disability, disease, death. Consequently, the social security system was extended. Its most important document was the Charter of Labour of 1927 that was intended to coordinate and unify the system and pension funds. In Italy's Fascist period also family allowances were established (1934), and health insurance (1943) was managed by a single organization for industrial workers, trade and agriculture (INAM). In this historic phase functions of pension and insurance were then entrusted to the productive sectors concerned, and the State was reserved only to coordinate and unify all regulation in the public interest for social protection. During this period a *corporate solidarity* was created. This kind of solidarity justified, on one hand, the protection's extension to risks unrelated to the performance of work (such as old age); on the other, it kept the insurance financing paid by the stakeholders.

In 1948, with the enactment of the Italian republican constitution, there was a radical change in the Italian social security system. The value of work is claimed in it (by articles 1 and 4) and the State's commitment to remove economic and social obstacles which limited the freedom and equality of citizens. It affirmed that all citizens, wealthy and indigent, should be able to exercise the fundamental rights and freedoms, thus should be able to take an active part in the life of the country (art. 3). Moreover, social protection is no longer an interest of the individual subject or of the individual categories in need, but it is a duty of the community (art. 2). So the State becomes a 'welfare state', as it acts not just mediating individual and category interests, but it assumes tasks that actively implements the rights and interests of constitutional source.

On the model of welfare state in Italy – Article 38 of the Italian Constitution has generated a debate about what is the model of the welfare state in Italy. There are two distinct doctrinal orientations.

Some scholars believe that the Italian model is universalistic, because it protects not only employees but also all citizens who are in a position of need, with a minimum pension level.

Other scholars are convinced that assistance and insurance meet different criteria. Assistance is based on a model of residual protection, because the beneficiaries are selected according to specific requirements attached to the right to welfare benefits (Art. 38, paragraph 1): inability to work and lack of livelihoods ascertained by the fact of having incomes below a predetermined threshold. Social insurance, instead, turns to a more limited set of beneficiaries, namely the workers (Art. 38 paragraph 2), to the occurrence of events that eliminate earning capacity. Moreover social insurance, contrary to social assistance, is not funded by taxation but by employers and workers through the payment of contributions. Compared to the position of the beneficiaries of the interventions, it is said that in social insurance pension benefit recipients (workers and, in some cases, their family members) hold a genuine individual right, while in assistance they have only a legitimate interest. From the legislative competence point of view, while social assistance falls within the legislative competence of the State (as regards the identification of the basic principles) and also of the local authorities, compulsory social security is governed exclusively by the State. According to these scholars, it is the same article 38 of the Constitution that distinguishes between social security and assistance, “outlining the operational areas, methods of protection and the same content of the performance”. For others, however, differences between

social assistance and insurance are fully recognized by the Constitution but, at the same time, differentiated, since “distinction does not mean separation”.

Social insurance - The main institution through which social security protection is implemented is social insurance. The insurance contract is one where one party (the insurer), in return for payment of a sum (insurance premium), assumes the obligation to provide other (insured) protection at the occurrence of certain and uncertain future events (risks) which prove to be economically disadvantageous to the insured person (claims). A fundamental characteristic of the insurance is the transfer of all or part of the bearing of the risk by the insured to the insurer (articles 1882-1932 cc).

When it comes to social insurance, it is the State that takes on, either directly or indirectly, the management of risks affecting collective interests (*e.g.*, health and working capacity of citizens). While in private insurance the State leaves freedom to individuals to arrange their own initiative to protect themselves.

The state as a social insurer, however, has a different nature than a private insurer. The insurer-State, in fact, does not pursue a profit contrarily to a private insurer. Moreover, in the case of social insurance, the employer, who pays the premium, is ‘separated’ from the worker who is entitled to receive services (only exceptions to this type of separation are represented by the compulsory insurance for autonomous workers).

The welfare reforms - In Italy, the most important ‘universalistic’ act is Law n. 833 in 1978 that created the National Health Service. Under this act, the protection of the physical and mental health of citizens is a fundamental human right and in the interest

of the whole community. The State is committed to ensure the benefits and services needed. After the post the World War II strong economic growth phase, the Italian economy started to experience a slowdown during the seventies, and this has led to the need to reduce the trend of public spending to finance welfare interventions. In particular, Law n. 328 in 2000, implemented a comprehensive reform of the entire discipline, defining the characteristics and requirements of the integrated system of assistance and social services managed by the State and local authorities, ensuring all citizens the quality of their life, equal opportunities and non-discrimination. State and local authorities must also prevent, eliminate or reduce the conditions of disability, need and unease of individuals and their families, resulting from inadequate income, social problems and dependency conditions.

As far as the retirement plan is concerned, the pension system in Italy has experienced a continuous revision process. A starting point is certainly Law n. 335 of August 8, 1995, regarding the complementary and compulsory pension reform. This law changed the criteria for calculating pensions, from the 'remuneration' method to the 'contribution' one; and it provided that adequate levels of social security should also be ensured by the complementary pension (i.e. by pension funds, as set up by Law n. 124 of April 4, 1993). The Law 35/1995 is unanimously considered one of the most important reforms of the Italian pension system. As noted above, it determined the change of pension's calculation, moving from the remuneration method (*i.e.*, pension's amount depends on employee's salary) to the contribution one (*i.e.*, pension's amount depends on the contributions paid by the worker in his working life). So, it determined a direct relationship between contributions paid and pension payable (also characteristic of the earlier corporative period). But according to some experts,

however, this would not be true, both because contributions are also related to earnings, and because law has retained some institutions – *e.g.*, the social pensions – in which such a direct relationship does not exist. The reforms in social security have followed with Law n. 243 (March 28, 2004). On the one hand, it has modified the requirements for access to old age and retirement pensions; on the other, it has facilitated the financing of pension funds through the granting of the termination indemnity (TFR) (as per Law n. 42 of February 2006). As a result, in Italy, as in most advanced economies, a pension system based on three ‘pillars’ was created. *(i)* The first pillar is the compulsory state pension. It is managed by INPS and financed by workers and employers throughout the course of a working life. But because of moving from the remuneration to the contribution method for pension’s calculation, this first pillar is not sufficient to ensure standards of living. *(ii)* Consequently, the second pillar has the aim of integrating the compulsory pension (of the first pillar). It is made by the pension funds, to which workers may participate in collective form. Pension funds are based on an individual capitalization system: contributions paid by the worker are invested in financial markets in order to generate a final capital to be converted into an annuity at retirement. Pension fund financial management is not carried out by the State but by financial managers (banks) selected by the pension funds. *(iii)* The third pillar is represented by the individual supplementary pension, that every individual can achieve freely through forms of individual savings, to integrate both the public welfare and the complementary one.

Subsequently, the social security rules were changed again with Law n. 247 (December 24, 2007), made under the so-called Welfare Protocol, and with Law n. 133 (June 8,

2008) which, among other things, abolished the non-overlapping rule between pensions and income from work in order to achieve higher levels of income.

The adjustment of pensions rules continued with Law n. 122 (of August 30, 2010), which removed some social security institutions and introduced a mechanism to adjust the retirement age. At the end of 2012, Italy arrived at the so-called 'Save Italy' Decree, converted into Law n. 214 (September 22, 2011). This law provided for the passage of all insured to the public contribution-based system and to the gradual rise of retirement age by indexing it to the changes in life expectancy. At the basis of this new and important reform there have been the effects on public debt of industrialized countries generated by the 2007-2008 financial crisis. In Italy, in particular, the pension expenditure corresponds to about half of public spending, and to about the 15% of GDP. Law 214/2011 (so-called 'Fornero reform', by the name of the Minister of Labour who proposed it) has deeply intervened on retirement rules, both for people close to their retirement age (who have suddenly seen change in the requirements for access to retirement), and for workers (who will have to work longer to qualify for an appropriate pension level, but less than those enjoyed by earlier retirees). This law has been considered for Italy a 'necessary' sacrifice to make Italian pension system financially sustainable, especially after the effects of the financial crisis. The Fornero reform, as well as changing the method of pension's calculation, has also changed the funders of pensions. All Italian workers, as well as most of the self-employed workers who do not have their own pension fund, are obliged to insure themselves only through the INPS (Istituto Nazionale della Previdenza Sociale), which has merged with other public pension institutions by force of that law (before the Forneo reform). The INPS numbers are impressive. In 2014 the Institute served: 40.7 million users; 23.4

million workers (82% of the employed population in Italy); 1.4 million businesses; 16 million retirees; 21 million pensions are paid each month; € 10.4 billion spent each year to support the family; EUR 22.7 billion spent each year on income support.

The reform of unemployment benefits - The other important aspect of the social security system are social safety nets, namely those forms of protection which deal with public aid workers in the event of reduction or loss of job. The great financial crisis which broke out in 2007-2008 has produced very serious effects on employment in Italy. In November 2009, in fact, Italy had one and a half million unemployed benefitting from contributions for income support. In 2010 and 2011, the unemployment rate continued to rise and, in February 2013, it reached 11.6% (with about 2.97 million unemployed). The rate of long-term unemployment reached 6.4% compared with 4.8% a year earlier, and given the more serious problem is for young people, with an unemployment rate of 37.8%¹⁸.

L. 28.6-2012, n. 92 (so-called 'legge Fornero') carried out a comprehensive reform of the Italian system of unemployment benefits. With this law, amended by Law 134/2012, the previous forms of income support have been changed. The social security for the employment (ASPI) was introduced as a new and unique tool against the risk of unemployment, which now includes the previous unemployment benefits and mobility. A review of tools for constant income support relationship (the so-called wage supplements) was also made by this law.

¹⁸ See: CNEL, *Notiziario sul mercato del lavoro*, n. 2, aprile 2013.

Trends of Italian welfare state - Some experts have identified a number of trends of Italian welfare state. First, the shift from a public welfare model to a system of 'welfare mix', in which certain services are provided, together with or as an alternative to the State, by private entities. This should increase the efficiency of the system and raise the overall level of social protection. Another trend that has been identified is the abandonment of a social policy based on the offer of indiscriminate social services (uniform in individuals and geographically), which appears no longer sustainable given the scarcity of public resources. The Italian welfare state seems to be directed more and more towards "flexible measures tailored to the needs of local communities and managed with efficiency at the local level"¹⁹.

Broadly speaking, given the constraints of public financial sustainability of this historical phase, the problem in Italy is about the transition from the current 'employment' welfare state model to a new 'universalistic' one.

¹⁹ See: Ministero del Lavoro, *Libro Bianco sul welfare, Proposte per una società dinamica e solidale*, Roma, 2003

Part II

The Financial Crisis in 2007-2008

5 Dynamic of the crisis

At the root of the crisis there was the large quantity of 'high risk' mortgage loans granted by many US banks since the beginning of 2000²⁰. These were the notorious subprime loans, i.e. loans granted by banks to individuals with low and/or non-steady income in order to buy homes, secured by the property and with an amount very close to the value of the property used as collateral (at the moment of purchase). Many acronyms were coined to name this financial product (a good example is 'NINJA loans', or loans granted to people with 'No Income, No Job or Asset'). To grant a subprime loan is of course a very risky operation for a bank: as it is unlikely right from the beginning that the borrower will honour its obligations in the future, the value of the loan lies in the value of the underlying collateral (rather than depending on the risk of borrower insolvency).

So, why did US banks grant subprime loans, when there was high probability of borrower insolvency right from the start? The explanations in context are many and well known: from 'deregulation' as the guiding principle of all political and institutional action to blind faith in the 'invisible hand', from the central role played by the market even in the accounting (Us-GAAP, IAS-IFRS) and supervisory (Basel II) practice to, last but not least, the pro-home-buying social policies sponsored by the US administration.

²⁰ See: Bassan F., Mottura C., *From Saviour to Guarantor. EU Member States' Economic Intervention During the Financial crisis*, Palgrave MacMillan, 2015.

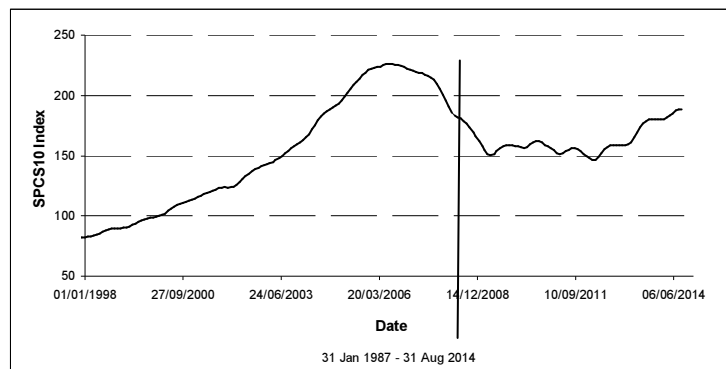
Without getting into too much detail about the causes that triggered the widespread use of subprime loans since early 2000 —as this is not relevant for our review— we will refer to real estate market and interest rate trends in the United States.

Starting from 2000 and through mid-year 2006, real estate prices in the US continued to grow; therefore, the banks granting the loans were not so concerned about the possible insolvency of their borrowers than about the value of the property (which they expected to be able to resell at a price higher than the residual amount of the loan granted). Between 2001 and 2004, interest rates in the US market were very low, which was an incentive to borrowing, including for the purpose of purchasing real property; all these purchases in turn contributed to inflating real estate prices further (and to generate what was later called ‘the real estate bubble’). Lastly, through the mechanism of securitisation, the banks placed their subprime loan portfolios on the financial markets in the form of bonds (like Asset Backed Securities, ABS), and made sure that the underlying risk was certified by specialised international companies (the rating agencies).

Securitisation and ABS-like instruments led to the development of a securitisation market that originated from the private sector and through which the subprime risk (i.e., the US real estate risk) was transferred from the banks to the financial markets via Special Purpose Vehicles (SPV), broken down into bonds issued by these SPVs — ABS, ABS-CDO, ... — that were subscribed by institutional investors (insurance companies, pension funds, merchant banks, investment funds, and so on). This process is known as risk transfer: the subprime risk was being transferred from the financial statements of banks to the financial markets. The part most at risk (the so-called equity portion) of subprime portfolios would typically be retained by the originators.

Synthetic securitisation transactions were also very widespread: in these, the underlying risk of subprime loan portfolios was managed through transactions in credit derivatives —non-standard Credit Default Swaps (CDS)— with large banks and insurance companies (such as AIG). The economic scenario started to change in 2004: as US interest rates grew (and continued to grow until 2006) fewer loans were granted and insolvencies on those already granted increased; then real estate prices stopped rising in mid-year 2006 as shown in figure below.

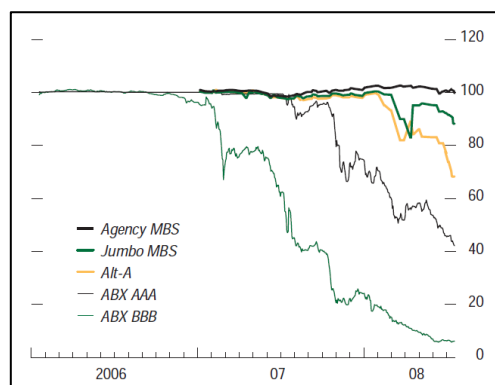
US real estate market trends
 ('S&P/Case-Shiller Composite-10 Home Price Index')



Source: Bloomberg

Starting from the Summer of 2007, the prices of ABS-like securities related to US mortgage loans started to decrease.

Prices of U.S. Mortgage-Related Securities (In U.S. dollars)



Source: IMF 2008²¹

²¹ See: International Monetary Fund, *Global Financial Stability Report*, October 2008 (in particular, pp. 11-13; in Figure 7: 'ABX' is an index of credit default swaps on mortgage-related ABS; 'MBS' is Mortgage Backed Security).

As the International Monetary Fund stated in October 2008, “U.S. residential mortgages are experiencing unprecedented credit deterioration. Since the last GFSR [Global Financial Stability Report], delinquencies on U.S. subprime and Alt-A mortgages have risen further and home foreclosures have reached new highs, especially in regions where home prices have fallen the most [...]. Reflecting this credit deterioration, bank charge-offs have risen, and prices on non-agency mortgage-related securities (especially Alt-A and senior subprime tranches) have resumed their declines”.

So the new scenario started to generate strong losses, both actual and potential, in the annual financial statements of institutional investors worldwide, including those banks – especially merchant banks – that had purchased or however retained subprime loan related securities. These ABS-like securities, that from that moment on were called ‘toxic’ securities, triggered a loss of trust in the international financial system, also because many operators were unaware of the quantities of subprime securities they had in their accounts (because they were off-balance sheet and often placed on the market by SPVs outside regulated territories). Shortly afterwards, the loss of trust became liquidity crisis: banks and big investors in subprime securities tried to counter their lack of liquidity by selling securities and other realisable assets, and no more loans were granted to enterprises and households. The risk turned systemic: a domino effect of losses was engendered, that eventually reflected in a collapse of stock market prices. This was the starting point of the crisis of the international financial system. The consequences were dramatic: banks took over other banks (JPMorgan acquired Bear Stearns, Bank of America acquired Merrill Lynch, etc.), insurance companies and

federal agencies were put into receivership (AIG, Fannie&Freddie, etc.), banks and institutions went bankrupt (Lehman Brothers, etc.).

6 Effects of the crisis

6.1 The public debt boom

In order to cope with systemic risk and avoid the collapse of the entire financial system, sovereign States and central banks made a massive intervention, overcoming the 'laws of the market', at least in the form they had been applied and interpreted until then. The first to intervene were central banks, in an attempt to counter the liquidity crisis, particularly with expansive monetary policy instruments aimed at reducing interest rate and creating more opportunities to receive funding from financial operators. State governments intervened too, making unprecedented financial resources (real and prospective) available to the system. In this situation, State guarantees represented and still represent the instrument most used by States to fight the crisis, that, on the other hand, led to a significant increase in the weight of contingent liabilities in the international public finance. It was an unprecedented public intervention, both in terms of resources distributed and from the standpoint of the coordination required by the global size of the crisis. So, the risk propagated from the markets to the States. In order to support interventions to help the financial system, deficits and public debt increased conspicuously, and the relief for having avoided a catastrophe was replaced by "a sudden anxiety of international financial

markets about the sustainability of the growing sovereign debt”²². According to the OECD’s ‘Sovereign Borrowing Outlook 2014’, the stock of public borrowing in industrialised countries exceeded the value of their aggregate GDP (something that had never happened before in times of peace, see figure below)²³.

Development of Gross Public Debt for selected OECD Economies (1880-2014; % of GDP)



Source: OECD, 2014

In particular, the OECD “estimates that gross borrowing requirements will total USD 10.6 trillion in 2014, down from USD 10.8 trillion in 2013. The redemption profile of medium- and long-term central government debt in the OECD area remains challenging ... with large projected payment flows for the G7 and euro area governments for 2013 and 2014. For the OECD area as a whole, governments will need to refinance close to 29% of its outstanding long-term debt in the next 3 years”.

In the face of these public interventions to support the banking system, international regulations initiated a strong revision of the system of rules. In fact, if “the crisis is

²² See: Bank of Italy, The Governor’s Concluding Remarks, 31 May 2010.

²³ See: OECD, www.oecd.org and: *Sovereign Borrowing Outlook 2014*. The economies considered by OECD estimates are Australia, Canada, France, Germany, Italy, Japan, Korea, Spain, United Kingdom and United States.

rooted [...] in the lack of rules and of supervision in the most important financial markets”²⁴, the agenda of the Financial Stability Board (FSB) —that had been put in charge of (re)designing the regulatory framework for the financial business since the onset of the crisis— was outlined along four main aspects: *(i)* definition of new rules governing banks (more robust equity, reduced financial leverage, control of liquidity risks)²⁵; introduction of specific provisions for systemic intermediaries (those ‘too big to fail’); *(iii)* less reliance on ratings in the supervision, that should instead be based on an efficacious control of decision-making processes; *(iv)* more transparency in trading in already regulated financial markets and definition of a set of rules for over the counter (OTC) markets similar to that applicable to regulated markets (normalisation of standard contracts, settlement of transactions at centralised counterparties subject to supervision).

In October 2014, the International Monetary Fund noted that, six years after the onset of the crisis, “the global economic recovery continues to rely heavily on accommodative monetary policies in advanced economies. Monetary accommodation remains critical in supporting the economy by *encouraging economic risk taking* in the form of increased real spending by households and greater willingness to invest and hire by businesses. However, prolonged monetary ease may also encourage excessive financial risk taking”²⁶.

²⁴ See: Bank of Italy, The Governor’s Concluding Remarks, 31 May 2010.

²⁵ This aspect also embraces the regulatory debate on “simplicity” vs “complexity”: “Modern finance is complex, perhaps too complex. Regulation of modern finance is complex, almost certainly too complex. That configuration spells trouble. As you do not fight fire with fire, you do not fight complexity with complexity. Because complexity generates uncertainty, not risk, it requires a regulatory response grounded on simplicity, not complexity” (see: Bank of England, *The dog and the frisbee*, 31 August 2012).

²⁶ See: International Monetary Fund, *Global Financial Stability Report*, October 2014.

6.2 The end of the liberalism mainstream and the research of a new 'market law'

The great 2007-2008 financial crisis originated, as already noted, from the deregulation that has characterized the international financial system at the end of the 20th century, marked the end of Von Hayek liberalist thought, of the 'spontaneous market order' theory and the self-regulating capacity of the market²⁷.

Von Hayek liberalist thought believed that the 'contrast' between the interests of capital to be free and the state's interest to protect the lower classes was rectified, in the long term, by the 'market law' of supply and demand. On the other hand, it took no account of the unsustainability of social costs necessary to move from the chaos generated by that 'contrast' (wars, revolutions, social inequality, and poverty) to the spontaneous long-term order generated by the market. It is therefore to analyze the ways to limit the social costs during the transition periods (such as the one we are living in) from chaos to a new spontaneous order.

The construction of a 'new' market law – i.e. of an economy legal order – must start from the analysis of the context change. A first evidence of this change is the decline of national sovereignty, which coincided with the decline of democracy, with the deterioration of the political representation mechanisms, with the delegation of decisions to supranational entities and the impossibility-inability to contrast the action of international finance. The second highlight is the new dimension of capitalism and money, which is no longer an effective value anchored to the real economy, but only a 'financial virtuality' created by new technologies. This virtuality gives capitalism a parasitic connotation. Finance speculates rather than dealing with companies

²⁷ Pessi R., *Ordine giuridico ed economia di mercato*, in 'Ordine giuridico ed economia di mercato', LUISS Dipartimento di Scienze giuridiche, Collana di Studi, n. 13, CEDAM, 2010.

producing real goods²⁸. Also the transmission of information and knowledge become virtual, so as to create a growing split between the culture of civil society settled in centuries of tradition and the new generations expropriated of their past by the new media reality.

In this new dimension, the conflict is between territorial law and the global economy governed by the *lex mercatoria* and nowadays reinforced by the silence of the sovereign States. A silence which has exposed two evident facts: the economic power of corporations over the States and the States' public debt purchase by the same corporations. International finance can therefore, appreciate or depreciate the economy and the solvency of the sovereign State, decree or not their bankruptcy.

The belief that the 'free market' – a market free from national law constraints – was creating increasing and widespread wealth and wellness is therefore wrong. We return to the belief that the market economy needs a 'legal order'; and that this order shall not be used to make the market more free, but it must impose that the economy be useful for the public economic interest. In addition, in terms of social context, deregulation has intensified the competition between legal systems and, in particular, the highest cost has been paid by the labor law and by the social rights protection²⁹.

²⁸ Pope Francis states that "the rescue of banks, by charging the cost to the population, without the decision to review and reform the entire system, reaffirms an absolute domination of finance that has no future and that will only generate new crisis after a long, expensive and apparent cure. The 2007-2008 financial crisis was an opportunity to develop a new economy, more attentive to ethical principles, and a new regulation of financial speculation and virtual wealth. Nevertheless, there has been no reaction that led us to rethink about the outdated criteria continuing to rule the world ... it's time to accept a certain economic decrease in some parts of the world procuring resources for the parts economically weaker" (encyclical Letter *Laudato si*, pp. 143-147).

²⁹ Pope Francis states "The need to defend the work" and to fight poverty: "helping the poor with money should always be a temporary remedy to deal with emergencies. The real goal should always be to allow them to have a dignified life through work ... Giving up to invest in people to get more immediate profit is a bad deal for society" (Encyclical Letter *Laudato si*, pp. 98-101). Pope Francis adds: "The XXI century, while keeping its governance of past eras, witnesses a loss of the States power, especially because the economic and financial dimension, having a transnational characters, tends to

However, the cost of the 'free market', mailly paid by the labor law, has not found remedies in the European Union dimension. First, because EU as a whole suffers from competition between jurisdictions, all characterized by weak or nonexistent welfare. Second, because the enlargement of the EU (but not of the Eurozone) has generated new incentives for cross-border allocations of business activities, on the basis of opportunistic assessments oriented towards more profit. So, even in UE, economy reasons prevail over employment, fair wages and decent work. Actually, the limited availability of public resources which characterizes, as previously noted, this historical phase, makes the preservation of social rights moving towards the protection of the person (*citizenship income*) and to the socially useful work (*employment benefit*) more impellent.

The idea is not an external harmonized legislation but rather local regulations guided by common values. The *lex mercatoria* must indeed still confront with the national legal systems should a default materialize. This is the time when the national court may overcome the contradiction between the territorial law and the globalization of the economy (which often highlights the absence of a rule to be applied to a specific case), using the *general clause of good faith* when exercising private powers and economic activities. The use of this clause could also give input to the proportionality principle in balancing the values involved in an abstract case and/or in a concrete one, typical of the constitutional courts' experience, and even (although more in terms of common law) of the European law. A general clause of good faith in the proper exercise of private powers and economic freedoms can act as a garrison for the

predominate over policy ... In the line already developed by the Church social doctrine , 'to govern the global economy ... we urge a true World Political Authority" (pp. 134-135).

recovery of capital and the social function of business, which continues to aim to produce wealth, welfare, employment.

The question then becomes whether virtuous national jurisprudences (that use the general clause to exercise the powers in good faith as a correct behaviour prototype) are suitable in imposing capital to fulfil a social function, or if they materialize in a multiplier effect of competition between jurisdictions. Positive indications on this path are offered by many experts. The evocation of a general good faith clause necessarily refers to the balancing technique of the constitutional status values. A technique that can also be used in a cross-border dimension, where the values in the legal systems involved are common and shared, and have equal dignity. The recent decision of the German Constitutional Court (which imposes a prior law that delegates to the government the power to sign new EU Treaties, and therefore takes back to the same Court the legitimacy judgment for the subscription) provides an accurate indication of the so-called theory of counter-limits acceptance, and opens new scenarios in the relations between the national constitutional courts and the European one.

It's evident that a full harmonization of the national jurisprudences (at least as to the good faith clause) requires a political intervention and, even more, interventions of collective autonomy. I think, in particular, about the role that the international trade union agreements (i.e. the collective agreements drafted with international trade unions) may carry out.

After all, the belief that the creation of a 'legal order' for the market economy is mainly entrusted to the role of national jurisprudences, is confirmed by the increasing sufferings of the WTO in ensuring a minimum regulation of world trade. New emerging economies, in fact, have increasingly become aware that they can form the market

prices of raw materials (even bending the oil-oligopoly of Arab countries), and therefore a reinforced tendency to not tolerate any compression of their production capacity of low cost manufacture products. On the other hand, the politic weakness in the transnational regulation is confirmed by the lack contrast of environmental degradation.

A solution to contain the effects of an economy inspired only by the reasons of profit could be therefore to recover, by judicial way, a general clause of good faith that would be referable to contractual relationships and to the exercise of private powers (and economic freedoms) in any region of the planet. It's a path that wants to reaffirm how living together in society requires respect for reasonable expectations of the parties in their mutual relationship and even more generally for workers, consumers, citizens.

By recalling the *social function of the company*, this path allows the balance of free enterprise value with those of the protection and promotion of the workers, citizen and human person rights (as per Articles 2 and 3 of the Italian Constitution).

The current crisis has thus marked the end of the liberal thought considered the unsustainability of the social costs it has generated (at least in the short-medium term). On the other hand, the labor law has activated the search for new ways, having as a natural aim worker protection and the construction of new welfare systems protecting citizens.

6.3 New economic theories, from the ‘secular stagnation’ to the ‘economic trickery’

Larry Summers – the Harvard University President Emeritus – gave a speech at the IMF in November 2013 and warned for a new Economic theory, the so called ‘secular stagnation’, saying that asset bubbles might be necessary for developed economies to reach their potential growth.

Secular stagnation is a situation in a rich country where real economic growth has ground to a halt or remains at a very low level due to chronic underinvestment in future potential³⁰. The lack of investment leads to falling per capita incomes over time and stagnant demand. In order for such an economy to stave off high unemployment it is necessary to pump up asset bubbles in order to mimic the effects of growth. What it needs, in other words, is repeated bouts of spending to increase demand whether from the private or public sector.

In the following is reported the speech by Larry Summers.

I am very glad for the opportunity to be here. I had an occasion to speak some years ago about Stan’s [Stan Fischer] remarkable accomplishments at the IMF when he left the IMF, and I had an occasion some months ago to speak about his remarkable accomplishments at the Israeli Central Bank when he left the Israeli Central Bank. So, I will not speak about either of those accomplishments this afternoon.

Instead, the number that is on my mind is a number that I would guess is entirely unfamiliar to most of the people in this room, but is familiar to all of the people on this stage, and that is 14.462. That was the course number for Stan Fischer’s class on monetary economics at MIT for graduate students. It was an important part of why I chose to spend my life as I have, as a macroeconomist, and I strongly suspect that the same is true for Olivier [Blanchard], and for Ben [Bernanke], and for Ken [Rogoff].

It was a remarkable intellectual experience, and it was remarkable also because Stan never lost sight of the fact that this was not just an intellectual game. He emphasized that getting

³⁰ Vedi Larry Summers, *Speaks during a panel discussion on financial crises at the International Monetary Fund (IMF)*, Jacques Polak Annual Research Conference in Washington, November 8, 2013.

these questions right made a profound difference in the lives of nations and their peoples. So, I will leave it to others to talk about the IMF and Israel, and I will say to you, Stan, thank you on behalf of all of us for 14.462, and for all you have taught us ever since.

I agree with the vast majority of what has just been said [by Ben Bernanke, Stan Fischer and Ken Rogoff] – the importance of moving rapidly; the importance of providing liquidity decisively; the importance of not allowing financial problems to languish; the importance of erecting sound and comprehensive frameworks to prevent future crises. Were I a member of the official sector, I would discourse at some length on each of those themes in a sound way, or in what I would hope would be a sound way. But, I'm not part of the official sector, so I'm not going to talk about any of that.

I'm going to talk about something else that seems to me to be profoundly connected, and that is the nagging concern that finance is all too important to leave entirely to financiers or even to financial officials. Financial stability is indeed a necessary condition for satisfactory economic performance but it is, as those focused on finance sometimes fail to recognize, far from sufficient.

We have all agreed, and I think our agreement is warranted, that a remarkable job was done in containing the 2007-2008 crisis. That an event that in the fall of 2008 and winter of 2009 that appeared, by most of the statistics – GDP, industrial production, employment, world trade, the stock market – worse than the fall of 1929 and the winter of 1930, ended up in a way that bears very little resemblance to the Great Depression. That is a huge achievement which we rightly celebrate.

But there is, I think, another aspect of the situation that warrants our close attention and tends to receive insufficient reflection, and it is this: four years ago, in the fall of 2009, the financial panic had been arrested. The TARP money had been paid back, credit spreads had substantially normalized; there was no panic in the air. To have normalized financial conditions so rapidly so soon after a panic was no small achievement.

Yet, in the four years since financial normalization, the share of adults who are working has not increased at all and GDP has fallen further and further behind potential, as we would have defined it in the fall of 2009. And the American experience of dismal economic performance in the wake of financial crisis is not unique, as Ken Rogoff and Carmen Reinhart's work has documented. Japan provides a particularly clear example. I remember at the beginning of the Clinton administration, we engaged in a set of long run global economic projections. Japan's real GDP today in 2013 is little more than half of what we at the Treasury or the Fed or the World Bank or the IMF predicted in 1993.

It is a central pillar of both classical models and Keynesian models that stabilization policy is all about fluctuations – fluctuations around a given mean – and that the achievable goal and therefore the proper objective of macroeconomic policy is to have less volatility. I wonder if a set of older and much more radical ideas that I have to say were pretty firmly rejected in

14.462, Stan, a set of older ideas that went under the phrase secular stagnation, are not profoundly important in understanding Japan's experience in the 1990s, and may not be without relevance to America's experience today.

Let me say a little bit more about why I'm led to think in those terms. If you go back and you study the economy prior to the crisis, there is something a little bit odd. Many people believe that monetary policy was too easy. Everybody agrees that there was a vast amount of imprudent lending going on. Almost everybody believes that wealth, as it was experienced by households, was in excess of its reality: too much easy money, too much borrowing, too much wealth. Was there a great boom? Capacity utilization wasn't under any great pressure. Unemployment wasn't at any remarkably low level. Inflation was entirely quiescent. So, somehow, even a great bubble wasn't enough to produce any excess in aggregate demand.

Now, think about the period after the financial crisis. I always like to think of these crises as analogous to a power failure or analogous to what would happen if all the telephones were shut off for some time. Consider such an event. The network would collapse. The connections would go away. And output would, of course, drop very rapidly. There would be a set of economists who would sit around explaining that electricity was only 4% of the economy, and so if you lost 80% of electricity, you couldn't possibly have lost more than 3% of the economy. Perhaps in Minnesota or Chicago there would be people writing such a paper, but most others would recognize this as a case where the evidence of the eyes trumped the logic of straightforward microeconomic theory.

And we would understand that somehow, even if we didn't exactly understand it in the model, that when there wasn't any electricity, there wasn't really going to be much economy. Something similar was true with respect to financial flows and financial interconnection. And that's why it is so important to get the lights back on, and that's why it's so important to contain the financial system.

But imagine my experiment where say for a few months, 80% of the electricity went off. GDP would collapse. Then ask yourself, what do you think would happen to GDP afterwards? You would kind of expect that there would be a lot of catch up, that all the stuff where inventories got run down would get produced much faster. So, you'd actually expect that once things normalized, you'd get more GDP than you otherwise would have had, not that four years later, you'd still be having substantially less than you had before. So, there's something odd about financial normalization, if panic was our whole problem, to have continued slow growth.

So, what's an explanation that would fit both of these observations? Suppose that the short-term real interest rate that was consistent with full employment had fallen to -2% or -3% sometime in the middle of the last decade. Then, what would happen? Then, even with artificial stimulus to demand coming from all this financial imprudence, you wouldn't see any

excess demand. And even with a relative resumption of normal credit conditions, you'd have a lot of difficulty getting back to full employment.

Yes, it has been demonstrated absolutely conclusively that panics are terrible and that monetary policy can contain them when the interest rate is zero. It has been demonstrated less conclusively, but presumptively, that when short-term interest rates are zero, monetary policy can affect a constellation of other asset prices in ways that support demand even when the short-term interest rate can't be lowered. Just how large that impact is on demand is less clear, but it is there. But imagine a situation where natural and equilibrium interest rates have fallen significantly below zero. Then, conventional macroeconomic thinking leaves us in a very serious problem, because we all seem to agree that whereas you can keep the federal funds rate at a low level forever, it's much harder to do extraordinary measures beyond that forever; but, the underlying problem may be there forever. It's much more difficult to say, well, we only needed deficits during the short interval of the crisis if equilibrium interest rates cannot be achieved given the prevailing rate of inflation.

If this view is correct, most of what might be done under the aegis of preventing a future crisis would be counterproductive, because it would, in one way or another, raise the cost of financial inter-mediation, and therefore operate to lower the equilibrium interest rate on safe liquid securities.

Now, this may all be madness, and I may not have this right at all. But it does seem to me that four years after the successful combating of crisis, since there's really no evidence of growth that is restoring equilibrium, one has to be concerned about a policy agenda that is doing less with monetary policy than has been done before, doing less with fiscal policy than has been done before, and taking steps whose basic purpose is to cause there to be less lending, borrowing, and inflated asset prices than there were before.

So, my lesson from this crisis, and my overarching lesson, which I have to say I think the world has under-internalized, is that it is not over until it is over, and that time is surely no right now, and cannot be judged relative to the extent of financial panic. And that we may well need, in the years ahead, to think about how we manage an economy in which the zero nominal interest rate is a chronic and systemic inhibitor of economic activity holding our economies back below their potential.

Larry Summers's speech was in November 2013. In September 2014 he may have changed his mind, saying that the strength of the U.S. labour market may point

to impending supply-side chokes rather than a problem of demand (as he said in 2013)³¹.

As far as 'economic trickery' is concerned, in 2015 Akerlof and Shiller (Nobel Prize-winning economists in 2001 and 2013 respectively) said that "ever since Adam Smith, the central teaching of economics has been that free markets provide us with material well-being, as if by an invisible hand"³². But they "deliver a fundamental challenge to this insight, arguing that markets harm as well as help us. As long as there is profit to be made, sellers will systematically exploit our psychological weaknesses and our ignorance through manipulation and deception. Rather than being essentially benign and always creating the greater good, markets are inherently filled with tricks and traps". They analyze "a paradox: why, at a time when we are better off than ever before in history, all too many of us are leading lives of quiet desperation"; and to reduce the "economic trickery" they suggest "through greater knowledge, reform, and regulation".

So welfare state is back again to attention, this time referring to the knowledge system and to face this new *uncertainty's paradigm*.

³¹ See: <http://www.businessinsider.com.au/larry-summers-admits-he-may-have-been-wrong-on-secular-stagnation-2014-9>

³² See: Akerlof G.A., Shiller R.J, *Phishing for Phools: The Economics of Manipulation and Deception*, Princetown University Press, 2015.

7 Institutional analysis of the crisis and post-crisis regulation effects

In the second half of 2014, the European Central Bank and the Bank of England launched a Discussion Paper “for a better functioning securitisation market in the European Union”³³ which also “provides an overview of the key failings of the securitisation market leading up to the financial crisis and how they contributed to the amplification of losses in the sub-prime mortgage market”.

The two Central Banks say that in “the years running up to the 2007-09 financial crisis the United States underwent a *credit boom*, largely funded by a huge expansion in *securitisation* issuance. However, the growth in securitisation *did not lead* to a diverse distribution of risk across the system. Much of the risk resided with banks [...].

In the years running up to the crisis, securitisation became increasingly *complex and opaque* [...]. These innovations were partly the result of investors’ *over-reliance on credit ratings*. But the assumptions used by credit rating agencies (and banks) to *model credit risk* proved to be inadequate. In particular, the assumptions significantly underestimated the correlation of the performance of mezzanine RMBS tranches underlying CDOs of ABS and over-estimated the quality of underlying sub-prime loans. As a result, the majority of AAA-rated tranches that were linked to sub-prime mortgages were downgraded as the crisis took hold ... Loose regulatory treatment helped fuel the securitisation boom and bust. The absence of retention requirements allowed loans to be originated solely for the purpose of securitisation. This weakened lenders’ incentives to apply stringent underwriting standards, with these incentives compromised further by investors’ over-reliance on credit ratings. *Loose capital*

³³ See: Bank of England, European Central Bank, *The case of a better functioning securitisation market in the European Union*, May 2014.

requirements allowed investment banks to hold near-zero capital against ‘hedged’ multi-billion dollar negative basis trade books of ABS. And a lack of disclosure requirements on banks’ exposures to securitisations, coupled with accounting rules that allowed many exposures to be held off balance sheet, added to the uncertainty around the creditworthiness of many banks as the crisis unfolded.

In 2007, markets began to perceive that US house prices were at risk of falling and that the poor quality of underwriting standards of US sub-prime mortgages would therefore lead to significant falls in their values.

Previously it had been well known that the underwriting standards were weak but market participants felt that this did not matter in *a world of ever increasing house prices*. The reappraisal, which began in 2007, exposed a chain of vulnerabilities in funding markets that would bring the global financial system to the brink of failure”.

The authoritativeness of the institutions that studied the crisis after 2007-2008 (ECB and BoE) would lead to thinking that a final diagnosis was pronounced on the origins and causes of the present crisis —hence the treatment found— at least as regards the instruments (‘ABS-like’), the techniques (securitisations) and the behaviours that had triggered it.

A new map of global risks was outlined on the occasion of the G20 meeting held in Australia in mid-November 2014. A few of these were considered within the scope of operations in traditional derivatives (forward, options, swap). These instruments have different characteristics compared to ABS instruments ‘derived’ from securitisation transactions (as described above) and, since the start of the crisis in 2007-2008, they have been the subject of prudential regulations, also given the huge dimensions of this market. According to estimates from the Bank for International Settlements, by the

end of June 2014 the OTC derivatives market was worth about \$700,000 billion in notional terms, and \$17,000 billion in terms of market value³⁴. International regulations (for instance, the Dodd-Frank Act in the US and the EMIR in the EU), in line with one of the main principles established by the Financial Stability Board at the onset of the crisis, introduced a series of rules to bring the operation of this OTC market back to the typical operation of regulated markets, by introducing Central Clearing counterParties (CCPs). However, these new players might engender *new systemic risks* if the aggregate operations in derivatives are, in the end, all concentrated with them. In particular, their degree of solvency —as new ‘systemic’ players— is under review, since all operations in derivatives (as already said, for about \$700,000 billion in notional terms and about \$17,000 billion in terms of market value by the end of June 2014) are concentrated with 15 Central Counterparties. This new form of systemic risk has a regulatory origin and relates to new subjects of private law (the CCPs) whose guarantor of last resort (i.e., the party the default risk may be transferred to if needed) has not been determined yet³⁵. Besides, one of the consequences of post-crisis regulations is the reduction of banking operations in certain sectors, which has favoured the development of the so-called ‘shadow banking’ phenomenon (which, according to Financial Stability Board data, has reached a value of about \$75,000 billion).

Despite institutional analysis and anti-crisis regulation, market risk is still on.

³⁴ See Bank for International Settlements, *Statistical release OTC derivatives statistics at end-June 2014*, November 2014.

³⁵ See, for example, JP Morgan Chase & Co, *What is the Resolution Plan for CCPs?*, Perspective, September 2014.

Part III

The debate on welfare state models

We said that during the eighties and nineties of last century, a crisis of welfare systems has occurred for economic, political, social and cultural reasons. Nowadays, we talk about a real *welfare state crisis*. All this was further powered by the 2007-2008 *financial crisis* effects (as analyzed in Part II) which on one hand has increased the citizens welfare demand and, on the other, has reduced – because of a public debt reaching ‘after-war’ levels – the States possibility to increase the welfare supply. If, in general, experts agree on the need for a change of welfare policies by the States, there is a debate on how to proceed in such change.

In this third part of the thesis I will try to deepen the elements of the debate on welfare state model changes, by proposing two different analyses.

The first analysis is developed by Professor Stiglitz and refers to the US welfare state. He studies the changes introduced in the US welfare state at the end of the nineties of last century before the 2001 *Internet crisis* and the effects these changes have determined in increasing the instability of the US economy³⁶. Stiglitz’s analysis also highlights the fundamental difference between retirement saving and financial saving, having the first, unlike the second, a non-surplus nature because it intended to support the individual needs in the phase of life when he will not work anymore. Consequently,

³⁶ See: Stiglitz Joseph E., *I ruggenti anni novanta. Lo scandalo della finanza e il futuro dell’economia*, Einaudi, 2005 (Stiglitz was Nobel prize in Economic Sciences in 2001).

according to Stiglitz, workers' contributions paid to *private pension funds* should not be invested in the stock market and so exposed to the Wall Street's volatility, because otherwise the risk is to increase the vulnerability of the economy as a whole. Neither the accounting rules adopted by the pension funds must follow market prices. Otherwise, we risk when financial markets are 'irrationally exuberance' – such as in the last decade of past century – to account very high (and very risky) short-term yields level, compared to the lower (and less risky) long-term ones. In this way, accounting rules offer the companies an 'yield transfer' opportunity, transforming the future pension funds income in profit distributed to shareholders³⁷. According to Stiglitz, even the public welfare should remain as it is, without considering the privatization attempts proposed by conservative parties which are more interested in the 'fees' generated by financial investments than to protect the future generations.

The second analysis, developed by professor Pessi, refers to Italian welfare state and discusses the need to reconsider the current model after the consequences produced by the 2007-2008 financial crisis. In Pessi's view we need to understand that we are in a new historical phase, where instability and uncertainty on the future are the key features, and where *emergency has become system*³⁸. Professor Pessi wonders whether in an era when emergency becomes system, it is necessary for Italy to move from the actual 'occupational' welfare model to a new 'universalistic' welfare model.

³⁷ For an analysis on of the Italian pension funds see: Messori M., *La previdenza complementare in Italia*, Bologna, Il Mulino, 2006; Grande G., Visco I., *A public guarantee of a minimum return to defined contribution pension scheme members*, Banca d'Italia, Working Papers, n. 762, June 2010; Visco I., *Retirement saving and the payout phase: how to get there and how to get the most out of it*, Keynote speech to the roundtable on "The impact of the payout phase on financial markets", OECD conference "The payout phase of pensions, annuities and financial markets", Paris, 12 November 2008. For the implications of the demographic risk in the context of pensions funds see: *Ageing and pension system reform: implications for financial markets and economic policies*, A report prepared at the request of the Deputies of the Group of Ten by an experts group chaired by Ignazio Visco, settembre 2005.

³⁸ See: Pessi R., *Ripensando il welfare*, Rivista di Diritto della Sicurezza Sociale, anno XIII, n.3, 2013.

Given the difficulty of responding with certainty, several signs and the change in the assumptions underlying the current welfare model suggest that it is necessary to study the transition to a new 'universalistic' model focusing on the fight against poverty.

8 Stiglitz's analysis on the US Welfare in the Nineties of the last Century

The general framework – In the nineties of last century, because of the 'Internet' phenomenon and the so called 'dot companies', great fortunes have been accumulated by investors and politicians and world business leaders pretended to be credited for it. No one believed or wanted to believe that sooner or later the bubble would break out. With the burst of the 'Internet bubble' we all realized with painful clarity what should have been guessed from the very beginning on accounting rules, banks activities and the links between markets, policy and deregulation.

But, mainly, the changes in the pension system and in the employment policy carried out during the nineties have more exposed citizens to the financial markets trends, in particular to equity market. With the equity market decline citizens have seen a decrease in their pension; and with the economic downturn they realised that the dismissal possibilities increased. At the same time, government policies have also changed. The unemployment insurance has failed to keep up with changes in the economy and welfare has been cut. In the past, these programs had instead anti-cyclical nature, having funds transferred into the economy when it slowed down. Therefore, a less stable and risky economy was created during the nineties, even jeopardizing the ability to manage that risk.

The 'new economy' as a 'double-edged sword' – The new economy and the significant economy changes occurred in the nineties, characterized by high technology and improved communications, should have put an end to the economic cycle. The idea was that new technologies should have accomplished a more efficient inventory management. In fact, excessive investments in inventories had been a major cause of economic fluctuations in the period after the World War II. Moreover, with the economy transition from industrial production to services (in the mid-nineties, less than 14.1% of American workers were employed in the industry), the role itself of inventories in the economy was losing importance. But the new economy has not put an end to the economic cycle, as it rather laid the foundation for a period of growth and recession cycles with far more evident peaks than the average postwar.

Greater sensitivity to the labor market – In the past, even during the crisis, employees layoffs by companies took into account the so called 'labor hoarding'. Companies knew that in the long term it was not advisable to lay off workers because this allowed them to retain the most qualified ones and to encourage their greater commitment. Instead, in the nineties of last century, before the outbreak of the internet crisis, a new business culture had developed that pushed companies to give importance only and exclusively to immediate profit without taking into account a long-term perspective. The company loyalty either towards the company or vice versa, was a value belonging to an era gone forever. This has resulted in a pro-cyclic effect, for which the employment levels decreased much faster than the growth reduction in the economy.

The anxiety of workers increases – With the decrease of company's loyalty towards workers, their anxiety grew. With an increasing number of workers 'in excess', social safety nets proved inadequate. The unemployment insurance replaced only a small percentage of the earnings, and many workers were left without. Finding a new job was mainly difficult for the elderly, the unemployment insurance lasted only twenty-six weeks, and thereafter workers could apply for the subsidy. The results were particularly evident with the 2001 protracted recession, when the number of long-term unemployed people, for whom the subsidies expired, had more than doubled. From the idea of a 'job for a life' we passed to the 'employability for life' and to 'lifelong learning' to enable workers to move more easily from one job to another (being easier for more educated people to change jobs). With the workers mobility, the problem to transfer the pension with them arose.

'Pension risk' and 'risk management' – Because of American economy changes in the last decade of last century, workers were forced to take more risks either at work or in their pension planning and this has made the economy more vulnerable. Citizens, in particular, have begun to rely on *private pension funds* for an increasing share of their retirement income. As well known, there are two pension forms: (i) *defined benefits plans*, with which the company guarantees a certain benefit depending on the worker's income and seniority; (ii) *defined contributions plan*, in which the company pays a fixed amount in an individual fund called IRA (Individual Retirement Account). The changes occurred in both pension forms in the nineties have created problems for the new millennium economy.

Many companies have moved to the defined contribution system and many people, reassured by the apparently high returns of financial markets, chose to invest much of their money in equity. This trend has significantly contributed to the creation of a 'popular' capitalism. But when the equity market went down, these people have been heavily affected by the crisis.

But also companies which remain in the defined benefits system had problem. Indeed, on the one hand the employer isolated the worker from the equity market crisis effects but, on the other, these programs generated problems too due to the accounting rules. In fact, the US government allowed the companies to account the internal funds allocated to meet future pensions of their workers assuming yields of 9%, much higher than those ever obtained. With a yield of 9% per year, money doubles every eight years; to get \$100 at age 65, it's enough to put aside only \$6 when the worker is twenty-five. Employers were able to promise very high benefits for the future without reducing their profits. This was because in the nineties the returns achievable on the market were higher by 9%. Then, with the equity market boom, companies believed to be able to fulfill their obligations towards employees. By following the rules, they could withdraw from the pension funds the exceeding money and add it to their profits. According to an estimate, the 12% earnings growth in 2000 came from the pension income. With the equity market downturn, pension plans were suddenly in difficulty towards their members. Just think that with a more realistic annual yield of 4.5% it takes sixteen years to double the capital, therefore to get \$100 at age 65 you need to set aside at the age of twenty-five an amount that is twice and a half higher than the one you need with a 9% yield. If, during the boom, companies have withdrawn from pension funds money that was distributed as profit to

shareholders, during the crisis it cannot happen the opposite process (you do not reduce profits to make money flow into pension funds). According to a study conducted on 348 companies in the S&P Stock Exchange with pension plans based on defined benefits plans, pension funds deficit was between 184 and 323 billion dollars. So companies set up imprudent and ineffective 'risk management' policies, transferring money from pension funds to corporate profits by investing social security contributions in shares of technology companies, attracted by the high yields offered by the equity stock market.

The debate on the US Social Security reform – Absurdly, the debate over pension security that developed in the US in the nineties did not involve private pensions but the social security, that is, the government pension program introduced in 1935 nowadays covering almost all American workers.

The United States have a Social Security system that works well, as it has basically eliminated poverty among the elderly, protecting citizens from the risks related to the financial market instability. But despite these successes, its reform and privatization were requested several times due, according to Stiglitz analysis, by three main factors: ideology, interests and greed.

When the equity market prices increase, we tend to forget the advantages of social security and its safety. We believe or want to believe, that the market boom goes on forever. Wall Street, in the nineties, fueled this belief by comparing the low returns of social security with the high stock market gains, since Wall Street had a vested interest in the social Security privatization. If even only a small portion of the money allocated to the social security had flown into the equity market, Wall Street would have

enjoyed a huge amount of new money. The free market ideologists say that competition reduces the commissions to a minimum level, if not even zero. But this did not happen pretty much anywhere. Even in the US, perhaps the most competitive and better functional of all capital markets, the persistence of high commissions in so many funds, regardless of performances, shows that reality is very different. Some tried to argue that the Social Security Trust Fund (which invests exclusively in Treasury bonds) has low returns and that they may increase significantly if the money was invested in shares (instead than in Treasury bonds). But investing in shares obviously involves a much greater risk. The equity market crash occurred in 2000 highlights perhaps the weakest point of the Social Security privatization: it makes people vulnerable to the equity market irrational pessimism, as well as they were previously surrendered to an equally unmotivated euphoria.

Teachings: reducing the pension risk to increase stability – To manage the risk is always difficult. US financial institutions, that should have particular expertise in this area, have shown how complicated it is. It is not easy to timely forecast an economic downturn and to take adequate measures to counter it. After World War II, we managed the economy much better than in the past, but we have not put an end to the economic cycle, and downturns always have a high social cost. That's why it is important to study policies and systems able to improve economic stability.

In the nineties of last century, US interior stabilizers were corroded by welfare cuts that, instead, would have needed more resources to combat the weakening economy. These changes have increased the economic US vulnerability, making the country even more sensitive to shocks. In the past, indeed, practices such as loyalty between

companies and employees (protecting the workers from certain market oddities) and defined pension programs (protecting people from the ups and downs of financial markets) not only produced a softer capitalism but also helped stabilizing the economy. The new discipline of the nineties, guided by the myopic financial markets philosophy whose only concern was the profit associated with the market flexibility, has filed the softer past capitalism form. And so, when the Internet bubble broke out, the consequences not only for individuals, but also for the economy as a whole, were more severe, although a more efficient risk management was so broadly discussed. Economic downturns are expensive: decrease of pension risk and increase the economic stability are definitely more convenient.

* * *

It is interesting to note that the lesson deriving from Stiglitz's analysis on US welfare system still appear quite relevant. It could be reconsidered, *mutatis mutandis*, after the outbreak of the 2007-2008 financial crisis that has shaken the international system since 2008, as the 'dependence' of the economy from financial markets remains at the center of the new economic instability.

9 Rethinking the Italian welfare after the Financial Crisis: Pessi's analysis

Welfare without resources: emergency or system – First of all, we have to figure out if the current emergency is cyclical or structural. In other terms, if the lack of resources available to States for the welfare management is a long-term phenomenon and, therefore, if the need to reduce the expenditure assumes permanent character. Unfortunately, several signals are moving in this direction. And, moreover, the parallel

between the current crisis and the 1929 great depression is in many ways alarming if we consider that to overcome the latter more than a decade of regional conflicts were needed, basically until the catharsis of World War II. Alongside the stall of advanced economies, lasting now from 2008, there are signs of a slowdown in emerging countries, even in China. On the EU side, social tensions are growing due to the crisis effects that have invested in different ways the production and employment levels. The monetary union itself is questioned for the increase of structural imbalances, mostly chargeable to the financial markets breakdown. No doubt that the new discomfort in the world is due, in macroeconomic terms, to the speculative dimension of international finance originated by the deregulation actions of neoliberal matrix accrued since the eighties of last century in the US and then globalized by supranational organizations and by investment banks. The reality is that the model, on which the last century economy was built, has suffered a substantial exhaustion since financial markets have caused a separation between business and profit, taking into account that profit is generated from operations unrelated to goods and activities. Therefore finance is not at service of companies and real economy, but of finance itself.

Real economy and speculative finance – At the base of the split between business and profit there is, on one side, the lack of rules; on the other, the increasing economy globalisation that has gone beyond the state sovereignty affected by the geographic limitations. The phenomenon caused the lack of proper risk management by banks, arresting the economic growth. In particular, the deregulation trend has increased the discretionary of risk management policies adopted by banks, by encouraging their

growing appetite to assume and redistribute risks, rather than managing them internally. To understand this effect just think to the securitization of subprime loans made in the US in the first five years of 2000. So doing, banks were more and more disengaged from real economy trends and increasingly focused on speculative bet and on the pursuit of high profits in shorter and shorter times. Basically, the liberal thought has allowed playing a 'planetary gamble game', increasingly detached from real economic developments. The outcome was deflagrating, but the players did not pay any price (if not rarely) even when they incurred in huge losses. Indeed, States have massively intervened in favor of the financial sectors, while nationalistic protectionism was re-emerging. The break out of the crisis could be an opportunity to transform the financial products design and distribution model, but it did not happen and the system mostly transferred on savers losses generated by the financial markets. Once again, what played a decisive role was the lack of transparency, resulting from the absence of an effective regulation of finance and of financial markets.

Eurozone and global crisis – Relaunching the rules for transparency would be particularly beneficial especially for EU, which has suffered more than others the effects of the global crisis. The adoption of the single currency has indeed resulted in the transfer, even if partial, of monetary sovereignty. This transfer could have been partly offset if the euro zone countries were integrated and homogeneous. Otherwise, the effect has been a further strengthening of the stronger economies over the weaker ones. These effects appear significant for a country like Italy, burdened by a fiscal guilt and a 'shadow' economy, maken it difficult to any income policy. Started from the uniformity assumption among (different) European economies, convinced that a union

over a unique currency – the euro – was possible, we had then to realize that this union model produced a contrary result, amplifying structural vices of Euro member States. The final result has been the increasing financial and commercial imbalances among these countries. The highest price was more paid by weaker countries citizens, experiencing an unemployment increase and a welfare reduction. Since, ultimately, there are no turnaround signs we must promptly *rethink* a welfare state model able to support, not in a pessimistic way, a long stagnation economic period before a possible exit from the crisis.

Social and family solidarity – A reflection on the Italian welfare must start from the above reported framework, in which inequalities are increasing and *emergency becomes system*. Also the Italian demographic picture appears important, showing a growing aging population with obvious effects on the entire welfare. An elderly population not only makes it difficult to balance a distribution pension system, but also creates difficulties in the health care system: the elderly increase and, as a result, care needs increase too. An overall assessment of recent legislative interventions about the welfare, show that the direction is that social solidarity is gradually moving back against the budgetary requirements and EU commitments, entrusting the protection of the weakest in a new-found family solidarity. In this context it becomes important an assistance policy to elderly, which by the social security can help the family budget.

Person and health – The return to family solidarity appears ethically significant because it fights the loneliness of the old age. On the other hand, it's disturbing because it shows a welfare decline. Just think about the recent regulatory changes on

health care, which are of greatest importance for the elderly. They all aimed to contain expenditures within the gradual process of EU public finance rebalancing, trying to improve the private management models, emphasizing inequalities and appearing to be in contrast with the principles laid down in the Italian Constitution. Moreover, the literature on this subject seems oriented to share the interventions aimed to contain the expenditures. It shows, on one hand, that the costs have increased because they are associated to the aging population, the increase in chronic diseases, to the progress in medicine and therefore to the performances required. On the other, it highlights that the financial constraints become pressing, especially the European ones, while margins for further tax increases reduce. Therefore, in this scenario, the only absent seems to be the fundamental right to health.

Old age and pensions – Critical points are also evident in the interventions on pension policy. The reforms undertaken and the proposals for further reforms appear in fact influenced by the emergency, although declaring the will to rely on the equity and flexibility principles in the pension acquisition. On the one hand, the ‘reform’ claims to move towards the confirmation and modernization of the pension system model developed by the 1995 reform (generalizing the contributions plans and the abolition of pension based on service length). On the other, the rationalization measures are solely motivated by the pension expenditure reduction. The overall picture resulting from the interventions of the last three years turns therefore upside down many certainties and many rights (just think to the block of pension’s adjustment to the cost of living). Doubts also raise from the objective to increase the retirement’s age up to seventy years, because it’s not only the result of the aging population but mostly of the

increasing difference between active workers and retirees caused by youth unemployment, and therefore of the available financial resources given the contributions reduction. This second economic motivation is evident when we consider that raising the retirement age also applies to the employees assigned to harmful works and to disabled people (which also generates doubts on the intervention fairness). Equally difficult to understand are the negative fiscal actions on pension funds benefits. Indeed, the so called 'second pillar' of social security should help bringing the salary/pension rate to sustainable levels (currently not guaranteed by the first pillar of the compulsory social insurance). In conclusion, we doubt that the revision measures of the pension system, beyond the savings produced in public expenditure, are suitable to promote employment and economic development.

Employment, social security cushions – Intervention on social security cushions (income assistance) does not seem to be aimed to a real reassessment of the actual system, but instead a prudent choice to conform to the EU prevailing model. Admitting that this reform could go at full speed, we seem to assist to a strong retreat model in protecting the de-industrialisation process: the generalization of the solidarity fund institute is highly questionable. This fund, that should complement the wage integration, appears questionable both for its complexity and the increase in labor cost. However, we should also take into account the origins of our system, historically based on categories, and the overall good results achieved. So we could assume the confirmation of the historical income assistance and social insurance employment, which should differ from the historic unemployment benefits and could play the role of broadly protecting the entire labor market.

Social security and welfare – The foregoing considerations all lead to the conclusion that we need a thorough welfare state review, reasoning on the assumption that it could be articulated on several levels (EU, national and popular levels) and entrusted to intermediate communities, to the third sector and to pension funds. The goal is to create a sustainable welfare suitable to recover the lost certainties and potentially able to assist the citizens in all steps of their own life. The issue, however, is whether it is appropriate to change the model given the structural shortage of resources available to the State. Furthermore, if the entire sector of social security and assistance can not predict increased costs for the State, and rather requires expenditures containments, the possible interventions are only the redistributive ones, which can cause significant problems being the main cost the one related to pensions' payment.

Welfare and sustainability – In a context where *the emergency becomes system*, rethinking to the welfare could also envisage an alternative to a conservative path of rationalization and efficiency of the existing resources. The idea is to move from the actual 'occupational' model to a so called 'universalistic' model, as now embodied in Italy in healthcare system. In macroeconomic terms, this move would not create particular problems in relation to EU. Indeed Italy spends on social protection a GDP share substantially in line with the EU average, and however not too different from the one of significant countries like the UK. As noted above, the Italian characteristic compared to other EU countries is the welfare expenditure composition. This last one is, even after recent reforms, mainly related to the pension system. In particular, we

could imagine an arrival model that falls between the United Kingdom welfare model and the Scandinavian countries one.

The UK model seems to be more feasible at this stage, for at least these reasons: its principal beneficiaries are the poor citizens and low-income workers; assistance measures based on need evidence prevail; social insurance schemes with limited and contained performance are used, allowing, however, functional integrations at the pension/income rate; a strong relationship with the market and employment policy.

The Scandinavian model, instead, seems interesting for: its call to an effective equality of citizenship; the intensive protection from the needs and social risks; a low dependence on the market.

The question becomes at this point whether it is possible to begin this process that, gradually, leads to a medium-long term construction of a national welfare to be placed in the so called 'universalistic' schemes. The answer is complex but also the conservative process – based on the current 'occupational' welfare model – is complex as it would be focused on the expenditure rationalization and to answer to redistributive goals rather than ameliorative. So the new social policy is at the center of legal systems, and moves from concertative moments among the social parties to the the electoral contest (often determining its outcomes). In this sense, the disaffection for the politic, as witnessed by the growing electoral absenteeism, may indicate a hope loss of individuals on welfare system as traditionally connoted western democracies. All this confirms that a rethinking of welfare state model is necessary.

Social security and citizenship – Is it therefore necessary to move from the current Italian 'occupational' welfare model to a new 'universalistic' model? The answer is not

certain, but many signs lead us to respond positively. There are three conditions from which the current welfare model was born and that today seem to be particularly critical. *(i)* First, the assumption of an economic system with high economic growth or at least sustainable, even admitting the presence of recurring but temporary crisis. In a context of low economic growth, which seems to take shape in this historical phase, the income generated by the country reduces and, therefore, the possibility for the State to use tax revenues, in structural or emergency way, to make up for welfare shortages. The only public sustainable interventions become of redistributive nature, at the same cost for the State. Taking a model similar to the one of the UK would reduce the pension expectations of future generations and would determine a strong compression in public expenditure. In the redistributive logic, on the other hand, the measure would support low-income workers in line with an increasingly precarious labor market, and therefore not able to guarantee high replacement rates even in the current pension system. *(ii)* Second, the assumption of a predominantly industrial society. We are now in a post-industrial society, characterized by services and new production methods based on high technology, and that resizes the role of manufacturing. *(iii)* The civil society model has deeply changed. The family is now necessary again for the shortcomings of the welfare system, but has a very different structure than in the past. Just think of marriage instability and (thankfully) to the increased presence of women in the labor market.

But the fall of these three conditions would still allow to maintain the current 'occupational' welfare model if other changes had not occurred undermining its foundations. *(iv)* The demographic crisis, with the increasing expected life and the fertility reduction, who unbalanced the relationship between age ranges. *(v)* The

increasing welfare expectations by more and more needy citizens, that appear in contrast with austerity policies and expenditure reduction coming from EU, with destabilizing effects on the Institutions balance. (vi) The economic interdependence, which compresses the degrees of freedom of single States (for Italy, think to the impossibility of competitive currency depreciation and to state aid constraints by EU).

This picture seems to confirm the need of a welfare change, towards a ‘universalistic’ model with respect to the current ‘occupational’ one, in accordance with the principles of freedom and equality sanctioned by Italian Constitution. From this welfare ‘rethinking’ could emerge in the medium term, and not without suffering, a more modern and efficient welfare state to perform its function of protecting needy people and allow them to reach the complete self-sufficiency.

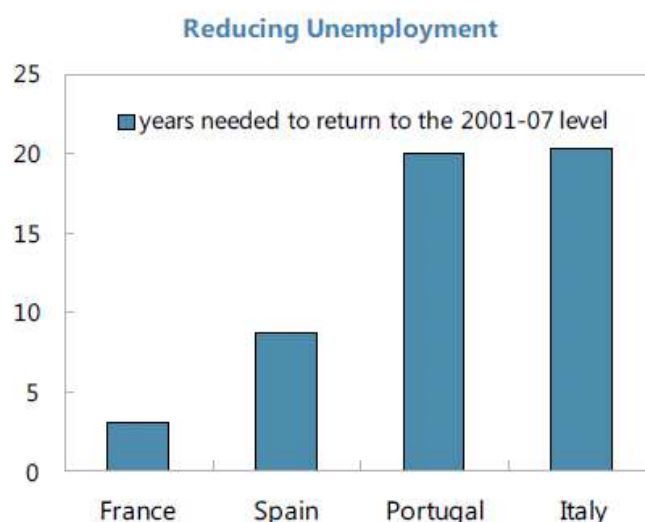
10 Other comments on the Italian welfare

10.1 Comments by FMI

In July 2015 the International Monetary Fund³⁹ said that “High unemployment is likely to persist for some time. Looking at some key euro area countries, the natural rate of unemployment (non-accelerating inflation rate of unemployment or NAIRU) is projected to remain higher than during the crisis in Italy, and at the crisis level in France over the medium term (WEO database, April 2015). While the NAIRU is expected to decline significantly from unprecedented levels in Spain, it would still

³⁹ IMF Country Report No. 15/2015.

remain above 15 percent over the medium term. Based on historical Okun’s law relationships, staff estimates suggest that, without a significant pick-up in growth, *it would take Spain nearly 10 years, and Portugal and Italy nearly 20 years, to reduce the unemployment rate to pre-crisis levels*”. Years needed to return to the 2001-07 level in FMI’s view are in the figure below.



Source: IMF Country Report No. 15/2015

10.2 Comments by OECD

A recent OECD⁴⁰ report states that the crisis affecting Italy since 2009, originated from finance and gradually extended to the real economy, is fueling a deep social crisis. The OECD invites policy makers to take responsibility for it, without waiting for a solution to come from the economic growth, still too weak, uneven and discontinuous to fuel certainties.

Urgent reforms needed to improve social protection – Household incomes of the average Italian fell by some €2.400 since 2007, reaching €16.200 per head in 2012. This

⁴⁰ See: OECD, *Society at a Glance*, March 2014.

is one of the biggest drops in the Eurozone – the fall in the average Eurozone country was €1.100. Income losses reflect the *deterioration of labour-market conditions across large parts of the population, and particularly among youth*. At just over 55%, the share of working-age people in employment is the fourth-lowest among 34 OECD countries. Between 2007 and 2013, unemployment swelled at a rate of 5% per week, and Italy accounts for 21% of the rise in unemployment in the entire Eurozone.

Income losses in Italy also reflect the weak protection for those affected by labour-market problems. With above-average unemployment, *Italy spends around one third less on working-age transfers* (such as unemployment benefits or family transfers) than the average EU or OECD country. Spending on services, including active employment support such as training or job-search assistance, is around half the EU and OECD averages and actually fell between 2007 and 2009.

Little public support for the losers of the crisis – The Italian social protection system was poorly prepared to tackle increasing *long-term unemployment and poverty risks*. Less than 4 out of 10 unemployed receive unemployment benefits and Italy is still one of only two EU countries without a comprehensive nationwide minimum-income benefit (the other one is Greece). At the same time, relatively well-off households benefit more from social spending than in any other EU country.

With no reliable income safety nets for poor households, and limited employment-oriented support for jobseekers, there are *increasing risks that economic difficulties and inequalities could become entrenched*. With losses adding up to 12% between 2008 and 2010, the poorest 10% lost much more income than for the richest tenth of the population, who lost around 2%.

Recent initiatives to reform labour markets and extend safety nets – through more accessible unemployment benefits and a proposal for more unified minimum-income support – are welcome. But support for the working-age poor remains weak, illustrating the difficulties of introducing effective social policies from scratch in a timely fashion during a severe crisis, and the value of having ‘crisis-ready’ social protection measures in place.

Few children and poor prospects for youth – In 2013, youth unemployment in Italy exceeded 40% for the first time and 1 out of 5 young adults aged 15-24 is neither in a job, nor preparing for employment. This so-called *NEET rate* (not in employment, education, or training) is higher than in Mexico and Spain, and the third-highest in the OECD (after Greece and Turkey). Youth who are not entitled to out-of-work benefits frequently rely on family networks for support. While this support helps those whose families can afford it, it typically leaves them without much-needed employment-oriented services, such as training and job-search assistance, as this is mostly reserved for recipients of unemployment benefits.

As young people delay moving out of their parents’ home out of economic necessity, this also delays family formation. *Italy’s fertility rate* remains at only 1.4 children per woman, far below the so-called replacement level of 2.1, which would be needed for broadly maintaining constant population levels. Italy already has fewer than three people of working age for every person aged 65 years or more, the second lowest in the OECD and much lower than the OECD average of 4.2 workers (Old age support rate). Emigration has further added to demographic pressures as the rate of people moving to other OECD countries has grown by almost 50% since the start of the crisis.

Economic recovery alone will not undo damage of a deep and long crisis – Economic recovery, even once firmly established, should not be expected to quickly put an end to the social and labour-market crisis. To prevent economic difficulties from becoming entrenched, Italy now needs to invest in better and more cost-effective social support measures.

A first priority is to ensure basic support for the most disadvantaged groups. Social assistance benefits for the long-term unemployed and poor working-age families have been on the policy agenda for some time. They now need to be implemented as a matter of urgency. In addition to legal changes, this requires adequate resources and the necessary administrative and delivery capacity to ensure that all eligible claimants receive support in a timely manner.

Second, access to employment support and retraining, and to other essential services, such as childcare, should be extended for disadvantaged groups. For some services, good targeting could be achieved by integrating them with cash assistance programmes once these are operational. For instance, access to available childcare places can be prioritised for those moving from out-of-work benefits to a new job. As labour markets recover and the capacity for providing employment support is extended, out-of-work benefits can be made increasingly conditional on active participation in job-search and reemployment measures, such as training.

OECD Social Indicator for Italy

	Pre-crisis			Latest year		
	Italy	EU	OECD	Italy	EU	OECD
Annual disposable household income*:						
Average	20,800	..	..	20,000	..	..
Bottom 10%	5,600	..	..	4,700	..	..
Total Fertility rate	1.42	1.63	1.75	1.42	1.59	1.70
Unemployment rate (%)	6.0	6.6	5.9	12.3	11.1	9.1
Youth neither in employment, education nor training, NEET rate (%)	16.3	10.7	11.5	21.4	12.7	12.6
Income inequality:						
Gini coefficient	0.311	0.288	0.313	0.319	0.291	0.313
Gap between richest and poorest 10%	8.9	6.9	9.2	10.2	7.4	9.5
Relative poverty (%)	12.0	9.2	11.2	13.0	9.4	11.3
Share of people reporting not enough money to buy food (%)	9.5	9.5	11.2	13.2	11.5	13.2
Public social spending (% GDP)	25.5	22.5	19.6	28.2	25.1	21.9
Suicide rates, per 100 000 population	5.7	12.5	12.5	5.8	12.2	12.4
Health expenditure per capita (latest year USD PPPs)	3,000	3,100	3,100	3,000	3,200	3,300
Confidence in national government (%)	33	50	49	30	41	43
Confidence in financial institutions (%)	34	65	63	21	43	46

* In national currency, latest year prices. Unweighted average of the 21 EU and 34 OECD countries

Source: OECD, Society at a Glance, March 2014

10.3 Comments by INPS

The INPS is the largest social protection institution in Europe, with performance that directly involve almost the 70% percent of the Italian population and which manages almost a fifth of the Italian GDP.

Historical evidence shows that social crises are more persistent and difficult to correct than the real economy ones; they require a long-term political vision to invest on future⁴¹. Also the economy growth cannot do much in a context where social discomfort spreads and takes root. As a matter of fact, social cohesion is an essential ingredient for a sustainable, virtuous and lasting economic development.

⁴¹ See: *Relazione annuale del Presidente Inps*, Roma, 8 luglio 2015.

While this awareness is spreading it is also growing the attention for a correct reading of the dynamics that characterize the social crisis, in order to guide the necessary corrective actions to contain its effects and to establish firm foundations for the future. An inadequate social protection system for disadvantaged families and for the unemployed job seekers may in fact cause the risk of a society rooted in inequality.

Social OECD indicators present a much diversified international scenario, in which the entire social security system of our country was marked, at the beginning of the crisis, as one of those poorly prepared to face the possible increase in long-term unemployment and poverty among the population. In this regard, ISTAT has recently reported that in Italy we “continue to devote too scarce resources protecting the main social risks”⁴². In the expenditure for families, the support in case of unemployment, the training, the reintegration in the labor market and the fight against poverty we are in the last places in Europe.

The stress test lesson – The 2007-2008 great depression and the subsequent crisis in the Euro zone have been a real stress test for the so-called ‘Social Europe’, for the social protection systems of the Old Continent. Not a stress already tested, like those in the banking system, but directly experienced by millions of our European citizens. In Italy the crisis was particularly long and intense. We did worse than during the Great Depression of 1929-33.

But what are the objectives of social protection systems, the light of which it is possible to evaluate their behavior during the crisis? Looking at the public expenditure structure in European countries, especially in the Nordic and Anglo-Saxon countries, it

⁴² See: ISTAT, *Rapporto annuale 2014*.

is clear that the primary objective of the welfare state is to contain absolute poverty, ensuring decent living standards for all citizens, in all stages of their lives. This means not only to care for those in economic difficulty, but also to ensure those living above the poverty line against the risk of strong contractions of their future income. The main risks, especially during a recession, come from the labor market, i.e. from the loss of the main income source for the great majority of European citizens.

In Italy, the 2008-2014 crisis has increased by one-third the rate of poverty. The number of people living below the poverty line as per Eurostat 2007 (€9,380), annually updated for inflation, increased by 4 millions. People in a condition of severe material deprivation, as defined by Eurostat, increase by a quarter in this period. The number of homeless surveyed in major Italian cities has doubled compared to pre-crisis levels. In many other countries, strong recessions comparable to the one experienced by Italy lead to lower increases of poverty rates and, more generally, of these economic hardship indices.

These international comparisons suggest that the *strong growth of poverty in Italy* was far from inevitable. In countries where unemployment has doubled or increased by a third in these years, poverty has marginally increased or even decreased. We refer not only to small countries with greater social cohesion as the Netherlands and Sweden, but also to large countries, such as France. We could, therefore, achieve a more equitable distribution of the crisis costs, a greater real solidarity in a difficult time for everyone.

Poverty rather than inequality – In Italy the crisis was not the same for everyone. The crisis has focused on the poorest 10% of the population, which has suffered an average

reduction of more than 27% of their disposable income. The richest 10% of the population has suffered a 5% decline in their average disposable income. A similar destiny affected the so-called middle class, those who are placed exactly in the middle in the income scale.

The heaviest crisis legacy is therefore in this widespread poverty: not only there are more people below the poverty line, but also the distance of many people from this poverty line has increased.

Today, even more than in the past, poverty is the number one problem of our social protection system. Much more than income inequality, still high, but that did not increase much during the recession. The traditional inequality measures, starting with the Gini index, have suffered marginal increases, variations not statistically significant in several cases.

This diagnosis, in a context where the public debt related to GDP is at an historic high, requires a radical improvement in the ability of our social protection system to reach the poorest citizens. Our social expenditure limits have been extensively documented by many studies: per €100 spent, only €3 goes to the poorest 10% of the population, which should be significantly over-represented among the beneficiaries.

Even when you ignore the social security expenditure, which is primarily based on principles of insurance nature rather than of welfare or redistributive one, the social expenditure percentage allocated to the poorest, slightly rises: for the poorest 10%, just €7 are allocated per 100 euro spent in social benefits other than pensions. The poverty and transfers rate before taxes in Italy is comparable to the French and German one. But it becomes much higher when income is measured after tax before

transfers, clear evidence that not only our social expenditure, but also our tax system, care little about very poor citizens.

Get out of poverty with the work – In a process of public debt reduction, centered on plans to contain public expenditure, poverty reduction can only come mainly from the *improved conditions of the labor market*. It's a matter of both quantity and quality of labor. It's not enough to create more jobs to reduce poverty. It's necessary that these jobs are relatively well paid and that they are not interspersed with many periods of unemployment. During the recession, in fact, is greatly increased the percentage of those who are poor although working. The so called 'working poor' have grown by almost 50% from 2008 to 2013. To reduce the poverty risk is also necessary that the work is well distributed, that there are fewer couples where only one family member works. It's a simple principle of risk diversification, which gives more and more value to women's employment, as main antidote to poverty of entire families.

The government has quite deeply changed in the last six months our labor market institutions, changing entry rules for new hires, abolishing some precarious contractual figures and increasing the social safety nets coverage that will now be able to reach even workers with discontinuous careers. It's an important step towards the rules harmonization between different workers categories, between workers with permanent contracts and temporary workers of various kinds. The government has also strongly encouraged the permanent contracts by introducing sharp contributive reductions for the first three years.

In a context of low economic growth, these measures appear to have had some effect in stabilizing the work and increasing the content of jobs growth. In the first four

months of 2015, the new hires percentage with permanent contracts compared to the total number of employees has almost doubled from December 2014. On the other hand, the so-called temporary employment is still far from being wiped out.

Between assistance and social security – If the creation and stabilization of work represent the best way to reduce poverty, there will always be the need for basic safety nets that gather those who, being victims of adverse events (loss of a job, home, the disintegration of a family), fall between the gaps of our social protection system. There will always be these victims, no matter what the situation is, even if our economy should miraculously restart at a gallop. The welfare state of all European Union countries, with the exception of Italy and (partially) of Greece, protects these people, has basic protection networks designed to prevent ending up in poverty. It would be about time to rectify this structural defect of our social protection system. In Italy various proposals to provide a *minimum guaranteed income* have been made. They have the quality to open a discussion on the fight against poverty but, at the same time, often have design defects that make them more onerous than necessary and not very efficient in reaching the poorest ones. In these matters, the devil is in the details and minor regulation adjustments can greatly improve the distributive properties, making these schemes at the same time less costly and more equitable.

General principles of a reform – INPS has proposed an Italian welfare reform that is based on five fundamental points.

1) A social protection network from 55 and over. It's the first step towards the introduction of a minimum guaranteed income which is lacking today in our country.

Above the age of 55 is very difficult to find alternative employment (only an unemployed out of ten succeeds according to our estimates). Poverty among people over 55 has increased so much during the recession just because of the long duration of unemployment in this age group.

Poor unemployed people over 55 have more than tripled in six years. Establishing that social assistance should be provided with uniform rules either to who has retired or who is still in working age, it will also be possible, for the first time, to separate assistance and social security in our pension accounts. Assistance should be financed by general taxation while the pension fund is an insurance benefit, which involves transfers between different generations, and that guarantees proportional rights to the contributions paid during the whole working life.

Moreover, we will be able to go beyond an original flaw of the contribution system introduced into our system in the second half of the '90s: the one of not providing minimum benefits for those who have no other income and accumulated a too low total contribution to secure a pension above the poverty line.

2) Unification. INPS provides 21 million pension benefits to about 15 million retirees. For every three retirees an average of 4 pension payment shall be made. We shall unify the pension between different regimes, including the so-called separate management, without additional costs and deleting the onerous re-union contributive costs which penalized more mobile workers with greater availability. These onerous re-union contributive costs penalized the more mobile workers, those who presumably had changed job trying to exploit their talents and vocations.

3) Harmonization. We shall harmonize pension benefits granted to various pensioners categories who are highly differentiated. These differences are not based on different

contribution levels. On the contrary, they often reflect significant differences in the rates of guaranteed yield to contributions paid by some courts and specific worker categories. In a redistributive system these favorable treatments have an impact on all other tax payers. We believe it is fair to ask those who have higher retirement incomes, given the much more advantageous treatment compared to the ones which the future pensioners will benefit of, to financially contribute to the cost of more flexible retirements, also to help those worker generations who had the bad luck to run into the crisis levels at the end of their working lives.

4) Sustainable Flexibility. The contribution system rules may allow some flexibility. A total contribution amount accumulated during the working life is redistributed in monthly payments, depending on the age and on the remaining expected life. Those who retire before must spread this figure over many more months than those retiring later. Given the same total amount, each less work year implies a reduction of these monthly payments, taking into account the demography and the economic situation. Provided that pensions are sufficient to ensure a dignified life, without needing the social welfare intervention, this is a sustainable flexibility which does not affect future generations as it doesn't lead to an increased pension debt. In this way, we can allow those who plan to spend less time at work towards the end of their careers to do so, without burdening on future generations. This flexibility can also be very useful during recessions because in this way, part of the labor market adjustment to macroeconomic shocks can occur through reductions in labor supply rather than by generating unemployment, as happened in the last 7 years.

5) You do not go 'on pension', but you take your pension. The relationship between tax payers and retired people – in 2014 for less than 130 members there were 100 pensions to be paid – is expected to further worsen given the decrease of the cohorts entering the labor market. The indexation of the retirement age to expected life won't be enough to prevent this trend. Consequently, even retirees can contribute to finance the pension of those who have completely retired from active life. INPS wants to offer new opportunities to pay and have contributions paid, which will then become a supplement pension for those who are already collecting a social insurance benefit. It's good that the employers can make additional contributions to allow their employees who retire before reaching the retirement age to increase their initial retirement. We will thus manage with lower social costs the restructuring which our country needs and contribute to face the problems of long-term care/non self-efficiency, which require better policies to balance work and family responsibilities. The pension system can give a contribution in this direction too.

What Europe can do - The crisis was ruthless right on the countries that have the more fragile social protection systems. This experience is a warning to these countries governments, starting with Italy, to quickly reform their redistributive institutions. But it is also a warning to the European institutions: no common system can hold up over time taking into account so marked gaps between member countries in the poverty and unemployment incidence. These disparities are even more unbearable in a monetary union that prevents rebalancing through the exchange rate adjustment. Especially when there still are significant restrictions on labor mobility between EU countries. Often, too often, we forget that behind the social security expenditure

curves, behind the humps and bumps of these colorful charts, there are the lives of millions of people.

Part IV

Market-based products for older homeowners

11 Preliminaries

Equity release products (in UK) and reverse mortgage products (in Australia, Canada and USA) can play a crucial role in *retirement funding*. With equity release and reverse mortgage products, you can either borrow against the value of your home or sell all or part of it for a regular monthly income, a lump sum, or a combination of these options. If you still have an outstanding mortgage on your property you will need to pay it off in full, either by using some of the proceeds from the equity you release or from other funds. Once that is done, the rest of the money you release can be spent as you wish. In the modern equity release market there are a range of products to choose from, with new and innovative products being created regularly. This means that whatever your equity release needs, there is likely to be an equity release plan available to meet them.

12 Equity release products

Equity release allows individuals aged 55 and over to release money from the property they live in without having to make any monthly repayments. By using an equity

release product, a home owner can draw a lump sum or regular smaller sums from the value of their home, while remaining in their home⁴³.

The market – The UK equity release market is now fully regulated. Both lifetime mortgages and home reversion plans now fall under the remit of the Financial Conduct Authority (FCA). Prior to FCA regulation, many lenders signed up to Equity Release Council (ERC) formerly known as Safe Home Income Plans (SHIP), a voluntary code of conduct that provides a number of guarantees. ERC was formed in 1991 in an attempt to improve the equity release market and its previous poor reputation. The ERC guarantees include a guaranteed right to remain living in the property which is the subject of the equity release, either for life or until entry into long term care. In addition there is a vital No Negative Equity Guarantee - which essentially guarantees that the amount to repay the equity release plan on death or entry into long term care can never exceed the value of the property itself, and so no debt can ever be left behind for beneficiaries of the equity release borrower. In 2012, SHIP rebranded as the Equity Release Council (ERC) and extended its reach to Equity Release advisers as well as product providers. The current members of ERC include Aviva, Bridgewater, Hodge Lifetime, Just Retirement, LV, More 2 Life, New Life, Partnership, Retirement Plus, Stonehaven and Pure Retirement.

Whilst a number of equity release providers, most notably Prudential, exited the market in the wake of the Credit Crunch, this trend has been reversed since the end of 2010, with a number of these companies - including More 2 Life, New Life and Stonehaven - keen to attract new customers once again.

⁴³ See: <http://www.equityreleasecouncil.com>.

In 2010, around £800 million of equity was released by UK home owners using regulated equity release with this rising year on year to £1.38 billion in 2014⁴⁴.

Equity Release Plans

Lifetime mortgage

A Lifetime mortgage involves taking a type of mortgage which does not require monthly repayments, although with some plans rather than roll up the interest you can opt to make monthly repayments if you wish. You retain ownership of your home and interest on the loan is rolled up (compounded). The loan and the rolled up interest is repaid by your estate when you either die or move into long term care. If you are part of a couple, the repayment is not made until the last remaining person living in the home either dies or moves into care, meaning that both you and your partner are free to live in your home for the rest of your lives.

If you take out a Lifetime Mortgage, you can choose to receive your funds in a lump sum or in smaller, regular amounts. There is also an option available to increase the amount you have borrowed as and when you want to, up to the maximum limit agreed with the plan provider. You can also elect to protect some of the value of your property as an inheritance for your family, meaning that you can benefit from releasing equity while still retaining something to pass on to your children. Some people may be able to release larger lump sums due to impaired health or may prefer to make monthly repayment in part, or in full, with an option to roll up at a later date if the monthly repayments became unaffordable.

⁴⁴ See: www.wikipedia.

Home Reversion Plan

A Home Reversion Plan also allows you to access all or part of the value of your property while retaining the right to remain in your property, rent free, for the rest of your life. With a Home Reversion product the provider will purchase all or part of your house taking into account your age and your health and will provide you with a tax free cash lump sum (or regular payments) and a lifetime lease, guaranteeing you the right to stay in your property rent-free for the rest of your life. There is no day-to-day interference and no restrictions on treating the house exactly as before; as a private home to live in freely. The percentage you retain in your property will always remain the same regardless of the change in property values, unless you decide to take further cash releases. At the end of the plan your property is sold and the sale proceeds are shared according to the remaining proportions of ownership.

The no-negative equity guarantee (NNEG) – If the loan provides a no negative equity guarantee when you die or move into long-term care, your home is sold and the money is used to pay off the loan. Anything leftover goes to your beneficiaries. However, in the unlikely event that the value of your house has decreased significantly it would be possible that the value of your home no longer covers the value of the equity release loan. The no negative equity guarantee means that in this situation the remainder of the loan would be written off, ensuring that whatever the future holds, your beneficiaries would never have to meet the cost of your loan.

Equity release fees – While costs vary from provider to provider, a very rough estimate of the cost of setting up an equity release scheme is around £1,500 plus any fee that you have to pay your financial adviser. However there may be offers from time to time that can reduce the cost of these fees. The costs involved in setting up an equity release plan usually include: an arrangement fee to cover the provider's costs of setting up the plan; a valuation fee to pay for your home to be valued; legal fees to pay for your solicitor; buildings insurance. There may be other fees depending on the type of plan you take, or there may be fewer fees.

Standard process for taking out an equity release plan – It usually takes 8-12 weeks from the day your application is received by the provider to the day your *money is received* by your solicitor.

The *amount you can borrow* usually depends on your age and health and that of your partner, and the on value of your property. A surveyor will be instructed by the provider to secure an accurate valuation of your property. If there are two people jointly taking out the plan, then the amount you can borrow will be based on the age of the youngest borrower. If you are in ill health then you may be able to apply to release a larger portion of the equity.

To qualify for a Lifetime Mortgage you need to be aged 55 and over. If you are taking out the plan with your partner, then the age of the youngest borrower must be at least 55. For a Home Reversion Plan you must be a minimum of 60 years old.

As far as family impact is concerned, taking out an equity release plan could leave your family with little or nothing to inherit from your property when you die.

You may be considering releasing equity from your home to help younger family members get on to the property ladder or pay for school fees. In which case the implications of releasing the equity now and not having it to release later need to be considered.

- If you are married, in a civil partnership or living with someone as a partner and you are both eligible by age, you can take out a joint equity release plan. Your spouse or partner will then have the right to live in the property for as long as they wish, should you pass away or move into long-term care.
- If your plan is in joint names, then your partner will be able to continue to live in the property under the same terms. If it is in your name only, then unless the mortgage can be paid in full the property will have to be sold and your partner will have to find somewhere else to live. It is normally a requirement that the plans are written in joint names from the outset to ensure that both parties have security of tenure. It may not be possible to add your new partner to the plan, in which case they will not have security of tenure.

If you repay a Lifetime Mortgage early you may be liable for extra charges called 'Early Redemption Charges'. These can be quite expensive. Most equity release plans are intended as long term options. There are products available with specific periods of early repayment penalties, some products which have no such penalties and some products which have early redemption penalties that stretch for a pre-determined time such as 5 to 10 years.

If you have a Home Reversion Plan and want to pay off the loan early you may have to sell the property to pay off the outstanding due amount.

13 Reverse mortgage products

The reverse mortgage is a form of equity release that is available in Australia, Canada and the United States⁴⁵.

A Reverse Mortgage or Home Equity Conversion Mortgage (HECM) is a special type of home loan for older homeowners that requires no monthly mortgage payments. Borrowers are still responsible for property taxes and homeowner's insurance. Reverse mortgage products (RMPs) allow elders to access the home equity they have built up in their homes now, and defer payment of the loan until they die, sell, or move out of the home. Because there are no required mortgage payments on a reverse mortgage, the interest is added to the loan balance each month. The rising loan balance can eventually grow to exceed the value of the home, particularly in times of declining home values or if the borrower continues to live in the home for many years. However, the borrower is generally not required to repay any additional loan balance in excess of the value of the home (*i.e.*, no-negative equity guarantee). Specific rules for reverse mortgage transactions vary depending on the laws of the jurisdiction.

Regulators and academics have given mixed commentary on the reverse mortgage market. Some economists argue that reverse mortgages allow the elderly to smooth out their income and consumption patterns over time, and thus may provide *welfare benefits*. However, regulatory authorities, such as the Consumer Financial Protection Bureau (CFPB), argue that reverse mortgages are “complex products and difficult for consumers to understand” especially in light of “misleading advertising”, “low-quality counselling”, and “risk of fraud and other scams”. Moreover, CFPB claims that many

⁴⁵ See: www.wikipedia.

consumers do not use reverse mortgages for the positive, consumption-smoothing purposes advanced by economists. In Canada the borrower must seek independent legal advice before being approved for a reverse mortgage.

Main types of arrangement

Lifetime mortgage. A loan secured on the borrower's home (a mortgage loan) is made. Compounded interest is added to the capital throughout the term of the loan, which is then repaid by selling the property when the borrower (or borrowing couple) dies or moves out. The borrower retains legal title to the home whilst living in it, and also retains the responsibilities and costs of ownership.

Interest only. A mortgage is made, on which the capital is repaid on death. Interest payments are paid whilst the borrowers remain in the property.

Home reversion. The borrowers sell all or part of their home to a third party, normally a reversion company or individual. This means all or part of their home belongs to somebody else. In return, the borrowers receive a regular income or cash lump sum (or both) and they continue to live in their home for as long as they wish.

Shared appreciation mortgage. The lender loans the borrower a capital sum in return for a share of the future increase in the growth of the property value. The borrowers retain the right to live in the property until death. The older the client the smaller the share required by the lender.

Home income plan. A lifetime mortgage where the capital is used to provide an income by purchasing an annuity often provided by the lender, which is often an insurance company.

13.1 RMPs in Australia

Eligibility – Reverse mortgages are available in Australia. However, there is little regulation: the Financial Services Reform Act does not regulate the loans, and although potential borrowers should seek financial advice before applying for a reverse mortgage, there is no legislation that requires the advisor to be licensed.

Eligibility requirements vary by lender. To qualify for a reverse mortgage in Australia,

- the borrower must be over a certain age, usually 60 or 65 years of age; if the mortgage has more than one borrower, the youngest borrower must meet the age requirement;
- the borrower must own the property, or the existing mortgage balance must be low enough that it will be paid off with the reverse mortgage proceeds

Loan size and cost – Reverse mortgages in Australia can be as high as 50% of the property's value. The exact amount of money available (loan size) is determined by several factors: the borrower's age, with a higher amount available at a higher age; current interest rates; property value; the property's location; program minimum and maximum; for example, the loan might be constrained to a minimum of \$10,000 and a maximum of \$425,000.

The cost of getting a reverse mortgage depends on the particular reverse mortgage program the borrower acquires. These costs are frequently rolled into the loan itself and therefore compound with the principal. Typical costs for the reverse mortgage include: an application fee (establishment fee) of \$950; stamp duty, mortgage registration fees, and other government charges vary with location.

The interest rate on the reverse mortgage varies. Some programs offer fixed rate loans, while others offer variable rate loans.

In addition, there are costs during the life of the reverse mortgage. A monthly service charge may be applied to the balance of the loan (for example, \$12 per month), which then compounds with the principal.

Proceeds from a reverse mortgage – The money from a reverse mortgage can be distributed in several different ways: as a lump sum, in cash, at settlement; as an annuity, with a cash payment at regular intervals; as a line of credit, similar to a home equity line of credit; as a combination of these.

Taxes and insurance – The borrower remains entirely responsible for the property. This includes physical maintenance. In addition, some programs require that the property is periodically revalued.

Income from a reverse mortgage set up as an annuity or as a line of credit should not affect Government Income Support entitlements. However, income from a reverse mortgage set up as a lump sum could be considered a financial investment and thus deemed under the Income Test; this category includes all sums over \$40,000 and sums under \$40,000 that are not spent within 90 days.

When the loan comes due – The reverse mortgage comes due – the loan plus interest must be repaid – when the borrower dies, sells the property, moves out of the house, or breaches the contract in some way.

Prepayment of the loan – when the borrower pays the loan back before it reaches term – may incur penalties, depending on the program. An additional fee could also be imposed in the event of a redraw.

13.2 RMPs in Canada

Eligibility – Reverse mortgages are available through private corporations in Canada, although none of the programs are insured by the government. Eligibility requirements vary depending on the lender. To qualify for a reverse mortgage in Canada,

- the borrower (or both borrowers if married) must be over a certain age, usually at least 55 or 62 years of age;
- the borrower must own the property ‘entirely or nearly’; in addition, any outstanding loans secured by your home must be retired with the proceeds of the reverse mortgage;
- there is no qualification requirement for minimum income level.

Loan size and cost – Reverse mortgages in Canada are usually a maximum of 25 to 50% of the property's value. The exact amount of money available (loan size) is determined by several factors: the borrower's age, with higher payments for higher age; current interest rates; property value, including location and a factor for future appreciation; program minimum and maximum; for example, the loan might be constrained to a minimum \$20,000 and a maximum of \$750,000. The interest rate on the reverse mortgage varies by program.

The cost of getting a reverse mortgage from a private sector lender may exceed the costs of other types of mortgage or equity conversion loans. Exact costs depend on the particular reverse mortgage program the borrower acquires. Depending on the program, there may be the following types of costs: real estate appraisal from \$175 to \$400; legal advice from \$400 to \$600; other legal, closing, and administrative costs of around \$1,495.

Proceeds from a reverse mortgage – The money from a reverse mortgage can be distributed in several different ways:

- as a lump sum, in cash, at settlement;
- as an annuity, with a monthly cash payment;
- as a line of credit, similar to a home equity line of credit;
- as a combination, with a smaller lump sum at settlement and then a smaller annuity.

Once the reverse mortgage is established, there are no restrictions on how the funds are used. The money from the reverse mortgage can be used for any purpose: to repair a home, to pay for in-home care, to deal with an emergency, or simply to cover day-to-day expenses. The borrower retains title to the property, including unused equity, and will never be forced to vacate the house.

Taxes and insurance – The borrower remains entirely responsible for the property. This includes physical maintenance and payment of all taxes, fire insurance and condominium or maintenance fees.

Money received in a reverse mortgage is an advance and is not taxable income. It therefore does not affect government benefits from Old Age Security or Guaranteed Income Supplement. In addition, if reverse mortgage advances are used to purchase non-registered investments – such as Guaranteed Investment Certificates and mutual funds – then interest charges for the reverse mortgage may be deductible from investment income earned.

When the loan comes due – The reverse mortgage comes due (the loan plus interest must be repaid) when the borrower dies, sells the property, or moves out of the house. Depending on the program, the reverse mortgage may be transferable to a different property if the owner moves. Prepayment of the loan – when the borrower pays the loan back before it reaches term – may incur penalties, depending on the program. In addition, if interest rates have dropped since the reverse mortgage was signed, the mortgage terms may include an interest-rate differential penalty. In Canada, a reverse mortgage can not accumulate debt beyond the fair market value of the property, nor can the lender recover losses from the homeowner's other assets. If the borrower lived long enough that the principal and interest together exceed the fair market value when the mortgage is due, the borrower or heirs do not have to pay more than the house's value at the time.

Origin of reverse mortgages in Canada – In 1986 William Turner founded the Canadian Home Income Plan (CHIP) Corporation.^[14] CHIP became Canada's first national provider of reverse mortgages.

13.3 RMPs in the United States

Eligibility – To qualify for a reverse mortgage in the United States, the borrower must be at least 62 years of age and must occupy the property as his or her principal residence. In addition, any mortgage on the property must be low enough that it will be paid off with the reverse mortgage proceeds.

Before starting the loan process for an FHA/HUD-approved reverse mortgage⁴⁶, applicants must take an approved counseling course. The counseling is meant to protect borrowers, although the quality of counseling has been criticized by groups such as the Consumer Financial Protection Bureau.

In a 2010 survey of elderly Americans, 48% of respondents cited financial difficulties as the primary reason for obtaining a reverse mortgage and 81% stated a desire to remain in their current homes until death.

On March 2, 2015 FHA has implemented its financial assessment for Reverse Mortgages. For those who are assigned a case number on or after March 2, 2015 you will be subject to the financial assessment. A case number is assigned to a borrower by FHA so that lenders can identify them. The financial assessment means lenders will

⁴⁶ FHA is for Federal Housing Administration. HUD is for Department of Housing and Urban Development.
See: http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/hecm/hecm lenders.

now be required by FHA to do a much more comprehensive credit, income and asset underwriting.

Loan size – The gross amount of money that a borrower can receive under a HECM reverse mortgage insured by the US federal government is called the principal limit. The principal limit is based on the maximum claim amount, the age of the youngest borrower, and the expected average interest rate. The maximum claim amount is equal to the appraised value of the home or the maximum amount HUD will insure, whichever is less. At least through December 14, 2014, the maximum amount HUD will insure is \$625,500. The maximum claim amount is multiplied by a principal limit factor to determine the principal limit. Principal limit factors are determined by HUD and are based on the borrower's age and the expected average rate of interest. The table below gives some examples of what the initial principal limit will be if a home is worth \$250,000 and for borrowers of different ages and with different expected average rates of interest.

Borrower's Age at Origination	Expected Mortgage Interest Rate	Principal Limit Factor (as of Aug 4, 2014)	Initial Principal Limit on a house value of \$250,000
65	5.5%	0.478	\$119,500
65	7.0%	0.294	\$ 73,500
75	5.5%	0.553	\$138,250
75	7.0%	0.373	\$ 93,500
85	5.5%	0.644	\$161,000
85	7.0%	0.479	\$119,750

Loan costs and existing liens may be paid from the principal limit. Other amounts for items such as taxes and insurance may also be subtracted from the principal limit. The

result after subtracting these amount is the net principal limit. This is the amount the borrower can actually convert to cash.

Interest Rate – Interest rates on reverse mortgages may be fixed or adjustable. Prior to 2007, all major reverse mortgage programs had adjustable interest rates. Adjustable rate reverse mortgages are typically adjusted on a monthly or annual rate up to a maximum rate. The note rate is used to calculate the interest added to the loan balance each month. The note rate may be different from the expected average interest rate used to determine the available loan proceeds.

Cash from a reverse mortgage – The most common reverse mortgage is one in which the owner receives cash or a credit line from an existing home. The money from a reverse mortgage can be distributed in several different ways: in a lump sum, in cash, at settlement; as a cash payment (cash advance) every month, applied for a fixed term (term) or for the owner's life; as a line of credit, similar to a home equity line of credit; some combination of the above.

Purchase of a new residence with 'HECM for Purchase' – The Housing and Economic Recovery Act of 2008 provided HECM mortgagors with the opportunity to purchase a new principal residence with HECM loan proceeds, the so-called *HECM for Purchase program*, effective January 2009. The HECM for Purchase applies if the borrower is able to pay the difference between the HECM and the sales price and closing costs for the property. The program was designed to allow the elderly to purchase a new principal residence and obtain a reverse mortgage within a single transaction by

eliminating the need for a second closing. Texas was the last state to allow for reverse mortgages for purchase.

Total Annual Loan Cost – The Truth in Lending Act requires lenders to disclose the Total Annual Lending Cost (TALC) for reverse mortgages. The TALC calculation should allow borrowers to compare the costs of the reverse mortgage from one lender to another.

Taxes and insurance – The money received from a reverse mortgage is considered a loan advance. It therefore is not taxable and does not directly affect Social Security or Medicare benefits. However, an American Bar Association guide to reverse mortgages explains that if borrowers receive Medicaid, SSI, or other public benefits, loan advances will be counted as ‘liquid assets’ if the money is kept in an account past the end of the calendar month in which it is received. The borrower could then lose eligibility for such public programs if total liquid assets (cash, generally) is then greater than those programs allow.

When the loan comes due – The loan comes due when the borrower dies, sells the house, or moves out of the house for more than 12 consecutive months. The loan may also be declared due and payable if the borrower fails to pay property taxes or fails to maintain hazard insurance on the property. Once the mortgage comes due, the borrower or heirs of the estate have an option to refinance the home and keep it, sell the home and cash out any remaining equity, or turn the home over to the lender. If the property is turned over to the lender, the borrower or the heirs have no more

claim to the property or equity in the property. The lender has recourse against the property, but not against the borrower personally and not against the borrower's heirs. A Reverse Mortgage is a non-recourse loan, meaning that the lender can only be repaid on the loan from the proceeds of the sale of the property either when the homeowner decides to sell the home or their estate sells the property. A Reverse Mortgage is not a loan that can be called at the lender's discretion.

Volume of loans – Home Equity Conversion Mortgages account for 90% of all reverse mortgages originated in the U.S. As of May 2010, there were 493,815 active HECM loans. As of 2006, the number of HECM mortgages that HUD is authorized to insure under the reverse mortgage law was capped at 275,000. However, through the annual appropriations acts, Congress has temporarily extended HUD's authority to insure HECM's notwithstanding the statutory limits.

Program growth in recent years has been very rapid. In fiscal year 2001, 7,781 HECM loans were originated. By the fiscal year ending in September 2008, the annual volume of HECM loans topped 112,000 representing a 1,300% increase in six years. For the fiscal year ending September 2011, loan volume had contracted in the wake of the financial crisis, but remained at over 73,000 loans that were originated and insured through the HECM program.

Loan volume is expected to grow further as the US population ages. In 2000, the Census Bureau estimated that 34 million of the country's 270 million residents were sixty-five years of age or older, while projecting the two totals to rise to 62 and 337 million, respectively, in 2025.

Criticism – Reverse mortgages have been criticized for several major shortcomings:

- High up-front costs make reverse mortgages expensive. In the US, entering into a reverse mortgage will cost approximately the same as a traditional FHA mortgage;
- the interest rate on a reverse mortgage may be higher than on a conventional forward mortgage;
- Interests compounds over the life of a reverse mortgage. Since no monthly payments are made by the borrower on a reverse mortgage, the interest that accrues is treated as a loan advance. Each month, interest is calculated not only on the principal amount received by the borrower but on the interest previously assessed to the loan. Because of this compound interest, as a reverse mortgage's length grows, it becomes more likely to deplete the entire equity of the property. That said, with the FHA-insured HECM reverse mortgage, the borrower can never owe more than the value of the property and cannot pass on any debt from the reverse mortgage to any heirs. The sole remedy the lender has is the collateral, not assets in the estate, if applicable;
- Reverse mortgages can be confusing; many obtain them without fully understanding the terms and conditions, and it has been suggested that some lenders have sought to take advantage of this. A majority of respondents to a 2000 survey of elderly Americans failed to understand the financial terms of reverse mortgages very well when securing their reverse mortgages. But in a 2006 survey of borrowers by AARP⁴⁷, 93% said their reverse mortgage had a mostly positive effect on their lives, compared with 3% who said the effect was

⁴⁷ See: <http://www.aarp.org/aarp-foundation/about-us/>.

mostly negative. Some 93% of borrowers reported that they were satisfied with their experiences with lenders, and 95% reported that they were satisfied with the counselors that they were required to see.

Part V

A Law and Finance Analysis of Italian equity release product ('PIV')

14 The Italian 'Prestito Ipotecario Vitalizio' (PIV)

The Italian 'Prestito Ipotecario Vitalizio' (PIV) is a lifetime long-term mortgage granted by a financial intermediary to individuals over 60 years of age and owners of a residential building⁴⁸. It was introduced in Italy in December 2005 with law 248/05, later modified by law 44/2015.

14.1 Description of the PIV

The main features of the PIV are: (i) the duration of PIV is uncertain; (ii) the repayment of principal, interest and costs (*i.e.*, the future value of the loan when it expires) takes place in a single installment on the death of the borrower (if the property is jointly held an elderly couple, the loan expires at the death the person who lives more); (iii) provides for the capitalization of interest, then the future value of the loan is calculated by compounding the interests, even considering any charges payable by the borrower during the life of the loan; (iv) the borrower continues to live in his house until his death; (v) the loan is secured by a first degree mortgage on the property; (vi)

⁴⁸ See: <http://prestitovitalizio.info/guida/introduzione/>; <https://it.wikipedia.org>; Scotti S, *Prestito vitalizio ipotecario: cosa cambia con la legge n. 44 del 2015*, Diritto bancario, Maggio 2015 (<http://www.dirittobancario.it>).

the repayment of the loan, less than voluntary early repayments by the borrower, shall be paid by heirs of the borrower; *(vii)* the loan includes a contractual clause under which the heirs are expected to reimburse at the maturity of the PIV an amount not greater than the value of the mortgaged property (No Negative Equity Guarantee). In other words, the lender can not claim against the heirs if the future value of the loan is greater than the value of the property, provided that the property is sold at loan's maturity by an independent curator and at market price.

The PIV can be provided by banks and other authorized financial intermediaries. The loan amount varies depending on the age of the borrower: the higher the age, the higher the amount of the loan. The value of the property is usually determined by an expert opinion made by an expert. The maximum amount paid as a percentage of appraisal value varies between 15% (if the applicant's age is around 65 years) and 50-55% (if the applicant's age is around 90 years old).

The borrower has the right to decide whether to gradually pay its debt or not. In the latter case it will be up to the heirs the burden of paying off the debt. If the borrower decides to repay the loan directly – something that is rarely done because it reduces the amount received – he will reimburse the bank in a gradual manner, according to the agreements signed in the contract. Conversely, if the debt is not repaid directly by the borrower, after his death his possible heirs can choose to repay the future value of the debt (principal, interest and costs) within 12 months in single solution (eventually selling the house), or let the bank puts the property for sale at market value. In the latter case, if the bank fails to sell the property after one year, its value will be cut of 15% from the initial sale value, and so the next year to achieving the sale itself.

With the realization of the sale, any amounts that would exceed the total of principal plus interest and expenses will be returned by the bank to the heirs.

The future value of the loan is to be paid in a lump sum by the heirs normally within 10-12 months after the death of longest of the contracting parties. The heirs have two options: if they want to retain ownership of the property, they are expected to reimburse the final value of the PIV; alternatively, the house can be sold and the proceeds are used to repay the loan. If there are no heirs or if the heirs do not intend to refund, the loan is repaid with the sale of the property, but always at the end of 12 months from the date of maturity of the loan.

All types of buildings are eligible to guarantee the PIV except for: rustic and commercial real estate; properties in high seismic risk areas unless an appropriate insurance cover; property encumbered by artistic, landscape and hydrogeological constraints or without planning permission; buildings under mortgage, except in the case of cancellation of the existing mortgage.

Once completed the PIV, the borrower is free to use the money received without any constraint of destination. He will continue to live in his house in accordance with certain constraints: he will not sell it, rent it, renovate it, or add a second mortgage or offer it as collateral in favor of third parties.

The fact that the borrower can continue to live in his house as long as he is alive makes the operation of entering into a PIV alternative to the bare ownership sale. Indeed, in both operations the owner can monetize his house and live there until he is alive, but in the PIV he also retains ownership (as opposed to what happens in the bare ownership sale).

14.2 Laws 248/2005 and 44/2015

Italian PIV was introduced by article 11-*quaterdecies* of Law n. 248 of December 2, 2005, stating that PIV *“relates to the grant from banks and institutions, including by financial intermediaries under Article 106 of the Legislative decree n. 385, September 1, 1993, of medium and long term loans with annual compounding of interest rate and expense, and full principal repayment in a lump sum at maturity, secured by a first mortgage on residential property, reserved for individuals over the age of 65 years”*.

Law n. 248 of 2005 has been amended by Law n. 44 of 2015, which added to the existing Law paragraphs 12 bis to 12 Sexies and established some operating modes to be used for this type of financing.

The main changes introduced by Law n. 44, 2015 are described below. These changes are applicable to loans obtained after Law n. 248 of 2005 came into force⁴⁹.

A first change is related to age beyond which you can have access to the PIV, which is reduced with the new rule from 65 to 60 years. It is then introduced another news on the repayment of the loan, that may be required, in a lump sum, at the time of death of the borrower or if the mortgaged property is sold or in case of acts by the borrower which could significantly reduce the value of his property (such as the establishment of new mortgaging in favor of third parties).

As for the method of repayment, paragraph 12 provides, as already noted, the annual compound of interests and expenses for the period from the date of signing the loan until the occurrence of any of the events provided by Law (first and foremost the death

⁴⁹ See: Scotti S, *Prestito vitalizio ipotecario: cosa cambia con la legge n. 44 del 2015*, Diritto bancario, Maggio 2015.

of borrower). It is a prediction notwithstanding art. 1283 of Italian civil code regarding compounding, thus constituting a provision of singular featuring the instrument in question. In terms of loan repayments also deserves attention the prediction of paragraph 12a, which states that at the time of conclusion of the contract will be possible for the borrower to agree on a gradual repayment of interest and costs before the events referred to in paragraph 12 occurs, without application on the amounts redeemed of compound interest.

In case of default of the borrower the new legislation provides for the application of Article 40, paragraph 2 of the 'Testo unico Bancario' (D. lgs 385/1993), so the possibility of the Bank to rely on the late payment (the one that is made between the thirtieth and the eightieth day after the end of the installment), which has occurred at least seven times, not necessarily consecutively, as the cause of the termination.

Since, as noted, the PIV has a duration uncertain, it shall be subject to Articles 15 and following of the decree n. 601, September 29, 1973, and subsequent modifications. They are then provided to the PIV tax benefits applicable to credit operations in the medium or long term: the exemption from stamp duty, registration, mortgage and cadastral tax on government concessions, due to the payment of a substitute tax (0.25% of the total amount of subsidized loans granted; 2% if reported in the first house and its outbuildings). In the absence of option in writing in the act of financing, however, normal taxes are due.

As already said, the PIV is secured by a first mortgage on real estate. The property must be free of previous mortgage inscriptions, and is applied the art. 39 of Banking Act (paragraphs 1, 2, 3, 4 and 7) in the area of mortgages. The mortgage can not be registered on multiple real estates owned by the borrower.

Precisely because of the mortgage, assuming that the loan is not repaid within 12 months from the occurrence of any of the events referred to in paragraph 12, the issuing bank will sell the property as a guarantee of the loan to value equal to that of market, as determined by an independent expert appointed by the bank. The amounts derived from the sale will be used for repaying the loans.

It is a rule that is an absolute novelty in the regulatory landscape, allowing the lending bank to sell the property without having to submit the same to the executive procedure real estate, thus avoiding its considerable costs and reducing the time to recover the debt. After a further 12 months without having finalized the sale of the property, the value of the same will have to be reduced by 15% for every twelve months until it will be the sale was made. Alternatively, there is an additional mode for the sale of the mortgaged property: the possibility for the heir to engage in the sale of the property by prior arrangement with the lending Bank, provided that the contract of sale is to be perfected within twelve months from the transfer of appointment in favor of the heir (by the bank). Any sum should have residual following the sale of real estate and the extinction of the debt occurred, they will be paid to heirs.

On the other, as already noted, a feature of the PIV is the fact that the amount of the outstanding debt can not be higher than the proceeds from the sale of the property after expenses incurred in (cd No Negative Equity Guarantee). The borrower and the heirs of the same are then protected from any legal actions of the bank for the recovery of any residual credit.

Paragraph 12 quater provides that, once the sale of the property, will have no effect to the purchaser of the property judicial claims provided for in Article 2652 Italian civil code transcribed following the transcription of purchase. It's the claims by which the

claimant argues the foundation of testamentary dispositions for infringement of the legitimate. The above, further proof a legislation that outlines a strong protection for the borrower and for the third party buyer of the property as a guarantee of the loan.

So, in summary: *(i)* even if the house is owned by one of the spouses elderly, the PIV can be signed by both spouses and the maturity of the loan is the spouse longest death (guaranteed by co-heading); *(ii)* there is a guarantee of maximum refundable fee in favor of the heirs (No Negative Equity Guarantee); *(iii)* at maturity of the loan, the heirs have a 'significant period' to decide whether to repay the future value of the loan, manage by itself the house sale or let the bank to sell the house. According to some observers, the main difficulty that prevents the development of this product is the prediction of compound interest that dramatically increases the value of repayment of the loan, making it too expensive. Moreover, the levels of interest rates paid by banks at PIV are higher than those applied to ordinary fixed-rate mortgages and floating rate.

Finally, Article 12 quinquies states that the Ministry of Economic Development, within three months from the date of entry into force of Law n. 44 of 2015 (6 May 2015), after hearing the Italian Banking Association and consumer groups, will adopt by decree a regulation which will set out the rules for the offer of lifetime mortgages and the cases will be identified that could lead to a significant reduction in the market value as reasons for the request for full repayment of the loan. By the same decree it will ensure the transparency and certainty of the amount to be financed, the terms of payment and the interest and costs due.

14.3 Features of the PIV supply in Italy

Major Banks that offer lifetime mortgages in Italy are Monte Paschi di Siena and Deutsche Bank. There are also other financial institutions and brokers that offer this type of product (Euvis SpA, Creditzone, IBL Bank).

14.3.1 The product 'Prestisenior' by Monte dei Paschi di Siena

The product 'Prestisenior' is a medium term lifetime mortgage with annual capitalization of interest and repayment on principal and interest at maturity, reserved to private individuals at least 70 years of age which are owners of a house for residential use with heirs⁵⁰. In case of a joint property, the funding is granted to all owners of the property if they are older than 70 years. The amount payable is calculated based on the age of the applicant (the most junior, in case of a joint property) and in relation to the value of the property. The loan is secured by a first mortgage on the property.

The duration of the loan is equal to the life of the borrower and the delivery of the capital of PIV can be in a lump sum or in annual payments. The repayment of principal and interest usually takes place, to the death of the contractor, by the heirs. If the heirs do not want to repay the loan, the property will be sold and the proceeds will pay off the loan, recognizing any excess remaining to the heirs. As to the financial conditions, it is a fixed rate loan (i.e. the interest rate of the PIV remains constant for its entire life).

⁵⁰ See: Monte Paschi di Siena, *Foglio Informativo del 7 luglio 2014*.

Below are described the other specific characteristics of the product offered by MPS.

Maximum amount financed

Up front: maximum € 200,000.00.

In installments: maximum annual amount € 25,000.00 (for a maximum of 20 disbursements).

The amount that could be awarded depends on the value of the property and the age of the applicant. For example, an applicant of 70 years could be granted a supply around 16% of the property value, one 80 years old 33%, to one of 90 to 50%, again up to a maximum of € 200,000.00.

Duration

Duration of the loan is equal to the life of the borrower. Repayment arrangements: in a lump sum principal and interest, or through funding to any heirs, except existence creditworthiness. At any time after six months from the date of death of the borrower, if any heirs do not intend to repay the loan principal and interest, the Bank will be entitled to act in the way of enforcement for the recovery of their claims.

Loan to Value

Depending on the age of the borrower, you can be delivered as a maximum the following percentages of the value of the property.

Age	Loan to Value
70 anni	16,00%
71 anni	17,20%
72 anni	18,50%
73 anni	19,90%

Age	Loan to Value
74 anni	21,45%
75 anni	23,00%
76 anni	24,80%
77 anni	26,70%
78 anni	28,70%
79 anni	30,90%
80 anni	33,30%
81 anni	34,50%
82 anni	35,50%
83 anni	36,40%
84 anni	37,40%
85 anni	38,40%
86 anni	39,40%
87 anni	40,50%
88 anni	41,60%
89 anni	42,70%
90 anni	43,90%
91 anni	45,10%
92 anni	46,30%
93 anni	47,50%
94 anni	48,80%
95 anni	50,00%

Nominal annual interest rate

Parameter: 30 Years Interest Rate Swap letter taken on the market two working days before the end of the month of signing of the loan plus a spread of 4.8% per annum. Interest is compounded annually and repaid in a lump sum together with the principal.

Depreciation type

Zero coupon bond, having principal and interest repaid at maturity. The annual capitalization of interest (Law 248/2005) is applied. The product does not require repayment plan installments.

Late payment fees

The statutory rate is applicable at the end date of death.

Expenses, fees

There are the following expenses and fees: preparatory of € 800.00; substitute tax to the extent provided by Law; stamp duty to the extent provided by Law.

14.3.2 The product 'Patrimonio casa' by Deutsche Bank

The features of the product by Deutsche Bank are described below⁵¹.

Amount financed

The amount of funding varies from a minimum of 14% to a maximum of 52% of the appraisal value of the mortgaged property and the age and sex of the borrower; in any case the amount payable will be between a minimum of €32,000.00 and a maximum of €450,000.00.

Interest rate

The interest rate that the borrower has to pay is calculated as follows: from the date of disbursement, the loan will bear interest to the extent of 7.85% fixed; accrued interest on the PIV will be capitalized at the end of each interest period and shall be paid in a lump sum at the date of expiry of the contract.

Procedures and time of delivery

With the signing of the contract, the bank will pay the amount of the loan, net of taxes and the costs of preparatory inquiry, to the borrower. The borrower must, on the

⁵¹ See: Deutsche Bank, *Foglio informativo relativo al Contratto di Prestito Vitalizio Ipotecario PATRIMONIOCASA in vigore dal 01/07/2009*.

same occasion, deposit that amount as guarantee deposits at the bank itself, to guarantee the timely fulfillment of all obligations charged to the same borrower. This the unprofitable deposit amounting will be released when the borrower has demonstrated to the bank, within 60 days from the date of signing the PIV: (i) the completion and consolidation of the mortgage guarantee; (ii) the performance of those insurance obligations under the Contract.

Duration

The duration of the loan is related to the life of the borrower or the surviving spouse. The date falling one year after the death of the borrower or the surviving spouse, in the case of PIV granted to a married couple, but not earlier than 18 months have elapsed and 2 (two) days from the date of signing the PIV shall be paid to the Bank:

- the principal amount of the loan;
- capitalized interest accrued on the amount of funding;
- if not already paid, fees, expenses, charges and all taxes due on the loan.

The heirs and assigns of the borrower may repay those amounts through the sale of the property, after seeking permission and consent of the bank which must be received by the same at least thirty (30) days before the date of the planned sale.

Early repayment

The borrower may prepay the loan in full on condition that he submits a written request with advance notice of at least thirty days. If the borrower exercised the option of voluntary early repayment, he will be required to pay the bank a penalty for early repayment.

Late payment fees

Fees on late payment are determined using the interest rate with the increase of 3% per annum.

Average global rate

The average global rate of the PIV is calculated assuming a duration of the loan equal to the average expected life of the population of the same age and sex of the borrower or the youngest of borrowers, if financing made out to a couple.

Commissions, expenses, charges and taxes

The cost of consultancy fees, commissions, fees, charges and taxes relating to the loan, the mortgage and the preparation, formalization and execution of the contract, shall be borne by the borrower. In particular:

- for the investigation of the matter concerning the granting of the PIV: €500.00;
- no cost for reduction, restriction and cancellation of the mortgage established to guarantee the loan;
- for each sending of a possible duplicate of the so-called certification interests: €7.50;
- for each bank statement as proof of the existence of credit: €7.50;
- costs for ongoing management of the loan and, in particular, for the conduct of audits of the state of the property and the honoring of obligations and statements referred to in the contract: € 50.00 per year.

The mortgage can not be less than 5 times the amount of the loan.

They are also charged to the borrower the cost of insurance against the risk of fire, explosion and lightning and charges and costs related to the property, including all dues and taxes, spending and condominium supply due regard to the ownership and possession of the same.

Substitutive tax

- for the purchase, construction or renovation of the 'first house' and its outbuildings or for different purposes of purchase, construction or renovation of buildings for residential use other than the first house: 0.25% of the sum paid;
- for the purchase, construction or renovation of property regarding a second home and more dwelling houses: 2,00% of the sum paid.

Penalty fee for early repayment

The fee is calculated on the accrued debt and is equal to the sum of: (i) 1% and (ii) the change in the reference rate in absolute terms, multiplied by 5, with the 5% limit where:

- accrued debt is the principal amount of the PIV plus interest accrued to the date of early redemption;
- initial reference rate is the rate at the date of delivery;
- the reference rate is the final swap rate at the date of early redemption;
- swap rate is the Euribor rate at 5 years published on Reuters page ISDAFIX2 at 11.00 am (CET);
- change in the reference rate is the difference between the reference rate and the initial reference rate final.

Cases of termination

The bank may terminate the PIV, as appropriate, in accordance with articles 1454 and 1456 Italian civil code, the occurrence of any of the following events:

- 60 days from the date of signing the contract without the borrower has provided evidence of the completion and consolidation of the mortgage guarantee provided by the agreement and fulfillment of insurance obligations under this agreement, the bank may cancel the contract itself, pursuant to art. 1456 Italian civil code, unless it considers to grant a new term, and is authorized to use the amounts pledged as security deposit for the repayment of the loan;
- any default of the borrower, his heirs or assigns, to pay, not remedied by within fifteen bank business days from receipt by the borrower of written notification from the bank;
- any representation or warranty made under the Contract proves to be, or have been, untrue, incorrect or misleading in any respect.

Main risks

Among the main risks are taken into account:

- the possibility of changes in interest rate, if the PVI is a floating rate, higher than the rate of departure;
- inability to benefit from any downward fluctuations in interest rates, if the PVI whether fixed;
- Compounded capitalization of interests as permitted under Law 248/2005.

14.3.3 Other products

The loan life mortgage 'Euvis Prestito Vitalizio' by Euvis⁵²

The minimum age limit for the application of the loan is 65 years. Age is the major factor, along with the value of the property, to determine the amount paid: it will go from a minimum of €32,000 to a maximum of 52.5% of the appraised value of the property subject to mortgage. The maximum amount can not exceed the value of €400,000. The interest rate on the loan is fixed and determined on the basis of IRS letter with maturity 20 years plus a maximum spread of 5.50%. There are expenses: opening practice (fees investigation) up to a maximum of €600; notary; management fee for €50 a year; sending account statements for €10. From the amount disbursed to the customer are subtracted the mandatory insurance costs (insurance fire risk) for a value of up to € 5 per square meter.

The loan life mortgage 'SENZARATA IBL' by IBL Banca⁵³

Given inscription mortgage on a property owned by the applicant, IBL Bank finances an amount ranging from €32,000 to €450,000 against the return of principal and interest at the time of the death of the principal. The elements that determine the amount of initial capital are the market value of the property and the applicant's age, always in limits ranging from 14% to 52% of the appraised value of the property serving as collateral. At the end of the contract, which coincides with the death of the obligor,

⁵² See: <http://www.ottenereunprestito.it/offerte-di-prestiti-personali/euvis-prestito-vitalizio>.

⁵³ See: <http://www.ottenereunprestito.it/offerte-di-prestiti-personali/senzarata-ibl-il-prestito-vitalizio-di-ibl-banca>.

the heirs may: pay the amount due, ie principal plus interest; sell the property to finance; renounce the inheritance.

The loan life mortgage 'CreditZone Prestito'⁵⁴

The maximum amount that can be requested is €350,000 but can not exceed 50% of the appraised value of the property. At the time of signing must be on an insurance on the property against damage by fire and explosion. The rate of the loan is determined on the basis of the IRS rate plus a spread that can range from 3% to 4%. The costs of preparatory inquiry have to be lower than €600. Among the charges: expert opinion paid by the customer, €100 for the release authorization for the sale of the property, €100 for the renewal mortgage and equally for the consent to the cancellation of the same. The early repayment penalty is calculated on the outstanding principal and consists of 5% if repayment takes place within three years of the loan from power, 3% between the third and tenth year, 1% over this period and prior to the thirtieth year. Thereafter the extinction does not provide for penalties.

Funding may be requested by all those who have reached sixty-five years of age, have a property owned (worth more than €100,000) where they are resident and dwell continuously. Although not a loan finalized there are exclusions on the intended use of the capital: the capital cannot be used to buy and renovate other buildings, finance the work obligor, speculating on the financial markets.

⁵⁴ See: <http://www.ottenereunprestito.it/offerte-di-prestiti-personali/creditzone-prestito-senza-rate-lopportunita-di-un-prestito-vitalizio>.

15 Real estate and the elderly: empirical data

At the end of 2012, the real estate wealth of Italian households exceeds 4,800 billion euro. Much of this wealth belongs to 12 million people over 65 years, often holding of low pensions and having increasing cost of maintenance and taxes on their house⁵⁵. That is why in Italy increases the interest on instruments to monetize the real estate for older homeowners, suited to their own needs and those of their children, who often have difficulty in working and do not have access to credit. The PIV is framed in this context and is particularly interesting not only for the structure of real estate in Italy but also for the trend of the main Italian banks to expand their range of services to the direct sale and purchase of real estate⁵⁶, becoming a sort of 'real estate agencies'.

As noted above, with respect to the objective of making cash with your own house, the PIV can be considered an alternative to the sale of the bare ownership⁵⁷.

15.1 The sale of the bare ownership

The sale of the bare ownership is a contract under which the buyer ('bare owner') acquires ownership of a house by paying a portion of the estimated value related to age of the seller ('usufructuary'). The usufruct and the right to live into the home remains to the seller and, at his death, they pass to the bare owner. Condominium

⁵⁵ See: *'La casa come rendita'*, il Sole 24Ore, 19/07/2014.

⁵⁶ See: *'Cosa cambia se la banca vende case'*, il Sole 24Ore, 10/10/2015.

⁵⁷ Another phenomenon that exists in Italy is the demographic impact on the housing market. Increasing aging of the Italian population and the provision of a population decline also depend on the fact that many citizens do not have children and therefore have less interest to leave a legacy. It emerges the risk of asset meltdown, namely the 'liquefaction' of the housing market.

expenses, charges for custody, administration and maintenance costs, are due by the seller, while the bare owner is entitled to extraordinary expenses. The usufructuary may transfer his right to a third party and can rent the house, while the owner of the right of residence can not.

The advantage for the buyer of a property's bare ownership is in paying the property at a price lower than the market value, while for the seller is to have cash while retaining the right to live in his own house until death. However, this solution does not seem to register great success in Italy. According to the data of the Revenue Agency, in the decade 2004/2013 the sales of bare ownership are decreased overall by 74%. In 2004 they recorded more than 4,000 while in 2013 the number of contracts decreased to 20,960 (down 11.2% compared to 2012). According to these estimates, these acts represent 2% of the sales total.

According to some observers, the low number of sales of bare ownership is tied to reasons of both market and (especially) cultural: an owner sells the bare ownership only if really need cash or he is alone. The value of the bare ownership is given by the market price of the property less the usufruct's value, being the latter calculated at the time of sale by the notary public according to established tables.

The percentages for the bare ownership and usufruct established by 2014 ministerial coefficients and the 2013 expected life referred as calculated by the Italian Institute of Statistics (ISTAT)⁵⁸, varying with the age of the owner, are reported in the table below.

Age	Usufruct	Bare ownership	Expected life
64	50%	50%	19,4
65	50%	50%	18,6
66	50%	50%	17,8

⁵⁸ Mortality tables for the Italian population - Breakdown: Italy – Males. Year 2013.

Age	Usufruct	Bare ownership	Expected life
67	45%	55%	17,0
68	45%	55%	16,2
69	45%	55%	15,5
70	40%	60%	14,7
71	40%	60%	14,0
72	40%	60%	13,3
73	35%	65%	12,6
74	35%	65%	11,9
75	35%	65%	11,3
76	30%	70%	10,6
77	30%	70%	9,9
78	30%	70%	9,3
79	25%	75%	8,7
80	25%	75%	8,2
81	25%	75%	7,6
82	25%	75%	7,1
83	20%	80%	6,6
84	20%	80%	6,1
85	20%	80%	5,7
86	20%	80%	5,3
87	15%	85%	4,9
88	15%	85%	4,6
89	15%	85%	4,2
90	15%	85%	3,9
91	15%	85%	3,7
92	15%	85%	3,4
93	10%	90%	3,1
94	10%	90%	2,9
95	10%	90%	2,6

Sometimes, determining the value of the bare ownership is not immediate: think of the seller who has a disease, having a reduced expected life with respect to the average level. In general, the higher the expected of the the seller, the more interesting the purchase price of the property for the buyer. From analyzes carried out on the Italian market about sales of the bare ownership in the year 2013, it results that over 70% of purchases of the bare ownership is for long term investment pourpouses, 25.8% are referred to the main house and only 3.2% aims to holiday-home. Buyers are aged between 35 and 64 years in 71.5% of cases, and they are often parents who buy for their children; while the owners have over 55 years in 74.2% of cases.

As for motivation that push the owners to sell the bare ownership, almost half of sellers (46.8%) do it for raise cash and thus to maintain a certain standard of living, or to meet needs related to the advance of 'age, sometimes for support their children in the acquisition of the house; in 37.1% of cases they try to improve their quality of living, while 8.1% of sales is determined by the change in family structure.

In conclusion, the main feature that differentiates the PIV from the sale of the bare ownership is that in the former case, unlike the latter, the heirs of the property owner have the possibility to maintain the ownership of the property by paying at maturity the future value of the loan (which, in any case, can not exceed the amount obtained from the possible sale of the property, as for the No Negative Equity Guarantee).

16 A critical issue: the financial conditions of the PIV

According to some analysis⁵⁹, one of the main problems in the development of the PIV in Italy is that Law 44/2015, just aimed to relaunch the PIV in Italy after ten years of its introduction, has not established any rules on the financial conditions of the loan. Each bank, indeed, can establish its financial conditions of the loan, in particular those concerning (i) the initial capital of the PIV, varying with the age of the borrower (increases with age) and (ii) the interest rate used to calculate the final capital of the PIV.

For example, looking at the Product Data Sheet of MPS's Prestisenior, the PIV is expensive and not very effective unless the beneficiary is very old. An owner of 70

⁵⁹ See: Lungarella R., *Prestito vitalizio ipotecario: perché lo chiedono in pochi*, 21 maggio 2015, www.lavoce.info. See also: Fornero E., Rossi M. C., Urzi Brancati M. C., *Explaining why, Right or Wrong, (Italian) Households do not like Reverse Mortgages*, Center for Research on Pensions and Welfare Policies, Working Paper 123/11

years (minimum age required by this bank) can get 16% of the value of his home, that is a relatively small share (the percentage is doubled if the age is 80 years). After ten years, the borrower must repay 170% of the amount originally received and after twenty years the 300%, as a result of compound interest and costs. In this case, the nominal annual rate of the rate is at 7.01% (obtained by applying to the 30 years Interest Rate Swap a spread of 4.8% per annum), with arrangement fees and other expenses corresponding to an amount of about a thousand euro. This level of interest rate is much higher, more than double, compared to that applied to ordinary mortgages. The high cost is likely to be attributable to two reasons: *(i)* uncertainty about the value of the house at the maturity date of the loan, and *(ii)* the costs, financial and managerial, the bank will have to bear for the sale of the house (if the loan will not be repaid by the heirs).

The relatively small amount of the loan compared to the value of the house, and the transformation of the capital initially funded in a consistent final value of the loan at maturity, can be a raw indicator to measure the ineffectiveness of the PIV. Apart from anything else, this measure will likely continue to make the PIV unattractive for older homeowners. Probably, PIV will be mainly used by those who, because of their advanced age, can receive sums of a certain size (always related to the home value) and those who are in a state of great need, which can not cope different. The boundaries of the market becomes, then, very tight. Consequently, also the support the PIV can give to the national economy, in terms of higher power consumption, becomes negligible and the development of a new welfare 'between' the Market and the State based on market products appears unlikely.

17 Financial analysis of the PIV

17.1 Formal description

Given the age of the borrower, the exchange of monetary amounts generated from a PIV can be described from the borrower's point of view (and of his heirs), considering the following variables:

0	stipulation time
l_0	initial value of the property
α	initial loan to value, expressed in % of property's initial value
$V = \alpha l_0$	initial capital received by the borrower
\tilde{n}	maturity
i	interest rate, expressed on an annual basis
$\tilde{A} = \alpha l_0 (1+i)^{\tilde{n}}$	final capital of the loan
\tilde{I}	final value of the property
$\tilde{Y} = \min \{ \tilde{A}, \tilde{I} \}$	final value of the PIV.

At the stipulation time of the PIV, its final value (\tilde{Y}) is uncertain and it depends both on the PIV's maturity, depending on the time until the borrower is in life (demographic uncertainty) and on the uncertainty of property's final value (real estate uncertainty).

In particular:

- the variables \tilde{n} , \tilde{A} are uncertain as they depend on the time when the borrower will die (demographic uncertainty);

- the variable \tilde{T} is uncertain and it depends both from the time when the borrower will die (demographic uncertainty) and property's final value (real estate uncertainty).

I have set the following PIV financial analysis by using the tools I have studied in my university course 'Mathematics for Legal Studies'⁶⁰. In particular, I have carried out a deterministic analysis, assuming the PIV's maturity and the property's final value are known. PIV's fees have not been taken into account⁶¹.

Technical assumptions

I have assumed that:

- the duration of the PIV is equal to the expected life of the borrower at the stipulation time of the loan as calculated by ISTAT (n), expressed in years:

$$\tilde{n} = n$$

- given the four variables α , i , l_0 , n , the final capital of the PIV is given by the formula:

$$A = \alpha l_0 (1+i)^n$$

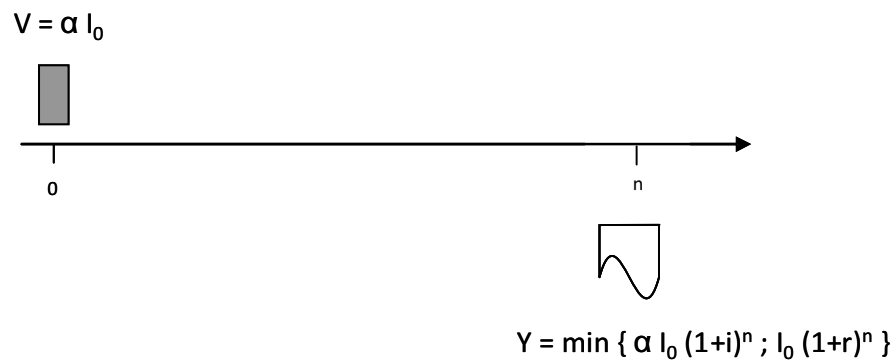
- given the three variables l_0 , n , r , and having defined with r the annual revaluation rate of property's initial value, property's final value is given by:

$$I = l_0 (1+r)^n$$

Given the assumptions, the monetary amounts exchanged under PIV may be represented, from the borrower point of view, by the following scheme.

⁶⁰ See: Università LUISS, course of 'Mathematics for Legal Studies', academic year 2014-2015.

⁶¹ The scheme of analysis can easily be extended to take account of PIV costs and expenses.



As evidenced in the scheme above, at the stipulation time the borrower receive the initial capital $V = \alpha I_0$ and he doesn't pay anything until he is alive; at PIV's maturity 'n' (when the borrower dies), the heirs will pay the PIV's final value determined as the minimum between the final capital of the loan (calculated at the annual interest rate 'i') and the property's final value (calculated at the annual real estate revalutaion rate 'r').

17.2 Applications

I have developed the financial analysis of the product 'Prestisenior' by Monte dei Paschi di Siena. The contractual terms and conditions have been described above.

The 'base case' – I have considered the 'base case' of a borrower with 70 years of age at the stipulation time of the PIV, who is the owner of a house worth €250.000, and the following data⁶²:

⁶² Base data used are the ones considered in the Information Sheet of July 7, 2014 the Monte Paschi di Siena.

$$I_0 = €250.000$$

$$\alpha = 16\%$$

$$i = 7,01\%$$

$$n = 14,73 \text{ years (equal to the borrower's expected life as determined by ISTAT)}$$

$$r = 0\% \text{ (i.e. stability of the real estate market: } I_n = I_0 \text{).}$$

It results:

$$V = 16\% * €250.000 = €40.000$$

$$M = 16\% €250.000 (1+0,0701)^{14,73} = €108.513$$

$$I = €250.000$$

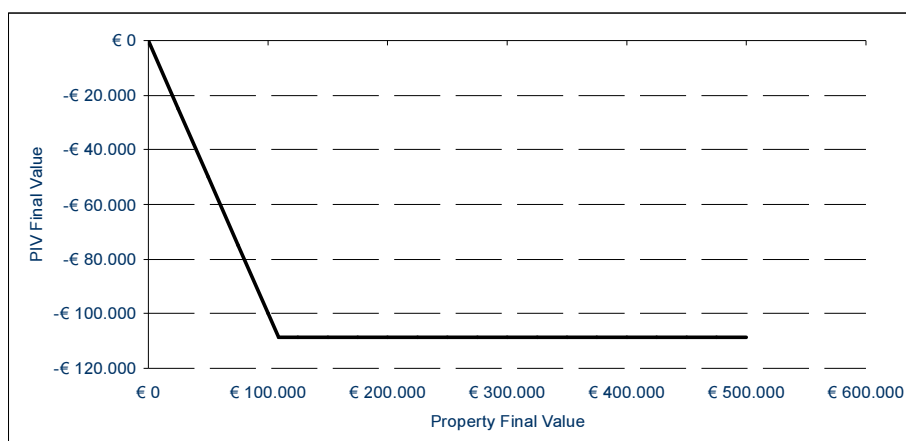
$$Y = €108.513.$$

Therefore, in the base case, compared to a property of initial value of € 250,000 (which is assumed to remain constant until the expiry of the loan, having set $r = 0\%$), the owner who signs the PIV receives an initial capital of € 40,000 (equal to 16% of the value of his house) and at the expected maturity (after around 15 years) his heirs will have to pay to the bank a final capital of €108,513 (without any interim disbursement). The fact that the heirs will have to pay almost three times the amount originally granted is a consequence of the rule of compound interest as prescribed by Law. Alternatively, because of the No Negative Equity Guarantee, the heirs can choose to pay off the debt owed to the bank by selling the mortgaged property, retaining the possible difference between the sale value and the final capital (in the base case, the difference in favor of the heirs would be: $€250,000 - € 108,513 = €141,487$).

How PIV's final value varies as final property value changes – I have analyzed how PIV's final value varies as final property value changes, given the other variables of the

base case. This is the so-called ‘pay-off analysis’. The results of the analysis for a property’s final value varying from €0 to €500,000 are reported and shown in table and graph below.

Input I	Output	
	A	Y
€ 0	€ 108.513	€ 0
€ 25.000	€ 108.513	€ 25.000
€ 50.000	€ 108.513	€ 50.000
€ 75.000	€ 108,513	€ 75,000
€ 100,000	€ 108,513	€ 100,000
€ 108,513	€ 108,513	€ 108,513
€ 125,000	€ 108,513	€ 108,513
€ 150,000	€ 108,513	€ 108,513
€ 175,000	€ 108,513	€ 108,513
€ 200,000	€ 108,513	€ 108,513
€ 225,000	€ 108,513	€ 108,513
€ 250,000	€ 108,513	€ 108,513
€ 275,000	€ 108,513	€ 108,513
€ 300,000	€ 108,513	€ 108,513
€ 325,000	€ 108,513	€ 108,513
€ 350,000	€ 108,513	€ 108,513
€ 375,000	€ 108,513	€ 108,513
€ 400,000	€ 108,513	€ 108,513
€ 425,000	€ 108,513	€ 108,513
€ 450,000	€ 108,513	€ 108,513
€ 475,000	€ 108,513	€ 108,513
€ 500,000	€ 108,513	€ 108,513



The graph illustrates how the *No Negative Equity Guarantee* in favor of the heirs of the PIV’s borrower works: if the property’s final value is less than the PIV’s final capital (of

€108,513), the heirs pay the property's final value ('property case'); otherwise, they pay the final capital ('financial case').

How PIV's final value varies as the age of the borrower changes – I have analyzed how PIV's final value varies as borrower's age changes, given the other variables of the base case⁶³. Please note that, given the assumptions, the age of the borrower identifies the expected duration of the PIV and the % of property's initial value financed (α). The results of the analysis are shown in the table below.

Input					Output			
Età	n	i	α	r	l	A	Y	Y/l
70	14.73	7.01%	16.00%	0%	€ 250,000	€ 108,505	€ 108,505	43.4%
71	14.02	7.01%	17.20%	0%	€ 250,000	€ 111,135	€ 111,135	44.5%
72	13.31	7.01%	18.50%	0%	€ 250,000	€ 113,967	€ 113,967	45.6%
73	12.62	7.01%	19.90%	0%	€ 250,000	€ 116,961	€ 116,961	46.8%
74	11.93	7.01%	21.45%	0%	€ 250,000	€ 120,354	€ 120,354	48.1%
75	11.25	7.01%	23.00%	0%	€ 250,000	€ 123,240	€ 123,240	49.3%
76	10.59	7.01%	24.80%	0%	€ 250,000	€ 127,013	€ 127,013	50.8%
77	9.94	7.01%	26.70%	0%	€ 250,000	€ 130,879	€ 130,879	52.4%
78	9.32	7.01%	28.70%	0%	€ 250,000	€ 134,896	€ 134,896	54.0%
79	8.72	7.01%	30.90%	0%	€ 250,000	€ 139,498	€ 139,498	55.8%
80	8.16	7.01%	33.30%	0%	€ 250,000	€ 144,667	€ 144,667	57.9%
81	7.62	7.01%	34.50%	0%	€ 250,000	€ 144,525	€ 144,525	57.8%
82	7.11	7.01%	35.50%	0%	€ 250,000	€ 143,654	€ 143,654	57.5%
83	6.61	7.01%	36.40%	0%	€ 250,000	€ 142,438	€ 142,438	57.0%
84	6.14	7.01%	37.40%	0%	€ 250,000	€ 141,773	€ 141,773	56.7%
85	5.70	7.01%	38.40%	0%	€ 250,000	€ 141,222	€ 141,222	56.5%
86	5.28	7.01%	39.40%	0%	€ 250,000	€ 140,882	€ 140,882	56.4%
87	4.90	7.01%	40.50%	0%	€ 250,000	€ 141,144	€ 141,144	56.5%
88	4.55	7.01%	41.60%	0%	€ 250,000	€ 141,580	€ 141,580	56.6%
89	4.22	7.01%	42.70%	0%	€ 250,000	€ 142,111	€ 142,111	56.8%
90	3.93	7.01%	43.90%	0%	€ 250,000	€ 143,233	€ 143,233	57.3%
91	3.67	7.01%	45.10%	0%	€ 250,000	€ 144,559	€ 144,559	57.8%
92	3.41	7.01%	46.30%	0%	€ 250,000	€ 145,844	€ 145,844	58.3%
93	3.13	7.01%	47.50%	0%	€ 250,000	€ 146,822	€ 146,822	58.7%
94	2.85	7.01%	48.80%	0%	€ 250,000	€ 148,026	€ 148,026	59.2%
95	2.58	7.01%	50.00%	0%	€ 250,000	€ 148,826	€ 148,826	59.5%

⁶³ The final capital of GDP, recalculated for all ages according to the scheme of analysis assumed, is the same as that reported in the Information Sheet of July 7, 2014 by the Monte Paschi di Siena.

As shown in the table, given the assumptions, the final value of the PIV (Y) is always equal, for all ages, to the final capital (A), the latter amount being always smaller, significantly, of the final property value (I). In addition, the analysis evidenced that: the PIV's final capital (A) varies from 2.7 to 1.2 times its initial capital (to € 40,000) if the age of the owner goes from 70 to 95 years, then it remains at rather high multiples for very old age as a result of compound interest.

We can hence reasonably say that 'Prestisenior' is a product having a 'financial' rather than a 'real estate' nature, as the loan to value at maturity (Y/I) is very low even when assuming conditions of stability in the housing market (as in the base case, with $r = 0\%$, that is, the property's final value is taken equal to its initial one). So, for example, the loan to value at maturity is between 43.4% and 59.5% for a person who has, respectively 70 and 95 years of age at PIV's stipulation time, levels that result lower even than those typically applied to ordinary home mortgages.

Obviously, the bank has a benefit to fix an initial loan to value (α) particularly low: the lower the loan-to-value, the greater the protection of the bank in the event that, at maturity, the heirs decide not to repay the loan but to sell the property (being the heirs in turn protected by the *No Negative Equity Guarantee* if the proceeds of the sale is less than the final capital of the PIV owed to the bank). Therefore, the lower α , the greater the protection of the bank against adverse movements in the housing market (property risk hedging). But, on the other, the financial nature of the product makes it unattractive for an elderly owner of property if the reason that led him to contract a PIV is precisely the need to get the highest immediate cash from his property (as it results in most cases, according to analyzes carried out on the Italian market).

In conclusion, here is the trade-off: low levels of the loan to value ratio make the product more attractive to the bank and less attractive to potential customers, because not suitable to satisfy his need for immediate liquidity; on the other, high levels of the loan to value expose the bank to higher real estate risk, being the heirs instead hedged by the *No Negative Equity Guarantee*.

To study this trade-off, I have implemented in the following an analysis of the so called 'par conditions' at the maturity of the PIV.

17.3 Par analysis at maturity

I have defined the 'par conditions' at maturity of the PIV as the financial conditions that make its final capital equal to the property's final value as initially assumed.

Formally, the 'par conditions' of the PIV satisfy the equality:

$$A = I$$

Namely, given the scheme of analysis adopted, it means to determine the relationships between the variables satisfying the following expression:

$$\alpha (1+i)^n = (1+r)^n.$$

Given the age of the PIV's borrower and (then) the expected life of the debt (n), the above expression depends on three variables (α , i , r). Therefore, given two of them, it will be possible to express the third⁶⁴.

⁶⁴ Alternatively, it would be possible to obtain the 'par conditions' by setting the net value of the PIV at its maturity equal to zero, having defined the net value as the difference between the final capital of PIV and its initial value capitalized at the interest rate of the loan. We would reach to the same conclusions. More in general, it would also be possible to develop a 'par analysis' of the PIV under uncertainty, by using models and tools from the Option Pricing Theory, being the final value of the property a random variable (see: Mottura C., *Financial valuation and risk management*, teaching materials, University 'Roma Tre').

By simple algebra, the following 'par conditions' at the PIV's maturity do result:

- given i, r: $\alpha^* = (1+r)^n / (1+i)^n$ [1]

- given α , i: $r^* = [\alpha (1+i)^n]^{1/n} - 1$ [2]

- given α , r: $i^* = [(1+r)^n / \alpha]^{1/n} - 1$ [3]

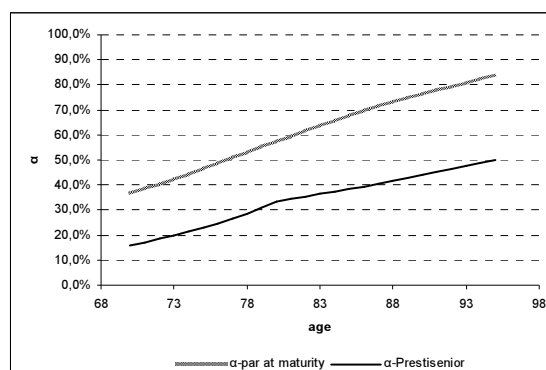
For example, in [1], it easily results that if $i = r$ it is $\alpha^* = 1$ (i.e. the bank would finance 100% of the initial value of the property if we initially assume an annual interest rate equal to the rate of property revaluation) .

The Par Loan to Value (α^*) - In the table below, using data from the base case, are illustrated the par levels for the initial loan to value (α^*) as calculated by the expression [1].

Input				Output				
Età	n	i	r	α^*	I	A	Y	$\alpha - \alpha^*$
70	14.73	7.01%	0%	36.9%	€ 250,000	€ 250,000	€ 250,000	20.9%
71	14.02	7.01%	0%	38.7%	€ 250,000	€ 250,000	€ 250,000	21.5%
72	13.31	7.01%	0%	40.6%	€ 250,000	€ 250,000	€ 250,000	22.1%
73	12.62	7.01%	0%	42.5%	€ 250,000	€ 250,000	€ 250,000	22.6%
74	11.93	7.01%	0%	44.6%	€ 250,000	€ 250,000	€ 250,000	23.1%
75	11.25	7.01%	0%	46.7%	€ 250,000	€ 250,000	€ 250,000	23.7%
76	10.59	7.01%	0%	48.8%	€ 250,000	€ 250,000	€ 250,000	24.0%
77	9.94	7.01%	0%	51.0%	€ 250,000	€ 250,000	€ 250,000	24.3%
78	9.32	7.01%	0%	53.2%	€ 250,000	€ 250,000	€ 250,000	24.5%
79	8.72	7.01%	0%	55.4%	€ 250,000	€ 250,000	€ 250,000	24.5%
80	8.16	7.01%	0%	57.5%	€ 250,000	€ 250,000	€ 250,000	24.2%
81	7.62	7.01%	0%	59.7%	€ 250,000	€ 250,000	€ 250,000	25.2%
82	7.11	7.01%	0%	61.8%	€ 250,000	€ 250,000	€ 250,000	26.3%
83	6.61	7.01%	0%	63.9%	€ 250,000	€ 250,000	€ 250,000	27.5%
84	6.14	7.01%	0%	66.0%	€ 250,000	€ 250,000	€ 250,000	28.6%
85	5.70	7.01%	0%	68.0%	€ 250,000	€ 250,000	€ 250,000	29.6%
86	5.28	7.01%	0%	69.9%	€ 250,000	€ 250,000	€ 250,000	30.5%
87	4.90	7.01%	0%	71.7%	€ 250,000	€ 250,000	€ 250,000	31.2%
88	4.55	7.01%	0%	73.5%	€ 250,000	€ 250,000	€ 250,000	31.9%
89	4.22	7.01%	0%	75.1%	€ 250,000	€ 250,000	€ 250,000	32.4%
90	3.93	7.01%	0%	76.6%	€ 250,000	€ 250,000	€ 250,000	32.7%
91	3.67	7.01%	0%	78.0%	€ 250,000	€ 250,000	€ 250,000	32.9%
92	3.41	7.01%	0%	79.4%	€ 250,000	€ 250,000	€ 250,000	33.1%
93	3.13	7.01%	0%	80.9%	€ 250,000	€ 250,000	€ 250,000	33.4%

Input				Output				
Età	n	i	r	α^*	I	A	Y	$\alpha - \alpha^*$
94	2.85	7.01%	0%	82.4%	€ 250,000	€ 250,000	€ 250,000	33.6%
95	2.58	7.01%	0%	84.0%	€ 250,000	€ 250,000	€ 250,000	34.0%

Let's consider, in the last column of the table above, the difference between the 'par' loan to value level and the one actually applied by the bank, which measures the degree of prudence initially applied by the bank to the PIV. For example, for an owner of 70 years, the bank could finance on 'par conditions' – if assuming (conservatively) that the property as collateral retains its initial value after 15 years – about 37% of property's initial value (more than €92,000) instead of the 16% actually financed (corresponding to an amount of €40,000). The arithmetic mean of such a difference for the different ages is around 28%. This means that the bank is financing an amount that is of 28% on average lower than that financed on a 'par conditions' basis. The comparison between the two rates is shown in the following graph.



The Par Real Estate Revaluation Rate (r^*) – In the table below, using data from the base case, are illustrated the par levels for the real estate revaluation rate (r^*) as calculated by the expression [2].

Età	Input			Output			
	N	i	α	r^*	I	A	Y
70	14.73	7.01%	16.00%	-5.5%	€ 108,505	€ 108,505	€ 108,505
71	14.02	7.01%	17.20%	-5.6%	€ 111,135	€ 111,135	€ 111,135
72	13.31	7.01%	18.50%	-5.7%	€ 113,967	€ 113,967	€ 113,967
73	12.62	7.01%	19.90%	-5.8%	€ 116,961	€ 116,961	€ 116,961
74	11.93	7.01%	21.45%	-5.9%	€ 120,354	€ 120,354	€ 120,354
75	11.25	7.01%	23.00%	-6.1%	€ 123,240	€ 123,240	€ 123,240
76	10.59	7.01%	24.80%	-6.2%	€ 127,013	€ 127,013	€ 127,013
77	9.94	7.01%	26.70%	-6.3%	€ 130,879	€ 130,879	€ 130,879
78	9.32	7.01%	28.70%	-6.4%	€ 134,896	€ 134,896	€ 134,896
79	8.72	7.01%	30.90%	-6.5%	€ 139,498	€ 139,498	€ 139,498
80	8.16	7.01%	33.30%	-6.5%	€ 144,667	€ 144,667	€ 144,667
81	7.62	7.01%	34.50%	-6.9%	€ 144,525	€ 144,525	€ 144,525
82	7.11	7.01%	35.50%	-7.5%	€ 143,654	€ 143,654	€ 143,654
83	6.61	7.01%	36.40%	-8.2%	€ 142,438	€ 142,438	€ 142,438
84	6.14	7.01%	37.40%	-8.8%	€ 141,773	€ 141,773	€ 141,773
85	5.70	7.01%	38.40%	-9.5%	€ 141,222	€ 141,222	€ 141,222
86	5.28	7.01%	39.40%	-10.3%	€ 140,882	€ 140,882	€ 140,882
87	4.90	7.01%	40.50%	-11.0%	€ 141,144	€ 141,144	€ 141,144
88	4.55	7.01%	41.60%	-11.7%	€ 141,580	€ 141,580	€ 141,580
89	4.22	7.01%	42.70%	-12.5%	€ 142,111	€ 142,111	€ 142,111
90	3.93	7.01%	43.90%	-13.2%	€ 143,233	€ 143,233	€ 143,233
91	3.67	7.01%	45.10%	-13.9%	€ 144,559	€ 144,559	€ 144,559
92	3.41	7.01%	46.30%	-14.6%	€ 145,844	€ 145,844	€ 145,844
93	3.13	7.01%	47.50%	-15.6%	€ 146,822	€ 146,822	€ 146,822
94	2.85	7.01%	48.80%	-16.8%	€ 148,026	€ 148,026	€ 148,026
95	2.58	7.01%	50.00%	-18.2%	€ 148,826	€ 148,826	€ 148,826

For example, for an owner of 70 years, the initial value of the property should depreciate by 5.5% each year (for around 15 years, under the compound rule) to achieve the PIV's par conditions.

The Par Interest Rate: a comparison between entry into of a VIP and sale the bare ownership (the 'comparison case') – To set a comparison between entry into of a PIV and sale the bare ownership of the same property, I have assumed for each age of the borrower an initial loan to value equal to the percentages provided by Law for sales of the bare ownership (column ' α^{ND} '). In the table below, using data from the base case,

are illustrated the par levels for the interest rate (i^*) as calculated by the expression [3].

Input				Output					
Età	n	α^{ND}	r	i^*	I	A	Y	i^*-i	$\alpha^{ND}-\alpha$
64	19.35	50.00%	0%	3.65%	€ 250,000	€ 250,000	€ 250,000	-	-
65	18.56	50.00%	0%	3.81%	€ 250,000	€ 250,000	€ 250,000	-	-
66	17.77	50.00%	0%	3.98%	€ 250,000	€ 250,000	€ 250,000	-	-
67	16.98	55.00%	0%	3.58%	€ 250,000	€ 250,000	€ 250,000	-	-
68	16.22	55.00%	0%	3.76%	€ 250,000	€ 250,000	€ 250,000	-	-
69	15.47	55.00%	0%	3.94%	€ 250,000	€ 250,000	€ 250,000	-	-
70	14.73	60.00%	0%	3.53%	€ 250,000	€ 250,000	€ 250,000	3.48%	44.0%
71	14.02	60.00%	0%	3.71%	€ 250,000	€ 250,000	€ 250,000	3.30%	42.8%
72	13.31	60.00%	0%	3.91%	€ 250,000	€ 250,000	€ 250,000	3.10%	41.5%
73	12.62	65.00%	0%	3.47%	€ 250,000	€ 250,000	€ 250,000	3.54%	45.1%
74	11.93	65.00%	0%	3.68%	€ 250,000	€ 250,000	€ 250,000	3.33%	43.6%
75	11.25	65.00%	0%	3.90%	€ 250,000	€ 250,000	€ 250,000	3.11%	42.0%
76	10.59	70.00%	0%	3.43%	€ 250,000	€ 250,000	€ 250,000	3.58%	45.2%
77	9.94	70.00%	0%	3.65%	€ 250,000	€ 250,000	€ 250,000	3.36%	43.3%
78	9.32	70.00%	0%	3.90%	€ 250,000	€ 250,000	€ 250,000	3.11%	41.3%
79	8.72	75.00%	0%	3.35%	€ 250,000	€ 250,000	€ 250,000	3.66%	44.1%
80	8.16	75.00%	0%	3.59%	€ 250,000	€ 250,000	€ 250,000	3.42%	41.7%
81	7.62	75.00%	0%	3.85%	€ 250,000	€ 250,000	€ 250,000	3.16%	40.5%
82	7.11	75.00%	0%	4.13%	€ 250,000	€ 250,000	€ 250,000	2.88%	39.5%
83	6.61	80.00%	0%	3.43%	€ 250,000	€ 250,000	€ 250,000	3.58%	43.6%
84	6.14	80.00%	0%	3.70%	€ 250,000	€ 250,000	€ 250,000	3.31%	42.6%
85	5.70	80.00%	0%	3.99%	€ 250,000	€ 250,000	€ 250,000	3.02%	41.6%
86	5.28	80.00%	0%	4.32%	€ 250,000	€ 250,000	€ 250,000	2.69%	40.6%
87	4.90	85.00%	0%	3.37%	€ 250,000	€ 250,000	€ 250,000	3.64%	44.5%
88	4.55	85.00%	0%	3.63%	€ 250,000	€ 250,000	€ 250,000	3.38%	43.4%
89	4.22	85.00%	0%	3.92%	€ 250,000	€ 250,000	€ 250,000	3.09%	42.3%
90	3.93	85.00%	0%	4.22%	€ 250,000	€ 250,000	€ 250,000	2.79%	41.1%
91	3.67	85.00%	0%	4.53%	€ 250,000	€ 250,000	€ 250,000	2.48%	39.9%
92	3.41	85.00%	0%	4.88%	€ 250,000	€ 250,000	€ 250,000	2.13%	38.7%
93	3.13	90.00%	0%	3.42%	€ 250,000	€ 250,000	€ 250,000	3.59%	42.5%
94	2.85	90.00%	0%	3.76%	€ 250,000	€ 250,000	€ 250,000	3.25%	41.2%
95	2.58	90.00%	0%	4.18%	€ 250,000	€ 250,000	€ 250,000	2.83%	40.0%

For example, an owner of 70 years, instead of sell permanently the bare ownership to the 60% of its property's initial value (receiving an initial capital of €150,000), could theoretically conclude a PIV – so leaving in addition to the heirs the opportunity to redemm their property at maturity – receiving the same initial capital (€150,000) and paying a par interest rate of 3.53% per annum.

18 A technical solution: the Subsidized PIV

We said above that modest PIV's initial capital compared to the initial value of the house, together with the compound capitalization of the initial capital that determines a consistent final capital, can be a raw indicator undermining the effectiveness of the PIV; and that apart from anything else, these elements will likely continue to make PIV unattractive for older homeowners. By this point of view PIV does not even appear competitive with the sale the bare ownership, because it cannot generate for the owner the same liquidity as from the sale the bare ownership.

We also said that, probably, PIV will be mainly used by those who, because of their advanced age, can receive sums of a certain size (always related to the home value) and those who are in a state of great need, which can not cope different. The boundaries of the market becomes, then, very tight. Consequently, we concluded that also the support the PIV can give to the national economy, in terms of higher power consumption, becomes negligible; and that the development of a new welfare 'between' the Market and the State based on market products appears unlikely.

To overcome this technical difficulty and revive the PIV in Italy as well as a competitive product to the bare ownership sale, one could imagine a so called 'Subsidized PIV', considering a State aid provided on a standard contractual and financial scheme properly defined between the State and lender-bank.

On the basis of the results of the Par analysis I have performed previously:

- the lender-bank could offer a loan having an initial capital equal to the amount obtainable from bare ownership sale, and an interest rate equal to its 'par' level;

- the State could assist the PIV (i) providing a public grant to cover the difference between the PIV's market interest rate and its 'par' interest rate and (ii) a state guarantee to cover real estate risk suffered by the bank (if property's final value is lower than the final capital).

Such a Subsidized PIV may be financially competitive, alternative to the bare ownership sale and socially useful because in favor of older people, which are exposed to considerable difficulty in this historical phase. It could satisfied all parties of the PIV transaction:

- the elderly owner of a property (*i.e.*, the borrower) would fulfilled his interest to maximize the initial capital;
- the heirs of the borrower, upon sale of the bare ownership, would have the option to redeem the property at maturity to more advantageous financial terms than those currently offered, because the final capital of the PIV would be calculated at a lower rate 'subsidized' compared to the market one; that means that the 'subsidized' final capital would be lower than the current one;
- the bank would be in an equivalent economic situation with respect to the current PIV, but would greatly enhance its reputation because of its new social role; this could be particularly important in this historical period, where the credit system has suffered a significant loss of reputation following tasks inspired by speculation instead of supporting the national system;
- the State would offer a public financial instrument – the State guarantee to older homeowners (to cover real estate risk at PIV's maturity) – it has already used to provide public aid to other distressed sectors. This is the case of the State guarantee recently proposed to cover the default risk of investments in

small and medium Italian enterprises, by a new 'rescue fund companies'; or, at the Eurozone level, of the state guarantees offered by Member States to support banks in difficulty; or public guarantees offered by the European Union by the so called 'Junker plane' for the revival of the productive sector. As far as the balance of public finances is concerned, according to the current Eurostat rules, the granting of type of guarantee could be a sustainable way for public intervention as it would not produce effects on public finances. On the other, these guarantees may encourage private capital investment towards the old age.

More generally, the proposal of a Subsidized PIV could start the creation of new social finance tools in favor of the elderly, 'between' Market and State.

Conclusions

This thesis analyzed the current debate on public welfare models after the effects produced by the 2007-2008 great financial crisis broken out in US. The thesis also studied, both from a legal and financial point of view, mortgage loans offered by banks to elderly owning property, and which can contribute to finance their needs.

In the first two parts of the thesis I discussed the characteristics of different welfare state schemes and the consequences of the great financial crisis. Of particular concern the crisis impact on the public debt of the most industrialized countries appears, (OECD members): at the end of 2014, compared to the produced wealth in terms of GDP, the total public debt has reached the same level as recorded at the end of World War II (but in 'peace time').

In the third part, I preliminarily described Professor Stiglitz's analysis on US welfare state changes during the nineties, and the effects they produced on the American economy after the Internet crisis broke out in the US at the beginning of the third millennium. Afterwards, I faced the problem of the possible transition, in Italy, from the current 'employment' public welfare model to a new 'universalistic' one. I discussed this issue on the basis of Professor Pessi's analysis as outlined in his article 'Rethinking the Welfare' (published on the 'Rivista del Diritto della Sicurezza Sociale' in 2013).

In this historic phase, when *emergency becomes system*, rethinking welfare in Italy towards a universalistic model it appears necessary to combat the poverty problem, which unfortunately, in recent years, has significantly resurfaced even at international level. The elements of Professor Pessi's analysis are also reflected in recent

considerations on the Italian welfare by IMF, OECD and 'Istituto Nazionale della Previdenza Sociale' (INPS). The recent awarding of the 2015 Nobel Prize for Economics to Professor Angus Deaton for his studies on consumption, poverty and welfare, is another proof that poverty is at the center of current international debate.

The features of the equity release and reverse mortgage products offered by banks to older homeowners, aimed to monetize the property while maintaining the right to live there as long as the owner is alive, were studied in part IV of the thesis. These products deserve attention both because of their international development after the great crisis, and because in Italy there are about 12 million people 'over 65' who own property, often entitled to a low pension and suffering continuously increasing fiscal costs.

Finally, the legal and financial analysis developed in part V of the thesis, regarding the so called 'Prestito Ipotecario Vitalizio' (PIV) offered by banks in Italy – similar to equity release and reverse mortgage products internationally offered –, highlights the need for a greater standardization of this type of product, both in contractual and financial terms. On one hand, it appears relevant to face this need because of the real estate structure in Italy and because the main Italian banks are expanding their operations and services to property management, becoming a sort of new 'real estate agency'. On the other hand, financial conditions currently offered by banks, are prohibitively expensive. Based on the tools of financial mathematics, the quantitative analysis carried out shows how it would be possible to create a new 'Subsidized PIV' more affordable for the elderly, assuming public aid on the loan interest and a state guarantee in the bank's favour to hedge its property risk. At the current market conditions, the public aid on the loan interest would be equal to about half of the market interest level.

In conclusion, the current historical phase, characterized by the great financial crisis effects on industrialized States public debt, requires *new ways of thinking* about welfare. On the public level, it requires to move from the 'employment' welfare model to a new 'universalistic' one, at least to face poverty, significantly back. On a private level, it requires developing new social finance, 'between' the Market and the State, to structurally channel the huge amounts of private capital into products aimed at the elderly.

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DIPARTIMENTO DI GIURISPRUDENZA

LAUREA MAGISTRALE A CICLO UNICO
PERCORSO 'DIRITTO ED ECONOMIA DELLE IMPRESE'

TESI IN DIRITTO DEL LAVORO

Welfare state e crisi finanziaria

Il dibattito sui modelli di welfare pubblico

La finanza per la terza età in Italia: il prestito ipotecario vitalizio

SINTESI

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SOMMARIO

Il lavoro svolto, i risultati conseguiti

Questa tesi si è posta due obiettivi. Da un lato, sul piano pubblico, ha analizzato il dibattito in corso sui modelli di welfare state dopo le conseguenze della grande crisi finanziaria scoppiata negli USA nel 2007-2008. Dall'altra, sul piano privato, ha studiato le caratteristiche dei prestiti ipotecari offerti dalle banche agli anziani proprietari di immobili che, insieme alla pensione pubblica, possono contribuire a finanziare i bisogni della terza età.

La tesi è strutturata in cinque parti.

Le parti I e II propongono, rispettivamente, le caratteristiche dei diversi schemi di welfare state e un'analisi della grande crisi finanziaria del 2007-2008. Sono discussi, in particolare, gli effetti della crisi sul debito pubblico dei paesi OECD (che, alla fine 2014, rispetto alla ricchezza prodotta, ha raggiunto lo stesso livello registrato alla fine della seconda guerra mondiale, ma in 'tempo di pace'), sul pensiero economico, sulla necessità di definire un nuovo 'ordine giuridico' del mercato, sulle teorie economiche e sulla trasformazione dei rischi sistemici.

Nella parte III sono analizzati gli elementi economici e giuridici del dibattito sui modelli pubblici di welfare. È preliminarmente considerata l'analisi del professor Stiglitz sul welfare USA, che studia i cambiamenti di welfare introdotti dal governo americano nel corso degli anni novanta del secolo scorso, che hanno reso *il sistema di welfare dipendente dai mercati finanziari*; e i rischi di questa dipendenza dopo la crisi 'Internet' scoppiata in America agli inizi del terzo millennio, che hanno aumentato la vulnerabilità dell'economia americana. Viene quindi affrontato, sulla base dell'analisi svolta dal professor Pessi nell'articolo 'Ripensando il welfare' (apparso sulla 'Rivista del Diritto della Sicurezza Sociale' nel 2013), con riferimento alla situazione italiana, il problema del possibile passaggio dall'attuale modello di welfare 'occupazionale' a un nuovo modello 'universale'. In questa fase storica, dove *l'emergenza si fa sistema*, ripensare il welfare italiano in senso 'universale' appare necessario in particolare per combattere il fenomeno della povertà che, secondo i dati dell'OECD, è riemerso negli ultimi anni in modo particolarmente significativo anche in Italia. Gli elementi dell'analisi sviluppata dal professor Pessi si ritrovano anche in recenti considerazioni sul welfare italiano proposte dal Fondo Monetario Internazionale e dall'Istituto Nazionale della Previdenza Sociale. Che la povertà sia al centro del dibattito internazionale lo dimostra anche la recente assegnazione del premio Nobel 2015 per l'economia al professor Angus Deaton, proprio per i suoi studi su consumi, povertà e welfare.

Nella parte IV della tesi sono discusse le caratteristiche dei prodotti finanziari a favore della terza età, a livello internazionale e nazionale. In particolare, sono considerati gli equity release products (utilizzati in Inghilterra) e i reverse mortgage products (diffusi negli Stati Uniti, in Canada e in Australia). Sono prodotti che, denominazione a parte, presentano caratteristiche contrattuali analoghe, e che si propongono di offrire alle persone anziane proprietarie di immobili la possibilità di 'monetizzare' il proprio immobile mantenendo il diritto di viverci finché sono in vita. Questa tipologia di prodotti merita attenzione in Italia: sia perché sono circa 12 milioni le persone 'over

65' proprietarie di immobili, spesso titolari di una bassa pensione e con costi fiscali in continuo aumento; sia per la tendenza delle principali banche italiane ad estendere le proprie attività verso i servizi di compravendita immobiliare (configurandosi come una sorta di nuove 'agenzie immobiliari').

Nella parte V è sviluppata un'analisi giuridica e finanziaria dell'equity release product offerto dalle banche in Italia, denominato 'Prestito Ipotecario Vitalizio' (PIV). Introdotto in Italia nel 2005 con la Legge 203/2005, il PIV è stato modificato il 6 maggio 2015 dalla Legge 44/2015 per tentare di rilanciarlo come strumento di finanziamento per la terza età. Tra le maggiori criticità del PIV segnalate da alcuni osservatori ci sono le condizioni finanziarie applicate dalle banche, che appaiono eccessivamente onerose sia perché il capitale finanziato è troppo basso (tanto rispetto al valore dell'immobile quanto in confronto all'importo ottenibile dalla vendita della nuda proprietà, che costituisce il concorrente più diretto alla stipula di un PIV), sia perché il tasso di interesse è troppo elevato (rispetto a quello applicato ai normali mutui ipotecari). Ciò rende il PIV poco attraente e non in grado di soddisfare l'esigenza di liquidità, che è alla base della domanda di questo tipo di prodotti per la terza età. Per analizzare questo problema finanziario è stata sviluppata un'analisi quantitativa basata sugli strumenti della Matematica finanziaria; e impostato un confronto con la vendita della nuda proprietà. Sulla base dei risultati dell'analisi, viene risolto il problema finanziario proponendo la creazione di un nuovo tipo di prodotto, denominato 'PIV agevolato'. Questo prodotto, sempre offerto dalle banche, prevederebbe un aiuto pubblico (sotto forma di un contributo in conto interesse e della concessione di una garanzia statale) e dovrebbe essere costruito secondo uno schema contrattuale e finanziario standardizzato definito dallo Stato e dal sistema del credito. In termini economici, il PIV agevolato sarebbe più vantaggioso della vendita della nuda proprietà perché, a parità di capitale finanziato, lascierebbe agli eredi il diritto di riscattare l'immobile ipotecato (pagando il montante alla scadenza). Ad esempio, se si considera un soggetto di 70 anni di età proprietario di un immobile di 250 mila euro, alle condizioni attuali di mercato, il PIV concesso dalla banca prevede un finanziamento di 40 mila euro al tasso annuo del 7% circa. Invece, con il PIV agevolato, la banca concederebbe un finanziamento di 150 mila euro (uguale all'importo ottenibile dalla vendita della nuda proprietà) ad un tasso annuo agevolato del 3,53%; la parte residua dell'interesse rispetto al tasso di mercato (del 3,48%) sarebbe a carico dello Stato; e la garanzia pubblica coprirebbe il rischio che, dopo 15 anni circa (corrispondenti alla durata attesa di vita del proprietario, secondo le tavole di mortalità ISTAT), il valore dell'immobile sia minore del montante finanziario del PIV agevolato.

In conclusione, l'attuale fase storica, gravata dagli effetti generati dalla grande crisi finanziaria del 2007-2008 sui debiti pubblici degli Stati industrializzati, richiede di *pensare nuove strade di welfare*. Da una parte, sul piano pubblico, passare dall'attuale modello di welfare di tipo *occupazionale* a un nuovo modello *universale* per combattere, in particolare, il fenomeno della povertà ritornato, purtroppo, di notevole entità. Dall'altra, sul piano privato, sviluppare nuovi prodotti di *finanza sociale*, tra Mercato e Stato, che permettano di far confluire strutturalmente gli ingenti capitali di origine privata in forme utili alla terza età.

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1 IL WELFARE STATE

1.1 Definizioni e concetti generali

Il termine "welfare state" o Stato sociale si riferisce "a un concetto di governo in cui lo Stato svolge un ruolo chiave nella protezione e nella promozione del benessere economico e sociale dei suoi cittadini. Si basa sui principi di uguaglianza di opportunità, di equa distribuzione della ricchezza, e della responsabilità pubblica nei confronti di chi non dispone dei mezzi minimi di sussistenza. In generale, questo termine può riferirsi a diverse forme di organizzazione economica e sociale".

Lo Stato sociale è una caratteristica dello Stato moderno, che nasce e si consolida in Occidente durante il XIX e il XX secolo, di pari passo con la storia della civiltà industriale. La sua evoluzione può essere suddivisa in tre fasi successive.

Una prima, elementare, forma di Stato sociale o più esattamente di Stato assistenziale venne introdotta nel 1601 in Inghilterra con la promulgazione delle leggi sui poveri. Queste leggi prevedevano assistenza per i poveri nel caso in cui le famiglie non fossero in grado di provvedervi e, oltre ad avere in sé un palese contenuto filantropico, prendevano le mosse da considerazioni secondo cui riducendo il tasso di povertà, si riducevano i fenomeni negativi connessi come, ad esempio, la criminalità.

La seconda fase, opera di monarchie costituzionali conservatrici o di pensatori liberali, si riconduce alla prima rivoluzione industriale ed alla legislazione inglese del 1834. L'estensione al continente europeo avvenne solo nel periodo tra il 1885 ed il 1915. Anche in questo caso, le forme assistenziali sono da ritenersi individuali e da intendersi rivolte unicamente agli appartenenti ad una classe sociale svantaggiata (minori, orfani,

poveri) ed in questo contesto nacquero le prime assicurazioni sociali che garantivano i lavoratori nei confronti di incidenti sul lavoro, malattie e vecchiaia. In un primo momento queste erano su base volontaria, in seguito però divennero obbligatorie per tutti i lavoratori. Le motivazioni della svolta in questa fase furono la ricerca della pace sociale, conciliando le rivendicazioni di maggior protezione da parte dei lavoratori proletari e la richiesta di una manodopera a minor costo possibile da parte degli industriali. Sempre in Inghilterra, fu compiuto un passo avanti con l'istituzione delle workhouse, case di lavoro e accoglienza che si proponevano di combattere la disoccupazione e di tenere, così, basso il costo della manodopera. Tuttavia queste si trasformarono di fatto in luoghi di detenzione forzata; la permanenza in questi centri pubblici equivaleva alla perdita dei diritti civili e politici in cambio del ricevimento dell'assistenza governativa.

Nel 1883 nacque, questa volta in Germania, l'*assicurazione sociale*, introdotta dal cancelliere Otto von Bismarck e basata sui principi dell'assicurazione privata, per favorire la riduzione della mortalità e degli infortuni nei luoghi di lavoro e per istituire una prima forma di previdenza sociale. Secondo alcuni studiosi fu proprio il "capitale" a spingere per i versamenti obbligatori dei propri operai, al fine di non doversi più accollare per intero il costo della sicurezza sociale dei lavoratori.

La terza fase, quella dell'attuale welfare, ha inizio nel dopoguerra. Il 1942 fu l'anno in cui, nel Regno Unito, la sicurezza sociale compì un decisivo passo avanti grazie al cosiddetto Rapporto Beveridge, stilato dall'economista William Beveridge, che introdusse e definì i concetti di sanità pubblica e pensione sociale per i cittadini. Tali proposte vennero attuate dal laburista Clement Attlee, divenuto Primo Ministro nel 1945.

Fu la Svezia nel 1948 il primo paese ad introdurre la pensione popolare fondata sul diritto di nascita, quindi un modello di *welfare universale* che eguagliò i diritti civili e politici acquisiti, appunto, alla nascita. Nel periodo che va dagli anni cinquanta fino agli anni ottanta e novanta, la spesa pubblica crebbe notevolmente specialmente nei Paesi che adottarono una forma di welfare universale, ma la situazione rimase tutto sommato sotto controllo grazie alla contemporanea sostenuta crescita del prodotto interno lordo generalmente diffusa. Tuttavia negli anni ottanta e novanta i sistemi di welfare entrarono in crisi per ragioni economiche, politiche, sociali e culturali, al punto che oggi si parla di una vera e propria *crisi del welfare state*.

1.2 Il welfare in Italia

La Costituzione italiana – L'art. 38 della Costituzione stabilisce: (i) il diritto di "ogni cittadino inabile al lavoro e sprovvisto dei mezzi necessari per vivere" al mantenimento e all'assistenza sociale (comma 1); in particolare, gli inabili e i minorati hanno inoltre diritto all'educazione e all'avviamento professionale (comma 3); (ii) il diritto dei lavoratori a "che siano preveduti ed assicurati mezzi adeguati alle loro esigenze di vita in caso di infortunio, malattia, invalidità e vecchiaia, disoccupazione involontaria" (comma 2); e afferma che la realizzazione dei suddetti compiti avviene mediante "organi ed istituti predisposti o integrati dallo Stato" (comma 4), fermo restando che "l'assistenza privata è libera" (comma 5).

Data questa norma fondamentale, si distingue solitamente l'*assistenza sociale* dalla *previdenza sociale*, laddove la prima è rivolta a tutti i cittadini e la seconda ai lavoratori. Entrambe, però, sono espressione del welfare italiano, perché si pongono l'obiettivo di liberare tutti i cittadini dallo stato di bisogno, come garanzia per l'esercizio dei fondamentali diritti politici e civili.

Come già osservato, l'ampiezza della tutela sociale dipende dal modello di welfare o di sicurezza sociale adottato da uno Stato e si distinguono fondamentalmente due tipi di modello, quello universale e quello occupazionale. Nell'analisi storico-economica, i modelli di Stato sociale sono essenzialmente due: il modello beveridgiano e il modello bismarkiano. Quest'ultimo, similmente al modello occupazionale, prende il nome dal cancelliere Bismarck che promosse l'adozione della prima forma di assicurazione sociale (in Germania, alla fine del XIX secolo). In questo modello, le prestazioni sono finanziate essenzialmente attraverso la contribuzione da parte degli interessati secondo lo schema dell'assicurazione privata. A livello di dottrina, c'è dibattito sul modello di welfare adottato dall'Italia, se di tipo universale o occupazionale, anche a seguito dell'evoluzione dell'ordinamento italiano in materia previdenziale.

L'evoluzione dell'ordinamento italiano – In Italia, la prima forma di assicurazione sociale è stata prevista dalla L. 17-3-1898, n. 80, che istituiva l'*assicurazione obbligatoria contro gli infortuni sul lavoro* degli operai dell'industria. Nello stesso anno fu promulgata la L. 17-7-1898, n. 350, che istituì la Cassa nazionale per l'assicurazione contro la vecchiaia e l'invalidità degli operai, organizzata con una contribuzione volontaria alla quale partecipava anche lo Stato. Il sistema creato in questa fase storica era fedele al modello assicurativo, perché faceva ricadere gli oneri previdenziali sui soli soggetti interessati (lavoratori e datori di lavoro). Si trattava, dunque, di un sistema basato sulla neutralità dello Stato rispetto alle esigenze dei cittadini. Infatti, anche se lo Stato interveniva prevedendo forme obbligatorie di assicurazione sociale, queste assicurazioni avevano comunque carattere privatistico. L'imposizione di un obbligo assicurativo in capo al datore di lavoro, con il relativo onere della contribuzione, era basato sulla "teoria del rischio professionale", secondo la quale i datori di lavoro, traendo dal lavoro altrui il massimo vantaggio, dovevano farsi carico del rischio di risarcire il lavoratore per i danni che poteva subire nello svolgimento dell'attività lavorativa.

Le leggi italiane in materia di previdenza ebbero un notevole sviluppo durante il periodo fascista, soprattutto a seguito dello sviluppo industriale, che determinò un crescente aumento dei lavoratori, e dell'ideologia della Nazione. Fu istituito il *sistema corporativo*, che estese l'assicurazione anche a rischi non strettamente collegati al lavoro come l'invalidità, le malattie, la morte. Fu così realizzato un sistema previdenziale più ampio, il cui documento più importante fu la Carta del lavoro del 1927 che aveva l'intento di coordinare e di unificare il sistema e gli istituti di previdenza. In questa fase storica le Casse di previdenza per singole categorie, e quelle per l'assistenza in caso di malattia, operanti spesso addirittura a livello aziendale, ebbero un notevole sviluppo. Vennero poi istituite l'assicurazione contro la tubercolosi e quella contro le malattie professionali, mentre alcuni istituti già esistenti (assicurazione invalidità e vecchiaia) furono sottoposti ad una completa revisione. Sempre nel ventennio fascista furono istituiti gli assegni familiari e l'assicurazione malattia gestita da un unico ente per i lavoratori dell'industria, del commercio e

dell'agricoltura (INAM). In questa fase storica le funzioni di assistenza e previdenza furono dunque affidate alle categorie produttive interessate, e lo Stato si riservò solo il compito di coordinare ed unificare tutta la disciplina in nome dell'interesse pubblico alla tutela previdenziale. In questo periodo si realizza una *solidarietà corporativa*. Questo tipo di solidarietà, da una parte giustificava l'estensione della tutela anche a rischi non connessi con lo svolgimento dell'attività lavorativa (come la vecchiaia); dall'altra manteneva il finanziamento dell'assicurazione a carico delle categorie interessate.

Nel 1948, con la Costituzione dello Stato repubblicano, c'è stato un radicale mutamento della previdenza sociale in Italia. Viene affermato il valore del lavoro (negli articoli 1 e 4) e l'impegno dello Stato per rimuovere gli ostacoli di ordine economico e sociale che limitano la libertà e l'eguaglianza dei cittadini; e stabilito che tutti i cittadini, abbienti e non abbienti, devono essere in grado di esercitare i diritti e le libertà fondamentali, quindi poter prendere attivamente parte alla vita del Paese (art. 3). Inoltre, la protezione sociale non è più un interesse del singolo soggetto bisognoso né dipende dall'autotutela delle singole categorie, ma è un dovere della collettività (art. 2). Lo Stato, dunque, diventa 'Stato sociale' perché non si limita più a svolgere una funzione di mediazione degli interessi individuali e di gruppo, ma assume compiti che lo impegnano attivamente a realizzare diritti e interessi di fonte costituzionale.

Sul modello di welfare state in Italia – Come già osservato, la formulazione dell'art. 38 della Costituzione ha generato un dibattito nella dottrina sul modello di Stato sociale adottato dall'Italia. Esistono due distinti orientamenti.

Una parte della dottrina ritiene che il modello italiano sia di tipo universale, perché tutela non solo i soli lavoratori ma anche tutti i cittadini che siano in una situazione di bisogno con un livello minimo delle prestazioni, soprattutto di tipo pensionistico.

Altra parte della dottrina ritiene invece che assistenza e previdenza rispondano a criteri diversi. L'assistenza si basa su un modello di tutela residuale, perché i beneficiari sono selezionati secondo precisi requisiti cui è subordinato il diritto alle prestazioni assistenziali (art. 38, comma 1): inabilità al lavoro e mancanza dei mezzi di sostentamento accertata per il fatto di possedere redditi inferiori ad una soglia predeterminata. La previdenza si rivolge invece a un insieme di beneficiari più limitato, ossia ai lavoratori (art. 38, comma 2) al verificarsi di eventi che riducono o azzerano la capacità di guadagno. Inoltre, al contrario di quanto accade nell'assistenza sociale, la previdenza non è finanziata dal prelievo fiscale, ma dai datori di lavoro e dai lavoratori attraverso il pagamento dei contributi (solidarietà corporativa). Dal punto di vista della competenza legislativa, mentre l'assistenza sociale rientra nella competenza legislativa dello Stato (per quanto riguarda l'individuazione dei principi fondamentali) e delle Regioni, la previdenza sociale obbligatoria è disciplinata esclusivamente dallo Stato. E' dunque lo stesso art. 38 della Costituzione che differenzia tra previdenza e assistenza, "delineandone gli ambiti operativi, le tecniche di tutela e lo stesso contenuto delle prestazioni".

Le assicurazioni sociali – Il principale istituto attraverso il quale si realizza la tutela previdenziale è l'assicurazione sociale. Il rapporto assicurativo (o assicurazione) è quello in base al quale una parte (assicuratore), a fronte del versamento di una somma (premio assicurativo), assume l'obbligo di fornire all'altra (assicurato) una tutela al

verificarsi di determinati eventi futuri e incerti (rischi) che si rivelino economicamente sfavorevoli per l'assicurato stesso (sinistri). Caratteristica fondamentale del rapporto assicurativo è il trasferimento totale o parziale della sopportazione del rischio dall'assicurato all'assicuratore (articoli 1882-1932 c.c.).

Lo Stato assume in proprio, direttamente o indirettamente, la gestione dei rischi che riguardano gli interessi collettivi (ad esempio, la salute e la capacità lavorativa dei cittadini), lasciando a ogni individuo la libertà di provvedere di propria iniziativa alla tutela. Nel primo caso si parla di assicurazioni sociali, nel secondo di assicurazioni private. Le assicurazioni sociali si differenziano da quelle private, almeno perché l'assicuratore non ha scopo di lucro e perché il soggetto obbligato al pagamento del premio (il datore di lavoro) è separato dal soggetto che ha diritto alla prestazione (il lavoratore). Uniche eccezioni sono rappresentate dalle forme assicurative obbligatorie per i lavoratori autonomi.

Sulle riforme assistenziali e previdenziali – In Italia, la legge più importante di natura *universalistica* è la L. 23-12-1978, n.833 che ha istituito il Servizio Sanitario Nazionale. Grazie a questa legge, la tutela della salute fisica e psichica del cittadino è un diritto fondamentale dell'individuo ed interesse di tutta la collettività, e lo Stato si impegna a garantire le prestazioni e i servizi necessari. Dopo le fasi di forte crescita economica nel secondo dopoguerra e negli anni sessanta, l'economia italiana ha cominciato a registrare un rallentamento e questo ha determinato l'esigenza di ridurre l'andamento della spesa pubblica per finanziare gli interventi assistenziali. In particolare, con la L. 8-11-2000, n. 328 è stata attuata una riforma organica dell'intera disciplina, definendo le caratteristiche ed i requisiti del sistema integrato di interventi e servizi sociali con cui lo Stato e gli enti locali garantiscono qualità della vita, pari opportunità e non discriminazione e prevengono, eliminano o riducono le condizioni di disabilità, di bisogno e di disagio individuale e familiare, derivanti da inadeguatezza di reddito, difficoltà sociali e condizioni di non autonomia.

Sul piano previdenziale, il sistema pensionistico italiano è stato contrassegnato da un continuo processo di aggiustamento e revisione, a partire dalla L. 8-8-1995, n. 335 di riforma della previdenza complementare e obbligatoria. Questa legge ha modificato i criteri di calcolo delle pensioni, passando dal sistema retributivo a quello contributivo; e ha previsto che l'adeguatezza dei livelli di copertura previdenziale debba essere assicurata anche mediante le forme pensionistiche complementari, ossia i fondi pensioni (istituiti con la L. 21-4-1993, n. 124). La L. 335/1995 è da molti considerata la più importante riforma del sistema previdenziale italiano. L'elemento più importante è il passaggio per il calcolo della pensione dal metodo retributivo, in cui la misura della pensione dipende dalla retribuzione del lavoratore, al metodo contributivo, nel quale l'importo della pensione dipende invece dai contributi versati dal lavoratore nella sua vita lavorativa. Questo cambiamento, secondo la maggioranza della dottrina, ha determinato il ritorno al principio della corrispettività (ossia al rapporto diretto tra contribuzione versata e pensione spettante), caratteristico della previdenza nel periodo corporativo. Altri, invece, ritengono che ciò non valga perché anche i contributi dipendono dalla retribuzione e perché la L. 335/1995 ha mantenuto alcuni istituti – come quello delle pensioni sociali – che sono incompatibili con il principio della corrispettività.

Le riforme in campo previdenziale sono susseguite con la L. 28-3-2004, n. 243 che, da un lato, ha rideterminato i requisiti di accesso alle pensioni di vecchiaia e di anzianità, e, dall'altro, ha incentivato il finanziamento dei fondi pensioni attraverso il conferimento del trattamento di fine rapporto (TFR) (D.Lgs. 2-2-2006, n. 42).

Si è così consolidato in Italia un sistema pensionistico basato sui c.d. tre "pilastri". Il primo pilastro è costituito dalla previdenza pubblica obbligatoria, finanziata dai lavoratori e dai datori di lavoro durante tutto il corso della vita lavorativa. Con il passaggio dalle pensioni calcolate con il metodo retributivo a quelle calcolate con il metodo contributivo, la previdenza di primo pilastro non è più sufficiente per garantire il mantenimento del tenore di vita. Interviene dunque il secondo pilastro, realizzato dai fondi pensione ai quali aderiscono i lavoratori in forma collettiva. I fondi pensione sono gestiti secondo il sistema della capitalizzazione: i contributi raccolti sono investiti nei mercati finanziari sulla base di un mandato conferito dal fondo a gestori privati, con l'obiettivo di generare un montante finale da convertire in rendita al momento del pensionamento. Il terzo pilastro, infine, è rappresentato dalla previdenza integrativa individuale che ogni individuo può realizzare liberamente attraverso forme di risparmio privato, per integrare sia la previdenza pubblica sia quella complementare.

Le regole previdenziali sono state nuovamente modificate con la L. 24-12-2007, n. 247 e con la L. 6-8-2008, n. 133 che, tra l'altro, ha abolito il divieto di cumulo tra pensione e redditi di lavoro, per consentire il raggiungimento di più alti livelli di reddito. L'aggiustamento delle regole in materia pensionistica è proseguito con la L. 30-7-2010, n. 122, che ha soppresso alcuni enti previdenziali e introdotto un meccanismo di adeguamento dell'età pensionabile. Si è poi arrivati, alla fine del 2012, al c.d. decreto 'Salva Italia' convertito nella L. 22-12-2011 n. 214 (c.d. 'riforma Fornero' dal nome del Ministro del lavoro dell'epoca). Questa legge ha attuato il passaggio, dal primo gennaio 2012, di tutti gli assicurati al sistema di calcolo contributivo e ha sancito la progressiva elevazione dell'età pensionabile, ancorandola alle variazioni della speranza di vita. A fondamento della nuova riforma ci sono anche stati gli effetti che la crisi finanziaria del 2007-2008 ha determinato sulla sostenibilità dei bilanci pubblici dei paesi industrializzati. La legge 214/2011 è dunque profondamente intervenuta sulle regole di pensionamento, sia per i soggetti prossimi al pensionamento (che hanno visto mutare repentinamente i requisiti di accesso alla pensione), sia per i lavoratori (che dovranno lavorare più a lungo per beneficiare di pensioni di livello adeguato, ma comunque inferiore a quelle di cui hanno goduto i pensionati precedenti). Questa legge è stata considerata da alcuni un 'sacrificio' necessario per rendere il nostro sistema pensionistico finanziariamente sostenibile. La riforma Fornero, oltre che cambiare il metodo di calcolo della pensione, ha anche cambiato gli enti che erogano la pensione: solo presso l'INPS (Istituto Nazionale della Previdenza Sociale), che ha accorpato altri enti pubblici previdenziali, devono obbligatoriamente assicurarsi tutti i lavoratori italiani, siano essi dipendenti pubblici o privati, nonché la maggior parte dei lavoratori autonomi che non abbiano una propria cassa previdenziale autonoma. Nel 2014 l'INPS ha gestito 40,7 milioni di utenti, oltre 23 milioni di lavoratori (l'82% della popolazione occupata in Italia), 1,4 milioni di imprese e 16 milioni di pensionati; ogni mese eroga 21 milioni di pensioni e spende ogni anno 10,4 miliardi di euro per il sostegno alla famiglia e 22,7 miliardi di euro per il sostegno del reddito.

La riforma degli ammortizzatori sociali – L'altro aspetto del sistema di sicurezza sociale di fondamentale importanza è rappresentato dagli ammortizzatori sociali, ossia da quelle forme di tutela pubblica che intervengono a sussidio del lavoratore in caso di riduzione o perdita del lavoro. La grande crisi finanziaria scoppiata negli USA nel 2007-2008 ha avuto effetti gravissimi sull'occupazione in Italia. Nel mese di novembre 2009, infatti, l'Italia aveva 1 milione e mezzo di disoccupati che usufruivano di prestazioni a sostegno del reddito. Nel 2010 e nel 2011, il tasso di disoccupazione è continuato ad aumentare e, a febbraio 2013, è arrivato all'11,6% (con circa 2,97 milioni di disoccupati). Il tasso di disoccupazione di lunga durata ha raggiunto il 6,4% rispetto al 4,8% di un anno prima, e il dato più grave è quello relativo ai giovani, con un tasso di disoccupazione del 37,8%.

La L. del 28-6-2012 n. 92 ha realizzato una riforma organica del sistema italiano degli ammortizzatori sociali. Con questa legge, poi modificata dalla L. 134/2012, è stata introdotta l'assicurazione sociale per l'impiego (ASPI) come nuovo e unico strumento contro il rischio di disoccupazione, dove sono confluite le precedenti indennità di disoccupazione e di mobilità; ed è stata operata una revisione degli strumenti a sostegno del reddito in costanza di rapporto (le c.d. integrazioni salariali).

Tendenze del modello sociale italiano – Le riforme descritte individuano una tendenza del sistema di welfare in Italia: (i) il passaggio progressivo da un modello di welfare esclusivamente pubblico ad un sistema di 'welfare mix', in cui alcuni servizi sono erogati, unitamente o in alternativa allo Stato, da soggetti privati, con l'effetto (auspicato) di aumentare l'efficienza del sistema e innalzare complessivamente il livello di protezione sociale; (ii) l'abbandono di una politica sociale basata sull'offerta indifferenziata di prestazioni e servizi (omogenea per individui e per aree geografiche), non più finanziariamente sostenibile data la scarsità di risorse pubbliche, per orientarsi sempre più verso "misure flessibili, ritagliate sulle esigenze delle comunità territoriali e gestite con efficienza a livello locale". Più in generale, tenuto conto dei vincoli di sostenibilità finanziaria, si pone oggi in Italia il problema del passaggio a un sistema di protezione sociale di natura 'universale'.

2 LA CRISI FINANZIARIA DEL 2007-2008

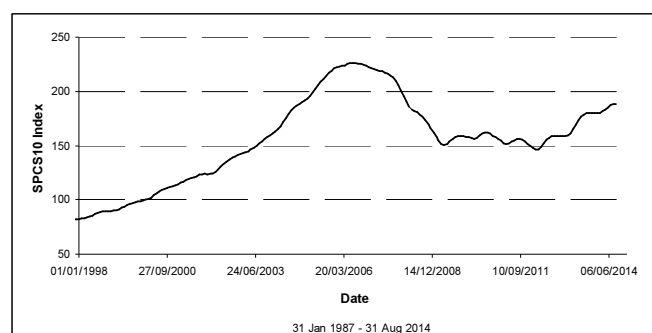
2.1 Una descrizione della crisi: il 'cammino' del rischio

All'origine della crisi c'è la grande quantità di mutui casa 'ad alto rischio' concessi, a partire dagli inizi del 2000, da molte banche americane. Si tratta, come ormai ben noto, dei c.d. mutui subprime, ossia di prestiti che una banca concede a un soggetto con un reddito basso e/o instabile per l'acquisto di un'abitazione, garantito dall'immobile e il cui ammontare è molto vicino al valore dell'immobile posto a garanzia (al momento dell'acquisto). Concedere un mutuo subprime è, ovviamente, un'operazione molto rischiosa per la banca: essendo fin dall'inizio (ex ante) molto probabile che il mutuatario non è in grado di assolvere alle proprie obbligazioni future, il valore del mutuo 'deriva' dal valore della garanzia immobiliare sottostante (piuttosto che dal rischio di insolvenza del debitore). Perché, dunque, le banche americane hanno concesso mutui subprime, essendo fin dall'inizio molto probabile l'insolvenza dei

mutuatari? Anche qui, come noto, le spiegazioni di contesto sono molteplici, e vanno dalla ‘deregolamentazione’ come principio ispiratore dell’azione politica e istituzionale, alla fiducia assoluta nella ‘mano invisibile’ del mercato, al ruolo centrale del mercato anche negli assetti contabili (come definiti dai principi internazionali americani e europei, Us-Gaap e IAS-IFRS) e di vigilanza (secondo la regolamentazione di Basilea); e, non ultima, alla politica sociale a favore della ‘casa’ promossa dall’amministrazione americana. Senza entrare nel merito delle cause che, a partire dagli inizi del 2000, sono state all’origine dell’uso diffuso dei mutui subprime, basti ricordare gli andamenti del mercato immobiliare e dei tassi interesse negli Stati Uniti. A partire dal 2000 e fino alla metà del 2006, il prezzo degli immobili americani è sempre cresciuto e, di conseguenza, la banca erogatrice del mutuo non si preoccupava tanto della possibile insolvenza del mutuatario quanto del valore della casa a garanzia (che si aspettava di poter rivendere ad un prezzo superiore all’ammontare residuo del credito concesso). Dal 2001 al 2004, i livelli dei tassi di interesse sul mercato americano si attestavano a livelli molto bassi, con ciò creando un incentivo a indebitarsi (anche) per l’acquisto di immobili; acquisti che, a loro volta, contribuivano all’ulteriore crescita del prezzo degli immobili (e ad alimentare quella che, poi, fu chiamata ‘bolla immobiliare’). Infine, con la tecnica della cartolarizzazione, le banche vendevano i portafogli di mutui subprime al mercato finanziario sotto forma di obbligazioni (di stile Asset Backed Securities, ABS), facendone certificare il rischio da società internazionali specializzate (agenzie di *rating*).

Con la tecnica della cartolarizzazione e con gli strumenti ‘ABS-like’ si è sviluppato un ‘securitisation market’ attraverso il quale il rischio subprime (ossia il rischio immobiliare americano) veniva trasferito dalle banche al mercato finanziario attraverso la costituzione di Special Purpose Vehicle (SPV). Si realizzava in tal modo un processo noto come ‘risk transfer’: il rischio subprime era trasferito dal bilancio delle banche al mercato finanziario. Tipicamente, la tranche più rischiosa (c.d. tranche ‘equity’) del portafoglio subprime era trattenuta dallo stesso originator. Le condizioni di contesto economico cominciano a cambiare a partire dal 2004, con la crescita dei tassi di interesse americani che continuerà fino al 2006, rendendo più difficile l’erogazione di mutui e aumentando, nel frattempo, le insolvenze su quelli già erogati; e con l’arresto della crescita dei prezzi degli immobili a metà del 2006 (Figura 1).

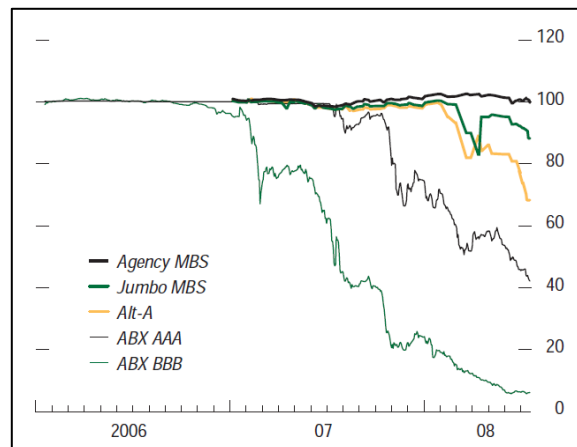
Figura 1 – Andamento del mercato immobiliare USA
(‘S&P/Case-Shiller Composite-10 Home Price Index’)



Fonte: Bloomberg

A partire dall'estate del 2007 cominciano a ridursi i prezzi dei titoli 'ABS-like' legati ai mutui americani (Figura 2).

Figura 2 – Prezzi di mercato di US Mortgage-Related Securities (in dollari americani)



Fonte: IMF 2008

Nell'ottobre del 2008, il Fondo Monetario Internazionale ha evidenziato che, "U.S. residential mortgages are experiencing unprecedented credit deterioration ... Reflecting this credit deterioration, bank charge-offs have risen, and prices on nonagency mortgage-related securities (especially Alt-A and senior subprime tranches) have resumed their declines".

Il nuovo contesto comincia così a generare forti perdite, effettive e potenziali, nei bilanci degli investitori istituzionali di tutto il mondo, tra i quali le stesse banche (specialmente le banche d'affari) che anche avevano acquistato o comunque trattenuto obbligazioni collegate ai mutui subprime. Questi strumenti 'ABS-like', da quel momento denominati titoli 'tossici', innescano una crisi di fiducia nel sistema finanziario internazionale, anche per effetto della non conoscenza, da parte dei diversi operatori, delle quantità dei titoli subprime detenuti in bilancio (perché posti fuori bilancio, e collocati sul mercato da società veicolo spesso al di fuori del terreno regolamentato). La crisi di fiducia si trasforma in breve in crisi di liquidità: le banche e i grandi investitori in titoli subprime cercano di sopperire alla mancanza di liquidità vendendo titoli e altre attività di bilancio liquidabili, si interrompe l'erogazione di credito a imprese e famiglie. Il rischio assume natura sistemica: si avvia un processo a catena di generazione di perdite, che si traduce anche nel crollo dei prezzi di borsa. E' questo il momento iniziale della crisi del sistema finanziario internazionale. Le conseguenze sono drammatiche: banche acquistano altre banche (JPMorgan acquista Bear Stearns, Bank of America acquista Merrill Lynch, ...), compagnie di assicurazioni e agenzie federali sono messe in amministrazione pubblica (AIG, Fannie&Freddie, ...), banche e istituzioni falliscono (Lehman Brothers, ...).

2.2 Gli effetti della grande crisi

Il 'boom' del debito pubblico internazionale – Per fronteggiare il rischio sistemico ed evitare il collasso dell'intero sistema finanziario, gli Stati sovrani e le banche centrali

intervengono massicciamente, abdicando alle ‘leggi del mercato’ almeno per come fino a quel momento interpretate e applicate. I primi interventi sono stati delle banche centrali, finalizzati a fronteggiare la crisi di liquidità soprattutto con strumenti espansivi di politica monetaria, al fine di ridurre i tassi d’interesse e facilitare l’accesso al credito da parte degli operatori finanziari. Al contempo sono intervenuti gli Stati, mettendo a disposizione del sistema risorse finanziarie effettive e potenziali. Si è trattato di un intervento pubblico senza precedenti sia in termini di risorse stanziare sia per l’esigenza di coordinamento imposta dalla dimensione globale della crisi. Dal mercato il rischio si propaga dunque agli Stati. Per finanziare gli interventi a sostegno del sistema finanziario, disavanzi e debiti pubblici aumentano vistosamente e al sollievo per la catastrofe evitata subentra “nei mercati finanziari internazionali l’ansia improvvisa per la sostenibilità di debiti sovrani crescenti”¹. Nel ‘Sovereign Borrowing Outlook 2014’ dell’OCSE si parla di uno stock di debito del settore pubblico dei paesi industrializzati superiore al valore del prodotto nazionale aggregato (cosa mai avvenuta in tempo di pace, figura 3)².

Figura 3 – Sviluppo del debito pubblico lordo nei paesi OECD (1880-2014; % GDP)



Fonte: OECD, 2014

Nell’ottobre 2014, il Fondo Monetario Internazionale, sei anni dopo lo scoppio della crisi, osservava che “the global economic recovery continues to rely heavily on accommodative monetary policies in advanced economies. Monetary accommodation remains critical in supporting the economy by encouraging economic risk taking in the form of increased real spending by households and greater willingness to invest and hire by businesses. However, prolonged monetary ease may also encourage excessive financial risk taking”³.

Ordine giuridico ed economia di mercato – La grande crisi finanziaria del 2007-2008, che ha avuto origine dalla deregolamentazione che ha caratterizzato il sistema finanziario internazionale alla fine del XX secolo, ha sancito la fine del pensiero liberista

¹ Vedi: Banca d’Italia, *Considerazioni finali*, 31 maggio 2010.

² Vedi: www.oecd.org e *Sovereign Borrowing Outlook 2014*. Le economie considerate nelle stime OECD sono: Australia, Canada, France, Germany, Italy, Japan, Korea, Spain, United Kingdom, United States.

³ Vedi: International Monetary Fund, *Global Financial Stability Report*, October 2014.

di Von Hayek e della teoria dell'ordine spontaneo e della capacità autoregolativa del mercato⁴.

Il pensiero liberista di Von Hayek riteneva che il contrasto tra l'interesse del capitale di essere libero da ogni vincolo e quello degli ordinamenti a regolare l'agire a tutela delle classi sociali era sanato, nel lungo periodo, dalle logiche economiche del mercato. D'altra parte, non teneva conto della insostenibilità dei costi sociali (guerre, rivoluzioni, diseguaglianza sociale, povertà) necessari a passare dal *caos* generato da questo contrasto all'*ordine spontaneo* di lungo periodo generato dal mercato. Si tratta dunque di analizzare i modi in cui limitare i costi sociali nei periodi di transizione, come quelli che stiamo vivendo, dal caos al nuovo ordine spontaneo.

La costruzione di un nuovo *ordine giuridico* dell'economia di mercato deve partire dall'analisi del mutamento di contesto. Una prima evidenza di questo mutamento è il declino della sovranità nazionale, che ha coinciso con il tramonto della democrazia, con il deteriorarsi dei meccanismi di rappresentanza politica, con la delega delle decisioni ad entità sovranazionali e con l'impossibilità-incapacità di contrastare l'azione della finanza internazionale. La seconda evidenza è la nuova dimensione del capitalismo e del denaro, che non rappresenta più un valore effettivo ancorato all'economia reale, ma solo una virtualità finanziaria creata dalle nuove tecnologie. Questa virtualità attribuisce al capitalismo un connotato *parassitario*. La finanza specula anziché occuparsi dell'impresa produttrice di benessere⁵. Virtuale si fa anche la trasmissione delle informazioni e dei saperi, tanto da concretizzare una crescente frattura tra la cultura della società civile sedimentata in secoli di tradizione e le nuove generazioni espropriate del loro passato dalla nuova realtà mediatica.

In questa nuova dimensione il conflitto è tra la territorialità della legge e la spazialità dell'economia governata dalla *lex mercatoria* e oggi rafforzata dal silenzio degli Stati sovrani. Un silenzio imposto da due evidenze: la potenza economica delle corporations rispetto agli Stati (laddove la somma dei fatturati delle prime duecento multinazionali è superiore alla somma dei Pil di tutti gli Stati del pianeta, esclusi gli otto più sviluppati) e l'acquisto del debito pubblico degli Stati da parte delle stesse corporations e della finanza internazionale che può quindi, apprezzando o meno l'economia e la solvibilità dei singoli Paesi, decretarne o meno la bancarotta.

La convinzione che il 'mercato libero' dai vincoli degli ordinamenti nazionali – l'ordine spontaneo – fosse generatore di ricchezza e benessere crescenti e diffusi è dunque sbagliata. Ritorna la convinzione che l'economia di mercato deve svolgersi secondo un *ordine giuridico*; e che questo ordine non deve essere finalizzato a renderla più libera, ma deve imporre all'economia di essere utile all'interesse pubblico economico. In aggiunta, a livello di contesto sociale, la deregolamentazione ha accentuato la

⁴ Vedi: Pessi R., *Ordine giuridico ed economia di mercato*, in 'Ordine giuridico ed economia di mercato', LUISS Dipartimento di Scienze giuridiche, Collana di Studi, n. 13, CEDAM, 2010.

⁵ Papa Francesco afferma che "il salvataggio delle banche, facendo pagare il prezzo alla popolazione, senza la ferma decisione di rivedere e riformare l'intero sistema, riafferma un dominio assoluto della finanza che non ha futuro e che potrà solo generare nuove crisi dopo una lunga, costosa e apparente cura. La crisi finanziaria del 2007-2008 era l'occasione per sviluppare una nuova economia più attenta ai principi etici, e per una nuova regolamentazione dell'attività finanziaria speculativa e della ricchezza virtuale. Ma non c'è stata una reazione che abbia portato a ripensare i criteri obsoleti che continuano a governare il mondo ... è arrivata l'ora di accettare una certa decrescita in alcuni parti del mondo procurando risorse perché si possa crescere in modo sano in altre parti" (Lettera enciclica *Laudato si*, pagg. 143-147).

concorrenza fra ordinamenti e, in particolare, il costo maggiore è stato pagato dal diritto al lavoro e dalla tutela dei diritti sociali⁶.

Il prezzo del 'libero mercato' non ha peraltro trovato rimedi nella dimensione comunitaria. Anzitutto perché l'Europa nel suo complesso soffre della concorrenza tra ordinamenti che sono tutti connotati da welfare deboli o inesistenti. In secondo luogo, perché l'allargamento dell'Unione Europea (ma non dell'eurozona) ha generato nuovi stimoli ad allocazioni transfrontaliere delle attività imprenditoriali in ragione di valutazioni opportunistiche orientate al maggior profitto. Dunque, anche a livello europeo, le ragioni dell'economia prevalgono su quelle dell'occupazione, del giusto salario e del lavoro decente. In concreto, la scarsa disponibilità di risorse pubbliche che caratterizza, come in precedenza osservato, questa fase storica, fa sì che la salvaguardia dei diritti sociali muova verso la protezione della persona (*reddito di cittadinanza*) e verso il lavoro socialmente utile (*sussidio all'occupazione*).

Sul piano legislativo, l'ipotesi non è quella di creare una normativa esterna armonizzata, quanto quella di basarsi sulle normative locali guidate da valori comuni. La *lex mercatoria* deve infatti comunque confrontarsi con gli ordinamenti nazionali laddove si concretizzi un'ipotesi di inadempimento. E' questo il momento in cui il giudice nazionale può superare l'antinomia tra la territorialità della legge e la globalità dell'economia, che spesso si evidenzia nell'assenza di una regola da applicare al caso concreto; e può farlo utilizzando la clausola generale di *buona fede* nell'esercizio dei poteri privati e delle attività economiche. L'utilizzo di questa clausola potrebbe dare ingresso anche a quel *principio di proporzionalità* nel bilanciamento dei valori in gioco e porsi come presidio per il recupero della funzione sociale del capitale e dell'impresa, che resta quella di produrre ricchezza, benessere, occupazione.

L'interrogativo diventa allora se giurisprudenze nazionali virtuose – che utilizzino la clausola generale di esercizio dei poteri secondo buona fede come prototipo di comportamento corretto – siano idonee a imporre al capitale l'assolvimento anche di una funzione sociale, ovvero se si concretizzino in un effetto moltiplicatore della concorrenza tra ordinamenti locali. Indicazioni positive su questo percorso sono offerte da numerosi esperti.

Del resto, la convinzione che la creazione di un *ordine giuridico* per l'economia di mercato sia prevalentemente affidata al ruolo delle giurisprudenze nazionali è confermata dalle crescenti sofferenze del WTO nel garantire una regolazione minima dei commerci mondiali. Le nuove economie emergenti, infatti, hanno acquisito una(la) crescente consapevolezza di poter formare i prezzi sui mercati delle materie prime (piegando anche l'oligopolio petrolifero dei Paesi arabi), e quindi una rafforzata propensione a non tollerare compressioni della loro capacità produttiva di prodotti a

⁶ Papa Francesco afferma "La necessità di difendere il lavoro" e di combattere la povertà: "aiutare i poveri con il denaro dev'essere sempre un rimedio provvisorio per far fronte alle emergenze. Il vero obiettivo dovrebbe sempre essere di consentire loro una vita degna mediante il lavoro ... Rinunciare a investire sulle persone per ottenere un maggior profitto immediato è un pessimo affare per la società" (Lettera enciclica *Laudato si*, pagg. 98-101). Aggiunge anche Papa Francesco: "Il XXI secolo, mentre mantiene una *governance* propria di epoche passate, assiste a una perdita di potere degli Stati nazionali, soprattutto perché la dimensione economica-finanziaria, con caratteri transnazionali, tende a predominare sulla politica ... nella linea già sviluppata dalla dottrina sociale della Chiesa, 'per il governo dell'economia mondiale serve; per risanare le economie colpite dalla crisi, per prevenire peggioramenti della stessa e conseguenti maggiori squilibri ... urge la presenza di di una vera Autorità politica mondiale" (pagg. 134-135).

basso costo nell'area della manifattura. D'altro canto la debolezza della politica nella regolazione transnazionale è confermata dal mancato contrasto del degrado ambientale.

In conclusione, una soluzione per contenere gli effetti di un'economia ispirata solo alle ragioni del profitto può essere quella di recuperare, per via giurisprudenziale, una clausola generale di *buona fede* che sia riferibile ai rapporti contrattuali e all'esercizio dei poteri privati (e delle libertà economiche) in ogni territorio del pianeta. È un percorso che vuole riaffermare come la convivenza civile imponga il rispetto delle ragionevoli aspettative delle parti di un rapporto; ed ancor più in generale dei lavoratori, dei consumatori, dei cittadini. Richiamando la funzione sociale dell'impresa, è un percorso che consente il bilanciamento del valore della libertà di iniziativa economica con quelli (di cui agli articoli 2 e-3, primo e secondo comma della Costituzione) della protezione e promozione dei diritti del lavoratore, del cittadino e della persona umana. Se, da una parte, l'attuale crisi ha segnato la fine dell'impianto di pensiero liberista, posta l'insostenibilità dei costi sociali che ha generato (almeno nel breve-medio periodo), dall'altra, il diritto del lavoro ha avviato la ricerca di nuove strade che abbiano come *naturale* punto di arrivo la tutela dei lavoratori e la costruzione di nuovi sistemi di welfare a difesa dei cittadini.

Nuove teorie economiche, dalla 'stagnazione secolare' all'inganno economico' –

In un convegno del Fondo monetario internazionale che si è svolto alla fine del 2013 Larry Summers – presidente emerito dell'Università di Harvard – ha teorizzato la c.d. 'stagnazione secolare' come una possibile spiegazione dell'attuale crisi finanziaria che sta frenando l'economia globale⁷. La tesi della 'stagnazione secolare' era stata originariamente sostenuta da Alvin Hansen, un economista americano degli anni trenta del secolo scorso, per spiegare la grande depressione alla fine degli anni trenta. Secondo Hansen il mancato aumento della popolazione e le scarse innovazioni tecnologiche avevano determinato la fine della crescita economica, e questa situazione di bassa crescita sarebbe dovuta durare a lungo. Fortunatamente la previsione di Hansen non si è verificata. Secondo Summers, questa tesi potrebbe però spiegare la lunga crisi attuale, considerato che la crescita economica post-crisi è rimasta molto al di sotto del potenziale negli anni precedenti il suo scoppio, determinando un significativo aumento della disoccupazione e, al contempo, bassi livelli di inflazione.

Passando alla "economia dell'inganno" di Akerlof e Shiller (economisti vincitori del Premio Nobel, rispettivamente, nel 2001 e nel 2013), in un volume pubblicato nel 2015⁸ questi due autori affermano che "sin dai tempi di Adam Smith, il principale insegnamento dell'economia è che il libero mercato ci fornisce benessere reale attraverso la sua mano invisibile"; ma, al tempo stesso, i mercati "offrono una sfida fondamentale a questa intuizione" perché possono danneggiarci così come aiutarci. Infatti, in una situazione di libero mercato, sfruttare le debolezze psicologiche delle persone costituisce una possibilità di profitto. Le frodi sono così comuni, spiegano gli autori, che la linea di separazione tra comportamenti equivoci e illegali e accorte pratiche commerciali è piuttosto arbitraria. Finché vi è il profitto da perseguire, i

⁷ Vedi: Larry Summers, *Speaks during a panel discussion on financial crises at the International Monetary Fund (IMF)*, Jacques Polak Annual Research Conference in Washington, November 8, 2013.

⁸ Vedi: Akerlof G.A., Shiller R.J., *Phishing for Phools: The Economics of Manipulation and Deception*, Princetown University Press, 2015.

venditori sfrutteranno sistematicamente le debolezze psicologiche e l'ignoranza dei potenziali acquirenti attraverso la manipolazione e l'inganno. Piuttosto che essere essenzialmente benigni e creare benessere, i mercati sarebbero dunque intrinsecamente pieni di trucchi e trappole. Akerlof e Shiller suggeriscono di controllare il rischio dell'inganno economico "through greater knowledge, reform, and regulation".

3 IL DIBATTITO SUI MODELLI DI WELFARE PUBBLICO

Negli anni Ottanta e Novanta del secolo scorso i sistemi di welfare sono entrati in crisi per ragioni economiche, politiche, sociali e culturali al punto che oggi si parla di una vera e propria *crisi del welfare state*. Ciò è stato ulteriormente amplificato dagli effetti della crisi del 2007-2008 che, da una parte, hanno aumentato la domanda di welfare da parte dei cittadini e, dall'altra, hanno ridotto la possibilità degli Stati di aumentare l'offerta di welfare. Se, in generale, gli esperti sono concordi sulla necessità di un cambiamento delle politiche di welfare da parte degli Stati, c'è dibattito sul modo in cui procedere a questo cambiamento. Si approfondiscono di seguito gli elementi di questo dibattito proponendo il contenuto due tipi di analisi.

La prima analisi, sviluppata dal Professor Stiglitz, fa riferimento agli USA e considera i cambiamenti introdotti nel welfare state americano alla fine degli anni Novanta del secolo scorso, rendendolo più dipendente dagli andamenti del mercato finanziario e esponendolo, più che in passato, agli effetti della c.d. bolla 'Internet' scoppiata nel 2001⁹. L'analisi muove dalla differenza fondamentale tra risparmio previdenziale e risparmio finanziario avendo il primo, al contrario del secondo, natura *non eccedentaria* perché destinato a sostenere il soggetto nella fase della vita in cui non lavorerà più. Di conseguenza, secondo Stiglitz, i contributi versati dai lavoratori ai *fondi pensione privati* non devono essere investiti in titoli azionari e quindi esposti alla volatilità di Wall Street perché altrimenti, indebolendo la rete di protezione sociale, il rischio è di aumentare la vulnerabilità dell'economia nel suo complesso. Né le *regole contabili* adottate dai fondi pensione devono seguire le logiche di mercato. Altrimenti si rischia, nei momenti di 'euforia irrazionale' dei mercati finanziari – come quelli che hanno contraddistinto l'ultimo decennio del secolo scorso – di contabilizzare livelli di rendimenti molto elevati e di breve periodo (quindi molto rischiosi) rispetto a quelli, più bassi, di medio-lungo periodo (perché meno rischiosi). Questo, in particolare, offre alle imprese la possibilità di trasferire agli azionisti, nella forma di utili attuali, il reddito futuro dei fondi pensione. Anche la previdenza pubblica deve, secondo Stiglitz, restare tale e non cedere ai tentativi di privatizzazione proposti dai partiti conservatori, più interessati alle 'commissioni' generate dagli investimenti che non alla tutela delle generazioni future.

La seconda analisi, sviluppata dal professor Pessi, riguarda l'Italia e discute sulla necessità di ripensare il modello di welfare italiano dopo le conseguenze prodotte dalla crisi finanziaria del 2007-2008 e l'ingresso in una nuova fase storica caratterizzata da instabilità e incertezza sul futuro¹⁰. Il professor Pessi si chiede se, in una fase storica in

⁹ Vedi: Stiglitz Joseph E., *I ruggenti anni novanta. Lo scandalo della finanza e il futuro dell'economia*, Einaudi, 2005 (Stiglitz ha vinto il premio Nobel per l'economia nell'anno 2001).

¹⁰ Vedi: Pessi R., *Ripensando il welfare*, Rivista di Diritto della Sicurezza Sociale, anno XIII, n.3, 2013.

cui *l'emergenza si fa sistema*, sia necessario per l'Italia passare dal modello tradizionale di welfare di tipo 'occupazionale' a un nuovo modello di welfare 'universale'. La risposta non è certa ma numerosi indizi e il venir meno delle premesse alla base dell'attuale modello di welfare fanno ritenere che sia necessario studiare il passaggio verso un nuovo modello 'universale' che, in particolare, metta al centro la lotta contro la povertà.

3.1 L'analisi del professor Stiglitz sul welfare americano negli anni novanta

Il contesto di riferimento – Negli anni Novanta del secolo scorso, con il fenomeno 'Internet' e delle c.d. 'dot company', sono state accumulate grandi fortune e i leader della politica e del mondo imprenditoriale hanno preteso che gliene venisse riconosciuto il merito. Nessuno credeva o voleva credere che prima o poi sarebbe scoppiata la bolla. Con lo scoppio della 'bolla Internet' fu compreso con dolorosa chiarezza quello che si sarebbe dovuto intuire sin dal primo momento: la contabilità, le banche, i collegamenti tra mercati e politica e la deregulation.

Ma, soprattutto, i cambiamenti intervenuti nel *sistema pensionistico* e nella *politica occupazionale* hanno esposto maggiormente i cittadini all'evoluzione dei *mercati finanziari*: con la flessione delle borse, i cittadini hanno visto diminuire la pensione, e con il rallentamento dell'economia hanno visto aumentare le possibilità di licenziamento. Allo stesso tempo, sono cambiate anche le politiche del governo: l'assicurazione contro la disoccupazione non è riuscita a stare al passo con i mutamenti dell'economia e il *welfare* ha subito dei tagli. In passato, questi programmi avevano invece avuto natura anti-ciclica, facendo confluire fondi nell'economia quando questa rallentava. Si era dunque creata un'economia meno stabile, esposta ad un rischio maggiore, anche compromettendo la capacità di gestire quel rischio.

La 'new economy' come 'arma a doppio taglio' – La new economy, ossia i notevoli cambiamenti intervenuti nell'economia durante gli anni Novanta, con la sua enfasi sulle alte tecnologie e il miglioramento delle comunicazioni, avrebbe dovuto porre fine alla teoria del 'ciclo economico' perché le nuove tecnologie avrebbero dovuto consentire una più efficace gestione delle scorte. In effetti, gli eccessivi investimenti nelle scorte erano stati una delle principali cause delle fluttuazioni economiche nel periodo successivo alla seconda guerra mondiale. Inoltre, con il passaggio dell'economia dalla produzione industriale ai servizi (a metà degli anni Novanta, meno del 14,1% dei lavoratori americani era occupato nell'industria), il ruolo stesso delle giacenze nell'economia stava perdendo importanza. Ma la new economy *non ha posto fine al ciclo economico*, bensì ha gettato le basi per un periodo di espansione e recessione, con picchi ben più marcati rispetto alla media del dopoguerra.

Maggiore sensibilità nel mercato del lavoro – In passato, anche nei periodi di crisi, i licenziamenti dei dipendenti da parte delle imprese tenevano conto del fenomeno che gli economisti chiamavano 'accaparramento di manodopera': le aziende sapevano che a lungo termine non conveniva licenziare i lavoratori perché questo consentiva di trattenere quelli più qualificati e di stimolare un loro maggiore impegno. Invece, durante gli anni Novanta del secolo scorso, prima che scoppiasse la crisi Internet, si era

sviluppata una nuova cultura che spingeva le aziende a dare importanza solo e soltanto agli utili immediati senza tener conto di una prospettiva di lungo periodo. La fedeltà aziendale, sia dei lavoratori verso l'azienda sia viceversa, era un valore che apparteneva a un'epoca finita per sempre. Questo ha determinato un effetto prociclico, per cui i livelli occupazionali diminuivano molto più velocemente rispetto alla riduzione della crescita dell'economia.

L'ansia dei lavoratori aumenta – Con il calo della fedeltà dell'azienda nei confronti dei lavoratori aumentava l'ansia dei lavoratori. Con un numero crescente di lavoratori 'in esubero', gli ammortizzatori sociali si sono rivelati insufficienti: l'assicurazione contro la disoccupazione sostituiva solo una percentuale minima dei guadagni e molti lavoratori sono rimasti scoperti. L'assicurazione contro la disoccupazione durava solo ventisei settimane e, successivamente, i lavoratori potevano chiedere il sussidio. Trovare un nuovo lavoro è risultato difficile soprattutto per i più anziani. I risultati sono stati particolarmente evidenti con il protrarsi della recessione del 2001; il numero di disoccupati a lungo termine, coloro per i quali scadevano i sussidi, era più che raddoppiato. Dunque, da una parte, dall'idea di un lavoro che dura tutta la vita si è passati alla 'occupabilità a vita' e alla 'educazione permanente' per consentire di passare più agevolmente da un lavoro all'altro (avendo le persone più istruite maggiore facilità a cambiare lavoro). Dall'altra, con la mobilità dei lavoratori, è sorto il problema della *trasportabilità della pensione*.

Il 'rischio pensione' e la 'gestione del rischio' – A causa dei cambiamenti intervenuti nell'economia americana nell'ultimo decennio del secolo scorso, i lavoratori sono stati costretti ad assumersi maggiori rischi sia sul posto di lavoro sia nella pianificazione della loro pensione; e questo ha reso l'economia più vulnerabile. I cittadini, in particolare, hanno cominciato ad affidarsi ai *fondi pensione privati* per una fetta crescente del loro reddito post-lavorativo, con pensioni calcolate nello schema contributivo e retributivo. I cambiamenti intervenuti in entrambi gli schemi di pensione durante gli anni Novanta hanno creato problemi per l'economia nel nuovo millennio. Da una parte, numerose aziende sono passate al sistema della contribuzione definita e molte persone, tranquillizzate dai rendimenti apparentemente elevati del mercato finanziario, hanno scelto di investire gran parte del loro denaro in azioni. Questa tendenza ha contribuito in maniera significativa alla creazione di un capitalismo 'popolare'. Ma quando le borse sono scese, queste persone hanno risentito pesantemente della crisi. Dall'altra, con il sistema della prestazione definita, sebbene questo sistema isoli il dipendente dagli effetti delle crisi del mercato azionario, problemi sono stati creati a seguito delle regole contabili. Il governo americano ha infatti consentito alle imprese di contabilizzare i fondi interni accantonati per far fronte alle future pensioni dei propri lavoratori ipotizzando rendimenti del 9%, ben superiori a quelli mai ottenuti. Con un rendimento del 9% annuo, il denaro raddoppia ogni otto anni; per avere 100 dollari all'età di 65 anni, basta metterne da parte solo 6 quando il lavoratore ne ha 25. I datori di lavoro erano in grado di promettere indennità molto alte per il futuro senza ridurre i profitti immediati. Questo perché durante gli anni Novanta i rendimenti realizzabili sul mercato erano maggiori del 9%. Dunque, con il boom del mercato azionario le aziende ritenevano di essere in grado di adempiere ai loro obblighi verso i dipendenti. Rispettando le regole, potevano prelevare dai fondi

pensione il denaro in eccesso e aggiungerlo agli utili da distribuire agli azionisti, determinando un trasferimento di ricchezza dai (futuri) pensionati agli (attuali) azionisti. Secondo una stima, il 12% della crescita degli utili del 2000 è arrivato dal reddito pensionistico. Con la flessione del mercato azionario, i piani pensionistici si sono però trovati all'improvviso in difficoltà nei confronti dei propri aderenti. Basti pensare che con un rendimento annuo del 4,5% sono necessari 16 anni per raddoppiare il capitale; quindi per avere 100 dollari all'età di 65 anni, è necessario mettere da parte all'età di 25 una somma che è due volte e mezzo superiore rispetto a quella necessaria con un rendimento previsto del 9%. Peraltro, se durante il boom azionario le aziende hanno prelevato dai fondi pensione denaro che è stato distribuito come profitto agli azionisti, in tempi di crisi non è successo il contrario.

Così le aziende hanno impostato politiche di 'gestione del rischio' di pensione poco prudenti, trasferendo il denaro dai fondi pensione agli utili societari attraverso l'investimento dei contributi previdenziali in titoli azionari di società tecnologiche, attratte dagli alti rendimenti offerti dal mercato azionario.

Il dibattito sulla riforma della previdenza sociale USA – Paradossalmente, il dibattito sulla sicurezza della pensione che si sviluppò negli USA negli anni Novanta non interessò solo le pensioni private ma anche la *previdenza sociale*, ossia il programma pensionistico del governo introdotto nel 1935 che copre quasi tutti i lavoratori americani. Gli Stati Uniti hanno un sistema di previdenza sociale che funziona, che ha eliminato quasi del tutto la povertà tra gli anziani, mettendo i cittadini al riparo dai rischi connessi alla volatilità del mercato azionario. Ma nonostante questi successi, a più riprese ne è stata chiesta la riforma e addirittura la privatizzazione. Secondo Stiglitz, queste richieste di privatizzazione sono motivate da tre fattori principali: ideologia, interessi e avidità.

Quando i prezzi del mercato azionario aumentano si tende a dimenticare i vantaggi della previdenza sociale e la sua prerogativa di sicurezza. Si crede, o si vuole credere, che il boom del mercato vada avanti all'infinito. Wall Street, negli anni Novanta, alimentava questo convincimento confrontando i *bassi rendimenti della previdenza sociale* con gli *alti guadagni del mercato azionario*, perché aveva tutto l'interesse alla privatizzazione della previdenza sociale: se anche solo una piccola parte del denaro destinato alla previdenza sociale fosse confluito in borsa, Wall Street avrebbe usufruito di una enorme quantità di nuovo denaro, quindi di nuove 'commissioni'. Gli ideologi del libero mercato dicono che la concorrenza riduce le commissioni a un livello minimo, se non le azzerava addirittura, ma questo non è avvenuto praticamente da nessuna parte. Persino negli Stati Uniti, forse il *più competitivo e meglio funzionante fra tutti i mercati dei capitali*, la persistenza di commissioni elevate in così tanti fondi, a prescindere dalle prestazioni, dimostra che la realtà è molto diversa. Alcuni hanno cercato di sostenere che i rendimenti del fondo della previdenza sociale (che investe esclusivamente i buoni del Tesoro) sono bassi e che potrebbero aumentare notevolmente se il denaro fosse investito in azioni. Ma investire in azioni comporta un rischio molto maggiore. Il crollo del mercato azionario avvenuto nel 2000 ha forse evidenziato il punto più debole della privatizzazione della previdenza sociale: rendere le persone vulnerabili al pessimismo irrazionale del mercato azionario, proprio come in precedenza si erano lasciati trasportare da un'euforia altrettanto immotivata.

Insegnamenti: ridurre il ‘rischio pensione’ per aumentare la stabilità – Gestire il rischio è sempre difficile. Le istituzioni finanziarie americane, che dovrebbero avere competenze particolari in questo ambito, hanno dimostrato quanto sia complicato. Prevedere per tempo una flessione dell’economia e adottare provvedimenti in grado di contrastarla non è cosa facile. Dopo la seconda guerra mondiale l’economia è stata gestita molto meglio rispetto al passato, ma non si è ancora posto fine al ciclo economico, e i periodi di flessione hanno un costo sempre elevato. Ecco perché è importante studiare politiche e sistemi in grado di migliorare la stabilità economica.

Negli anni Novanta del secolo scorso sono stati erosi negli USA gli stabilizzatori interni con tagli al welfare che, invece, avrebbero avuto bisogno di maggiori risorse per contrastare l’indebolimento dell’economia. I mutamenti intervenuti negli anni Novanta hanno pertanto aumentato la vulnerabilità economica degli Stati Uniti, rendendo il paese ancora più sensibile agli shock dei mercati finanziari. Pratiche quali la fedeltà tra aziende e dipendenti, che mettevano al riparo i lavoratori da certe bizzarrie del mercato, e programmi pensionistici definiti, che tutelavano le persone dagli alti e bassi del mercato azionario, non soltanto producevano un capitalismo più morbido, ma aiutavano a stabilizzare l’economia. La nuova disciplina, guidata dalla *filosofia miope dei mercati finanziari*, la cui unica preoccupazione è *l’utile di bilancio* associata alla *flessibilità* del lavoro, ha archiviato la forma ‘serena’ di capitalismo tra le cose del passato. Per questo, allo scoppio della *bolla Internet*, le conseguenze non solo per i singoli, ma anche per l’economia nel suo complesso, sono state più gravi, malgrado si fosse tanto parlato di una più efficiente gestione del rischio. Le flessioni dell’economia costano care: conviene decisamente ridurre il ‘rischio pensione’ e aumentare la stabilità.

E’ interessante osservare che gli insegnamenti che derivano dall’analisi di Stiglitz sui mutamenti introdotti nel sistema del welfare USA negli anni Novanta, che hanno reso questo sistema più dipendente dalle dimamiche dei mercati finanziari, appaiono tuttora attuali e potrebbero essere riconsiderati, *mutadis mutandis*, dopo lo scoppio della crisi finanziaria del 2007-2008 posto che alla base dei suoi effetti c’è proprio la ‘dipendenza’ dell’economia degli Stati dagli andamenti dei mercati finanziari.

3.2 Ripensare il welfare in Italia: l’analisi del professor Pessi

Welfare senza risorse: emergenza o sistema – Si tratta anzitutto di capire se l’attuale emergenza ha natura congiunturale o strutturale, se la carenza di risorse disponibili agli Stati per la gestione del welfare sia un fenomeno di lungo periodo e se, quindi, l’esigenza di contrazione della spesa assume carattere ‘permanente’. Purtroppo, concorrenti segnali si muovono in questa direzione. E, del resto, il parallelo con la crisi del 1929 risulta per molti versi inquietante se si considera che la stessa, per essere effettivamente superata, necessitò di un decennio di conflitti regionali, sino alla catarsi della seconda guerra mondiale. Allo stallo delle economie avanzate, che ormai si protrae dal 2008, si affiancano segnali di rallentamento dei Paesi emergenti che interessano persino la Cina. Sul versante dell’Europa crescono le tensioni sociali per le ripercussioni della crisi che hanno investito, in modo diverso, i livelli di produzione e di occupazione; mentre si mette in discussione la stessa unione monetaria per

l'incrementarsi di squilibri strutturali, per lo più imputabili al disfunzionamento dei mercati finanziari. È fuori dubbio che il malessere del mondo sia imputabile, in termini macro-economici, alla dimensione speculativa della *finanza internazionale*, originata dagli interventi di deregolamentazione di matrice neoliberista maturati a partire dagli anni ottanta del secolo scorso negli USA e poi globalizzati dagli organismi sovranazionali e dalle banche d'affari. La realtà è che il modello su cui si è costruito il sistema economico nel secolo scorso ha subito uno svuotamento sostanziale, laddove il mercato dei capitali ha operato una *scissione tra impresa e profitto*, e il profitto è generato da operazioni non collegate ai beni e alle attività, ma da una finanza fine a se stessa, e non al ruolo di servizio alle imprese produttive di beni e servizi.

Economia reale e finanza speculativa – Alla base della scissione tra impresa e profitto c'è l'assenza di regole e la progressiva globalizzazione del sistema economico che è andata oltre la sovranità degli Stati, condizionata dal vincolo geografico. Il fenomeno ha comportato il venir meno di una corretta gestione dei rischi e della liquidità da parte delle banche, arrestando la crescita economica. Il trend di deregolamentazione ha infatti aumentato la discrezionalità gestionale delle banche e degli intermediari, favorendo una loro crescente propensione all'assunzione ed alla redistribuzione di rischi, anziché la loro gestione interna (si pensi alle operazioni di cartolarizzazione dei mutui subprime realizzate negli USA nel primo quinquennio del 2000), e un'operatività finanziaria sempre più svincolata dalle dinamiche dell'economia reale e sempre più orientata alla scommessa speculativa e al perseguimento di alti profitti in tempi sempre più brevi. In buona sostanza, il pensiero liberista ha consentito di giocare a un 'gioco d'azzardo' planetario sempre più avulso dagli andamenti dell'economia reale. L'esito è stato deflagrante; ma i giocatori non hanno pagato alcun prezzo, se non raramente, anche quando hanno registrato ingenti perdite. Gli Stati sono infatti intervenuti massicciamente a favore dei settori finanziari, mentre riemergevano protezionismi nazionalistici. L'esplosione della crisi avrebbe potuto essere l'occasione per trasformare il modello di progettazione e di distribuzione dei prodotti finanziari ma così non è stato, e il sistema ha trasferito in via prevalente sul risparmiatore le perdite generatesi nei mercati finanziari. Ancora una volta ha giocato in modo determinante la mancanza di trasparenza, conseguenza dell'assenza di una effettiva regolazione della finanza e dei mercati finanziari.

Eurozona e crisi globale – Un rilancio delle regole, anche in materia di trasparenza, sarebbe particolarmente benefico specialmente per l'Europa, che ha subito più di altri gli effetti della crisi globale.

L'adozione della moneta unica ha comportato l'abbandono, seppure parziale, della sovranità monetaria, bilanciata in parte da altri benefici se le economie dell'area fossero state integrate ed omogenee, anche in termini di struttura del mercato del lavoro. Diversamente, l'effetto è stato quello della prevalenza dell'economia forte sull'economia debole. Questi effetti sono gravi per un Paese come l'Italia gravato da iniquità fiscale ed economia sommersa, perché rendono difficile una qualsivoglia politica dei redditi. Partiti da una presunzione di uniformità tra le varie economie europee e convinti della possibilità di una loro unione oltre la moneta, con un effetto traino da parte dei paesi virtuosi, si è dovuto poi constatare come questo modello di unione abbia prodotto un risultato contrario, amplificando i vizi strutturali delle

nazioni aderenti all'eurozona. Il risultato finale è stato così la crescita degli squilibri finanziari e commerciali tra i paesi membri dell'eurozona, con il contrapporsi dell'economia tedesca, virtuosa e creditrice, alle economie dei paesi con debiti pubblici crescenti ed esportazioni in forte decrescita a seguito dell'impossibilità di utilizzo di svalutazioni competitive ed aiuti di Stato. Il prezzo più alto di questa divergenza tra economie dell'Eurozona è pagata sempre più dai cittadini dei Paesi deboli, con l'aumento sostenuto della disoccupazione e la riduzione del welfare . Poiché, in prospettiva, non si intravedono segnali di inversione di rotta, *si impone un ripensamento del welfare* che sconti, in una lettura non pessimistica, *un lungo periodo di stagnazione* prima di una possibile uscita dalla crisi.

Solidarietà sociale e solidarietà familiare – Una riflessione sul welfare italiano deve dunque partire dal quadro di riferimento sopra considerato, nel quale si moltiplicano le diseguaglianze e *l'emergenza si fa sistema*. Anche importante è il quadro demografico italiano, che evidenzia un *crescente invecchiamento della popolazione* con evidenti riflessi sull'intero welfare . Una popolazione anziana non rende solo problematico l'equilibrio di un *sistema pensionistico* comunque a ripartizione, ma crea difficoltà soprattutto al *sistema sanitario*: aumentano gli anziani e, di conseguenza, crescono le esigenze di cure.

Una valutazione d'insieme dei recenti interventi normativi in materia di welfare evidenziano che *la direzione di marcia* è quella di un *graduale arretramento della solidarietà collettiva* a fronte delle esigenze di bilancio e degli impegni con l'Unione Europea, affidando la protezione dei più deboli ad una ritrovata *solidarietà familiare* originata, se non dagli affetti, dalla crisi economica. In questo contesto diventa importante la politica di assistenza agli anziani non autosufficienti, che attraverso l'erogazione di trattamenti previdenziali o assistenziali può aiutare a rendere sostenibile il bilancio familiare.

Persona e salute – Il ritorno alla solidarietà familiare appare eticamente apprezzabile perché combatte la solitudine propria della vecchiaia. D'altra parte, è inquietante perché evidenzia un arretramento del welfare . Si pensi ai recenti interventi normativi sull'assistenza sanitaria, quelli di maggior importanza per gli anziani, tutti orientati al contenimento della spesa nell'ambito della progressiva opera di risanamento della finanza pubblica, secondo logiche di efficientamento in chiave privatistica dei modelli gestionali che accentuano le *diseguaglianze nelle prestazioni* e che appaiono in contrasto con i principi indicati nella nostra Carta costituzionale. E, del resto, la letteratura in proposito sembra orientata a condividere gli interventi finalizzati al contenimento della spesa, laddove evidenzia, da un lato, che i costi sono crescenti in quanto associati all'invecchiamento della popolazione ed all'incremento delle malattie croniche, nonché insieme ai progressi della medicina e quindi delle prestazioni richieste; dall'altro, che i vincoli finanziari si fanno pressanti, specie quelli europei, mentre diminuiscono i margini per ulteriori aumenti della tassazione. In questo panorama, dunque, il solo assente sembra il diritto fondamentale alla salute.

Vecchiaia e pensioni – Criticità si evidenziano anche negli interventi sulle pensioni. Le riforme realizzate e le proposte di ulteriori riforme appaiono infatti condizionate dall'emergenza, pur dichiarando la volontà di richiamarsi ai principi dell'equità e della

flessibilità nell'acquisizione dei trattamenti pensionistici. Da una parte, la 'riforma' dichiara di muoversi in un'ottica di conferma e di ammodernamento del modello di sistema pensionistico elaborato dalla riforma del 1995 (generalizzazione del criterio di calcolo contributivo e soppressione del pensionamento di vecchiaia basato sulla anzianità di servizio). Dall'altra, gli interventi di razionalizzazione sono esclusivamente motivati dal contenimento della spesa pensionistica. Il quadro complessivo che risulta dagli interventi dell'ultimo triennio è quindi quello di un *travolgimento di molte certezze e di molti diritti* (basti pensare al blocco della perequazione automatica o l'utilizzo della c.d. 'contribuzione di solidarietà' sulle pensioni più elevate che rompe il principio di corrispettività tra carriera retributiva e trattamento pensionistico, che dovrebbe essere l'asse portante del modello di calcolo contributivo). Perplexità suscita anche l'obiettivo di aumento dell'età pensionabile fino al settantesimo anno di età, perché è conseguenza non solo del fenomeno dell'invecchiamento demografico ma soprattutto dell'aumento del divario tra lavoratori attivi e pensionati a seguito della disoccupazione giovanile, quindi della riduzione dei contributi e delle risorse finanziarie disponibili. Questa seconda motivazione economica è evidente se si considera che l'aumento dell'età pensionabile vale anche per gli addetti alle lavorazioni nocive e gli invalidi civili (cosa che genera dubbi anche sull'equità dell'intervento). Ugualmente di difficile comprensione sono gli interventi negativi in materia di *previdenza complementare* relativi al regime fiscale dei contributi, dei rendimenti e delle prestazioni, visto che il c.d. secondo pilastro dovrebbe contribuire a portare il tasso di sostituzione retribuzione/pensione a livelli di sostenibilità (attualmente non garantiti dal primo pilastro dell'assicurazione obbligatoria). In conclusione, è dubbio che i provvedimenti di revisione del sistema pensionistico, al di là del risparmio della spesa pubblica che producono, siano anche idonei a promuovere occupazione e sviluppo economico.

Occupazione ed ammortizzatori sociali – Gli interventi sugli ammortizzatori sociali non sembrano finalizzati a una vera e propria rivisitazione effettiva del sistema, quanto a una scelta prudente per uniformarsi al modello prevalente dell'Europa. Ammettendo che questa riforma possa andare a regime, sembra prospettarsi un modello di forte arretramento delle tutele nei processi di deindustrializzazione: assai discutibile è la generalizzazione dell'istituto dei fondi di solidarietà che dovrebbe affiancarsi all'integrazione salariale, sia per la complessità del modello, sia per l'effetto di ulteriore aumento del costo del lavoro. Peraltro si dovrebbe anche tener conto delle origini del nostro sistema, storicamente impostato su base categoriale e dei buoni risultati complessivamente raggiunti. Così potrebbe ipotizzarsi la conferma dello storico assetto della Cassa integrazione guadagni e l'assicurazione sociale per l'impiego, che dovrebbe discostarsi dalla storica indennità di disoccupazione, e che potrebbe assolvere il ruolo di tutela diffusa per tutto il mercato del lavoro.

Previdenza e assistenza – Le considerazioni sin qui svolte portano tutte a ritenere che è *necessaria una profonda rivisitazione del welfare*, ragionando sull'ipotesi che possa articolarsi su più livelli, comunitario, nazionale e diffuso; cioè affidato alle comunità intermedie, al terzo settore, alla previdenza complementare. L'obiettivo è quello di *creare un welfare dell'autosufficienza*, cioè idoneo al recupero delle certezze perdute e potenzialmente in grado di assistere il cittadino in tutti i passaggi dell'affermazione

della persona, della costruzione della sua identità, della promozione delle sue capacità. Il tema, tuttavia, è se sia opportuno un cambiamento di modello considerata la *strutturale carenza di risorse a disposizione dello Stato*. Inoltre, se tutto il comparto della previdenza ed assistenza non può prevedere aumenti di costo per lo Stato, ed anzi impone contenimenti di spesa, gli interventi possibili sono solo quelli *in chiave redistributiva*, che possono determinare problemi significativi essendo la principale voce di costo quella relativa al pagamento delle pensioni.

Welfare ed autosufficienza – In un contesto in cui *l'emergenza si fa sistema*, una riflessione sul welfare potrebbe anche prospettare, in alternativa ad un percorso conservativo di razionalizzazione ed efficientamento dell'esistenza, il passaggio per le generazioni future dal modello c.d. *occupazionale* a quello c.d. *universale* (oggi concretizzato in Italia nella sola sanità). In termini macro-economici l'operazione non creerebbe problematiche particolari nei confronti dell'Europa. Infatti l'Italia spende per la protezione sociale una quota di Pil sostanzialmente allineata alla media Europa, e comunque non troppo diversa da quella di Paesi significativi come il Regno Unito. Come già osservato, la caratteristica italiana rispetto agli altri paesi europei è la composizione della spesa per welfare che risulta, anche dopo le recenti riforme, prevalentemente riferita al sistema pensionistico (ridotti risultano gli interventi per la famiglia, crescenti quelli per gli ammortizzatori sociali, e pressoché assenti quelli per l'esclusione sociale). In particolare, si potrebbe immaginare un modello di arrivo che si collochi *tra il modello di welfare proprio del Regno Unito e quello dei Paesi scandinavi*. Il modello del Regno Unito sembra più praticabile in questa prima fase di carenza di risorse. Infatti: i suoi destinatari principali sono i cittadini poveri ed i lavoratori a basso reddito; predominano misure di assistenza basate sulla prova del bisogno; si utilizzano schemi di assicurazione sociale circoscritti e con prestazioni contenute, che consentono, peraltro, integrazioni funzionali a tassi significativi di sostituzione pensione/reddito da lavoro; persiste un forte rapporto con il mercato ed una politica dell'impiego.

Il modello scandinavo, invece, sembra interessante per: la vocazione ad una eguaglianza effettiva di cittadinanza; la protezione intensa dai bisogni e dai rischi sociali; l'attenuazione della dipendenza dal mercato.

La domanda diviene a questo punto se sia possibile iniziare questo percorso che, in più stadi, porti alla costruzione nel medio-lungo periodo di un *welfare nazionale che si collochi nell'area degli schemi c.d. universali*. La risposta è complessa come complesso è anche il percorso conservativo – nell'attuale modello di welfare (occupazionale) – orientato alla razionalizzazione della spesa e che risponde a obiettivi redistributivi piuttosto che migliorativi. Così la nuova politica sociale si pone al centro degli ordinamenti e si sposta dai momenti concertativi tra le parti sociali al confronto elettorale (determinandone spesso gli esiti). In questo senso, la disaffezione per la politica testimoniata dal crescente assenteismo elettorale e dal rifiorire di diversi populismi e di nuovi qualunquismi, può indicare una perdita di speranze dei singoli proprio nei confronti di quel *welfare che connotava l'essere delle democrazie occidentali*. Tutto ciò conferma che *un ripensamento del modello è necessario*.

Sicurezza sociale e cittadinanza – È dunque necessaria la trasformazione del welfare italiano dal sistema attuale di tipo 'occupazionale' ad un modello 'universalistico'? La

risposta non è certa, ma molti indizi portano a rispondere positivamente. Sono tre le premesse dalle quali era nato l'attuale modello di welfare e che oggi appaiono particolarmente critiche. (i) Anzitutto l'assunzione di un sistema economico a crescita economica elevata o comunque sostenibile, pur ammettendo la presenza di crisi ricorrenti ma di natura temporanea. In un contesto di *bassa crescita economica*, quale sembra invece delinearsi in questa fase storica, si riduce il reddito prodotto dal paese e, di conseguenza, la possibilità per lo Stato di utilizzare le entrate fiscali, in modo strutturale o emergenziale, per sopperire alle carenze del welfare. Gli unici interventi pubblici sostenibili diventano di natura redistributiva, a parità di costo per lo Stato. L'assunzione di un modello analogo a quello del Regno Unito ridurrebbe le aspettative di pensione delle generazioni future e determinerebbe anche una forte compressione della spesa pubblica. Nella logica redistributiva, d'altro canto, la misura sosterrrebbe i lavoratori a basso reddito in coerenza ad un mercato del lavoro sempre più precarizzato, e quindi non in grado di garantire tassi di sostituzione elevati anche nell'attuale schema pensionistico. (ii) In secondo luogo, è venuta meno l'assunzione, sempre alla base del nostro modello di welfare, di una società prevalentemente industriale, basata sul paradigma della grande impresa. Ormai siamo in una *società post-industriale*, caratterizzata da servizi e da nuovi modi di produzione basati su alta tecnologia e che ridimensiona il ruolo della 'manifattura'. (iii) Si è profondamente modificato il *modello di società civile*: la famiglia è tornata ad essere necessaria per le carenze del welfare, ma ha una struttura molto diversa rispetto al passato. Basti pensare all'instabilità del matrimonio e all'aumento (auspicabile!) della presenza della donna nel mercato del lavoro.

Ma la caduta di queste premesse consentirebbero ancora il mantenimento dell'attuale modello occupazionale di welfare se non fossero intervenute altre modifiche che ne minano le fondamenta di base. (iv) La *crisi demografica*, con l'aumento dell'aspettativa di vita e la riduzione della fertilità, che ha reso squilibrato il rapporto tra fasce di età, oltre al forte incremento dell'afflusso di migranti da Paesi sottosviluppati, con scarsa professionalità. (v) Le *maggiori aspettative di welfare* da parte di cittadini sempre più bisognosi, che appaiono in contrasto con le politiche di austerità e di riduzione della spesa che provengono dall'Europa, che determina effetti destabilizzanti sull'equilibrio delle istituzioni. (vi) L'*interdipendenza economica*, che comprime gli spazi di manovra degli Stati nazionali (si pensi all'impossibilità di realizzare svalutazioni competitive o ai divieti degli aiuti di Stato), e determina, in Paesi come il nostro, effetti negativi sull'occupazione, con bisogni crescenti di reddito sostitutivo. Questo quadro sembra confermare la necessità di una trasformazione del welfare, verso un welfare universale rispetto a quello attuale di tipo occupazionale, anche in coerenza con i principi di libertà ed eguaglianza sanciti dalla nostra Costituzione. Da questo 'ripensamento del welfare' potrebbe scaturire nel medio periodo, e non senza sofferenze, un welfare più moderno e più efficiente per assolvere la sua funzione di proteggere le persone dal bisogno e consentirne la completa autosufficienza.

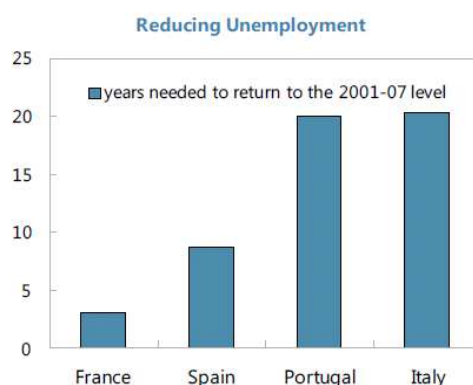
3.3 Considerazioni sul welfare in Italia

Considerazioni del Fondo Monetario Internazionale – Nel luglio del 2015 il Fondo Monetario Internazionale¹¹ ha affermato che "High unemployment is likely to persist

¹¹ Vedi: IMF Country Report No. 15/2015.

for some time". Gli anni necessari a ridurre la disoccupazione ai livelli di occupazione del 2001-2007, secondo l'analisi del FMI, sono illustrati nella figura 4.

Figura 4 – Anni necessari a ridurre il tasso di disoccupazione



Fonte: IMF Country Report No. 15/2015

Secondo le stime del FMI sarebbero necessari all'Italia circa 20 anni per tornare ai livelli di disoccupazione del periodo pre-crisi.

Considerazioni dell'OECD – Un recente rapporto dell'OECD¹² afferma che la crisi che attraversa l'Italia dal 2009, originata dalla finanza e progressivamente estesi all'economia reale, sta alimentando una profonda *crisi sociale*. L'OCSE invita i policy makers a farsene carico, senza attendere che la soluzione possa venire dalla *ripresa*, ancora troppo *debole, disomogenea e discontinua* per alimentare certezze. I *social indicators* dell'OECD sono riportati nella tabella 1.

Tabella 1 – Indicatori sociali italiani secondo l'analisi dell'OECD

	Pre-crisis			Latest year		
	Italy	EU	OECD	Italy	EU	OECD
Annual disposable household income*:						
Average	20,800	..	..	20,000	..	..
Bottom 10%	5,600	..	..	4,700	..	..
Total Fertility rate	1.42	1.63	1.75	1.42	1.59	1.70
Unemployment rate (%)	6.0	6.6	5.9	12.3	11.1	9.1
Youth neither in employment, education nor training, NEET rate (%)	16.3	10.7	11.5	21.4	12.7	12.6
Income inequality:						
Gini coefficient	0.311	0.288	0.313	0.319	0.291	0.313
Gap between richest and poorest 10%	8.9	6.9	9.2	10.2	7.4	9.5
Relative poverty (%)	12.0	9.2	11.2	13.0	9.4	11.3
Share of people reporting not enough money to buy food (%)	9.5	9.5	11.2	13.2	11.5	13.2
Public social spending (% GDP)	25.5	22.5	19.6	28.2	25.1	21.9
Suicide rates, per 100 000 population	5.7	12.5	12.5	5.8	12.2	12.4
Health expenditure per capita (latest year USD PPPs)	3,000	3,100	3,100	3,000	3,200	3,300
Confidence in national government (%)	33	50	49	30	41	43
Confidence in financial institutions (%)	34	65	63	21	43	46

Fonte: OECD, *Society at a Glance*, March 2014

¹² Vedi: OECD, *Society at a Glance*, March 2014.

Considerazioni dell'INPS – Come noto, l'INPS è il più grande istituto di protezione sociale d'Europa, con prestazioni che coinvolgono direttamente quasi il 70% per cento della popolazione italiana e che gestisce quasi un quinto del PIL (prodotto interno lordo) dell'Italia. Secondo l'INPS, l'evidenza storica insegna che le *crisi sociali* sono più persistenti e difficili da correggere di quelle dell'economia reale, perché richiedono una visione politica di lungo respiro per investire sul futuro¹³. Insegna anche che poco può la crescita dell'economia in un contesto in cui il disagio sociale si diffonde e si radica. Di fatto la *coesione sociale* è un ingrediente imprescindibile per uno sviluppo economico virtuoso, duraturo e sostenibile. Un sistema di protezione sociale insufficiente per le famiglie svantaggiate e per i disoccupati in cerca di lavoro, può dunque esporre al rischio di un *radicamento nella società delle disuguaglianze*. Gli indicatori sociali dell'OCSE prospettano uno scenario internazionale molto diversificato, al cui interno l'intero sistema di previdenza sociale del nostro Paese veniva segnalato, agli inizi della crisi, tra quelli scarsamente preparati ad affrontare la prospettiva di un aumento della *disoccupazione di lunga durata* e della *povertà tra la popolazione*. A questo proposito l'Istat ha recentemente segnalato come da noi “si continuano a destinare risorse troppo scarse a tutela dei principali rischi sociali”: la spesa per le famiglie, il sostegno in caso di disoccupazione, la formazione, il reinserimento nel mercato del lavoro ed il contrasto alla povertà ci vedono agli ultimi posti in Europa¹⁴.

Guardando alla struttura della spesa pubblica nei Paesi europei, soprattutto nei Paesi nordici e in quelli anglosassoni, si deduce che *l'obiettivo primario dello stato sociale è quello di contenere la povertà assoluta*, assicurando standard di vita dignitosi a tutti i cittadini, in tutte le fasi della loro vita. Questo significa non solo assistere chi si trova in condizioni di disagio economico, ma anche assicurare chi vive al di sopra della soglia della povertà contro il rischio di forti contrazioni del suo reddito futuro. *I rischi principali, soprattutto durante una recessione, provengono dal mercato del lavoro*, ossia dalla perdita della principale fonte di reddito per la stragrande maggioranza dei cittadini europei. In Italia, la crisi 2008-2014 ha fatto aumentare di *un terzo* il tasso di povertà. Il numero di persone che vivono al di sotto della linea di povertà Eurostat del 2007 (di € 9.380) è aumentato di 4 milioni. Le persone in condizione di grave deprivazione materiale, secondo le definizioni Eurostat, sono aumentate di *un quarto* in questo periodo. Il numero dei 'senza casa' censiti nelle grandi città italiane è *raddoppiato* rispetto ai livelli pre-crisi. In molti altri paesi, recessioni di comparabile intensità di quella vissuta dall'Italia comportano incrementi molto più contenuti dei tassi di povertà e, più in generale, di questi indici del disagio economico. Queste comparazioni internazionali sembrano indicarci che la forte crescita della povertà in Italia era tutt'altro che inevitabile. In paesi che hanno visto la disoccupazione raddoppiare o aumentare di un terzo in questi anni, la povertà è aumentata marginalmente o addirittura si è ridotta. Ci riferiamo non solo a paesi piccoli, con maggiore coesione sociale come Olanda e Svezia, ma anche a paesi grandi, come la Francia. Si poteva, dunque, ottenere una distribuzione *più equa dei costi della crisi*, una maggiore solidarietà di fatto e non solo a parole in un periodo difficile per tutti.

¹³ Vedi: Relazione annuale del Presidente Inps, Roma, 8 luglio 2015.

¹⁴ Vedi: ISTAT, Rapporto annuale 2014.

In Italia la crisi non è stata uguale per tutti. La crisi si è concentrata sul 10% più povero della popolazione, che ha subito mediamente riduzioni superiori al 27% del proprio reddito disponibile. Il 10% più ricco della popolazione ha subito mediamente un calo del proprio reddito disponibile del 5%. Sorte analoga è toccata al cosiddetto ceto medio, a coloro che sono collocati esattamente a metà nella scala dei redditi.

L'eredità più pesante della crisi è perciò in questa povertà diffusa: non solo ci sono più persone al di sotto della soglia di povertà, ma anche la distanza di molti da questa linea della povertà è aumentata. Oggi, ancor più che in passato, *la povertà è il problema numero uno del nostro sistema di protezione sociale*. Lo è molto di più delle disuguaglianze di reddito, che rimangono elevate, ma che non sono aumentate di molto durante la recessione. I tradizionali indici di disuguaglianza (a partire dall'indice di Gini) hanno subito incrementi marginali, variazioni statisticamente non significative in diversi casi.

Questa diagnosi, in un contesto in cui il debito pubblico in rapporto alla ricchezza prodotta è ai massimi storici, impone un *radicale miglioramento della capacità del nostro sistema di protezione sociale di raggiungere i cittadini più bisognosi di aiuto*. I limiti della nostra spesa sociale sono stati ampiamente documentati da molti studi: su 100 euro spesi, solo 3 euro vanno al 10% più povero della popolazione, che dovrebbe invece essere nettamente sovra-rappresentato nella popolazione dei beneficiari. Anche quando si ignori la spesa previdenziale, che si regge soprattutto su principi di natura assicurativa piuttosto che assistenziale o redistributiva, la percentuale di spesa sociale destinata ai più poveri sale di poco: al 10 per cento più povero sono destinati 7 euro su 100 spesi per prestazioni sociali non pensionistiche. Il tasso di povertà prima delle tasse e dei trasferimenti in Italia è comparabile a quello di Francia e Germania. Ma diviene molto più alto quando il reddito è misurato al netto delle tasse e al lordo dei trasferimenti, prova evidente del fatto che non solo la nostra spesa sociale, ma anche il nostro sistema fiscale, guardano poco ai cittadini più poveri.

Se la creazione e la stabilizzazione del lavoro rappresentano la strada maestra per ridurre la povertà, ci sarà comunque sempre bisogno di reti di protezione di base che raccolgano coloro che, vittime di eventi avversi (la perdita di un lavoro, della casa, la disgregazione di una famiglia), cadono tra le crepe del nostro sistema di protezione sociale. Queste vittime ci saranno sempre, quale che sia la congiuntura, anche se la nostra economia dovesse miracolosamente ripartire al galoppo. Lo stato sociale di tutti i paesi dell'Unione Europea, ad eccezione del nostro paese e (parzialmente) della Grecia, protegge queste persone, ha reti di protezione di base volte a impedire che finiscano in condizioni di indigenza. Sarebbe davvero tempo di porre rimedio a questo difetto strutturale del nostro sistema di protezione sociale con l'introduzione di un *reddito minimo garantito*.

4 IL PRESTITO IPOTECARIO VITALIZIO (PIV)

Il Prestito Ipotecario Vitalizio (PIV) si inquadra nel mercato internazionale dei prodotti finanziari di tipo equity release e reverse mortgage.

Gli Equity release products (nel Regno Unito) e i Reverse mortgage products (in Australia, Canada e negli Stati Uniti d'America) possono giocare un ruolo importante nel finanziamento della terza età. Con questi prodotti, infatti, è possibile ottenere un prestito a fronte del valore della casa di proprietà, o vendere la casa in tutto o in parte

per ricevere un rendita mensile o un capitale iniziale in unica soluzione, ovvero ottenere una combinazione di queste opzioni.

In generale, questi prodotti appaiono estremamente variegati e in grado di soddisfare diverse necessità finanziarie, ma non hanno goduto (almeno in passato) di una buona reputazione. Attualmente il mercato inglese degli Equity release è regolamentato dalla Financial Conduct Authority (FCA). In precedenza, molti istituti di credito avevano sottoscritto l'Equity Release Council (ERC), ancora prima noto come Safe Home Income Plan (SHIP), un codice di condotta volontario che prevedeva una serie di garanzie. L'ERC è stata costituita nel 1991, nel tentativo di migliorare il mercato degli Equity release e la sua precedente cattiva reputazione. Le garanzie dell'ERC prevedono il diritto di continuare a vivere nell'abitazione di proprietà – che costituisce l'oggetto dell'Equity release – finché il proprietario è in vita o, alternativamente, fino all'entrata del proprietario in un'assicurazione di tipo long term care. In aggiunta, esiste una clausola di *No Negative Equity Guarantee* che garantisce che l'importo da rimborsare alla scadenza dell'Equity release non può mai superare il valore della proprietà stessa, e quindi nessun debito può essere lasciato agli eredi del mutuatario dell'Equity release. Nel 2012, il Safe Home Income Plan è stato ridenominato come il Council Equity Release (CER). Gli attuali membri del CER sono Aviva, Bridgewater, Hodge vita, Just Retirement, More 2 Life, Legal & General Home Finance, Partnership, Retirement Plus, Stonehaven and Pure Retirement. Se nel 2010 furono realizzate operazioni di Equity release regolamentato per circa 800 milioni di sterline, nel 2014 questo mercato ha raggiunto la quota di 1,38 miliardi di sterline.

In Italia, il Prestito Ipotecario Vitalizio è un finanziamento a lungo termine concesso da un intermediario finanziario autorizzato a persone fisiche con più di 60 anni di età e proprietari di un'immobile residenziale. È stato introdotto in Italia nel dicembre 2005 dalla L. 248/05, poi modificata dalla L. 44/2015.

Le caratteristiche principali del PIV sono: (i) la durata aleatoria; (ii) il rimborso del capitale, degli interessi e delle spese avviene in unica soluzione alla morte del mutuatario (se l'immobile è cointestato ad una coppia di anziani, alla morte del soggetto più longevo); (iii) prevede l'anatocismo, ossia la maturazione degli interessi sugli interessi già scaduti; in termini tecnici, il montante del prestito è calcolato secondo la legge degli interessi composti, anche considerando le eventuali spese previste nel corso della vita del finanziamento; (iv) il contraente continua a vivere nella sua casa fino alla morte; (v) è assistito da ipoteca di primo grado sull'immobile di residenza; (vi) il rimborso, a meno di ammortamento volontario anticipato da parte del sottoscrittore, è a carico degli eredi; (vii) prevede una clausola contrattuale secondo la quale gli eredi sono tenuti a rimborsare alla scadenza un importo non maggiore del valore dell'immobile dato in garanzia (clausola di *'No Negative Equity Guarantee'*); la banca finanziatrice non può pertanto rivalersi sugli eredi dell'eventuale maggior debito rispetto al valore dell'immobile (a condizione che il rimborso avvenga a fronte della vendita dell'immobile per tramite di un curatore indipendente e a prezzo di mercato).

Il PIV può essere erogato da banche e da altri intermediari finanziari autorizzati. L'importo del prestito varia in funzione dell'età del mutuatario: maggiore è l'età, maggiore è l'importo del finanziamento. Il valore dell'immobile è normalmente determinato con una perizia realizzata da un esperto indipendente. La quota massima

pagata in percentuale sul valore di perizia oscilla tra il 15% (se l'età del richiedente è intorno ai 65 anni) e il 50-55% (se l'età del richiedente è intorno ai 90 anni).

Il sottoscrittore ha la facoltà di decidere se ripagare gradualmente il proprio debito, oppure se non pagare nulla e lasciare così ai posteri l'onere di estinguere il proprio debito. Se decide di ripagarlo in prima persona – cosa che avviene raramente perché riduce la somma ricevuta – rimborserà la banca in maniera graduale, secondo gli accordi definiti nel contratto. Viceversa, se il debito non viene estinto dal mutuario, dopo il suo decesso gli eventuali eredi potranno scegliere se ripagare il debito più gli interessi entro 12 mesi in unica soluzione (eventualmente vendendo la casa), oppure se lasciare che la banca ponga l'immobile in vendita al valore di mercato. In questo secondo caso, qualora la banca non riesca a vendere l'immobile dopo un anno, decurterà il 15% dal prezzo di vendita, e così l'anno successivo fino a realizzare la vendita stessa. Con il realizzo della vendita, l'eventuale somma che dovesse eccedere il totale di capitale più interessi, verrà restituita dalla banca agli stessi eredi.

Il prestito deve essere rimborsato in un'unica soluzione dagli eredi normalmente entro i 10-12 mesi successivi alla scomparsa del più longevo dei contraenti. Gli eredi hanno due possibilità: se vogliono mantenere la proprietà dell'immobile, sono tenuti a rimborsare il montante del PIV; alternativamente, l'abitazione può essere venduta utilizzando il ricavato per rimborsare il finanziamento. Se non ci sono eredi, o questi non procedessero al rimborso, il finanziamento viene estinto con la vendita dell'immobile, ma sempre allo scadere dei 12 mesi dalla data di scadenza del finanziamento.

A garanzia del PIV sono ammesse tutte le tipologie di immobili ad eccezione di: rustici e immobili non residenziali; immobili in zone ad elevato rischio sismico, a meno di idonea copertura assicurativa; immobili gravati da vincoli artistici, paesaggistici o idrogeologici o senza concessione edilizia; immobili gravati da ipoteca, fatta salva l'ipotesi di cancellazione dell'ipoteca preesistente.

Una volta stipulato il PIV, il titolare del prestito è libero di utilizzare la somma ricevuta senza alcun vincolo di destinazione. Potrà continuare a vivere nella propria casa, rispettando alcuni vincoli: non potrà venderla, affittarla, ristrutturarla, né aggiungere una seconda ipoteca o offrirla in garanzia a favore di terzi. Il fatto che il titolare del prestito possa continuare a vivere nella sua casa finché in vita, rende la stipula di un PIV alternativa alla vendita della nuda proprietà (che è un'altra forma per ottenere liquidità senza perdere la disponibilità dell'immobile finché si è in vita). Nel PIV, però, il mutuatario resta titolare del diritto di proprietà sull'immobile (concesso in ipoteca).

Le principali banche che offrono Prestiti Vitalizi Ipotecari in Italia sono il Monte Paschi di Siena (con il prodotto 'Prestisenior') e Deutsche Bank (con il prodotto 'Patrimonio casa').

4.1 L'analisi del contratto: le leggi 248/2005 e 44/2015

Il prestito ipotecario vitalizio è stato introdotto in Italia dall'art. 11-*quaterdecies* della legge n. 248 del 2 dicembre 2005 ("Conversione in legge, con modificazioni, del decreto-legge 30 settembre 2005, n. 203, recante misure di contrasto all'evasione fiscale e disposizioni urgenti in materia tributaria e finanziaria"), secondo cui *"il prestito vitalizio ipotecario ha per oggetto la concessione da parte di aziende ed istituti*

di credito nonché da parte di intermediari finanziari, di cui all'articolo 106 del testo unico di cui al decreto legislativo 1° settembre 1993, n. 385, di finanziamenti a medio e lungo termine con capitalizzazione annuale di interessi e spese, e rimborso integrale in unica soluzione alla scadenza, assistiti da ipoteca di primo grado su immobili residenziali, riservati a persone fisiche con età superiore ai 65 anni compiuti”.

La legge n. 248 del 2005 è stata modificata dalla legge n. 44 del 2015, che ha aggiunto i commi da 12 bis a 12 Sexies alla preesistente legge e stabilito alcune modalità operative di questo tipo di finanziamento.

Queste le principali modifiche introdotte dalla legge n. 44 del 2015, applicabili solo ai finanziamenti stipulati dopo la sua entrata in vigore.

Una prima modifica è relativa all'età, superata la quale, è possibile avere accesso al prestito ipotecario vitalizio, e che viene ridotta con la nuova norma da 65 a 60 anni. Viene poi introdotta una ulteriore novità relativa al rimborso del finanziamento che potrà essere richiesto, in una unica soluzione, al momento della morte del finanziato oppure nel caso in cui via sia stato il trasferimento, parziale o totale, della proprietà o di altri diritti reali o di godimento sull'immobile che viene ipotecato a garanzia del prestito, o qualora vengano compiuti degli atti che possano ridurre in maniera significativa il valore del bene immobile stesso (come la costituzione di diritti reali di garanzia in favore di soggetti terzi).

Quanto alle regole di rimborso, il comma 12 prevede, come già osservato, la capitalizzazione annuale di interessi e spese per il periodo che va dalla data di stipula del mutuo fino al verificarsi di uno degli eventi previsti dalla legge (primo tra tutti il decesso del mutuatario). Si tratta di una previsione in deroga al disposto dell'art. 1283 c.c. in materia di anatocismo, costituendo quindi una norma del tutto singolare che caratterizza lo strumento in esame. In tema di rimborso del finanziamento merita anche attenzione la previsione di cui al comma 12 bis che stabilisce che, al momento della stipulazione del contratto, sarà possibile per il soggetto finanziato concordare una modalità di rimborso graduale della quota di interessi e delle spese prima che si verifichino gli eventi di cui al comma 12, senza applicazione sulle quote rimborsate della capitalizzazione composta degli interessi.

In caso di inadempimento del soggetto finanziato, la nuova normativa prevede l'applicazione dell'art. 40, comma 2 del Testo unico Bancario (D. lgs 385/1993), dunque la possibilità per la Banca di invocare il ritardato pagamento (quello cioè effettuato tra il trentesimo e il centottantesimo giorno dalla scadenza della rata), che si sia verificato almeno sette volte anche non consecutive, quale causa di risoluzione del contratto.

Poiché, come già osservato, non rileva nel PIV la data di rimborso del prestito, si applica la disciplina di cui agli artt. 15 e seguenti del DPR 29 settembre 1973, n. 601, e successive modificazione. Fiscalmente, sono quindi previste per il PIV le agevolazioni applicabili alle operazioni di credito a medio o lungo termine: l'esenzione dalle imposte di bollo, registro, ipotecarie e catastali e dalle tasse sulle concessioni governative, grazie al versamento di un'imposta sostitutiva (0,25% dell'ammontare complessivo dei finanziamenti agevolati erogati; 2% se non riferito a prima casa e relative pertinenze). In mancanza di opzione in forma scritta nell'atto di finanziamento, si pagano però le normali imposte.

Si è già detto che il PIV è garantito da un'ipoteca di primo grado sull'immobile residenziale. L'immobile deve essere libero da iscrizioni ipotecarie precedenti, e si

applica l' art. 39, commi 1, 2, 3, 4 e 7 del Testo Unico Bancario in materia di ipoteche. L'ipoteca non può essere iscritta su più immobili di proprietà del finanziato.

Proprio in forza dell'ipoteca, nell'ipotesi in cui il finanziamento non venga rimborsato entro 12 mesi dal verificarsi di uno degli eventi di cui al comma 12, la banca erogante potrà vendere l'immobile posto a garanzia del prestito a un valore uguale a quello di mercato, come determinato da un perito indipendente incaricato dalla banca stessa. Le somme ricavate dalla vendita dovranno essere utilizzate per l'estinzione del prestito. Si tratta di una previsione che costituisce una assoluta novità nel panorama normativo, consentendo alla banca finanziatrice di vendere l'immobile senza dover sottoporre lo stesso a procedura esecutiva immobiliare, pertanto evitando i relativi ingenti costi e riducendo i tempi di recupero del credito. Trascorsi ulteriori 12 mesi senza che sia perfezionata la vendita dell'immobile, il valore dello stesso dovrà essere decurtato del 15% per ogni dodici mesi successivi fino a che non sarà stata effettuata la vendita.

In alternativa, esiste un'altra modalità per la vendita dell'immobile ipotecato: la possibilità per l'erede di provvedere direttamente alla vendita del bene, previo accordo con la Banca finanziatrice, a condizione che il contratto di compravendita si perfezioni entro dodici mesi dal conferimento dell'incarico in favore dell'erede (da parte della banca). Le somme che eventualmente dovessero residuare in seguito alla vendita dell'immobile e alla avvenuta estinzione del debito, saranno riconosciute agli eredi.

Come già osservato, una caratteristica del PIV è costituita dal fatto che l'importo del debito residuo non può essere superiore al ricavato dalla vendita dell'immobile al netto delle spese sostenute (*No Negative Equity Guarantee*). Il soggetto finanziato e gli eredi dello stesso sono quindi al riparo da eventuali azioni della banca per il recupero dell'eventuale residuo credito.

Il comma 12 *quater* prevede che, una volta effettuata l'alienazione del bene, non avranno effetto nei confronti dell'acquirente dell'immobile le domande giudiziali previste all'art. 2652 c.c. trascritte successivamente alla trascrizione dell'acquisto. Si tratta precisamente delle domande con cui si contesta il fondamento di un acquisto a causa di morte e di domande giudiziali di riduzione delle donazioni e delle disposizioni testamentarie per lesione di legittima. Quanto sopra a ulteriore riprova di una normativa che delinea una tutela forte per il soggetto finanziato e per il soggetto terzo acquirente dell'immobile posto a garanzia del prestito.

Il 23 dicembre 2015, tenuto conto del parere del Consiglio di Stato del 16 ottobre 2015 n. 2791, il Ministero dello Sviluppo Economico ha emanato il Decreto attuativo della Legge 44 del 2015 completando così l'iter giuridico della nuova normativa sul prestito ipotecario vitalizio.

4.2 Alcuni dati, un problema

Alla fine del 2012 la ricchezza abitativa delle famiglie italiane superava i 4.800 miliardi di euro. Gran parte di questo patrimonio appartiene a 12 milioni di persone con più di 65 anni, spesso titolari di basse pensioni e con costi di manutenzione e tasse sulla casa crescenti. Per questo motivo sembra aumentato in Italia l'interesse verso strumenti finalizzati a ottenere dalla casa una 'rendita' adeguata alle proprie necessità e a quelle dei figli. Il PIV, oltre che per questa struttura della proprietà immobiliare in Italia,

appare anche di interesse per la tendenza delle principali banche italiane ad estendere la propria offerta verso i servizi di compravendita immobiliare.

Come osservato in precedenza, se l'obiettivo è di generare una disponibilità immediata, la stipula di un PIV costituisce un'alternativa alla vendita della nuda proprietà. Quest'ultima, come noto, è il contratto con il quale il nudo proprietario acquista la titolarità di una casa pagando una parte del valore di stima legata all'età del venditore, mentre usufrutto o diritto di abitazione restano al venditore e alla sua morte passano al nudo proprietario. Spese condominiali, oneri di custodia, amministrazione e manutenzione, anche non trascritti nei registri immobiliari, sono a carico dell'usufruttuario. Al nudo proprietario spettano le spese straordinarie e quelle necessarie per inadempimento dell'utilizzatore. L'usufruttuario può cedere a terzi il suo diritto e può affittare casa, il titolare del diritto di abitazione no. Il vantaggio per chi acquista la nuda proprietà di un immobile è nel pagare l'immobile a un prezzo più basso rispetto al valore di mercato, mentre per chi vende il vantaggio è quello di avere un'entrata immediata conservando il diritto di abitare la propria casa fino alla morte. D'altra parte, nel caso di stipula del PIV, gli eredi mantengono la proprietà dell'immobile.

La vendita della nuda proprietà, sebbene sia possibile in Italia da un decennio, non ha registrato un grande successo. Secondo i dati dell'Agenzia delle entrate, nel decennio 2004/2013 le compravendite di nuda proprietà sono diminuite complessivamente del 74%. Nel 2004 se ne registrarono oltre 4 mila, mentre nel 2013 il numero di contratti è sceso a 20.960 (in calo dell'11,2% rispetto al 2012). Questo tipo di atti rappresenta il 2% circa delle compravendite totali. Alcuni osservatori ritengono che il basso ricorso alla vendita della nuda proprietà sia legato a ragioni di mercato e soprattutto culturali: un proprietario vende la nuda proprietà solo se ha veramente bisogno di liquidità oppure se è solo. Il valore della nuda proprietà è dato dal prezzo di mercato dell'immobile sottratto l'usufrutto, e si calcola secondo tabelle prestabilite all'atto di vendita dal notaio. Nella tabella 2, al variare dell'età del proprietario, sono riportate le percentuali di nuda proprietà e usufrutto stabilite dai coefficienti ministeriali 2014 e la vita attesa calcolata dall'ISTAT e riferita all'anno 2013¹⁵.

Tabella 2 – coefficienti ministeriali 2014 per nuda proprietà/usufrutto e vita attesa ISTAT

Età	Usufrutto	Nuda Proprietà	Vita attesa (ISTAT)
64	50%	50%	19,4
65	50%	50%	18,6
66	50%	50%	17,8
67	45%	55%	17,0
68	45%	55%	16,2
69	45%	55%	15,5
70	40%	60%	14,7
71	40%	60%	14,0
72	40%	60%	13,3
73	35%	65%	12,6
74	35%	65%	11,9
75	35%	65%	11,3

¹⁵ Tavole di mortalità della popolazione italiana - Ripartizione: Italia - Maschi - Anno: 2013.

Età	Usufrutto	Nuda Proprietà	Vita attesa (ISTAT)
76	30%	70%	10,6
77	30%	70%	9,9
78	30%	70%	9,3
79	25%	75%	8,7
80	25%	75%	8,2
81	25%	75%	7,6
82	25%	75%	7,1
83	20%	80%	6,6
84	20%	80%	6,1
85	20%	80%	5,7
86	20%	80%	5,3
87	15%	85%	4,9
88	15%	85%	4,6
89	15%	85%	4,2
90	15%	85%	3,9
91	15%	85%	3,7
92	15%	85%	3,4
93	10%	90%	3,1
94	10%	90%	2,9
95	10%	90%	2,6

E' stato osservato che il *problema* principale che frena lo sviluppo del PIV in Italia è la mancanza di una norma che ne regoli le *condizioni economiche*¹⁶. Ogni banca, infatti, può stabilire le condizioni finanziarie da applicare al prestito, in particolare quelle relative (i) al *capitale iniziale* del PIV, che varia al variare dell'età del beneficiario del prestito (aumenta all'aumentare dell'età) e al (ii) al *tasso d'interesse* da utilizzare per il calcolo del *montante finanziario*. Ad esempio, dall'esame del foglio informativo del prodotto 'Prestisenior' offerto dal Monte dei Paschi di Siena, risulta che un proprietario di 70 anni (età minima richiesta da questa banca) può ottenere solo il 16% del valore della propria abitazione (la quota raddoppia se l'età è di 80 anni); dopo 10 anni il montante da restituire è il 170% del capitale inizialmente ricevuto, dopo 20 il 300%, per effetto della capitalizzazione composta di interessi e spese. Nel caso specifico, al prestito viene applicato un tasso annuo nominale del 7,01% (ottenuto applicando al tasso Interest Rate Swap a 30 anni uno spread annuo del 4,8%), con spese di istruttoria e altre spese corrispondenti a un importo di circa 1000 euro. Si tratta di tassi di interesse che risultano molto superiori, anche più del doppio, rispetto a quelli applicati ai normali mutui ipotecari. L'elevato costo è, verosimilmente, attribuibile all'incertezza sul valore dell'abitazione alla scadenza del prestito dopo molti anni e agli oneri, finanziari e gestionali, che la banca dovrà sostenere per l'eventuale vendita dell'immobile.

Il modesto importo del prestito rispetto al valore dell'abitazione e l'elevato tasso di interesse che trasforma il capitale finanziato in un consistente montante a scadenza, sono alla base della scarsa appetibilità del PIV. Per questi motivi, oltre a ogni altra

¹⁶ Vedi: Lungarella R., Prestito vitalizio ipotecario: perché lo chiedono in pochi, 21 maggio 2015, www.lavoce.info. Vedi anche: Fornero E., Rossi M. C., Urzi Brancati M. C., *Explaining why, Right or Wrong, (Italian) Households do not like Reverse Mortgages*, Center for Research on Pensions and Welfare Policies, Working Paper 123/11

considerazione, questo prodotto finanziario continuerà probabilmente a essere poco attraente per gli anziani proprietari di case. Verosimilmente, vi ricorreranno principalmente coloro che, data la loro età avanzata, possono ricevere somme di una certa consistenza (rispetto al valore dell'abitazione) e quelli che si trovano in uno stato di forte necessità al quale non possono far fronte in modo diverso. I confini di questo mercato diventano, allora, molto ristretti, così come il sostegno che il PIV può dare all'economia nazionale e allo sviluppo di un welfare di natura privatistica.

Per analizzare il problema finanziario del PIV è stata sviluppata un'analisi basata sugli strumenti della Matematica finanziaria¹⁷. L'analisi, in particolare, è riferita al prodotto 'Prestisenior' offerto in Italia dal Monte dei Paschi di Siena.

4.3 L'analisi finanziaria del PIV, una possibile soluzione

Data l'età del mutuatario, lo scambio di importi monetari generato dal PIV può essere formalmente descritto, dal punto di vista del beneficiario (ossia del mutuatario e dei suoi eredi), considerando le seguenti variabili:

0	<i>istante di stipula</i>
I_0	<i>valore iniziale dell'immobile ipotecato, alla stipula del PIV</i>
α	<i>% finanziata, che dipende dall'età del mutuatario</i>
$V = \alpha I_0$	<i>capitale iniziale ricevuto dal mutuatario alla stipula</i>
\tilde{n}	<i>durata aleatoria del PIV</i>
i	<i>tasso di interesse del PIV alla stipula, su base annua</i>
$\tilde{A} = \alpha I_0 (1+i)^{\tilde{n}}$	<i>montante finanziario del PIV</i>
\tilde{I}	<i>valore finale dell'immobile ipotecato, alla scadenza del PIV</i>
$\tilde{Y} = \min \{ \tilde{A}, \tilde{I} \}$	<i>capitale finale del PIV, da rimborsare alla scadenza.</i>

Nell'istante di stipula del PIV, l'aleatorietà del *capitale finale* del PIV (\tilde{Y}) da rimborsare alla scadenza dipende dall'incertezza sia del valore futuro dell'immobile ipotecato (incertezza immobiliare) sia della durata di vita residua del mutuatario (incertezza demografica). In particolare:

- le grandezze \tilde{n} , \tilde{A} dipendono dall'istante in cui avverrà il decesso del mutuatario;
- la grandezza \tilde{I} dipende dal valore che avrà l'immobile ipotecato alla scadenza del PIV.

Nell'analisi svolta, di tipo deterministico, si è ipotizzato che:

- la *durata aleatoria* del PIV (\tilde{n}) è nota alla stipula e uguale alla *vita attesa* del mutuatario alla stipula del PIV come calcolata dall'ISTAT ed espressa in anni (n):

$$\tilde{n} = n$$

- il *valore finale dell'immobile* ipotecato è noto alla stipula e uguale al montante del valore iniziale (I_0) calcolato al *tasso di rivalutazione immobiliare* (r) fissato

¹⁷ Vedi: Università LUISS, Prof. G. Olivieri, corso di 'Matematica per le scienze giuridiche', Laurea a ciclo unico in 'Giurisprudenza, anno accademico 2014-2015.

alla stipula. Di conseguenza, quantificate le variabili l_0 , n , r , il *valore finale dell'immobile* è fornito dalla formula:

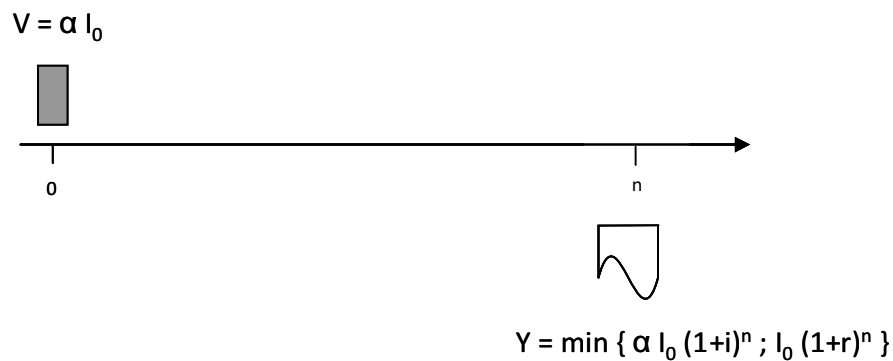
$$I = l_0 (1+r)^n.$$

Inoltre, quantificate le variabili α , i , l_0 , n , il *montante finanziario* del PIV si ricava, secondo la legge dell'interesse composto, dalla formula:

$$A = \alpha l_0 (1+i)^n.$$

Lo scambio monetario generato dal PIV, dal punto di vista del beneficiario, è rappresentato nella figura 5. Il mutuatario incassa alla stipula del PIV l'importo V , che è una percentuale α del valore iniziale dell'immobile ipotecato, e alla morte del mutuatario i suoi eredi si obbligano a pagare il minore tra il montante finanziario e il valore finale dell'immobile inizialmente ipotizzato.

Figura 5 – scambio degli importi monetari generati dal PIV



Dopo aver descritto formalmente il contratto, sono proposte di seguito alcune applicazioni.

'Caso base' – Si considera il 'caso base' di un proprietario di prima casa con 70 anni di età alla stipula del PIV e con i seguenti dati¹⁸:

- l_0 = €250.000
- α = 16%
- i = 7,01%
- n = 14,73 anni (vita attesa ISTAT del mutuatario)
- r = 0% (stabilità del mercato immobiliare).

Risulta che:

- V = 16% * €250.000 = €40.000
- M = 16% €250.000 $(1+0,0701)^{14,73}$ = €108.513
- I = €250.000
- Y = €108.513.

¹⁸ Si riprendono i dati di partenza considerati nel *Foglio Informativo del 7 luglio 2014* del Monte Paschi di Siena.

Pertanto, nel caso base, dato un immobile ipotecato di valore iniziale di €250.000 e ipotizzando che il suo valore rimanga costante fino alla scadenza del PIV ($r=0\%$), il mutuatario riceve il capitale iniziale di €40.000, ossia il 16% del valore della sua casa, e alla scadenza attesa – dopo 15 anni circa – i suoi eredi dovranno pagare un capitale finale di €108.513. Il fatto che gli eredi debbano pagare quasi tre volte il capitale iniziale dipende dalla capitalizzazione composta degli interessi, prevista dalla legge¹⁹. Se invece gli eredi scelgono di saldare il debito verso la banca vendendo l'immobile ipotecato, riceveranno alla scadenza del PIV la differenza di €141.487 tra valore finale dell'immobile e montante finanziario ($€250.000 - €108.513 = €141.487$).

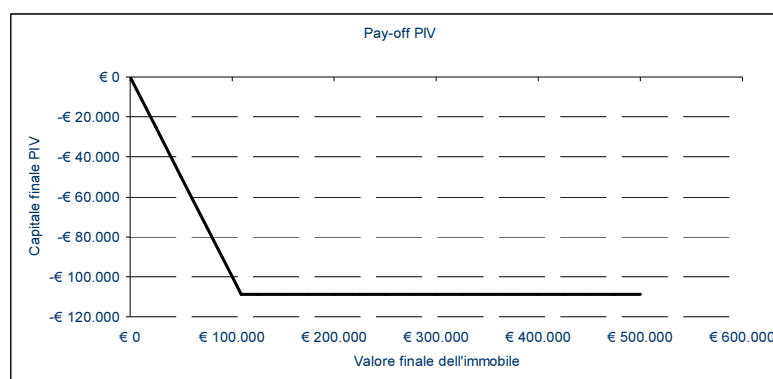
Analisi di pay-off – E' stato analizzato come varia il *capitale finale* del PIV al variare del *valore finale dell'immobile*, a parità degli altri dati del caso base. Tecnicamente, è la c.d. analisi di pay-off. I risultati dell'analisi, al variare del *valore finale dell'immobile* tra €0 e €500.000, sono riportati e illustrati nella tabella 3 e nella figura 6.

Tabella 3 – andamento del capitale finale (Y) in funzione del valore finale dell'immobile (I)

Input I	Output	
	A	Y
€ 0	€ 108.513	€ 0
€ 25.000	€ 108.513	€ 25.000
€ 50.000	€ 108.513	€ 50.000
€ 75.000	€ 108.513	€ 75.000
€ 100.000	€ 108.513	€ 100.000
€ 108.513	€ 108.513	€ 108.513
€ 125.000	€ 108.513	€ 108.513
€ 150.000	€ 108.513	€ 108.513
€ 175.000	€ 108.513	€ 108.513
€ 200.000	€ 108.513	€ 108.513
€ 225.000	€ 108.513	€ 108.513
€ 250.000	€ 108.513	€ 108.513
€ 275.000	€ 108.513	€ 108.513
€ 300.000	€ 108.513	€ 108.513
€ 325.000	€ 108.513	€ 108.513
€ 350.000	€ 108.513	€ 108.513
€ 375.000	€ 108.513	€ 108.513
€ 400.000	€ 108.513	€ 108.513
€ 425.000	€ 108.513	€ 108.513
€ 450.000	€ 108.513	€ 108.513
€ 475.000	€ 108.513	€ 108.513
€ 500.000	€ 108.513	€ 108.513

¹⁹ Invece, se si utilizzasse la capitalizzazione semplice (non consentito dalla legge), gli eredi dovrebbero pagare un importo di € 81.303, ossia poco più del doppio del capitale iniziale.

Figura 6 – andamento del capitale finale (Y) in funzione del valore finale immobiliare (I)



La figura 6 illustra il senso della condizione di 'min' prevista nel PIV (*No Negative Equity Guarantee*):

- se il *valore finale dell'immobile* è minore del *montante finanziario*, gli eredi pagano alla banca il *valore finale dell'immobile* ('caso immobiliare');
- viceversa, gli eredi pagano alla banca il *montante finanziario* ('caso finanziario').

Ad esempio, se si ipotizza:

- un valore finale dell'immobile di €25.000, a fronte di un montante di €108.513, gli eredi saranno tenuti a pagare solamente €25.000 (l'importo minore);
- un valore finale dell'immobile di €250.000, sempre dato il montante di €108.513, gli eredi saranno tenuti a pagare €108.513 (l'importo minore).

Pertanto, la condizione di 'min' prevista nel PIV *protegge gli eredi* dal rischio di riduzione del valore dell'immobile ipotecato al di sotto del montante finanziario e, dall'altra, *espone la banca* a questo tipo di rischio.

Come varia il capitale finale del PIV (Y) al variare dell'età del mutuatario – E' stato analizzato come varia il *capitale finale* del PIV al variare dell'età del mutuatario, a parità degli altri dati del caso base. Date le ipotesi, l'età del mutuatario determina sia la durata attesa del mutuo (n) sia la % *finanziata* dalla banca (α). Gli esiti dell'analisi svolta sono riportati nella tabella 4²⁰.

Tabella 4 – andamento del capitale finale (Y) al variare dell'età del mutuatario

Input					Output			
Età	n	l	α	r	l	A	Y	Y/l
70	14,73	7,01%	16,00%	0%	€ 250.000	€ 108.505	€ 108.505	43,4%
71	14,02	7,01%	17,20%	0%	€ 250.000	€ 111.135	€ 111.135	44,5%
72	13,31	7,01%	18,50%	0%	€ 250.000	€ 113.967	€ 113.967	45,6%
73	12,62	7,01%	19,90%	0%	€ 250.000	€ 116.961	€ 116.961	46,8%
74	11,93	7,01%	21,45%	0%	€ 250.000	€ 120.354	€ 120.354	48,1%
75	11,25	7,01%	23,00%	0%	€ 250.000	€ 123.240	€ 123.240	49,3%

²⁰ L'ammontare del *capitale finale del PIV*, ricalcolato per ogni età secondo lo schema di analisi ipotizzato, è uguale a quello riportato nel *Foglio Informativo del 7 luglio 2014* del Monte Paschi di Siena.

Input					Output			
Età	n	l	α	r	l	A	Y	Y/l
76	10,59	7,01%	24,80%	0%	€ 250.000	€ 127.013	€ 127.013	50,8%
77	9,94	7,01%	26,70%	0%	€ 250.000	€ 130.879	€ 130.879	52,4%
78	9,32	7,01%	28,70%	0%	€ 250.000	€ 134.896	€ 134.896	54,0%
79	8,72	7,01%	30,90%	0%	€ 250.000	€ 139.498	€ 139.498	55,8%
80	8,16	7,01%	33,30%	0%	€ 250.000	€ 144.667	€ 144.667	57,9%
81	7,62	7,01%	34,50%	0%	€ 250.000	€ 144.525	€ 144.525	57,8%
82	7,11	7,01%	35,50%	0%	€ 250.000	€ 143.654	€ 143.654	57,5%
83	6,61	7,01%	36,40%	0%	€ 250.000	€ 142.438	€ 142.438	57,0%
84	6,14	7,01%	37,40%	0%	€ 250.000	€ 141.773	€ 141.773	56,7%
85	5,70	7,01%	38,40%	0%	€ 250.000	€ 141.222	€ 141.222	56,5%
86	5,28	7,01%	39,40%	0%	€ 250.000	€ 140.882	€ 140.882	56,4%
87	4,90	7,01%	40,50%	0%	€ 250.000	€ 141.144	€ 141.144	56,5%
88	4,55	7,01%	41,60%	0%	€ 250.000	€ 141.580	€ 141.580	56,6%
89	4,22	7,01%	42,70%	0%	€ 250.000	€ 142.111	€ 142.111	56,8%
90	3,93	7,01%	43,90%	0%	€ 250.000	€ 143.233	€ 143.233	57,3%
91	3,67	7,01%	45,10%	0%	€ 250.000	€ 144.559	€ 144.559	57,8%
92	3,41	7,01%	46,30%	0%	€ 250.000	€ 145.844	€ 145.844	58,3%
93	3,13	7,01%	47,50%	0%	€ 250.000	€ 146.822	€ 146.822	58,7%
94	2,85	7,01%	48,80%	0%	€ 250.000	€ 148.026	€ 148.026	59,2%
95	2,58	7,01%	50,00%	0%	€ 250.000	€ 148.826	€ 148.826	59,5%

Come evidenziato nella tabella 4, il *capitale finale* del PIV (Y) è sempre uguale, per tutte le età, al *montante finanziario* (A) essendo quest'ultimo sempre minore del *valore finale dell'immobile* (l). In altri termini, il capitale iniziale finanziato dalla banca è molto basso rispetto al valore iniziale dell'immobile ipotecato.

Come osservato nell'analisi di pay-off, la banca fissa una *% finanziata* molto bassa per proteggersi dal rischio che il valore finale dell'immobile sia minore del montante finanziario (e che, di conseguenza, la banca possa subire una perdita). Dall'altra, però, una bassa *% finanziata* rende il PIV poco appetibile per il proprietario anziano perché non permette di soddisfare la sua esigenza di liquidità che, solitamente, è alla base della richiesta di questo tipo di strumento.

Per studiare questo trade off 'rischio/appetibilità' – minore è il rischio della banca, minore è l'appetibilità del prodotto – sono studiate di seguito le condizioni 'di parità' alla scadenza del PIV.

Le condizioni 'di parità' a scadenza – Dato il *valore finale dell'immobile* ipotizzato alla stipula del PIV, le condizioni di parità sono quelle condizioni che rendono il *montante finanziario* del PIV uguale al *valore immobiliare finale*:

$$A = l \rightarrow \alpha (1+i)^n = (1+r)^n \quad [1]$$

Data l'età del mutuatario del PIV, quindi la sua durata attesa (n), l'uguaglianza [1] dipende da tre variabili: α , i, r. Di conseguenza, assegnatene due di esse, sarà possibile ricavare la terza. Con alcuni passaggi algebrici si ricavano le seguenti formule di parità:

- dati i, r: $\alpha^* = (1+r)^n / (1+i)^n \quad [2]$

$$- \text{ dati } \alpha, i: \quad r^* = [\alpha (1+i)^n]^{1/n} - 1 \quad [3]$$

$$- \text{ dati } \alpha, r: \quad i^* = [(1+r)^n / \alpha]^{1/n} - 1 \quad [4]$$

Ad esempio, dall'espressione [2], se si assume un tasso di interesse del PIV uguale al tasso di rivalutazione immobiliare ($i = r$) risulta $\alpha^* = 1$. La banca, in questa ipotesi, potrebbe dunque finanziare il 100% del valore iniziale dell'immobile ipotecato.

Livelli di parità della % finanziata – Nella tabella 5, utilizzando i dati del caso base e la formula [2], sono riportati i livelli di parità α^* della % finanziata.

Tabella 5 – livelli di parità della % finanziata

Input				Output				
Età	n	i	r	α^*	I	A	Y	$\alpha - \alpha^*$
70	14,73	7,01%	0%	36,9%	€ 250.000	€ 250.000	€ 250.000	20,9%
71	14,02	7,01%	0%	38,7%	€ 250.000	€ 250.000	€ 250.000	21,5%
72	13,31	7,01%	0%	40,6%	€ 250.000	€ 250.000	€ 250.000	22,1%
73	12,62	7,01%	0%	42,5%	€ 250.000	€ 250.000	€ 250.000	22,6%
74	11,93	7,01%	0%	44,6%	€ 250.000	€ 250.000	€ 250.000	23,1%
75	11,25	7,01%	0%	46,7%	€ 250.000	€ 250.000	€ 250.000	23,7%
76	10,59	7,01%	0%	48,8%	€ 250.000	€ 250.000	€ 250.000	24,0%
77	9,94	7,01%	0%	51,0%	€ 250.000	€ 250.000	€ 250.000	24,3%
78	9,32	7,01%	0%	53,2%	€ 250.000	€ 250.000	€ 250.000	24,5%
79	8,72	7,01%	0%	55,4%	€ 250.000	€ 250.000	€ 250.000	24,5%
80	8,16	7,01%	0%	57,5%	€ 250.000	€ 250.000	€ 250.000	24,2%
81	7,62	7,01%	0%	59,7%	€ 250.000	€ 250.000	€ 250.000	25,2%
82	7,11	7,01%	0%	61,8%	€ 250.000	€ 250.000	€ 250.000	26,3%
83	6,61	7,01%	0%	63,9%	€ 250.000	€ 250.000	€ 250.000	27,5%
84	6,14	7,01%	0%	66,0%	€ 250.000	€ 250.000	€ 250.000	28,6%
85	5,70	7,01%	0%	68,0%	€ 250.000	€ 250.000	€ 250.000	29,6%
86	5,28	7,01%	0%	69,9%	€ 250.000	€ 250.000	€ 250.000	30,5%
87	4,90	7,01%	0%	71,7%	€ 250.000	€ 250.000	€ 250.000	31,2%
88	4,55	7,01%	0%	73,5%	€ 250.000	€ 250.000	€ 250.000	31,9%
89	4,22	7,01%	0%	75,1%	€ 250.000	€ 250.000	€ 250.000	32,4%
90	3,93	7,01%	0%	76,6%	€ 250.000	€ 250.000	€ 250.000	32,7%
91	3,67	7,01%	0%	78,0%	€ 250.000	€ 250.000	€ 250.000	32,9%
92	3,41	7,01%	0%	79,4%	€ 250.000	€ 250.000	€ 250.000	33,1%
93	3,13	7,01%	0%	80,9%	€ 250.000	€ 250.000	€ 250.000	33,4%
94	2,85	7,01%	0%	82,4%	€ 250.000	€ 250.000	€ 250.000	33,6%
95	2,58	7,01%	0%	84,0%	€ 250.000	€ 250.000	€ 250.000	34,0%

Nell'ultima colonna della tabella 5 è riportata la differenza tra il livello di parità (α^*) della % finanziata e il livello di mercato applicato dalla banca (colonna α della tabella 4). Questa differenza ($\alpha^* - \alpha$) può essere interpretata come una misura del 'grado di prudenza' applicato dalla banca al PIV, a fronte del rischio di ribasso che il valore dell'immobile alla scadenza scenda al di sotto del montante finanziario (di €250.000). Questa differenza risulta elevata, in media del 28%.

Ad esempio, se si considera un proprietario di 70 anni e si ipotizza che l'immobile ipotecato abbia alla scadenza un valore uguale a quello iniziale, in condizioni di parità

la banca potrebbe finanziare un importo di oltre €92.000 (il 37% del valore iniziale dell'immobile) anziché quello di €40.000 effettivamente erogato (il 16% del valore).

Livelli di parità del tasso di rivalutazione immobiliare – Nella tabella 6, utilizzando i dati del caso base e la formula [3], sono illustrati i livelli di parità di parità r^* del tasso di rivalutazione immobiliare.

Tabella 6 – livelli di parità del tasso di rivalutazione immobiliare

Input				Output			
Età	n	i	α	r^*	I	A	Y
70	14,73	7,01%	16,00%	-5,5%	€ 108.505	€ 108.505	€ 108.505
71	14,02	7,01%	17,20%	-5,6%	€ 111.135	€ 111.135	€ 111.135
72	13,31	7,01%	18,50%	-5,7%	€ 113.967	€ 113.967	€ 113.967
73	12,62	7,01%	19,90%	-5,8%	€ 116.961	€ 116.961	€ 116.961
74	11,93	7,01%	21,45%	-5,9%	€ 120.354	€ 120.354	€ 120.354
75	11,25	7,01%	23,00%	-6,1%	€ 123.240	€ 123.240	€ 123.240
76	10,59	7,01%	24,80%	-6,2%	€ 127.013	€ 127.013	€ 127.013
77	9,94	7,01%	26,70%	-6,3%	€ 130.879	€ 130.879	€ 130.879
78	9,32	7,01%	28,70%	-6,4%	€ 134.896	€ 134.896	€ 134.896
79	8,72	7,01%	30,90%	-6,5%	€ 139.498	€ 139.498	€ 139.498
80	8,16	7,01%	33,30%	-6,5%	€ 144.667	€ 144.667	€ 144.667
81	7,62	7,01%	34,50%	-6,9%	€ 144.525	€ 144.525	€ 144.525
82	7,11	7,01%	35,50%	-7,5%	€ 143.654	€ 143.654	€ 143.654
83	6,61	7,01%	36,40%	-8,2%	€ 142.438	€ 142.438	€ 142.438
84	6,14	7,01%	37,40%	-8,8%	€ 141.773	€ 141.773	€ 141.773
85	5,70	7,01%	38,40%	-9,5%	€ 141.222	€ 141.222	€ 141.222
86	5,28	7,01%	39,40%	-10,3%	€ 140.882	€ 140.882	€ 140.882
87	4,90	7,01%	40,50%	-11,0%	€ 141.144	€ 141.144	€ 141.144
88	4,55	7,01%	41,60%	-11,7%	€ 141.580	€ 141.580	€ 141.580
89	4,22	7,01%	42,70%	-12,5%	€ 142.111	€ 142.111	€ 142.111
90	3,93	7,01%	43,90%	-13,2%	€ 143.233	€ 143.233	€ 143.233
91	3,67	7,01%	45,10%	-13,9%	€ 144.559	€ 144.559	€ 144.559
92	3,41	7,01%	46,30%	-14,6%	€ 145.844	€ 145.844	€ 145.844
93	3,13	7,01%	47,50%	-15,6%	€ 146.822	€ 146.822	€ 146.822
94	2,85	7,01%	48,80%	-16,8%	€ 148.026	€ 148.026	€ 148.026
95	2,58	7,01%	50,00%	-18,2%	€ 148.826	€ 148.826	€ 148.826

Ad esempio, nel caso di un proprietario di 70 anni, il valore immobiliare iniziale dovrebbe *dimezzarsi* – svalutarsi ogni anno del 5,5% per 15 anni e in capitalizzazione composta – affinché il montante finanziario sia uguale al valore dell'immobile ipotecato.

Livelli di parità della variabile i: confronto tra stipula del PIV e vendita della nuda proprietà – Nella tabella 7, utilizzando i dati del caso base e la formula [4], sono illustrati i livelli di parità i^* del tasso di interesse. In particolare, per realizzare un confronto tra la stipula del PIV e la vendita della nuda proprietà, la % *finanziata* è stata posta uguale alle percentuali ministeriali di nuda proprietà (riportate nella tabella 2 e nella colonna ' α^{ND} ' della tabella 7).

**Tabella 7 – livelli di parità del tasso di interesse
se la % finanziata è uguale alla % di nuda proprietà**

Input				Output					
Età	n	α^{ND}	r	i^*	I	A	Y	$i-i^*$	$\alpha^{ND}-\alpha$
64	19,35	50,00%	0%	3,65%	€ 250.000	€ 250.000	€ 250.000	-	-
65	18,56	50,00%	0%	3,81%	€ 250.000	€ 250.000	€ 250.000	-	-
66	17,77	50,00%	0%	3,98%	€ 250.000	€ 250.000	€ 250.000	-	-
67	16,98	55,00%	0%	3,58%	€ 250.000	€ 250.000	€ 250.000	-	-
68	16,22	55,00%	0%	3,76%	€ 250.000	€ 250.000	€ 250.000	-	-
69	15,47	55,00%	0%	3,94%	€ 250.000	€ 250.000	€ 250.000	-	-
70	14,73	60,00%	0%	3,53%	€ 250.000	€ 250.000	€ 250.000	3,48%	44,0%
71	14,02	60,00%	0%	3,71%	€ 250.000	€ 250.000	€ 250.000	3,30%	42,8%
72	13,31	60,00%	0%	3,91%	€ 250.000	€ 250.000	€ 250.000	3,10%	41,5%
73	12,62	65,00%	0%	3,47%	€ 250.000	€ 250.000	€ 250.000	3,54%	45,1%
74	11,93	65,00%	0%	3,68%	€ 250.000	€ 250.000	€ 250.000	3,33%	43,6%
75	11,25	65,00%	0%	3,90%	€ 250.000	€ 250.000	€ 250.000	3,11%	42,0%
76	10,59	70,00%	0%	3,43%	€ 250.000	€ 250.000	€ 250.000	3,58%	45,2%
77	9,94	70,00%	0%	3,65%	€ 250.000	€ 250.000	€ 250.000	3,36%	43,3%
78	9,32	70,00%	0%	3,90%	€ 250.000	€ 250.000	€ 250.000	3,11%	41,3%
79	8,72	75,00%	0%	3,35%	€ 250.000	€ 250.000	€ 250.000	3,66%	44,1%
80	8,16	75,00%	0%	3,59%	€ 250.000	€ 250.000	€ 250.000	3,42%	41,7%
81	7,62	75,00%	0%	3,85%	€ 250.000	€ 250.000	€ 250.000	3,16%	40,5%
82	7,11	75,00%	0%	4,13%	€ 250.000	€ 250.000	€ 250.000	2,88%	39,5%
83	6,61	80,00%	0%	3,43%	€ 250.000	€ 250.000	€ 250.000	3,58%	43,6%
84	6,14	80,00%	0%	3,70%	€ 250.000	€ 250.000	€ 250.000	3,31%	42,6%
85	5,70	80,00%	0%	3,99%	€ 250.000	€ 250.000	€ 250.000	3,02%	41,6%
86	5,28	80,00%	0%	4,32%	€ 250.000	€ 250.000	€ 250.000	2,69%	40,6%
87	4,90	85,00%	0%	3,37%	€ 250.000	€ 250.000	€ 250.000	3,64%	44,5%
88	4,55	85,00%	0%	3,63%	€ 250.000	€ 250.000	€ 250.000	3,38%	43,4%
89	4,22	85,00%	0%	3,92%	€ 250.000	€ 250.000	€ 250.000	3,09%	42,3%
90	3,93	85,00%	0%	4,22%	€ 250.000	€ 250.000	€ 250.000	2,79%	41,1%
91	3,67	85,00%	0%	4,53%	€ 250.000	€ 250.000	€ 250.000	2,48%	39,9%
92	3,41	85,00%	0%	4,88%	€ 250.000	€ 250.000	€ 250.000	2,13%	38,7%
93	3,13	90,00%	0%	3,42%	€ 250.000	€ 250.000	€ 250.000	3,59%	42,5%
94	2,85	90,00%	0%	3,76%	€ 250.000	€ 250.000	€ 250.000	3,25%	41,2%
95	2,58	90,00%	0%	4,18%	€ 250.000	€ 250.000	€ 250.000	2,83%	40,0%

Ad esempio, un proprietario di 70 anni, se la banca concedesse il PIV a un tasso di interesse del 3,53% anno (anziché al tasso di mercato del 7,01%), potrebbe ricevere dalla stipula del PIV liquidità un finanziamento di € 150.000, uguale all'importo che otterrebbe dalla vendita della nuda proprietà della sua casa (ma, nel caso del PIV, rimandandone proprietario!).

Una possibile soluzione: il PIV agevolato – Si è detto in precedenza che il basso capitale iniziale del PIV (rispetto al valore dell'immobile) e l'elevato tasso di interesse (rispetto a quelli applicati ai mutui ordinari) compromettono l'appetibilità del PIV,

anche rispetto alla vendita della nuda proprietà. I risultati dell'analisi di parità potrebbero consentire di superare questo problema.

Infatti, a partire dai risultati riportati nella tabella 7, si potrebbe immaginare la creazione di un nuovo prestito vitalizio, denominato 'PIV agevolato', offerto dalle banche e assistito da un aiuto pubblico, e costruito secondo uno schema contrattuale e finanziario standardizzato, opportunamente definito tra Stato e sistema del credito. In particolare:

- le banche potrebbero offrire un PIV con un capitale iniziale uguale all'importo ottenibile dalla vendita della nuda proprietà e con un tasso di interesse uguale al suo livello di parità;
- lo Stato potrebbe assistere questo PIV con (i) un contributo in conto interesse, uguale alla differenza tra tasso di interesse di mercato e livello di parità, e (ii) concedendo alle banche una garanzia a copertura del rischio che il valore finale dell'immobile sia minore del montante finanziario del PIV.

Ad esempio, per un proprietario di 70 anni, il tasso di parità (agevolato) sarebbe del 3,53%, il contributo pubblico in conto interesse del 3,48% e la garanzia statale coprirebbe il rischio che, dopo circa 15 anni, l'immobile ipotecato abbia un valore minore di €250.000.

Un prodotto così costruito potrebbe essere ben accolto da tutti i soggetti coinvolti nell'operazione (proprietario anziano, eredi, banche, Stato). Infatti:

- il proprietario immobiliare anziano vedrebbe soddisfatta la sua esigenza di ricevere una liquidità elevata, perché stipulando il PIV otterrebbe lo stesso importo che avrebbe dalla vendita della nuda proprietà del suo immobile;
- gli eredi, alla scadenza del PIV, avrebbero la possibilità di riscattare l'immobile a condizioni finanziarie più vantaggiose rispetto a quelle di mercato, essendo il montante finanziario calcolato al tasso agevolato, più basso di quello calcolato al tasso di mercato;
- la banca si troverebbe in una situazione di indifferenza economica ma potrebbe migliorare il suo ruolo sociale e la sua reputazione che, almeno in questa fase storica, appaiono fortemente compromessi;
- lo Stato potrebbe utilizzare lo strumento della garanzia a favore della terza età, in modo analogo a quanto già fatto per fornire aiuti ad altri settori (si pensi, ad esempio, alla garanzia a favore degli investimenti nelle piccole e medie imprese italiane o anche, a livello europeo, alle garanzie statali post-crisi offerte dagli Stati membri a sostegno delle banche nazionali in difficoltà); e questo tipo di intervento, secondo le regole europee, non avrebbe effetti sui vincoli di finanza pubblica.

Più in generale, la proposta di un *PIV agevolato* potrebbe avviare la nascita di nuovi strumenti di *finanza sociale*, tra Mercato e Stato.

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