The Bekaert case: a story of delocalization, struggle and legal remedies in the Italian industrial province

Giulia Frosecchi, PhD Candidate, University of Trento.

The Bekaert bubble exploded on 22nd June 2013, in the – less and less – industrial district of Figline Valdarno, a small town in the Florence province (Italy). On that day, 318 employees, most of which breadwinners of families with substantial bank loans, received an unexpected visit from the managers of the Belgian multinational steel company, who, surrounded by security-guards and supported by an incredulous translator, came all the way to the Arno Valley to suddenly announce that the closure of the Figline plant was planned for 3rd September 2018 and the still cord production (initiated thanks to the Figline industrial development department) was going to be moved to an Easter European country, as soon as possible.

It is worth addressing this story mainly from three perspectives: the delocalization practices and respective Italian legal remedies; the industrial conflict; the social shock absorbers.

It is well known that delocalization practices are a sensitive issue especially within the European Union, given the freedom of establishment recognised by the EU Treaties, which eliminates any restriction to the companies that move the production from an EU Member State to another. Therefore, national Governments do not enjoy a wide margin of intervention when it comes to defend productivity and the employment levels within the State.

However, in Italy, as in other EU countries, the legislator has attempted to restrain the delocalization practices, in compliance with the EU legislation. The so called *Decreto Dignità* (Decree Law 87/2018, converted with amendments into Law 96/ 2018) has recently intervened, *inter alia*, on delocalization, by reforming the pre-existing legal framework. Art. 5(1) provides that Italian or foreign companies that have benefited from State aid, on the grounds of productive investments, loose the benefits if they delocalize in countries not belonging to the EU, nor to the European Economic Area (EEA), before 5 years have passed. An administrative sanction is also applied. The second paragraph of Art. 5 states that the same sanctioning mechanism is applicable to companies that have benefited from subsidies aimed to support specific local investments and move the business, or part of it, outside of the original territorial scope (hence, whether in Italy or in EU and EEA countries).

Delocalization is broadly defined as "the relocation of an economic activity, or a part of it, from the productive site which has received the State aid to another site, decided by the beneficiary company or by a controlled or connected company" (Art. 5(6), Decree Law 87/2018).

We can observe that, at present, for the Italian legislation, the State aid is a definitional element of *delocalization*. Which leads to conclude that where the State does not provide subsidies to the company, the choice of moving the production to a different area and/or a country, not only, is not subject to sanctions, but it does not constitute a delocalization, either. In particular, the *Decreto Dignità* norms are applicable only to companies that have received the State aid after their entry into force. Indeed, the previous legal framework on delocalization was set by the Stability Law for 2014, which linked the revocation of the benefits and the administrative sanction to a consistent decrease in the employment levels (a criteria not adopted by the *Decreto Dignità*).

The company at issue had not received any State aid (nor after the entry into force of Decree Law 87/2018, neither before). Therefore, the mentioned reforms would have not been applicable to the case at stake and in any case, the Italian Government could have not discouraged Bekaert from delocalizing the still cord production to neither an EU country, nor an extra-EU country, precisely because the Italian provisions aimed to discourage the business relocation are all based upon the fact of having benefited from State aid. To the point that the Bekaert decision to move the still cord production to an eastern European country cannot even be defined as *delocalization*, under Italian law.

A second relevant aspect of the Beakert approach is the infringement by the company of the obligatory procedures for collective redundancies. Indeed, Law 223/1991 (Artt. 4 and 5) provides for a collective redundancy procedure, which begins with the written notice sent to the relevant trade unions, as well as workers' representative bodies at company level. This document shall include a series of detailed information, regarding, for instance, the economic, production and organizational reasons that shall justify the redundancy and a generic indication of the positions concerned. The parties have 45 days to come to an agreement autonomously. Otherwise, the Law provides for 30 additional days to reach an agreement with the mediation of public administrative bodies. In case the agreement is reached, the parties can set the criteria to proceed with the collective redundancy. To the contrary, once the 75 days have passed and the parties have not concluded an agreement the company can proceed with dismissals, by respective given criteria provided for by Law 223/1991.

In case the company does not respect the procedure set by law, either completely or partially, each worker can appeal against the individual dismissal (imposed within the collective redundancy). Therefore, the remedies are the same as for individual unfair dismissals. In practice, in the Bekaert case, to challenge the unfair dismissals would have not hampered, in any case, the closure of the Figline Valdarno plant and, in the very best case, the workers would have been reintegrated in the other Bekaert's plant based in a different, and distant, region (a paradoxical "solution", anyway applicable only to workers hired before 7 March 2015).

Against this background, the workers had two options: bring the company before the Court to force it to respect the collective redundancy procedures (which, however, would have not had an impact on the closure

of the plant and eventual dismissal of the 318 workers) or initiate a political struggle to gain time and find a way to reindustrialize the site and secure employment. FILM-CISL, FIOM-CGIL and UILM, that is the trade unions elected in the trade union's representative bodies within the company (RSU), following a number of assemblies with the Bekaert workers, decided to proceed with a political pressure strategy addressed to the Government, with the aim to force it to support the reindustrialization of the site and the to save the employment positions, which would have required a collaborative attitude from the company, as well.

After numerous collective actions addressed to both the company and the Government, and thanks to the significant support of the local communities, the workers achieved two objectives: the possibility to benefit from a wage support system analogous the the CIGS (*Cassa Integrazione Guadagni Straordinaria*), which have been repealed by the Jobs Act, for one year and – linked to that - an agreement between the trade unions, the Ministry of economic development and Bekaert to favour the reindustrialization of the site, consistently with the workers' competences and qualifications.

On 28th September 2018, the Italian Government has approved, via urgent legislative procedure, Decree Law 109/2018 to address a number of emergencies, first of all the disaster caused by the collapse of Genoa bridge, known as *Decreto Genova*. The Bekaert workers' struggle pushed the Government to include in the emergency Decree a provision which has the potential to support hundreds of workers all over Italy for the next couple of years. Indeed, Art. 44 of *Decreto Genova* establishes that, for the years 2019 and 2020, an extraordinary wage guarantee instrument can be activated, for a maximum of 12 months, in case a company ceases its business and there are "concrete perspectives to divest the business and reintegrate the employees", or "to reindustrialize the production site" or to activate "specific active labour market policies".

The prerequisite for activating the income protection mechanism is the conclusion of an agreement at the Ministry of Labour and Social Policies, with the presence of the Ministry for Economic Development and the Region concerned.

On 2nd October 2018, FILM-CISL, FIOM-CGIL and UILM have concluded an agreement with Bekaert at the Ministry of Labour and Social Policies, in light of Art. 44, Law 109/2018. The agreement sets the closure of the plant at 31st December 2018. Since then, the workers will benefit from the extraordinary wage support, for one year. During this time, the company has agreed in providing economic incentives to either the reindustrialization of the production site, or the re-employment of the concerned workers in other companies.

The workers struggle goes on to make sure that the first objective is achieved: the reindustrialization of the site and the reintegration of the workers, consistently with the contractual qualifications achieved.