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Cooperative work for persons with disabilities: the Italian case in the light of the Sixth Principle of International cooperation*

Contents: **1.** The research question. **2.** The Italian case: facts and rules on employment vulnerability of persons with disabilities. **3.** The “Biagi reform”: labour inclusion within social cooperatives. **4.** “Cooperation among Cooperatives”, and more: a tool for Sustainable Development. **5.** Closing remarks.

1. *The research question*

The concept of sustainability comes from the environmental dimension, and moves to sustainable development, which includes a social character¹. Sustainable development cannot be separated from the design of inclusive environments², because they both represent the “Just transition”³.

An in-depth analysis of the UN “2030 Agenda for Sustainable Devel-

* In this paper, which deepens my speech at the *20th International Conference in commemoration of Prof. Marco Biagi* (March 17, 2022, University of Modena), I translated by myself all the Law and Scholars’ contributions not originally available in English.

¹ According to PERULLI, SPEZIALE, *Dieci tesi sul diritto del lavoro*, il Mulino, 2022, p. 111, “the concept of sustainability is expressed by the ability of a company (or, more generally, of a community) to carry out its activities, in a long-term perspective, taking into consideration the impact they have on natural resources, on and social and human capital”. In the awareness of an endless debate on sustainability, please refer to them at least, for the extensive international recognition, and doctrinal references.

² GRECH, *Disability, poverty and development: critical reflections on the majority world debate*, D&S, 2009, 24, p. 771.

³ On the proposal of a “Just Transitions Law (JTL)”, combining “insights from environmental law, environmental justice, and labour law”, see DOOREY, *Just Transitions Law: Putting Labour Law to Work on Climate Change*, in *JELP*, 2017, 30, p. 206.

opment”⁴ shows the relationship between environmental sustainability and decent work, especially for the most vulnerable categories of workers⁵. By this, the Goal (no. 8 – spec. 8.5 – of the UN Agenda) takes on an (even more) relevant meaning of promoting “sustained, inclusive, and sustainable economic grow [...] and decent work for all, [especially for] persons with disabilities”.

Moreover, the link between the environmental development and a fair working context is evident in the current (re-)definition of disability⁶. Due to the shift of the concept of equality “from the formal, to the substantive level”⁷, this personal characteristic “must no longer be interpreted from the medical perspective, but from the relational one”⁸, considering the relationship among impairments, and environmental, economic, and social barriers that “may hinder [his/her] full and effective participation in society on an equal basis with others” (Art. 1, par. 2, UN Convention on the Rights of Persons with Disabilities).

The pandemic hit people and companies hard, with tragic effects on the labour market. This is a social issue that all countries are still addressing: a huge amount of resources were mobilized within the framework of the European Green Deal⁹, and by the “Next Generation EU” investment programs, to fight inequalities¹⁰.

A “human-centered, inclusive, sustainable and resilient recovery” is a need for all and, in particular, for people, who, due to their characteristics,

⁴ UNITED NATIONS, *Transforming our world: the 2030 Agenda for Sustainable Development*, 2015, <https://sdgs.un.org>.

⁵ INTERNATIONAL LABOUR ORGANIZATION, *World employment social outlook 2018. Greening with jobs*, 2018, p. 15, <https://www.ilo.org>.

⁶ On this point, from a medical perspective, see the transition from WORLD HEALTH ORGANIZATION, *International Classification of Impairments, Disabilities and Handicap*, 1980, <https://www.who.int>, to WORLD HEALTH ORGANIZATION, *International Classification of Functioning, Disability and Health*, 2001 <https://www.who.int>. For the legal embrace of this new approach, see UNITED NATIONS, *Convention on the Rights of Persons with Disability*, 2006, <https://sdgs.un.org>.

⁷ GAROFALO D., *La tutela del lavoratore disabile nel prisma degli accomodamenti ragionevoli*, *ADL*, 2019, 6, p. 35.

⁸ MALZANI, *Inidoneità alla mansione e soluzioni ragionevoli, oltre il repêchage*, *ADL*, 2020, 4, p. 966.

⁹ EUROPEAN COMMISSION, *The European Green Deal*, 2019 <https://eur-lex.europa.eu>.

¹⁰ Indeed, according to JENDROSKA, REESE, SQUINTANI, *Towards a new legal framework for sustainability under the European Green Deal*, in *OSAL*, 2021, 2, p. 89, these resources are not only a tool to achieve a full ecological transition, but also a lever a lever to ensure equal opportunities.

are at risk of being progressively (more) excluded from the labour market¹¹. Indeed, eight years after the adoption of the UN Agenda for Sustainable Development, the goal of a world where “no one (is left) behind” is still far from being achieved: many institutional reports on the employment levels of persons with disabilities show that they are positioned at the margins of the labour market, with low levels of social protection¹².

From this point of view, the Italian case appears emblematic¹³. Italy holds the lowest “disability employment gap”¹⁴ in EU (14.9 p.p., compared to 24.4 p.p. on average in the 27 EU Member States). On one hand, it can be observed that the general employment rate is low; on the other hand, the Italian legal system provides for a mechanism that shows a good performance in the collaboration between enterprises and social cooperatives. It is worth sharing this Italian best practice to fight the risk of exclusion from the labour market of persons with disabilities because it is useful to “facilitate the efficient exchange of best practices from experiences carried out at national level”¹⁵.

Moreover, the Italian legal system allows for the development of a further mechanism, drawing on the “Sixth Principle of the Statement on the Cooperative Identity”¹⁶. It states that “cooperatives serve their members most

¹¹ The call to action for a “human-centred, inclusive, sustainable and resilient recovery”, agreed upon by the 187 ILO Member States at the International Labour Conference on June 3, 2021, is based on the knowledge that the pandemic contingency “has hit vulnerable people hardest and increased poverty and social inequalities”.

¹² For an international comparison, see INTERNATIONAL LABOUR ORGANIZATION, *Advancing social justice. Promoting decent work. Disability and work*, 2023, <https://www.ilo.org>.

¹³ EUROPEAN DISABILITY FORUM, *European Human Rights Report. Issue no. 7 – 2023. The right to work: the employment situation of persons with disabilities in Europe*, 2023, p. 31, <https://www.edf-feph.org>, shows that, among the EU countries, Italy is not in the worst situation in terms of labour inclusion of persons with disability; other countries – such as Spain, which has a legal system of inclusion comparable to the Italian one – is even further behind.

¹⁴ The “disability employment gap” shows the gap between the employment of persons with disabilities and the employment of persons without disabilities

¹⁵ BIAGI, *Cambiare le relazioni industriali. Considerazioni a margine del Rapporto del Gruppo di Alto Livello sulle relazioni industriali e il cambiamento nella Unione europea*, ADAPT, 2002, 5, p. 18.

¹⁶ The “Statement on the Cooperative Identity” has been recognized by the International Cooperative Alliance at the XXIII Vienna Congress in 1966. For an overview of Principles of the Cooperative Identity see INTERNATIONAL COOPERATIVE ALLIANCE, *Cooperative identity, values, and principles*, 2002, <https://www.ica.coop> and, on their implementation within the Italian legal system, VERRUCOLI, *I «principi» dell'Alleanza Cooperativa Internazionale e la loro applicazione nella legislazione italiana*, in RDC, 1980, p. 5.

effectively and strengthen the cooperative movement by working together through local, national, regional and international structures”. By this, the “Cooperation among Cooperatives” has been elevated from a practice traditionally followed by cooperative movement to a principle of their identity, for the achievement of greater efficiency, building a (even intersectoral) network, inspired by common ideological foundations¹⁷.

Focusing on the Italian legal system, this paper aims to investigate: *A*) which is the situation of persons with disabilities in the labour market; *B*) how working in a social cooperative helps them to better their situation; *C*) exploring the Sixth Principle, understanding collaboration between social cooperatives, to combine labour inclusion of persons with disabilities, and sustainability for all. Alongside the analysis of the Italian case, the paper will *D*) add some insights to the international debate international debate, on inclusive, and sustainable development.

2. *The Italian case: facts and rules on employment vulnerability of persons with disabilities*

The Italian system of support for “targeted placement” of persons with disabilities provides for a framework of obligations, incentives, and sanctions, under Law No. 68/1999¹⁸.

Public and private employers must recruit workers with disabilities, in proportion to their employment size. The minimum rate is one (for small companies, up to 30 employees), and the maximum is 7 p.p. of the workforce (for companies with 51 employees)¹⁹. The aim is to guarantee the “right to

¹⁷ FICI, *L'identità delle società cooperative, i Principi dell'Alleanza Cooperativa Internazionale e le legislazioni nazionali europee*, in RDS, 2012, p. 2, who suggest that “working together” means that – “even if each cooperative achieves positive results on its own” – each one “should try to develop the benefits on a larger scale, collaborating with each other in the most suitable forms”, while maintaining the advantages of territorial rootedness.

¹⁸ In the Italian legal system, the “targeted placement” means labour inclusion of persons with disability, with the aim of the best match between the worker’s skills and the job to be filled. On this topic, see completely RICCARDI, *Disabilità e lavoro*, Cacucci, 2018, and her literature review.

¹⁹ In particular, the Italian legal system – like other European legal systems (such as, for example, the Spanish one) – provides that “public and private employers are required to [employ workers with disability on their payroll, in an amount equal to]: a) seven per cent of the workers

work of the persons with disabilities”, and the ambition is “to adequately assess persons with disabilities in their working capacities, and to place them in the appropriate place” (Art. 2, Law no. 68/1999).

Sanctions are associated with that obligation. The legislator has recently increased them. If the employer fails to cover the “quota” reserved for persons with disabilities, Art. 15, Law no. 68/1999 provides for sanctions for each working day of non-employment, setting up the amount at five times the expected contribution exemption provided for by Art. 5²⁰; since, with the recent adjustment of the amount of the exemption contribution (according to Ministerial Decree no. 193/2021), the penalty system for non-compliant employers has been aggravated²¹.

Originally, the legal system for the labour inclusion of persons with disabilities required the employer to declare the public employment service the number and the tasks of workers to be employed, up to 7 p.p. of the workforce. The public service would find workers, pick them in a special list, and match them with the employer.

This system was abolished in 2015²²: now, the employer can choose the person with disabilities to be employed. This seems to have lightened the employer’s obligation. While it may be a better solution for employers, on the contrary, for workers (and those seeking employment), it seems to have “legitimized an escape way to evade the recruitment obligation”²³, to the detriment of the most severe forms of disability.

But recruitment is still very problematic due to difficulties in placing persons with disabilities in the plant²⁴. Especially in cases of mental disabil-

employed, if they employ more than 50 workers; b) two workers, if they employ between 36 and 50 workers; c) one worker, if they employ between 15 and 35 workers” (Art. 3, par. 1, l. no. 68/1999).

²⁰ Art. 5, l. no. 68/1999 establishes that “companies that, due to the special conditions of their activity, cannot employ the full quota reserved for persons with disability, may be partially exempted from the recruitment obligation [if they pay] an exemption contribution for each person not employed”.

²¹ With the rise of the amount of the exemption contribution to EUR 39.61, the penalty for each failure to hire becomes EUR 196.05 per day and, when multiplied by 260 working days, reaches EUR 50,973.00 per year.

²² See the amendments to Art. 7, par. 1, l. no. 68/1999 provided for by Art. 6, d.lgs. no. 151/2015.

²³ DI STASI, *Il diritto al lavoro dei disabili e le aspettative tradite del “collocamento mirato”*, in *ADL*, 2013, 4-5, p. 888.

²⁴ Although direct recruitment allows an immediate integration of the person with dis-

ities, employment requires (in addition to *the adaptation of the company to the person with disabilities*, also) *the adaptation of the person with disabilities to the company*, becoming a reason for further frustration, rather than an opportunity for fulfilment.

The most recent national reports testify that disability is still perceived as a personal characteristic that hinders a “targeted placement” useful to the needs of employers²⁵. Due to an (alleged) lowered productivity, persons with disabilities are placed on the fringes of the labour market. Even more, in the rare cases in which they are employed²⁶, they are assigned to less relevant tasks for the company’s production purposes, with lower remuneration, and precarious working conditions²⁷.

As mentioned above, the issue seems to be even more critical when disabilities are physical or mental²⁸. In these cases, the discomfort suffered by the person limits his/her chances of being included within the labour market, and, even if he/she has a job, it significantly reduces the possibilities of maintaining employment²⁹.

ability into the labour market, MALZANI, *Benessere e sicurezza dei lavoratori*, in *VTDL*, 2020, 4, p. 980, affirms that this perspective presupposes “the design of an organization aimed at the well-being – and not only at remedying or combating discrimination already perpetrated – of the person with disability”.

²⁵ For an investigation on the employment conditions of persons with disability, please refer to DE FALCO, *Il diritto al lavoro delle persone con disabilità: alla ricerca della “persona giusta al posto giusto”*, in *LG*, 2022, 4, p. 380, and references included therein.

²⁶ Looking forward to the next update, ISTAT, *Rapporto annuale 2022. La situazione del Paese*, 2022, p. 262, <https://www.istat.it>, remarked that “in the 2020–2021 average, the share of employed people aged 15–64 with disability is half of that observed in the population without limitations: only one third of the first ones is employed” to the advantage of unemployment and, above all, inactivity.

²⁷ FONDAZIONE STUDI CONSULENTI DEL LAVORO, *L’inclusione lavorativa delle persone con disabilità in Italia*, 2019, p. 8, <https://www.consulentidellavoro.it>.

²⁸ The surveys mentioned by UNITED NATIONS, *Conference of States Parties to the Convention on the Rights of Persons with Disabilities. Economic empowerment and Entrepreneurship of Persons with Disabilities*, 2022, <https://www.un.org>, agree that persons with mental or intellectual disability, on average, get a remuneration (often below 50% of the national minimum wage) equal to only 25% of the salary of people without limitations employed in the same task.

²⁹ Although d.lgs. no. 151/2015 extended the “targeted placement” also to persons with mental disability [Art. 2, amending Art. 1, par. 1, let. a), l. no. 68/1999], even providing new incentives for their recruitment (Art. 10, modifying Art. 13, l. no. 68/1999), the job placement remained almost impossible, in the comparison between physical and psychological disability (see the Evaluation Document *Disabili psichici e inserimento lavorativo: un percorso di ricerca*, 2017, <https://www.senato.it>).

Moreover, it should be noted that the unequal treatment experienced by persons with disability in the labour market involves a redundancy that falls overwhelmingly not only on their economic condition, but also on the family sphere (already weighed down by the burdens of care and assistance³⁰), as well as on the sustainability of the whole national welfare system.

In this scenario, the 2020–2022 pandemic acted as a magnifying glass for known (but normally low observed) issues. In Italy, as well as in other countries, the spread of the virus has worsened the condition of persons with disability, contributing to slowing down their (already complicated) access to the labour market³¹. Although specific leaves³² and measures designed to combine health and employment protection³³ have been foreseen, most persons with disability could not access them, due to their unemployment.

In front of these perspectives, where “few lights shine and many shadows fall”³⁴, there are timid encouraging signs, resulting from the growing attention given to the issue of social inclusion.

On the one hand, the National Recovery and Resilience Plan (NRRP) has recognized the disability as a “transversal priority”, to which huge investments will have to be destined, in order to “ensure suitable social and working conditions for persons with disability throughout the country”³⁵.

³⁰ TIRABOSCHI, *Occupabilità, lavoro e tutele delle persone con malattie croniche*, ADAPT Labour Studies e-book, 2015, p. 682.

³¹ GIOVANNONE, *Il collocamento dei disabili nel mercato del lavoro post-emergenziale: criticità e prospettive*, in *Federalismi.it*, 2021, 10, p. 113. For an international overview, see the empirical research conducted by LEONARD CHESHIRE, *Locked out of the labour market: the impact of COVID-19 on disabled adults in accessing good work, now and into the future*, 2020, (<https://www.leonardcheshire.org>), which shows that 42% of employers surveyed were discouraged from hiring persons with disability due to prejudices related to their needs during the pandemic.

³² LAMONACA, *L'estensione della durata dei permessi retribuiti ex art. 33, L. n. 104/1992, e gli altri istituti di supporto dell'assistenza ai disabili in condizione di gravità*, FILI, *Covid-19 e rapporto di lavoro*, in GAROFALO D., TIRABOSCHI, FILI, SEGHEZZI (eds), *Welfare e lavoro nella emergenza epidemiologica*, ADAPT University Press, 2020, p. 261.

³³ The reference is to “telework”, on which refer at least to BROLLO, *Lavoro agile per i lavoratori fragili: lezioni dalla pandemia...*, in *ADL*, 2022, 3, p. 405, and ZILLI, *Il lavoro agile come “acomodamento ragionevole”*, *fra tutela della salute, diritto al lavoro e libertà di organizzazione d'impresa*, in *Labor*, 2020, 4, p. 531.

³⁴ GRIFFO, *La L. n. 68/1999, un bilancio vent'anni dopo*, in BRUZZONE (ed), *Salute e persona: nella formazione, nel lavoro e nel welfare. Multidisciplinarietà e logiche condivise*, ADAPT University Press, 2017, p. 19.

³⁵ The job placement of persons with disability is of particular importance in the frame-

Among the main reforms planned therein³⁶, it is worth emphasizing the provision of the “Disability Framework Law” (provided by Law no. 227/2021³⁷), for the reformulation of Italian legislation, to make it as adherent as possible to the principles sanctioned at international and European level³⁸.

Moreover, with the approval of Italian *NRRP*, an essential role in the implementation and monitoring of investments for equal opportunities was attributed to the “National Observatory on the condition of persons with disability” (established by Law no. 18/2009), entrusting it the task of verifying the effectiveness of the reforms envisaged in the Plan³⁹.

On the other hand, it is necessary to mention the recent “Guidelines on the targeted placement of persons with disability” (Ministerial Decree no. 43/2022)⁴⁰, published on March 16, 2022. This document aims to support the application of Law no. 68/1999 on different Italian areas, introducing “a system of evaluation of the policies promoted by the Regional Administrations, which considers the potential impact on the world of disability of the measures provided, [and] interpreting work not only in terms of equity, but also in terms of economic growth”.

The goal is to consolidate “a path of collaboration [...] oriented towards a more efficient and organic system of labour inclusion throughout the country”, able to strengthen public services, in the perspective of their “continuous improvement”⁴¹.

work of the “National Programme for the Employability Guarantee of Workers” (Mission 5, Component 1, p. 202, *NRRP*), as a “national programme of caretaking, provision of specific services and customised vocational planning”.

³⁶ See GAROFALO D., *Gli interventi sul mercato del lavoro nel prisma del PNRR*, in *DRI*, 2022, I, p. 114.

³⁷ Please refer to DE FALCO, *Ragionando attorno alla L. delega in materia di disabilità: una prospettiva giuslavoristica*, in *RCP*, 2022, 5, p. 1738.

³⁸ The main reference is to the mentioned UN Convention on the “Rights of persons with disabilities”, ratified by Italy, ex l. no. 18/2009. At European level, please refer lastly to the European Commission Communication of March 2021, which includes the “Strategy for the right of persons with disabilities 2021–2030”.

³⁹ On this point, please refer to the Italian Labour Minister “Directive to the Administrations in charge of projects, reforms, and measures in the field of disability” (Decree February 9, 2022): it is a guideline document, aimed at valuing disability in the interventions planned under the *NRRP*, to allow the Administrations to verify – *ex ante*, *in fieri* and *ex post* – that each reform contemplated by the Plan has an inclusive and non-discriminatory character.

⁴⁰ Please refer to DE FALCO, *Linee guida in materia di collocamento mirato delle (e per le) persone con disabilità*, in *Boll. ADAPT*, March 28, 2022, no. 12.

⁴¹ On the presentation of the Guidelines, it was also introduced the “Targeted Placement

These actions are welcome because no one – *companies, government, and society as a whole* – wants persons with disability to remain on the sidelines of the labour market. However, it is necessary to be aware that *no measure* is sufficient on its own, and that *all measures* are (not only useful, but) indispensable for a serious, lasting, and inclusive recovery after the pandemic.

3. The “Biagi reform”: labour inclusion within social cooperatives

To overcome the problems in recruitment, the national legal system allows *alternative paths*, which are designed to balance the productive interests of the employer and the needs of the worker⁴². Law no. 68/1999 has allowed agreements among companies, in which the employer: *A*) employs a person with disabilities and transfers him/her to another company if the person cannot be included in the plant (Art. 12); *B*) agrees to postpone the coverage of the mandatory quota until the end of the Agreement, while the person with disabilities is working in another company, which is under contract with the required one (Art. 12-*bis*)⁴³.

These types of job placement accompany persons with disabilities towards a (work) environment suited to their characteristics, also allowing the employer to fulfil the coverage of the mandatory quota. The mechanism is useful, but the requirement of equal pay for all workers (*without* and *with* disabilities) does not encourage the placement⁴⁴.

Database”, which intends collect all the information on the Labour inclusion of persons with disability, to simplify the fulfilments, strengthen the controls, and improve the monitoring and the evaluation of the measures provided for by l. 68/1999. In this regard, the Guidelines reiterate the “importance of systemic data management, the constant updating of information flows and the development of application collaboration oriented towards full interoperability between the reference systems on disability”.

⁴² In this direction, “the solidarity that everyone is now rediscovering must be looked for with the individual scruple to benefit from what one is entitled to and not to abuse or give an idea of abuse” (MISCIONE, *Il Diritto del lavoro ai tempi orribili del coronavirus*, in *LG*, 2020, 4, p. 323).

⁴³ On this topic, see widely GAROFALO D., *L’inserimento e l’integrazione lavorativa dei disabili tramite convenzione*, in *RDSS*, 2010, 2, p. 231.

⁴⁴ For an extensive comparison of the different models, see the recent study carried out by BORZAGA M., MAZZETTI, *Le forme di sostegno all’instaurazione di rapporti tra imprese e cooperative*

The so-called “Biagi reform” (Legislative Decree n. 276/2003) seems to be very relevant on this side. Specifically, Art. 14, Legislative Decree no. 276/2003 entrusts the promotion of work inclusion to the “Framework Agreement on a territorial basis”, granted by the Regions⁴⁵. The stipulation of this “normative accord”⁴⁶ is entrusted to the employment public services, after consultation with the technical committee⁴⁷, and the “most representative trade unions of employers and employees at the national level”, as well as the “associations representing, assisting and protecting cooperatives” [Art. 1, par. 1, let. b), Law no. 381/1991] “and their consortia” (Art. 8, Law no. 381/1991”).

Through the signing of this Framework Agreement, it is stipulated that the “social cooperative for the employment of disadvantaged people”⁴⁸ recruits the worker in place of the company obliged to employ; in return, the latter assigns work orders to the social cooperative⁴⁹, proportionate to the cost of staff included therein, for the entire duration of the contract⁵⁰. It means that the person with disabilities can lawfully be paid less.

sociali di tipo B: gli artt. 12 e 12-bis della legge n. 68/1999 e l'art. 14 del d.lgs. n. 276/2003, in BORZAGA C., BORZAGA M. (eds), *Inserimento lavorativo e contratto di rete*, il Mulino, 2023, p. 111.

⁴⁵ On the profitable involvement of the public actor, see NOGLER, BEGHINI, *La lenta marcia verso le convenzioni per l'inserimento lavorativo dei disabili*, in *ISoc.*, 2006, 1, p. 130.

⁴⁶ The Framework Agreement is defined in these terms by TURSI, *Cooperative sociali e inserimento dei lavoratori svantaggiati*, in Vv.AA. (eds), *Come cambia il mercato del lavoro*, Ipsoa, 2004, p. 71, as it sets “rules, conditions and modalities, with which subsequent contracts must comply”.

⁴⁷ The reference is to the entity provided for by Art. 6, par. 3, d.lgs. no. 496/1997, as amended by Art. 6, par. 2, let. b), l. no. 68/1999.

⁴⁸ In the Italian legal system, “social cooperatives for the employment of disadvantaged people” – as a *species* of the cooperative *genus* [provided for in Art. 1, let. b), l. no. 381/1991] – are legal entities obliged by the internal regulation to employ at least 30% of persons in a particular situation of the disadvantage, under Art. 4, l. no. 381/1991. For an overview of the discipline of social cooperatives, see FERLUGA, *Il lavoro nelle cooperative sociali*, in *VTDL*, 2019, 5, p. 1711.

⁴⁹ TIMELLINI, *La tutela dei lavoratori svantaggiati: il raccordo pubblico-privato e le cooperative sociali*, in GALATINO (ed), *La riforma del mercato del lavoro*, Giappichelli, 2004, p. 148, interprets Art. 14, d.lgs. no. 276/2003 as “a bet on social cooperatives”.

⁵⁰ RICCARDI, *cit.*, p. 219. For a full examination of the tool, as well as for the value of the work order and its method of quantification, see also SLATAPER, *Le convenzioni con le cooperative sociali per favorire l'inserimento dei soggetti svantaggiati*, MISCIONE, RICCI, *Organizzazione e disciplina del mercato del lavoro*, in CARINCI F. (ed), *Commentario al d.lgs. 10 settembre 2003, n. 276*, Ipsoa, 2004, p. 300.

Moving from its heading (“Social cooperatives and job integration of *disadvantaged people*”⁵¹), it is possible to understand that Art. 14 of the 2003 Biagi reform is aimed at a wider audience than that identified by Law no. 68/1999, addressing (not only persons with disabilities but also) “any person [...] who has difficulty entering the labour market without assistance”⁵². However, this manifestation of the intention to incorporate the redefinition of disability⁵³ clashes with the absence, in the Italian legal system, of a recruitment obligation expressly provided for all “disadvantaged people”⁵⁴; indeed, their labour inclusion could be facilitated only if their employment is encouraged by (economic or normative) incentives at the regional level⁵⁵.

Instead, regarding persons with disabilities, the integration into the social cooperative “is considered useful for the coverage of the mandatory quota” of the burdened companies (Art. 14, par. 3, Legislative Decree no. 276/2003). For this purpose, Framework Agreements concerning “workers with disabilities” require the specification of the maximum limit of the coverage that can be achieved with it [Art. 14, par. 2, let. g), Legislative Decree no. 276/2003], to ensure that the recruitment obligation provided for by Law no. 68/1999 is met⁵⁶. The Law neither clarifies the nature, and the type of

⁵¹ L. no. 76/2020 (by converting d.l. no. 137/2020) has modified the title of Art. 14, d.lgs. no. 276/2003 into “Social enterprises, social cooperatives and job integration of disadvantaged people”, extending the possibility to sign a Framework Agreements also to social enterprises regulated by d.lgs. no. 112/2017.

⁵² See the reference made by Art. 2, let. k), d.lgs. no. 276/2003 to Art. 2, let. f), EC Regulation no. 2204/2002 on State aid for employment, then in force, which identifies additional “categories” of social disadvantage to those referred to in Art. 4, l. no. 381/1991 (which also went beyond the sphere of disability *stricto sensu*).

⁵³ See above, Par. 1.

⁵⁴ Regarding employers, SARTORI, *Le cooperative sociali. Profili giuslavoristici*, in *VTDL*, 2017, 2, p. 456, claims that “it is legitimate to ask why they should confer for subjects not included among the person with disability [...], since only for the latter is the computation provided for in the quota *ex l. 68/1999*”.

⁵⁵ On the assumption that the disadvantaged people excluded in Art. 4, l. no. 381/1991 can neither be counted by social cooperatives in the 30% useful to be included in the category, nor allow them to benefit from the tax relief provided by the same law, BORZAGA C., *Cooperazione sociale e inserimento lavorativo: il contributo dell'analisi economica*, in *GDLRI*, 2006, p. 123 asks “what the added value of this provision could be, when cooperation could already spontaneously accommodate disadvantaged people”.

⁵⁶ TURSI, *Le nuove convenzioni per l'inserimento lavorativo dei disabili e dei soggetti svantaggiati tramite cooperative sociali, due anni dopo*, in *GDLRI*, 2006, p. 78.

the working relationship, nor its duration⁵⁷: this lack led the legislator to repeal it in 2007⁵⁸, but it was reinstated the following year⁵⁹.

Nowadays, even as the result of the rediscovery of the world of social cooperation⁶⁰, it is possible to overcome the concerns of those who saw the risk of isolation of persons with disabilities in the tool⁶¹, as it “breaks the established patterns of the targeted placement system”⁶². On the contrary⁶³, it is considered that, through the setting up of individual plans implementing the Framework Agreements, social cooperatives are working contexts that

⁵⁷ SARTORI, *Le cooperative sociali*, cit., p. 454 notes that “the doctrine does not exclude the possibility of relationships other than that of permanent employment [...], and refers to the sectoral bargaining, for which the relationship may be of various types depending on the needs of the concrete case”.

⁵⁸ Art. 14, d.lgs. no. 276/2003 was abrogated by Art. 1, par. 37, let. a), l. no. 247/2007, but was subsequently restored by deletion of the abrogating provision (see Art. 39, par. 10, let. m), l. no. 133/2008).

⁵⁹ The Legislator intended to replace – through the introduction of Art. 12-bis in l. no. 68/1999 – the model of the Framework Agreement, as it allowed employers to fulfil their recruitment obligation without including, indefinitely, the person with disabilities within their organization. However, from this point of view, the Agreements provided for by Art. 12-bis, l. no. 68/1999 appeared to be worse than the tool they were intended to replace: on this issue, and for a complete comparison of the two agreements, see GAROFALO D., *L’inserimento e l’integrazione lavorativa*, cit., p. 261.

⁶⁰ On the evolution of social cooperation, from a marginal entity in the labour market, to a major player in the relations between persons with disability, public services, and local companies, see CALABRESE, FALAVIGNA, *Le cooperative sociali prima e durante il Covid-19. Un’analisi economico-finanziaria tramite benchmarking*, in *ISoc.*, 2021, p. 3.

⁶¹ Art. 14, d.lgs. no. 276/2003 has long been hit by intense doctrinal criticism, resulting from prejudices towards the world of social cooperation, and towards the fear that the mechanism provided for therein “could lead to the creation of two non-communicating labour markets”: the first one would be able to accommodate the milder – and “socially accepted” – forms of disability, and the second one would isolate the more severe forms of disability (in these terms, see CIMAGLIA, *L’esperienza applicativa dell’art. 14, D. Lgs. n. 276 del 2003*, in *GDLRI*, 2006, p. 135, and, in the same direction, GARATTONI, *L’inserimento dei lavoratori svantaggiati nel sistema comunitario degli aiuti di Stato*, in *RGLPS*, 2006, 3, p. 650).

⁶² CIMAGLIA, *cit.*, p. 133, according to whose approach the risk is that the work orders become “the price to be paid” to avoid the employment of the person with disability by the company obliged by l. no. 68/1999.

⁶³ See TURSI, *cit.*, p. 75, and NOGLER, *Cooperative sociali e inserimento lavorativo dei lavoratori svantaggiati*, in PEDRAZZOLI (ed), *Il nuovo mercato del lavoro*, Zanichelli, 2004, p. 192, who agree that the risk of isolation of persons with disability in the Framework Agreement model is “unfounded”. Moreover, even though disadvantaged persons must “constitute at least 30% of the workers of the social cooperative and, depending on their individual status, be partners of the cooperative” (Art. 4, par. 2, l. no. 381/1991), the quota identified by the

are “more sensitive and attentive to the needs of people”⁶⁴, able to value them, even on the regulatory side, as working partners⁶⁵.

Hence, by exalting the virtuous collaboration between companies required to employ persons with disabilities, social cooperatives, and local public institutions, the model designed by Art. 14 of the 2003 Biagi reform seems to satisfy the interests of all parties involved in the mechanism, in a “*win-win(-win-win)*” solution.

A) First, it allows the employer with the recruitment obligation to fulfil it regularly, saving the greater burdens connected with direct recruitment or the payment of sanctions. Even if the employment in the social cooperative concerns disadvantaged workers (without disabilities), the company will be able to benefit from goods and services that it currently produces in-house, or that it buys from outside providers.

B) Consequently, by signing the Framework Agreement, the social cooperative guarantees work orders itself, that are functional to maintaining its financial equilibrium. Moreover, the social cooperative pursues its social objective⁶⁶, ensuring job opportunities for people who would risk being excluded from the ordinary channels through which labour supply and labour demand spontaneously meet⁶⁷. In this way, cooperation is encouraged to

Italian legislator – in the *minimum*, but not in the *maximum* – is functional to mitigate this risk.

⁶⁴ MASSI, *Il nuovo collocamento obbligatorio*, Ipsoa, 2000, p. 64, whose position is supported by the findings of the empirical investigation conducted by CHIAF, *Il valore creato dalle imprese sociali di inserimento lavorativo*, in *ISoc.*, 2013, I. In similar terms, CORBO, *Le convenzioni per il diritto al lavoro dei disabili: natura, struttura, funzione e strumenti di tutela*, in *ADL*, 2009, 2, p. 385, interprets social cooperatives as a “disability-oriented environments”.

⁶⁵ On the partnership and employment relationship in social cooperatives, see BIAGI, *Cooperative e rapporti di lavoro*, Franco Angeli, 1983, p. 137, and, after the enactment of l. no. 381/1991, see at least GAROFALO D., *Il socio lavoratore delle cooperative sociali*, in GAROFALO D., MISCIONE (eds), *La nuova disciplina del socio lavoratore di cooperativa: L. n. 142/2001 e provvedimenti attuativi*, Milano, 2002, p. 51, as well as LAFORGIA, *La cooperazione e il socio-lavoratore*, Giuffrè, 2009, p. 85, and IMBERTI, *Il socio lavoratore di cooperativa. Disciplina giuridica ed evidenze empiriche*, Giuffrè, 2012, p. 131.

⁶⁶ According to IMBERTI, *Il socio lavoratore di cooperativa*, cit., p. 10, cooperation is “both a type of company that operates on the market, and a part of a social movement that does not only pursue economic purpose”.

⁶⁷ In this way, BORZAGA C., *Cooperazione sociale e inserimento lavorativo*, cit., 115, who identifies social cooperation as a “sheltered workshop, and a springboard to allow the enhancement of skills, through training, and the professionalism of those involved in their activity”. See also SCALVINI, *La cooperazione sociale di inserimento lavorativo*, in *ISoc.*, 2006, p. 22, who affirms that

emancipate itself from a purely welfarist vision, and to insert itself in the value chain as active members of the production cycle, generating economic prosperity, and social reinvestment⁶⁸.

C) Furthermore, the public welfare system benefits from the inclusion of persons with disabilities⁶⁹, since the reduction of the number of unemployed people alleviates the pressure on the national budget. For this reason, the economic independence of persons with disabilities relieves the Welfare State system of social assistance costs, otherwise necessary to guarantee the implementation of the principles of solidarity and equality.

D) Finally (and above all), persons with disabilities can recover satisfaction, professionalism, and, more generally, dignity through work, in a context supervised by Public Administration. In this way, the inclusion of persons with disabilities in social cooperatives gives the possibility to appreciate their value⁷⁰, as (partner) workers and not as merely passive persons of care and assistance⁷¹.

For these reasons, the mechanism provided for in Art. 14, Legislative Decree no. 276/2003 transforms social cooperatives into the highest expression of the “Benefit company”⁷². The “common benefit” of their activity lies on the one hand, in the neutralization of the negative effects produced by the non-employment (both on the person with disabilities, and the com-

social cooperatives transform persons with disability “from *objects* of assistance into value-generating *products*”, for themselves and for others.

⁶⁸ TURSI, *Cooperative sociali*, cit., p. 45.

⁶⁹ On this point, it must be stressed that FIORENTINI, *Welfare e impresa sociale di garanzia*, in *ISoc.*, 2016, 7, traces the first experiences of social cooperation back to forms of “horizontal and circular subsidiarity, able to complement the public welfare system”.

⁷⁰ As observed by NAVILLI, *I lavoratori disabili e il collocamento “mirato”*, BROLLO, *Il mercato del lavoro*, in PERSIANI, CARINCI F. (eds), *Trattato di diritto del lavoro*, Cedam, 2012, p. 284, “the valorization [of professionalism] and the concretization of the right to work [can] neutralize the handicap of persons with disability”.

⁷¹ It is about achieving the “protection that is not merely defensive, but proactive, and capacitating” demanded by CARUSO, DEL PUNTA, TREU, *Manifesto per un diritto del lavoro sostenibile*, in “*Massimo D’Antona*”, 2020, p. 11.

⁷² This is a certification recognized to companies that add – to the typical lucrative purposes (Art. 2247, Italian Civil Code) – one or more purposes of “common benefit” aimed at producing a positive effect (or at reducing a negative one) towards the various parties that interact with the company. Among the first essays on the subject, see CORSO, *Le società benefit nell’ordinamento italiano: una nuova “qualifica” tra profit e non profit*, in *NLCC*, 2016, 5, p. 995 and, more recently, SQUEGLIA, *Le società benefit e il welfare aziendale. Verso una nuova dimensione della responsabilità sociale delle imprese*, in *DRI*, 2020, 1, p. 61, p. 81.

pany obliged to recruit), and, on the other hand, in the positive impact that this model produces on the community.

It can be deduced that the cooperative “social function” is recognized under Art. 45, par. 1 of the Italian Constitution⁷³ and incorporates a mutualistic spirit⁷⁴, which is an impulse to remove obstacles to the realization of the principle of equality⁷⁵. It follows that, by combining solidarity, inclusion and participation, social cooperatives assume *socially responsible behaviour*⁷⁶, which, in the described model, is suitable for sustaining employment, development, and, by this, sustainability of the community.

4. “Cooperation among Cooperatives”, and more: a tool for Sustainable Development

The widespread value of the Framework Agreements provided by Art. 14 of the 2003 Biagi Reform is confirmed by recent institutional reports on the inclusion of persons with disabilities⁷⁷, which confirm its attractiveness, and its

⁷³ IMBERTI, *La disciplina del socio lavoratore tra vera e falsa cooperazione*, in “Massimo D’Antona”, 2007, no. 61, p. 278, and, widely, IMBERTI, *Il socio lavoratore di cooperativa*, cit., p. 27. At the same time, d.lgs. no. 117/2017 (on which extensively, RICCOBONO, *Diritto del lavoro e Terzo settore. Occupazione e welfare partenariale dopo il D. Lgs. n. 117/2017*, ESI, 2020) counts “social enterprises, including social cooperatives” (Art. 4, par. 1) among the Italian “Third Sector”, recognizing their “value and social function [as expressions of] solidarity” (Art. 2). In this way, social cooperation is deemed capable of “pursuing the common good [and fostering] the inclusion and full development of the person” (Art. 1, d.lgs. no. 117/2017).

⁷⁴ Within the (“special”) cooperative employment relationship, BIAGI, *Cooperative e rapporti di lavoro*, cit., p. 415 sees “a relationship which is instrumental to the fulfilment of the mutualistic purpose of ensuring better working conditions” to workers. In this direction, IMBERTI, *La disciplina del socio lavoratore*, cit., p. 291, identifies “false cooperation” in the absence of the “mutualistic purpose” (Art. 2511, Italian Civil Code), which distinguishes cooperatives with “social merit” from “companies that fraudulently use the cooperative scheme for profit-making purposes”.

⁷⁵ PASTORE, *Brevi note sulla “Cooperazione a carattere di mutualità e senza speculazione privata”*, in *Federalismi.it*, 2008, 9, p. 5.

⁷⁶ According to SALOMONE, *La responsabilità sociale dell’impresa: riflessioni a margine di una strategia europea sullo sviluppo sostenibile*, in *DRI*, 2004, 2, p. 379, “the only way to think about corporate social responsibility today, from the perspective of labour law, would be to seriously reconsider forms of worker participation in company management, as a tool of controlling corporate governance”.

⁷⁷ The reference is to the Xth and IXth Reports to the Italian Parliament on the state of implementation of Law no. 68/1999 (both available on the official website of the Italian Ministry of

concrete application⁷⁸. Even if the Italian system looks better than others, a deep analysis of these statistics shows that the recourse to this tool is still inadequate and can be strengthened, especially in some areas of the country⁷⁹.

Indeed, it emerges that many employers do not engage direct recruitment of persons with disability, and do not utilize Framework Agreements. The obstacles seem to be represented by the alleged impossibility of being able of profitably employing individuals with disabilities within the company and of entrusting social cooperation with profitable work orders⁸⁰.

By January 31, of each year, employers must submit an informational statement on their employment status, which determines the obligation to employ persons with disabilities, or affects the assessment of the mandatory quota⁸¹. If the employer does not submit it, or if the quota reserved for persons with disabilities is not met, employers should face costly sanctions. Even if sanctions will not help persons with disabilities to work, they may receive disability checks. Unfortunately, sanctions are not very effective, because they are not easy to collect⁸². Then, persons with disabilities do not find either a job or receive a pension.

But the informational statements on occupational situations could be

Labour: <https://www.lavoro.gov.it>), published, respectively, in May 2023, and in January 2021, but relating to the years 2019, and 2016–2017–2018.

⁷⁸ See Tab. 46, p. 100, *IXth Report, cit.*

⁷⁹ For a striking overview of territorial differences in the use of labour insertion agreements, see FONDAZIONE STUDI CONSULENTI DEL LAVORO, *cit.*, Tab. 7, p. 20.

⁸⁰ The mentioned Reports highlight that, among the (more than) 900.000 people registered in the targeted placement system, the job placement at public and private employers is just over 43.000 (see Tab. 50, p. 104, *Xth Report, cit.*, and Tab. 19, p. 71, *IXth Report, cit.*). Furthermore, 40.9% of the private companies, and 30.1% of the Public Administrations report the availability of job positions for people with disability (see Tab. 1, and Fig. 2-3, p. 44, *Xth Report, cit.*). In aggregating public and private sectors data, it emerges that the 110.060 surveyed companies – with more than 515.000 job positions to be assigned to persons with disability – do not cover 148,229 reserved quotas.

⁸¹ Art. 9, par. 6, l. no. 68/1999 states that public and private employers “must send [...] an information statement showing the total number of employed workers, the number and the names of employed workers with disability, and the jobs and the task available to persons with disability” that could be hired.

⁸² Observing Tab. 11, p. 57, *IXth Report, cit.* (concerning the “number of communications to Italian Territorial Labour Inspectorates on non-compliance with recruitment obligations”), in relation to the number of non-compliant employers (excluding those who can benefit from the contribution exemptions), it is easy to understand that the inflicted sanctions are lower than the number of non-compliant employers.

very useful, as far as they are accessible to everyone (Art. 9, par. 6, Law no. 68/1999). They show the overall mandatory quota for companies in a definite geographical area⁸³.

Then, we can move from a single to a territorial compensatory perspective, fostering partnerships among companies for labour inclusion.

The same perspective has already been developed in the context of the “sustainable finance” mechanisms called “carbon offsetting”⁸⁴. They allow companies to compensate for their emissions if they cannot neutralize on their own, by buying “carbon credits” offered by environmental protection projects. Like the better-known “social impact bonds”⁸⁵, these investments in sustainability produce positive effects for companies, for the environment, and, more generally, for the community. In an ecological metaphor, the envisioned path leads to ask whether it is also possible to build a model of “social offsetting”, able to achieve labour inclusion of persons with disabilities.

Going back to the 2003 Biagi Reform, it is a matter of shifting the focus from the environmental to the social dimension of sustainable development. Thanks to the driving force contained in Art. 14, Legislative Decree no. 276/2003, companies that can entrust work orders to social cooperation could post a higher quota of persons with disabilities than that required by law, to compensate for the shortcomings of other companies, which find it more difficult to use of Framework Agreements. The proposal is to focus on the Sixth principle of the Statement on the Cooperative Identity⁸⁶, under the banner of labour inclusion of persons with disabilities.

If a network for social inclusion is the *goal*, the *tool* to realize it could be the “network contract”. It is the legal instrument through which “several entrepreneurs pursue the aim of individually and collectively increasing their

⁸³ In a perspective useful for the reasoning that will be conducted here, ZILLI, *La trasparenza nel lavoro subordinato. Principi e tecniche di tutela*, Pacini, 2022, p. 119, observes that “a lot of information is accessible but offered without filters and keys to interpret it, to the point of being useless compared to understanding what is happening”.

⁸⁴ On these procedures, see BALLASSEN, LEGUET, *The emergence of voluntary carbon offsetting*, Research Report, HAL, 2007, and, more recently, DUGAST, *Net Zero Initiative. A framework for collective carbon neutrality*, 2020, www.carbone4.com.

⁸⁵ The “social impact bonds” constitute investments, whose remuneration depends on the achievement of a social outcome (such as, for example, “increased employment”, on which see CRISTOFOLINI, *Potenzialità e criticità dei social impact bonds per l’inserimento lavorativo*, in *DRI*, 2021, 4, 2021, p. 1027) previously agreed upon between the client – often, a Public Administration – the investors, and the service provider.

⁸⁶ See above, par. I.

innovative capacity and competitiveness on the market” by obliging themselves “to cooperate in predetermined forms, and areas” (Art. 3, par. 4-ter, Decree-Law no. 5/2009, converted into Law no. 33/2009)⁸⁷.

It was pointed out that “the employment of persons with disabilities can fit into the strategic objectives of a network of social cooperatives”⁸⁸. Trying to take it a step forward, it is possible to imagine a broader network, including social cooperatives and companies required to employ persons with disabilities, to join *productivity* and *inclusion*, as *two sides of the same coin*.

By the admitted “co-employability of workers hired with rules established by the network contract”⁸⁹, and “according to a shared (network) interest of the parties involved (therein)”⁹⁰, the network contract combines the collaboration between companies, with the virtuous exchange of goods, services, and (above all) human resources⁹¹.

From the legal point of view, the network is considered as a single entity, to which both labour relations, and legal obligations (including the recruitment obligation of persons with disabilities)⁹² are ascribed. By this, it can be

⁸⁷ Without claiming to be exhaustive, see at least ALVINO, *Il lavoro nelle reti di imprese: profili giuridici*, Giuffrè, 2014; ZILIO GRANDI, BIASI, *Contratto di rete e diritto del lavoro*, Cedam, 2014; GRECO, *Il rapporto di lavoro nell'impresa multidatoriale*, Giappichelli, 2017; MAIO, SEPE, *Profili giuridici ed economici della contrattazione di rete*, il Mulino, 2017.

⁸⁸ In this direction, see BORZAGA C., BORZAGA M., DEPEDRI, FERRARI, GUBERT, IAMCELI, MAZZETTI, *Reti tra imprese per l'inserimento lavorativo. Applicabilità e potenzialità del contratto di rete*, Euricse Research Report no. 21/2021, 2021, and, more recently, FERRARI, IAMCELI, *L'utilizzo del contratto di rete da parte delle cooperative di inserimento lavorativo: strategie di collaborazione e disegno contrattuale*, in BORZAGA C., BORZAGA M. (eds), *Inserimento lavorativo e contratto di rete*, cit., p. 137, and p. 157 (to which please refer for a survey of good experiences already developed by Italian social cooperatives).

⁸⁹ See Art. 30, par. 4-ter, d.lgs. no. 276/2003 (introduced by the mentioned l. no. 33/2009), on which see exhaustively PERULLI, *Gruppi di imprese, reti di imprese e codatorialità: una prospettiva comparata*, in RGL, 2013, I, p. 83, and GRECO, cit., p. 113.

⁹⁰ BIASI, *Dal divieto di interposizione alla codatorialità: le trasformazioni dell'impresa e le risposte dell'ordinamento*, in ZILIO GRANDI, BIASI (eds), cit., p. 137, to which please refer also for its appropriate doctrinal references.

⁹¹ However, it should be emphasized that a common purpose consisting in the mere sharing (or in the promiscuous use) of human resources presents critical issues regarding the limits placed by Italian legal system on irregular staff leasing (on which see BORZAGA C. et al., *Reti tra imprese*, cit., p. 95). It becomes fundamental that the employment of persons with disability is supported by a concrete and coherent causal scheme, linked to the purpose of the network of “individually and collectively increasing [its] innovative capacity and [its] competitiveness on the market” (Art. 3, par. 4-ter, d.l. no. 5/2009).

⁹² On this point, see specifically BORZAGA M., MAZZETTI, *I rapporti di lavoro nei con-*

realized a broader collaborative mechanism among social cooperatives, and companies required to employ persons with disabilities, under the banner of productive inclusion⁹³.

Through the described territorial compensations, the companies in the network (which do not currently employ persons with disability, and do not use the Framework Agreements) could fulfil the mandatory quota and save the sanctions. Of course, the mechanism could help persons with disabilities to restore dignity, well-being, and independence, which are likely to be damaged – if not lost – due to unemployment.

The criticism could come from those who see in the mechanism a “distorted” inclusion, mediated through cooperation, or from those who note lower sanction receipts for the Public Administration.

First, *the goal justifies the tool*: each step towards inclusion should be welcomed, rather than standing silently in front of discrimination that grips persons with disabilities in the labour market.

About the second potential critical issue, it should be remembered that the penalties for failure to comply with the recruitment obligation constitute a theoretical collection for the Public Administration, and that the purpose of the targeted employment system is not to collect the sanctions but to ensure the right to work of the persons with disabilities⁹⁴.

tratti di rete, in BORZAGA C., BORZAGA M. (eds), *Inserimento lavorativo e contratto di rete*, cit., p. 197.

⁹³ On legal level, it is a matter of reintroducing the network contract “with solidarity purpose”, which emerged during the pandemic, as a result of the amendments made to Art. 3, par. 4-*sexies*, d.l. no. 5/2009, by Art. 43, par. 1, d.l. no. 34/2020, converted into l. no. 77/2020). On this tool, see at least ALVINO, *Contratto di rete e diritto del lavoro: un bilancio delle funzioni e delle potenzialità del contratto di rete a otto anni dal varo del distacco semplificato e della codatorialità*, in *LDE*, 2021, 3.

⁹⁴ It is a matter of implementing Art. 4 and Art. 38 of the Italian Constitution. On the one hand, Art. 4 of the Italian Constitution states that “the Republic shall recognize the right of all citizens to work and shall promote such conditions as shall render this right effective. Every citizen shall have the duty, according to personal potential and individual choice, to perform any activity or function contributing to the material or spiritual progress of society”. On the other hand, Art. 38 of the Italian Constitution states that “every citizen unable to work and without the necessary means of subsistence shall be entitled to welfare support. Workers shall be entitled to adequate means for their living requirements in case of accidents, illness, disability, old age and involuntary unemployment. Physically and mentally disabled persons shall be entitled to education and vocational training. Responsibilities under this Article shall be vested into entities and institutions established or supported by the State. Private-sector assistance may be freely provided”.

The issue is how to settle economic, fiscal, or reputational⁹⁵ advantages for the network companies. If it is true that *unity is strength*, the virtuous collaboration among social cooperatives and enterprises generates sustainable development, which is disseminated and shared through inclusion. The hope is that the forthcoming “Framework Law on disability” will help, by rationalizing employment channels fulfilling the right to work of persons with disabilities⁹⁶.

5. Closing remarks

In this paper, the topic of Sustainable Development is focused on the working conditions of persons with disabilities, moving from the Italian case to draw up wide-ranging considerations. Persons with disabilities have always been very weak in the labour market, because of their (verified or supposed) reduced working capacity.

It has been observed that the inclusion of workers with disabilities in the plant is hard: for the employer’s side, because of the need to adapt the organization to special needs; from the worker’s side, because of the stressful working conditions, which are barely understandable, and affordable for a person with disabilities. After the pandemic, the situation has worsened and these vulnerable workers (or workers-to-be) had more difficulties in finding and keeping a job.

The Italian case shows quite well data and problems, and a useful tool to reverse the situation.

The 2003 Biagi Reform introduced a legal instrument, that is an alliance among employers, workers, and social cooperatives. By an agreement, monitored and guaranteed by the Regional Government, the workers with disabilities can work in a social cooperative, that is organizing work, and taking care of them. Through the Framework Agreement, the employer can ask (and pay) the social cooperative to realize a part of the firm production, which is realized by persons with disabilities.

The tool is effective and efficient, but up to now, it has had only little

⁹⁵ This enhancement could take place, for example, through the recognition of the “benefit company” certification (on which please refer to par. 3).

⁹⁶ According to SARTORI, *Transizioni occupazionali e vulnerabilità lavorative: il difficile compito per il diritto del lavoro post-pandemico*, in *DRI*, 2021, 4, p. 973.

diffusion, because it is not well-known by employers. Moreover, some employers cannot sign the Framework Agreement because their field of expertise is not compatible with work, realized by workers with disabilities.

According to this, Italian employers often prefer to pay sanctions, instead of hiring them. This is a critical issue, because *A)* sanctions are very harsh, and *B)* persons with disabilities are not included in the labour market.

To overcome these critical issues, the proposal is to build a network among social cooperatives and companies that are obliged to employ persons with disabilities. On the one hand, the model aims to enhance “cooperation among cooperatives”, which from being a principle of Cooperative Identity becomes a vehicle for labour inclusion. On the other hand, through the integration of companies into the network, the purpose is to create partnerships for the virtuous exchange of goods and human resources in a selected geographical area.

As mentioned above, the inspiration comes from “carbon offsetting” procedures, which allow companies to compensate their emissions, by investing in environmental protection projects. In the same way, the perspective of “social offsetting” allows companies to compensate for their shortcomings in the employment of persons with disabilities, by investing in social cooperation. The proposal is to face problems and duties, through sharing resources for sustainable development: the Sixth Principle of the Statement on the Cooperative Identity can support the “cooperation among cooperatives” and more.

The Italian experience can represent a best practice, and can also be exported to other countries, considering the worldwide role played by cooperatives in supporting the labour inclusion of persons with disabilities⁹⁷. It is a matter of finding “supported employment” (especially in the hardest cases)⁹⁸, to ensure sustainable development and, above all, the sustainability of Labour Law.

⁹⁷ Without claiming to be exhaustive, see at least Reports of INTERNATIONAL LABOUR ORGANIZATION, *Cooperatives and the Fundamental Principles and Rights at Work: Cooperatives and Non-Discrimination at Work*, 2017 <https://www.ilo.org>, and *At work together: The cooperative advantage for people with disabilities*, 2015, <https://www.ilo.org>. Moreover, see ALBERT, *In or out of the mainstream? Lessons from research on disability and development cooperation*, Leeds, 2006, and WESTOBY, SHEVELLAR, *The possibility of cooperatives: a vital contributor in creating meaningful work for people with disabilities*, in D&S, 2019, and the extensive references made therein.

⁹⁸ DRAKE, MCHUGO, BECKER, ANTHONY, CLARK, *The New Hampshire study of supported employment for people with severe mental illness*, in JCCP, 1996, 2, p. 391.

Abstract

The paper investigates a specific dimension of “Sustainable Development” within Labour Law, which is identified in the labour inclusion of persons with disabilities. Through an analysis of the Italian case, the reasoning develops by examining critical issues of the unemployment of persons with disabilities. Furthermore, the discussion concerns a legal tool provided for by the Biagi reform (that can potentially be exported beyond national borders), which allows equal opportunities, thanks to investments in social cooperatives. The aim is to reinterpret the model in the light of the Sixth principle of the Statement on the Cooperative Identity (“Cooperation among cooperatives”), identifying how a broader collaboration can be concretely realized, to support the sustainable development of Labour Law.

Keywords

Cooperation among cooperatives, Social cooperatives, Sustainable development, Persons with disabilities, Labour inclusion.