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## **The Network Contract: the Evolutionary Path of the Italian Model**

by

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# THE NETWORK CONTRACT: THE EVOLUTIONARY PATH OF THE ITALIAN MODEL

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## **Abstract**

A growing number of different business associations forms has been mushrooming over the past few years. The said phenomenon represents the natural reaction to a global market wherein an increasing and overwhelming competitiveness burdens - and at times wipes out – small and medium enterprises. Following said premise, the present article aims at analyzing the ‘embryo’ of the various socio-contractual cooperation patterns which have recently arisen (in particular, network contracts). In more detail, this manuscript focuses on the regulation of network contracts under Italian law from a private law and tax law perspective.

**Keywords:** contract – network - tax driver - fiscal regime

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## I. THE ECONOMIC CONTEXT

The tendency towards aggregation is natural for companies in order to better face the challenges posed by globalization. This kind of aggregation has been examined by various disciplines, including the economic analysis of law, where it is described as a network<sup>1</sup>.

As economic literature has stressed, at the beginning of the twentieth century, the British economist Marshall had observed that to grow, capitalism could actually follow two paths. One was precisely that of the concentration in large companies, the other that of the coordination of many small businesses, specialized in complementary parts or workings of more complex products, close to each other. The first path had in fact been covered, the second had been an interrupted journey<sup>2</sup>.

In this context, the notion of ‘network of companies’ refers to all those processes of interdependence, integration and coordination that allow companies to form a network to pursue a purpose very difficult to reach independently by temporarily joining forces to carry out common a project. This concept has been developed to describe two phenomena, on the one hand the disintegration of a large enterprise into a plurality of smaller, independent ones or, on the other hand, the aggregation of several small enterprises into a bigger one.

The legal scholars, having realized the advantages associated with this concept have started using contracts to govern the relationships among the companies in the network. Here, the contract, rather being a means to regulate a specific economic transaction, becomes a means to coordinate the activities of the various companies so as to pursue a common goal. The contractual regulation of networks represents, in this sense, an effective and cheaper alternative to corporations and associations, with the added benefit of increased flexibility and looser link<sup>3</sup>.

Historically, the trend has been from big and hierarchized enterprises towards the creation of business networks operating through a permanent structure of companies differently associated to each other. This phenomenon results from the need to reduce the transaction costs, to achieve economies of scale and leads to increasingly complex. However, the phenomenology of business networks does not

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<sup>1</sup> The so-called reticular strategy is a solution so as to successfully deal with the critical shortcomings that stand in the way of those actions necessary for an economic revival (such as, huge investments in research and development in order to increase the capacity of technological innovation. In this regard, see O. WILLIAMSON, *The Mechanism Of Governance*, Oxford-NewYork-Oxford University Press, 1996; E. RULLANI, *Economia Della Conoscenza. Creativita' E Valore Del Capitalismo Delle Reti*, Bologna-Carocci, 2004; P. ZANELLI, *Reti di impresa: dall'economia al diritto, dall'istituzione al contratto*, in *Contratto E Impresa*, 2010, 951. For a transnational overview, see M. AMSTUZZI - G. TEUBNER (eds.), *Networks. Legal Issues Of Multilateral Co-Operation*, Oxford-Hart Publishing, 2009; F. CAFAGGI, *Contractual Networks and the Small Business Act: Towards European Principles?*, in *European Review of Contract Law*, 493 ff.

<sup>2</sup> In this regard, see E. BARTEZZAGHI - E. RULLANI, *Forme di reti: un insieme diversificato*, in *Reti d'impresa oltre i distretti*, Milano-Sole 24 ore, 2008, 35.

<sup>3</sup> See C. CAMARDI, *I contratti di distribuzione come contratti di “rete”*, in *Le Reti Di Imprese E I Contratti Di Rete*, Torino-Giappichelli, 2009 (ed. P. Iamiceli), , 227-228.

present homogeneous features and the concept of network makes it possible to include all those forms in "hierarchical-organizational co-ordination and coordination of pure market"<sup>4</sup>.

In this sense, networks can be of different kinds, *i.e.* contractual, organizational or combined. As Cafaggi points out, "[o]ften enterprises start with a contractual network that is perceived as a lighter form of commitment, but which subsequently evolves into an organizational network. Notice that even in the case of contractual networks, enterprises create a new company but preserve their own legal and economic independence."<sup>5</sup>

A similar definition is given by Collins who writes that "network signifies a grouping of contractual arrangements between more than two parties with a productive aim that requires the interaction and co-operation of all parties. Within networks, many of the parties have contractual links, often of relational type, but there are also many other economic relations present that have not been constructed through an express contract."<sup>6</sup>

This flexibility means that networks are often the most efficient private regulators since they usually incur lower costs than other institutions in monitoring their members' behavior within the network and the norms originally enforced by the network have sufficiently low enforcement costs to form spontaneously and survive (*i.e.*, succeed in enforcing the low-cost norm)<sup>7</sup>.

In other words, networks are sets of relational contracts characterized by a hybrid nature (neither the law of business associations nor the law of contracts are perfectly tailored to govern them)<sup>8</sup> along with cooperative elements belonging to those associations which are connected through a series of bilateral contracts<sup>9</sup>.

One of the benefit of network contracts is that they combine the flexibility and incentives of market transactions with the close cooperation typical of transactions within a firm/hierarchy<sup>10</sup>.

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<sup>4</sup> M. R. MAUGERI, *Reti di imprese, contratto di rete e reti contrattuali – Non minor virtus est tueri et perficere rem inventam... quam reperire*, in *Obbligazioni e Contratti*, 2009, 951. See also, A. GENTILI, *Una prospettiva analitica su reti di imprese e contratti di rete*, in *Obbligazioni e Contratti*, 2010, 87. A. BAGNASCO - E. RULLANI, *Ragioni e contenuti del libro: guida alla lettura*, in AIP, *Reti D'impresa Oltre i Distretti. Nuove Forme Di Organizzazione Produttiva, di Coordinamento e di Assetto Giuridico*, Milano-II Sole 24 Ore, 2008, 1, highlighting that the economic discourse for interpreting the phenomenon of business growth has departed slightly from the observations of the early 20th century doctrine. Further on, see H. COLLINS, *Introduction: The Research Agenda of Implicit Dimension of Contracts*, in *Implicit Dimension Of Contract. Discrete, Relational, And Network Contracts*, 2003 (ed. D. Campbell, H. Collins e J. Wightman), Hart, Oxford-Portland, 19 ff. See also M. C. JENSEN, *A theory of the firm*, Cambridge-Harvard University Press, 2000, 22. F. CAFAGGI, *Reti di imprese tra regolamentazione e norme sociali*, Bologna-II Mulino, 2004, A. PISANI MASSAMORMILE, *Profili civilistici del contratto di rete*, in *Riv. dir. priv.*, 2012, 363 ff.; M. ONZA -L. SALAMONE, *Le nuove forme di integrazione tra imprese: dai contratti di rete ai gruppi paritetici (e ritorno)*, in *Ricerche giur.*, 2012, 221.

<sup>5</sup> F. CAFAGGI, *Contractual networks and the small business act: towards European principles?*, in *European review of contract law*, 2008, 495 ff.. See also, F. CAFAGGI, *Introduction*, in *Contractual Networks, Inter-firm Cooperation And Economic Growth*, 2011, (Ed. F. Cafaggi), 1. See recently, F. CAFAGGI – P. IAMICELI, *Contracting in Global Supply Chains and Cooperative Remedies*, in *Uniform Law Review*, 2015, 135-179 and F. CAFAGGI – P. IAMICELI, *Private Regulation and Industrial Organization: Contractual Governance and The Network Approach*, in *Contract Governance: Dimensions in Law and Interdisciplinary Research*, Ed. S. Martin Grundmann, F. Möslin, K. Riesenhuber), Oxford, Oxford university Press, 2015, p. 341-374.

<sup>6</sup> H. COLLINS, *Introduction to Networks As Connected Contracts*, in G. TEUBNER, *Network as connected contract* cit. 1. See also A. AVIRAM, *A Paradox of Spontaneous Formation: The Evolution of Private Legal Systems*, 22 *Yale L. - Pol'y Rev.* 1, 2004, 22-23.

<sup>7</sup> see, e.g., R.C. FEENSTRA, *Integration of trade and disintegration of production in the global economy*, in *Journal of economic perspectives*, 1998, 31-50. A. GRANDORI - M. NERI, *The fairness property of interfirm networks*, in *Interfirm network. Organization and industrial competitiveness* (Ed. A. Grandori), London-Routledge, 1999; P. FAEDO - A. FARINET, *Modelli reticolari evoluti e strategie di cooperazione tra piccole e medie imprese. Alcune ipotesi interpretative*, in *Economia e politica industriale*, 1999, 35 e 42. C. CREA, *Reti contrattuali e organizzazione dell'attività d'impresa*, Napoli-Esi, 2008, 257 ff.

<sup>8</sup> FEENSTRA, *Integration of trade and disintegration*, cit., 34.

<sup>9</sup> H. COLLINS, *Introduction*, cit., 10. See G. TEUBNER, *In the Blind Spot: The Hybridization of Contract*, in *Theor. Inq. In Law*, 2007, 51-71. See also F. CAFAGGI, *Contractual Network and The Small Business Act: Toward an European Principles?*, *EUI Working Paper LAW No. 2008/15*. Available at <http://ssrn.com/abstract=1156839> or <http://dx.doi.org/10.2139/ssrn.1156839> (last visited 28 march 2015).

<sup>10</sup> See the following valuable works of O. E. Williamson on this topic: O. E. WILLIAMSON, *Markets and Hierarchies: Analysis and Antitrust Implications (A Study in the Economics of Internal Organization)*, New York-Free Press, 1975. See also R. COASE, *The Nature of the Firm*, *Economica*,

For that that, they are often considered to be at the borders between contract and company law since, given the high level of complexity, the network requires a more composite governance mechanism than bilateral contracts without however creating a new legal entity<sup>11</sup>.

Even if contractual networks pursue, as a common goal, the achievement of participants' aims, an organizational model is not necessarily adopted. This structure leads to a bunch of mutual obligations among the parties buttressed by the general principle of loyalty<sup>12</sup>.

The level of formalization, then, is a function of the firms' size and international dimension: the greater their size is the more formal would be their structure<sup>13</sup>.

The traditional vertical integration model of corporate expansion is more and more being replaced by strategic collaboration or alliances as a means for expansion. It is a way of pooling resources from a number of firms, as well as sharing costs and risks of the new undertaking<sup>14</sup>. The strategic issues in such collaborations consist in minimizing conflicts of interest, continuing to align interests, and preventing opportunistic behavior by one of the collaborating partners<sup>15</sup>.

This phenomenon has been described as 'co-petition', a compound noun resulting from the association between the concepts of cooperation and competition among the parties to network contracts, and serves to define the actual "aim of the network"<sup>16</sup> or *Netzwerkzweck*<sup>17</sup>.

This article will try to describe how the Italian legal system reacted to this phenomenon, opting for a very formalized approach prescribing mandatory contractual elements to have access to tax breaks. It is for this reason that the civil aspects of the network contract cannot be examined without also analyzing the fiscal regulation of the contract.

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1937, 386; F. LAFONTAINE - M. SLADE, *Vertical Integration and Firm Boundaries: The Evidence*, J. Econ. Literature 2007, 649; C. F. SABEL - J. ZEITLIN, *Neither Modularity nor Relational Contracting: Inter-Firm Collaboration in the New Economy*, *Enterprise - Soc'y*, 388, 2004, 388-89. F. CIRIANNI, *Il contratto di rete*, in *Notariato*, 2010, 446. The topic is taken into consideration also by the Italian literature: see, specifically related to the "contratto di rete" A. BARBA, *Rete di impresa e abuso di dipendenza economica*, in *Contratto di rete di imprese*, (Ed. V. Cuffaro), Milano, Giuffrè, 2016, 337; A. NERVI, *Contratto di rete e disciplina antitrust*, in *Contratto di rete di imprese*, (Ed. V. Cuffaro), Milano, Giuffrè, 2016, 474.

<sup>11</sup> F. CAFAGGI, *Contractual Network*, *cit.* at 9.

<sup>12</sup> *Id.*, 11.

<sup>13</sup> *Id.*, 12.

<sup>14</sup> As early as 1934, Salandra Vittorio criticized the absence in the private law system in force at the time of "a concept of plurality consisting of connected elements, which, while preserving their formal independence and not aiming at a new unit, act however according to the collective group they belong to" (V. SALANDRA, *Il Diritto Delle Unioni Di Imprese (Consorti e Gruppi)*, Padova-Cedam 1934, 61 ff.); in this perspective, it was not considered appropriate to adopt the concept of "legal person" to regulate the new organizational forms in relation to the management of network systems. Subsequently, such doctrinal orientation has changed under the innovated industrial needs. In 1976 the consortia reform provided businesses with an instrument able to meet their capital, economic and organizational needs. For an overview of the first measures regarding the network issue, see F. CAFAGGI, *Reti di imprese tra regolazione e norme speciali. Nuove sfide per diritto ed economia*, Bologna-Il Mulino, 2004. See also E. BRODI, *Coordinamento tra imprese e "Contratto di rete": primi passi del legislatore*, in *Contratti*, 2009, 727; F. CAFAGGI - P. IAMICELI, *Contratto di rete. Iniziativa una nuova stagione di riforme?*, in *Obbl. E Contr.*, 2009, 595; M. MAZZEO, *Nasce il contratto di rete*, in *Obbl. E Contr.*, 2009, 6. See R. BROWNSWORD, *Network Contracts Revisited*, in *Networks. Legal Issues Of Multilateral Co-Operation* (M. Amstutz - G. Teubner eds.), Oxford-Hart Publishing, 2009, 51-52, the author draws a parallel between the network based on consent and "the social contract (a governance regime authorized by the consent of the participants) or governance in clubs". In addition, see F. CAFAGGI, *Organizational loyalties and models of firms: Governance design and standard of duties*, *Theor. Inq. In Law* 2005, 463-526; G. TEUBNER, *'And if I by Beelzebub Cast Out Devils, ...': An Essay on the Diabolics of Network Failure*, *German Law Journal*, 2009, 115-136.

<sup>15</sup> L. A. DI MATTEO, *Strategic Contracting: Contract Law as a Source of Competitive Advantage*, *Am. Bus. L.J.*, 2010, 755 stating that business is founded for the most part upon a web of contracts. Even in areas that are governed by specialized bodies of law, such as government procurement, employment, franchising and patent pooling, the area-specific law is essentially a body of specialized contract law.

<sup>16</sup> S. GRUNDMANN, *Contractual Networks in German Private Law*, in *Contractual Networks*, *cit.*, 112. The concept of "network aim" must not be confused with the "common aim" typical of partnership.

<sup>17</sup> F. CAFAGGI, *Contractual Networks*, *cit.*, 11.

## II. THE NETWORK CONTRACT: THE ITALIAN MODEL

The Italian legislature, being aware of the needs of the companies in the current economic context, has proposed a new standardization which facilitates the reticular aggregation and has granted a high level of autonomy to individual entrepreneurs, enabling them to establish economic and legal arrangements among themselves<sup>18</sup>.

The implementation of this new institution hinged on art. 6 bis of the Decree Law no. 112 of 25 June 2008, 'urgent provisions for economic development, simplification, competitiveness, stabilization of public finance and tax equalization' (repealed by art. 1, paragraph 2 of the Law no. 99 of 9 July 2009), aimed at promoting the development of the enterprise system through network actions that strengthen the organizational measures, the supply chain integration for the exchange and diffusion of the best technologies, the development of support services and collaboration between manufacturing companies even belonging to different regions, the features and procedures for the identification of enterprise networks and supply chains established<sup>19</sup>.

The industrial sectors where network contracts are more common are automotive, metallurgy, green economy, but also tourism and food<sup>20</sup>.

After a period of uncertainty and distrust, network contracts are now becoming more widespread; according to Sole 24 ore, the number of network contracts in November 2015 is 2.405, involving more twelve participants, most of them located in Lombardy (with more than 2000 members), followed by Emilia Romagna (1.154), Tuscany (1.016) and Latium (901). Forty-six per cent of these networks groups from two to three participants, forty-four per cent from four to nine, and ten per cent ten or more<sup>21</sup>.

It should be said that in Italy business networks based on entities cooperating in light of manufacturing processes' integration already existed; private law provides a variety of models applicable to them. Business networks, in fact, have been implemented using a plurality of schemes including the contract of association, based on a bundle of bilateral relations between the parties to the network, the

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<sup>18</sup> As provided by the Italian Law no. 33 of 9 April 2009 (following the transformation into law of the Decree Law no. 5 of 10 February 2009 on urgent measures to support industrial sectors in crisis, art. 4b). See recently, S. DELLE MONACHE – F. MARIOTTI, *Il contratto di rete*, in *Trattato dei Contratti* (Ed. V. Roppo), Milano, 2014, p. 1235-1286 and V. CUFFARO, *Introduzione*, in *Contratto di rete di imprese*, (Ed. V. Cuffaro), Milano, Giuffrè, 2016, xv.

<sup>19</sup> Decree Law no. 5 of 10 February 2009 on urgent measures to support industrial sectors in crisis, art. 4b. See, for the succession of the Acts reforming the network contract, J. BASSI, *Evoluzione normativa del contratto di rete nel sistema delle fonti*, in *Contratto di rete di imprese*, (Ed. V. Cuffaro), Milano, Giuffrè, 2016, 49.

<sup>20</sup> K. MANDURINO, *Imprese più competitive con le reti*, at <http://argomenti.ilssole24ore.com/parolechiave/contratto-rete-.html>.

<sup>21</sup> K. MANDURINO, *Reti d'impresa in accelerazione, a Treviso la II Fiera del settore*, at <http://argomenti.ilssole24ore.com/parolechiave/contratto-rete-.html>.

plurilateral contract and other models representing hybrids obtained by combining the previous models<sup>22</sup>.

According to the legislative definition, the network contract is a contract whereby two or more undertakings are bound to exercise in common one or more economic activities falling within the scope of their articles of associations in order to increase their capacity of innovation and competitiveness in the market<sup>23</sup>.

The essential feature is the extension of a series of tax, administrative and financial benefits to the companies involved in the network.

From an administrative standpoint, the basic idea is that the network as such may have relations with the government inspired by streamlining and simplification and that, therefore, the network (or district) may speak with the offices both before and during the proceedings, with the result that the effects of these proceedings will be on its participants. The same mechanism should facilitate access to grants that are provided at all levels (sub-regional, regional, national, EU levels) to companies involved in the network and for which certificates are usually required (such as, for example, those relating to the *de minimis* regime concerning state aid)<sup>24</sup>.

For a network of companies to legally arise certain formal requirements are to be met. These include the specific identification of the companies belonging to the network, the indication of the strategic objectives and common activities which shall form the basis of the network, the identification of a network program, the duration of the contract, the rules for other companies to accede to it and for the current members to withdraw from it as well as an indication of a common body overseeing the execution the network contract, as well as the modalities of participation of each company in such body, and provided with the relevant powers, first of all the power of representation<sup>25</sup>.

The regulatory formula paves the way for a first systematic consideration: the network does not create, at least initially, a new legal entity, but rather an organization teleologically intended to implement a "joint network program."

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<sup>22</sup> See, on this point, the results of the research on northeast Italy' companies published in F. CAFAGGI - P. IAMICELI (EDS.), *Reti Di Imprese Tra Crescita E Innovazione Organizzativa. Riflessioni Da Una Ricerca Sul Campo*, Bologna-Il Mulino, 2007.

<sup>23</sup> The last amendments were passed in December 2012. See M. COZZIO - M. BASCHIERA, *Osservazioni Presentate Nell'ambito Della Consultazione Dell'autorità Per La Vigilanza Dei Contratti Pubblici, "I contratti di rete nell'ambito delle procedure di gara"*, (2012) available at <http://www.osservatorioappalti.unitn.it/viewFile.do?id=1342625266661-datald=5178-filename=Testo.pdf>, 2012 (Last visited 23 April 2016). The authors suggested the Italian Authority for the Supervision of Public Contracts for works, services and supplies (AVCP) to extend the legal framework of network contracts also to professional associations; but it has recently been admitted also a network contract with the participation of workers. And their suggestion has eventually been accepted as it emerged in the final document published by the AVCP in 2012, i.e. "*Misure per la partecipazione delle reti di impresa alle procedure di gara per l'aggiudicazione di contratti pubblici*" (available at [http://www.avcp.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/\\_Atto?ca=5181](http://www.avcp.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/_Atto?ca=5181)) (Last visited 23 March 2016).

See J. BASSI, *Le parti e i soggetti esclusi*, in *Contratto di rete di imprese*, (Ed. V. Cuffaro), Milano, Giuffrè, 2016, 57; F. D'ANGELO, *Il contratto di rete e la disciplina della crisi ("nella" rete e "della" rete)*, in *Contratto di rete di imprese*, (Ed. V. Cuffaro), Milano, Giuffrè, 2016, 243; L. ALVINO, *Contratto di rete e rapporti di lavoro*, in *Contratto di rete di imprese*, (Ed. V. Cuffaro), Milano, Giuffrè, 2016, 423.

<sup>24</sup> According to M. GRANIERI, *Il contratto di rete: una soluzione in cerca di problema?*, in *Contratti*, 2009, 934.

<sup>25</sup> F. CIRIANNI, *Il contratto di rete*, in *Notariato*, 2010, 442, the author, by taking into account the insufficient legislation, argues that the legislator intended to create neither a new social type nor a legal entity, but rather a contract designed to link the conferred goods with a specific destination.

In definitional terms, the network contract is an associative contract with an open structure. It relies upon the elements set out in art. 1325 of the Civil Code, which enhance mutual innovation capacity of the network and increase its market competitiveness, while aiming at implementing a series of mutual obligations on the part of the member companies to commonly engage in one or more businesses included in the companies' article of association.

The implementation and coordination of all network program activities constitute the core of the contract role at issue; thanks to the flexibility of the latter - and thus the consequent possibility to structure the program network independently - it is therefore possible to identify from time to time the object of the network contract in accordance with the requirements set out in the program itself.<sup>26</sup>

Regarding the form of the network contract, art. 3, paragraph 4 of the Decree Law no 5 of 2009 establishes a prescriptive, binding content and mandates, in addition, that the network contract must be drafted by either public deed or certified private deed<sup>27</sup>.

In the event that the parties do not rely upon public deeds or private deeds, contractual restrictions would remain in force between them but no network contract would arise<sup>28</sup>.

The provisions contained in Article 3, as subsequently amended, represent a minimum framework upon which the parties can rely to create an organizational structure with its own joint stock.

In a context where the legislator has established a rudimental network contract discipline, it is particularly significant to resort to the general clauses of contract law.

However, from the structural perspective, the network contract is comparable to the partnership agreement pursuant to art. 2247 of the Civil Code, but with a significant difference in terms of the *causa* of the contract since, instead of pursuing profits distribution, its goal is the increase of reciprocal capacity of innovation and competitiveness in the market<sup>29</sup>.

This is because the activity of the network is designed to meet the "special interests" of the parties<sup>30</sup>.

However, though these factors cannot exclude the possibility that the parties to a network contract will govern the allocation of the profits resulting from the transactions related to the network program, they are not sufficient to define the *causa* of the contract<sup>31</sup>.

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<sup>26</sup> C. SCOGNAMIGLIO, *Le reti di impresa e contratti di rete*, in *Contratti*, 2009, 961.

<sup>27</sup> M. RIZZUTI, *Il problema della struttura del contratto di rete*, in *Contratto di rete di imprese*, (Ed. V. Cuffaro), Milano, Giuffrè, 2016, 75 and R. LENZI, *Forma e struttura del contratto di rete*, in *Contratto di rete di imprese*, (Ed. V. Cuffaro), Milano, Giuffrè, 2016, 81.

<sup>28</sup> Cf. G. VILLA, *Il coordinamento interimprenditoriale nella prospettiva del contratto plurilaterale*, in *Le Reti D'impresa ed i Contratti di Rete*, 108 – 109. Article 3, paragraph 4(b) provides that "the network contract is subject to registration in the register of companies with which each participant is registered and the contract validity shall commence from when the last of the original subscribers complete the registration." A. CAPRARA, *Il contratto di rete e gli adempimenti pubblicitari la pubblicità del contratto*, *Giurisprudenza Commerciale*, fasc.1, 2015, pag. 113 focuses, in particular, on the effectiveness, against third parties, of the registration of the contract and the amendments to it. This study shows that the entry in the register produces different effects in relation to the contents of the same (strict liability for the obligations assumed, representation, tax advantages, etc.), and the effects of the registration in connection to the formation or not of an independent legal entity. According to the Italian Confindustria in its Guida pratica al Contratto di Rete d'Impresa, novembre 2011, 9 the registration produces the segregation of the assets identified therein; the registration, furthermore, is considered an essential element of the network contract since without it the segregation of the assets does not come into being not only in relation to third parties but also in relation to the contracting parties..

<sup>29</sup> Art. 3, § 4 *ter* of the Italian legislative decree 5/2009.

<sup>30</sup> (see P. IAMICELI, *Le Reti D'impresa ed i Contratti di Rete*, *cit.*, 23).

<sup>31</sup> P. IAMICELI, *Il contratto di rete, fondo comune e responsabilità patrimoniale*, in F. CAFAGGI, *Il Contratto Di Rete. Commentario*, *cit.*, 63 ff.

Hence, the *causa* of the contract needs to be anchored to a concrete element, identifiable by the subject matter of the contract itself, and consisting in the preparation of the so-called network program, a litmus test for the assessment of the abovementioned actual growth feasibility.

Therefore, the observance of the network program - regarded as the set of rights and obligations pertaining to each member company as well as the way to achieve the common goal within the context of the economic activities included in each party's social objects – underlines, on the one hand, that the implementation of the activities referred to therein cannot be instrumental to the pursuit of individual interests, unless indirectly through the pursuit of objectives of the common program<sup>32</sup>. And, on the other hand, it shows how sharing activities and purposes of the network contract permits to identify the reason underlying the members' collaboration, which requires a certain degree of coordination among their activities as well.

Further on, a distinction must be drawn as regards the legal provision concerning the improvement of the productivity and competitiveness on the market. In fact, the *ex-ante* evaluation of the objectives and purposes of the network is purely formal and, therefore, it is not subject to any sanctions as it is merely aimed at guiding the exegesis of the contract itself<sup>33</sup>; and the conditions relating to the enhancement of the ability to compete and innovate acquires importance in relation to the authorization - by the Ministry of Economy and Finance along with the Ministry of Economic Development - to extend tax benefits to the network.

In conclusion, given the vagueness of the aforementioned regulations and the legislator's intention not to excessively restrain companies through the enactment of strict rules, for a network in order to be validly concluded it is only necessary that the underlying business plan does not have to be fully fleshed out but only require a minimum level of rationality<sup>34</sup>.

In other words, only where the program lists unfeasible activities, it is possible to declare the contract invalid owing to the lack of a valid *causa*. Whereas, when the unattainability of the *causa* emerges only

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<sup>32</sup> The existence of a common interest accompanied by individual, specific, and sometimes contradictory, interests of the network members leads to the need for a specific discipline apt to regulate any conflicts of interest as well as *ad hoc* rules to govern the specific case of the transformation of one of the network nodes into a deadlock. (see F. BARTOLINI, *Le reti di imprese, in Le Reti D'impresa ed i Contratti di Rete, cit.*, 340, footnote 13). It follows that the network should always be able to achieve the objective laid down in case of node "malfunction". See F. CAFAGGI - M. GOBBATO, *Rischio e responsabilità nella rete, in Il Contratto Di Rete. Commentario, cit.*, 91. This is especially true in case of a regulation on the exchange of information among companies belonging to the network. In this sense, it is advisable to limit the possibility of termination by placing limits on the parties' minimum permanence in the network, due notice, penalties as well as confidentiality and non-competition obligations which shall remain in force even after the natural or pathological termination of the network contract itself. For an example of approach to law and economics, see P. IAMICELI, *Le Reti D'impresa ed i Contratti di Rete, cit.*, 37.

<sup>33</sup> See also C. SCOGNAMIGLIO *Le reti di impresa e contratti di rete, cit.*, 962 ff.

<sup>34</sup> According to C. SCOGNAMIGLIO, *Le reti di impresa e contratti di rete cit.*, 74 ff. In other words, only in case of a program listing non-feasible activities, there is the possibility to establish the contract invalidity owing to the lack of a valid *causa* of the contract. Whereas, in case the unattainability of the *causa* emerges only after the conclusion of the contract, the parties have the possibility to terminate the contract because of a supervening impossibility of pursuing the common goal. C. SCOGNAMIGLIO, *Le reti di impresa e contratti di rete cit.*, 75-76. Furthermore, see A. GENTILI, *Il contratto di rete dopo la L.N. 122 del 2010, in Contratti*, 2011, 617, whereby the author points out that law n. 33 of 2009 and law n. 122 of 2010 (which amended the previous one) offer, on the one hand, a preferential contract to private entities for the conclusion of network contracts. Whereas, on the other hand, by encouraging the conclusion of such contracts due to the fact that its compliance with the relevant legal requirements will be evaluated by private and state bodies, the aforementioned laws do not specify the set of benefits, rights and duties that the parties must envisage, but merely mention the purpose, while granting the parties maximum freedom for its accomplishment. Therefore, it does not exist a single network model (although such "freedom" must comply with certain limits provided for by law) and such flexibility is likely to create several practical problems.

after the conclusion of the contract, the parties are merely entitled to the termination of the contract because of a supervening impossibility of pursuing the common goal<sup>35</sup>.

The identification of the legal nature of network contracts is closely related to the *causa* of such contracts: the legislature's silence on the issue of reticular interdependencies has raised questions pertaining to their proper legal framework and, consequently, the identification of the adequate legal reference categories<sup>36</sup>.

In this regard, the assumptions by the legal scholars either make it possible to consider the networks in relation to the models typically required by the legislation in force (e.g., consortia-network, companies-network, associations-network) or, alternatively, to use an unnamed multilateral agreement benefiting from the autonomy granted to individuals and recognized by art. 1322 of the Civil Code<sup>37</sup>.

In fact, in the legislature's intention, the network contract can be considered a trans-type, intended to be used to give clothes to business operations due to a number of typical or atypical figures already laid down by the system or known to the praxis<sup>38</sup>.

The contractual figures used in the network are those already typified by the legislator or, although atypical, used in practice, such as, for instance, the consortium, the temporary associations, the joint ventures, the distribution networks or production.

Nevertheless, the network contract - whereby the network is considered the set of relationships among the nodes and the adjunct enterprises - keeps a physiologically atypical nature, also on the basis of its peculiarities (and in many cases complexity), which on the legal front results in a cross and multiform character, therefore not referable to a single or unitary model, in which the interests at stake can be isolated with sufficient clarity, so that the legislator can intervene on them to give life to a particular regulation in the typical forms of enacting and imperative rules<sup>39</sup>.

In order to implement the program on which the network is predicated, the parties are granted the opportunity to use a mutual fund or, alternatively, to resort to art. 2447 *bis* of the Civil Code, and, therefore, establish a fund for the specific transaction.

In the first case, the regulations concerning consortia with external activities, referred to in Articles 2614 and 2615 of the Civil Code, apply<sup>40</sup>: creditors of individual member companies cannot enforce their rights against the common fund and, third parties, owed money as a result of obligations assumed

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<sup>35</sup> C. SCOGNAMIGLIO, *Le reti di impresa e contratti di rete* cit., 75-76. See also M. D'AURIA, *La causa ed il ruolo dell'autonomia contrattuale*, in *Contratto di rete di imprese*, (Ed. V. Cuffaro), Milano, Giuffrè, 2016, 104.

<sup>36</sup> See P. IAMICELI, *Le Reti D'impresa ed i Contratti di Rete*, cit., 7 ff. The author analyzes the possibility of applying the general law of contracts to the regulation of business networks, by addressing the potential and critical concepts of negotiated connection and multilateral agreement. Regarding the former, she takes into account the function of "coordination contracts" in relation to direct contracts so as to determine the content of the subsequent agreements. Afterwards, she states that the concept of negotiated connection has been extended up to encompass real strategies of coordination and inter-enterprising collaboration. Whereas, as regards the analysis of reticular relationships from the perspective of multilateral agreements, the author highlights a simplification role caused by the necessary convergence of the membership of the parties to the same contract.

<sup>37</sup> The two alternatives are respectively analyzed in F. CAFAGGI, *Reti di imprese tra regolazione e norme speciali*, cit., 11.

<sup>38</sup> P. IAMICELI, *Le Reti D'impresa ed i Contratti di Rete*, cit., 27.

<sup>39</sup> *Id.*

<sup>40</sup> See D. CORAPI, *Dal consorzio al contratto di rete*, cit., 170.

by the joint authority through its legitimate representatives, cannot attack the assets of the single members but rather only the common fund<sup>41</sup>.

In the second case, even though parties are granted a limited liability, no separation of their property occurs; but, on the contrary, the ownership of the assets assigned to the network would still be held by the individual participants<sup>42</sup> and the joint authority would merely represent them<sup>43</sup>.

Finally, art. 3(e), paragraph 4-*ter* of law 33/2009 establishes that the practical implementation of the network program can be achieved by "the joint authority responsible for carrying out the contract." The latter is an operating structure that acts as a representative of the network's participants in terms of internal and governance relations, as well as with third parties<sup>44</sup>.

However, given the prevailing private autonomy in regulating network contracts, the joint authority's composition and powers may be almost freely established by the contracting parties<sup>45</sup>. Owing to its specific nature, this institution cannot be reduced to a mere representative body but it becomes itself "an instrument designed to make the 'network program' - which is the *causa* of the contract - applicable outside"<sup>46</sup>.

In conclusion, if the parties satisfy the aforementioned requirements they are rewarded by the State with tax breaks that will be now examined<sup>47</sup>.

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<sup>41</sup> See G. VILLA, *Il coordinamento interimprenditoriale* cit.,110 and M. LASCIALFARI, *La dotazione patrimoniale della rete di impresa e la disciplina dei conferimenti*, in *Contratto di rete di imprese*, (Ed. V. Cuffaro), Milano, Giuffrè, 2016, 164.

<sup>42</sup> See A. ZOPPINI, *Autonomia e separazione del patrimonio nella prospettiva dei patrimoni separati delle società per azioni*, in *Riv. Dir. Civ.*, 2002, 547; B. INZITARI, *I patrimoni destinati ad uno specifico affare (art. 2447 bis, lett. a, c.c.)*, in *Resp. Civ.*, 2003, 164 ff. Regarding the specific issue of network contracts, see D. SCARPA, *La responsabilità patrimoniale delle imprese contraenti per le obbligazioni assunte a favore di una rete tra loro costituita*, in *Resp. Civ.*, 2010, 406.

<sup>43</sup> In so doing, the bond would resemble a sort of shareholders' agreement. (G. VILLA, *Il coordinamento interimprenditoriale*, cit., 111). According to the doctrine, without the creation of a specific fund the consortium rules are not applicable. See D. CORAPI, *Dal consorzio al contratto di rete: spunti di riflessione*, in *Le Reti D'impresa ed i Contratti di Rete*, cit., 172). See also L. BENCINI, *La responsabilità della rete di imprese*, in *Contratto di rete di imprese*, (Ed. V. Cuffaro), Milano, 2016, 208.

<sup>44</sup> See F. CAFAGGI, *Il contratto di rete nella prassi. Prime riflessioni*, in *Contratti*, (2011), 504 and F. CAFAGGI, *Il nuovo contratto di rete: "Learning by doing"*, in *Contratti*, 2010, 1143. F. CAFAGGI - P. IAMICELI (EDS.), *Reti di imprese e modelli di governo inter-imprenditoriale: analisi comparativa e prospettive di approfondimento*, in *Reti Di Imprese Tra Crescita E Innovazione Organizzativa*, Bologna-II Mulino, 2007, 279 ff., and recently, M. D'AURIA, *L'organo comune e la governance del contratto di rete*, in *Contratto di rete di imprese*, (Ed. V. Cuffaro), Milano, Giuffrè, 2016, 131 and G. AIELLO & L. GRAZZINI, *Contratto di rete e organizzazione aziendale*, in *Contratto di rete di imprese*, (Ed. V. Cuffaro), Milano, Giuffrè, 2016, 363.

<sup>45</sup> P. IAMICELI, *Le Reti D'impresa ed i Contratti di Rete*, cit., 34. If the parties opt for an association, the joint authority will represent the network; if the parties opt for a less structured solution, the joint authority will follow the rules on agency. See P. BENAZZO, *I diritti di Voice e di Exit nei contratti di rete "riconosciuti"*, in *Riv. soc.*, 2012, 677.

<sup>46</sup> C. CAMARDI, *I contratti di distribuzione come contratti di "rete" cit.*, 258. A. ZOPPINI, *Premesse sistematiche all'analisi del recesso nei contratti tra imprese*, in *Il terzo contratto. Asimmetrie di potere contrattuale ed imprenditori deboli* (G. Gitti – G. Villa eds.), Bologna-II Mulino, 2008, 223 ff.; R. FRANCO, *Il contratto di rete: tra attività e responsabilità (per inadempimento)*, in *Vita notarile*, 2012, 2, 1048 ff. And this role emerges primarily in the functions accomplished by the joint authority. In fact, unless otherwise agreed upon by the parties, the latter acts on behalf of the networks contract members under several circumstances specifically identified by the legislator, ranging from negotiating planning procedures with public entities, to the activities for accessing credit and the promotion and protection of Italian products as well as the development of the business system in the processes of internationalization and innovation. P. IAMICELI, *Il contratto di rete tra percorsi di crescita e prospettive di finanziamento*, in *Contratti*, 2009, 942. See D. SCARPA, *Rete di imprese in prospettiva industriale: adeguatezza e congruità quali criteri fondanti la struttura*, *Riv. Dir. Ind.*, 2014, 48. The paper stresses the importance of the collective mark and the communion of the brand. See on the very specific topic also M. S. SPOLIDORO, *Reti di impresa e diritti di proprietà industriale*, in *Riv. Dir. Ind.*, 2014, 245. F. CAFAGGI, *Contractual networks, inter-firm cooperation and economic growth*, Cheltenham-Elgar, 2011, 10.

<sup>47</sup> The Italian legal system is the only one granting tax breaks for parties concluding a network contract. Briefly, Common law does not recognize network contract due the adherence to the privity of contract theory resorting to tort law to solve the issue. On the other hand, German legal theory has elaborated specific solutions which cannot be used in a systematic manner and the existence of a network contract is explicitly excluded when there is a common fund. Finally, not even under French law network contracts are recognized by the civil code and the formants have come up with different labels, haphazardly applied, to which different consequences are attached by the courts. For a detailed comparative law overview see, A.BORRONI, *The Network Contract: a Comparative Survey*, in *Legal Roots, The International Journal of Roman Law, Legal History and Comparative Law*, 2015, 89 ff..

### III. THE NETWORK CONTRACT: THE FISCAL REGIME

The first incentives before 2014. –Network contract, as already said in the previous paragraphs dealing with the Italian legal system, is the agreement through which businessmen cooperate to individually and collectively enhance their competitiveness on the market and their innovative capacity<sup>48</sup>.

To boost the common program of the network, Legislature introduced fiscal incentives: the tax facilitation laid down in paragraphs 2(c) - 2(f) of art.42 of the Decree Law no. 78 of 31 May 2010 (subsequently amended and transferred into law no. 122, of 30 July 2010 and implemented later by the Art. 45, d.l. 22 June 2012 -transferred with amendments into the law 134/2012- and, finally, by the article 36, co. 4, d.l. 18 October 2012, n. 179) that represented the most striking innovation among the developments concerning network contracts.

Initially, paragraph 2(c) provided that, up to the end of the relevant tax year, the operating profits of the network members were excluded from each company's taxable income if they were part of the common capital fund or asset deals. However, such profits had been used for the realization of the investments planned in the network joint program asseverated by the competent national authority within one year according.

It was also established that "*profits bear to the income year in which the reserve is used for any purpose other than to cover operating losses or in which there is less adhesion to the network contract*" and, in addition, that the amount not bearing to the business income could not exceed the threshold of 1,000,000 Euros.

To qualify for this facilitation, companies had to disclose the profits designed for the common capital fund in a separate section of their financial statement with an integrative notice, and also obtain in advance the asseveration to the network program of the representative bodies of the business associations.

Moreover, paragraph 2(c) set that any profits benefitting from such tax facilitation had to be bound to the achievement of the investments established by the network program, besides, the Income Revenue Authority monitored the realization of those investments leading to the qualification for that facilitation. Therefore, this facilitation consisted of a mere tax suspension and its benefit was essentially financial, for upon the termination of the contract the previously deferred tax would then be "recovered", unless the planned investments were achieved before the contract's expiry date<sup>49</sup>.

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<sup>48</sup> A. TRIVOLI - L. BAIANI, *I profili tributari del nuovo contratto di rete*, in *AA.VV., Il contratto di rete per la crescita*, cit., 376 ss. See also, BASSI, *Evoluzione normativa del contratto di rete nel sistema delle fonti*, cit., 34-38.

<sup>49</sup> See A. BORRONI - I. SALA, *Profili civilistici e fiscali del contratto di rete*, in *INFORMATORE*, 2012, 134-136. These effects apply only if a single company participating in the network withdraws from the contract and in case of the termination of the network contract itself. The fiscal benefit was initially preserved even though one participant leaves the network, now this benefit has been erased. The fiscal benefits fade away if the business gains are used for different purposes other than covering losses or if the single participant leaves the network (see Circular 15/E/2011). See also P. ZANELLI, *Reti e contratto di rete*, Padova-CEDAM, 2012, 7 ss. and recently T. TASSANI, *Profili fiscali del contratto di rete tra soggettività giuridica e separazione patrimoniale*, *Riv. dir. trib.*, 2013, 569 who considers the recent tax changes of network

In cases of unilateral termination of the contract or withdrawal, however, the taxation recovery of the previously tax-exempt profits should have occurred within the tax year during which the company will once again enjoy its preceding contributions to the network<sup>50</sup>.

The legislative choice was intended to ensure a wide margin of operability to the Italian entrepreneurship and to counter the new international competitors particularly structured and aggressive. These aims could only be answered and supported in a dimensional profile, able to contribute to a lower incidence of fixed costs in goods and services production, and to a constant product innovation by facilities for research and development.

The network helps small and medium-sized enterprises (SMEs) making the most of business opportunities in the EU and beyond<sup>51</sup>.

The phenomenon of networks of firms has been for a long time without a single legal framework also in fiscal sector: while activating a collaboration plan was entrusted to some models of association (such as “joint ventures” or “Temporary Associations Business”), exchange of goods and/or services reports between companies were regulated by the common framework of contracts<sup>52</sup>.

To answer this economic need- due to economic contexts increasingly based on knowledge and innovation, which require individual companies to develop cooperative relationships with other organizations - the legislature introduced the fiscal discipline for the network contract<sup>53</sup>.

This instrument has undergone many changes since its introduction to the detriment of legal certainty<sup>54</sup>.

## 1. The Circulars

With respect to this topic, the Resolution no. 129/E of 13 December 2010 and the Circular no. 4/E of 15 February 2011 issued by the Income Revenue Authority should be taken into account.

The abovementioned circular no. 4/E aimed at clarifying some aspects concerning the tax facilitation issue. The Authority specifies that the limit of one million Euros provided for by law relates to each undertaking and not to the network as a whole. Therefore, if the network is composed of more enterprises, each of which fixes a lower sum than such threshold, all of them would benefit from the entire subsidy. Further on, it is also underlined that the limit of one million Euros applies to the tax period within which the facilitation can be accessed.

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contract particularly in the alternative between juridical subjectivity and segregated liability taking into consideration also the issues of conclusion of the contract, relationship between subjects and the execution of the network program.

<sup>50</sup> M. MALTONI, *La pubblicità del contratto di rete: questioni applicative*, *Studio n. 5-2013/I del CNN*, in [www. notariato.it](http://www.notariato.it).

<sup>51</sup> T. TASSANI, *La fiscalità delle PMI tra distretti produttivi e reti di impresa: il dibattito teorico e l'evoluzione legislativa*, in *Piccola impresa*, 2007, 109 ff.

<sup>52</sup> P. ZANELLI, *Reti e contratto di rete*, Padova-CEDAM, 2012, 7 ff.

<sup>53</sup> G. MELIS, *Le agevolazioni tributarie finalizzate all'aggregazione delle imprese e il contratto di rete: alcune considerazioni*, in AA.VV., *Il contratto di rete per la crescita delle imprese*, ed. by Cafaggi, Iamiceli, Mosco, Milano, 2012, 395 ff.

<sup>54</sup> See recently G. GIANGRANDE, *Inter-firm Networks: Subjectivity and Fiscal Discipline. “Domestic Profile and European Perspective”*, English abstract, Dottorato di ricerca in Diritto degli Affari e Tributario dell'Impresa, Ciclo XXVII, Luiss, 2014-2015 who said: “The underlying theme is the incomplete nature of the institute which in the face of the numerous advantages granted, reflects a legislative choice which, although full of good intentions, is guilty of lack of systematicity, clarity and above all reliability because charge of interpretation questions not easily overcome.”

In 2011 the European Commission carried out a survey on Italy's legislation and set that a State aid could not be established in relation to networks, therefore it gave its go-ahead to the Country's fiscal discipline<sup>55</sup>. The EU Community grounded its decision on the basis that the Italian legislative measure established no spatial constraints and it did not discriminate between Italian and foreign companies, neither is it with regard to the size or number of companies constituting the network, nor in relation to the sector in which they operate; therefore, it complies with the European regulations<sup>56</sup>.

Following, the Italian Income Revenue Agency issued a second circular no. 15/E of 14 April 2011 whereby it explained that the costs incurred for the purchase or use of goods (whether instrumental or not), for the services as well as for the staff may be lawfully entailed in the realization of the planned investments<sup>57</sup>. Moreover, another important element in organizational terms is represented by the possibility that the costs arising from the use of the resources of the networks' single enterprises can be also eligible for the tax facilitation<sup>58</sup>. Thus, an important scenario unfolds in terms of organization if the network is entitled to make use of both physical and human capital of each participating company.

Finally, according to Circular 4/E the participating companies do not lose their tax liability and, in addition, the network does not acquire its own legal subjectivity. After the enactment of the Circular n.20/E/2013, that provided a systematic fiscal discipline for the subject, this regime is still in force for the "reti contratto", i.e. networks of companies linked only through a contract without a specific and separate patrimony (so called, "reti soggetto")<sup>59</sup>.

In case of *reti contratto*, the fiscal and tax situation of each single participant to the network is autonomous and it is pro quota and a function of the amount invested in the network program; in case of *reti soggetto*, the benefits of the investments is directly in favour of the Network itself since the gains of the business is the outcome of the activity of the network as whole<sup>60</sup>.

## 2. THE LAST EVOLUTION

These fiscal benefits have been slowly but inexorably lowered.

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<sup>55</sup> Cf. C(2010)8939 final, Brussels 26 January 2011, State Aid N 343/2010-Italy, Support to set up companies' networks (*reti di impresa*), available at [http://ec.europa.eu/competition/state\\_aid/cases/237229/237229\\_1184925\\_34\\_3.pdf](http://ec.europa.eu/competition/state_aid/cases/237229/237229_1184925_34_3.pdf) (last visited 28 April 2014).

<sup>56</sup> *Id.*, points 21 – 25.

<sup>57</sup> Cf. Agenzia Entrate Circolare N.15/E 14 april 2011. See also, recently, A.MARINELLO, *Inquadramento fiscale e strumenti di agevolazione*, in *Contratto di rete di imprese*, (Ed. V. Cuffaro), Milano, Giuffrè, 2016, 418.

<sup>58</sup> Cf. Agenzia Entrate Circolare N.15/E 14 april 2011. On the tax issues see, A. GIOVANARDI, *L'agevolazione fiscale alle reti di impresa: profili sistematici e applicativi*, in *Dialoghi trib.*, 2011, 602 ff.; F. MARIOTTI, *Detassazione degli utili destinati al fondo patrimoniale comune per incentivare le reti di imprese*, in *Corr. trib.*, 2011, 951 ff.; M. CEDRO, *Profilo fiscale del contratto di rete*, in *Rass. trib.*, 2011, 1163 ff.; M. MALTONI - P. SPADA, *Il contratto di rete*, *Studio n. 1-2011/I del CNN*, in *Studi e Materiali*, 2011, 1193 ff.; E.M. TRIPPUTI, *Il contratto di rete*, in *Le nuove leggi civ. comm.*, 2011, 56 ff.; F. GALLIO - S. PISTOLESI, *Le ultime novità riguardanti il contratto di rete di imprese: aspetti civilistici e fiscali*, in *Fisco*, 2013, 519 ff.

<sup>59</sup> For the previous regime, see the Circular n. 15/E/2011, enumerating the requirements to be admitted to the fiscal benefits, the Order of the Director of the Agenzia delle Entrate of the 4 April 2011, prot. 31139/2011, that approved the model RETI, Resolution of the Agenzia delle Entrate n.70/E/2011, who created a specific code of commercial activity for the companies that establish a network to carry on their activities (code 59). M. MILELLA, *La soggettività nel contratto di rete tra imprese*, in *I contratti*, 2014, 201 ss.; G.A. MICHELI, *Soggettività tributaria e categorie civilistiche*, in *Riv. dir. fin.*, 1977, I, 419.

<sup>60</sup> But in this case, the Circular n. 15/E/2011 requires the creation of a separate fund ascribable to the network. A. SACRESTANO, *Reti d'impresa: dalla semplificazione della procedura di costituzione all'attribuzione della soggettività*, in *Corr. trib.*, 2012, 3288 ff.

In the 2014, *Documento di economia e finanza* (Def) established that, from 2015, every year two hundreds millions of euros will be used to refinance the fund constituted to ensure the operability of the fiscal benefit of the network contract regime.

The fiscal benefit has been changed by D.L. n.91/2014 in a mere tax credit which may amount up to 40% of the expenses incurred for these investments (with the limit, in any case, of 1.000.000 euros of gain for each participants and for each fiscal year).

#### IV. CONCLUSIONS

The Italian legal system has adopted a *sui generis* model which associates the objective dimension with the identification of a unitary economic operation based on several linked contracts.

Specifically, the peculiarity of the Italian law stems from the fact that the legislator has provided for an *ad hoc* regulation of contractual networks comprised in a special law, along with a favourable fiscal regime, which mark out Italy from the other legal systems.

Hence, in light of the autonomy of the network property, the Italian concept of “*contratto di rete*” represents an hybrid notion, halfway through the legal status of ‘contract’ and ‘organization’<sup>61</sup>.

Undoubtedly, the *contratto di rete* is a new and original notion; however, for the time being, it is not possible to determine whether or not it will actually be a successful one also in light of the recent cut given to the fiscal benefits. It is, therefore, worth waiting for the first reactions the market will show without boost of the fiscal driver.

Thus, the Italian model does not excessively focus on definitions neither does it extensively rely on the contracts which are made ‘typical’ by law (which is invoked for fiscal benefits only), but, on the contrary, it proposes – according to the author - a notion of network contract as a ‘trans-type’ which in each case adopts the legal framework which best suits the legal and economic circumstances at issue.

In light of this, a single regime does not seems suitable to deal with the complex and multifaceted issue of networks of contracts. Conversely, it would be advisable to adopt a more flexible approach which, rather than being based on rigid and certain legislative solutions, may be tailored to the various commercial epiphanies that require the recourse to the network contract.

After all, there does not exist a single network model (although such “*freedom*” must comply with certain limits provided for by law) and such flexibility is likely to create several practical problems<sup>62</sup>.

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<sup>61</sup> M. SCIUTO, *The Network Contract in Italy, A third Route Between “Contract” and “Organisation”?*, available at: <http://ssrn.com/abstract=2486311>.

<sup>62</sup> See A. GENTILI, *Il contratto di rete dopo la L.N. 122 del 2010*, in *Contratti*, 2011, 617. However, if one of the uses of the network contract consist in making it simpler for companies to compete on the international market, maybe, national Parliaments are not in the best position to successfully enact rules but rather this should be left to the autonomy of the various companies with the State intervening only as a safety valve, when they violate fundamental principles of their own legal system (for instance, in the case of unfair competition).