

How does it work?

An overview of the social clause in public procurements in Italy

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1. Introduction

1.1 A given definition of social clause within legal boundaries.

While the general debates on social clause often lacked clarity, it is importance to set a first basic definition taking into consideration the legal and the social perspectives regarding the social clause issue.

On one side, the legislative framework is regulated by European Commission Directives, treaties and communications. The legislation on trade is based and finalised on the economic principles.

On the other side, social clauses in public procurement refer to social and labour standards which are mandatory for contractors that want to tender for a public contract. These conditions are usually based by local public institutions under the aim of insert social limitations for entities participating to public procurements.

1.2 The market perspective within the European legislative framework.

Since 2004 public procurement procedures are regulated by two European directives¹ both draw on former case law and include provisions concerning employment protection, working conditions and social issues. For instance, contracting authorities may lay down special conditions relating to the performance of a contract concerning, in particular, social and environmental considerations².

On 1st December 2009 the Lisbon Treaty³ was ratified and the Charter of fundamental rights became legally binding: since then, social rights have a legal status comparable to the fundamental freedoms of the Internal Market.

The essence of the procurement directives is to establish cross border market access to the national public procurement markets of the member states: the above-mentioned directives are based primarily on the free movement of goods and services regimes.

Which means that not necessary the social or environmental principle are included: if procurements are a sole economic driven exercise, any social considerations are excluded.

Due to the supremacy of EC law over that of the participating Member States, a gradual

1 Ref.: the [Directive 2004/17/EC](#) refers to procurement procedures of entities operating in the water, energy, transport and postal services sectors; the [Directive 2004/18/EC](#) refers to governing procedures for the award of public works, and supply and service contracts in other sectors.

2 Ref.: Art. 38 of Directive 2004/17/EC; art. 26 of Directive 2004/18/EC

3 Ref.: see the official definitions: [Treaty of Lisbon](#) and the [Charter of Fundamental Rights of the European Union](#)

removal of many social clauses has taken place and this phasing out is still ongoing, while in many countries⁴ the social objectives are still part of the general debate.

1.3 The social perspective.

While on one end the points set by the Lisbon Treaty, and foremost, by the Eu2020 agenda involve the fundamental importance of social issues: « ... it is about addressing the shortcomings of our growth model and creating the conditions for a different type of growth that is smarter, more sustainable and more inclusive ... »⁵.

Within the context of international trade, a social clause is the integration of seven core ILO labour rights conventions⁶ into trade agreements.

Generally speaking, for some public authorities, concerns about the Eu procurement rules have prevented them from making the most of regeneration or other local development projects. Instead of a given market driven approach, the Eu2020 strategy entitles to require social benefits as long as they operate within the relevant legislative framework and guidance.

The primary sources of law clearly recognise the possibility of incorporating social benefits into the public procurement process. In support of this, various sources of guidance have been issued by local, regional and European Government which clarify, to some extent, what is and is not permissible.

1.4 Public policies to foster insertion into work.

Generally speaking there are four main policies which are addressed to employers and enterprises in term of a mixture of mandatory obligations together with financial benefits and economical incentives.

The obligational policies force the employers and the enterprises to hire a certain percentage of disadvantaged groups by introducing obligations, limitations and sanctions. Although being the most used option, this policy has been demonstrated to be less effective in long term.

4 Ref.: in the European Court of Justice (Beentjes v the Netherlands [1988] ECR 4635), it appeared to take a controversial stance in allowing the possibility to take into account objectives of a general interest within certain limits. The Commission subsequently issued a communication in which it limited the possibilities for contracting entities to use public procurement as a tool to promote social policies. Relevant actions by the Commission against Member States following this communication were upheld by the Court of Justice. However, in Commission v France [2000] ECR I-7745, the Court refused the interpretation of the Commission. Directives 2004/18/EC and 2004/17/EC, although they did contain some changes with regards to social considerations, mainly clarified and cemented the existing law. Any innovations contained therein are limited.

5 Ref.: Official presentation: [Europe 2020 strategy paper](#) ; explicative documentation at [Europe 2020 in a nutshell](#)

6 The seven ILO conventions are:

- freedom of association and protection of the rights to organise (convention 87, 1948)
- right to organise and collective bargaining (convention 98, 1949)
- forced labour convention (convention 29, 1930)
- prohibition of forced labour (convention 105, 1957)
- equal remuneration (convention 100, 1951)
- discrimination in employment and occupation (convention 111, 19589)
- minimum age (convention 138, 1973)

The compensation policies introduce the possibility to compensate the less degree of productivity of disadvantaged employees and to introduce incentives to their assumption. The incentives usually take the form of vocational activities and of training-into-job which are offered by the local authorities to the disadvantaged groups.

A third case is represented by the so-called substitutive policies, where the minister of labour directly intervene with own funds to support the insertion into public places, both with direct occupation or with funds for local authorities to hire them or to offer sheltered employment initiatives.

The last general policy is represented by the locally driven interventions with targeted and tailored procedures, which usually implies the methodology of supported employment, where the enterprise and/or the employer is supported by social workers with specific skills in social accompaniment and mediation between the market necessities in term of productivity and flexibility, and the individual needs.

2. The Italian scenario.

The same double-sided situations that occurs in many western post-modern societies happens in Italy as well:

- point one: the market is expected to offer a salary opportunity to most of the population
- point two: the combination of various circumstances (a general restructuring of labour market policies, the austerity measures, the lack of social protection, the absence of minimum income policies and the difficult degree of employability of disadvantaged groups) creates a de facto impossibility to satisfy the market expectation descending from point one.

As data⁷ shows that the market own regulations and praxis are not self-sufficient to assure a general employment, various initiatives have been placed by different welfare institutions⁸ to support and respond to the need of insertion in labour market for disadvantaged groups.

The first required specifications are about the identification of the organisations entitled to propose the interventions and the definition of disadvantaged groups.

The organisations which are historically addressed to offer support to social groups in need are the social cooperatives. Specifically regarding the insertion into employment, the social cooperatives improved their presence from the 70s onward, mostly because of

7 The most recent data from Istat in September 2013 are discouraging:

- unemployment rate..... 12,20%
- employment rate 55,8%
- inactive 36,30%
- NEET 23,9% (in the southern regions, almost 35%)
- young unemployment (15-24) 40,1% (women 51%)

8 Italy is structured on a subsidiary model where most of the praxis are assigned as a formal deputation from the national government to local authorities. Depending from various field of intervention, the deputation might be addressed and taken, or addressed and passed by. So there are policies that belong to Regional or provincial governments and to municipalities.

two specific issues, the impact of the de-institutionalisation and the diffusion of heroin addictions.

In both cases, a large number of people were in need of a global taken in charge which was functional to their reinsertion into society.

Within the time, their approach became specialised, ending into social cooperatives and social enterprises orientated to specific targets, which might have been the former psychiatric patients, people experiencing addictions to drug and/or alcohol, ex-prisoner, and more recently to migrants and low-skilled drop-outs.

These activities were not only developed as a cultural, ethical and political issue, as they also matched with some productive necessities.

More specifically, the laboratories for employability, the paid apprenticeship, the working scholarship, the subsidies for low production met the market need of lowering the production cost within a scenario of social solidarity.

This specific aspect constitutes quite a critical issue in the debate.

The massive dimension of the social cooperatives into the field of labour market has been so wide that was officially recognised and regulated by the Law 381 in 1991.

2.1 ILO economical index.

After the definition and regulation of the organisations which are entitled to offer structured activities of insertion into labour market, the Italian government issued a specific regulation to define the boundaries of disadvantaged groups and their rights to work.

This regulation became the Law 68/1999, which regards the “right for the disable people to work”. Within the law, and in its further developments, the right to work was extended to the concept of disadvantaged groups.

The Law 68/1999 made mandatory to hire disadvantaged individuals by setting defined quotas related to the dimension of the enterprise, and defined the suspension and/or reductions of such obligations, the hiring procedures and the various form of job-placement, the economical incentives for the enterprises.

The obligations and the requisites will be detailed lately.

In such a general regulation, each local Employment Office had to set a specific list of mandatory job-placement; average data indicate almost 750 thousand individuals which are inscribed to such list. At a more global level, the ILO report on occupation, social justice and fair globalisation indicates an average loss between 1 and 7 percent in the world GDP.

2.2 Legislative framework

The Italian legislative framework is historically rich in terms of heritage, experiences and directives toward the creation of supportive background for social economy. This is the

result of the impact of a strong cooperative movement, dating back to the end of 1800, with the various legislative regulations which integrated their efforts through different fields, such as, among others the measures to assure the right to work for disable persons; the regulation to close all mental hospitals and total institutions; the regulation of social cooperatives; the regulation of social economy with the definition of requirements for being registered as social enterprise.

The Legislative Decree 163/2006, also known as the codex for public grants and procurements, puts in clear evidence the concept of social-clause within public procurements for works, services and goods. The article 2 and the article 69 allow to insert the social-clause into public grants within a framework where the economical principle of cost-benefit ratio is subjected to the more general principles of social equality, prevention of general interest in term of health, protection of the environment and promotion of a sustainable development.

These concepts purchase the aims of supporting economical investments into social economy and the effort toward assuring a more inclusive impact of those part of the population which is generally effected by various disadvantages in entering labour market.

2.2.1 The Law 381/1991 on social cooperatives.⁹

Social cooperatives in Italy were officially recognised, defined and regulated by Law 381/1991, which clarified their main aim as “pursuing the general interest of the local communities to promote citizenship and social integration of the population”.

The Law introduced four different forms:

- type A cooperatives: providing social, health and educational services
- type B cooperatives: providing employment opportunities to disadvantaged groups
- type “mixed”: which include both the previous two
- consortia: second level organisations, build upon wide partnership structured as a cooperative organisation where at least 70% of its members are social cooperatives.

For the Law 381/1991, a social cooperative must responds to the specific requirements on the following issues:

- *business*: at least 30% of net surplus must be inscribed into the indivisible reserve fund; the surplus might be reinvested or inscribed into the indivisible reserve fund; interest is limited to the bond rate and dissolution is altruistic (assets may not be distributed)
- *liability*: the cooperative has legal personality and limited liability
- *objectives*: the general benefit of the community and the social integration of those of type B integrate disadvantaged people into the labour market. The target set of

⁹ Ref.: P. Brusa, *The state of the art: an introduction to the economy of social economy in Italy*, 2011

disadvantage may include physical and mental disability, drug and alcohol addiction, developmental disorders and problems with the law. They do not include other factors of disadvantage such as race, sexual orientation or abuse, which are considered discrimination and are prosecuted by Law.

- *fields of intervention*: type A cooperatives provide health, social or educational services
- *associative framework*: various categories of stakeholder may become members, including paid employees, beneficiaries, volunteers (up to 50% of members), financial investors and public institutions. In type B co-operatives at least 30% of the members must be hired from the disadvantaged target groups
- *democratic process*: voting process is "one person, one vote"

In more recent years, the legislative framework were improved by Law 118/2005 and by the Legislative Decree 155/2006 which introduced the formal regulation for social enterprises.

The article 2 defines that the legal form of a social enterprise includes all the private enterprises, as for example cooperatives, in which the main economic activity is stable and the production and exchange of goods and services of social value and general interest is its statutory object.

The official definition of "not for profit" organisation is applicable to all those organisations as "Not Lucrative Organisation of Social Utility (Italian acronym is ONLUS)".

As the definition itself put in evidence, all the these organisations have two mandatory characteristics: the absence of any form of personal gain and the social utility as final scope.

2.2.2 The Law 68/1999 on rights to work for disadvantaged groups

All employers are interested in the application of Law 68/1999, which was titled "the right of disabled people to work". The Law indicated work placements and economic autonomy as the crucial factors to foster and support social integration of people with disabilities.

The general principle is the achievement of a full social and working integration of the disable person in relation to productive context.

The Law 68/1999 represented the overtaking of the precedent Law 482/68, which was still based on the principles of charity philosophy.

The Law 68/1999 introduced new rules which were based on the art. 1 of the Italian Constitution¹⁰: the law affirmed the principle of a placement for people with disabilities, just as for all other Italian citizens, under a tailored approach where the dignity and the respect of the working capacities of the workers should match the expectations of the

¹⁰ The article of the Italian Constitution affirms the right to work for all Italian citizens, as it states "Italy is a democratic republic based on the right to work".

employers.

The article 2 set five key concepts addressing the practical application of the law:

- 1) orientation: every person deserves to have a life project, which comprehends a path of awareness on self capacities and attitudes, which are necessary to define personal aims at existential, social and working level;
- 2) education: each individual has the right to receive a tailored programme to develop personal skills and competences which can be acquired by educational processes, that has to be opportunely certified;
- 3) experience: the person should acquire adequate practical skills through supported stages and internships;
- 4) motivation: as all other citizens, the most vulnerable has the right to contribute to the development of collectivity and to self realization, which will be obtained by maintenance;
- 5) responsibility: every person has to receive the possibility to assume the role of worker and the resulting commitments, without any discounts nor discriminations.

The Law application is focused on people in working age with physical, psychic, sensorial, intellectual and relational disabilities, and to civil disability, working disability, total blindness, deafness at birth or before the speaking learning, war disability and disability for service.

The entitled person has to submit an enquire to the local Health department, where a specialised commission verifies the condition of the disability.

The law regulates the roles for stages and internships in companies, in order to enrich the curriculum, gain experience and acquire practical skills. The Law includes the possibility for the entitled individual to activate taylored programme based on an alternation of school and work.

3. The Italian model of labour reinsertion within the framework of social cooperation.

The Italian model of insertion into work for the vulnerable groups is based on the combination of the previous mentioned laws, which on one side create the most suitable environment to define a social economy enterprise, such as cooperatives of type B. On the other side, there is the application of the right to work for every citizen, whatsoever the individual condition.

On parallel, the so called “Basaglia Law¹¹” defined the definitive closure of special

11 In 1978, after long social and political debates, the “Basaglia” Law n. 180/1978 stated the definitive closure of total institutions for mental health in Italy. The institutions were substituted by housing opportunities where former “patient” became “citizens” in their communities, and lived just as all others. Support were established when needed. The law took the name of Franco Basaglia (1924-1980), a psychiatric and neurologist whose contribution was fundamental.

institutions for psychiatric problems, disabilities and orphans.

On the specific side of inclusion into work, the Law 381/1991 defined the social cooperative of type B as the prime entity to respond to such social necessity.

The law indicated clearly as they can be employed in whatsoever activity, with the sole exclusion of social, health and educational services, in order to prevent any form of crossing and conflict of interest between the individual situations and the possible users needs.

By Law, disadvantaged persons has to represent at least the 30% of the whole work force of a type B cooperative. The main fiscal benefit is that the cooperatives is exonerate from the payment of contributions (social taxation) for the sole disadvantaged members.

The Law 381/1991 introduced peculiarities that contributed to the success of such social entity:

- the private form of social cooperatives allow them to be active in every market and to adopt private national standards in contracting procedures
- a wider definition of “disadvantaged groups” than from the previous laws
- the clear difference between supported employment and offer of social services allowed such entities to focus on insertion into work having the productive activities as instrumental
- the clear difference between supported employment and protected activities, such as meaningful occupation, allowed the cooperatives to have a significant percentage of disadvantaged workers within a productive framework which was still market economically-sustainable
- the economical self maintenance of cooperatives allowed to respect the obligation of adopting national standards in contracting procedures, while the obligation for disadvantaged workers to become full members of cooperatives allowed individual to obtain full democratic control on their own work, and to receive eventual assets, where eligible and allowed

3.1 Legislative obligations.

The Law 68/1999 is very clear: every company with more than 15 employees has the mandatory obligation of hiring a defined proportion of workers taken from the protected categories.

The so called protected categories indicates those individuals who are registered on local health departments, employment office and public assurance offices.

The Law defines clearly that to be part of the “protected category” one person should be either:

- civil invalids, such as physical, psychic, sensorial, intellectual and relational disabilities, with a officially recognised loss of more than 45% of working abilities; this category includes also disease such as cancer and diabetes

- work invalids, meanings those who were already employed, and saw their working abilities decrease of more than 33% for a professional disease or for an accident
- blind and deaf persons
- invalid from war and service
- widows, orphans, refugees and other persons which are identified as victims of terrorism or criminality

The Law sets the following precise proportion for the hiring of workers from the protected categories:

Number of employees	number of workers from protected categories
From 15 to 35	1 employee
From 36 to 50	2 employees
From 51 to 150	7% with disabilities plus 1 from another category
More than 150	7% with disabilities plus 1% from another category

The Law 68/1999 also indicates the way to count the number of employees.

A company is allowed not to consider the following roles and contract positions: board members; other supported contracts; apprenticeship; tele workers; short term contracts, meaning less than 9 months, usually adopted for maternity leaves; members of social cooperatives.

The recent reform law on public pensions¹² introduced an enlargement of the occupational offer as it included all forms of temporary contracts within the countable for the definition of the proportion of staff from protected categories.

This means that it includes all temporary contracts which are created to cover the women in maternity leaves.

The result was not reasonably predetermined, but it was paradoxical: it became even harder for young women to find contracts positions, as the employers consider their hiring risky for their productive model.

The Law 68/1999 indicates the benefit and the incentives that the state recognised to those company who respect the mandatory hiring of workers from protected categories. The main incentives are:

- a maximum of 8 years time for the taxation of the contributions on social security for those employees with more than 79% of invalidity and for those with psychic and cognitive disability
- a maximum of 5 years time for the taxation of the 50% of contributions on social security for those employees with invalidity between 67% and 79%

12 Ref.: art. 24 of the Legislative Decree 201/2011

- a forfeit reimbursement for the cost needed to adequate the environment to the special needs of workers with at least 50% of invalidity, to buy IC tools for tele working.

Together with the indication of the benefits and of the incentives, the Law defines the sanctions for those companies which don't respect the mandatory obligation of hiring persons from disadvantaged groups inscribed to the protected categories. Never to late to remember it once again, this mandatory obligation is for both public and private companies.

The only companies which are excluded from this obligations are the one which pass into a situation of crises, reorganization, restructuring, etc. formally ascertained, or when the company carries out a labor mobility procedure pursuant to the same law.

In case an enterprise, because of specific conjuntural business situation, is unable to fulfill the obligation occupying the entire quota of disabled workers, the enterprise can request a partial exoneration from the obligations by the payment of an "exonerative contribution".

As for every obligation, the disrespect implies the following sanctions. The law introduced a difference between late reports and total disrespect.

The company who will produce a report on the information on the number of employees after the deadline of 31 January, will be fined with €. 635.

This fine will increment progressively of €. 30,76 each single day. After 60 days after the obligation of hiring, the company will have to pay a fine for € 62,77 per day for each "un-hired" worker.

3.2 Data on labour reinsertion.

Even if the most recent available data are already a bit old, as they refers to 2005, they offer an overall view on the phenomenon. In 2005, there were 2.419 B-type cooperatives, representing almost one third (32,8%) of all the social cooperatives.

Of these 2.419 B-type cooperatives, only 234 (less than 10%) were established before the Law 381/1991 was amended. In the five years after the Law become valid, there was a 200% increment of B-type cooperatives. This increment continued in the following years.

Geographically speaking, even if they are present in the entire national territory, their presence is more massive in the north.

The first data research on the diffusion and the impact of B-type cooperatives has been published in 2009 as Euricse, and it analyse the situation in three north east districts of Italy, specifically the province of Brescia and Trent (which represent one of the case study that are presented lately) and the Region of Veneto.

The research was based on questionnaires which were presented to 127 B-type cooperatives between the existing 377s in the interested area.

The following scheme¹³ shows the distribution of the fields of activities, the percentage of a certain activities run by B-type cooperatives between other companies and the percentage of disadvantaged workers within the global number of employees.

Field of activities	% of cooperatives	% of disadvantaged workers
agriculture	5,5	3,1
gardening	44,9	43,3
waste	25,2	24,4
manufacturing	11,8	11
industry	18,1	16,5
stores	9,4	6,3
Restaurants, cafeteria, canteen	11,8	8,7
laundry	6,3	6,3
Building and construction	6,3	5,5
Cleaning and domestic services	35,4	32,3
IT, call centres	15,7	13,4
others	37	32,2

*Data are expressed in percentage on the overall employees.
Ref.: Euricse 2009 report, Gorzaga and Depetri*

3.3 Main characteristics of B-type cooperatives involved in labour reinsertion.

B-type cooperatives are a classical example of the bottom-up approach, as both historical heritage, witnesses and data shows they are established by groups of people sharing the same principles, and most of the time (60%), being directly involved as former-users in their factual experience of active citizenship.

Only one fourth (26%) have been created as spin-off of previous cooperative experiences.

B-type cooperatives are usually small in term of dimension, being the 43,1% between 15 and 50 workers. One fourth (26,7%) are even smaller, counting less than 15 employees.

The average number of employees from the protected categories is 13.

Data shows that if social disadvantaged groups are included in the analysis, their

¹³ Ref.: Euricse 2009 report

percentage is between 30% and 50% of overall employee of workplaces are run by disadvantaged groups is considerably high, reaching 34,4%.

These percentages refers to the following 2007 Istat data on disadvantages; the percentages refers to a total population of 30.141 individuals.

disadvantages	%
Alcohol addiction	4,3
Inmates and former inmates	8,7
Physical, psychic, sensorial disabilities	46,3
Long term unemployed	3,8
minors	0,7
Psychiatric patients	15
Drug addiction	16
Other disadvantages	5,2
<i>Ref.: Istat 2007 report</i>	

3.4 Typology of employment contracts.

Another interesting aspect of B-type cooperatives is the quality of the contracts, as the vast majority of workers from the protected categories (74%) and from the broader definition of disadvantages groups (68,9%) signed permanent contracts.

Even more significant, even if the recent reforms on labour market introduces more flexible solutions, only a small minority of such contracts has been used. The distribution of contracts is as follow:

contracts	protected categories		disadvantages groups	
	n.	%	n.	%
Full time contract	859	51,80%	133	42,50%
Part time contract	800	48,20%	180	57,50%
<i>total</i>	<i>1.659</i>	<i>100,00%</i>	<i>313</i>	<i>100,00%</i>
Permanent contract	1227	74,00%	127	40,60%
Fixed term contract	432	26,00%	186	59,40%
<i>total</i>	<i>1.659</i>	<i>100,00%</i>	<i>313</i>	<i>100,00%</i>
<i>Ref.: Euricse 2009 report, Gorzaga and Depetri</i>				

3.5 Results.

The Euricse 2009 research shows a significant data when considering the issue of the impact of B-type cooperatives, specifically concerning the degree of succeeding with the statutory and establishing aims and scopes.

aims of labour insertion	original	nowaday
Priority to be permanent employed by the cooperative	46,3	34,6
Temporary employed within the cooperative for training and then external employment	26	26
Internal or external employment as a tailored solution	27,6	39,4
total	100	100

Ref.: Euricse 2009 report, Gorzaga and Depetri

The data clearly shows as the option for external job-placement increased since the time in which the cooperatives were established, with a congruent decrement of internal solutions.

Between the B-type cooperatives where the external placement increased, the majority is targeted to foster the labour insertion of migrants, ethnic minorities and people experiencing social exclusion.

Because of its heritage and of its statutory regulations, B-type cooperatives usually assure a global taken-in-charge of the individual, in order to succeed with their aims and social scopes.

The majority (81%) is structured on the default offer of tailored programmes, including tutoring and mentoring opportunities.

What appears to be relevant is the fact that cooperatives, which foster the integration of migrants and people experiencing various kind of addictions and social exclusion, have a stronger collaboration with public social services.

There is a even more relevant percentage (almost 30%) of cooperatives which offer tailored ad individual programmes even without the collaboration of public social services.

Another significant consideration arising from the Euricse 2009 research is the impact in term of occupational results.

In the 85% of the cases, employees declared their interest and motivation in keeping their

occupations.

The confrontation between the results of the programmes of insertion into work is also significant, as the following scheme puts in evidence:

results	n.	%
Failure of the programmes	152	26,5
Programmes closed without further occupations	201	35,1
Programmes closed with external job placement	220	38,4
<i>In other cooperatives</i>	7	
<i>In social enterprises</i>	103	
<i>In public institutions</i>	7	
<i>unknown</i>	103	
total	573	100,00%

Ref.: Euricse 2009 report, Gorzaga and Depetri

4. how does it work?

4.1 the selection criteria

It comes the time to deepen the pragmatical aspect of the legislative framework, in order to focus on the practical procedures which regulate the whole process.

The selection for a job-placement can either depend on “nominative call” or on “numerical call”.

The nominative call is a mandatory obligation for the employers who has to hire a worker from the protected categories.

The procedures is based on individual interviews which can be made directly from the company referent for the human resources, or by an external recruitment agency.

The numerical call was introduced by the Law 68/1999 is based on a progressive list of disposable workers which is prepared by the Provincial Employment agencies.

This procedure match the capacities of the worker with the specific abilities required by a given working position.

The numerical call can be used by companies accordingly with the following regulation:

- companies with 35 to 50 employees, political parties, unions
- companies with 35 to 50 employees for the 50% of their new contracts
- companies with more than 50 employees for the 60% of their new contracts

In case the requirements for the given working position don't match with the capacities of the persons in the list of the Provincial offices, it will be the duty of the employment agencies to find a persons who is more suitable for that position.

It is also possible a third procedures, which is a mixed of the two mentioned above.

4.2 How does it work? – the insertion

The insertion into work is always one of the most delicate moment of the whole process.

For the correlate effects of the privacy law, except on direct declaration from the employee, the referent for the human resources is not allowed to communicate the peculiarity of the new inserted worker to the other colleagues.

In order to favour a good insertion process, a sensitive case manager is suggested, in order to offer a human support, which can be at same time pragmatical. Tutoring and mentoring support are suggested as well.

4.3 How does it work? Accessibility and technology

In Italy, the Ministerial Decree 236/1989 stated the mandatory obligations for every activities which is open to public users to be accessible, in order to favour real equal opportunity for all.

This means that it is on the company responsibility to extinguish any barriers, both in terms of architectural and sensorial barriers.

This means that every company and every public place (restaurant, office, movie theatre, store...) has to be totally accessible.

The architectural barriers has to be removed: stairs need to have elevator with braille indications, toilets need to offer facilities. Regarding the sensorial barriers, the new technologies offer accessible solutions: 3D-maps in braille language, screen readers, textual indications on visible panels.

The following scheme offers a summary of the most common solutions:

disabilities	Difficulty in accessibility	solutions
motor disabilities	Stairs, steps, gaps with difficulty in mobility	elevator with braille indications
	Toilet with difficulty in mobility	Accessibility solutions
	Mobility indications	3D-maps in braille language, screen readers, textual indications on visible panels

blindness		Lack of tactile codex	Screen readers
Deafness, hearing impairment	hearing	mobile	Textual phone
blindness, deafness, hearing impairment		Phone and answering machine	Textual phone, email, textual indication on visible panels
		IC interface, automat, cash machine, with difficulty in multi-sensorial access (read and touch)	Screen readers, textual phone with braille keyboard, voice activated programmes
motor disabilities		IC interface, automat, cash machine, info point with difficulty in handling mouse	One-touch command programmes, voice activated programmes
Mental disabilities, aphasia, difficulty in reading		Info points, automat, IC interface, with difficulty in comprehension of textual indications and in verbal expression	Synthetic speech, facilitated-language interfaces, emails, audio-visual instructions
<i>Ref.: own elaboration on Page Personnel e-book panel</i>			

5. Case Studies.

Having in mind the Italian subsidiary system, the application of the governmental decisions (both through national laws, legislative or ministerial decree) is a responsibility which is passed through regional, provincial and local initiatives.

In order to present a comprehensive overview of how the social-clause is turned into practice, it is interesting to have a look of three different situations: the municipality of Turin, the Province of Trent and the Region of Lombardy.

The three presented case studies display the situation of north areas, where the diffusion and the present of social cooperatives is historically most relevant.

5.1 Municipality of Turin

Turin is a city and an important business and cultural centre in north-west Italy, capital of the Piedmont Region.

The population of the city is 911.823 (December 2012) while the population of the urban area is estimated by Eurostat to be 1.7 million inhabitants. The whole Turin metropolitan area is estimated by the Organisation for Economic Cooperation and Development to have a population of 2.2 million inhabitants.

Once world-known as the city of car-industry, from the 80s on the global industrial

recession generated a radical shift to a post-industrial scenario, as the majority of the economic activities crashed or changed their focus to the tertiary sector.

The impact of such changes greatly influenced the population: the society was affected by a change in terms of its composition and by a general process of impoverishment, due to the combination of the industrial crisis, the fall in purchasing power and the punishing economic recession.

The need to change and to identify comprehensive answers¹⁴ to the new social necessities had a double effect: the attempt to secure the social environment by changing and renewing the urban scenario created new threats of social exclusion and poverty.

The general impoverishment, the difficulties in finding long-term employment and the higher rent in the renovated neighbourhoods pushed the former lower-middle class out of the city-centre, while the safety of the most vulnerable section of society was threatened and quickly became a priority issue.

Since its massive migration processes of the 50s and the 60s, and forced by the industrial devolution of the 90s, the city become has always been considered as a social laboratory.

The Municipality of Turin, accordingly with Regional directives, introduced the social-clause regulation in public procurements with the Act 358/1998, which was lately revised with the Directive 307/2005.

The Directive 307 introduced specific standards for public procurements, affirming that "... a minimum of 3% of the entire funds for public procurements and utility will be addressed to private companies where a minimum of 30% of employees are from disadvantaged individuals, both in the case of overcoming the European financial threshold and for direct contracts with social cooperatives ...".

Concerning the insertion of individuals with reduced working abilities, which implies an higher risk of social exclusion, the article 10 affirms that the Labour Department of the Municipality "... has to operate in order to assure the insertion of at least 20% of people with disabilities between the work force, with an yearly monitoring that every private and public companies, independently to their field of activity ..."

Another relevant requirement is the case-management procedures: both companies and social cooperatives should put in place tailored and individually focused programme in order to display a tutoring and mentoring offer.

This tutoring activity, named "individual social programme", is a development of social accompaniment targeted to labour insertion.

It shall include strategies to succeed the specific aims of fostering the harmonisation between "... the number and characteristics of the disadvantaged individuals, the specific goals, the managing strategies, the characteristics of work placement in term of role, mandates, contracting conditions, training and social integration policies...".

Practically, it means that each single person will receive an individual programme focused

¹⁴ Ref.: P. Brusa, *Handle with care: how local authorities approach the fight against social exclusion in the post-industrial Italian city of Turin*, in Feantsa Homelessness in Europe Bulletin "Local authorities and the fight against homelessness", summer 2005

to the higher possible degree of autonomy, in order to assure “ ... the stability and the continuity of employment ...”.

The Department for Social Policies followed the entire commitment procedure with:

consultancy in the structuring process for the call for proposals, public grants and procurements, in order to assure the coherence with the Act 307;

presence of an expert during the selection and award procedures;

periodic meetings with the awarded companies and social cooperatives in order to discuss the adopted strategies, to evaluate the results and the impact, to debate eventual critical situations and to indicate proper alternative solutions;

cross evaluation between the enterprises necessities, the individual needs and specificities, the overall quality of the programmes both in term of hard and soft indicators;

previsonal monitoring and analysis on eventual networking collaboration between various enterprises in order to match their needs with the individual peculiarities.

The results have been published with a comprehensive reports. The last available data indicates the following results for the period 2006–2011:

indicator	2006	2007	2008	2009	2010	2011
Available funds in €.	7.119.289	7.541.484	10.147.881	10.962.195	13.874.328	15.010.677
Increment		+ 5,93%	+ 34,56%	+ 8.02%	+ 26,56%	+ 8,19%
% on city budget	2,78%	3,14%	4,24%	4,85%	5,50%	5,95%
Number of beneficiaries	273	294	457	431	514	562
<i>Ref.: Municipality of Turin, 5th report on Act 307 year 2010–2011</i>						

The total number of beneficiaries, meaning persons from disadvantaged groups who participated to the insertion programme through the application of the social in the public procurement is defined in 562 in 2011. This represents the number of single individuals who entered the programme.

They generated 890 work places: it indicates that, generally speaking, their vast majority was interested into two job-placements, due to their own specificities, the duration of the insertion period, the need of the enterprises.

Their activities generated 19.365 working hours per week, which is equivalent to almost 493 full time jobs for 562 persons. It represents a very impressive high standard.

Between others, the last report from the Municipality show another interesting aspect,

related to the type of enterprises which were interested by the social clause during the period 2010 and 2011:

Type of enterprise	2010	2011
Type B cooperative	17	18
Type A cooperative	2	2
Other type of cooperative	2	3
Consortia	3	3
Profit enterprise	8	9
<i>Ref.: Municipality of Turin, 5th report on Act 307 year 2010-2011</i>		

The categories of disadvantages representing the beneficiaries of Act 307 are defined by the following legislations:

Law 381/1991 for the regulation of social cooperatives

Law 68/1999 for the mandatory obligation to hire persons with disabilities for enterprises with more than 15 employees

European Commission Regulation 800/2008 for the definition of disadvantaged groups and the intervention of member states which don't exceed the state aid regulation

The distribution of the categories of disadvantage between the beneficiaries illustrates other relevant aspects. The following scheme shows the data for the year 2010 and 2011. The distribution is in percentage.

Disadvantages categories (Law 381/1991)	2010	2011
Drug addiction	15,36%	9,78%
Alcohol addiction	0,97%	1,06%
Physical disability	14,98%	14,23%
Mental disability	13,42%	12,45%
Psychiatric disability	9,33%	8,54%
Inmates	1,36%	1,24%
Multiple disadvantage	3,5%	3,38%
Total Law 381/1991	58,94%	50,71%
Total CE 800/2008	41,06%	49,29%
<i>Ref.: Municipality of Turin, 5th report on Act 307 year 2010-2011</i>		

It is relevant the different distribution in percentage between the beneficiaries from the disadvantaged groups defined by the Law 381/1991 and those from the EC Regulation 800/2008, which includes long term unemployed.

The austerity measures, the restriction in work opportunities and the restructure of the labour market impact directly on disadvantaged groups (as defined by Law 381), which face the “competition” of newly targeted disadvantages.

5.2 the Province of Trent.

The Province of Trent is, along with South Tyrol, one of the two provinces which make up the Region of Trentino Alto Adige. It is designated as an autonomous region under the constitution.

The 1972 second Statute of Autonomy for Trentino–Alto Adige devolved most legislative and executive competences from the regional level to the provincial level, creating de facto two separate regions.

Administratively, the province enjoys a large degree of autonomy in the following sectors: health, education, welfare and transport infrastructure.

The province is divided into 217 municipalities. Its capital is the town of Trent. The province covers an area of more than 6.000 km², with a total population of about 0.5 million.

Due to its autonomy, the Province set with the local Employment Agency an active plan of insertion in labour market for disadvantaged groups.

Between its various points, the so-called Action 18 (former Action 9) is the supporting measures which has been adopted to foster the development of B-type cooperatives in succeeding the aims of insertion of disadvantaged individuals into employment.

Every year, all the interested Type-B cooperatives submit an activity programme to the Employment Agency in order to formally present their specific projects.

For each beneficiary, a tailored and individual programme must be presented; the hiring contract must be included, mostly in the form of permanent contracts.

The Action 18 represents an articulate example of social clause in social procurement, which deserve a precise presentation.

The specific aims are to foster the development of social cooperative within the specific purpose of increasing the number of insertions into employment, in permanent and qualified forms. Beneficiaries are the individuals included in the categories of disability and disadvantaged groups.

The Province, according with the Employment Agency, can intervene with a direct support with the following measures:

1. public grant and economical direct contributions to support feasibility studies,

- start-up phases, training activities and consultancy to foster the establishment of new social cooperatives addressed to labour insertion; this contributions can cover at most the 90% of declared and proven costs within the maximum amount of €. 25.000 for each project;
2. activation of training courses addressed to both staff and management of social cooperatives and their beneficiaries; the courses can be directly activated, or being funded to certified training centres;
 3. economic contributions to cooperatives and consortia for:
 - consulting on management and social marketing; this contributions can cover at most the 80% of proven costs within the maximum amount of €. 25.000 for each consulting;
 - consulting on networking strategies; this contributions can cover at most the 90% of declared and proven costs within the maximum amount of €. 25.000 for each project;
 4. supporting the recruitment:
 - on permanent contracts of persons with disabilities and from disadvantaged groups; this contributions can cover:
 - at most the 60% of staff cost for the first year
 - at most the 40% of staff cost for the second and the third year
 - on temporary contracts to cover at most the 40% of staff cost for first three years for:
 - inmates
 - individuals with drug addiction in charge to the local Health Department
 - individuals with psychiatric certified disabilities
 5. long term economical support with contributions to social cooperatives to cover at most the 30% of the staff cost for other six year for individuals with psychiatric certified disabilities whose external recruitment was unsuccessful;
 6. partial coverage of tutoring expenses, to cover at most the 35% of tutor costs for the sole period of the insertion and work-placement; the tutors must provide an adequate educational degrees and proven experiential competences to be certified by the Employment Agency;
 7. partial coverage of mentoring expenses, to cover at most the 60% of the mentor costs for the sole working hours required by the individual programmes of the beneficiaries; the mentor must provide an adequate educational degrees and having attended a specific training provided by the Employment Agency
 8. direct economical contributions to social cooperatives, to a maximum of €. 4.000

per year per single enterprise.

The above mentioned contributions are in no way cumulative with other fiscal benefits, or additional funds and contributions for activities in the same field of intervention.

The beneficiaries of the Action 18 are all individuals experiencing a situations of disadvantage.

This is a broader definition, which includes:

the persons with disabilities as defined by Law 68/1999 and inscribed to the protected categories list

former patients of mental health hospitals

individual under psychiatric treatment, in charge at local mental health department

people with addictions, indifferently from drugs, alcohol, gambling

minors in working age¹⁵ with familiar difficulties

inmates and former inmates who were entitled by the Court to alternative measures.

The relevant innovation is the inclusion of social disadvantaged categories which usually tend to be excluded by the social clause procedures as “not too typical”, meaning they are bearer of multiple disadvantages and living in situations of severe social exclusion, such as for people experiencing homelessness, as they are defined by the Ethos categories¹ to ⁷¹⁶.

The Action 18 considers equally disadvantaged all individuals who are in charge to local social services. Accordingly to the Provincial Law 13/2007, it includes also non-Italian citizens which have been victims of violence, abuses and trafficking.

All beneficiaries must be resident in the Province of Trent, with two major exceptions: if they are inmates or people released from prisons and other institutions; inmates who are entitled by the Court to alternative measures.

The social cooperatives which intends to benefit of contributions has a mandatory obligation of submitting a paper every year to the Employment Agency. The paper should include:

the documents to prove the financial liability, included a development previsionial

¹⁵ In Italy the working age for minors is set by the article 1, comma 622 of the 2007 Budgetary Law at minimum of 16 years; the Law specified that to enter the labour market minors have to be completed the education obligations.

¹⁶ The ETHOS typology has been developed by FEANTSA and it is based on three domains which conceptually constitute a “home”, the absence of which can be taken to delineate homelessness. Having a home can be understood as: having an adequate dwelling (or space) over which a person can exercise exclusive possession (*physical domain*); being able to maintain privacy and enjoy relations (*social domain*) and having a legal title to occupation (*legal domain*). This leads to the 4 main concepts of Rooflessness, Houselessness, Insecure Housing and Inadequate Housing all of which can be taken to indicate the absence of a home. ETHOS therefore classifies people who are homeless according to their living situation. These conceptual categories are divided into 13 operational categories. The categories 1 to 7 are: 1) people living rough; 2) people in emergency situations; 3) people in accommodations for homeless; 4) people in women's shelters; 5) people in accommodation for migrants; 6) people due to be released from institutions; 7) people receiving long-term support due to homelessness.

plan;

a report to prove the coherence between the proposed intervention of job-placement with the overall activities carried on by the enterprise;

the precise quota of persons with disabilities, disadvantages and the other staff members;

a clear definition of the methodology for the job-placement process, including evaluation criteria on the process itself and on its impact; specific training-into-job offer; detailed description of the tutoring and mentoring activities; procedures to foster the permanent recruitment in external labour market.

The Province of Trent case study is not officially defined as a social clause, even if the effects and the impact on the final beneficiaries are the same than in the case study from the Municipality of Turin.

The Euricse research proved the economical benefit of the investment of job-placement procedures entitled under the Action 18: public social services saved €. 5.000 for every final beneficiary who got inserted into work. This reduction, multiplied for the 194 final beneficiaries in the period of the research 2003-2006, created a saving for public funds of almost 6 million euro.

This saving depends on tax income on salary, and in decrease of social support for the time in which the person is at work; the reduction tends to decrease proportionally after the first year.

Another impressive result is represented by the impact of the Action 18 measures:

the 56,2% of final beneficiaries, meaning 109 individuals, complete the process of inclusion within the same enterprise

the 25,3% of final beneficiaries, meaning 49 individuals, have been recruited by an external enterprise.

5.3 the Region of Lombardy

The Region of Lombardy is the sixth in term of population, while one fifth of the whole national GDP is produced in the region. If the gross domestic product is measured by inhabitants, the results is 25% higher than the national average value. Through the last 50 years, the region moved from a basic industrial vocation to a great development in third sector.

The specific presented case study is an example of private intervention into social policy. The intervention is a proposition of a private bank foundation, which for the Italian law is considered as an actor in the field of social economy¹⁷.

¹⁷ By legislative given definition, foundations of banking origin, or bank foundations, are not-for-profit organisations with an inner source of monetary resources that is used under scope of public utility. Differently than associations, the foundations don't have their basic grounds in the membership nor in the activities that they carried out. They can receive funds in different ways, which are basically bound to bank-surplus, donations and legacy. The requirements for a foundation are set by Law 461/1998: qualified minimum property asset of Euro 100.000, in order to assure a general high-level financial availability and capacity to finance and fund; distribution of financial availability and resources has to be statutory oriented. Ref.: P. Brusa, *The state of the art: an introduction to the economy of social*

The Action Plan is addressed to favour a permanent and qualified insertion into labour market of disadvantaged individuals. This general scope leads to the definition of more specific goals:

- increase the average number of insertion of disadvantaged individuals into labour market

- increment the geographical diffusion of social enterprises and of activities based on the principles of social economy

- strengthen the existing enterprises operating within the boundaries of social economy

- favour a real impact in term of equal opportunities for all

- support the non-profit sector in the effort to include individuals under psychiatric treatments into job-placement procedures

- foster the integration between the public and private sector

Consequently to these aims, the Action Plan is structured on various levels:

- direct economical and financial support for the establishment of new social enterprises with specific previsional activities-plans, with specific indicators for the evaluation of the impact in terms of employment, together with a multi annual business plan to ensure the competitiveness on the market

- address specific programmes for those final beneficiaries who are under psychiatric treatments; the programmes should be based on pragmatcal networking strategies between the private enterprises, the public health department and social services

- a general support to strengthen the collaboration between social cooperatives and the entire public system, including signed agreement with local authorities, social and health services, employment agencies)

The main instrument is represented by a call for proposal for a grant contract; the call is addressed to social cooperatives under the specific object of permanent and qualified recruitment of disadvantaged individuals.

For people under psychiatric treatments, another specific call has been held to support economically various social cooperatives.

Conclusions.

The European Union fosters the diffusion of active inclusion since many years, by proposing and funding opportunities to match the field of social policies with the one of economical policies.

This effort had to confront with the so-called general crisis, which represent a global restructuring instead.

In fact, if we just read the economical global scenario, we will see what official data¹⁸ from United Nations shows very clearly: that the exchange of goods and money are substantially stable over the last 13 years.

Even more impressive are the data on global wealth¹⁹, which shows a general increment over the last 15 years from 2000 onward. The report from Credit Suisse demonstrates that «... despite a decade of negative real returns on equities, several equity bear markets and the collapse of housing bubbles ... global wealth has more than doubled since 2000... average wealth per adult has hit a new peak, but inequality remains high: ... taken together, the bottom half of the global population own less than 1 % of total wealth. In sharp contrast, the richest 10 % hold 86 % of the world's wealth, and the top 1 % alone account for 46 % of global assets.»

If the economy is globally stable in terms of exchange of goods and GDP, and the global wealth increases, the crisis is all but economical.

The question is who benefits from talking about the crisis. The challenge is to find some ways which might be able to affirm, or better reaffirm a pragmatism alternative to a market which seems to be unable to support society as a whole.

In such a context, the competitions, which is considered as self-sufficient in the capitalistic principles, turned from a self-generating opportunity furnace to a chimney producing socially exhausted scrap.

When the omnipresent dogma is represented by the given absolute in “economy”, then all the global and social context becomes shapes in terms of cost/benefit ratio and in term of efficiency. When a social definition of an individual depends on such bipolar terms, it logically means that someone is or isn't. The difference marks the field of inclusion and of exclusion: it means that if one is economically efficient, he/she will be a fine part of the majority. Otherwise, one is a leftover. A scrap. As the dictionary says literally, one who is left over after the greater part has been used. By others.²⁰

For all those belonging to be part of a social body, work is not an option, is the way. Similarly, for all those who risks to be excluded because of a lower compliance to the productive dimension, the social-clause represents the way, and not just an option.

As we demonstrate from the Italian scenario, the insertion into labour market through the procedures of social clause in public procurements represents a relevant opportunity for

18 Ref.: United Nations, *Global outlook of the World Economic Situation and Prospects* 2013

19 Ref.: Credit Suisse, *Global Wealth Reaches New All-Time High* 2013

20 Ref.: P. Brusa, *E=mc2, a metaphorical journey through the evolution of physics to deepen the relation of care*, 2014

those who live situations of various disadvantages, indifferently to those being related to physical, psychical, sanitary or social circumstances.

The social clause is also one of the instruments which are foreseen by the Italian Constitution, which clearly states how employment is not just a measure of gaining a salary, but it is considered as an activity leading to the construction and the strengthening of own identity through the participation to social inter relations.

By the Constitution and its various amendments, employment is considered by the legislative framework as a cornerstone pillar of the definition of people identity, self realisation, valorisation, a fundamental space to exchange competences, skills, a place where it is possible to build social relations, self trust, independence.

The safeguard of the inclusion of most disadvantages is a pillar of the constitution of every modern society, much before being a principle at the basis of various welfare state.

The main indicators of a success within the application of the social clause in public procurements and in other contribution which are intended to reach the same results constitute a general framework which represents a logical framework itself for the definition, adaptation and transfer of the Italian experience. The main factors to define a good practice are:

- foster the integration between various sectors of the public social services, health services and employment agencies

- strong indication in term of policy to develop a functional structure to activate the needed infrastructures

- maximizing effect in term of integration within the local environment, both in term of social and economical impact

- definition of a general legislative framework

- maximizing effect in term of cost/benefit ratio for social services, health services and employment agencies

- de facto implement of praxis of active inclusion and active citizenship

- permanent monitoring of the phenomenon

- supportive impact on the development of social economy addressed to the social enterprises and the cooperative system, both in term of quality and efficiency

- transversal impact in term of cultural impact for all inclusion issues and for the principle of equal opportunities for all

Despite of a driven crisis, Italy represents an example of good compliance between market necessity and social needs.

Within a national scenario where every practice and every experience can be implemented, all the efforts to foster inclusion of most deprived and disadvantages could create a virtuous cycle that will impact positively in term of equal opportunities for all, social cohesion, solidarity, active inclusion, economic benefits, active citizenship, leading to a general improvement in quality of life.

The historical heritage, together with political, economical and ethical reasons brought Italy to have an influent social economy sector, a unifying legislative framework, a proven experience of good practices where the reasons and the needs of public, private and economy merged to foster the integration of all citizens in an effort to offer equal opportunity to all.

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ANNEX 1: PRACTICAL EXAMPLES OF SOCIAL CLAUSE IN PUBLIC PROCUREMENTS

Public organisation launching the call	Municipality of Turin
duration	3 years
Object of the call	Cleaning service for municipalities' public offices, library and museums
budget	€ 7.170.660.00 (VAT excluded)
Social clause	– job-placement for individuals as identified by Law 381/1991 with a minimum of 30% of total staff for Activities 1,2,3,4 and with a minimum of 20% of total staff for Activity 5
Award criteria	– most effective on a budgeting level – max 40 points for the project – max 60 points for the previsual budget

Public organisation launching the call	AMIAT (multi-services for environmental hygiene, Turin)
duration	3 years
Object of the call	Separate waste collection and recycling (all city open-air markets)
budget	€ 31.675.000 (VAT excluded)
Social clause	– job-placement of individuals as identified by Law 381/1991 and by legislative decree 276/2003 with a minimum of 20% of total staff – a tailored individual programme should be placed to support all insertions
Award criteria	– max 35 points for the project and management – max 15 points for the insertion programmes – max 50 points for the previsual budget