
From “Carbon” to “Social” Offsetting. An Italian Tool to Accommodate Workplaces for Persons with Disabilities.

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Abstract

The paper aims to share the idea that “Sustainable Development” is not only linked to an environmental dimension, but also to a social one. The reasoning focuses on a specific declination of sustainability within Labour Law, which is identified in the employment inclusion of persons with disabilities, and it develops by taking the Italian legal system as a reference point: after showing its weaknesses and opportunities, the paper sets out a proposal, which is based on the concept of “Offsetting”, embracing it from the environmental framework to the right to work of persons with disabilities.

Keywords: Sustainability; Equality; Social cooperatives; Right to work; Persons with disabilities.

1. The research question.

“Environmentalism, without class struggle, is just gardening”. This well-known motto of Francisco ‘Chico’ Mendes (Brazilian Trade Unionist, 1944-1988) reveals that environmental issues cannot be detached from social ones.

For a long time, this link has not been exploited, but, as far as environmental protection has increased in importance and urgency, it has become more and more evident within the concept of sustainability in the United Nations “2030 Agenda”.¹

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¹ United Nations, *Transforming our world: the 2030 Agenda for Sustainable Development*, 2015, available at <https://sdgs.un.org/2030agenda>.

At the very beginning, sustainability was not focused on the “capacity of a company (or, more generally, a community) to carry out its activities, in a long-term perspective, considering the impact they have both on natural resources and on social and human capital”.² Indeed, companies and National institutions have mainly concentrated on strictly environmental issues.

On this side, a very interesting action was taken by many companies to answer the European call to reduce climate-changing emissions (by 40 p.p. until 2030) and to increase employment in new “green”³ sectors. Even for those companies where this ambition seemed unrealistic, the goal has been achieved, thanks to the sustainable finance mechanism, called “Carbon Offsetting”. This solution allows companies to compensate for their residual emissions (i.e., the emissions they cannot neutralize internally), through the purchase of “carbon credits” offered by projects for the protection of the environment.⁴

This model seems very attractive, because, by absorbing residual emissions elsewhere, it produces positive effects for companies, for the environment, and, more generally, for the community. However, it has often been limited to a purely environmental dimension.

Hence, by adopting a broader perspective, this paper aims to investigate whether (and how) it is possible to imagine a legal mechanism, comparable to “Carbon Offsetting”, for social matters and, specifically, concerning the inclusion of persons with disabilities.

The urgency comes from an in-depth analysis of the UN “2030 Agenda”, that emphasizes the relationship between sustainability and decent work, notably for the most vulnerable categories of workers.⁵ Focusing on Goal No. 8, par. 5 of the Agenda, it takes on an (even more) relevant meaning of promoting “sustained, inclusive, and sustainable economic growth [...] and decent work for all, [especially for] persons with disabilities”.

The (re-)definition of disability developed in the 2000s⁶ shifted from a *formal* to a *substantive* level, in which this personal characteristic “must no longer be interpreted from the medical perspective, but from the relational one”.⁷ It must be considered the “interaction” between impairments of the person, and environmental barriers that “may hinder their full

² Perulli A., Speziale V., *Dieci tesi sul diritto del lavoro*, Il Mulino, Bologna, 2022, 111.

³ On this point, see International Labour Organization, *World employment social outlook 2018. Greening with jobs*, Geneva, 2018, https://webapps.ilo.org/weso-greening/documents/WESO_Greening_EN_web2.pdf.

⁴ See Ballassen V., Leguet B., *The emergence of voluntary carbon offsetting*, Research Report, Paris, 2007, available at <https://hal.science/hal-01190163/document>, and, more recently, Dugast C., *Net Zero Initiative. A framework for collective carbon neutrality*, Carbone 4, 2020, available at <https://www.carbone4.com/files/wp-content/uploads/2020/04/Carbone-4-NZI-Guidelines-april-2020-2.pdf>.

⁵ Madansa J., Loeba M., Eide A.H., *Measuring Disability and Inclusion in relation to the 2030 Agenda on Sustainable Development*, in *Disability and the Global South*, 4, 2017, 1164, available at <https://sintef.brage.unit.no/sintef-xmlui/bitstream/handle/11250/2586798/dgs-04-01-06.pdf?sequence=1>.

⁶ The transition from the medical approach (World Health Organization, *International Classification of Impairments, Disabilities and Handicap*, 1980), to the biopsychosocial one [World Health Organization, *International Classification of Functioning, Disability and Health*, 2001, https://apps.who.int/gb/archive/pdf_files/WHA54/ea54r21.pdf] has been legally transposed by United Nations, *Convention on the Rights of Persons with Disability*, 2006, available at <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>. For an international and multidisciplinary reading of this regulation, see Wansing G., Welti F., Schäfers M. (eds), *The Right to Work for Persons with Disabilities. International Perspectives*, Nomos, Busto Arsizio, 2018 (spec. 17-84).

⁷ In these terms, effectively, Malzani F., *Inidoneità alla mansione e soluzioni ragionevoli, oltre il repêchage*, in *Argomenti di Diritto del Lavoro*, 4, 2020, 966.

and effective participation in society on an equal basis with others” (Article 1, par. 2, UN Convention “on the Rights of Persons with Disabilities”).

Hence, sustainable development cannot be separated from the design of inclusive environments and workplaces,⁸ because they both signify the “Just Transition”.⁹

While some steps forward have been taken on the environmental side, eight years after the adoption of the UN 2030 Agenda, the goal of a world where “no one (is left) behind” is still far from being achieved.¹⁰ Through an ecological metaphor, this paper aims to convert the mentioned “Carbon Offsetting” prototype into a “Social Offsetting” model, for a more fair, equal, and sustainable Labour market for all.

In this research path, the case study will be represented by the Italian legal system of labour inclusion of persons with disabilities, which is based on recruitment obligations for (most) employers. Moving from the difficulty to fulfilling this duty, it has been developed a model of *compensatory mechanism*, thanks to the role played by Social Cooperatives in work integration¹¹. I will share this national best practice of “Social Offsetting”, which promotes labour inclusion, and, by this, the so-long advocated sustainable development. The paper ends with some final remarks so that the proposal can be shared in different legal systems.

2. From the Italian case: the employment vulnerability of persons with disabilities.

In the reasoning proposed here, the Italian case appears emblematic, both for the employment difficulties of persons with disabilities,¹² and for hidden opportunities (see below, § 3 and 4) of the legal system.

Indeed, the Italian model of support for unemployed persons with disabilities provides for a framework of obligations and sanctions, under Law No. 68/1999.¹³ The aim is to guarantee their “right to work”, and the ambition is “to adequately assess persons with

⁸ Grech S., *Disability, poverty and development: critical reflections on the majority world debate*, in *Disability & Society*, 24, 2009, 771.

⁹ On the proposal of a “Just Transitions Law”, combining “insights from environmental law, environmental justice, and labour law”, see Doorey D.J., *Just Transitions Law: putting Labour Law to Work on Climate Change*, in *Journal of Environmental Law and Practice*, 30, 2017, 206.

¹⁰ Many institutional reports on the employment levels of persons with disabilities show that they are fringed at the margins of the Labour market, with low levels of social protection. For an international comparison, see both Organization for Economic Cooperation and Development, *Disability, Work and Inclusion, Mainstreaming in All Policies and Practices*, OECD, 2022, available at <https://www.oecd.org/employment/disability-work-and-inclusion-1eaa5e9c-en.htm>, and International Labour Organization, *Advancing social justice. Promoting decent work. Disability and work*, 2023, available at <https://www.ilo.org/ja/media/254991/download>.

¹¹ The topic was addressed in this e-Journal by Santuari A., *Work integration social enterprises (WISEs): a legal and innovative form to promote the right to work of people with disabilities*, 2, 2020, 145, available at <https://illej.unibo.it/article/view/11778/11866>.

¹² Although European Disability Forum, *European Human Rights Report. Issue No. 7 – 2023. The right to work: the employment situation of persons with disabilities in Europe*, Brussels, 2023, available at https://www.edf-feph.org/content/uploads/2023/05/hr7_2023_press-accessible.pdf, shows that, among the EU countries, Italy is not in the worst situation in terms of the occupational inclusion of persons with disabilities, it holds the lowest gap between the employment of persons with disabilities and the employment of persons without disabilities (14.9 p.p., compared to 24.4 p.p. on average in the 27 EU Member States).

¹³ On this topic, see at least Riccardi A., *Disabilità e lavoro*, Cacucci, Bari, 2018, and her complete literature review.

disabilities in their working capacities, and to place them in the appropriate place” (Article 2, Law No. 68/1999). Nevertheless, its effectiveness is still low.

Like in many European countries,¹⁴ Italian (public and private) employers must recruit workers with disabilities, in proportion to their employment size: the minimum quota is one (for small companies, 15-30 employees), and the maximum is 7 p.p. of the workforce (for companies with more than 50 employees).¹⁵ On a residual basis, some employers are partially dispensed from this obligation (due to the activity carried out),¹⁶ but they are required to pay an exemption fee, for each working day and each worker with disabilities not employed.

Originally, the legal system required the employer to declare the public employment service the number and the tasks of workers to be hired: the public service would find workers, pick them in a special list, and match them with the employer. This mechanism was abolished in 2015: now, the employer can choose the person with disabilities to be employed.

If the employer does not hire the rate of persons with disabilities he is obliged to, he must pay huge penalties. The Italian legal system provides for sanction for each working day of non-employment, setting up the amount at five times the contribution required for the mentioned exemption. Considering that the current exemption fee is EUR 39.61,¹⁷ the penalty for each failure to hire is EUR 196.05 per day, and, if multiplied by 260 working days, it reaches EUR 50,973.00 per year.

However, as mentioned above, recruitment is still very problematic, due to the reluctance of companies in employing persons with disabilities in the plant. Indeed, the most recent national reports testify that disability is still perceived as a personal characteristic that hinders the better match between the employer’s needs and the worker’s skills for the job to be filled (i.e., the so-called “targeted employment”).¹⁸

Due to an (alleged) lower productivity, persons with disabilities are placed on the fringes of the Labour market. Even more, in the rare cases in which they are employed, they are allocated to less relevant, or non-core tasks, with lower remuneration, and precarious working conditions.¹⁹

¹⁴ For example, consider the Spanish legal system, on which see at least Alcazàr Ortiz S., *Trabajo decente y trabajo de las personas con discapacidad*, in Vv.Aa., *El Trabajo decente*, Comares, Albolote, 2018, 361.

¹⁵ Article 3, par. 1, Law No. 68/1999 states that “public and private employers are required to [hire workers with a disability on their payroll, in an amount equal to]: a) 7 p.p. of the workers employed, if they employ more than 50 workers; b) two workers, if they employ between 36 and 50 workers; c) one worker, if they employ between 15 and 35 workers”.

¹⁶ Article 5, par. 1, Law No. 68/1999 states that “companies that, due to the special conditions of their activity, cannot employ the full quota reserved for persons with disabilities, may be partially exempted from the recruitment obligation [if they pay] an exemption fee for each person not employed”.

¹⁷ According to Ministerial Decree No. 193/2021.

¹⁸ For a review of the results of reports on the employment conditions of persons with disabilities, please refer to De Falco M., *Il diritto al lavoro delle persone con disabilità: alla ricerca della “persona giusta al posto giusto”*, in *Il lavoro nella giurisprudenza*, 4, 2022, 380, and references included therein.

¹⁹ On this point, see the survey of Fondazione Studi Consulenti del Lavoro, *L’inclusione lavorativa delle persone con disabilità in Italia*, 2019, 8, available at:

<https://www.consulentidellavoro.it/files/PDF/2019/FS/InclusioneLavorativaPersoneDisabilitaItalia.pdf>.

The issue is even more critical for persons with physical or mental disabilities,²⁰ both in accessing the Labour market, and in maintaining employment.²¹ The possibility for the employer to choose the person with disabilities to be employed (since 2015, *see above*) seems to have “legitimized an escape route to evade the recruitment obligation”,²² to the detriment of the most severe forms of disability.

These observations paint a picture where “few lights shine, and many shadows fall”.²³ In this scenario, the 2020-2022 pandemic acted as a magnifying glass for known (but normally low observed) issues, bringing attention to the issue of social and labour inclusion, and implementing measures to make it more effective.

In Italy, as well as in other countries, the spread of the virus has worsened the condition of persons with disability, contributing to slowing down their (already complicated) access to the Labour market.²⁴ Although specific leaves²⁵ and measures designed to combine health and employment protection²⁶ have been foreseen, most persons with disability could not access them, due to their unemployment.²⁷

The National Recovery and Resilience Plan (NRRP) has recognized disability as a “transversal priority”, to which huge investments will have to be destined, to “ensure suitable social and working conditions for persons with disability throughout the country”.²⁸

²⁰ The surveys mentioned by United Nations, *Conference of States Parties to the Convention on the Rights of Persons with Disabilities. Economic empowerment and Entrepreneurship of Persons with Disabilities*, 2022, agree that persons with a mental or an intellectual disability, on average, get a remuneration (often below 50 p.p. of the national minimum wage) equal to only 25 p.p. of the salary of people without limitations employed in the same task.

²¹ Although Legislative Decree No. 151/2015 extended the recruitment obligation to persons with mental disability [Article 2, amending Article 1, par. 1, let. a), Law No. 68/1999], even providing incentives for their recruitment (Article 10, modifying Article 13, Law No. 68/1999), the job placement remained almost impossible, in the comparison between physical and psychical disability (*see the evaluation document of Senato della Repubblica, Disabili psichici e inserimento lavorativo: un percorso di ricerca*, 2017, available at <https://www.senato.it/service/PDF/PDFServer/BGT/01069024.pdf>).

²² Di Stasi A., *Il diritto al lavoro dei disabili e le aspettative tradite del “collocamento mirato”*, in *Argomenti di Diritto del Lavoro*, 4-5, 2013, 888.

²³ Griffò G., *La L. n. 68/1999, un bilancio vent'anni dopo*, in Bruzzone S. (ed), *Salute e persona nella formazione, nel lavoro e nel welfare*, ADAPT University Press, Bergamo, 2017, 19.

²⁴ Giovannone M., *Il collocamento dei disabili nel mercato del lavoro post-emergenziale: criticità e prospettive*, in *Federalismi.it*, 10, 2021, 113, available at https://www.federalismi.it/nv14/articolo_documento.cfm?Artid=45182.

²⁵ Lamonaca V., *L'estensione della durata dei permessi retribuiti ex art. 33, L. n. 104/1992, e gli altri istituti di supporto dell'assistenza ai disabili in condizione di gravità*, in Fili V. (ed.), *Covid-19 e rapporto di lavoro*, in Garofalo D., Tiraboschi M., Fili V., Seghezzi F. (eds), *Welfare e lavoro nella emergenza epidemiologica*, ADAPT University Press, Bergamo, 2020, 261.

²⁶ The reference is to “telework”, on which *see at least to* Brolo M., *Lavoro agile per i lavoratori fragili: lezioni dalla pandemia...*, in *Argomenti di Diritto del Lavoro*, 3, 2022, 405, and Zilli A., *Il lavoro agile come “accomodamento ragionevole”, fra tutela della salute, diritto al lavoro e libertà di organizzazione d'impresa*, in *Labor*, 4, 2020, 531.

²⁷ ISTAT, *Rapporto annuale 2022. La situazione del Paese, 2022*, available at <https://www.istat.it/it/archivio/271806>, remarked that “in the 2020-2021 average, the share of employed people aged 15-64 with disabilities is half of that observed in the population without limitations: only one third of the first ones is employed” to the advantage of unemployment and, above all, inactivity.

²⁸ The labour inclusion of persons with disabilities constitutes a fundamental pillar of the “National Programme for the Employability Guarantee of Workers” (Mission 5, Component 1, NRRP), as a “national programme of caretaking, provision of specific services and customized vocational planning”.

Among the main reforms planned therein,²⁹ it is worth emphasizing the provision of the “Disability Framework Law” (provided by Law No. 227/2021)³⁰, for the reformulation of Italian legislation, to make it as adherent as possible to the principles sanctioned at international and European level³¹. Moreover, with the approval of the Italian RRP, an essential role in the implementation and monitoring of investments for equal opportunities was attributed to the “National Observatory on the condition of persons with disability” (established by Law No. 18/2009), entrusting it the task of verifying the effectiveness of the reforms envisaged in the Plan.³²

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

3. *To the Italian solution: labour inclusion within Social Cooperatives.*

The criticalities in direct recruitment of persons with disabilities within the plant have been faced by the Italian legal system. It provides for alternative paths, which are designed to balance the interests of the employer, and the right to work of persons with disabilities.³³ These categories of job placement aim to accompany the worker towards a work environment suited to their characteristics (which may not correspond to the obliged company), also allowing the employer to fulfil the coverage of the mandatory quota.

Among these mechanisms, the most relevant is provided by Article 14, Legislative Decree No. 276/2003. Specifically, this model entrusts the promotion of labour inclusion to the “Framework Agreement on a territorial basis”, granted by the regional administration (which is entitled to labour-active policies).³⁴

²⁹ See Garofalo D., *Gli interventi sul mercato del lavoro nel prisma del PNRR*, in *Diritto delle Relazioni Industriali*, 1, 2022, 114.

³⁰ Please refer to De Falco M., *Ragionando attorno alla L. delega in materia di disabilità: una prospettiva giuslavoristica*, in *Responsabilità Civile e Previdenza*, 5, 2022, 1738.

³¹ The main reference is to the mentioned UN Convention on the “Rights of persons with disabilities”, ratified by Italy with Law No. 18/2009. At European level, please refer lastly to the European Commission Communication of March 2021, which includes the “Strategy for the right of persons with disabilities 2021-2030”.

³² On this point, please refer to the Italian Labour Minister “Directive to the Administrations in charge of projects, reforms, and measures in the field of disability” (Decree February 9, 2022): it is a guideline document, aimed at valuing disability in the interventions planned under the NRRP, to allow the Administrations to verify that each reform contemplated by the Plan has an inclusive and non-discriminatory character.

³³ For an overview of different inclusion tools other than direct recruitment, see Garofalo D., *L’inserimento e l’integrazione lavorativa dei disabili tramite convenzione*, in *Rivista del Diritto della Sicurezza Sociale*, 2, 2010, 231, and more recently Borzaga M., Mazzetti M., *Le forme di sostegno all’instaurazione di rapporti tra imprese e cooperative sociali di tipo B: gli artt. 12 e 12-bis della legge n. 68/1999 e l’art. 14 del d.lgs. n. 276/2003*, in Borzaga C., Borzaga M. (eds), *Inserimento lavorativo e contratto di rete*, Il Mulino, Bologna, 2023, 111.

³⁴ On the profitable involvement of the public actor, see Nogler L., Beghini V., *La lenta marcia verso le convenzioni per l’inserimento lavorativo dei disabili*, in *Impresa Sociale*, 1, 2006, 130.

This “normative accord”³⁵ involves the administration (i.e., the employment public services), the social partners (i.e., the most representative trade unions of employers and employees at the national level), the associations representing, assisting, and protecting cooperatives, and their consortia. Through the signing of this Framework Agreement, it is agreed that the “Social Cooperative for the employment of disadvantaged people”³⁶ recruits the worker in place of the company obliged to hire. In return, the latter assigns work orders to the Social Cooperative,³⁷ proportionate to the cost of staff included therein, for the entire duration of the contract.³⁸

The integration of the person within the Social Cooperative “is considered useful for the coverage of the mandatory quota” by the employer (Article 14, par. 3, Legislative Decree No. 276/2003). For this purpose, Framework Agreements require the specification of the maximum limit of the coverage that can be achieved with it [Article 14, par. 2, let. g), Legislative Decree No. 276/2003], to ensure that the recruitment obligation provided for by Law No. 68/1999 is met.³⁹ The Law neither clarifies the nature, and the type of the working relationship, nor its duration.⁴⁰ This lack led the legislator to repeal it in 2007, but it was reinstated the following year.⁴¹

³⁵ The Framework Agreement is defined in these terms by Tursi A., *Cooperative sociali e inserimento dei lavoratori svantaggiati*, in Vv.Aa., *Come cambia il mercato del lavoro*, IPSOA, Milan, 2004, 71, as it sets “rules, conditions, and procedures, with which subsequent contracts must comply”.

³⁶ In the Italian legal system, “Social Cooperatives for the employment of disadvantaged people” [Article 1, let. b), Law No. 381/1991] are legal entities obliged by the internal regulation to employ at least 30% of persons in a particular situation of the disadvantage, under Article 4, Law No. 381/1991. On this topic, see at least Borzaga C., Santuari A., *Social enterprises in Italy: The experience of social co-operatives*, in *ISSAN Working Papers*, 15, 2000, available at <https://iris.unitn.it/retrieve/8be1a8f4-6028-4ff6-a367-348c748d07da/wp15.pdf>, and for an overview of the labour normative, Ferluga L., *Il lavoro nelle cooperative sociali*, in *Variazioni su Temi di Diritto del Lavoro*, 5, 2019, 1711. For a comparison with similar entities at European level, see also Davister C., Defourny J., Gregoire O., *Work integration social enterprises in the European Union: An overview of existing models*, in *EMES – European Research Network Working Papers*, 4, 2004, available at <https://emes.net/publications/working-papers/work-integration-social-enterprises-in-the-european-union-an-overview-of-existing-models/>.

³⁷ In this way, Timellini C., *La tutela dei lavoratori svantaggiati: il raccordo pubblico-privato e le cooperative sociali*, in Galatino L. (ed), *La riforma del mercato del lavoro*, Giappichelli, Turin, 2004, 148, interprets Article 14, Legislative Decree No. 276/2003 as “a bet on social cooperatives”.

³⁸ For a full examination of the tool, as well as for the value of the work orders, and its method of quantification, see Slataper S., *Le convenzioni con le cooperative sociali per favorire l’inserimento dei soggetti svantaggiati*, in Miscione M., Ricci M. (eds), *Organizzazione e disciplina del mercato del lavoro*, in Carinci F. (ed), *Commentario al d. lgs. 10 settembre 2003, n. 276*, IPSOA, Milan, 2004, 300.

³⁹ Tursi A., *Le nuove convenzioni per l’inserimento lavorativo dei disabili e dei soggetti svantaggiati tramite cooperative sociali, due anni dopo*, in *Giornale di Diritto del Lavoro e delle Relazioni Industriali*, 109, 2006, 78.

⁴⁰ Sartori A., *Le cooperative sociali. Profili giuslavoristici*, in *Variazioni su Temi di Diritto del Lavoro*, 2, 2017, 454 notes that “the doctrine does not exclude the possibility of relationships other than that of permanent employment [...], and refers to the sectoral bargaining, for which the relationship may be of various types depending on the needs of the concrete case”.

⁴¹ Article 14, Legislative Decree No. 276/2003 was abrogated by Article 1, par. 37, let. a), Law No. 247/2007, but it was subsequently restored by deletion of the abrogating provision [Article 39, par. 10, let. m), Law No. 133/2008]. The Legislator intended to replace – through the introduction of Article 12-bis in Law No. 68/1999 – the model of the Framework Agreement, as it allowed employers to fulfil their recruitment obligation without including, indefinitely, the person with disabilities within their organization. However, from this point of view, the Agreements provided for by Article 12-bis, Law No. 68/1999 appeared to be worse than the tool they were intended to replace. on this issue, and for a complete comparison of the two agreements, see Garofalo D., nt. (33), 261.

Nowadays, these critical issues have been overcome by more detailed regulation at the regional level.⁴² Moreover, even as the result of the 2020s' rediscovery of the world and values of Social Cooperation,⁴³ the risk of isolation of the involved persons with disabilities seems no longer detectable:⁴⁴ on the contrary,⁴⁵ it is considered that, through the setting up of individual plans implementing the Framework Agreements, Social Cooperatives are working environments that are “more sensitive and attentive to the needs of people with disabilities”,⁴⁶ able to evaluate them, even on the regulatory side, as working partners.⁴⁷

Hence, by exalting the virtuous collaboration among companies (required to employ persons with disabilities), Social Cooperatives, and regional administration, the mechanism designed by Article 14, Legislative Decree No. 276/2003 seems to satisfy the interests of all parties, in a win-win(-win-win) solution.

First, it allows the obliged employer to regularly fulfil the recruitment obligation, avoiding difficulties (in direct recruitment) or sanctions. At the same time, the company will be able to benefit from goods and services that it currently produces in-house, or that it buys from (more expensive) outside providers.

Consequently, by signing the Framework Agreement, the Social Cooperative guarantees work orders itself, which are functional in maintaining its financial equilibrium. Moreover, the Social Cooperative pursues its social objective,⁴⁸ ensuring job opportunities for people who would be probably excluded from the Labour market.⁴⁹

⁴² Castellucci F., *Sinergie per il lavoro: alleanze territoriali per l'inclusione*, in *Professionalità Studi*, 3, 2023, 147.

⁴³ At national level, see Colombo G., *Il lavoro nelle cooperative sociali c.d. di tipo B: quando la forma è sostanza*, in *Professionalità Studi*, 3, 2023, 128 and 139. At international level, see Zolyomi E., Birtha M., *Towards inclusive employment of persons with disabilities*, European Centre for Social Welfare Policy and Research, 2020, available at <https://www.euro.centre.org/publications/detail/4101>.

⁴⁴ Article 14, Legislative Decree No. 276/2003 has long been hit by intense doctrinal criticism, resulting from prejudices towards the world of Social Cooperation, and towards the fear that the mechanism provided for therein “could lead to the creation of two non-communicating labour markets”: the first one would be able to accommodate the milder – and “socially accepted” – forms of disability, and the second one would isolate the more severe forms of disability (in these terms, see Cimaglia M.C., *L'esperienza applicativa dell'art. 14, D. Lgs. n. 276 del 2003*, in *Giornale di Diritto del Lavoro e delle Relazioni Industriali*, 112, 2006, 135).

⁴⁵ According to Nogler L., *Cooperative sociali e inserimento lavorativo dei lavoratori svantaggiati: le novità del D.lgs. n. 276/2003*, in Vv.Aa., *Rappresentanza, rappresentatività, sindacato in azienda ed altri studi. Studi in onore di Mario Grandi*, Cedam, Padua, 2005, 525, the risk of isolation of persons with disability in the Framework Agreement model is “unfounded”. Moreover, even though disadvantaged persons must “constitute at least 30% of the workers of the Social Cooperative and, depending on their individual status, be partners of the cooperative” (Article 4, par. 2, Law No. 381/1991), the quota identified by the Italian legislator – in the *minimum*, but not in the *maximum* – is functional to mitigate this risk.

⁴⁶ Massi E., *Il nuovo collocamento obbligatorio*, IPSOA, Milan, 2000, 64. In similar terms, Corbo C., *Le convenzioni per il diritto al lavoro dei disabili: natura, struttura, funzione e strumenti di tutela*, in *Argomenti di Diritto del Lavoro*, 2, 2009, 385, who interprets social cooperatives as a “disability-oriented environments”.

⁴⁷ On the partnership and employment relationship in Social Cooperatives, see Biagi M., *Cooperative e rapporti di lavoro*, Franco Angeli, Milan, 1983, 137, and, after the enactment of Law No. 381/1991, see at least Garofalo D., *Il socio lavoratore delle cooperative sociali*, in Garofalo D., Miscione M. (eds), *La nuova disciplina del socio lavoratore di cooperativa: L. n. 142/2001 e provvedimenti attuativi*, IPSOA, Milan, 2002, 51. More recently, see again Colombo G., nt. (43), 137, and her complete literature review.

⁴⁸ According to Imberti L., *Il socio lavoratore di cooperativa. Disciplina giuridica ed evidenze empiriche*, Giuffrè, Milan, 2012, 10, cooperation is “both a type of company that operates on the market, and a part of a social movement that does not only pursue economic purpose”.

⁴⁹ In this way, Borzaga C., *Cooperazione sociale e inserimento lavorativo: il contributo dell'analisi economica*, in *Giornale di Diritto del Lavoro e delle Relazioni Industriali*, 109, 2006, 115, identifies Social Cooperation as a “sheltered workshop,

By this, cooperation is encouraged to emancipate itself from a purely welfarist vision, and participate in the value chain as an active member of the production cycle, generating economic prosperity, and social reinvestment.⁵⁰

Furthermore, the public system benefits from the inclusion of persons with disabilities,⁵¹ since the reduction of the number of unemployed people alleviates the pressure on the national budget.⁵² For this reason, the economic independence of persons with disabilities relieves the Welfare State of social assistance costs, which are otherwise necessary to guarantee the implementation of the principles of solidarity and equality (Articles 3, 4, and 38, Italian Constitution).

Last but not least, persons with disabilities can recover satisfaction, professionalism, and, more generally, dignity through work, in a context supervised by the Public Administration. The inclusion of persons with disabilities within Social Cooperatives guarantees the appreciation of their value,⁵³ as (partner-) workers, and not as people who are merely passive in care and assistance.⁵⁴

4. *Vices and virtues*: Sustainable Development as a goal, “Social-Offsetting” as a tool

The widespread value of the Framework Agreements provided by Article 14, Legislative Decree No. 276/2003 reflects the same logic of “Social Impact Bonds (SIB)”⁵⁵ and, specifically, of the mentioned “Carbon Offsetting” projects. Like companies absorbing the harmful emissions of others, Social Cooperatives reduce the negative impact of the exclusion of persons with disabilities, setting up “Social Offsetting” processes.

and a springboard to allow the enhancement of skills, through training, and the professionalism of those involved in their activity”.

⁵⁰ Tursi A., *Cooperative sociali e inserimento dei lavoratori svantaggiati*, in Vv.Aa., *Come cambia il mercato del lavoro*, IPSOA, Milan, 2004, 45.

⁵¹ On this point, it must be stressed that the first experiences of Social Cooperation date back to forms of “horizontal and circular subsidiarity, able to complement the public welfare system” (in these terms, Fiorentini G., *Welfare e impresa sociale di garanzia*, in *Impresa Sociale*, 7, 2016, available at <https://www.rivistaimpresasociale.it/rivista/articolo/welfare-e-impresa-sociale-di-garanzia>).

⁵² Borzaga C., Loss M., *Work Integration Social Enterprises in Italy*, in EMES – European Research Network Working Papers, 2, 2002, 16, available at https://emes.net/content/uploads/publications/PERSE_WP_02-02_I.pdf.

⁵³ According to Navilli M., *I lavoratori disabili e il collocamento “mirato”*, in Brollo M. (ed), *Il mercato del lavoro*, in Persiani M., Carinci F. (eds), *Trattato di diritto del lavoro*, Cedam, Padua, 2012, 284, “the valorization [of professionalism] and the concretization of the right to work [can] neutralize the handicap of persons with disabilities”.

⁵⁴ It is about achieving the “protection that is not merely defensive, but proactive, and capacitating” demanded by Caruso B., Del Punta R., Treu T., *Manifesto per un diritto del lavoro sostenibile*, Centre for the Study of European Labour Law “Massimo D’Antona”.IT, 2020, 11, available at: https://csdle.lex.unict.it/sites/default/files/Documenti/OurUsers/Manifesto_Caruso_Del_Punta_Treu.pdf.

⁵⁵ See Organization for Economic Cooperation and Development, *Social Impact Bonds. State of play & Lessons learnt*, OECD, 2016, available at <https://www.oecd.org/cfe/leed/SIBs-State-Play-Lessons-Final.pdf>. Specifically, SIB constitute a financial investment, whose remuneration is linked to the achievement of a social result (such as, for example, increasing employment, on which see Cristofolini C., *Potenzialità e criticità dei social impact bonds per l’inserimento lavorativo*, in *Diritto delle Relazioni Industriali*, 4, 2021, 1027), previously agreed between the customer (which is often a Public Administration) the investors, and the service provider (i.e., the company implementing the social project).

It is worth stressing that the advantage concerns both the customer (i.e., the company that entrusts Social Cooperative with work orders) and the worker, whose right to “full and effective participation in society on an equal basis with others” is finally recognized.⁵⁶

For these reasons, Social Cooperatives represent the highest expression of the “Benefit company” (Article 1, par. 376-384, Law No. 208/2015). This certification is awarded to companies that add – to their typical purposes – one or more common value purposes, aimed at producing a positive effect, or at reducing a negative one, on the community.⁵⁷

In the present case, Social Cooperatives reach a double common benefit: first, they bring a *positive impact* on the Welfare State system, and on society as a whole; moreover, they reduce the *negative effect* of long-time unemployment of persons with disabilities, both for the worker and for the companies (burdened with recruitment obligations).

The attractiveness of the described tool is confirmed in Italian institutional reports on the labour inclusion of persons with disabilities,⁵⁸ which highlights its appeal to employers, and its concrete application.⁵⁹

Nevertheless, a deep analysis of these statistics shows that Framework Agreements are still underused, and they can be strengthened, especially in some areas of the country.⁶⁰ Indeed, it emerges that many employers do not engage direct recruitment of persons with disabilities, and do not utilize Framework Agreements.⁶¹ In these cases, it must be remembered that employers should face severe penalties (*see above*, § 2).

Unfortunately, sanctions are not effective, because they are not easy to collect:⁶² this situation, in addition to not helping persons with disabilities to work, makes the recruitment obligation easy to be circumvented.

From this point of view, the Law can bring about a turnaround. The implementation of the “Disability Framework Law” (No. 227/2021) should rationalize the labour inclusion channels, “by making Framework Agreements the main tool for fulfilling the right to work

⁵⁶ Recalling the mentioned Article 1, par. 2, UN Convention “on the Rights of Persons with Disabilities”.

⁵⁷ Among the first essays on this topic, *see* Corso S.M., *Le società benefit nell’ordinamento italiano: una nuova “qualifica” tra profit e non profit*, in *Le Nuove Leggi Civili Commentate*, 5, 2016, 995, and, more recently, Squeglia M., *Le società benefit e il welfare aziendale. Verso una nuova dimensione della responsabilità sociale delle imprese*, in *Diritto delle Relazioni Industriali*, 1, 2020, 81.

⁵⁸ The reference is to the Xth and IXth Reports to the Italian Parliament on the state of implementation of Law No. 68/1999 (both available at <https://www.lavoro.gov.it/notizie/pagine/x-relazione-al-parlamento-sullo-stato-di-attuazione-della-legge-12-marzo-1999-n-68> and at <https://www.lavoro.gov.it/notizie/pagine/xi-relazione-al-parlamento-sullo-stato-di-attuazione-della-legge-12-marzo-1999-n-68>), published, respectively, in May 2023 and in January 2021, but relating to the years 2019, and 2016-2017-2018.

⁵⁹ *See* Tab. No. 46, IXth Report, nt. (58).

⁶⁰ For a striking overview of territorial differences in the use of Framework Agreements, *see* Fondazione Studi Consulenti del Lavoro, nt. (19), 20, spec. Tab. No. 7.

⁶¹ The mentioned Reports highlight that, among the (more than) 900,000 persons with disabilities seeking employment, the job placement at public and private employers is just over 43,000 [*see* Tab. No. 50, Xth Report nt. (58), and Tab. No. 19, IXth Report, nt. (58)]. Furthermore, 40.9 p.p. of the private companies, and 30.1 p.p. of the Public Administrations report the availability of job positions for persons with disabilities [*see* Tab. No. 1, and Fig. No. 2 and 3, Xth Report, nt. (58)]. In aggregating public and private data, it emerges that the 110,060 surveyed companies – with more than 515,000 job positions to be assigned to persons with disabilities – do not cover 148,229 reserved quotas.

⁶² Observing Tab. No. 11, IXth Report, nt. (58), on the “number of communications to Italian Territorial Labour Inspectorates on non-compliance with recruitment obligations” in relation to the number of non-compliant employers, it is easy to understand that the inflicted sanctions are lower than the non-compliant employers.

of persons with disabilities”.⁶³ In the same direction, the inspection controls should be intensified, and the sanctions should be more effective.

However, the Law cannot fight discrimination alone. The main obstacle seems to be represented by the alleged impossibility for employers to entrust Social Cooperation with profitable work orders.

To remedy this critical issue, Social Cooperatives have autonomously decided to work together,⁶⁴ building networks aimed at labour inclusion.⁶⁵ These alliances have been formalized through “network contracts” (Article 3, par. 4-*ter*, Decree No. 5/2009, converted into Law No. 33/2009).⁶⁶ By this, it can be realized a much broader (territorial) “Social Offsetting”, which could fight the employers’ resistance to investing in Social Cooperation. Indeed, the employer can entrust the network with their order, which Social Cooperatives can manage together.

Indeed, from the legal point of view, the network is considered as a single entity, to which both labour relations and work orders are ascribed.⁶⁷ Due to the admitted “co-employability of workers hired with rules established by the network contract”, and “according to a shared (network) interest of the parties involved (therein)”,⁶⁸ it was pointed out that “the employment of persons with disabilities can fit into the strategic objectives of a network of Social Cooperatives”.⁶⁹

Through territorial compensations, “Social Offsetting” comes true: the companies, neither employing persons with disability nor participating in the Framework Agreements, can fulfil the mandatory quota and save the sanctions. Of course, this process helps persons

⁶³ This is the proposal of Sartori A., *Transizioni occupazionali e vulnerabilità lavorative: il difficile compito per il diritto del lavoro post-pandemico*, in *Diritto delle Relazioni Industriali*, 4, 2021, 973.

⁶⁴ Indeed, “Cooperation among Cooperatives” represents the “Sixth Principle of the Statement on the Cooperative Identity”, which has been recognized by the International Cooperative Alliance at the XXIII Vienna Congress in 1966. It states that “cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional and international structures”. On this topic, and for a deep commentary on the principles of Cooperation, see Fajardo G., Fici A., Hentzy H., Hiez D., Meira D., Münkner H., Snaith I., *Principles of European Cooperative Law: Principles, Commentaries and National Reports*, Intersentia, Brussels, 2017.

⁶⁵ See Borzaga C., Borzaga M., Depedri S., Ferrari C., Gubert E., Iamceli P., Mazzetti M., *Reti tra imprese per l’inserimento lavorativo. Applicabilità e potenzialità del contratto di rete*, Euricse Research Report No. 21, 2021, available at <https://base.socioeco.org/docs/rapporto-reti-finale-def.pdf>, and, more recently, Ferrari C., Iamceli P., *L’utilizzo del contratto di rete da parte delle cooperative di inserimento lavorativo: strategie di collaborazione e disegno contrattuale*, in Borzaga C., Borzaga M. (eds), *Inserimento lavorativo e contratto di rete*, Il Mulino, Bologna, 2023, 157 (to which please refer for a survey of best practices already developed by Italian Social Cooperatives).

⁶⁶ “Network contract” is the Italian legal tool through which “several entrepreneurs pursue the aim of individually and collectively increasing their innovative capacity, and competitiveness on the market” by obliging themselves “to cooperate in predetermined forms, and areas” (Article 3, par. 4-*ter*, Decree-Law No. 5/2009, converted into Law No. 33/2009). On this tool, see at least Zilio Grandi G., Biasi M. (eds), *Contratto di rete e diritto del lavoro*, Cedam, Padua, 2014.

⁶⁷ See Borzaga M., Mazzetti M., *I rapporti di lavoro nei contratti di rete*, in Borzaga C., Borzaga M. (eds), *Inserimento lavorativo e contratto di rete*, Il Mulino, Bologna, 2023, 197.

⁶⁸ Article 30, par. 4-*ter*, Legislative Decree No. 276/2003 (introduced by the mentioned Law No. 33/2009). On this point, see Biasi M., *Dal divieto di interposizione alla codatorialità: le trasformazioni dell’impresa e le risposte dell’ordinamento*, in Zilio Grandi G., Biasi M. (eds), *Contratto di rete e diritto del lavoro*, Cedam, Padua, 2014, 137, to which please refer also for his literature review.

⁶⁹ See Ferrari C., *Il contratto di rete tra collaborazione strategica e finalità solidaristiche: elementi caratteristici e assetto attuale della disciplina*, in Borzaga C., Borzaga M. (eds), *Inserimento lavorativo e contratto di rete*, Il Mulino, Bologna, 2023, 137.

with disabilities to restore dignity, well-being, and independence, which are likely to be wounded – if not lost – due to unemployment.

Some criticism could come from those who see in the (single or territorial) “Social Offsetting” mechanisms a falsified inclusion, as it is mediated through Social Cooperation, or from those who note lower sanction receipts for the Public Administration

About the first objection, I believe that the goal justifies the tool. Each step towards inclusion should be welcomed, rather than standing silently in front of discrimination that grips persons with disabilities at the fringes of the Labour market.

About the second potential critical issue, it should be remembered that the penalties for failure to comply with the recruitment obligation constitute a theoretical collection for the Public Administration and that the purpose of the employment system for persons with disabilities (Law No. 68/1999) is not to collect sanctions but to ensure the right to work.

If it is true that unity is strength, the “Social Offsetting” model generates sustainable development, which is disseminated and shared through inclusion.

5. Closing remarks.

In this paper, the issue of Sustainable Development is focused on the labour inclusion of persons with disabilities.

Moving from the Italian situation to draw up wide-ranging remarks, the case study shows well problems and trends. Despite the mandatory quotas, persons with disabilities have always been very weak in the Labour market, because of their (verified or supposed) reduced working capacity. After the pandemic, their condition worsened, and these vulnerable workers (or workers-to-be) had more and more difficulties in finding and keeping a job.

Besides the recruitment obligation, the Italian legal system provides a useful tool to reverse the situation. Through the Framework Agreement (Article 14, Legislative Decree No. 276/2003) persons with disabilities work in a Social Cooperative, that is organizing work and taking care of them. In return, the burdened employer asks (and pays) the Social Cooperative to realize a part of their production, involving workers with disabilities.

This perspective follows the same logic of the “Carbon Offsetting” projects but realizes broader “Social Offsetting” processes. Indeed, Social Cooperatives compensate for the shortcomings of employers burdened with the recruitment obligation, which, by investing in Cooperation, engage in “socially responsible behaviour”.⁷⁰

The mechanism is effective and efficient, even if, up to now, it has not developed its potential, because it is still unknown by employers. In addition, even aware employers are a little reluctant towards Framework Agreement, due to the difficulty of finding a Social Cooperative to whom they can entrust profitable work orders.

To overcome these critical issues, Social Cooperatives spontaneously started to collaborate strategically, promoting partnerships for labour inclusion. Through their

⁷⁰ Salomone R., *La responsabilità sociale dell'impresa: riflessioni a margine di una strategia europea sullo sviluppo sostenibile*, in *Diritto delle Relazioni Industriali*, 2, 2004, 379.

network, they share goods, knowledge, and human resources; nevertheless, they can manage (more complex) work orders. By this, even the most hesitant employer can entrust the tool.

The described weaknesses can be successfully addressed: Social Cooperatives allow both individual and territorial “Social Offsetting”, able to ensure sustainable development for all. The Italian experience can represent a highly disseminable best practice, as it can be exported, considering the worldwide role played by Cooperatives and, in particular, by Social Cooperatives, in supporting the labour inclusion of persons with disabilities.⁷¹

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⁷¹ Please refer to Santuari A., nt. (11), 148, and his extensive references.

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