Sociedad Internacional de Derecho del Trabajo y de la Seguridad Social

XXIII Congreso Mundial

7 - 10 de Septiembre de 2021 - Lima, Perú

RETOS DE LOS SISTEMAS DE LEGISLACIÓN LABORAL Y SEGURIDAD SOCIAL

- Transformación del trabajo: desafíos para el Derecho del Trabajo
- Comercio internacional y trabajo
- Nuevos retos de la Seguridad Social
- Trabajadores migrantes
- Trabajadores atípicos e informales
- Igualdad en el trabajo
- El Estado y las nuevas formas de voz colectiva

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MIGRANT WORKERS

THE NETWORK CONTRACT: AN INSTRUMENT TO CONTRAST LABOUR EXPLOITATION IN AGRICULTURE. THE ITALIAN CASE*

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ABSTRACT: The paper, after investigating the criticalities of the agro-food chain that make illegal gang-master trade ("caporalato") a coessential phenomenon to the survival of the agricultural enterprise on the market in the face of the negotiating dominance of the large-scale retail trade (GDO), illustrates the prospects and potentialities of the use of network contract as a tool to contrast the informal economy. Co-employment (Codatorialità), in fact, allowing companies to share the cost of labour in return for a joint employment, seems a tool susceptible to combat the serious labour exploitation much more than the criminal sanction policies, even in light of the low effectiveness of the Quality Agricultural Work Network.

KEYWORDS: Labour exploitation - Network contract - Co-employment.

1. INTRODUCTION. THE ITALIAN CONTEXT

In Italy can be found widespread forms of labour exploitation and illegally recruiting labour for a long time, just think that the first law that introduce tools to fight abuses perpetrated by gangmaster dates to the early last century. What changed over the years were, above all, the victims of this silent drama that rages in the countryside: in the past they are Italian citizens, today they are mainly foreign workers[1]. Despite several parliamentary inquiries[2] and subsequent legislative reforms[3], the problem of illegal gang-master trade (so called caporalato) and labour exploitation is, with varying degrees of severity, still firmly rooted in the country.

The serious epidemiological crisis caused by the spread of the Sars-Cov-2, more recently, has led to a worsening of the already precarious conditions of migrant workers trough «an exponential increase of the working activity with the consequent decrease, for example, of the break time, the general lengthening of

1 Perrotta, "Vecchi e nuovi mediatori. Storia, geografia ed etnografia del caporalato in agricoltura", in *Mer. Riv. Stor. Sci. Soc.*, 2014, 193 ff.; Chiaromonte, "«Cercavamo braccia, sono arrivati uomini». Il lavoro dei migranti in agricoltura fra sfruttamento e istanze di tutela", in *Dir. Lav. Rel. Ind.*, 2018, 338 ff.

2 The most recent one ended on 12th may 2021 by issuing a document approved by the joint parliamentary committees XI (private and public labour) and XIII (Agriculture) on the phenomenon of illegal gang-master trade (caporalato) in agriculture.

3 Sgroi, "Utilizzo interpositorio illecito della manodopera: le misure di contrasto", in *Riv. Dir. Sic. Soc.*, 2018, 95 ff.

the daily working time, the increase of the risk of even serious accidents»[4]. The problems have regarded also health and safety issues related to the preventive measures implemented against Covid-19, considering the failure to delivery personal protective equipment to workers and the precarious conditions of the housing provided by the employer which did not allow respect for social distancing[5].

It is possible to define the illegal gang-master trade (caporalato) as an «illicit system of recruiting and exploitation of labour by illegal intermediaries (caporali) who recruit the workforce» for third parties. Workers recruited in this way are quite often subjected during the employment relationship to degrading working and living conditions, in breach of the provisions on working time, pay and social contributions, health and safety at work[6]. This phenomenon is favoured by the intrinsic characteristics of agricultural work which constitute an important risk factor. The seasonal and temporary nature of the harvest time makes work precarious and the workers easily blackmailed, because they are bound to accept heavy and degrading working conditions in order to have a job. The need to save time in order to avoid the deterioration of products and to reduce the costs related to this production phase has an impact on the productive rhythms and methods of remuneration (es. piecework pay). At the same time, due to the seasonality of agriculture, migrants are pushed to move periodically throughout the territory, following the trend of crops, to ensure their livelihood. This situation clashes, however, with the «institutional and welfare system that rewards the permanence» of the foreign citizen for the access to social rights. This forced mobility of migrant workers is therefore a further factor of vulnerability, because it «undermines the guarantee of the rights relating to requests and renewals of residence permits, to registration in the health register, as well as access to judicial protection»[7].

4 Omizzolo, "Sfruttamento, caporalato e lavoratori migranti in agricoltura al tempo del Covid-19", in IDOS, Dossier statistico immigrazione 2020, 2020, 288 ff.

5 Camera dei deputati, Documento approvato dalle commissioni riunite XI (Lavoro pubblico e privato) e XIII (Agricoltura) a conclusione dell'indagine conoscitiva sul fenomeno del cosiddetto «caporalato» in agricoltura, in https://documenti.camera.it/_dati/leg18/lavori/documentiparlamentari/IndiceETesti/017/009/INTERO.pdf, 2021, 26 (Last access 09.06.2021).

6 Ministero del lavoro e delle politiche sociali, "Piano triennale di contrasto allo sfruttamento lavorativo in agricoltura e al caporalato 2020-2022", in https://www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/Tavolo-caporalato/Documents/Piano-Triennale-post-CU.pdf 2020, 4 (last access 06.06.2021).

7 Schiuma, "Sfruttamento e (in)sicurezza nel lavoro agricolo degli extracomunitari, in Calafà, Ia-

The presence of such vulnerable, low-skilled and powerless workforce, which is predominantly foreign, represents an attractive pool of low-cost employees for businesses, since it enables them to discharge the effects of competition on prices to the workers[8].

The expansion of this method of recruitment and employment of labour in the agricultural sector can be explained, in the current economic context characterized by the globalization of markets, by the market needs of the large retail chains and the agri-food industry, which determine a fierce downward competition in prices and exhausting productive rhythms required to respond effectively and promptly to the demand of goods[9]. It is just the dynamics of the agri-food chain that push agricultural enterprises to keep labour costs as low as possible, by ensuring pay below the minimum wage, and to offer degrading working conditions[10]. The latter have «little bargaining power» and are unable to affect the pricing of agricultural products due to structural factors such as small size, fragmentation and lack of innovation, as well as other factors more closely linked to the specific characteristics of agricultural production, like the nature of the product or the unpredictability of the harvest in quantitative and qualitative terms[11]. Consequently, the only way to preserve their profitability become the downward of labour costs.

For this reason, after a brief analysis of the instruments adopted at any level to prevent and to contrast labour exploitation in agricultural sector by the legislator, it will be appropriate to develop a reasoning on the network contract, as a tool able, on the one hand, to strengthen the position of agricultural enterprises in the market, by improving their productivity and organizational efficiency,

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vicoli, Persechino (a cura di), Lavoro *in*sicuro. Salute, sicurezza e tutele sociali dei lavoratori immigrati in agricoltura, 2020, 156.

8 Faleri, "Il lavoro povero in agricoltura, ovvero sullo sfruttamento del (bisogno) di lavoro", in *Lav. Dir.*, 2019, 150-151.

9 De Angelis, "Il lavoro irregolare dei braccianti immigrati. Profili critici e azioni di contrasto", in D'Acunto, De Siano, Nuzzo (a cura di), In cammino tra aspettative e diritti. Fenomenologia dei flussi migratori e condizione giuridica dello straniero, 2017, 406; Canfora, "Le regole del gioco nelle filiere agroalimentari e i riflessi sulla tutela del lavoro", in *Agriregionieuropa*, 55, 2018.

10 Pinto, "Rapporti lavorativi e legalità in agricoltura. Analisi e proposte", in *Dir. Lav. Rel. Ind.*, 2019, 12-13.

11 Tarangioli, "Le filiere agroalimentari in Italia fra spinte competitive, innovazione e processi inclusivi", in Zumpano (a cura di), Migrazioni, agricoltura e ruralità. Politiche e percorsi per lo sviluppo dei territori, 2020, 88.

and, on the other hand, to avoid to the inherent temporary and cyclical nature of agricultural work.

2. THE INSTRUMENTS TO PREVENT AND COMBAT GANGMASTERING AND LABOUR EXPLOITATION. IN SEARCH OF A "FAIR PRICE" FOR THE SALE OF AGRO-FOOD PRODUCTS

The agricultural entrepreneur, defined according to the provisions of art. 2135, paragraph 2 of the Civil Code in relation to the care of the biological cycle or a phase of it, is presented by the following paragraph 3 in relation to the ability to place itself on the market both through the manipulation, preservation and processing of products and, of course, their commercialization. Because the relationship between the activities of modification of agricultural products and commercialization is not indispensable, commerce - an elementary form of exchange for the obtainment of income and, therefore, profits - also refers to exclusively harvested products. It is thus established, within the wider principle of freedom of enterprise protected by art. 41 of the Constitution, a deep connection between agricultural activity, productive organization and market.

Agricultural products, as is intuitive, take root within the circulation processes of commodities that, in our country, are essentially distinguished by types of supply chain. There are the so-called short supply chains, which promote proximity between producer and consumer or alternative disintermediation channels, including those in solidarity aimed at encouraging a critical approach to consumption (GAS - Solidarity Purchasing Groups), or based on the creation of direct fidelization processes between producers and consumers, based on the values of environmental sustainability and the defense of biodiversity (GODO - Groups organized supply and demand)[12]. However, apart from these residual forms of distribution, which do not seem to have structurally altered the market functioning (and, therefore, to have affected the recourse to "caporalato") due to their limited amplitude and incapacity to absorb the entire agricultural production, a predominant position in the relationship with the final consumers is played by the so-called long chains of the GDO (Large-scale retail trade). These are companies that, due to their diffusion on the national territory or to the fact that they belong to international chains, are able to concentrate their sales in widespread physical spaces and, therefore, require considerable quantities of

12 Paoloni, "La filiera agroalimentare «etica» e la tutela del lavoro", in *Riv. Dir. Agroalimentare*, 2020, 643 ff.

food products (fresh, processed, transformed) that they are able to find almost everywhere in the world, even in the opposite direction to the seasonality of the production. The competition in the supply of such commodities on a global level (often, non-EU) and the simple substitutability of suppliers, together with the reduced number of companies of the large-scale retail trade in the face, on the other hand, of productive companies that tend to be fragmented and in competition with each other, has therefore generated a natural position of oligopsony of the large-scale retail trade, favoring vertical bargaining phenomena[13]. In particular, these are agreements that impose, as noted by the Italian Antitrust Authority as early as 2013, «"unfair" contractual conditions, when not outright vexatious», including not only discount clauses of a commercial nature, but also clauses for «remuneration of distribution services (access fees, promotional contributions, remuneration for preferential exposure, for central services, etc.)» to which are added «discounts and contributions (so-called extra-invoice) conditioned on the achievement of specific sales objectives, events and/or promotional activities by distribution companies» or other extraordinary charges, by way of remuneration to certain general expenses incurred by the central office or by the individual chains, «such as secretarial expenses, centralisation of orders, stock management, etc.»[14].

The oligopsony of the enterprises of the GDO also benefits, upstream, from the preponderant weight of the Great Purchasing Centers (GCA – "Grandi Centrali di Acquisto"), which constitute a form of "alliance between distribution chains" functional to exploit the contractual weight of the united enterprises as a result of the aggregation of the overall level of the orders to obtain "cost savings in the phase of purchase of the goods through the collective negotiation with the suppliers" of distribution framework agreements, functional to fix the general conditions of the contracts that, then, will be signed directly between the suppliers and the enterprises affiliated to the GCAs[15].

It is with reference to this reality, which has developed predominantly as a result of a liberalization policy inaugurated by the Italian legislator in 1998 (with legislative decree no. 114 of 1998). 114 of 1998) - to which a regulation

13 Costantino, "L'integrazione verticale per contratto nel settore agroalimentare: fattispecie giuridica e disciplina applicabile", in *Contr. Impr.*, 2013, 1448 ff.

14 Agcm (*id est*, Italian Antitrust Authority), "Indagine conoscitiva sul settore della GDO – IC43", 2013, 4.

15 Agcm, "Indagine", op. cit., 85 ff.

of competition has not corresponded, until late, in the EU - that the structural unbalances within the Italian agro-food chain have affected not only agricultural producers, but also the industrial processing companies (which, however, formed an essential alternative recruitment channel for the first ones), which have seen their profit margins reduced, sometimes even below the average costs of production, even due to the rise of private label products, which allow the companies of the GDO to dominate the chain imposing to the undertaking producing the price of the product and, therefore, marginalizing the profits of the them on the products purchased[16]. Obviously, this is not a phenomenon exclusively affecting Italy, but a condition that covers the entire European Union market, albeit with different nuances. Since 2008, the European Commission, committed to finding the reasons for an unexpected fluctuation in agricultural product prices, has found that the unequal bargaining power within the food chain is the main reason for the lower profit margins of producers, especially small ones[17]. This led to the issuance, first, of a EU Regulation (no. 261 of 2012) regarding the milk and dairy sector and, a year later, of a EU Regulation (no. 1308 of 2013) regarding all contracts for the sale of agricultural products, which contain principles for regulating the agricultural competitive market, on the one hand, linked to the contents of the agreements and, on the other, aimed at encouraging the aggregation of undertaking producing into associations or organizations of producers to strengthen their contractual position. However, it must be said that the absence of any provision designed to allow for a check on the reasonableness of the exchange (because the Regulations described above are more oriented towards prescribing the mandatory written form of the agreements, although at the discretion of the Member States) has, in fact, only apparently constituted a protective rule for suppliers, who are only formally guaranteed in terms of knowledge of the conditions of the agreement and by a minimum duration of the agreement. However, despite the fact that art. 42 TFEU allows the European legislator to derogate from the general rules on

16 Ismea, "Rapporto sulla competitività dell'agroalimentare italiano", luglio 2018, in www.ismea.it

17 Commissione europea, Comunicazione "I prezzi dei prodotti alimentari in Europa", COM(2008) 821; Id., Comunicazione sul "Migliore funzionamento della filiera alimentare in Europa" del 28 ottobre 2009; which was followed by Id., Comunicazione su "Affrontare le pratiche commerciali sleali nella filiera alimentare tra imprese" del 15 luglio 2014; Id., "Relazione sulle pratiche commerciali sleali nella filiera alimentare tra imprese" del 29 gennaio 2016; e la Risoluzione del Parlamento europeo del 7 giugno 2016 sulle pratiche commerciali sleali nella filiera alimentare (2015/2065(INI)).

competition between companies in the agricultural sector[18], the conditions of the agreement are left to the free functioning of the market[19]. Also following the implementation of the previous legislation in the face of the issuance of Regulation no. 2393 of 2017 (so-called Omnibus Regulation)[20], then, the same convenience for producers to associate or organize themselves has ended up stopping in front of the persistent prohibition, present in art. 209 Reg. no. 1308 of 2013, to conclude agreements that establish identical prices. This has nullified the aggregative intent (at least in relation to supply agreements) and to favor, rather, a revival of competition on the market based on the reduction of labour costs (and therefore the ability to offer commodities at lower prices).

If we then consider how the absence of any sanctioning requirement established at European level – which has left individual EU countries with discretionary powers regarding forms of protection for producers (civil, administrative, etc.) – has contributed to the fragmentation of the European market with consequent effects on competition[21], it can be understood how, as agricultural entrepreneurs are captivated by the oligopsonistic commercial practices of large-scale distribution companies. Consequently the use of flexible and underpaid labour has proved to be an elementary (and at times indispensable) factor for agricultural companies to manage the strong competitive pressure and the need, deriving from the value production chain, to increase the otherwise narrow profit margins[22]. The high-cost of regular labour contract has an impact, in fact, on the cost of production but, due to the characteristics of the commercial relationship between the parties, the reduced market scenarios and the low profitability of products, an increase in the price charged for the supply cannot be generated[23]. This situation encourages a race to the illegal labour in order to fill the tendency

18 Jannarelli, Profili giuridici del sistema agro-alimentare e agro-industriale. Soggetti e concorrenza, 2016, 117 ff.

19 Cfr. Russo, "Le pratiche commerciali scorrette nella filiera agroalimentare tra diritto UE e diritto interno", in *Riv. Dir. Agroalimentare*, 2020, 406 ff.

20 Su cui Jannarelli, "Dal caso "indivia" al regolamento omnibus n. 2393 del 2017: le istituzioni europee à la guerre tra la PAC e la concorrenza?", in *Riv. Dir. Agroalimentare*, 2018, 109 ff.

21 Nonostante le indicazioni della Commissione europea nel "Libro verde sulle pratiche commerciali sleali nella catena di fornitura alimentare e non alimentare tra imprese in Europa" del 31 gennaio 2013.

22 Pinto, "Filiere agro-alimentari e agro-industriali, rapporti di produzione agricola e lavoro nero", in V. Ferrante (a cura di), Economia 'informale' e politiche di trasparenza. Una sfida per il mercato del lavoro, 2017, 91 ss.; Faleri, "Il lavoro povero", op. cit., 150-151

23 Paoloni, "La filiera", op. cit., 647 ff.

of reduced marginal revenues that derive from the commercialization of agricultural products (especially unprocessed) within the supply chain.

In short, given the downward competition on agricultural products, agricultural enterprises inevitably tend to rely on "caporali" (illegal intermediaries) and undeclared workers in the obvious knowledge that the number of them and the low salary, within a supply-chain of virtually slave labour, is capable of favoring profit margins on the product unit value and increase, therefore, the final profits. In this context, as far as the European Union has been interested in labour issues only insofar as they have a direct or reflected impact on competitiveness, in its most recent initiatives, the law of the Union seems to have gathered around the negative effects that unfair commercial practices carried out downstream in the chain, in the relationship with the companies of the large-scale retail trade, reflect on the other links of the chain (the weakest), a much broader attention than in the past, moving at the base of a new intervention on unfair commercial practices in the business-to-business relationships in the agricultural and food chain (the Directive no. 633 of 2019) the consideration that they are susceptible to reverberate "in cascade" on the subsequent links of the food-chain, since the party who suffers them will inevitably try to unload the harmful effects on their contractual partners, until forcing the last link, the primary producers, to take charge of it taking advantage, in turn, of the physiological condition of weakness, in fact, of workers (Recital 7)[24]. The spirit of impunity which seems to have characterized the relationships between companies operating in the agro-food chain and which was favored by the lock-in in which the producing companies were bound (not having negotiating power unless with the risk of upsetting a commercial relationship very often essential for the same survival on the market) does not seem, however, to be completely destined to cease with the adoption of the directive. In fact, the model followed by the European legislator in 2019 seems to be still characterized by some rigidities, so as to have adopted, differently from what is provided for by 2005/29/EC on unfair commercial practices between companies and consumers, a principle of exhaustivity in order to prohibit only certain cases (some of which, moreover, only under certain conditions) without recurring to a general definition (and

24 Faleri, "«Non basta la repressione». A proposito di caporalato e sfruttamento del lavoro in agricoltura", in *Lav. Dir.*, 2021, 272; Jannarelli, "La tutela dei produttori agricoli nella filiera agro-alimentare alla luce della direttiva sulle pratiche commerciali sleali *business to business*", in *Riv. Dir. Agr.*, 2019, 1 ff.

therefore offering a flexible protection) of the phenomenon and without therefore providing a generalized remedy to balance the position of natural weakness of agricultural producers in the supply chain. In fact, the model followed by the European legislator in 2019 seems to be still characterized by some rigidities, so as to have adopted, differently from what is provided for by 2005/29/EC on unfair commercial practices between companies and consumers, a principle of exhaustivity in order to prohibit only certain cases (some of which, moreover, only under certain conditions) without recurring to a general definition (and therefore offering a flexible protection) of the phenomenon and without therefore providing a generalized remedy to balance the position of natural weakness of agricultural producers in the supply chain.

Therefore, in this perspective, the elision of caporalato (which, in the end, is nothing more than an act of unfair competition against competing companies that respect law) remains entrusted to a gamble on the future, having been overlooked so far by the legislator that the use of irregular labour will be a structural phenomenon of the agro-food and agro-industrial sector as long as it does not constitute an economically inconvenient practice for agricultural companies.

2.1. Unfair commercial practices in the supply chain and and illegal gangmaster trade

It cannot be overlooked, to tell the truth, that the Italian legislator had not been idle waiting for the issuance of the European Regulation, so much as to have anticipated the problems through the adoption of some rules aimed at encouraging the integrated management of the supply chain, but with an approach that has shown a limited integrated vision of the relationship between the economy of the supply chain and caporalato. This circumstance, symptomatic of a possible genetic deficiency in the structuring of policies to combat labour exploitation in agriculture, is reflected both in the forms of regulation of bargaining relationships within the supply chain provided by Legislative Decree no. 102 of 2005, and in the forms of protection against unfair trade practices introduced by 2012.

From the first point of view, the structural recourse to irregular forms of work is partly due to the choice of the domestic legislator to promote fair trade relations within the supply chain, either through the involvement of the most representative bodies at national level in the sectors of production, processing,

trade and distribution of agricultural and agro-food products (art.9, legislative decree no. 102 of 2005) and through the stipulation of framework agreements (art. 10), but in an essentially voluntary perspective and, as such, unable to be applied to vertical integration contracts to unrelated third parties and, in any case, without an adequate consideration of the forms of protection for the weaker parties[25].

The problems mentioned are also found, similarly, in the regulation of commercial transactions regarding the sale of agri-food products, which at the moment finds in the disharmonious discipline resulting from articles 62 of Law no. 1 of 2012 (converted with Law no. 27 of 2012, subsequently integrated with the implementing regulation of October 19, 2012, no. 199) and 10-quater of Law no. 27 of 2019 (converted with amendments into Law no. 44 of 2019)[26] the demonstration of the inadequacy of the liberal conception aimed at supporting the natural convergence of the parties on the contract fairness according to a logic of maximization of mutual benefits.

The aforementioned art. 62, although containing a discipline that is in some ways broader than the subsequent European one[27], in providing for the requirement of a written form for contracts for the sale of agricultural and food products between entrepreneurs with specific indication of the essential elements of the agreement (duration, quantity, characteristics of the product sold, delivery and payment methods) and, above all, of the price (para. 1), has indeed represented a partial response to a phenomenon characterized not so much by the vacuity of the contractual texts, but above all by the imposition of oppressive clauses that the weak parties, under penalty of leaving a market essential for the survival of the business, just cant' help but subscribe; indeed, it is a discipline incapable of directing the negotiated exchange towards objectives of fairness and justice of the contractual regulation. From this point of view, the same list of prohibited practices in commercial relations between economic operators (and therefore not only those relating to contracts for the sale of agro-food products) has proved in the long run to be completely inadequate to ward off hypotheses of exploitation

25 Costantino, "L'integrazione", op. cit., § 4.

26 Benedetti, Bartolini, "La nuova disciplina dei contratti di cessione dei prodotti agricoli e agro-alimentari", in *Riv. Dir. Civ.*, 2013, 1641 ff.; Torino, "La nuova disciplina dei contratti e delle relazioni commerciali di cessione dei prodotti agricoli e alimentari", in *Contr. Impr.*, 2013, 1425 ff.

27 Russo, "Le pratiche commerciali", op. cit., 416 ff.

by large-scale distribution companies of the economic dependence of supplier companies, although, according to the subsequent implementing decree (d. m. no. 199 of 2012), among the particularly burdensome purchasing conditions prohibited could also include those capable of determining, in contrast to the principle of good faith and fairness, prices clearly below the the average production costs (art. 4, paragraph 2, letter c).

The rationalization efforts made in 2012 have in fact shown all the limits related to the inability to adequately affect the pricing criteria for the sale of agricultural products (left to the free competitive market), given the difficulty for the Italian Antitrust Authority to find adequate parameters of comparison to assess the threshold value below which the purchase price of the product can be considered an illegal imposition.The definition of an average production price is, moreover, affected by an extreme variability of definition, since, being linked to the ability of the company to generate profits, it is affected by the size of the agricultural company, its geographical and altimetrical location, its degree of managerial and organizational efficiency, the distribution of production on one or more products, the presence of other revenues generated through different revenues (even if related) to that of the product sold. The Authority does not, after all, have the possibility of establishing, on its own, a single average cost value as a reference for all the prices paid for each product, unless it wishes to reintroduce, indirectly, a minimum price policy.

In the light of the abandonment of the CAP (Common Agricultural Policy) centered on fixing exchange prices, the Italian legislator has therefore not been able to achieve the objective which, at least ideally, it intended to pursue. The case of the dairy sector is probably one of the most paradigmatic examples, given that the daily production of milk, the trend of daily international quotations, the significant fluctuations in demand for products, both fresh and processed, have continued to have a major impact on the way the price of products is negotiated. This has favored the imposition by the processing companies of prices lower than the average production costs of the farmers, in its turn generated by the imposition of a price realized on the shelves of the large-scale retail trade equal to or lower than the total processing and distribution costs[28]. The conflict on the determination of the price has, moreover, exploded a few months after the introduction of d.l. n. 51 of 2015 concerning measures to face the serious crisis

28 Agcm, "Indagine conoscitiva sul settore lattiero-caseario", IC51.

and relaunch the dairy-milk sector. And in fact, despite the enthusiasm aroused by a specific provision aimed at establishing monthly average production costs of raw milk through the active involvement of Ismea for the purposes of the application of art. 62 cit., a strict interpretation of the Antitrust Authority has taken root in the immediate. It excluded a general prohibition for milk purchasers to apply a purchase price lower than the average production costs calculated by Ismea, which were considered as one of the elements at the Authority's disposal to evaluate whether, in the specific contractual relationship, «the industrial company has actually imposed, in contrast with the principles of good faith and fairness, a purchase price that is unjustifiably burdensome, evaluating the possible burdensomeness also on the basis of the level and trend of production costs of companies active on the market»[29]. The legislative technique used in the aforementioned decree, which has been correctly interpreted by the Guarantor, has indeed shown in the operators of the sector (as well as in the scientific community) the inability of art. 62 quoted to offer an adequate response to the demands of market regulation deriving from the structural divarication of bargaining power in the sector, as well as from cyclical market crises[30].

The tensions relating to the products price redistribution in the supply chain have thus exploded in 2019, in relation to the DOP pecorino romano food-chain, which has put a strain on the previous discipline, in the meantime extended with art. 10-quater cit. - in the wake of the generalized extension to all sectors of value-sharing clauses, capable of holding the balance of the agreement unscathed against disruptive contingencies in the market prices of the products traded or other raw material markets (art. 172-bis Regulation no. 1308 of 2013 following the amendment made by Regulation no. 2393 of 2017) - to all agricultural products, allowing to arise, in the background, a presumption of unreasonableness of the exchange such as not only to constitute, as it is stated, unfair trade practice, but also, clearly, an index of irregularity in the production

29 Agcm, "Indagine conoscitiva", op. cit., p. 120 ss. In this sense, for the Authority, «the elabourations of the Ismea can certainly be of help to the evaluation, but they must be interpreted and used together with other informative elements on the market characteristics».

30 Jannarelli, "Prezzi dei prodotti agricoli e rispetto dei costi medi di produzione tra illusioni ottiche ed effettiva regolazione del mercato: cronache amare dal Bel Paese", in *Riv. Dir. Agrario*, 2019, 576; conf. Canfora, "La filiera agroalimentare tra politiche europee e disciplina dei rapporti contrattuali: i riflessi sul lavoro in agricoltura", in *Dir. lav. rel. ind.*, 2018, 274 ff.

process of the products (with implicit repercussions on the management of labour relations) and therefore an act of unfair competition against virtuous producers[31].

It had happened that the sale price of sheep's milk in Sardinia, destined to the processing companies belonging to the Consortium of Pecorino Romano DOP had undergone a significant decrease in the last three months, settling at a level lower than the average production costs borne by farmers, calculated by Ismea in € 70 cents per liter. The protests of the producers have solicited the Authority to intervene in order to establish whether, through the imposition of contractual conditions unjustifiably onerous, in contrast with the principles of good faith and fairness, could be a violation of article 62, Law Decree no. 1 of 2012 in conjunction with article 2 of Law Decree no. 51 of 2015[32]. In the meantime, however, in order to deal with the violent protests of shepherds in Sardinia that broke out in the early months of 2019, following a specific Ministerial intervention, a negotiating table was opened between processors and producers, at the end of which an agreement was reached on the sale prices of sheep's milk, with the commitment of pecorino producers to pay a fairer price, with the hope of opening discussions with large-scale distribution companies.

The aforementioned episode, even though it allows the Antitrust Authority to recognize the lack of grounds for intervention pursuant to art. 62 cited above, does, however, reveal a certain inadequacy of the discipline resulting from art. 62 cited above and 10-quater to provide a direct remedy in situations in which the price policy is affected by the economic or structural characteristics of the market and not by the mere position of predominance of one party over the other.

Moreover, these are two provisions that find it difficult to talk to each other, as is clear from the absence in the second provision of any reference to the first, even though it qualifies as an unfair commercial practice the establishment of prices significantly lower than the average costs of production found by Ismea, from the provision of specific sanctions and the introduction of a

31 More precisely, art. 10-quater cited has extended Ismea's competence to establish monthly average production costs already provided for by Law no. 51 of 2015 to all contracts having as their object the transfer of agricultural products pursuant to art. 168, par. 1 Reg. no. 1308 of 2013. The provision of prices significantly lower than the average production costs detected by Ismea, if accompanied by the lack of at least one of the conditions provided for by art. 168, par. 4 Reg. no. 1308 of 2013, is considered an unfair commercial practice and entails the application, against the purchasing company, of an administrative sanction of up to 10% of the revenues achieved in the last year prior to the assessment.

32 Agcm, "AL21 - Prezzi del latte in Sardegna", Provvedimento n. 27805.

special investigation procedure by the Guarantor Authority. In short, a only partially overlapping system is created, in which art. 10-quater becomes a special discipline in the absence of which the conditions of art. 62 finds its (already limited) operational space[33].

Thus, in conclusion, if it is true that the disturbances that are hovering over the supply chain do not find in the invoked rules only a partial response to the phenomenon of "caporalato", which indeed is ultimately favoured, as it is essential to the survival of the company on the market, it is necessary to verify what other tools are provided by the "toolbox" of the Italian system, to understand in what terms they are able to operate a dissuasive policy and contrast this serious scourge.

3. THE CRIME OF ILLEGAL INTERMEDIATION AND LABOUR EXPLOITATION

In view of the social scourge of illegal gang-master trade (so called caporalato) and labour exploitation that particularly affects the agricultural sector, the Italian legislator has adopted some instruments, manly of a criminal-repressive nature, which to the facts have been ineffective to counter the phenomenon. The main reference is to the crime of illegal intermediation and labour exploitation referred to in art. 603-bis of the Italian penal code, introduced in 2011 and then modified by l. n. 199/2016. This crime persecutes both those (illegal intermediaries or caporale) who recruit workers for third parties in conditions of exploitation and taking advantage of their state of needs and those who use, hire or employ workers, including even trough an illegal intermediary, subjecting them to conditions of exploitation and taking advantage of their state of need.

The article does not proceed to define the exploitation but relies on some indices that can detect its presence relating to breaches in the field of remuneration, working hours and rest times, health and safety and, more generally, to the submission to working conditions or degrading housing situations[34].

33 Jannarelli, "Prezzi dei prodotti", op. cit., 582 ff.; Russo, "Le pratiche commerciali", op. cit., 421 ff.

34 On the analysis of art. 603-*bis* c.p. see Miscione, "Caporalato e sfruttamento del lavoro", in *Lav. Giur.*, 2017, 113; Fiore, "La nuova disciplina penale dell'intermediazione illecita e sfruttamento del lavoro, tra innovazioni e insuperabili limiti", in *Dir. Agroal.*, 2017, 267; Andronio, "Il reato di intermediazione illecita e sfruttamento del lavoro: evoluzione normativa e giurisprudenziale", in *Dir. Lav. Merc.*, 2019, 430; Garofalo, "Il contrasto al fenomeno dello sfruttamento del lavoro (non solo in agricoltura)", in *Riv. Dir. Sic. Soc.*, 2018, 229; di Martino, Sfruttamento del lavoro. Il valore del contesto nella definizione del reato, 2019.

If, as a result of the amendment intervened in 2016, the regulatory provision widened its scope, prosecuting both the illegal intermediary and the user or employer, as well as conducts not necessarily committed with violence or threat, at the same time, however, it does not seem that the instrument is able to cope with the multiform expression of the phenomenon of labour exploitation in agriculture[35].

So much so, that if, on the one hand, the crime provision has contributed, by virtue of its dissuasive effects, to the reduction in the use of the most serious forms of irregular work, on the other, «the overall working conditions, in fact, seem to remain substantially unchanged»[36].

The other main limitation of criminal instruments adopted to contrast the phenomenon is the access to justice[37]. There is a certain reluctance of the exploited migrants to take legal action against the employer and the illegal intermediary in order to assert their rights due to the fear of losing their jobs and suffering the negative consequences of the legal proceedings, as well as for a lack of knowledge of their rights. The difficulty of bringing out the cases of exploitation is mainly due to the absence of a protective path that effectively guarantees an alternative form of livelihood to the migrant who decides to make complaints[38].

Just think that the art. 22, d.lgs. n. 286/1998, on the one hand, transposing Directive 2009/52/EC, recognizes the possibility of obtaining a residence permit to the migrant that made complaints and cooperated in the criminal proceedings for serious labour exploitation. On the other, the art. 10-bis of the same d.lgs. 286/1998 exposes the victims of labour exploitation, who very often are undocumented migrants, to the risk of being prosecuted for the crime of illegal entry and residence in the State[39].

35 Faleri, "«Non basta la repressione». A proposito di caporalato e sfruttamento del lavoro in agricoltura", in *Lav. Dir.*, 2021, 262 ff.

36 D'Onghia, Laforgia, "Lo sfruttamento del lavoro nell'interpretazione giurisprudenziale: una lettura giuslavoristica", in *Lav. Dir.*, 2021, 250; Tarangioli, "Le filiere agroalimentari in Italia fra spinte competitive, innovazione e processi inclusivi", cit., 92.

37 Calafà, "Lavoro irregolare (degli stranieri) e sanzioni. Il caso italiano", in *Lav. Dir.*, 2017, 80-82.

38 Zonca, "Stranieri "invisibili". Riflessioni comparative in tema di diritto al lavoro e integrazione sociale dei migranti", in *Riv. AIC*, 2018, 502-503.

39 Spinelli, "Immigrazione e mercato del lavoro: lo sfruttamento dei migranti economici. Focus sul lavoro agricolo", in *Riv. Dir. Sic. Soc.*, 2020, 135.

Discussed is, then, among scholars the applicability of the path of protection, provided for victims of exploitation referred to in art. 18, d.lgs. n. 286/1998, to the hypotheses of labour exploitation[40]. In both cases, however, the practice has shown a poor implementation of the two instruments, due to the limited cooperation of migrants in making complaints[41].

The punitive-repressive perspective that intervenes on the pathological level, «although essential in countering the most serious forms of labour exploitation», has shown, ultimately, all its limitations, as «it is not able to remove its structural reasons»[42]. This is also the consequence of the fact that the entire regulation of immigration is the result of a continuous tension between demands to guarantee public order and the needs to protect foreigner as a person, in which very often to prevail are the first[43].

4. THE QUALITY AGRICULTURAL WORK NETWORK

The law n. 199/2016, together with the amendment of art. 603-bis penal code, has revitalized another important measure, the Quality Agricultural Work Network, introduced by art. 6, decree law n. 91/2014, conv. in law n.116/2014, which aims to prevent at the root the phenomenon of illegal gangmaster trade and labour exploitation.

It is an institution where only agricultural companies that fulfil certain conditions, concerning compliance with decent working conditions, can participate.

Membership in the Network allows agricultural companies to be exempted from ordinary inspection checks, with the exception of those relating to health and safety at work and those carried out following an inspection request. In this way, inspections are carried out mostly on companies not included in the network.

40 In a positive sense see Genovese, Santoro, "L'art. 18 (t.u. immigrazione) e il contrasto allo sfruttamento lavorativo: la fantasia del giurista tra libertà e dignità", in *Dir. Lav. Rel. Ind.*, 2018, 545 e ss.; Lorea, "Immigrazione e sfruttamento del lavoratore: profili giuslavoristici", in *Dir. Merc. Lav.*, 2020, 184. Instead, D'Onghia, Laforgia, "Lo sfruttamento del lavoro nell'interpretazione giurisprudenziale: una lettura giuslavoristica", cit., 248-249, express some perplexity.

41 Santoro, Stoppioni, "Il contrasto allo sfruttamento lavorativo: i primi dati dell'applicazione della legge n. 199/2016", in *Dir. Lav. Rel. Ind.*, 2019, 282-283; Caprioglio, Rigo, "Lavoro, politiche migratorie e sfruttamento: la condizione dei braccianti migranti in agricoltura", cit., 51-53.

42 D'Onghia, Laforgia, op. cit., 251; Calafà, op. cit., 81; Torre, "Il diritto penale e la filiera dello sfruttamento", in *Dir. Lav. Rel. Ind.*, 2018, 309.

43 Recchia, "L'accesso al lavoro dei migranti economici", cit., 94.

The institution in charge of the network is the Steering Board "Cabina di Regia" which is chaired by the INPS and composed by representatives of relevant national institutions, trade unions, representatives of employers' association. It is responsible, inter alia, for promoting initiatives in the field of active labour policies, combating undeclared work and social contribution evasion, organising and managing seasonal labour flows, assisting foreign migrant workers.

If there is no doubt that it would be useful to set up measures that act in advance and at the level of the culture of work, by enhancing and rewarding the use of productive methods that compliance with the dignity of workers, at the same time, it should be noted that the current configuration of the Quality Agricultural Work Network presents some problems.

A first problem concerns the voluntary nature of membership in the Network and the lack of real incentives that can encourage agricultural companies to participate in it. This has led to an insufficient adhesion to the Network and uneven distribution of participating companies through the national territory.

For this reason, one of the goals set out in the "Piano Triennale di contrasto allo sfruttamento lavorativo in agricoltura e al caporalato" is to proceed, inter alia, to the «revision of the admissions requirements, to the establishment of a system of membership incentive, to the review of the territorial organization of the Network»[44].

The second aspect to consider is the exemption from ordinary inspection checks. Once passed the preparatory checks for the registration to the Network, enterprises enjoy of a substantial and permanent exemption from the ordinary inspection checks, that can bring about the risk to create «an enclave made up of people who ordinarily will no longer be the subjects of ordinary verification any»[45]. Rather, it should be just the possibility of becoming part of an ethical circuit that certifies the respect of decent working conditions to impose a higher frequency in checks[46].

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44 Ministero del lavoro e delle politiche sociali, "Piano triennale di contrasto allo sfruttamento lavorativo in agricoltura e al caporalato 2020-2022", cit.,18.

45 Sgroi, "Utilizzo interpositorio illecito della manodopera: le misure di contrasto", cit., 125; Faleri, "Il lavoro povero in agricoltura, ovvero sullo sfruttamento del (bisogno di) lavoro", in *Lav. Dir.*, 2019, 166.

46 D'Onghia, de Martino, "Gli strumenti giuslavoristici di contrasto allo sfruttamento del lavoro in agricoltura nella legge n. 199/2016: ancora timide risposte a un fenomeno molto più complesso", in *Var. Temi Dir. Lav.*, 2018, 172.

Finally, it must be considered that there isn't an automatic reputational advantage deriving from the participation in the ethical circuit of the Network as compared with other companies operating on the market, as it can be frustrated by the more or less virtuous behaviour of different actors in the supply chain, such as consumers and distributors[47].

The measure of the Quality Agricultural Work Network, although meritorious, at present has not been able to affect successfully to correct «the distortions that can be found in agriculture»[48], which result not only from the intrinsic characteristics of agricultural work, but above all even from the power relations that govern the agri-food chain[49].

5. NETWORK CONTRACTS IN AGRICULTURE

The measures to prevent and to contrast the phenomenon of illegal gangmaster trade and labour exploitation introduced by law n. 199/2016 have not led to the expected results, showing all their structural limitations. The Quality Agricultural Work Network has remained practically ineffective due to the voluntary nature of the membership which has led to a low participation. At the same time, as we have seen, it is unthinkable to address the issue only on a repressive level, because migrants hardly complain the abuses suffered in the face of the risk of remaining without any protection.

It is, therefore, necessary to consider also initiatives capable to «remove imbalances and distortions of agri-food production destined to negatively affect also the dynamics of agricultural work»[50]. The solution could be pursued through the aggregation of farmers in order to achieve a greater bargaining power within the agri-food chain and to improve the competitiveness and productivity of the companies involved[51].

47 Pinto, "Rapporti lavorativi e legalità in agricoltura. Analisi e proposte", in *Dir. Rel. Lav. Ind.*, 2019, 26.

48 Laforgia, "Il contrasto allo sfruttamento lavorativo dei migranti", cit., 186.

49 Leccese, "Lavoro, sfruttamento e tutele nella filiera agroalimentare: un itinerario", in *Dir. Rel. Lav. Ind.*, 2018, 248.

50 Camera dei deputati, Documento approvato dalle commissioni riunite XI (Lavoro pubblico e privato) e XIII (Agricoltura) a conclusione dell'indagine conoscitiva sul fenomeno del cosiddetto «caporalato» in agricoltura, cit., 26.

51 See Saccomanno, "Il contratto di rete, profili di un'indagine aperta", in *Contr. Impr.*, 2017, 695.

The introduction of new digital technologies in agriculture, as well as the transition to innovative environmentally sustainable production methods, requires substantial investments that the small producer can hardly bear economically. This, however, remains the only real way that can allow companies to combine the maintenance of their competitiveness on the market and the recognition of decent working and economic conditions.

In Italy, the decree law n. 5/2009, conv. in law n. 33/2009, introduced the network contract, an instrument with which «more entrepreneurs pursue the goal of increasing, individually and collectively, their innovative capacity and their competitiveness in the market» (art. 3, paragraph 4-ter). The entrepreneurs can, on the basis of a common network program, «to collaborate in forms and in predetermined areas for the exercise of their companies or to exchange information or services of an industrial, commercial, technical or technological nature or to jointly exercise one or more activities falling within the scope of their business». In this way, network companies gain advantages not only in quantitative terms, linked to the larger size of the network compared to individual companies, but also in qualitative terms, due to the sharing of skills and know-how among the participating companies[52].

Unlike the Quality Agricultural Work Network, an institution in which, as we have seen, the enterprise can participate mostly in order to obtain the certification of compliance with decent working conditions and exemption from ordinary inspection activity, the network of enterprises establishes forms of collaboration in the course of the economic activity that generate positive consequences on the management of the business activity.

The creation of the network can be an aid to the governance of change and innovation processes that have recently affected the agricultural and agri-food sector, with a view to improving the productivity of companies and their positioning on the market. The latter, in fact, through the participation to a network of enterprises, would have the possibility «both to acquire other people's innovation of which he does not have and to adapt themselves to an interesting market standard, and to circulate his own technology spreading a standard already used»[53].

52 Saccon, "I vantaggi economici per le imprese nel "fare rete", in Zilio Grandi, Biasi (a cura di), Contratto di rete e diritto del lavoro, 2014,14 and ff.

53 Masi, "Oggetti e relazioni della disciplina agroalimentare nel nuovo secolo tra scienza e diritto",

The collaboration and the aggregation between agricultural enterprises is not, however, a novelty own of the network contract. With the so called "reciprocanza", that is «the exchange of labour or services according to usage», regulated by art. 2139 civil code, the possibility of sharing the use of the means of production or even the labour force was already envisaged, on the basis of the peculiarities that distinguish agriculture (small businesses, family farms, and seasonal crops). It is born as a form of mutual aid between small farmers to satisfy temporary needs linked to extraordinary increases in productive activity and consists in the free exchange of agricultural services in a reciprocal way[54]). Similarly, with the consortium contract referred to articles 2602 and ff. civil code, more entrepreneurs may establish a common organisation for the regulation or for the conduct of certain phases of their enterprises.

The network contract, however, has an innovative nature compared to the existing forms of collaboration between farms. In fact, with respect to the so called "reciprocanza", network companies collaborate to pursue a common purpose and do not necessarily have to be farms or exchange labour for conducting agricultural services. As regards differences with consortia, although similarities are undoubtedly greater in this case, network contracts can «regulate the entire life cycle of the product or service (from production to distribution)» and aim to achieve «a common goal through a shared strategy»[55].

6. THE ADVANTAGES OF USING THE NETWORK CONTRACT AS A WAY OF REGULATING COMPETITION OVER WORKING CONDITIONS IN THE SUPPLY CHAIN: JOINT-RECRUITMENT AND CO-EMPLOYEMENT

In the above described context of agricultural producers' intrinsic economic dependence on agro-industrial or large-scale retail trade companies, in consideration of the latter's oligopsony position in the chain, for the final sale price determination of agricultural and food products, both fresh and processed, it

in *Riv. Dir. Alim.*, 2019, 19.

54 On this topic see Nuzzo, "L'utilizzazione di manodopera altrui in agricoltura e in edilizia: possibilità, rischi e rimedi sanzionatori", in WP CSDLE "Massimo D'Antona".IT, 357, 2018, 15-16; Greco, "Relazioni tra imprese e rapporti di lavoro in agricoltura", in Campanella (a cura di), Vite sottocosto. 2° rapporto presidio, 2018, 348-350.

55 Di salvatore, "Un'introduzione allo studio delle reti di imprese come modello di sviluppo per le aree interne", in *Nuove Autonomie*, 2019, 633 nt. 43. See also Russo, "Il contratto di rete in agricoltura", in *Riv. Civ.*, 2015, 186, according to which the networks of enterprises pursue goals that «seem to have a broader horizon than those that can be pursued with the consortium».

seems that agricultural producers, rather than hoping for corrective measures in the market by the legislator (both national and EU), have no choice but to join forces, in order to impose minimum price standards, which allow not only the fair allocation of profits, but also a sustainable approach, in terms of transparency and legality, in the work relationship management.

In this sense, the European legislator had already foreseen the possibility for agricultural producers to join forces through the establishment of organisations pursuing specific common objectives relating to the trading of their commodities, the provision of mutual technical assistance or the research and development of innovative production techniques, in order to strengthen their position on the market. The reference is to producers' organisations and inter-branch organisations for a specific sector, now covered by EU reg. 1308/2013 and regulated in Italy respectively by legislative decree no. 102/2005 and by legislative decree no. 51/2015. However, these organisations have ended up functioning rather sparsely, if not marginally, as their operation is essentially left to the discretion of the parties involved. Furthermore, they are subject to rather strict requirements, both as regards their form (a corporation in the case of producers' organisations, an association in the case of interprofessional organisations) and as regards the activities carried out, which in any case do not contemplate forms of joint business activity and can only be made up of agricultural entrepreneurs and, in any case, in the case of interprofessional organisations, do not carry out operational activities such as production, processing or marketing of products[56].

Hence the importance of network contract in agriculture. And in fact, beyond the alluvial legislation in favour of agricultural enterprises to get a greater reactive boost to high market competitiveness[57], including the specific form of funding for «newly established clusters and networks or those undertaking a new activity» provided for under the EU regulation on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (Reg. EU

56 Russo, "Il contratto di rete in agricoltura", op. cit., 192; Mocella, Reti di imprese e rapporti di lavoro, 2018, 83. It should be noted, however, that article 162 of Regulation (EU) no. 1308/2013 provides for a specific derogation for interbranch organisations for tobacco, olive oil and table olives, assigning them the performance of certain operational tasks.

57 Russo, "Il contratto di rete in agricoltura", op. cit., 1018 ff.; Costantino, "L'impresa agricola "in rete"", in Genovese (a cura di), Riflessioni sul contratto di rete. Profili privatistici e fiscali, 2013, 199 ss.; Costantino, "Il contratto di rete tra imprese nel settore agricolo", in *Riv. Dir. Agr.*, 2013, 668 ff.

1305/2013)[58], the greatest potential of network contracts in agriculture seems to lie in their ability to attract not only agricultural enterprises but also industrial ones, so as to encourage the establishment of a common purpose (a common interest) that can generate a virtuous distribution of the value of products among the enterprises involved. In this sense, the role of the network also appears to be well adapted to the supply chain, especially the agro-industrial one. It is therefore possible (and in a certain sense desirable) that within the supply chain the transition towards technologically advanced or digital production methods that ensure higher standards of product quality, health and environmental sustainability (e.g. the expansion of hydroponic cultivation methods), which are increasingly requested by those downstream in the supply chain, is completed through agreements that will involve the network companies in the collaborative or reticular management of agro-industrial goods processing. Alternatively, the network could be a way of creating synergies between agricultural enterprises and services companies to facilitate access to work in the countryside, and between social enterprises and other companies, in order to integrate vulnerable and disadvantaged people.

In this sense, it should not be forgotten that the network companies can also benefit from the organisational flexibility that the two network models envisaged by the 2009 legislator leave to the discretion of the contracting parties: the network can, in fact, become a legal entity (even if not a personality) (the so-called subject network - "rete soggetto") or merely regulate the mutual cooperation between network companies, without creating a new legal entity (so-called contract network - "rete contratto"), leaving, however, in both cases to the contracting parties the choice of establishing or not an organ and a common patrimonial fund. The use of the network contract, in fact, allows companies not only to increase their innovativeness and market competitiveness but also to mitigate the negative consequences arising from the unpredictability and seasonality of agriculture.

58 The importance of providing such support is found in the possibility of better achieving the objectives of rural development policy, as such an approach helps operators in rural areas to overcome the economic, environmental and other disadvantages of fragmentation. It is through the promotion of new forms of cooperation, such as business networks, which make it possible to organise joint working processes and share facilities and resources that the activity of small producers can become economically viable despite its small scale (recital 29).

The second potential inherent in the use of the network contract lies in the power granted to the network companies to adopt mutual forms of job-sharing of the workforce which, on one side, allow the same employee to be employed in different cultivation processes according to the seasonality of the production, sharing labour costs between the companies and, on the other side, also ensure continuity of employment for the workers employed, avoiding that agricultural unemployment is mainly paid for by the coffers of the Italian National Social Security Institution (INPS)[59].

This opportunity to share labour can be achieved through two modalities, both of which are likely to generate a dissociation of the employment relationship: co-employment and joint recruitment in agriculture, provided respectively by art. 30, paragraph 4-ter and art. 31 of Legislative Decree no. 276/2003. Apart from the question, which is very debated, about the difference between the two categories, it can be said, essentially, that co-employment is an instrument of joint employment of labour and sharing of the relevant professional skills according to the rules of engagement identified with the network contract in relation to a specific interest shared by the network companies (the one, in fact, at the basis of the network contract). On the contrary, the joint recruitment referred to in article 31, more specifically, is aimed at the agricultural sector and is characterised by the fact that only the recruitment phase is joint, since after the initial moment the workers carry out the «work services at the relevant companies»[60]. Only if it is carried out within the framework of a network contract, on condition that at least 40% of the network enterprises are agricultural enterprises, does joint employment also constitute a hypothesis of co-employment, since it may be adopted in view of the achievement of the common interest of the network and according to rules of engagement identified in the network contract itself[61].

59 However, it should be pointed out that article 30 of Legislative Decree no. 276 of 2003, which presumes the existence of an interest in the detachment of the workforce and therefore legitimises the employment of employees in other companies belonging to the network, is also applicable to agricultural network companies, as long as the requirement of temporariness is respected.

60 This option is available where agricultural enterprises, including those set up as cooperatives, belong to the same group or are owned by the same person or by persons related by a family relationship or affinity up to the third degree.

61 Greco, Il rapporto di lavoro nell'impresa multidatoriale, 2017, 192; M.T. Carinci, "Introduzione. Il concetto di datore di lavoro alla luce del sistema: la codatorialità e il rapporto con il divieto di interposizione", in Id., Dall'Impresa a rete alle reti d'impresa. Scelte organizzative e diritto del lavoro, 2015, 33.

In these terms, the shared and combined use of one or more workers for a interest specific but shared by the network enterprises (the one on which the network contract is based) in the agricultural sector has the potential to offer forms of mutual sharing of employees' professionalism and to be a concrete way of attracting regular labour within the agri-food chain, encouraging continuity of employment and permanence in the vicinity of the workplaces with positive effects in terms of social inclusion and access to local support programmes. In fact, it would make it possible to mitigate the negative effects deriving from the seasonal nature of harvests, which in terms of work lead to a temporary and precarious nature of the job, as well as to the need for the migrants to forcibly move around the territory (including outside Italy) in search of work, following the growing season[62]. All these elements, as we have seen, constitute specific risk factors for labour exploitation and forced labour in agriculture.

Of course, it is quite clear that the network contract is only one of the many possible ways to fight against 'caporalato'. However, if we keep in mind that it is a functional tool for cutting labour costs and that the fight will only be won when recourse to informal forms of work becomes economically unviable, then sharing the regular labour costs between network enterprises, together with the possibility of covering a substantial part of the food-chain, at least up to the processing companies located close to the production sites, seems could favour the establishment of ethical forms of food-chain that could lead to a sincere pact with consumers to adequately remunerate the legality of the production process. This is a first step on a road still to be travelled.

62 Giarè, "Strumenti per l'inclusione dei migranti. Il contributo dell'agricoltura sociale", in Zumpano (a cura di), Migrazioni, agricoltura e ruralità. Politiche e percorsi per lo sviluppo dei territori, 2020, 143; Canfora, Leccese, "Lavoro irregolare e agricoltura. Il Piano triennale per il contrasto allo sfruttamento lavorativo, tra diritto nazionale e regole di mercato della nuova PAC, in *Riv. Dir. Agroalimentare*, 2021, 71-72.