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## **Possible future work by UNCITRAL on contractual networks: proposal of the Government of Italy**

### **Note by the Secretariat**

The Government of Italy has requested the Secretariat to transmit for consideration by the Commission at its fiftieth session a proposal for possible future work by UNCITRAL on alternative forms of organization to corporate-like models (contractual networks). The text of the proposal is reproduced as an annex to this note in the form in which it was received by the Secretariat. The proposal was before Working Group I (MSMEs) at its twenty-eighth session (New York, 1-9 May 2017) ([A/CN.9/WG.I/WP.102](#)).



## Annex

# Contractual networks and economic development: a proposal of Italy for possible future work by UNCITRAL on alternative forms of organization to corporate-like models

## I. Introduction

1. At the twenty-third session of Working Group I, held in Vienna on 17 to 21 November 2014, Italy and France submitted observations on Possible Alternative Legislative Models for Micro and Small Businesses (A/CN.9/WG.I/WP.87). Such observations aimed at presenting domestic legislative models applicable to micro and small businesses that could provide for the segregation of business assets without requiring the creation of an entity with legal personality, but that could offer limited liability protection. In particular, as for the Italian model, reference was made to cooperation among micro, small and medium-sized enterprises (MSMEs) through the so-called “network contract” (*contratto di rete*). This model not only offers the possibility of segregation of assets and consequently limited liability protection, but also facilitates internationalization of MSMEs and cross-border cooperation. Moreover, it provides a tool to link MSMEs to larger companies by permitting MSMEs to be connected to the supply chain of such companies.

2. Working Group I is currently working on two separate instruments, one on business registration (A/CN.9/WG.I/WP.101 — Draft legislative guide on key principles of a business registry) and another on the statute of a limited liability organization (A/CN.9/WG.I/WP.99 and A/CN.9/WG.I/WP.99/Add.1 — Draft Legislative Guide on an UNCITRAL Limited Liability Organization). At its twenty-seventh session (Vienna, 3 to 7 October 2016), the Working Group agreed to devote some time at its twenty-eighth session (New York, 1 to 9 May 2017) on possible future work once the two mentioned instruments are completed. To complement the observations by Italy and France (A/CN.9/WG.I/WP.87), and being convinced that models to segregate business assets by entrepreneurs as well as to permit internationalization and cross-border cooperation between MSMEs would complement the texts the Working Group is currently working on, Italy submits the present observations to illustrate possible future work on alternative forms of organization to limited-liability entities, and its foreseen benefits for MSMEs. The aim is to fill a gap between issues of business registration, on the one hand, and the establishment of a limited-liability entity, on the other hand, with a flexible contractual instrument. As it will be explained, such a model would particularly fit those economies whose economic environment heavily relies on MSMEs.

## II. Business landscape

### 1. Global value chains offer many opportunities to small and medium-sized enterprises

3. Economic development is increasingly aimed at driving local economies towards global markets. Recent statistics show that, between 1995 and 2011, most developed and developing countries have significantly increased their contributions to global value chains (GVCs), taking advantage of lower trade costs and improved communication technology.<sup>1</sup> Competitiveness of GVCs does not mirror one single national economy but builds on “*bundle of labor, capital and technology*”.<sup>2</sup>

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<sup>1</sup> See WTO, International trade statistics 2015: “In 2011, nearly half (49 per cent) of world trade in goods and services took place within GVCs, up from 36 per cent in 1995. The tendency of countries to specialize in particular stages of a good’s production (known as vertical specialization), brought about by foreign direct investment, has created new trade opportunities,

4. In this landscape, foreign investments have played a major role. However, even greater prominence has been achieved by the so called “non-equity modes” (NEMs) of international production, such as contract manufacturing, services outsourcing, contract farming, franchising, licensing, management contracts, and other types of “*contractual relationship through which transnational corporations (TNCs) coordinate the activities of host-country firms, without owning a stake in those firms*”.<sup>3</sup> Indeed, participation in GVCs requires more and more explicit coordination and, through such coordination, developing countries are called upon to facilitate the upgrading of local economies.<sup>4</sup>

5. What is the role of MSMEs in this context? GVCs offer important opportunities to small and medium-sized enterprises, including those operating in low income and developing countries.<sup>5</sup> By learning from and interacting with other actors in the chain, these businesses can access new technologies and new markets, thereby contributing to the creation of value not only for the benefit of local economies but also for society at large.<sup>6</sup>

## 2. However, MSMEs experience a number of serious hurdles in accessing global trade and global supply chains

6. One of these is the lack of an appropriate common legal framework. Both micro enterprises (MiE) and SMEs<sup>7</sup> constitute the skeleton of domestic industrial and agricultural production systems.<sup>8</sup> They experience serious hurdles to access global trade and global supply chains.<sup>9</sup> These hurdles concern in particular: (1) access to capital, (2) access to technology, intellectual property rights, and know how, and (3) access to a qualified and well-trained labour force.<sup>10</sup> In order to ensure the participation of SMEs in global trade, access to critical resources has to be facilitated by promoting an appropriate common legal framework and new industrial policies.

7. The participation of SMEs in global trade is made even more difficult by a fragmented legal framework. National legal systems have developed various

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especially for small developing countries and eastern European economies. As a result, world trade in intermediate goods has grown with the rise of vertical specialization”.

<sup>2</sup> R. Baldwin, *Multilateralising 21st Century Regionalism*, OECD Global Forum on Trade, February 2014, at 22.

<sup>3</sup> See UNCTAD, *World Trade Investment Report*, 2011, explaining that cross-border NEM activity worldwide is estimated to have generated over \$2 trillion in sales in 2009. Contract manufacturing and services outsourcing accounted for \$1.1-1.3 trillion, franchising for \$330-350 billion, licensing for \$340-360 billion, and management contracts for around \$100 billion.

<sup>4</sup> See OECD, WTO and World Bank Group Report, *Global Value Chains: Challenges, Opportunities and Implications for Policy*, prepared for submission to the G20 Trade Ministers Meeting Sydney, Australia, 19 July 2014.

<sup>5</sup> See OECD and World Bank Group Report, *Inclusive Global Value Chains Policy options in trade and complementary areas for GVC Integration by small and medium enterprises and low-income developing countries*, prepared for submission to G20 Trade Ministers Meeting Istanbul, Turkey, 6 October 2015.

<sup>6</sup> See *Inclusive Global Value Chains Policy options*, cit.

<sup>7</sup> The differences between micro-enterprises and SMEs suggest that specific policies are required to support their activities and foster their growth both at the national and global levels. Whereas we believe that the objectives are similar, we maintain that legal instruments might differ depending on the size and capacity of the firms and the scope of their activities (whether global or local).

<sup>8</sup> In Italy, with regard to industry, services and construction sectors (no analogous data is available for agriculture), micro enterprises (0-9 employees) make up 95.3 per cent of the total, SMEs with 10-249 employees comprise 4.6 per cent and with 250+ employees represent 0.1 per cent of the total; in terms of value added, the ration is the following: micro enterprises 30.6 per cent, SMEs 38.4 per cent, large firms 31 per cent. In terms of the total number of firms, microenterprises are 83 per cent in the industrial sector, 96.7 per cent in services, and 96.1 per cent in construction; the percentage of SMEs is: 16.7 per cent in the industrial sector, 3.2 per cent in services, 3.9 in construction.

<sup>9</sup> See *Inclusive Global Value Chains Policy options*, cit.

<sup>10</sup> See ILO, *Decent work global chains*, International conference, 2016 available at [www.ilo.org](http://www.ilo.org).

instruments, primarily in company law, to promote the integration of SMEs but relatively little has been done to favour contractual collaboration both among SMEs and between them and global chain leaders like transnational corporations (TNCs). Fragmentation is even more problematic when considering national tax legislation, state aids and foreign direct investment (FDI) policies where differences are remarkable and regulatory arbitrage substantial. Harmonization of the law governing interfirm contractual collaboration may reduce regulatory fragmentation and help SMEs taking part in global trade to access resources and opportunities.

### **3. Complementarity between the establishment of companies and contractual collaboration**

8. SMEs' growth is driven, among other factors, by the adoption of an appropriate legal framework to promote their coordination in order to favour economic growth and specialization. Such growth can occur through integration in corporate entities or via contractual collaboration in various degrees.

9. These two families of legal instruments are complementary. The corporate-like family (company, cooperative) supports the integration of existing different enterprises when the level of mutual trust and reciprocal knowledge is high and the industrial project is well defined from the very beginning. The contractual family provides a set-up for enterprises to start new collaborations, in particular when they might not otherwise enter into a demanding and burdensome common industrial project. Lack of steady availability of physical capital or uneven access to financial resources among potential partners may also discourage SMEs from entering into corporate-like forms of integration. The complementarity between corporate-like and contractual modes might establish a process whereby SMEs start with contractual collaboration and end with the creation of new companies that integrate some of their activities.

10. When SMEs have relative little knowledge about their partners, the degree of risk and uncertainty stemming from potential collaboration is higher, and the incentives to invest might initially be lower. In that case, the contractual approach is more appropriate than the creation of a new company. What is needed is a more flexible instrument that maximizes the benefits of cooperation while reducing the costs of conflict and opportunism.

11. Collaboration is a process that might require various steps. The first is through contractual collaboration that may or may not translate into the creation of a company with a higher degree of ownership integration of different types of assets including both tangible and intangible ones. Hence, the evolution of a contractual collaboration over time should be compatible with dissolution, preservation or transformation of the contract into a corporate entity. Contractual networks (i.e.: multiparty contracts between SMEs located in the same or in different jurisdictions) may provide such an instrument with a relatively low level of initial capital, low entry and exit costs, and a light governance infrastructure. Multiparty contracts may facilitate access to capital by providing joint collateral to credit institutions; they can facilitate access to new technologies with the creation of common technological platforms, where common intellectual property rights may be used. Access to qualified labour force may be enabled through the possibility of sharing employees who may rotate among the enterprises participating in the network, thus increasing specialization and the effective use of human capital.

### **4. Existing types of Contractual networks**

12. Contractual networks include different existing forms of multiparty contracts ranging from joint ventures to consortia, franchises or patent pools; they can take the form of either a single contract with several parties, or of a set of interlinked bilateral contracts with high levels of coordination and interdependence. These contractual models include production and distribution and can be domestic or international. They can provide SMEs with the legal infrastructure to trade (for

example, through e-commerce platforms and payment systems like “Pay-pal”). Legal frameworks exhibit a great degree of differentiation between jurisdictions that make international SME collaboration very difficult. In addition, choice of law and forum rules are unclear for multiparty contracts,<sup>11</sup> and even less clear for interlinked contracts.

13. Essentially two forms of contractual networks are currently in place. **Vertical networks** operate along supply chains that include different stages of production/distribution. Participants in vertical networks (e.g. suppliers) perform activities (e.g. production of intermediate goods, supply of services) to be incorporated into the activity of another chain participant (e.g. an assembler) and the network is aimed at coordinating their interdependent activity along the lines of a chain project, often developed by a chain leader. TNCs often face high transaction costs when investing in developing countries because local enterprises operate in isolation and conventional local intermediaries (such as local leaders, trade associations, or local chambers of commerce, governmental agencies) do not operate very effectively. TNCs look for stable relationships that decrease coordination costs and increase the stability of the supply required by global markets. In order to stabilize the supply chain governance they need stronger coordination between local suppliers of inputs and intermediate goods and chain leaders. This process is reinforced by the increasing number of regulatory requirements, as on safety, environmental and social protection, to be applied along the global chain. In order to facilitate access to global trade, cross border contractual collaboration is necessary and specific legal forms tailored to SMEs are needed. Such forms may contribute to the process of the internationalization of SMEs through or independently from existing global chains. Consolidated international instruments related to sales and distribution currently provide an excellent toolkit for bilateral relationships but do not allow the promotion of multiparty coordination among SMEs contributing to the same production process but located in different jurisdictions.<sup>12</sup> Multiparty contracts linking several SMEs involved in global supply chains can provide a useful collaborative instrument as long as they are designed to make access to critical resources easier and cheaper.

14. **Horizontal networks** are networks in which various SMEs contribute to a common project with their *products or services*, playing a similar role along the supply chain or having similar expectations from the network programme (e.g. new trade opportunities for the sale of final products). The latter may, for example, concern the construction industry, where suppliers of electrical infrastructure may collaborate with plumbers and carpenters to complement the work of the main contractor, or the fashion and garment industry where product design and software in the initial stage of the production process have to be integrated. Horizontal networks can also be found in agriculture, or agri-food industry, where, for example, producers of different final products (such as wines) or commodities (e.g. rice, soy, or corn) collaborate to comprise a richer portfolio of products to enter a new foreign market.

15. Vertical networks of SMEs are part of broader supply chains that include one or multiple chain leaders. For example, in the agri-food industry supply chains, both a producer of the final product and a large retailer may share the leadership. The contractual relationships between the leader(s) and the SMEs are generally characterized by strong asymmetric power between enterprises located in different jurisdictions. The choice of applicable law and forum becomes very important and may influence the effectiveness of collaboration. Horizontal networks may include

<sup>11</sup> See Hague Conference on Private International Law, Principles on choice of law in international commercial contracts (approved on 19 March 2015), available at <https://assets.hcch.net/docs/5da3ed47-f54d-4c43-aaef-5eafc7c1f2a1.pdf>.

<sup>12</sup> There is some debate about revising the United Nations Convention on Contracts for the International Sale of Goods (CISG) in order to correlate sales contracts into global chains. UNCITRAL might contribute to this debate by coordinating the proposal on contractual networks with proposals to revise existing international contractual instruments.

SMEs of the same jurisdiction (the majority) or different jurisdictions (more common in the high tech industry or e-commerce). Horizontal networks feature lower asymmetric power distribution.

16. A third relevant dimension of contractual networks is their sheer number. Small collaborative networks (from 2 to 10 enterprises) of SMEs require a different governance structure than those encompassing hundreds or even thousands of SMEs (as it is the case for transnational e-commerce platforms devoted to SMEs).

17. Finally, creativity and innovation with intellectual property protection and management are among the key drivers of competitiveness, growth and development. This underscores the importance of network contracts in giving rise to platforms with a view to jointly exploit intellectual property rights. In particular, SMEs can share existing technology provided by one or more platform members, directly co-produce new technology within the platform itself or acquire technology licensed/transferred by subjects that are not party to the platform. Network contracts may also ease the provision of technical assistance given to SMEs related to intellectual property by business and government bodies, by facilitating the transfer of information and knowledge to a single collective subject and its subsequent dissemination among the network members.

### 5. Specific issues for micro enterprises

18. Compared to SMEs, MiEs exhibit financial, technological, trade weaknesses that are greater than for other types of enterprises. The role played by public institutions, non-governmental organizations (NGOs), trade or financial intermediaries and even MNCs is often pivotal to determine MiEs' chance to access GVCs. Such access requires a long-lasting process in which strategic collaboration, capacity-building and fair value allocation are key components. Networks aim at this type of collaboration, which is mostly focused on services rather than the mere exchange of goods.

19. Indeed, several types of networks may be distinguished among those involving MiEs:

- (a) Those involving only MiEs;
- (b) Those involving MiEs and non-business actors such as public entities, NGOs and the like;
- (c) Those involving MiEs and business actors such as MNCs and/or trade intermediaries; and
- (d) Various combinations of the above.

20. When dealing with networks involving MiEs, a uniform legal instrument should specifically address issues concerning the fairness on which network relations should be based and the guarantees that MiEs should enjoy vis à vis other GVC participants, regardless of whether these members belong to the same contractual network. Whereas such an instrument may envisage the adoption of mechanisms monitoring the fairness of contractual terms and practices in case (c), in the first two instances it could aim at empowering contracting parties (e.g. by establishing common negotiating platforms) in order to reduce power asymmetries along the chain.

21. A legal instrument facilitating collaboration among MiEs should focus on collective capacity-building in order to favour both individual and collective economic growth.

## III. Legal framework

22. In light of the above, an international legal instrument could eliminate legal barriers and accommodate the specific needs arising from this model of cooperation.

With the sole intent of presenting to the Commission the issues that may be considered, and in the hope of making it easier to assess the potential use of such an instrument, Italy will discuss some of the main issues to be included in a legal framework. These are broad and preliminary considerations to be intended for discussion, with no intention of being exhaustive, nor by any means to suggest a specific policy choice to the Commission.

### **1. Possible legal approaches to Contractual networks**

23. The above-noted differences suggest that a legal framework to address contractual networks might be organized around some functional distinctions:

- (a) Horizontal *versus* vertical;
- (b) Domestic *versus* international;
- (c) Small *versus* large networks;
- (d) Networks of MiEe *versus* networks of SMEs; and
- (e) For profit *versus* non-profit networks.

### **2. An integrated modular proposal of an international instrument on Contractual networks**

24. Whereas we believe that instruments for MiEs might differ from those for SMEs and that the latter should definitely be part of global trade, we would envisage a modular legal instrument with common general principles and possibly two specific sections, one devoted to MiEs and one to SMEs.

25. These principles might be drafted having in mind a multilevel system: i.e., whatever is not explicitly regulated would be supplemented by national legislation, leaving scope for a certain level of differentiation in legal architecture. The international instrument would define the specific principles and provide the relevant definitions but some aspects (for example, mistake, fraud, or avoidance) could be left to applicable contract law.

26. Most importantly, the structure of such principles should identify the new roles of contract beyond pure exchange, focusing on organizational and regulatory functions in order to ensure that network contracts can also promote compliance with global standards related to environmental, social, and data protection requirements, and should be applicable to both domestic and transnational networks.

27. These rules should ensure both the stability and the flexibility of the contractual network, and distinguish between internal relationships among members and relationships between the network and third parties, in particular, with creditors. Such rules could provide for different degrees of complexity with increasingly structured forms of governance, which could take place inside the network or could use companies controlled by the network to perform specific activities that require limited liability and asset partitioning.

### **3. Governance, knowledge transfer and innovation**

28. When defining a uniform legal framework, strategic importance might be devoted to knowledge transfers and innovation among the enterprises of the network and between the network and third parties. Contract rules become extremely important when knowledge cannot be “propertized” (i.e. cannot be made proprietary) either because no legal devices are available, or because the benefits of sharing are such that individual or even collective ownership would be inappropriate. In particular, two problems usually emerge within network governance: (1) Proportionality between investments, contributions and revenues, since lack of proportionality often emerges between individual investments and profits, and opportunistic behaviour by some members of the network might arise; and (2) The interest of the contractual networks might require protection against

behaviour such as unfair competition, violations of trade secrets, or unauthorized transfers to third parties external to the network.

29. A special regime concerning trade secrets and intellectual property rights might also need to be devised so as to maximize incentives to produce innovation inside the network, but, at the same time, to generate strong safeguards against knowledge leaking outside the network. Since creation and use of intellectual property rights might be too expensive for individual MSMEs, forms of collective ownership and licensed use might be regulated by multiparty contracts making innovation also possible for firms with limited capital.

30. Further, consideration should be given to instruments that permit the segregation of assets and the establishment of limited liability protection for the activities covered by the contractual network (or parts thereof), in order to offer an additional instrument to MSMEs.

31. Finally, specific rules concerning private international law might be appropriate in this context.<sup>13</sup> In multiparty contracts, when enterprises located in different jurisdictions want to collaborate there is a need to identify the applicable law to fill the gaps that are not explicitly regulated by the contract. Freedom of choice of applicable law should be encouraged along the lines of other initiatives established at the international level.<sup>14</sup> The international dimension may also require forms of mutual recognition when enterprises are registered in national registries with different requirements. To this latter extent, it would be advisable that the proposed international instrument permit coordination among the different business registration regimes in the countries of the network's members.

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<sup>13</sup> The above considerations are without any prejudice to the competence of The Hague Conference on Private International Law.

<sup>14</sup> See The Hague Conference on Private International Law, Principles on choice of law in international commercial contracts (approved on 19 March 2015), available at <https://assets.hcch.net/docs/5da3ed47-f54d-4c43-aaef-5eafc7c1f2a1.pdf>.



## Annex to the proposal

### Italian Law on Network Contracts<sup>15</sup>

#### 1. Main features

1. The business network contract (*contratto di rete*) was recently introduced into the Italian legal system by Law Decree No. 5 of 10 February 2009, converted into Law No. 33 of 9 April 2009 and further amended.<sup>16</sup> This is an agreement by which “*more entrepreneurs pursuing the objective of enhancing, individually and collectively, their innovative capacities and competitiveness in the market, undertake a joint programme of collaboration in the forms and specific clusters as they agree in the network contract, or to exchange information or services of an industrial, commercial, technical or technological nature, or to engage in one or more common activities within the scope of their business*” (Article 3).<sup>17</sup> The scope of business network contracts can thus broadly differ, and kind and degree of cooperation are left to the free agreement of parties, as long as, through the determination of a common programme, strategic goals are shared that allow either the improvement of innovative capacity or the growth of competitiveness.

2. Cooperation can range from a plain undertaking to exchange information or services, to the organization of cooperation, up to the joint exercise of economic activities. In addition, the two mentioned goals of cooperation are widely interpreted: improvement of innovative capacity is understood to include any new opportunities that firms may have access to by virtue of belonging to a network, such as the development of new technical or technological opportunities.

3. With regard to the growth of competitiveness, this is generally meant to increase the competitiveness of the members of the network or the network itself at both the national and international level, in the sense of creating business opportunities otherwise precluded to a single firm. Competitiveness is increased thanks to measures (such as — but not limited to — access to funding, existing fiscal facilitations, participation in public bids and labour law measures for companies in contractual networks) and from endogenous growth factors (such as the overcome of dimensional limits, the creation of marketing opportunities, knowledge exchange etc.). This leaves the door open to vertical (coordination of suppliers with shared standards of production, distribution or franchise chains) or horizontal integration (research and development, centralized point of sale or of acquisition). Under the most recent amendment to the relevant legislation, business networks can also take part in public bids.<sup>18</sup>

4. Whatever categories can be abstractly drawn in respect of the business functions of network contracts, there is no specific type of network agreement for any of these entities: it is up to the parties to decide the organizational structure and functioning of their network. The sole requirement to enter into a business network contract is to be an entrepreneur, irrespective of the nature and the activities performed. This includes sole ownership, companies of all kinds and public entities, including those of a non-commercial nature, as well as for profit and non-profit entities (mixed networks do not seem to be precluded, where there are for profit and non-profit participants). Business networks, although factually mainly used as a scheme for cooperation of small and medium-sized enterprises, are thus generally open to any businesses, including corporations and groups.

<sup>15</sup> This Annex is a slightly adjusted version of paras. 8 to 17, [A/CN.9/WG.I/WP.87](#).

<sup>16</sup> This has been further amended in 2009-2010 (Law No. 99/2009 and Law No. 122/2010) and in 2012 (Law No. 134/2012 and Law No. 221/2012).

<sup>17</sup> As of 3 January 2017, 3,320 of such contracts have been established, involving almost 17,000 entrepreneurs (<http://contrattidirete.registroimprese.it>).

<sup>18</sup> Italian Authority for the Oversight of Public Contracts for Works, Services and Supplies (AVCP), Resolution No. 3/2013.

## 2. Minimum content of the contract and registration

5. A business network contract must specify at a minimum: (i) The business or corporate name of each participant, as well as that of the network in the event that a common fund is constituted; (ii) Indication of the strategic objectives of the cooperation and the procedures agreed upon to measure progress towards these objectives; (iii) Description of the network programme, spelling out rights and obligations of each participant, the means of implementation of the common purpose, and, in the case of a common fund, the measure and standards of evaluation of participants' contributions, as well as its management regulation; (iv) Duration of the contract and rules for adhesion. Rules for early termination or withdrawal of a participant may also be inserted (in whose absence, general principles on termination of multiparty agreements with a common purpose apply); (v) Name of the entity, if any, appointed to act as the body responsible for the administration of the execution of the contractor of individual parts or stages thereof; (vi) Rules for decision-making of participants on any subject or aspect of common interest (not delegated to the body responsible for administration, if appointed).

6. The contract must be in writing, either by public deed or authenticated by a public notary, and be registered with the Business Registry of the place of registration of each of its members. Effectiveness of the contract runs from when the last of the prescribed registrations occurs, both among the contracting parties<sup>19</sup> and against third parties: registration is thus a necessary and essential prerequisite for the legal validity of the contract (*pubblicità costitutiva*). Modifications to the network and the contract need also to be registered in the Business Registry of the member directly involved and must be directly communicated by the manager of the relevant Business Registry to all other Registries involved so as to have the change automatically included in each of them. The contract may also provide for the establishment of a capital fund (*fondo patrimoniale*) and the appointment of a common body responsible for the management, in the name and on behalf of the participants, of activities for the execution of the contract or of individual parts or stages thereof.

## 3. Separate fund

7. In order to carry out the programme of the business network, contracting parties may establish a common fund. This is a separate fund exclusively devoted to implement the programme of the network and then to the pursuit of its strategic objectives. Creditors of individual participants to the network cannot rely on the fund, which only serves to satisfy claims deriving from the activities performed within the scope of the network. Provisions in the civil code on the constitution and effects of a fund in consortia apply, although the exact scope of such reference has to be assessed taking into account that a business network contract, as described above, might involve a much looser cooperation among members, where activities might be carried out individually albeit for a common purpose and under a common programme.

8. As mentioned above, the relevant contract must establish the extent and criteria for the evaluation of contributions. These can be either in cash or in goods and services. The contribution may also consist of a separate fund. In separate legislation, a common fund has also been foreseen for agricultural enterprises establishing a business network, which can in turn contribute to a national mutual fund for the stabilization of returns of this category of entrepreneurs.<sup>20</sup>

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<sup>19</sup> However, some scholars are of the view that registration only affects enforceability against third parties, the network contract being valid among parties irrespective of its registration.

<sup>20</sup> DL 22 June 2012, No. 83 as converted into Law No. 134/2012.

**4. Governance**

9. Governance of the network is left to contractual freedom. If a common body is appointed for the management of the activities of the fund, it will act in the name and on behalf of the network when it has legal personality, or in the name and on behalf of the members of the network if it has none.

**5. Legal personality**

10. Business networks do not normally have legal personality. However, the most recent amendments to relevant legislation (as of 2012) permit these to also be established with legal personality.<sup>21</sup>

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<sup>21</sup> As of 3 January 2017, 474 business networks were established with legal personality (<http://contrattidirete.registroimprese.it>).