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# Work integration social enterprises (WISEs): a legal and innovative form to promote the right to work of people with disabilities

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1. Introduction. 2. The right to work of people with disabilities. 3. WISEs: aims, activities and legal characters. 4. The EU legal framework for Social enterprises: a brief overview. 5. WISEs in the Italian legal system. 6. Concluding remarks.

## Abstract

This article analyses the activities and the role played by work integration social enterprises (WISEs). The article aims to prove that the specific legal character of WISEs, which are enhanced both by EU law and by the Italian 2017 Social Enterprises Reform Act, help strengthen the right to work and integration of people with disabilities, thus increasing social cohesion, especially at the local community level.

**Keywords:** Social enterprises; Work integration; People with disabilities; Right to work of people with disabilities

## 1. Introduction.

Marketisation, globalisation, financial crises, health budget restraints and the recent pandemic appear to undermine individuals' fundamental rights<sup>1</sup>, including the right to work of persons with disabilities. Sometimes, it seems as though these rights fall out of the

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<sup>1</sup> See for example, Newdick C., *From Hippocrates to Commodities: three models of NHS governance: NHS governance, regulation, Mid Staffordshire inquiry, health care as a commodity*, in *Medical law review*, Vol. 22, 2, 2014, 162-179. Globalisation "has significantly affected the law and economics approach, causing a re-thinking of the mechanisms of balance and un-balance between economic freedoms and individual rights. Accordingly, new systems of regulation are required to adequately and effectively match new social and economic needs." Stefanelli M.A., *Prefazione*, in Stefanelli M.A. (ed.), *Dopo la globalizzazione: sfide alla società e al diritto*, Giappichelli, Torino, 2017, 2.

obligation of modern welfare states or even represent a burden to growth and competitiveness.<sup>2</sup>

In this economic and political context, it is all the more difficult for people with disabilities to find effective protection and organisational solutions to match their needs, including adequate jobs.<sup>3</sup> People with disabilities may generally find a job either in public offices or in private businesses. In some legal systems, public authorities and private companies may even be compelled to employ a given percentage of persons with disabilities out of the total number of workers.<sup>4</sup> These legal provisions have reportedly increased the chances for people with disabilities to find steady job positions. Yet, the whole mandatory employment system for people with disabilities has shown a rigid and bureaucratic approach to this issue. It has especially highlighted a gap between potential employers and the public agencies in charge of finding an adequate matching for persons with disabilities. Furthermore, even when this matching is found, enterprises are not capable of providing disadvantaged people with effective on-the-job training programmes that may contribute to enhancing their professional skills.<sup>5</sup>

By contrast, such a possibility is offered by work integration social enterprises (WISEs), the exclusive aim of which is to integrate people with disabilities into work through carrying out any kind of industrial, commercial or service activity.<sup>6</sup> WISEs and their activities have been legally recognised and provided for both by EU law<sup>7</sup> and national legislation.<sup>8</sup>

Against this background, the article intends to investigate the legal characters and the role of WISEs. The article is divided into six sections. Section 1 sets out the background upon which the article has been drafted. Section 2 deals with work integration as an individual's fundamental right. Section 3 analyses the aims pursued, the activities carried out and the main legal characters of WISEs. Section 4 points out to the EU legal framework concerning WISEs. Section 5 deepens the legal characters and the activities of WISEs as provided for by the Italian 2017 Social Enterprises Reform Act. Finally, Section 6 includes some remarks on the potentials of WISEs.

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<sup>2</sup> Vanherke B., Sabato S., Bouget D., *Conclusions. Social policy in the EU: high hopes but low yields*, in Vanherke B., Sabato S., Bouget D. (eds.), *Social policy in the European Union: state of play 2017*, European Trade Union Institute (ETUI) and European Social Observatory (OSE), Brussels, 2017, 201.

<sup>3</sup> The protection of people with disabilities is often either a secondary issue or limited to granting these people a minimum wage. It is then far from being regarded as a relevant organisational asset by which to enhance diversity. See Malzani F., *Dal collocamento mirato al diversity management. Il lavoro dei disabili tra obbligo e inclusione nella prospettiva di genere*, in *Rivista del Diritto della Sicurezza Sociale*, Vol. 43, 4, 2019, 717.

<sup>4</sup> In Italy, for example, the 1999 Right to work for disabled people Act No. 68 has partly encouraged a number of active employment policies and the establishing of local networks among public authorities, employment agencies and economic operators. See Fondazione Cariplo, *Il collocamento mirato e le convenzioni ex-art.14. Evidenze e riflessioni*, in *Quaderni dell'Osservatorio – Approfondimenti* 30, 2019, 97.

<sup>5</sup> See Bottà M., *Dopo vent'anni di collocamento disabili*, 30 October 2020, in <https://welforum.it/dopo-venti-anni-di-collocamento-disabili/>, where the Author analyses the pros and cons of the abovementioned 1999 Act. In particular, the article points out to the mistrust against disability that still dominates a significant share of the labour market.

<sup>6</sup> See Davister C., Defourny J., Gregoire O., *Work integration social enterprises in the European Union: An overview of existing models*, EMES, WP No. 04, 2004.

<sup>7</sup> See Section 4.

<sup>8</sup> According to the Italian 1991 Social Co-operatives Act No. 381, social co-operatives are divided into two categories: the first one (a) includes those social co-operatives that carry out social, health and training activities. The second category (b) consists of social co-operatives that carry out any kind of industrial, agricultural or business activity by integrating people with disabilities into their work process.

## 2. The right to work of people with disabilities.

According to Article 27(1) of the Convention on the Rights of Persons with Disabilities (titled “Work and employment”)<sup>9</sup>, persons with disabilities have to be granted the same opportunities to gain a living as all other people. This statement intends to contrast with those circumstances under which persons with disabilities, when they are employed, are more likely to be offered low-paying jobs, lower occupational levels and worst working conditions than their colleagues. More often than their peers, people with disabilities are also in part-time jobs or temporary positions, often with few possibilities for career development.<sup>10</sup>

In this respect, the abovementioned Article 27(1) enables persons with disabilities to have the same right as any other worker to freely choose their work or to be accepted in a labour market and work environment. Article 27 reinforces the provision of Article 23 of the Universal Declaration of Human Rights<sup>11</sup> and employs similar wording to that of Article 6 of the International Covenant on Economic, Social and Cultural Rights.<sup>12</sup> It also sets out a non-exhaustive list of appropriate steps for States parties to take, including through legislation, to safeguard and promote the realization of the right to work.<sup>13</sup>

The combination of the abovementioned legal provisions represents an effective cornerstone for disabled people’s rights. This recognition amounts to an obligation on the part of national welfare systems to set up plans whereby to provide people with disabilities with both training programmes and work environment that may fully respect their individual needs.<sup>14</sup>

National welfare systems may enforce the right of people with disabilities to work through legislation. This can also imply the setting out of an enabling legal framework that defines organisational forms whereby people with disabilities are empowered and provided with effective tools to enhance their professional skills. WISEs represent the legal form under which people with disabilities can be both empowered and provided with adequate work facilities.

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<sup>9</sup> Convention on the Rights of Persons with Disabilities (CRPD), 2006.

<sup>10</sup> See United Nations Human Rights Office of the High Commissioner, *Covid-19 and the rights of persons with disabilities: guidance*, 29 April 2020, 5; where the OHCHR reports that persons with disabilities “have less access to social insurance based on employment than others which decreases their economic resilience in the current COVID-19 context.”

<sup>11</sup> “(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work.”

<sup>12</sup> See the Committee on Economic, Social and Cultural Rights’ general comments No. 5 (1994) on persons with disabilities and No. 18 (2005) on the right to work.

<sup>13</sup> On this point, with reference to the US system, see Oas D., McCord M., Popejoy S.L., *Right to work: a legal rights perspective*, in *Labor Law Journal*, Vol. 67, 3, 2016, 437-444.

<sup>14</sup> Durham J., Brolan C.E., Mukandi B., *The convention on the rights of persons with disabilities: A foundation for ethical disability and health research in developing countries*, in *American Journal of Public Health*, 104, 11, 2014, 2037-2043.

### 3. WISEs: aims, activities and legal characters.

WISEs pursue public interest by carrying out a productive and entrepreneurial set of activities<sup>15</sup>, thus revealing a market orientation<sup>16</sup> and a clear entrepreneurial dimension<sup>17</sup>, although WISEs pursue general interest outside the limits of the market and of the state.<sup>18</sup>

Along with work integration programmes, WISEs are also capable of deliver ongoing and tailored follow-up and training: these are expected to provide persons with disabilities with better professional skills through which they may increase their chances to find a job also outside WISEs, once their training period has been regarded as satisfactory.<sup>19</sup>

Despite WISEs are characterised by either a total or partial non-distribution constraint<sup>20</sup>, on carrying out their activities, WISEs tend to show a high propensity to innovate the type of services they supply as well as the organisation of the services provision.<sup>21</sup> Furthermore, WISEs devote a particular attention to active employment policies, to the empowerment of users and to the creation of new jobs, especially for hard-to-place people.<sup>22</sup>

These organisational characters make WISEs different to the foregoing experiences of sheltered employment workshops<sup>23</sup>, from which WISEs partly originate. In particular, WISEs differ from sheltered workshops at least for three aspects.<sup>24</sup> Firstly, they are generally less dependent on public funds and pay more attention to market dynamics. Such an evolution has probably also to do with the quality of jobs that persons with disabilities have progressively developed: from mere mechanic and routine positions, people with disabilities

<sup>15</sup> See Reiser D.B., Dean S.A., *Social Enterprise Law: Trust, Public Benefit and Capital Markets*, Oxford University Press, Oxford, 2017, 10. See also Bandini F., Gigli S., Mariani L., *Social Enterprises and Public Value: A Multiple-Case Study Assessment*, in *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, published online on 5 November 2020.

<sup>16</sup> In this respect, the definition of social enterprises as “business-like” organisations is to be carefully interpreted, since the commercial nature of WISEs, as well as of social enterprises at large, refers to the activity performed and not to the aim pursued. See Dart R., *Being “Business-Like” in a Nonprofit Organization: A Grounded and Inductive Typology*, in *Nonprofit and Voluntary Sector Quarterly*, Vol. 33, 2, 2004, 290-310; Nicholls A., *The legitimacy of social entrepreneurship’: reflexive isomorphism in a pre-paradigmatic field*, in *Entrepreneurship: Theory and Practice*, Vol. 4, 2010, 611-633.

<sup>17</sup> See Defourny J., *From third sector to social enterprise*, in Borzaga C., Defourny J. (eds.), *The emergence of Social Enterprise*, Routledge, London, 2001, 14-18.

<sup>18</sup> See Trivedi C., Stokols D., *Social Enterprises and Corporate Enterprises: Fundamental Differences and Defining Features*, in *The Journal of Entrepreneurship*, Vol. 20, 1, 2011, 2.

<sup>19</sup> In many Member States of the European Union, WISEs’ mission is supported by public contracts. See, Nyssens M., *European Work Integration Social Enterprises: Between Social Innovation and Isomorphism*, in Defourny J., Hulgård L., Pestoff V. (eds.), *Social Enterprise and the Third Sector: Changing European Landscapes in a Comparative Perspective*, Routledge, London, 2014, 218.

<sup>20</sup> Some social enterprises, such as traditional “non-profit” organisations, are bound not to distribute any profits among their members, boards of directors or stakeholders at large. Other social enterprises may instead distribute profits to a limited extent. In all cases, the social enterprise tends to forbid all profit-maximising behaviours. See Lind A.J., *The non-distribution constraint and social enterprise: Can share capital fund non-profit organisations?*, in *Third Sector Review*, Vol. 25, 2, 2019, 233.

<sup>21</sup> See Bacchiega A., Borzaga C., *Social enterprises as incentive structures: An economic analysis*, in Borzaga C., Defourny J. (eds.), *The Emergence of Social Enterprise*, Routledge, London, 2001, 284.

<sup>22</sup> See Stryjan Y., *Sweden: The Emergence of Work-integration Social Enterprises*, in Borzaga C., Defourny J. (eds.), *The Emergence of Social Enterprise*, Routledge, London, 2001, 220-235.

<sup>23</sup> See May-Simera C., *Reconsidering Sheltered Workshops in Light of the United Nations Convention on the Rights of Persons with Disabilities (2006)*, in *Laws*, Vol. 7, 1, 2018, 6; Mark B.G., Hofmayer S., Rauch E., Matt D.T., *Inclusion of Workers with Disabilities in Production 4.0: Legal Foundations in Europe and Potentials Through Worker Assistance Systems*, in *Sustainability*, Vol. 11, 21, 2019, 5978.

<sup>24</sup> Davister C., Defourny J., Gregoire O., nt. (6).

have been trained to perform higher standard jobs. Added to this, structured professional training programmes, which are aimed to enhance the employability of persons with disabilities in the labour market<sup>25</sup>, have improved the competencies and qualification of disabled workers.<sup>26</sup>

Secondly, WISEs pursue the objective to ensure that employed disadvantaged people earn income comparable with that of other workers<sup>27</sup>, thus enforcing article 27(1) of the Convention on Rights of Persons with Disabilities and other national constitutional principles.<sup>28</sup>

Thirdly, whereas traditional sheltered workshops were mostly involved in passive labour policies, WISEs are tools of active labour policies for people with disabilities. In this respect, national and local governments have taken action to mix work integration programmes with other policies, such health and social care, education, employment<sup>29</sup> and environmental services.<sup>30</sup>

Part of the reputation of social enterprises at large and of WISEs in particular stems out of their being deeply rooted in local communities. Here proximity between supply and demand might help create new opportunities for persons with disabilities. Close links with local communities also enable WISEs a) to tune in with local needs, b) to contribute to the creation of social value<sup>31</sup> and social capital, c) to benefit local communities<sup>32</sup>, especially by increasing local development and social cohesion<sup>33</sup> and d) to enhance the sense of identity, safe space and social networks.<sup>34</sup> In this way, WISEs build up inclusive protection systems against vulnerabilities and social risks<sup>35</sup>, including the capability of proving to be resilient organisational frameworks.<sup>36</sup>

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<sup>25</sup> For a wider presentation and a theoretical analysis of the work-integration initiatives, see Defourny J., Favreau L., Laville J. (eds.), *Insertion et nouvelle économie sociale: un bilan international*, Desclée de Brouwer, (Socio-Economie), Paris, 1998.

<sup>26</sup> See also Visonà S., *Il lavoro nella riforma del Terzo settore*, in *Analisi Giuridica dell'Economia*, 1, 2018, 73-75.

<sup>27</sup> For an interesting analysis of wages in social enterprises, see Becchetti L., Castriota S., *Wage Differentials in Italian Social Enterprises*, in *Economia politica*, 3, 2011, 323-368.

<sup>28</sup> This is the case of Article 3(2) of the Italian Constitution, which provides for a general obligation on the part of public institutions, private companies and civil society organisations to remove any economic and social obstacle which may hinder the full promotion of human dignity of any individual and the real participation of workers in the political, economic and social life of the Country.

<sup>29</sup> See the 2015 Work integration and social inclusion of fragile and vulnerable people through the integration of public employment, health and social care services Act passed by the Italian Region Emilia-Romagna.

<sup>30</sup> See, for example, the case of Eco-WISEs in Austria: the Ecological Work Integration Social Enterprise are aimed to integrate disadvantaged people into the labour market by carrying out environmentally-related activities. See, Anastasiadis M., Lang R., *Social Enterprise in Austria: A Contextual Approach to Understand an Ambiguous Concept*, in *ICSEM Working Papers*, No. 26, 2016, 15-16.

<sup>31</sup> On the social value created by WISEs in Italy, see Chiaf E., *Il valore creato dalle imprese sociali di inserimento lavorativo*, in *Impresa Sociale*, Vol. 0, 2013, 21-37.

<sup>32</sup> See Melkas H., Koskela V., Oikarinen T., Konsti-Laakso S., *Do Finnish work integration enterprises benefit the community?*, in *Work Organisation, Labour & Globalisation*, Vol. 11, 2, 2017, 59-70.

<sup>33</sup> Vulnerable users of WISEs' activities represent a strong element of legitimacy of these mission-driven organisations both as to their social impact and as far as their employment and economic capacity is concerned. See Depedri S., Boglioni M., *L'inserimento lavorativo avvantaggia solo i soggetti svantaggiati? Un'analisi costi-benefici applicata ad alcune cooperative sociali aderenti al Consorzio Sociale Unitario G. Zorzetto di Venezia*, Research Report EURICSE, 2012, 17-18.

<sup>34</sup> OECD, *Perspectives on Global Development 2012: Social Cohesion in a Shifting World*, OECD Publishing, Paris, 2011.

<sup>35</sup> Fonseca X., Lukosch S., Brazier F., *Social cohesion revisited: a new definition and how to characterize it*, in *Innovation: The European Journal of Social Sciences*, Vol. 32, 2, 2019, 231-253.

<sup>36</sup> Cheney G., Santa Cruz I., Peredo A.M., Nazareno E., *Worker cooperatives as an organizational alternative: Challenges, achievements and promise in business governance and ownership*, in *Organization*, Vol. 21, 5, 2014, 593.

The close links with local communities are also expressed in the internal governance of WISEs. Like all other social enterprises, WISEs too present an inclusive, democratic and multi-stakeholder governance system.<sup>37</sup> This enables volunteers, workers, including people with disabilities, beneficiaries and public authorities to take actively part in the decision-making process of the enterprise also by serving on the board of directors.

The multi-stakeholder organisation revolves around the democratic principle that has traditionally inspired all mutual and co-operative societies around the world. In these organisations, the decision-making process is not proportionate to the capital invested in the company but it is rather based on the “one head, one vote” principle. Accordingly, members take part in the general meeting and in the enterprises’ management on a democratic and participatory rule, which strongly values the active engagement of users and workers, including persons with disabilities.

This requirement plays an important role because it allows persons with disabilities to take actively and personally part in the decision-making process concerning their work conditions. Hence, the integration of people with disabilities is ensured both within the organisation and through its activities as long as their engagement in WISEs is not transitional. The decision-making process necessarily implies a long-run programming and duration: short employment times would not be consistent with decisions that have consequences for the future of the enterprise.<sup>38</sup>

#### 4. The EU legal framework for Social enterprises: a brief overview.

Social enterprises, including WISEs, owe much of their development to academic research projects<sup>39</sup>, to an EU enabling legal framework and to a number of the EU Commission’s Action Plans.<sup>40</sup> Although at the EU level, social enterprise is a notion that is far from being a comprehensive one<sup>41</sup> and in most Member States it encompasses a wide

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<sup>37</sup> An inclusive and democratic governance is among the requirements provided for by the EU Commission to recognise the legal form of social enterprise. See Communication from the Commission to the European Parliament, the Council, the European economic and social committee and the Committee of the Regions. *Social Business Initiative. Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation*, Brussels 25.10.2011 COM(2011) 682 final.

<sup>38</sup> See Davister C., Defourny J., Gregoire O., nt. (6).

<sup>39</sup> See, among others, Cafaggi F., Iamiceli P., *New Frontiers in the Legal Structure and Legislation of Social Enterprises in Europe: A Comparative Analysis*, in *EUI-LAW Working Papers*, No. 16, 2008.

<sup>40</sup> See European Commission, Communication from the Commission to the European Parliament, the Council, the European economic and social committee and the Committee of the Regions. *Social Business Initiative. Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation*. Brussels, 25.10.2011, COM(2011) 682 final; European Commission, Communications “A new industrial Strategy for Europe” and “An SME Strategy for a sustainable and digital Europe”, 10th March 2020. Both these Communications recognise the existence of Social economy enterprises, including WISEs, and their role in the twin transition, as well as the need to use the European Pillar of Social Right as a compass towards green and socially fair transition. See also Bassi A., Fabbri A., *Under pressure: Evolution of the social economy institutional recognition in the EU*, in *Annals of Public & Cooperative Economics*, Vol. 91, 3, 2020, 411-433; Angeli M., Cinque S., *Impresa sociale e concorrenza*, in *Analisi Giuridica dell’Economia*, 1, 2018, where the Authors underline how social economy plays a fundamental role in pursuing the priorities set out in the Europe 2020 strategy (152).

<sup>41</sup> Fici A., *A European Statute for Social and Solidarity-Based Enterprise*, Policy Department for Citizens’ Rights and Constitutional Affairs, 2017, 8.

range of different legal organisations carrying out various activities<sup>42</sup>, social enterprise is commonly recognised and accepted as a uniform definition.<sup>43</sup> In this respect, the “2008 Small Business Act”<sup>44</sup> has recognised social enterprises as operators in the social economy<sup>45</sup> whose main objective is to have a social impact on local communities rather than making a profit for the benefit of their owners/shareholders.<sup>46</sup>

Social economy enterprises are particularly apt to deliver Social Services of General Interest (SSGIs).<sup>47</sup> These include services that benefit the community at large and are necessary to ensure the accomplishment of individuals’ fundamental rights, including the right to work of persons with disabilities. Pursuant to Article 14 of the Treaty on the Functioning of the European Union, Member States are responsible for outlining the legal and organisational framework for SSGIs. Accordingly, over the years, Member States’ legal systems have created favourable legal environment within which social enterprises are preferred to deliver SSGIs due to their legal and organisational features.<sup>48</sup>

The characters of social enterprises have also inspired Directive 2014/24/EU concerning public procurement, which entails specific legal provisions relating to social enterprises at large and WISEs in particular.<sup>49</sup> According to Article 77 (1) (2) of this Directive, public authorities may reserve the awarding of public contracts in the health, social and cultural services to social enterprises that must comply with the following conditions:

- (a) their objective is the pursuit of a public service mission;
- (b) any profits must be reinvested with a view to achieving the organisation’s objective.

Where profits are distributed or redistributed, they should be based on participatory considerations;

- (c) the structures of management or ownership of the organisation performing the contract are based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders; and

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<sup>42</sup> Felicetti R., *L’impresa sociale negli altri ordinamenti*, in *Analisi Giuridica dell’Economia*, 1, 2018, 222.

<sup>43</sup> European Commission, Directorate-General for Employment, Social Affairs and Inclusion, *Social Enterprises and their Eco-systems: Developments in Europe*, 2016; Fici A., nt. (41).

<sup>44</sup> European Commission, Communication from the Commission to the Council, European Parliament, the European Economic and Social Committee and the Committee of the Regions. “Think Small First” A “Small Business Act” for Europe, Brussels, 25.6.2008 COM(2008) 394 final.

<sup>45</sup> See Opinion of the Economic and Social Committee on ‘The Economy for the Common Good: a sustainable economic model geared towards social cohesion’ (own-initiative opinion) (2016/C 013/06), where social enterprises are regarded as “Entrepreneurs for the common good”. See also Opinion of the European Economic and Social Committee on ‘Principles for effective and reliable welfare provision systems’, (2016/C 013/08), where the role of WISEs is valued (par. 4.7.).

<sup>46</sup> See European Economic and Social Committee, *Recent evolutions of the Social Economy in the European Union*, Study, 2019.

<sup>47</sup> European Commission, Directorate-General for Employment, Social Affairs and Inclusion, *Second biennial report on Social Services of General Interest*, Brussels, 2011, where the services for the benefit of people with disabilities are regarded as the Commission’s commitment to social services quality (58).

<sup>48</sup> On the role of social enterprises in delivering services of general interest, see European Commission, OECD, *Policy Brief on Social Entrepreneurship. Entrepreneurial Activities in Europe*, 2013.

<sup>49</sup> See Pirvu D., Clipici E., *Social Enterprises and the EU’s Public Procurement Market*, in *Voluntas: International Journal of Voluntary and Nonprofit Organizations*, Vol. 27, 4, 2016, 1611–1637. See also Argyrou A., *Providing social enterprises with better access to public procurement: The development of supportive legal frameworks*, in *European Procurement & Public Private Partnership Law Review (EPPPL)*, Vol. 12, 3, 2017, 310–324.

(d) the organisation has not been awarded a contract for the services concerned by the contracting authority concerned pursuant to this Article within the past three years.<sup>50</sup>

It has been previously stated that the European Union proves to be WISE-friendly and it intends to strengthen the possibility for this type of social enterprises to access to public procurement to increase the chances of employment for people with disabilities.<sup>51</sup> In this respect, Article 20 of Directive 2014/24/EU recognises that Member States may reserve the right to sheltered workshops and economic operators to participate in public procurement procedures. The legal requirement for the recognition of such a right is the accomplishment of the social and professional integration of disabled or disadvantaged persons. These public contracts can also be performed within sheltered employment programmes, provided that at least 30 % of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.<sup>52</sup> This percentage is aimed to both effectively get persons with disabilities involved in work programmes and to avoid false sheltered workshops or social enterprises to be awarded public contracts.

## 5. WISEs in the Italian legal system.

The Italian legal system recognised WISEs even before the European Union did. Article 45 of the Constitution of 1948 bestows a social role on mutual and co-operative societies whose aim is regarded as beneficial to communities.<sup>53</sup> Pursuant to this constitutional principle, the 1991 Social Co-operatives Act has been the first legislative attempt to value the public interest pursued by social co-operatives, including WISEs.<sup>54</sup> The public benefit goals that social co-operatives are to accomplish are ensured by the following legal requirements. Like all social co-operatives, WISEs are not prevented from either making or distributing profits, if they decide to do so. However, any distribution cannot be higher than 2% of the rate applicable to the bonds issued by the Italian Post Service. Added to this there is no possibility of distributing any assets or benefits among members and boards of directors should the co-op be wound up.<sup>55</sup>

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<sup>50</sup> This provision risks of endangering those social and health care services that certainly require continuity of care, such as elderly or children care programmes.

<sup>51</sup> Biggeri M., Testi E., Bellucci M., *Enabling Ecosystems for Social Enterprises and Social Innovation: A Capability Approach Perspective*, in *Journal of human development and capabilities*, Vol. 18, 2, 2017, 299-30.

<sup>52</sup> This percentage has been taken from the Italian 1991 Social Cooperatives Act: Section: see infra.

<sup>53</sup> The supervision over the accomplishment of the social aim is entrusted both with public authorities and to cooperatives' umbrella organisations, which are called upon to check their balance-sheets, among others.

<sup>54</sup> The 1991 Act has also paved the way to the legal recognition of a specific collective agreement for social co-operatives' workers and of the relevant labour cost. See the administrative order of the Italian Ministry for Employment and Social Welfare No. 7/2020 of 17 February 2020. The collective agreement also recognises the propensity of WISEs to carry out on-the-job training together with work integration activities. On the application of the national collective agreement to WISEs, see the Court of Padua, Labour Judge, ruling No. 295 of 2019. This stated that social cooperatives' collective agreement is consistent with Article 36 of the Italian Constitution, which provides that any worker is entitled to a wage that needs to be proportional to the quality and quantity of their job and anyway enough to ensure them and their family a free and respectable life.

<sup>55</sup> These assets, as well as 3% of yearly profits, are to be directed to the mutual funds that are managed by the co-operative movements' national associations. These funds are mainly entrusted to support and finance those co-operative societies that face economic and financial dire straits.



In particular, the 1991 Act provides for the direct engagement of people with disabilities into the work integration process and the co-operatives' governance systems. In this respect, when their legal status allows them to freely express their will, Article 4 (2) of the 1991 Act provides that at least 30% of the whole WISEs' membership must consist of persons with disabilities. This percentage witnesses to the Parliament's intention to recognise "genuine" WISEs in which persons with disabilities are effectively and actually involved in the co-operatives' decision-making process.

The pursuing of social aims, the work integration of persons with disabilities as well as the limited profit distribution constraint make WISEs reliable organisations and partners of public authorities. In this respect, the 1991 Act provides that WISEs may be awarded public contracts directly without competing for competitive tenders.<sup>56</sup> Beyond this amount, public tenders may include social clauses providing for a reserve right for WISEs.<sup>57</sup> Furthermore, they are granted a specific tax benefit, namely, they do not pay their disadvantaged people's social security, which is covered by general taxation. The exception rule to public tenders and tax benefits for disadvantaged workers amount to the formal and legal recognition of WISEs' social mission.<sup>58</sup>

However, the work integration of persons with disabilities is no longer the exclusive sphere of the 1991 Social Co-operatives Act No 381. It has been included as one of the specific provisions of the 2017 Social Enterprises Reform Act No. 112. This Act has expanded the legal forms under which work integration of disabled and disadvantaged people may be accomplished. In this respect, the 2017 Act provides that business companies, associations and foundations can adopt the legal form of WISEs to pursue their social mission while performing a wide range of activities of general interest. As in the 1991 Act, the 2017 Act requests WISEs to a) implement a democratic and multi-stakeholder governance model, b) disclose a social balance sheet and c) not to distribute any profit or, alternatively, to distribute it to a very limited extent.

In accordance with EU law, the 2017 Act empowers local authorities to select WISEs to award then public contracts or to enter public-private partnerships by which to promote work integration of people with disabilities. Public authorities may then become partners of WISEs, though the former can neither take over social enterprises, nor exert any control over them. This represents a remarkable legal provision because it allows to build up steady partnerships within the same legal form without hampering the genuine nature of social enterprises and it helps giving work integration programmes a certain degree of continuity and sustainability.

As far as the democratic governance model is concerned, the 2017 Act refers to co-management and to the multi-stakeholder dimension of social enterprises as essential features of their legal status. Accordingly, WISEs' by-laws must allow for the direct engagement of workers, users and volunteers, which are all to be consulted and invited to

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<sup>56</sup> To be eligible for these public contracts, WISEs must be listed on a special regional register and the total amount of these contracts must not exceed a maximum threshold.

<sup>57</sup> See Section 4.

<sup>58</sup> See Santuari A., *Le cooperative sociali e lo svolgimento di attività di interesse generale tra riforma del Terzo settore e normativa regionale: il ruolo della regolazione pubblica*, in *Istituzioni del Federalismo*, Vol. 1, 2019, 181-206.

take part in the decision-making process, especially when the decisions affect work conditions and the quality of the services supplied.<sup>59</sup>

Overall, the 2017 Social Enterprises Reform Act recognises the importance of WISEs as private enterprises whose aim is to pursue the public interest. The reconciliation between economic drivers and social mission within a legal form enables WISEs to strengthen and enforce the right to work of people with disabilities. Accordingly, WISEs contribute to lower public expenditure since otherwise people with disabilities would receive unemployment subsidies, pensions or other kinds of subsidies should they remain unemployed.<sup>60</sup>

Not only are the role and activities carried out by WISEs viewed in the light of their capacity of increasing employment opportunities and tailored-made training for people with disabilities. Their performances are also regarded as beneficial to the whole community. This is why Article 9 (2) of the 2017 Act provides that WISEs subject their activities, projects and programmes to a social impact assessment.<sup>61</sup> This is supposed to value to what extent social enterprises generate social values for local communities, which remain often silent or implicit.<sup>62</sup> In this respect, WISEs are expected to prove that their activities produce and share both economic and social value, thus demonstrating that efficiency is no longer enough to test the usefulness of enterprises.<sup>63</sup>

## 6. Concluding remarks.

WISEs are capable of providing an adequate legal framework whereby people with disabilities can find steady jobs and effective training programmes also by actively taking part in the internal decision-making process, where applicable.

In general, WISEs can be regarded as a valuable complementary system of traditional employment policies.<sup>64</sup> To some extent, WISEs may by-pass the obstacles against investment in the selection and training of disadvantaged workers, thereby earning the confidence of public authorities and local communities. Furthermore, if good reputation is achieved, WISEs may be in a position to supply other employers with reliable information regarding the actual abilities of trainees, thereby reducing both the costs and the risks that these

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<sup>59</sup> See Fici A., *Disciplina dell'impresa sociale: gli stakeholder*, in *Impresa Sociale*, Vol. 11, 2018, 7-14.

<sup>60</sup> See Borzaga C., Loss M., *Work Integration Social Enterprises in Italy*, EMES, WP 02, 2002, 16.

<sup>61</sup> On this topic, see Dufour B., *State of the art in social impact measurement: methods for work integration social enterprises measuring their impact in a public context*, in *5th EMES International Research Conference on Social Enterprise: "Building a scientific field to foster the social enterprise eco-system"*, EMES (2015), Helsinki, 2015; Grieco C., *Assessing Social Impact of Social Enterprises. Does One Size Really Fit All?*, Springer, 2015.

<sup>62</sup> Venturi P., *La valutazione d'impatto sociale come pratica "trasformativa"*, in *Aiccon*, Short Paper No. 19, 2019.

<sup>63</sup> Carnini Pulino S., Maiolini R., Venturi P., *Social Entrepreneurship Policy: Evidences from the Italian Reform*, in *Foresight and STI Governance (Foresight-Russia till No 3/2015)*, Vol. 13, 3, 2019, 77-88; Chiaf E., nt. (31); Chiaf E., Biazzi G., Corsini A., *Il valore creato dall'inserimento lavorativo per il budget pubblici. Il caso delle cooperative sociali dell'Emilia-Romagna 2016*, Centro Studi Socialis, Brescia, 2017; OECD, *Policy Brief on Social Impact Measurement for Social Enterprises. Policies for Social Entrepreneurship*, European Commission, 2015; Rago S., Venturi P., *L'impatto della cooperazione sociale di inserimento lavorativo in Emilia-Romagna*, in *Aiccon*, 2017.

<sup>64</sup> Borzaga C., Santuari A., *Social enterprises in Italy: The experience of social co-operatives*, in *ISSAN Working Papers*, No. 15, 2000.

employers would face when hiring them. Consequently, WISEs help both improving the functioning of the labour market and enforcing the rights of persons with disabilities.<sup>65</sup>

WISEs present two specific advantages with respect to other organisations that are compelled to employ people with disabilities. The first advantage is that they can select and train employees at a lower cost than other businesses, thanks to the skills that have been developed through constantly working with disadvantaged workers. Moreover, WISEs can provide a sort of qualification certificate, which vouches for the worker's skills acquired on the training programme, backing it with their reputation as reliable intermediate organisations. This comparative advantage thus enables WISEs to act as "gateways" from welfare to productive work: not only do they operate within local welfare systems to increase the employability degree of persons with disabilities; they also contribute to integrate them into society at large.<sup>66</sup>

Through the nonprofit-constraint, the participatory nature as well as their work integration approach make WISEs reliable organisations to a range of stakeholders. Firstly, public authorities are constantly worried that incentives will prove no more than monetary gifts to employers. In this respect, WISEs' own mission to integrate people with disabilities into work may prove more effective in increasing the employability success. Secondly, WISEs may also prove credible to trade unions. These are notably reluctant to accept exceptions to minimum pay levels in the form of entry or training wages. In case of WISEs, trade unions' objections and fears may be overcome by the strong commitment of WISEs to ensuring fair work conditions, including the right to non-discriminatory wages. In this respect, WISEs are obliged to grant people with disabilities adequate wages, thus fully respecting workers' rights and avoiding work abuses. Such an approach is expected to increase the level of productivity achieved by disadvantaged workers, which may be employed within WISEs or outside it in the open labour market.

Thirdly, WISEs' involvement of their beneficiaries and volunteers in the membership and/or in the management of the organization increases their community engagement.

Fourthly, WISEs warrant special consideration by policy-makers since they prove successful in selecting, training and integrating disadvantaged workers compared to other business forms.

In this respect, public regulation can play a significant role in supporting the development of WISEs. In particular, the Italian 2017 Social Enterprises Reform Act may account as a best practice for other jurisdictions.

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<sup>65</sup> Chui C.H.-K., Shum M.H.Y., Lum T.Y.S., *Work integration social enterprises as vessels of empowerment? Perspectives from employees*, in *Asia Pacific Journal of Social Work and Development*, Vol. 29, 2, 2018, 133-148.

<sup>66</sup> Laratta R., Nakagawa S., *Work Integration Social Enterprises for People with Disabilities in Japan*, in *Nonprofit Policy Forum*, Vol. 7, 4, 2016, 496.

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