

**THE FOUNDATIONS  
OF THE ITALIAN ACTION PLAN  
ON THE UNITED NATIONS  
“GUIDING PRINCIPLES ON BUSINESS AND  
HUMAN RIGHTS”**

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## THE BASES FOR FUTURE ACTION

The interdependence and reciprocal reinforcement among the aspects of the action of the United Nations system, regarding its three pillars, namely peace, (economic and social) development and human rights, is at the basis of the principle stating that the promotion of respect for human rights, democracy and rule of law allows to address more effectively the deep causes of conflicts, inequalities, “challenges and threats to international peace and security of the 21<sup>st</sup> century<sup>1</sup>”.

In the light of international obligations and commitments undertaken on the issue of promotion and protection of human rights, Italian action is based on the principles and values of our Constitution (1<sup>st</sup> January 1948), contemporary to the Universal Declaration of Human Rights (10<sup>th</sup> December 1948) – and on the conviction that the respect for human rights and the affirmation of adequate national human rights protection systems contribute to reinforce the three pillars of the United Nations.

At international level, traditional Italian priorities are: the campaign for the abolition of the death penalty in the world; the protection of freedom of religion and belief; children’s rights, especially of children involved in armed conflicts; women’s rights, in particular the fight against practices such as female genital mutilations and precocious or forced marriages; the education to human rights. To these, the implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs) is now to be added.

Italy highlighted since the “1<sup>st</sup> UN Forum on Business and Human Rights” (Geneva, 3-5 December, organised in 2012 in the framework of the activities of the Human Rights Council, under the main guidance of the UN Working Group on Business and Human Rights<sup>2</sup>, with the support of the OHCHR), the need to re-establish the focus on human rights also in business policies and strategies, taking into consideration the respect for the environment and for international standards related to labour law, while outlining also the need for a better coordination among UN and not UN Organisations and Agencies.

The Italian role in granting the promotion and protection of human rights within the United Nations and the European Union is by now widely acknowledged, in New York as well as in Geneva and Brussels.

Many political and parliamentary forces converge on the Italian priorities. In the current (17<sup>th</sup>) legislature, the “Special Commission for the protection and promotion of human rights” within the Senate and the “Permanent Committee on Human Rights” within the Foreign Affairs Commission of the Chamber of Deputies has been set up.

Italy has been having for some time a proactive role in the political coordination of the European Union, in the conviction that, without deducting any importance to national policies, only an authentically European dimension can bring about that political and contractual added value, allowing the field of human rights at global level to be really effective.

The main recent qualitative turning point was the adoption by the EU Foreign Affairs Council, on 25<sup>th</sup> June 2012, of the “Strategic Framework on Human Rights and Democracy” and its

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<sup>1</sup> Please refer to the UN Report on Threats, Challenges and Changes by the former Secretary General, Kofi Annan.

<sup>2</sup> Please refer to the reference standards and report of the relevant Special Procedure:

<http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>

“Action Plan”, concluding the process of strategic revision of the Union foreign policy in the field of human rights, initiated at the end of 2011 by the High Representative Catherine Ashton.

Some of the Italian follows-up of the “Strategic Framework” are: the current “Foundations of the Italian Action Plan on the UNGPs” (defined in compliance with the European Commission Communication COM (2011) 681). This Plan stands besides other Plans already adopted: the “National Plan against violence on women and stalking (2010-13)”, “National Action Plan on Women, Peace and Security” (2010-13) – defined according to UN Security Council Resolution 1325 (2000) and currently being updated; “National Plan against Racism” (currently being finalized); “First National Strategy for the Integration of the Roma, Sinti and Travellers Communities” (2012-2020) – drafted according to the 2011 EU framework for the national integration of the Roma communities (European Commission Communication COM (2011) 173); “First National Strategy for the Prevention and Contrast to Discrimination based on Sexual Orientation and Gender Identity” (2013-2015).

At the same time, Italy supports the efforts for a greater European cohesion on each individual issue concerning human rights, to allow the Union to speak with a single voice at international level, reinforcing the prerogatives of the External European Service and the role of the European delegations within the International bodies.

Moreover, also during the UN and the World Bank Group meetings, our country is already active in increasing the importance of the UNGPs role, also through the Post 2015 Development Agenda.

At international level, it is worth remembering the signing by the Italian government of the OECD Guidelines annexed to the Declaration on International Investment and Multinational Enterprises, defining a set of principles and standards of responsible business conduct – including on human rights – that the 46 adhering governments committed to promote.

With regards to the International Law on Human Rights, in particular in the pactional field, Italy is State-Party of the universal/UN and regional relevance core (binding) standards (such as the recent ratification of the Istanbul Convention on Violence against Women, and to ratifications of the Lanzarote Convention regarding minors and the Warsaw Convention on Action against Trafficking in Human beings), as well as actively supporting the main Conferences and Declarations in the field, in particular the principles set out on the occasion of the second World Conference on Human rights (Wien, 1993), whose twentieth anniversary was this year (2013).

As for Labour rights, the Government signed the Declaration on Fundamental Labour Principles and Rights in 1998 and ratified various Conventions of the International Labour Organisations (ILO), the UN Agency in charge of promoting decent and productive work in conditions of freedom, equality, safety and human dignity (<http://www.ilo.org/rome/ilo-italia/convenzioni-ratificate/lang--it/index.htm>)

The coming of the UNGPs among Italian priorities reinforces our conviction, that the action of human rights mainstreaming needs to be extended at all levels, growingly recognising its cross-sectoral relevance, as well as restating that, from a subjective point of view, a specific focus should be placed on the gender dimension and, more generally on the most vulnerable groups, such as, for example, minors and people with disabilities. It goes without saying that the different situations and sensitivities cannot be overlooked and that special attention should increasingly be devoted to economical and social rights. In the European and Western countries different sensitivities and differentiated approaches coexist between those that prefer dialogue and the search for trans-regional convergences, giving relatively greater relevance to social and economical rights and those who tend, on the other hand, to re-state, instead, traditional priorities focused on civil and political rights.

It is hoped this juxtaposition will soon be overcome, recognising in point of fact to economical and social rights the same ethical and political dignity of civil and political rights, the historical foundation of the rule of law in the West, and that in the name of the guiding principles of the Vienna Declaration (1993) according to which all human rights are universal, indivisible and interrelated will soon hopefully be settled.

To this end – and not oblivious to the recent coming into force (5 May 2013) of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OpICESCR)<sup>3</sup> - it is true that economic, social and cultural rights tend to be stated as having a inherently programmatic character. This is the reason why their implementation cannot present that immediacy and enforceability pertinent to civil and political rights. Nevertheless, it is also through the enjoyment of the former that the latter can more fully and effectively be enjoyed.

The above being stated, the Italian diplomacy is starting initiatives for:

- the coherence of Government action on “businesses and human rights” within the European and International bodies and within the political and economical relations with third countries;
- the harmonisation of the action for cooperation development with the UNGPs;
- the participation and support to the multi-stakeholders initiatives of international relevance;
- the effective functioning of the remedy mechanisms, in particular with reference to cases of extraterritorial violations.

Accounting also for the international political relevance of the Government’s commitment to UNGPs, the technical Ministries felt that the Foreign Affairs Ministry was the natural seat for the coordination of the Public Administration activity, taking on the job of lead Ministry in drafting the Foundations of the Action Plan.

The Foundations of the Italian Action Plan presented in this document lay on rather solid bases. They graft on the trunk of the effective sensitivity the Italian state apparatus has been expressing in the last decade, from a perspective greatly similar to the one chosen by the UNGPs in their strategy of promoting and protecting relations among businesses, public administration and human rights and at the same time, being aware of the constant evolution characterizing this sector. Such evolution demands that they (the above-mentioned Foundations) assume the quality of “strategic framework” which will be enriched of new areas, new issues and projects in the months and years to come.

The Ministry of Foreign Affairs, as the coordinating administration in the drafting of the Foundations of the Plan, wish to thank particularly all the Public Administrations involved and, for the assistance received from the: Ministry for the Environment, Land and Sea; Ministry of Economy and Finances; Ministry of the Infrastructures and Transports; Ministry of Justice; Interior Ministry; Ministry of Labour and Social Policies; Ministry of Agricultural, Food and Forestry Policies; Ministry of Economic Development; National School of Administration.

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<sup>3</sup> See: <http://www.governo.it/Governo/Provvedimenti/dettaglio.asp?d=73806>

# **FIRST PILLAR**

## **The duty of the State**

## 1. AGRICULTURAL POLICIES

This section is the contribution of the Ministry of Agricultural, Food and Forestry Policies (MIPAAF).

The issues under consideration are: work conditions in agriculture (point 1), aspects linked to generational renewal and gender policies (point 2), the use of agricultural production to help the poor (point 3) and the start of social responsibility approaches in the management of agricultural enterprises (point 4).

For each issue the main features are outlined in order to then proceed to the presentation of positive actions undertaken by this Ministry, not only in the context of European Union policies, but also for what concerns more *strictu sensu* national initiatives.

### 1. The job market in agriculture

In 2012 people employed in agriculture, forestry and fishing were, on average, about 3.7% out of the total of those employed in the whole economy. At December 2012, according to data from the labour force survey by ISTAT, those employed in agriculture amount to 849 thousands people (-0.2% from 2011), 428 thousands of those are employees (+3.6%) and 421 thousands are self-employed (-3.7%). The reduction of agricultural workers affected especially Central Italy (-1.5%) and the South (-1.0%), while there was an increase in the North (+1.5%). The slight drop of those employed in agriculture concerned female employment (-0.8%), while male employment recorded a slight increase (+0.2%) (Table 1).

Table 1 – People employed in agriculture, forestry and fishing by professional status, year 2012.

	Employed (000)		Variation % from 2011	
	Employees	Self-employed	Employees	Self-employed
North East	67	119	13.6	-0.9
North West	33	95	-3.6	-1.2
Centre	55	60	11.2	-10.8
South	273	146	1.0	-4.5
Italy	428	420	3.6	-3.7

**Source: Istat**

In any case, the 2012 trend fits in a long-term development characterized by the loss of importance of the sector in the national economy, the increase in foreign labour and important changes in legislation.

#### *Immigrant workers*

In Italy, the number of foreign workers in the agricultural, livestock and forestry sector is constantly growing. ISTAT data in the 2012 Census reveal the presence of about 230,000 foreign workers

employed in the sector, a labour force almost equal to a quarter of the total number of workers, excluding domestic workers. Such share is even more significant if one takes into account the agricultural entrepreneurial fabric of this Country, made of mainly of small enterprises: in this context it is to be noted that only 4% of foreign workers is permanently employed as an employee of an agricultural enterprise.

With regard to countries of origin, 58% of foreign workers come from EU countries: these workers generally hold flexible employment contracts. Non-EU workers, instead, have mainly more stable types of contracts.

As for types of work, there is an increase in the number of foreign workers employed as generic “unskilled” workers. On the other hand, it has been recorded also a specific phenomenon of sectorialization linked to the provenance of the workers themselves.

From the point of view of health and safety in the workplace, the high number of foreign workers gives rise to serious difficulties in the implementation of adequate prevention and protection measures. Having said that agriculture is, in general, one of the most dangerous employment sector, because of the well known specificities of the various activities it includes (use of dangerous equipment, intensive seasonal works, exposure to dangerous substances, climatic events, manual handling of heavy goods, etc.), making the evaluation of the associated risks difficult, specific issues must be raised linked to the presence of foreign workers. In particular, communication difficulties constitute the main barrier to a correct informational and training action of foreign staff, as well as the seasonal use (for example in fruit and vegetable harvesting) of foreign employment. It is manifest that language barriers can constitute a serious criticality in the planning of prevention activities.

The agricultural sector is for many immigrants an opportunity of stable employment (farming and hothouses) or an opportunity limited to certain periods of the year (seasonal work) to the point that agriculture is the only sector to have recorded, for immigrants, a positive headcount balance. From 1989 to 2010, employment of immigrants in Italy went from 23,000 units to over 200,000, including also citizens from recent EU-membership countries<sup>4</sup>. Against the loss of workers from the primary sector, a typical phenomenon of the evolution of mature economies, the resort to the use of foreigners is on the increase. While in the year 2000 they represented almost 10% of the total people employed, in 2010 this percentage is more than doubled<sup>5</sup>.

The foreign worker employed in the Italian agriculture is mostly young, male, not very educated and without specific skills in the agricultural sector; with the exception of a not irrelevant presence of competences in the livestock sector for Indian and Pakistani workers, for example, and of forestry competences for Albanians and Polish workers. Immigrant workers, moreover, stand out for flexibility and adaptability: not only geographical mobility is very frequent, due to the

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<sup>4</sup> It is appropriate to highlight that the quantitative results, borne out of a specific INEA survey, give an evaluation on regular migrants and irregular migrants labour in agriculture and derives from estimates provided by the information given by samplers and by comparisons with alternative external sources. The survey highlights as over time the dependency of our agricultural production from foreign labour has increased.

<sup>5</sup> Substantial differentiation characterised our countries: the employment of immigrants is greatly absorbed by the Northern Regions (54%) and a consistent share is found in agriculture in the South (28%, excluding the Islands). Considering the sectors more involved in the phenomenon, it emerges that 38% of migrants look after arboreal farming. The dynamics of the past ten years reveal that some sectors have growingly resorted to foreign manual labour. Such is the case of animal husbandry employing in the year 2000 10% of foreigners and in 2010 the share has increased to 17%. Also horticulture, absorbing in 2000 only 4% of foreign workers, now increased to 10%.



seasonality of the work, but also sectorial mobility, with search for employment in other production sectors (constructions, itinerant trade, etc.), especially in those local sectors where development and economic diversification allow it. Actually, agriculture continues to represent – notwithstanding processes, albeit slow, of integration of migrant workers in the productive cycle – an opportunity for temporary employment and instrumental to the main need of having access to money, given also the prevailing precariousness of the working relationship, characterised as well by particularly heavy hours and workloads.

Table 2 – Employment of migrant workers in Italian agriculture by production activity

<b>TYPE OF ACTIVITY</b>							
<b>Agricultural activity by production sector</b>							
<b>Years</b>	Livestock	Horticultural Crops	Tree Crops	Nursery work	Industrial Crops	Other crops or activities	<i>Total</i>
North							
2000	10	9.4	62.6	8.1	5.4	4.4	100
2008	18.3	15.2	41.2	13.9	7.2	4.2	100
2009	17.9	14.7	40.8	15.5	6.9	4.1	100
2010	16.7	14	44.8	14.4	6.7	3.5	100
Centre							
2000	20.9	23.8	26	2.6	11.4	15.1	100
2008	25.8	9.8	22.9	9.8	12.8	18.9	100
2009	28.3	9.8	22.4	8.6	12.1	18.9	100
2010	32.6	9.3	21.3	8.1	10.7	18	100
South							
2000	6.2	14.6	61	0.8	17	0.3	100
2008	9.8	27.3	35.3	2.7	24.9	0	100
2009	10.8	29.1	37.7	3.6	18.7	0	100
2010	11.8	31.8	32.3	4.1	20	0	100
Islands							
2000	10.4	36.3	47.8	0.1	0	5.4	100
2008	11.3	41.5	42.4	0	0	4.8	100
2009	12.2	41.5	41.3	0.1	0	4.9	100
2010	12.5	40.3	42.3	0	0	4.9	100
ITALY							
2000	10.1	15.8	55.2	3.6	10.8	4.4	100
2008	16.1	19.8	36.9	9	13.5	4.8	100
2009	16.8	19.9	37.4	10.1	11.1	4.8	100
2010	17.3	19.5	37.9	10	10.7	4.6	100

Source: INEA Survey

On the other hand, and with reference to rights granted also to migrant workers, it is appropriate to remember two important points: the ILO Conventions concerning the primary sector, since long ratified by Italy as indicated in Table 3. Secondly, it is necessary to underline also the role of the main trade unions (FLAI, FAI, UILA and agriculture and forestry UGL) in reclaiming rights for all agriculture and forestry workers in general.

Table 3 – ILO Conventions ratified for the agriculture sector

Convention	Ratification recorded on	Ratification Law
Minimum Age (Agriculture), 1921	08/09/1924	R.d.l. 20/03/1924, n. 585 (G.U. 06/05/1924, n. 107)
Right of association (Agriculture), 1921	08/09/1924	R.d.l. 20/03/1924, n. 601 (G.U. 06/05/1924, n. 107)
Workmen's Compensation (Agriculture), 1921	01/09/1930	R.d.l. 26/04/1930, n. 878 (G.U. 07/07/1930, n. 157)
Old-Age Insurance (Agriculture), 1933	22/10/1947	R.d.l. 06/05/1935, n. 1364 (G.U. 30/07/1935, n. 176)
Invalidity Insurance (Agriculture), 1933	22/10/1947	R.d.l. 06/05/1935, n. 1364 (G.U. 30/07/1935, n. 176)
Survivors' Insurance (Agriculture), 1933	22/10/1952	L. 02/08/1952, n. 1305 (Suppl. or. G.U. 17/10/1952, n. 242)
Minimum Wage Fixing Machinery (Agriculture), 1951	05/05/1971	L. 19.10.1970, n. 864 (Suppl. ord. G.U. 28/11/1970, n. 302)
Holidays with Pay (Agriculture), 1952	08/06/1956 (denounced)	L. 22/05/1956, n. 741 (Suppl ord.n. 1 G.U. 27/07/1956, n. 186)
Labour Inspection (Agriculture) , 1969	23/06/1981	L. 10/04/1981, n. 157 (Suppl. ord. G.U. 29/04/1981, n. 116)
Rural Workers' Organisations, 1975	18/10/1979	L. 03/02/1979, n. 68 (Suppl. ord. G.U. 02/03/1979, n. 61)

Source: ILO.org website

### *Safety on the work place*

The trend of accidents reported by agricultural workers follows a decreasing trend during the years. In 2012, 41,096 accidents at work in the agricultural sector were reported to INAIL (National Institution for Insurance against Accidents at Work) with a negative variation of 9.6% on 2011 and a ratio of accidents to working hours also on the decrease since 2008 (Table 4), 78% of those involving self-employed workers. Another factor to be considered is that obviously such figure doesn't include unreported accidents involving to the so-called 'undeclared' workers.

Another aspect to be underlined when speaking about safety in agriculture and forestry concerns the high number of accidents among those not professionally employed (for example, pensioners, amateurs, etc.). Taking into consideration these data, a drop in deaths is also to be recorded.

Table 4 – Reported accidents in agriculture (in the work environment)

Territory	2008	2009	2010	2011	2012
North-West	9,786	9,934	9,300	8,651	7,851
North-East	15,583	15,336	14,975	14,100	12,862
Centre	10,382	10,084	9,497	8,926	8,042
South	10,588	10,222	9,482	8,890	8,195
Islands	4,935	5,008	4,824	4,462	4,145
Not specified	–	–	–	1	1
<b>TOTAL</b>	<b>51,274</b>	<b>50,584</b>	<b>48,078</b>	<b>45,030</b>	<b>41,096</b>
Number of		2.14	2.05	1.96	1.9

accidents per 100 working hours	2.1				
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Source: INAIL database

Positive Actions:

*Immigration, undeclared labour and ‘caporalato’ (gang master system)*

In order to offer as complete as possible a framework, a premise is needed to introduce some rather delicate issues, such as immigration, undeclared labour and ‘caporalato’ (illegal recruiting of day workers or gang master system). In the primary sector, in particular, the three issues are often treated in an all encompassing way, although a basic distinction can help to understand these phenomena.

It is true that undeclared labour in agriculture is a seriously widespread fact, official statistics - ISTAT national accounts – for the year 2012 state an illegal employment rate in agriculture equal to 36% out of the total of those employed against a 10% rate on average in the economy (more moderate but still serious the estimates in terms of working units amounting, respectively, to 24.3 % and 12.1%). Not all undeclared labour, though, is recruited through the gang master system, i.e. the latter phenomenon is not as widespread as the former. Similarly, the ‘illegality’ takes on different characteristics ranging from formally legal contracts where the working hours are under-declared to the total informality of the working relationship (also with the complicity of the worker who may already be entitled to other forms of retirement allowance and therefore not interested in being subjected to further payroll deductions for pension) to the complete evasion of the social security and welfare contributions, to the blatant exploitation of the weakest individuals in contractual terms. The reasons for the extensive spreading of undeclared labour in agriculture can be found in structural, economical and institutional factors. Labour demand in agriculture is discontinuous, due to seasonality, and fragmented due to small size (according to the Census 2012, 84% of enterprises is under 10 hectares). Moreover, the family-run and small size dimensions favour the prevalence of informal working relations also due to the difficulty of managing the bureaucratic obligations linked with staff management. To these aspects, factors external to the sector, concerning the specific geographical situation of the phenomenon, need to be added, namely the high unemployment rate, the availability of an immigrant workforce with less bargaining power, especially if without EU citizenship, the weakness of the surveillance systems as well as the undeniable criminal infiltrations also from the mafia. All of the above is emerging in various contexts of investigation and the Ministry is following the phenomenon also through a series of in-depth analysis highlighting a complex situation where, however, are present favourable prospects. In particular, according to the survey on the employment of foreign workers, the more foreign presence consolidates, the more their working and living conditions improve; at the same time recent analysis highlighted how Italian agriculture represents, for the immigrants also an business opportunity (INEA 2013 *Le imprese straniere nel settore agricolo in Italia* - Enterprises run by foreigners in the agricultural sector in Italy). It becomes more and more apparent how foreigners are an important resource for the Italian agriculture as workers and as entrepreneurs, according to the ISTAT Labour Force Survey, foreigners in agriculture amount to 13.5 % out of the total of those employed (the figure concerns only declared labour). In this context there are still criticalities that do not concern only undeclared employment of the workforce. In particular the sector appears to be heavily damaged by criminal infiltration profiting from the gang master system as well as from the trafficking in

counterfeited food, from environmental resources exploitation through the illicit trafficking of waste, from the imposition of monopolistic practices in the logistical organisation.

Lastly, with the aim of having a more accurate view on the phenomenon of migrants' employment in agriculture in the Southern Italian regions, the MIPAAF signed a partnership agreement with the Interior Ministry to monitor and represent the degree of geographical diffusion of foreign declared and undeclared workforce.

To that end, the Ministry has always been undertaking its task in defence of migrant workers in agriculture and of agricultural enterprises receiving them. Since 2010, this merely administrative and institutional role has mutated into a proactive and operational role intervening directly in the formulation of integration and inclusion projects. In this context, the MIPAAF, in December 2010 presented its S.O.F.I.I.A. (Support, Assistance, Training, Entrepreneurship for Immigrants in Agriculture) project, aimed at supporting and training young non-EU immigrants in the creation of agricultural enterprises to be financed through the 2011FEI funds<sup>6</sup>. The FEI national authority evaluated favourably the project and admitted it to the financing proposal.

The European Commission with Decision C (2011) 6455 of 13 September 2011, approved the 2011 annual programme for the European Fund for the Integration of Third-country Nationals, including also the MIPAAF project proposal "Support to self-entrepreneurship of young foreigners in the agricultural sector". In summary, the project proposal provided for the opening on the whole national territory of help-desks in support of enterprise creation and a training course aimed at young non-EU immigrants employed in agriculture, to enable them to acquire competences and knowledge needed for initiating a new activity in the agricultural sector.

In June 2012 the S.O.F.I.I.A. project was started and starting from September 2012, 6 helpdesks have been opened at the Headquarters of Confcooperative Puglia, entity awarded the public tender. 300 Third-country nationals acquired information through such helpdesks, in February, on provisions for starting-up agricultural enterprises. Third sector organisations, informed about the project and involved, have directly and indirectly participated to it. S.O.F.I.I.A. obtained consensus at all levels as pilot project, thanks to the involvement of all the entrepreneurs associations, workers organisations and cooperatives in the agricultural sector. The Puglia Region granted support to those wishing to start up a business through access to funding provided for in the Regional Development Plans. The Ministry of Labour and of Social Security initiated a support program offering a non refundable grant of 5,000 euro for the enterprise start-up cost. Other institutions made available some land (to rent) to initiate activities.

In December the training course for entrepreneurship started with a group of 22 young immigrants aged 18 to 35, coming from 15 (Asian, African and Balkan) countries. The course trained and motivated participants to start agricultural enterprises. The programme of the course, the learning material and all the other information were uploaded on the website [www.soffia.it](http://www.soffia.it) and made available not only to course participants, but to everybody who wish to know the legal, welfare and safety norms to start up an agricultural enterprise. In the month of February 2013, to accommodate

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<sup>6</sup> The European Fund for the Integration of third-country nationals for the period 2007 to 2013 was established with. 2007/435/CE Decision of the Council of European Union as part of the General programme 'Solidarity and Management of Migration Flows'. The objective of the Fund is to support the Member States in improving their capacity of devising, implement, monitor and evaluate all integration strategies, policies and measures towards third-country nationals, exchange of information and best practices and cooperation to allow those who arrive legally in Europe to satisfy their residence requirements and integrate more easily in the host societies. On the basis of the intervention priorities specified by the European Commission for the destination of the funds allocated, the Ministry of Interior (Department for Civil Liberties and Immigration), identified by the European Commission as the Italian authority in charge, developed a multi-annual programme for the whole reference period (2007 -2013) and an annual planning.

all the applications received, a training course was organised at the Support and Information Helpdesks.

The S.O.F.I.I.A. Project ended in June 2013 with a final event and a round table with the participation of the representatives of the major employers, trade union and third sector organisations.

The S.O.F.I.I.A. experience had such a positive impact on the Apulia area it reinforced the belief the MIPAAF had that it should be proposed as a proper line of intervention in the sector. The S.O.F.I.I.A. 2 Project was indeed approved to be financed by the 2012 FEI Funds (<http://www.sofiia.it/sofiia2/>) and started on 30 April 2013, to continue the above-described initiative, in order to give operational continuity to the project in the Apulia Region, starting it also in 2 other Regions (Umbria and Veneto). This will allow to obtain tangible medium-term results and to identify the best practices to be applied when the project will be financed again by the 2013 FEI funds. It is an operational programming which can constitute a model for further developments in the programming interventions for the 2014 -2020 Solid Funds.

MIPAAF operational intervention since 2013 (FEI Funds 2012) has grown to encompass the two new projects “In the sunlight” and “AFORIL”, both on training and information for non-EU citizens. The former, which started on 30 April has the aim of preparing informational material (multimedia spots and press releases) for workers whose employment status is to be formalised and employers, as well as providing information on norms on labour, social security, safety in the workplace in agriculture on the different rules to respect in order to avoid unofficial forms of labour. The latter, already in its operational stage, aims instead at training workers abroad, i.e. in their countries of origin (in particular, Tunisia, Egypt, Morocco), to enable them to perform skilled agricultural jobs, and for a possible stable employment in the sector. The project originates from the starting point that workers already trained in their country of origin are personally assured of their employment destination and having been trained and able to be directly employed in skilled jobs, they will constitute a guarantee for the host country.

Moreover, in the “Policy paper on immigration policies 2007–2009”, for what concerns “Housing policies against unstable housing conditions”, MIPAAF made a significant contribution, suggesting the use of abandoned villages or rural dwellings in abandoned areas for housing migrants and/or refugees. That shows MIPAAF’s sensitivity towards inclusion policies for Third-country nationals living in Italy.

Lastly, in the framework of the agreement between the Interior Ministry and MIPAAF on the National Operational Programme (NOP) on Safety the implementation of the survey “The employment of migrants in agriculture in the Convergence Regions” has been planned. The study, carried out by the National Institute of Agricultural Economics (INEA), who has been producing for over 20 years in-depth analysis on these issues, highlights how the resort to foreign workforce in agriculture has now become a phenomenon of a structural character. The survey considers both the declared and undeclared foreign workforce, and highlights how over time our agricultural production has become growingly dependant on the employment of foreign workforce.

The survey aims at better knowing the dynamics of migrants’ employment in agriculture in the Convergence Regions. The need of a more punctual and defined comprehension of the entity and characteristics of the trend in the more at risk areas was assessed as being of great usefulness for the implementation of adequate inclusion, reception and safety policies, fundamental for achieving greater legality conditions, one of the aims of the *National Operation Programme on Safety for Development. Convergence Goal 2007 – 2013*. On the other hand, MIPAAF recognised the issue as

one of the main instruments for the improvement of living and working conditions in rural areas. The results of the work, available from the second half of 2013, are based upon:

- The identification of specialized areas of production employing foreign workers. 36 areas were identified in the four Convergence Regions;
- A partnership activity with the involvement of Territorial Councils for Immigration in the Provinces interested by the survey;
- The systematization of the different informational sources: SIT, ISTAT Census Data, INPS, RICA;
- The administering of 400 questionnaires, divided in two sections, a quantitative and a qualitative one. The questionnaires, for each specialisation area, allow to establish the full amount of migrant workers, their distribution by gender, educational level, the periods when they are mostly employed, their areas of origin and their motivations when arriving, their subsequent destinations and expectations, the relations between migrant workers and agricultural enterprises (types of contracts, working hours, pay, etc.), the representation of the system of labour laws applied by enterprises, the conditions of the facilities and of hosting/reception services, the dedicated public policies.

The whole work was developed on an I.T. platform, a Data Warehouse (DWH) and Business Intelligence (BI) system, with the stated aim of mapping the information gathered and representing them. The system is implemented using PDI (Pentaho Data Integration) and SAP Business Objects technologies, allowing visualising pictorially and analysing the key indicators of the service of interest through reports. The results of the work offer a snapshot of great interest on the dimension of the phenomenon and on the possibilities to support initiatives encouraging an effective integration of foreign workers in the production processes and consequently improving the living conditions of all those residing in rural areas.

Lastly, it is necessary to remember how the labour reform affected the agricultural sector, also with reference to apprenticeships. The Consolidated Act on Apprenticeship (law degree 167/2011) has deeply changed a contractual form previously subjected to various abuses, defining it as “indefinite contract of employment aimed at training and employing young people”, leaving the pertinent regulations to collective bargaining agreements and to ad hoc multi-industry agreements. Just in order to be able to enjoy innovations introduced by the new legislation, the social partners reached a national multi-industry agreement for professional training apprenticeship in agriculture on 30 July 2012.

### *Safety on the workplace*

MIPAAF, as far as its jurisdiction, constantly promotes activities to inform and train workers on health and safety in agriculture and forestry. Indeed, also in virtue of the obligations deriving from Decree Law 81/2008 and its amendments and modifications, many initiatives are implemented at local and national level to try and meet the specific needs of agriculture and forestry workers. Such interventions, to be framed according to a perspective aimed at prevention, are of different nature and concern mainly:

- The promotion of a safety culture in the colleges with a specialism in agriculture through the project called “Green Safety” aimed at training the future agriculture and forestry workers on health and safety in the workplace. The project promoted jointly with the Ministry of Education, University and Research, in collaboration with INAIL and the National Network

of Agrarian Colleges (Re.N.Is.A.), involves the organisation and delivery of training courses for technical and professional colleges students on safety in the workplace, safety of the agriculture and forestry machines and equipment, as well as training to drive agricultural or forestry tractors.

- The participation to the activities of the inter-regional Working Group on “Health and Safety in agriculture and forestry”, in the frame work of the Inter-regional Technical Committee for Prevention, Hygiene and Safety on the Workplace (Technical Committee of the Regions and Autonomous Provinces); in such context the various initiatives implemented are to be mentioned: to inform workers on best practices for the proper work procedures, choice and use of devices of individual protection (DPI), the safe use of work machines and equipment; special attention has been devoted to foreign workers, in order to encourage also through multilingual informational leaflets the dissemination of the safety culture, respect for gender, race and language differences in agricultural workplaces, where the presence of both European and Non-EU workers is great;
- The activation of a specific inter-ministry working group for the identification of best practices for the safe usage of plant protection products; such initiative has the intent of providing all stakeholders in the agriculture and forestry sector with guidelines to safeguard workers’ health and safety when using toxic and/or dangerous substances, as well as granting a greater respect for the environment around the agricultural areas where the plant pathology treatments are carried out.
- Study and research activities led mainly in collaboration with INAIL on problems linked to the safe usage of agricultural machines and equipment by non-professional workers (the so called ‘hobbyists’ ), pensioners and those who are not in the field of jurisdiction of Decree Law 81/2008; in such context, different technical solutions to facilitate the safe use of agriculture and forestry equipment have been studied and experimented;
- The organisation of events at national level for the dissemination of promotion initiatives carried out by the Ministry: among those the organisation of the Study Day “Safe Agriculture: health and safety in the agriculture and forestry activities” needs to be quoted, organised in April 2010 and that will soon be repeated, as well as the numerous participations to seminars, fairs and congresses, both a national and international level.

Lastly, among the interventions aimed at promoting knowledge and developing human capital, the granting of assistance<sup>7</sup> aimed at the usage of consultancy services by agricultural entrepreneurs and owners of forestry areas is provided for. Such assistance is given in order to help agricultural entrepreneurs to bear the costs of consultancies to improve the general profit of their enterprises. Among the issues included in the regulation on rural development, there are the requirements on safety on the workplace set by EU laws and regulations.

## **2. Generational renewal and gender policies**

Article 23, par. 1 of the Universal Declaration of Human Rights states: “1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment”. To that end, it is appropriate to include the commitments by this Ministry

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<sup>7</sup> Axis I of the Rural Development Program - PSR gathers measures aimed at improving the competitiveness of the agriculture and forestry sector (art. 20 Reg. (CE) n. 1698/2005).

not only to the fight against the gang master system among migrants, but also to all the actions in favour of categories generally considered as “disadvantaged” such as young people and women. In the year 2010, in Italy, only 2.9% of farmers were under 35, while in the comparison among two Census survey (2000 – 2010) emerges how the substitution/replacement rate stopped at only 50% of farmers departing from agricultural activities. In the agricultural sector, then, the generational renewal continues to represent one of the main issues to face. As for female employment, data from the ISTAT Census reveal that there 500 thousands enterprises led by women. It is a relevant share of the female component at entrepreneurial level.

Positive Actions for youth employment

*Tools encouraging generational renewal in rural development policies*

A set of tools tries to intervene on the issue of youth and generational renewal in agriculture in order to encourage youth access, with special reference to interventions focused mainly in the 2<sup>nd</sup> Pillar of the Rural Development Policy (PAC), although reform proposals of agricultural policy for 2014 -2020 include the introduction of measures for young people also within the 1<sup>st</sup> Pillar (Direct Payments and Market Measures).

In the current 2007-2013 planning, in the framework of the National Strategic Plan for Rural Development (PSN), i.e. the guidance document of rural development policy, the issues of youth and generational renewal are identified as being among the strategic priorities.

Scheme 1 – EU Strategic Guidelines and main objectives for the Axis 1 in the PSN

	MAIN AXIS OBJECTIVES		EC Guidelines - Binding priorities
AXIS I	Promotion of modernisation and innovation in business and of production chain integration	←	Modernisation, innovations and quality in the food chain
	Consolidation and development of the quality of agriculture and forestry production	←	Knowledge transfer
	Enhancement of physical and thematic infrastructure provisions	←	
	Improvement of the entrepreneurial and professional capacity of agriculture and forestry workers and supporto to generations replacement	←	Investments in human and physical capital

Source: National Strategic Plan, version 2010

Rural development programmes include support to the settlement of young farmers (*measure 112 - Settlement of young farmers*). The request by some Management Authorities of being able to reorganise financial resource to satisfy a higher than planned number of participants bears witness to the appeal of the measure.

It is to be kept in mind that intervention of rural development policy not only include tools for the direct incentive to entering/exiting the agricultural sector, but also tools aimed at enhancing the growth of entrepreneurial capacities and the integration among different measures. The PSN identified among the implementable instruments the so-called “youth pack”, to offer specific



incentives to farmers under 40 wishing to settle in an enterprise. Such instrument includes not only an award when first joining but also support to the enterprise investment plan, the help-service support and assistance for business consultancy, incentive to early retirement, as well as other enterprise measures considered more appropriate in function of the characteristics of the enterprise and of the production techniques adopted (e.g. agro-environmental awards i.e. measure of Axis III finalised to diversification of economic activities). To further encourage the settling of young farmers and the structural adaptation of their farms after the initial settling phase, the reform of the *Health Check* (2009) increased the maximum amount of aid, from €55,000 to €70,000 (Annex I Reg. (CE) n. 74/2009).

As stated above, among the proposals for the 2014 -2020 programming, a payment to young farmers (“Young Farmers Scheme”) is included in the framework of the decoupled payments in the first CAP pillar. It would be mandatory for Member States to grant a supplementary annual payment to young farmers who are entitled to a basic payment, devoting to the Scheme not higher than 2% of the annual national ceiling (for Italy it amounts to almost 540 million Euro for the whole period, about 77 million Euro per year). It is a form of aid geared to favour the initial settling of young farmers and the structural adaptation of their farms in the period following the setting up, which can be integrated by aid to settlement within rural development.

In the terms of the reform proposal, aid will be granted for a period of up to five years. As for the second CAP pillar, a relevant innovation consists in the possibility given to Member States to insert in the future Rural Development Programmes (RDP) some thematic sub programmes. Those will include also young farmers (Art. 8 COM (2011) 627def.). Indicatively, measures and interventions of special relevance for the latter type of thematic sub programme will be: help to start up a business activity for young farmer settling for the first time in an agricultural enterprise; investments in tangible assets; transfer of knowledge and informational actions; consultancy, substitution and assistance services to agricultural enterprises management; cooperation and investments in extra-agricultural activities.

#### *OIGA (Observatory for Youth Entrepreneurship in Agriculture) activities*

In all of the European Union countries, and in particular in Italy, a trend of abandonment of rural areas has been recorded for many years, more manifest in marginal context, and a slow but continuous ageing process of the active rural population, whose consequence is the need to incentivise generational renewal, protecting the category of young farmers with specific initiatives dedicated to facilitate their access to or their permanence in agriculture.

To that end, in 1998 the Observatory for Youth Entrepreneurship in Agriculture (OIGA) was set up within this Ministry, with the task of monitoring the enforcement of national and EU laws and regulations for youth entrepreneurship in agriculture, drafting surveys for the different areas of the Country and industries, promoting informational campaigns and training activities. Moreover, Law 296 of 27/12/2006 (2007 Financial Law) set up a Fund for the Development of Youth Entrepreneurship in Agriculture, managed by the Ministry, with the support of OIGA. With the Fund’s resources the following measures have been financed:

- Pilot projects for entrepreneurship training: study grants have been financed for attending university Master courses in the faculties of agricultural science, veterinary and economics to young agricultural entrepreneurs and unpaid family workers. Advanced training courses were also activated.

- Awards for the best youth entrepreneurship experiences: contributions were assigned for the participation of enterprises led by young farmers to exhibitions, fairs, etc.;
- Research projects: an innovative measure financing research projects presented by young farmers together with Universities and/or Research Bodies. Such projects were aimed at solving young farmers' specific problems;
- Substitution services: contributions were given to each enterprise, for substitution services provided to a young farmer in case of illness/accident, maternity and participation to training courses;
- Access to credit: it is a *de minimis* scheme, providing for the abatement of the cost of the guarantees in favour of youth agricultural entrepreneurs in return for funding accorded by credit institutions. The measure, notified by the European Commission, is entrusted to the Institute of Services for the Agricultural Food Market (ISMEA) which, on the basis of Decree Law n.102 of 20 March 2004, is the body authorized to operate in the agricultural sector for the issuance of guarantees on access to credit.

Still with the Fund resources, the Ministry has recently signed an agreement with ISMEA for the implementation of some activities in favour of young farmers. Among these activities special attention was given to training on issues considered of great relevance, such as safety on the work place, environmental issues and the "Made in Italy"/Italian products.

There are, also, other support tools for young farmers at national level managed by ISMEA. First of all, the instrument of the takeover allowing young people aged 18 to 39 wishing to take over an enterprise to have their business project financed through a mixture of capital grants and subsidized loans. The project wants to pursue one of these objectives: reduction of production costs; improvement and reconversion of production; quality improvement as well as improvement of the natural environment or livestock hygiene or welfare. Such an instrument helps young people taking over both in terms of investment funding both through capital grants, allowing also the signing of subsidized loan agreements.

### Positive Actions for female employment

#### *Instruments Favouring the Presence of Women in Agriculture in Rural Development Policies*

Policies in favour of rural development in the current programming period tried to offer instruments able to grant more gender mainstreaming in the RDP. The adopted strategy involved various kinds of interventions, attributable, in particular to Axis 1 and Axis 2, in order to incentivize and support the entrance of women entrepreneurs and at the same time favouring diversification of the economy in rural areas. In particular, actions of Axis 3 were oriented to financial and business diversification of production activities (farm holidays, learning farms, environmentally-friendly farms, energy production) to basic services for the people living in these areas (farm based nursery schools, social or care farming), to the protection and regeneration of rural heritage (local tourism) and of the know-how (rural workers training and competence acquisition). Moreover MIPAAF promoted the implementation of a "Women Scheme", aimed at offering to women farmers the possibility of activating, in an integrated manner, the different typologies of intervention, which, though, was not implemented at regional level.

The measures within Axis 1 concerned are n.111 – Professional training and informational interventions, n.112 – Setting up of young farmers, n.113 – Early retirement and n.121 - Modernisation of agricultural holdings.

For what concerns Axis 3, measures concerned are n.311 – “Diversification towards non-agricultural activities”, n.312 – “Establishment and development of businesses” and n.331 – “Training and information”.

Lastly, in Axis 4 the measure concerned is n.413, allocated an amount equal to 5% of public expenditure and registering a 12% progress in the expenditure. Also in this case, like in Axis 3, the number of women participants was equal to the one of male participants.

### *ONILFA Activities*

As stated above, women farmers represent a considerable percentage of the female population living and working in rural areas. To that, though, also women working as wage-earners in agriculture need to be added, as well as women involved – as holders or employees – in the other productive sectors characterizing the economical structure of these areas, such as tourism, small businesses and craft and environment.

Aimed at this varied female population there are also structural and rural development EU policies, ever more oriented at promoting an integrated approach, as well as a multifunctional agriculture capable of initiating synergies with other productive sectors. In particular, said policies have among the various objectives also the one of contributing to a greater presence of women in the economic, social and institutional fabric of rural areas, promoting equality between men and women in the following fields:

- access and participation, at all levels, to the job market;
- general and professional training, above all in relation to the acquisition of competences and professional qualifications;
- business establishment and development;
- work-life balance;
- balanced participation to decision-making processes.

For the reasons above, this Ministry set up the National Observatory for Female Entrepreneurship and Labour in Agriculture (ONILFA) with Ministerial Decree 24040 of 13 October 1997. Chaired by the Ministry of Agricultural, Food and Forestry Policies, such Observatory sees an ample participation of women in representation of some central administration, of Regions and of the women section of the professional agricultural organizations.

The Observatory is called to carry out a fundamental function in the field of the promotion and support of women’s role in the rural areas development process in general and Italian agriculture in particular. The main aim is to analyse policies in favour of female entrepreneurship and employment in the rural and agricultural sector with the aim of promoting specific interventions in that field. Other aims are also activities of information and awareness raising on issues concerning the female world in agriculture as well as on the opportunities devoted to it. From that arise the need to activate a set of tools able to inform promptly and effectively:

- institutions, potential promoters and implementer of policies and interventions aimed at women;
- women, to pass them on information on opportunities offered by the financial and entrepreneurial world.

ONILFA, accordingly to the objectives, for which it was set up, was a non-financial partner in:

- the TERCOM project, funded by the Italian Ministry of Foreign Affairs to contribute to the restructuring of the Lebanese rural sector. The project aimed at developing strategies and programmes to improve the quality of the agricultural production, promoting the development of the rural areas and supporting the food and fishing industry in the South of Lebanon and led also to the institution of the equivalent National Observatory for Women in Agriculture and Rural Areas (NOWARA) in Lebanon. The project ended on 31 October 2008;
- the GEWAMED (Mainstreaming Gender Dimensions into Water Resources Development and Management in the Mediterranean Region) project, funded by the European Commission, aimed at committing the political institution of Mediterranean countries to lift the barriers to equality between men and women. The project ended the 14 July 2011.

Moreover, ONILFA promotes annually an award, called ““De@terra”, aimed at the valorisation of female entrepreneurship in agriculture. The award was aimed at women whose business history is characterized by original, sustainable elements and the implementation of multifunctional and multimedia activities, with a significant contribution to economic, social and cultural growth in the rural areas. The ultimate aim of the award is to present, disseminate and transfer women-led holdings success experiences.

### **3. Poverty and nutrition**

#### *Positive Actions*

Support to the poor is an issue measuring the capacity of a country to face the ensuing strong social tensions, made even more acute in the past few years by the economic and financial crisis.

The European programme to help the poor stemmed from the Common Agricultural Policy and represents an excellent example on how is possible to intervene on society through an effective encounter between the public and private sector. The measure has two main aims: a social goal (contributing to alleviate significantly the condition of deprivation of the poor) and a market goal (stabilize markets of agricultural products through the reduction of the intervention stocks).

The support regime related to the provision of foodstuff coming from intervention stocks for the poor in the European Union was set up in 1987 with the Regulation (CEE) No 3730/87. Lastly, article 27 of the Regulation (CE) No 1234/2007 provides for that the stocks held from the intervention can be annually made available to the national paying agencies appointed by the Member states for distribution to poor people<sup>8</sup>. Products that can enjoy public intervention are cereals, paddy rice, butter, skimmed milk powder and, at certain conditions, beef. The counter value attributed to Italy for the 2013 programme, according to Commission Regulation (EU) No 208/2012 of 9 March 2012, amounts to almost 97 millions Euros.

The budgeted EU plafond, as can be seen by table 5, was incremented throughout the years. Italy is the Member State benefitting the most by the support programme.

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<sup>8</sup> In Italy, AGEA – Agenzia per le Erogazioni in Agricoltura (Agency for Agriculture Subsidy).

Table 5 – Food distribution programmes to the poor

FINANCIAL YEAR	REGULATION	EU RESOURCES	ITALY RESOURCES	% IT/EU	PRODUCTS
2006	1819/2005	€ 259,414,143.00	€ 73,538,420.00	28.35	CEREALS, RICE, DAIRY, SUGAR
2007	1539/2006 AMENDED BY 306/2007	€ 275,563,261.00	€ 70,764,888.00	25.68	CEREALS, RICE, DAIRY, SUGAR
2008	1146/2007 AMENDED BY 182/2008	€ 305,109,562.00	€ 69,614,288.00	22.82	CEREALS, RICE, DAIRY, SUGAR
2009	983/2008	€ 496,000,000.00	€ 129,220,273.00	26.05	CEREALS, RICE, DAIRY, SUGAR
2010	1111/2009	€ 500,000,000.00	€ 122,456,856.00	24.49	CEREALS, RICE, DAIRY,
2011	945/2010	€ 500,000,000.00	€ 100,649.380	20.12	CEREALS, RICE, DAIRY

EU Regulation No 807/2010, moreover, provides for products coming from the intervention to be added to other products with the basic aim of obtaining more complete foodstuff from a nutritional point of view.

As from 2014, the EU Commission proposes to transfer the scheme in question to Heading 1 - Social Policy and Cohesion.

#### 4. Corporate Social Responsibility in agriculture

In the past few years social and environmental issues have become an integral part of the agricultural policy objectives. The ever more growing demand for food quality, safety, health and genuineness, climate and energy shocks and social and environmental issues connected to the issue of sustainable development contributed to speeding up this process. It follows that the success of agriculture in respect of the new expectations of society lies in the ability of the agricultural holding of producing healthy and genuine food and contribute at the same time to the production of natural resources and to a balanced development of the local area, creating occupation and devoting greater attention to the quality of labour. Nowadays the consumer is growingly more aware and oriented towards considerate purchases and includes in the concept of agricultural and food product quality also values such as environmental and social sustainability of production. Agriculture, therefore, devotes great attention to cross-over issues such as food safety, production traceability, products quality, respect for the environment and for human resources (employment, integration of immigrant labour, staff training, safety on the workplace). Such aspects contributed to articulate the concept of production into a greater dimension of production chain and of locality, flanked by the

promotion and traceability of agricultural and food productions and by forms of institutional communication aimed at valorising and acknowledging the quality of the Italian agricultural and food products, at creating awareness of the evolution of the agriculture between tradition and innovation and at promoting the “Made in Italy” as a style of life and of consumption. Moreover, the agricultural sector developed new functions that over the years have become an integral part of the traditional one – i.e. production of primary goods – but that are all connected to the concept of personal<sup>9</sup> and societal<sup>10</sup> welfare. In such a perspective, one can speak of a new social and environmental awareness by agricultural farm holders, who are growingly more aware of their impact on everything that surrounds them, also because of the initiative of policies in the field.

### Positive actions

That is in line, without doubt, with the Communication from the European Commission COM (2011) 681 2011 who puts forward a new definition of Corporate Social Responsibility (CSR) as “the responsibility of enterprises for their impacts on society”. Given that it is a topical argument and that it implies a new vision of business-making, INEA (upon MIPAAF’s assignment) in 2005 had already set up an activity aimed at the analysis and dissemination of these issues among the vast group of intermediate subjects of the institutional and operational CSR community, comprising national and local institutions, professional organisations, Chambers of commerce, industry and citizens’ associations, universities, etc.

The outcomes of the work implemented were made public through monographs, seminars, training courses and conferences at national and international level, as well as on an *ad hoc* web portal dedicated to social responsibility in the agricultural and food system ([www.inea.it/agres](http://www.inea.it/agres)). In particular, the CSR guidelines in the agricultural and food system were the first work produced on the issue (translated also into English when INEA participated to the UN Global Compact). The volume presents the *CSR four macro areas – Product, Locality, Human Resources and Environment* - identified by the work group and shared (participative approach) with the different stakeholders and also a *self-diagnosis grid* companies may use to evaluate their progress towards sustainability, through a modular and gradual approach which takes into account behaviours adopted by each company as well as the system dynamics the company itself is involved in.

Such guidelines come with a collection of case-studies whose aim is to represent the diversity of the experiences carried out by enterprises in the sector, find shared approaches in the adoption of CSR practices and evaluate the impact of business conducts put forth by the enterprise according to the (economical, social-institutional and environmental) treble approach. The enterprises analysed,

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<sup>9</sup> Reference is made for example to the social agriculture comprising the set of practices on a territory implemented by agricultural holdings, social cooperatives and other Third Sector organisations, conjugating the use of agricultural resources and low impact multifunctional production process, mainly and progressively with biological methodologies, with social activities, aimed at generating inclusive benefits, favouring therapeutic, rehabilitation and care programmes, supporting social and labour insertion of disadvantaged and marginalised sectors of the population, and to favour social cohesion in a substantial and continuous way. Such activities must be implemented in cooperation with social and health services and public authorities in charge of the territory and must undergo periodical checks, through an ad-hoc social report. Source: Forum on Social Agriculture – Guidelines for a legislation on social agriculture

<sup>10</sup> The Agriculture Commission of the Organization Economic Development and Cooperation defines the multifunctionality in agriculture in the following way: “As well as its primary function of supplying food and fibre, agricultural activity can also shape the landscape, preserve biodiversity, manages sustainably resources, contribute to the socio-economic viability of rural areas, ensuring food safety. When agricultural activity adds to its primary role one or more of this functions can be defined as multifunctional”. Source: OECD (2001) - Multifunctionality: Towards an analytical framework.

offered, among others, various hints for policies concerning human resources and great focus on all of their stakeholders. In particular, for the commitment to grant their staff information, training and equal opportunities of professional growth, valorising the contribution each person can offer to the consolidation of the business culture; to provide a healthy, safe and functional workplace and for a greater respect for human rights. The human rights issue in agricultural holdings is particularly relevant since, in the past few years, it has been the only sector to record, for immigrants, a positive employment rate. Many of the agricultural holdings are sensitive to this issue and tried to favour integration of their foreign staff and their families in their environment. The dissemination of CSR best practices contributes then also to a greater respect of human rights and of the main labour regulations. A subsequent work on the same issue allows to further one's knowledge on the motivations, approaches and instruments with which the actors of the agricultural and food system can satisfy new consumers, workers and all stakeholders' expectations about the social and environmental impacts of production, transformation and commercialization processes of agricultural and food products.

Lastly, in the years 2009- 2010, some very relevant issues were analysed, following prompting by the various stakeholders: sustainable means of production, responsible consumption and CSR in the production chain, while in the years 2011 -2012 the study of the social responsibility was focused on the wine-growing and producing chain in order to identify best practices of sustainability both in the vineyard and winery.

## 2. ENVIRONMENTAL AND SUSTAINABLE DEVELOPMENT POLICIES

This section constitutes the contribution of the Ministry for the Environment, Land and Sea (MATTM)

### 1. Human rights and environmental protection

Policies and regulations for environmental protection contribute directly and indirectly to the respect of human rights by businesses. In particular, in Italy, environmental protection rises to the level of a protection granted by the Constitution in the light of the combined provisions of Articles 9 and 32; Article 3, paragraph 2 on Substantial Equality; Articles 41,42,44 for the Economic Aspect, and Articles 4 and 35 for the Social Aspect.

Equally, the jurisprudence of the European Court of Human Rights, acknowledges a “right to environment” as a component of the right to respect for private and family life according to article 8 of the European Convention of Human rights, of which Italy is a State party.

Italy adheres to the international and European Union norms and principles on environmental protection and sustainable development, contributing to their definition and implementation.

Italy adopted the Environmental Code, approved by the Decree Law 152/2006 (and its modifications: Decree Law 4/2008 and Decree Law 128/2010). The Code represents the Consolidated Law that unifies and implements the mandatory European legislation as well as the main regulations in force in the field.

The text of the law lays down as its main aim the promotion of a high quality level of human life, to be implemented through the safeguard and the improvement of environmental conditions and the careful and rational usage of the natural resources (Art.2).

### 2. Environment and Businesses: towards a green economy

Environmentally sustainable behaviours, which also adhere to the principle of sustainable development, constitute a fundamental pillar of any strategy and documents on CSR reporting and in particular, for those businesses whose investments are in countries having less stringent environmental standards than those in their country of origin. The setting out of measures protecting against any form of pollution of waters, land, and air as well as from over-exploitation of natural resources, are at the basis of the human rights to life and health, whose respect businesses are definitely requested to fulfil. National, European and international occurrences where the right to life and the right to health intertwine with environmental protection are now numerous.

As well as the substantial legislation in force, mostly European, the aim of sustainable development – intended as a balanced relation among the economical and productive social and environmental systems - was pursued also through voluntary tools. These tools aim at promoting virtuous behaviours, beyond what provided for in the existing legislation, and at establishing synergies between the public and private component to protect the local area and advocate for social rights. Many interventions were promoted by the MATTM to motivate business to adopt environmentally responsible behaviours, useful for environmental protection and competitiveness and, more recently, to encourage them in the route towards green economy.

Among the voluntary tools there is the complex mechanism of environmental management systems (codified by international and EU regulations and standards such as ISO 14001 and EMAS) whose objective is certifying the environmental value of processes and products of a specific organisation.



The systemic approach and the product approach aim at a responsible environmental management and lead organisations to adopt the best available technologies, allowing them to reduce management costs, improve productivity, prevent environmental damages and risks of accidents for workers and for the locality, improve relationships with the public as well as the image of the business, acquiring new market quota.

The recent UN Conference on Sustainable Development known also as Rio+20 (Rio de Janeiro 20-22 June 2012) had among its main topics the relation between business activity, market and environmental protection. Such relation materialised in a discussion focused on the identification of possible cooperation elements and areas to move globally towards a green economy contributing to social and economic development with due regard for the planet limitations. The Conference acknowledged for the first time the concept of “green economy”, defining it as one of the main instruments for economic and social growth and, especially in the developing countries, as one of the approaches to fight against poverty. The Rio+20 Conference gave a fundamental input to governments as well as businesses and other stakeholders to collaborate to the adoption and put into practice of green economy policies which, in this way, become a significant element of any future action and initiative in the CSR field. In this context, the MATTM worked together with other Administrations to identify a national road to embark upon in that direction. Such road, still being implemented, includes the following main points: “decarbonisation” of the economy and reduction of emissions; creation of a list of green technologies; sustainable and “smart” cities; implementation of countermeasures against climate change and hydro geological disaster; reinforcement of environmental cooperation in the world; simplification and transparency for the authorisations not protecting the environment; implementation of environmental tax regime. The actuation of a green economy represents an instrument of the environment to pressurise the economy, the innovation and the occupation especially in the small and medium enterprises.

At national level, it needs to be mentioned how the work carried out by the Ministry together with the Sustainable Development Foundation, which on November 2012 organised the ‘*Etats Généraux*’ of the Green Economy, was very important. The meeting produced a document called “The roadmap for green economy in Italy”. Recently a National Council for Green Economy was set up and a new document called “A Green New Deal for Italy” was prepared. Such document was the outcome of an articulated preparatory activity for the processing of a programmatic platform for the development of a green economy in Italy, result of an open and participatory process seeing the involvement of hundreds of experts and representatives of the business world, political powers and civil society. The contents of the documents and discussions carried out to date on green economy both at national and European level do not seem to have given adequate attention to the links between the green economy, corporate social responsibility and human rights. Nevertheless, such link is emerging more and more neatly in the context of the debate on the new UN Post-2015 Development Agenda. A separate paragraph below is dedicated to this issue.

The voluntary commitments by enterprises for the evaluation of the environmental footprint, aimed in particular to the calculation of the carbon footprint and to the reduction of the emission of the greenhouse gas, are taking on a growingly more significant role for the reinforcement of the action provided for in the norms and governmental policies within the Kyoto Protocol and the “Climate and Energy Package” adopted by the Council of the European Union in 2008.

In this context, the Ministry for the Environment, Land and Sea, involved for a long time in the support to the voluntary initiatives of the Italian productive sector, initiated an intense programme in order to experiment on a large scale and optimise the different measurement methodologies of

environmental performances, taking into account the different characteristics of the different economical sectors, in order to be able to harmonise them and render them replicable.

The initiative has the objective, moreover, of identifying carbon management procedures adopted by enterprises and of circulating technologies and best practices of low carbon emissions in the productive processes. Such activities represent:

- an environmental and competitiveness driver for the Italian business system that takes into account the importance that nowadays the ‘ecological’ requirements of products have;
- an important instrument of economic and commercial development in the direction of an ever more sustainable economy;
- an opportunity to create new consumer awareness toward more responsible consumer choices and virtuous behaviours.

For the realisation of the programme the “Task Force for the Evaluation of the Environmental Footprint of Production and Consumption Systems and Models” was set up. The main mission of the “Task Force” is to assist the Ministry in the project planning and in the implementation of the activities of competence, with particular reference to the calculation of the carbon footprint and water footprint provided by voluntary agreements with public bodies and enterprises, or deriving from public selection procedures promoted and financed by the Ministry, in Italy and abroad.

To date, the Italian programme involves more than 200 business, municipalities and universities as partners.

It is necessary to quote moreover the MATTM commitment in the wine-growing and producing chain. In this last sector the Ministry for the Environment started in July 2011 a national pilot project for measuring the sustainability performance of the wine-growing and producing chain, with the participation of some large firms (F.lli Gancia & Co, Masi Agricola, Marchesi Antinori, Mastroberardino, Michele Chiarlo, Castello Montevibiano Vecchio, Planeta, Tasca d’Almerita e Venica&Venica) and 3 University Research Centres (Agroinnova – the Centre of Competence for the Innovation in the Agro-environmental Sector of the University of Torino; OPERA– the Research Centre for Sustainable development in Agriculture of the Catholic University of the Sacred Heart; the Research Centre on Biomasses of the University of Perugia). The project “Evaluation of the Impact of wine-growing and producing on the environment” – V.I.V.A. Sustainable Wine” accomplished a calculation and evaluation methodology of product sustainability, from field to consumption, able to measure the environmental quality of the wine-growing and producing chain, verifiable in a label guaranteed by the Ministry of the Environment. V.I.V.A. Sustainable Wine introduce four indicators (air, water, vineyard and locality) created both for businesses and for consumers. Businesses can rely on them to evaluate the optimal use of resources; consumers, thanks to a simple and transparent system, can verify the effective commitment of the business to the environmental and social and economic field. The indicators will be validated every two years by a third party and the label will make known both the current performance and the progress accomplished by the business over time.

### **3. Environment and right to health**

In our juridical system, the right to health is recognised pursuant art. 32 para.1 of the Constitution. It is the most important of the social rights indicated in art. 3 of the Constitution, i.e. those rights recognised to the individual in order to eliminate the economic and social inequalities and render effective the general exercise of freedom rights. The judicial development of the pair environment – health contributed to the evolution of important juridical institutes such as the one of collective

interests and, albeit still in its initial stage, of the related guarantees mechanisms for environmental damage (class actions).

In Italy, the contribution to the respect of such right by the measures aimed at protecting the environment is multifaceted and incisive; it includes measures aimed at the regulation and control of air, water, land pollution as well as launching land recovery and regeneration procedures. In a densely populated and subject to strong anthropogenic pressure territory, such as the Italian one, the link between environment protection and right to health is particularly tight, if not inseparable.

On the other hand the link between environment and health was internationally recognized in a long and articulated path that from the United Nations Conference on Environment and Development (UNCED, Rio de Janeiro 1992) led to the planning of the Millennium Development Goal n.7 and the fight against indoor pollution affecting especially women and children of the poorest countries. Particularly relevant is the role of the European WHO Office, which, as early as 1989, promoted the 1<sup>st</sup> Inter-ministerial Conference of the Environment and Health Ministers on *Environment and Health* which approved the *European Charter on Environment and Health*. Since then, every 5 years, the inter-ministerial Conference identifies joint programme principles and priorities for the Ministers of Environment and Health of participant States. Of particular relevance, the signing, in 1994, of the *Environmental Health Action Plan for Europe – EHAP* in which the States pledged, among other things, to draft their *National Environmental Health Action Plan - NEHAP*; as well as, the signing of the Charter on Transports, Environment and Health in London in the year 1999 and the “Water and Health Protocol”. In collaboration with other international bodies, such as UNICEF (United Nations Children's Fund) and the European Agency for Environment, the Conference of London defined specific strategies to grant *children's health protection in a healthy environment*. Thanks to this activity, the *CEHAP* (*Children Environmental Health Action Plan for Europe*) was signed in Budapest in 2004.

In 2010, in Parma, Italy hosted the 5<sup>th</sup> Inter-ministerial Conference Environment and Health. The main results were the signing of an Inter-ministerial Declaration, involving not only Ministers from the 53 countries adhering to the process, but also other partners including the European Commission, many international and intergovernmental organisations, civil society and private sector. A line of activity within the WHO was also launched, focusing on the analysis of the effects of climate change on human health.

At European level, Art. 168 of the Treaty on the Functioning of the European Union (TFUE) (pursuant art.152 of the TCE), in its first paragraph, establishes that “...1. in the definition and implementation of all policies and activities of the Union a high level of protection of human health is granted”, while art.191 of TFUE (pursuant art.174 of TCE) devoted to the environment, establishes that the Union policy on the environment contributes to pursue various objectives, among which there is also the one of protecting human health. The Sixth Community Environment Action Programme (Dec. n.1600/2002/CE) indicated among its strategic objectives the achievement of “*a high level of quality of life and social well being for citizens by providing an environment where the level of pollution does not give rise to harmful effects on human health and the environment*”. In the Seventh Environment Action Programme, recently adopted by the European Union, health is the subject of the third priority objective “to safeguard the Union's citizens from environment-related pressures and risks to health and wellbeing”.

The Ministry of Environment, Land and Sea has been actively engaged for over twenty years in the integration policies and measures of environment and health in all the above-described fields and has activated in the past 15 years an intense international cooperation activity, set on the principle

of integration of environmental policies in sector policies with particular reference to research, information and education, industry, transports, energy, health. Various were the activities implemented in collaboration with businesses and private sector. They were devoted in particular, to cross-border impact industrial risk management as in the case of the ecological disaster of Baja Mare in Romania in the year 2000 in the low Danube area and to their impact evaluation, such as in the case of projects implemented in the Fergana Valley in Central Asia in collaboration with UNEP/OSCE/UNDP.

#### **4. Environment and access to information, participation and access to justice: the Aarhus Convention**

The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was ratified by Italy under Law 108 of the 2001, year when it came into force. The Convention, albeit developed in the UNECE context, was opened to signing by all the UNO membership. It attributes procedural rights on environmental matters.

The Convention asks governments to intervene with three goals: i. Granting citizens' access to environmental information; ii. Encouraging public participation in environmental decision-making activities; iii. Extending conditions for access to justice.

For what concerns the pillar on access to environmental information, the right of requesting access extends to any person or association, without them having to prove or state an interest or a reason for coming into their possession (Art. 3- *sexies* of Decree Law 152/2006). In this lies the difference with the general regulations on the right to access to the administrative acts, according to which applicants have to prove their vested interests. In judicial setting, such presumption translates into the admissibility to legal proceedings of any individual whose access to documents containing the environmental information requested was unfairly denied.

The second pillar of the Aarhus Convention regarding public participation in environmental decision-making processes is granted in Italy by the regulations applicable to environmental evaluations (V.I.A - Environmental Impact Evaluation and V.A.S - Strategic Environmental Evaluation included in Decree Law 152/2006.)

For what concerns the pillar regarding access to justice on environmental matters, the Italian system does not provide for specific tribunals dedicated to the matter and, therefore, the general rules on civil, penal and administrative matters are in force. Nevertheless, there are some peculiarities worthy of mention, including the role given to environmental organisations (in particular those recognised by the Ministry of Environment), the rules for access to environmental information and the environmental damage regime.

Art.18 of Law 349/86 establishing the Ministry for Environment attributes to recognised environmental protection agencies pursuant art.13 the power of:

- designating their own representatives in different collegial organs including the National Environmental Council, the provincial Commissions, which define the Territorial Hunting Grounds and the Governing boards of the Park Authorities;
- reporting damages of environmental assets they are aware of;
- intervening in judgements for environmental damages;
- recurring in the administrative courts for the cancellation of illegitimate acts.

Moreover in accordance with Article 4 of Law 265/1999, the said associations can propose compensation actions under jurisdiction of the ordinary court befitting the Municipalities and the Province, following environmental damage. Any compensation is wound up in favour of the

substituted body and the costs of proceedings are wound up in favour of or charged to the association. Other members of the public do not have the possibility of appealing directly against the acts of the Public administrations; undeniably, though, in case of behaviours liable to criminal prosecution, enacted by any individual, anybody can indirectly activate legal proceedings reporting the act to the police or to the Public Prosecution who is obliged to initiate proceedings if the news is considered well founded), or even communicating it to the Regional Agency for Environmental Protection (ARPA) of competence.

As it emerges from the above, the law meant to recognize the capacity of being a party in legal proceedings to recognised environmental protection associations also when the association itself is not directly damaged (criminal and civil proceedings) and also when it does not have a legitimate direct interest (administrative proceedings). This is because the recognised environmental protection association is acknowledged as having the capacity of representing the so-called collective interests i.e. interests belonging to indistinct members of the community and the population at large.

In particular, access to justice is granted by the very regulations on access to environmental information. The Decree Law 195/05 disposes that against the decisions of the public authority on the right to access and in case of lack in response within the prescribed time limits, the applicant can seek an administrative or judicial review; the law refers to the procedures laid down on access to administrative documents (Law 241/90 Art.25, as modified by Law 15/05).

The Italian legal system, based on the recognition of the norms on the legitimate interest, recognise also the possibility of lodging an appeal to the TAR – Regional Administrative Tribunal, or to the President of the Republic, against the decree of environmental compatibility of a project subject to VIA.

It is to be noted that the appeal to the President of the Republic is possible against any illegitimate decision of the public administration and is free of charge. It is, moreover, open to any member of the public holding a legitimate interest and willing to appeal against an administrative decision.

The Decree Law 152/2006 states that against the decisions, the acts or the omissions subject to dispositions on public participation established in terms of the VIA (title II , 2nd part) the appeal is always admissible according to the general norms on the appeal against illegitimate administrative acts.

Anybody (individual or group) considers damaged his/her own rights or legitimate interests has the right of initiate proceeding to obtain compensation for the damage and any imposition of penal sanctions. Any member of the public can, as said above, report the fact to the police or the Public Prosecutor office or even communicate it to the ARPA of competence, in order to initiate an investigation.

On the matter of environmental damage compensation, specific regulations are in force. The Decree Law 152/06, as modified, identifies in the State, specifically in the MATTM, the competent authority to act for the preventive and compensatory protection from environmental damage. In particular, the Ministry is authorised to act for environmental damage compensation in a jurisdictional manner, also instituting the civil action in criminal proceedings, and in an administrative manner through an immediately enforceable decision.

The territorial bodies and the natural or legal person who are or who could be affected by environmental damage or who claim an interest establishing their entitlement to participation to the proceedings concerning the adoption of the precautionary, prevention or recovery measures can only prompt the Ministry reporting the damage or presenting observations (the recognised

environmentalist associations are included). Such subjects can, then, act in administrative proceedings for the cancellation of the acts and the measures adopted in violation of the provisions of the decree or against the silent failure to fulfil obligations by the Ministry. Such subjects can, lastly, lodge a jurisdictional appeal to obtain compensation for the damages sustained due to the delay in acting by the Ministry, while they cannot act against those directly responsible. The faculty of lodging an extraordinary appeal to the President of the Republic against the illegitimate or damaging measures remains.

Law 349/86 acknowledges to environmental associations recognised by the Ministry the power of intervening in proceedings for environmental damages that have already been started.

It is significant the prevailing view taken by the courts of law that, notwithstanding the general principle of the exclusive ownership by the State of the compensation for environmental damage, tends to give legal standing to associations, territorial bodies or individuals in consideration of the complexity of the basis for claims linked to the damage to the environment. In particular, according to such view, the environmental associations, albeit not recognised, are given autonomous and main standing in the compensation proceedings for environmental damage, and therefore in bringing a civil action when they have, according to their statute, territorially circumscribed environmental interests, substantially damaged by the illicit activity. Environmental organisations, then, can take part in criminal proceeding (according to Art 91 of Code of Criminal Procedure) with powers identical to those of the injured parties, who must give their consent to allow the organisation to take part, and could join proceedings as a civil party seeking damages, if conditions apply (*ex plurimis* Cass. Pen. Sect. III, Judgement n. 36514, 3 November 2006; Cass. Pen. Sect. III, n.33887, 9 October 2006; Cass. Pen. Sect. 3, Judgement n.554, 15 January 2007).

The role of the Ombudsman, which can be appointed by local authorities (Decree Law 267/2000), is becoming more widespread. The legal evolution both at regional and national level, has over time given to the Ombudsman new functions and competences enlarging the prerogatives and fields of activities (as seen in the matter of access to documents). Ombudsmen, when maladministration is reported to them, can request the internal review of acts /omissions of the public administrations and intervene in case of denial to access to administrative acts (see above).

ISPRA and ARPA, as well as a set of national police forces (Police, Forest Guards, Military Police for the Environment, financial police, etc.), have the task of controlling, through the inspection of the facilities, that environmental norms and conditions according to which the authorisation to operate were given, are respected.

In general, these 'inspection' actions are requested by the environmental authority of competence (Central Administration, Regions, Provinces etc.) or by the judiciary, but can be initiated by citizens' reports if reputed to be well founded.

The environmental authority of competence is informed of the outcome of the inspections and, if a violation of the environmental norms or of the conditions of authorisations is found, the sanction proceedings are initiated. The sanctions can be administrative (fine, suspension of the authorisation) or criminal.

Lastly, stricter safeguard and prevention measures can be provided for (suspension of the activity, closure of the facilities, confiscation), immediately implemented through an ordinance of a Public Authority such as a Mayor, Magistrate, Minister of the Environment or the President of the Council of Ministers.

## **5. Environment and United Nations' Post-2015 Development Agenda**

The United Nations system is intensely working and on many fronts to design the “Post-2015 Development Agenda”. The Agenda’s contents includes an update of the Millennium Development Goals (MDGs) expiring in 2015 and the definition of new objectives, the Objectives of Sustainable Development. The negotiating process defining it substantially was launched at the Event on MDGs under the auspices of the UN Secretary General (New York, 25 September 2013) and will end in September 2015. The need that such agenda is “human rights based” is emerging with force in all documents being discussed and is supported by many parties. In particular, issues such as the protection of women and children, health, decent labour, access to water and to other essential services, fight against discriminations, etc., are all part of the debate and will be fully included in the final version of the Post–2015 Agenda. Once approved, it will constitute the reference point and the parameter of behaviour and action not only for Governments but also for all the stakeholders, including businesses, involved in international cooperation activities or, in the case of multinational enterprises, involved in business activities in many Countries in the world. As the MDGs guided actions and initiatives to ensure and evaluate the capacity of a business of contributing to social, economic, environmental and human development of the territory where it operates, the same will do the new Agenda, which together with the fight against poverty, will pursue in an integrated manner the objective of sustainable development and respect for human rights. The adhesion to the new Agenda by the Italian government, as well as its promotion to the Italian businesses operating in Italy and abroad, is an important challenge to carry out in the near future as contribution to the implementation of human rights by businesses.

### 3. LABOUR AND EQUAL OPPORTUNITIES POLICIES

This section constitutes the contribution of the Ministry of Labour and Social Policies.

#### 1. Labour Policies

There is much that the Italian State is already doing on labour policy, social policies and equal opportunities, in line with the international standards and first of all those by the International Labour Organisation (ILO) as well as provisions of the Constitution and of the ordinary legislation, regulating labour relations (including Decree Law 198/2006 – Equal Opportunities Code).

#### **Workers with disabilities**

Law 12 March 1999, n. 68 governing “Norms for the right to work for people with disabilities” overcomes the charitable and coercive approach of the previous regulations to adopt the logic of promoting the insertion and the social-labour integration of people with disabilities in the working world, with the aim of valorising the potential of the person within the working context.

Art. 2 sets out the concept of targeted job placement, intended as the set of “technical and support tools allowing to evaluate adequately people with disabilities in their work abilities and to place them in the right position through the analysis of jobs available, support forms, positive actions and solution of problems related to environments, tools and interpersonal relationships.”

Law 68/99 provides for a system of permanent dialogue between Provinces, Job Centres, Regions, and a tight connection among the collegial body carrying out the functional diagnosis, the technical Committee and the offices of competence, in order to encourage the insertion of protected individuals.

Art. 3 regulates the reserved quota according to the size of the business (one worker for employers employing 15/35 employees, two workers for employers with 36 to 50 employees and 7% of employees for employers with over than 50 employees).

People with disabilities, to whom Law 68 of 1999 applies, are only those “of working age” affected by physical, mental or sensorial impairments and people with intellectual disability, involving over 45% reduction of the working ability; people disabled due to work injury with a percentage of disability over 33%; blind or deaf people; as well as disabled ex-servicemen and women, civilians disabled by war and people disabled through service with an impairment ascribed from the first to the eight category of the tables annexed to the Consolidated text of the regulations on war pensions (art. 1, para.1).

Regarding the forms of compulsory recruitment, the employers hire disabled workers, applying for job placement services to the offices of competence, or through the signing of agreements, which, in the legislation on the labour market, constitute forms of agreed flexibility. Indeed, the traditional tool used to fulfil the obligations placed on the employer by the system of compulsory recruitment (for disabled people) received a substantial impulse thanks to Law 68/99; it comes not only to stand beside the traditional job placement system, based on the application to the specific offices, but becomes the preferred mode of job placement for people with disabilities. The specific offices can, as stated in Law 68/99, draw up various typologies of agreements diversified according to the subjects who can draw them up (businesses, not for profit organisations, social cooperatives and self-employed people with disabilities) and above all according to the aims pursued by them



(programme agreements; labour inclusion agreements; temporary work placement agreements for training purposes; work placement agreements).

Public and private employers, liable to comply with the provisions of Law 68/99, must send electronically to the deputed offices an informational prospectus, indicating the total number of employees, the number and the names of workers countable in the reserved quota, the positions and the tasks available for workers with disabilities.

Moreover, with Law 5 February 1992, n.104, regulating the assistance, social integration and rights of people with disabilities, flexibility in the work schedule was encouraged for people with disabilities and the relatives caring for them. Such a law, indeed, not only has the aim of granting the full respect of human dignity and freedom and independence rights to the person with disability and promotes their full integration in the family, in the school, in the workplace and in society through early diagnosis and social and health information, but also aims at encouraging their social inclusion through the removal of any type of social-economical and cultural barrier.

### **Migrant workers**

Italy ratified ILO Conventions 97 (1949) and 143 (1975) on migrant workers.

There is no obligation or recommendation to businesses to refund migrant workers for the labour tax since the cost of the work permit is on the worker.

There is no obligation or recommendation to business to refund airfares to workers wishing to go home for a justified reason (e.g. sickness of a relative), regardless from contractual requirements. The employer is obliged, though, to reimburse the State of the travel expenses incurred in case of deportation of a worker employed.

### **Ethnic minorities**

Discipline on racial discrimination ruled by Law 654/1975 was integrated by the Consolidated Act on Immigration (Legislative Decree. n. 286/98) in particular by Articles 43 and 44, respectively containing the punctual identification of the discriminatory acts and the discipline of the civil action against discriminatory acts.

Both of the quoted articles refer to discriminatory behaviours enacted not only towards non-EU foreign nationals - target of the great majority of the provisions of the Consolidated Act but also towards Italian citizens, stateless persons, and citizens of other member states of the European Union.

Article 43 of the Consolidated Act on Immigration considers as discriminatory those behaviours that, directly or indirectly, operate a distinction, an exclusion, a restriction or a preference on grounds of race, colour, nationality, ethnic origin, religion and having the intent or the effect of destroying or compromising the acknowledgement or the exercise, on a level playing field, of human rights and fundamental freedoms in the political, economic, social or cultural and in every other sector of public life.

In particular the following acts of discrimination in respect of belonging to a certain race, religion, ethnic group or nationality are identified:

- execution or omission of a unfairly discriminatory act towards a foreign citizen, by a public official or a person responsible for a public service or providers of services of use to the general public;
- imposition of more disadvantageous conditions or refusal to provide goods or services offered to the public;

- imposition of more disadvantageous conditions or refusal to provide access to employment, housing, education, training and to social and health services to regularly resident foreign nationals in Italy,
- actions or omissions aimed at preventing the exercise of a legitimate economic activity undertaken by the regularly resident foreign national in Italy;
- acts or behaviours enacted by the employer or by his employees aimed at discriminated also indirectly the foreign worker.

The provision gives, moreover, an identification of the criteria through which identify the particular cases of “indirect discrimination”: such is to be considered any prejudicial treatment following the adoption of criteria placing at a disadvantage in greater proportion workers of a certain race, ethnic or language group, having a certain religion or citizenship and which do not concern essential requirements for undertaking the working activity.

Article 44 of the Consolidated Act on Immigration establishes and regulates the civil action against discriminatory acts.

It provides for the possibility of instituting legal proceedings at the civil court with a formality-free appeal, aimed at obtaining a measure which may, also as a matter of urgency, remove the effects of discrimination and refund the damages incurred. The non-compliance with the measure is prosecutable under criminal law.

When collective discrimination happens in a work context, the appeal can be lodged also by the major trade unions, and businesses may incur in supplementary penalties.

Lastly, the institution by Regions of information, legal support and observation centres on the trend of this phenomenon is provided for.

### **Minimum age**

A minor can be admitted to employment if two requirements are met: the attainment of the minimum age of 16 and the completion of compulsory schooling. For underage trainees special rules applies aimed at protecting the psycho-physical health of the minor. In particular, pursuant to Law n.977/67, the working hours cannot be more than eight per day or 40 per week.

For what concerns access of the minor to the apprenticeship contract, it is highlighted that the minor aged at least 15 can access to the typology of apprenticeship for the qualification and for the professional diploma, also to fulfil compulsory schooling requirements (Art. 3 Decree Law n. 167/2011).

However, both in the case of apprenticeship or other forms of employment relations, there is the prohibition of employing minors for night time work (Articles 15 and 17, Law n. 977/67).

Therefore the underage apprentice cannot be made to work in the 12 hours between 10 p.m. and 6 a.m. or between 11 p.m. and 7 a.m.

Such prohibition can be derogated from in two hypotheses:

- extraordinarily and only for the strictly necessary time, for those who are over 16, when there is a cause of force majeure hindering the functioning of the business.
- For minors employed in cultural, artistic, sport, advertisement or show business sector activities. In any case the work performed cannot last over 12 a.m. (midnight) and, when accomplished, the minor has the right to a period of rest lasting at least 14 consecutive hours.

## **Overtime**

Italian discipline is included in the legislative decree n.66/2003 in accordance with and in implementation of the European Directive 2003/88/CE regarding certain aspects of the organisation of the working time.

In particular, Art.5 of the said decree provides for the overtime to be separately counted and paid with a top-up amount on wages set out in the collective labour agreements. The collective labour agreements can in any case allow that, in alternative or in addition to the top-up amount on wages, workers can make use of compensatory rest periods.

Overtime, according to art.1(2) c), of the mentioned legislative decree, is any time worked beyond normal working hours, that is over the 40 hours per week provided for in Art.3.

When the collective agreement provides for a weekly working time lasting less than the legal one, the hours in excess not beyond the 40 hours limit, can be qualified not as overtime but as additional work. In any case the weekly limit of working hours cannot exceed 48, including overtime.

Given that the worker has to fulfil the obligation of having at least 11 hours of continuative rest every 24 hours of work, the working activity cannot, in any case, exceed 13 hours per day, including any overtime.

If in the collective agreements indications are lacking, the resort to overtime is legitimate only if agreed between the parties and, anyway, cannot exceed 250 hours per year, subject to the assumptions set out in art. 5(4), Legislative decree n.66/2003 (cases of extraordinary technical and production needs impossible to be dealt with the recruitment of other workers or in cases of force majeure or of serious and imminent danger or damage to people or to production, or, lastly, in the occasion of special events such as exhibitions, fairs, events, etc.)

Indeed, as envisaged by Circular n.8/2005 of this Ministry, within the meaning of the mentioned article, the employer cannot request his/her employees to perform overtime in excess of 250 hours per year or beyond the different time limits set out in the collective agreements, except in the occurrence of the particular conditions outlined above.

## **Minimum wage**

Remuneration constitute the consideration of the service provided by employed persons who, by constitutional principle, have the right to wages in proportion to the quantity and quality of their work and in all cases sufficient to ensure them and their families a free and dignified existence (Art. 36, Italian Constitution).

Generally speaking the remuneration is determined freely by the parts, with due respect to a minimum limit, that jurisprudence – on the basis of the constitutional principle of sufficient remuneration and in a frame work of trade union freedom – has identified in the pay values fixed by the collective labour agreements themselves.

## **Children's rights**

Italy took on many commitments at international level following the signing of the Convention on Children's rights of 1989, ratified in Italy by Law 176/1991, the Charter of Commitments to promote children's and adolescents' rights and eradicate child labour exploitation, signed on 16 April 1998; the Beijing Declaration of 15 September 1995; the ILO Convention n.138 of 1973 and ratified in Italy by Law n.157 of 1981; the ILO Convention n.182, ratified in Italy by Law n.148 of 2000.

Indeed, in 2006 a coordinating committee between government and social parties for the fight against the exploitation of child labour was set up, which is being reconstituted and is made of Ministries and territorial bodies involved, representatives of business associations of trade unions, civil society and non governmental organisation, it shared the new reframing of the Charter of commitments signed in 1998 to promote children's rights and eradicate exploitation of child labour. Main points of the mentioned Charter are:

- a) Developing in international forums, particularly ILO, initiatives to contrast the 'social dumping' determined with the concurrence of child labour and promoting international fair trade.
- b) Recognising the validity of tools such as social terms and conditions and ethical codes which could prove effective not only in the international fight against child exploitation, but also on the domestic front, since they could constitute a further element of regulation of business relations, also with special reference to sub-contracting; introducing the social quality label for businesses proving the respect of workers rights and granting the absence of child labour exploitation.
- c) Defining codes of conduct, already envisaged by the 1998 Charter, negotiated for sectors and/or businesses internationalising in various ways their own activities envisaging in them the respect for fundamental human rights and the eradication of child labour exploitation and supporting the development of monitoring activities through sector and cross-sector mechanisms included in collective agreements;
- d) Supporting, also internationally, support measures in favour of victims of human trafficking and initiatives aimed at contrasting human trafficking and sex tourism;
- e) Disseminating and promoting among Italian businesses, for example through the Project Italy "Sustainable Development through Global Compact", best practices on corporate social responsibility, as well as developing and encouraging public-private partnership projects contributing to a quality growth and to an economic establishment in a perspective of sustainable development.
- f) For what concerns multinational enterprises, disseminating the voluntary OECD guidelines on corporate social responsibility, against the exploitation of child labour;
- g) Implementing the EU system of generalised preferences, also through specific incentives in duties and fees for those developing countries which have ratified and applied effectively the fundamental Convention UNO/ILO on human and labour rights.

The new reconstitution of the coordinating committee should lead to the drafting of the actions of the Action Plan in implementation of the ILO Convention n.182, to bring together in future in the Action Plan for Children and Adolescents.

### **Human trafficking**

ILO Convention on Forced Labour n.29 of 1930 and ILO Convention on the Abolition of Forced Labour n.105 of 1968 were ratified in Italy.

For the implementation of interventions in favour of victims of trafficking and serious exploitation, different from jurisdictional protection, the Italian governments promoted some initiatives, such as:

First aid and self-disclosure programmes pursuant art. 13 Law 228/2003

Social assistance and integration programmes pursuant art. 18 legislative decree 286/1998.

As well as such complementary measures, social assistance and integration programmes and measures for people who have been trafficked are quoted below:

- First care programme, according to Art.13 of Law 228/2003 (“Measures against human trafficking”) “Institution of a special programme of care for victims of offences referred to art. 600 and 6001 of the Criminal Code”. Art.13 projects grant assistance to the supposed victims of trafficking and to those already identified as such for at least three months, which, where possible, can be extended for three more months. The people taken on by public or private non profit-making bodies are entitled to adequate accommodation, meals, health and legal care. In many cases, once the individual Art.13 project is ended, people continue to be supported within projects according to art.18. From 2006 to 2012, art.13 financed project were 166. From 2006 to 2012, thanks to art.13 projects, 3,770 trafficked persons were supported.

- Social assistance and integration programme envisaged by art.18 of legislative decree 286/98 “Consolidated Text of provisions governing immigration and the status of aliens”. Art.18 projects, lasting 12 months, grant to trafficked persons the possibility of accessing to a set of services and activities, on the basis of the individual care plan devised according to their specific needs: housing, psychological counselling, legal aid, language-cultural mediation, health-care service accompaniment, professional training, company apprenticeships, job search support, workplace insertion. From 1999 to 2012, 665 projects were funded. From 2000 to 2012, over 65,000 people got in touch with Art.18 projects and received some form of support (information, psychological counselling, legal aid, health-care accompaniments); 21,378 people of those, participated to a social protection project. Beneficiaries of this programme can also benefit of a “temporary permit of stay for humanitarian reasons”.

Both assistance programme provide for co-financing – through a joint annual call – of projects realised by local and territorial bodies and/or association. The latter, to participate to the public call, must be registered in the second section of the Register of associations and bodies operating in favour of migrants.

- **National anti-trafficking free phone number (800.290.290)** working 24 hours a day – free and anonymous, it allows to come into contact with multilingual specialized staff. It provides detailed information on legislation and services granted to trafficked and exploited people in Italy and, on demand, send the latter towards social-care services available within Art.13 programmes (Law 228/03) and Art.18 programmes (legislative decree 286/98). The service revolves around a central location operating in close contact with Art.13 projects and in particular with ad hoc facilities set up within the latter, called “operational territorial units”. They have the task of taking on the reports coming from the national free phone number and evaluating the case and sending the supposed trafficking or exploitation victim to services *ad hoc* to the relevant area. The service is also aimed at those citizens willing to report exploitation situations as well as to workers in the field, in order to facilitate networking at national level.

Italy adopted specific binding legislative measures such as the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, ratified in Palermo by Law n.146 of 16 March 2006, aimed also at preventing trafficking in human beings.

These often are foreign unaccompanied minors, victims of downright placement in a position of slavery or of trafficking of people in state of subjection – by relatives or third parties, knowingly or unknowingly by their family of origin – and taken to Italy by criminal organisations involved in labour exploitation rings.

Our legal system envisages not only the offence of human trafficking, but also the one of placement or maintenance in a position of slavery and servitude.

- Art. 600. Placement or maintenance in a position of slavery or servitude .

- Art. 601. Trafficking in human beings.
- Art. 602. Buying and selling of slaves.
- Art 602ter. Aggravating circumstances

The current version of these articles is due to the following amending provisions which have been made in the last few years.

- Law n. 228 of 2003 (Measures against trafficking in human beings).
- Law n. 108 of 2010 (Ratification and execution of the Convention of the Council of Europe on the fight against trafficking in human beings agreed in Warsaw on 16 May 2005, as well as provision for the adaptation of the Italian legal system;
- Law n. 172 of 2012 (Ratification of the Convention of the Council of Europe of 2007 for the protection of minors from exploitation and sexual abuse, agreed in Lanzarote on 25 October 2007, as well as provisions for the adaptation of the Italian legal system. This latter norm, among other things, in Art. 4 provided for the doubling of the limitation period for offences provided for in Art.601 and 602 of the Criminal Code.

At European level, the Department for Equal Opportunities reinforced ever more the activity at international level for what concerns the interventions on trafficking in human beings. At European level it was proposer and lead body of the projects financed within the EU Programme Prevention of and fight against crime – Action Grants 2007:

- a) Transnational cross sectoral action for the fight against trafficking in human beings for labour exploitation. Identification and support to victims (FREED): implanted in close collaboration with ILO, International Labour Organisation, aimed at the analysis of the issue of migrants undeclared labour and slave-like labour, of existing best practices and activation of information and training processes of those operating in the sector.
- b) Development of a Transnational Referral mechanism for victims of trafficking among origin and destination countries (TRM-EU): realised in close collaboration with ICMPD of Wien (International Centre for Migration Policy Development) develops an institutional cooperation system among member states of the European Union and Third Countries, in order to grant an organic management of transnational cases of trafficking in human beings and share adequate standard for the protection of victims and the treatment of sensitive data.

The Department was also partner in two other projects presented within the same European programme:

- Romania, National Agency against the trafficking in human beings – ROBSI project aimed at targeted interventions for the reduction in the number of women trafficked from Romania and Bulgaria towards Italy and Spain and to awareness raising on the issue of trafficking for sexual exploitation purposes;
- Save the Children Italy: AGIRE project aimed at targeted interventions for the reinforcement of public – private cooperation in Italy, Greece and Romania, in the field of identifying and assisting minors who are victims or potential victims of trafficking.

Lastly, the Department was partner of a project financed within the *European Commission Thematic programme of cooperation with third countries in the areas of migration and asylum* (EuropeAid/126364/C/ACT/Multi), promoted by ILO. It is a biannual programme to reinforce cooperation between Nigeria and Italy on the identification of victims of trafficking, prosecution of traffickers and assistance to victims. Its research component – carried out both in Italy and in Nigeria – was coordinated by the Department and investigated on the migration flows of Nigerians towards Italy, with a specific focus on trafficking for labour exploitation purposes. There are also contributions aimed at consolidating the bilateral institutional cooperation: the creation of a multi-agency working group for

best practices promotion, training seminars for workers in the sector, awareness raising and training actions for groups at risk, assistance and integration interventions for victims once repatriated.

The Department cared particularly for bilateral cooperation relations with Romania, country of origin the majority of victims of trafficking living in Italy. Such cooperation led to the signing of a Protocol of Intents among the Department, the Ministry of Labour, the Italian Regions, and the Romanian Ministry of Labour, Family and Equal Opportunities, signed in Bucharest on 9 July 2008. The agreement provides for the cooperation and coordination of activities on the fight against trafficking in human beings and assistance to victims implemented with the resources of the European Social fund, 2007 - 2013 programming period.

## **2. Equal opportunities policies**

The Italian State is already very much involved in the field of employment, social policy and equal opportunities, in line with international standards, primarily, the International Labour Organization (ILO). In addition to the constitutional and ordinary legislation governing labour relations (including Legislative Decree 198/2006 Code on Equal Opportunities), the following questionnaire focuses mainly on mandatory and non-mandatory national instruments aimed at, or having the effect of, requiring companies to avoid discrimination in the workplace (and also requests whether the adequacy of these instruments is periodically assessed, filling in any gaps).

There are several mechanisms that the Italian State has put into place to acquire information from businesses to counteract or prevent forms of discrimination in the workplace.

In particular, with reference to gender discrimination in the workplace, the Code on Equal Opportunities (Legislative Decree n. 198, 11 April 2006) provides - in Article 46 - for the obligation for both public and private companies, with more than 100 employees, to submit every two years a detailed report on the staff situation. This report must highlight quantitative differences of gender in relation to recruitment, training, career promotion, level of employment, change of category or qualification, institutes such as mobility, redundancy fund, layoffs, early retirements and retirements and wages paid. The report must be sent to the Councillor for Equality responsible for the region- as well as to the enterprise union representatives. In case of failure to transmit, the Regional Directorate of Labour invites the employer to comply within a time limit of 60 days, after which it will apply administrative sanctions and, in severe cases, it can also come to the suspension of all contributory benefits if enjoyed by the company for a period of one year.

The employer can not ask to people with disabilities a job performance not compatible with their impairments and is also required to assure them the same salary and conditions provided for by law and by collective bargaining agreements for workers in general.

In order to ensure respect for the principle of equal treatment of people with disabilities, private and public employers are required to make reasonable adjustments, as defined by the UN Convention on the Rights of Persons with Disabilities, ratified under the **Law n.18 of 3 March 2009**, in the workplace, to ensure to persons with disabilities full equality with other workers (**Article 3**, paragraph 3 - *bis* of the **Legislative Decree of 9 July 2003 n. 216**).

The provision of reasonable adjustments by the employer is also provided for employees with disabilities working from home or with telecommuting arrangements, to whom the employer entrusts an amount of work likely to provide to such subjects a continuous occupation corresponding to normal working hours and to the one established by the national collective

agreement applied to employees of the company that employs the disabled person at home or through telecommuting (Article 4, paragraph 3, law 68/99)

To encourage the hiring of workers with disabilities, art. 13 of Law 68/99 grants private employers a contribution from the Fund for the Right to Work of Persons with Disabilities, for the partial lump-sum reimbursement of the expenses necessary for the transformation of the workplace to make it suitable to the operational capabilities of disabled people with a reduced capacity to work greater than 50% or for the setting up of telecommuting technologies or for the removal of architectural barriers restricting in any way the labour integration of the disabled person.

Moreover, for what concerns disabling and oncological conditions the following regulations are referred to: Law 151/2000, Art.12-bis, Art.33, para.6; Law 104/1992 Art.42, par. 5, Legislative Decree 151/2000, Art.6, par. 3 bis; Law 80/2006 and the best safeguards introduced in the labour contract renewals. It is highlighted that Italian regulations present some innovative aspects for contract types such as: leave of absence, financial support, safeguards for the rights of family members.

With reference to the collective dismissal procedures, it is useful to note that, in addition to providing a mandatory consultation procedure - to be carried out in the first instance with the trade unions and in the absence of an agreement by the competent territorial bodies - also aimed at identifying workers' selection criteria that take into account not only the business needs but also the family responsibilities and length of service, the Italian legislator (Article 5 para.2 Law 223/91) expressly requires that the employer can not dismiss a percentage of female workers higher than the percentage of female workers employed (with reference to the tasks performed by those being dismissed).

The rescission pursuant to Art. 4, paragraph 9 of the Law of 23 July 1991, n. 223 or dismissal for staff reduction and for just cause, exercised against an employee with a disability mandatorily placed can be voided if at the time of dismissal the number of remaining mandatorily placed workers employed is smaller than the reserved quota provided for by art. 3 of Law 68/99.

A tool that the Italian state identifies - as part of the legislation on health and safety in the workplace - to bring out or reduce the presence of discriminatory practices can be identified in the Risk Assessment Document. The Consolidated Act on Safety, Legislative Decree 81/2008, implements contents and objectives of the Risk Assessment Document with two important innovations. The first major innovation lies in the fact that the company is required to assess work-related stress risk (art.28 para.1 ), analyzing its labour organization and identifying a number of indicators useful to assess such risk (e.g. injury rates, sick leave, evolution of career development, decision-making autonomy of workers, interpersonal relationships, planning of tasks, schedules and shifts). The analysis of the business situation - through the indicators mentioned above - can be done through the writing of reports or investigations objective / subjective to work areas or homogeneous groups. A monitoring plan must also be provided for, with the relative check schedules. In this regard, it is noted that the National Institute for Insurance against Accidents at Work (INAIL) has developed a platform allowing companies to assess work-related stress, through checklist, questionnaires, and a guide for monitoring actions. The second major innovation lies in the obligation to carefully assess the risks for pregnant employees, and - of great importance for the prevention of discrimination in the workplace - also with regard to gender, age, race and contract type differences.

The Legislative Decree 81/2008 on the reorganization and reform of the rules about health and safety of workers on the workplace in force, provides in Article 6, paragraph 8, letter h the



opportunity to "valorise union agreements, and conduct and ethics codes, adopted on a voluntary basis, which, given the specificity of the productive sectors of reference, guide the behaviour of employers, also according to the principles of social responsibility, of employees and of all stakeholders for the purpose of improving the legislatively defined levels of protection". That is, they thus wanted to encourage those entrepreneurial behaviours, which, in addition to applying the rules of the industry, had something more and safeguarded workers' health and safety, but also the environment in which the industrial facility is located or provided a service to the community where the workplace is.

In such legislative framework, the Ministry of Labour and Social Policies instituted specific committees, set up pursuant art.6 of the Legislative Decree n.81/2008, among which a specific one for the devising of unique criteria identifying ethical and conduct codes requirements and trade unions agreements, as well as best practices in order to highlight the common traits, examining then a non exhaustive sample of subjects, to classify them according to the different legal status: public sector, private sector, third sector. Five macro-areas were identified: health protection and safety on the workplace, promotion of best practices at work, management of the organisation, protection for the environment, respect for human rights.

With reference to the compensations for discrimination proved both in conciliation than in Court, the Italian State allows the employer who acknowledges such discrimination (in conciliation) or who is condemned in Court, to compensate the worker with a sum given as compensation for the biological damage that often is caused to the discriminated subject. Such sum is exempt from tax and contributory burdens, without the possibility of applying the minimum threshold of exemption. The exemption from the contributory burden was stated also recently by INPS, with its circular n.40 of 22 February 2011.

With reference to the tax exemption, the compensation for biological damage – i.e. personal damage - is brought back to the concept of actual damage, whose situation has been recognized as exempt from taxation by the Supreme Court (Supreme Court - *Cassazione* - Session 9 December 2008, n.28887).

Under a general profile, it should be noted, moreover, that Art. 38 of the "Code for Equal Opportunities" shall identify the measures against discrimination. If discrimination is practiced, including in pay, the worker, or by proxy the trade unions, associations representing rights or interests affected or the Councillor for Equal Opportunities territorially competent can lodge an appeal. The labour court judge or the competent administrative tribunal requires compensation also for non-pecuniary damages, within the limits of the evidence provided, and with a motivated and immediately enforceable decree, orders the cessation of the unlawful conduct and the removal of its effects. Failure to comply with the decree may be punished with a pecuniary fine, and in serious cases with imprisonment of up to six months. In addition, in the event that the discriminatory conduct was practiced by those who enjoy the benefits granted by the state (economic contributions, tax or contributory breaks, etc.), or who hold contracts relating to the implementation of public works, upon recommendation of the Regional Offices of Labour, the granted benefit or the contract may be revoked. This type of penalties shall not apply in the case where both parties reached a solution of a conciliatory type.

Discipline on racial discrimination ruled by Law 654/1975 was integrated by the Consolidated Act on Immigration (Legislative Decree 286/98), in particular by Articles 43 and 44 containing respectively the punctual identification of discriminatory acts and the discipline of the civil action against discrimination.

Both quoted articles refer to discriminatory behaviours not only against non-EU nationals – targeted by great part of the provisions of the Consolidated Act – but also against Italian citizens, stateless persons and citizens of other EU member states living in Italy.

Article 43 of the Consolidated Act on Immigration considers as discriminatory those behaviours that, directly or indirectly, operate a distinction, an exclusion, a restriction or a preference on grounds of race, colour, nationality, ethnic origin, religion and having the intent or the effect of destroying or compromising the acknowledgement or the exercise, on a level playing field, of human rights and fundamental freedoms in the political, economic, social or cultural and in every other sector of public life.

In particular the following acts of discrimination in respect of belonging to a certain race, religion, ethnic group or nationality are identified:

- execution or omission of a unfairly discriminatory act towards a foreign citizen, by a public official or a person responsible for a public service or providers of services of use to the general public;
- imposition of more disadvantageous conditions or refusal to provide goods or services offered to the public;
- imposition of more disadvantageous conditions or refusal to provide access to employment, housing, education, training and to social and health services to regularly resident foreign nationals in Italy,
- actions or omissions aimed at preventing the exercise of a legitimate economic activity undertaken by the regularly resident foreign national in Italy
- acts or behaviours enacted by the employer or by his employees aimed at discriminated also indirectly the foreign worker.

The provision gives, moreover, an identification of the criteria which identify the particular cases of “indirect discrimination”: such is to be considered any prejudicial treatment following the adoption of criteria placing in greater proportion at a disadvantage workers of a certain race, ethnic or language group, having a certain religion or citizenship and which do not concern essential requirements for undertaking the working activity.

Article 44 of the Consolidated Act on Immigration establishes and regulates the civil action against discriminatory acts.

It provides for the possibility of instituting legal proceedings at the civil court with a formality-free appeal, aimed at obtaining a measure which may, also as a matter of urgency, remove the effects of discrimination and refund the damages incurred. The non-compliance with the measure is prosecutable under criminal law.

When collective discrimination happens in a work context, the appeal can be lodged also by the major trade unions, and businesses may incur in supplementary penalties.

Lastly, the institution by the Regions of information, legal support and observation centres on the trend of this phenomenon is provided for.

In the Italian legal system the general principle related to the equality of pay among men and women was provided for already in the general provisions of Art.1 of the Equal Opportunity Code, where it made explicit that equal treatment and opportunities among men and women must be ensured in all fields, including employment, work and retribution. More in details, Art.28 of the Code declined the principles provided for in the relevant European Directive (2006/54/CE) as follows: *“Any direct and indirect discrimination, concerning any aspect or condition of the retribution, for what concerns the same work or a work to whom is attributed equal value, is*

*forbidden*” reinforcing and making mandatory EU indications. Recently Law n.92 of the 28 June 2012 “*Provisions on the reform of the labour market*”, focused again on the need to promote equal pay between men and women providing for an actual monitoring system aimed at verifying the effects of the application of the said reform through the creation of a complex system of databases, offering from time to time elements of knowledge on the trend of female employment, noting in particular the correspondence between levels of pay and the principle of equal treatment. From the outcome of the monitoring, useful elements will be gathered for the implementation, if any – where necessary – of measures introduced by said reform.

With reference to the pension systems in force in Italy for women workers in the public sector, the recent national regulations (Law n.102/2009) increased women’s retirement age, making it equal to men’s, also through a gradual mechanism, to consent equal pension treatment. Equal treatment and the prohibition of pay discrimination stands also for the supplementary and collective pension funds. As for the economic and legal treatment laid down for women workers on maternity leave, Art.22 of the Legislative Decree n.151 of 2001 “*Consolidated Text on the Legal Provisions on the Protection and Support of Motherhood and Fatherhood*” provides for the payment of a daily allowance equal to 80% of the pay for all the duration of maternity leave. These periods are counted in all respects towards seniority in the career progression and for the purposes of calculating contributions for the achievement of pension requirements. Many contracts, including those decentralized, in order to avoid wage penalty for women workers on maternity leave, provide for the employer’s integration of the allowance up to reaching 100% of the daily wage.

The institutional figure responsible for the prevention of gender discrimination in the workplace is the Councillor for Equality, established at national, regional and provincial levels. In exercising her function, she holds the office of a public official as well as a guarantor for the protection of victims of gender discrimination. The Councillor for equality can use the tools of formal and informal conciliation and, if the dispute arisen is not resolved in the conciliation, may bring an individual or collective action in court, or may intervene *ad adiuvandum* in judicial proceedings if promoted by women workers. Among the many duties assigned by law to the Councillor for Equality is evident the one relating to the detection of situations of gender imbalance, access to employment, career promotion and vocational training, including vocational and career progression, working conditions including remuneration, as well as in collective supplementary pension schemes.

For the purpose of preventing discrimination Art. 50 - *bis* of the Equal Opportunity Code (Legislative Decree n. 198/2006 ) also states that collective agreements may provide for specific measures, including codes of conduct, guidelines, best practices, to prevent all forms of gender discrimination, in particular harassment and sexual harassment in the workplace, in the working conditions, as well as in training and professional development.

In the early '90s, an equal opportunities policies institutional path has begun, which introduces a corporate culture and therefore also the support to overcoming gender stereotypes, with Law n. 125/1991 and with the law instituting the Councillors for Equality - Law no. 196/2000 - giving them specific functions to promote gender policies against stereotypes and, again, with Law 215/1992 for female entrepreneurship and not least the Equal Opportunities Code, Legislative Decree 198/2006 and subsequent amendments.

Just recently, moreover, the National Councillor for Equality signed a strategic cooperation agreement with the Ministry of Education and already implemented 23 initiatives in schools; they are experimental information sessions at technical secondary schools, aimed at teachers and

students, to promote within secondary schools the knowledge of the rules, practices and tools in use in the labour world valuable for a better job placement, also oriented towards new jobs .

Furthermore it is not only of relevance the transposition of the Directive of 27 March 1997, but also subsequently in 2008, the 2020 Italy Plan of the Italian Government with Actions aimed at promoting the allocation of powers and responsibilities to women, devoting sections to the strategic goal of "*training in gender culture*" and "*in gender policies*" and noting the objective to insert in the curriculum the issue of teacher training or to implement training for gender respect as well as declaring the will of including gender issues in broader contexts, such as respect for differences, mediation, policies to support female entrepreneurship.

Thanks to Law n. 120 of 12 August 2011, the Italian State guarantees more the presence of women in the boards of directors of companies, in other corporate bodies or in executive roles in general.

#### **4. POLICIES FOR AFFILIATED UNDERTAKINGS AND FOR ECONOMICAL OPERATORS IN PRIVATIZED SECTORS**

This section constitutes the contribution of the Ministry of the Economy and Finances (MEF).

Enterprises concessionaries of public services - both companies owned by the State and those involved in the privatized sectors - have been shown in recent years a particular attention to the concept of corporate social responsibility, i.e. the integration of social and environmental concerns in their daily decisions, of an industrial or commercial nature.

As evidence of this, it is significant the diffusion of the initiative on the preparation of the Sustainability Report document, with the aim to give an account to the stakeholders, namely the stakeholders that contribute to support the economic activity, of the performances achieved by the Company in terms of social responsibility and sustainability.

The provision of public services, especially for what concerns rules regulating public relations, is entrusted to the concession act, integrating the service contract – stipulated between the controlling Administration and the subject implementing the public services – including specific provisions to safeguard the users themselves. In this context, the Service Charters represent one of the instruments used by the legislator to extend to the area of public services those safeguard mechanisms reserved to the consumer and the service users.

To that respect, Art.8 of the legislative decree n.1/2012 (the so-called liberalisation decree) valorises the Service Charters. It is a very innovative provision and certainly very significant in order to protect consumers and public service users' rights, as well as ensuring quality, universality, and cheapness of the relevant services. In particular, the Charters in question are mandatorily required to contain the definition of constitutionally granted personal rights and any other right, including compensation rights, users can demand from the service providers.

Basically, the quoted Art.8 of the legislative decree n.1/2012 sets forth clearly the rigorously binding character of the Service Charters, where it indicates that those are needed to define the obligations service providers must fulfil. Therefore, it appears manifest that such charter cannot be a collection of style or generic provisions and empty marketing formulas. It is a source of binding rules that need to be articulated in a clear and precise manner, and who place upon the involved subjects obligations and sanctions in case of non-compliance and grant rights to the safeguarded individuals.

As far as the protection of workers' rights, it is to be noted that the legislative decree n.81 and n.106, respectively of year 2008 and 2009, introduced important amendments to the discipline relating to the health and safety on the workplace (i.e. fire prevention).

Moreover, in such a perspective, Art.14 of the legislative decree n.58/2011 becomes especially relevant – it lays down provisions for the complete liberalization of the internal market of postal services in the European Union, in implementation of the Directive 2008/6/CE – according to which the providers of postal services must respect obligations on work conditions provided for by the national legislation and by the collective contract bargaining of reference.

The norm in question aims at promoting, and therefore at rendering more possible, the implementation of a sector contract, creating a general and homogeneous framework of rules and fundamental safeguards. The said norm, then, aims at safeguarding needs essential for the working conditions in the postal delivery sector, explicitly recalling the reference collective labour

agreements, preventing, at the same time, any enterprise, from appealing to the cost of labour to compete on the market (*social dumping*).

As far as respect for the environment, it is to be noted that companies in which a stake is held by MEF (i.e. ANAS– state owned national road company, and *Ferrovie dello Stato* – national railways) perform also activities having a close connection with the environment.

In particular, said companies are called to satisfy mobility needs in the most efficient and sustainable manner, interfacing, then, in a direct way with the environmental matrix.

The principle of sustainable development was introduced in our legal system by legislative decree 152/2006, laying down norms on environmental issues, which in Art.3-quarter, par. 1, recites “*Every activity...relevant pursuant the present code must conform to the principle of sustainable development*”. Such concept it is also recalled by the Presidential Decree n.207/2010 “Regulation of public works” which, in Art.15, recites “...the planning is aligned to principles of environmental sustainability..” and in Art.14, par.1, letter e) states “*studies for the projects must allow the preventive evaluation of environmental sustainability..*”

The importance of the development and maintenance of road and rail infrastructures, which is an essential element for the nation’s development, implies, though, many negative impacts on the environment, deriving from the physical presence of infrastructures on the territory such as, for example, land usage, atmospheric emissions, refuse production, sound pollution, and from aspects strictly linked to the construction process, including soil erosion, shallow water pollution due to the prime matters used in construction, the deviation of water flows, deforestation. Such impacts can have both short term and long term effects.

In a sustainable development perspective, all impacts must be carefully identified and evaluated before the interventions, in order to maximize the effects on the environment and on the human population. Moreover, such effects must be taken into account constantly and, where possible, contained and mitigated.

The VIA (Environmental Impact Procedure) procedure is based on the principle of preventive action, according to which the best approach for works implementation is preventing the negative impacts linked to the realisation of the project instead than fighting later the effects. The VIA is, therefore, conceived to give information on environmental consequences of an action before the decision is adopted and represents a technical and administrative procedure aimed at the formulation of an admissibility judgement on the very consequences on the global environment, intended as the full set of human activities and natural resources.

Basically, in line with what provided for in the regulations in force, the VIA identifies significant impacts on the infrastructure on the population, on the different environmental fields, on biodiversity, on climate and landscape, including protected areas. In such respect, with the aim of operating practically in the direction of a responsible management of the activities, environmental impact reduction, pollution prevention and continuous improvement of their own environmental performances, ANAS initiated in 2011 the implementation project of an Environmental Management System compliant to the UNI EN ISO 1401 norm, with the aim of identifying, analysing, preventing and controlling the environmental effects of their activities.

The Italian National railways (Ferrovie dello Stato) recently informed that “In the course of 2011 more than 25 million people travelled on the *Frecciarossa* and *Frecciargento* high speed trains, allowing in a single year, to reduce by over 600 thousands tons the emission of CO<sub>2</sub> in the atmosphere”.

Ferrovie dello Stato received in the 2001 the *Oscar di bilancio* (financial statement award) in the category “Large-size enterprises and not-listed enterprises” for the *Annual Report 2010* made of the consolidated financial statements of the Group, the individual financial statement of the Group leader and by the **Sustainability Report**.

It is an important recognition for a Company where the Ministry of the Economy and Finance holds a stake equal to 100%, for the quality of reporting also on the front of sustainability.

There are various norms, in such respect, granting adequate systems of safety and social security arrangements as a result of privatisation processes of public enterprises.

The recent legislative decree n.134/2008 on the complete privatization of Alitalia, provides for specific support measures for the redundant personnel for seven years; moreover, the same decree sets out that the subsidy for workers’ redundancy and labour mobility allowance can be given for a maximum period of, respectively, 48 and 36 months.

Also in the transformation of the former public undertaking (*ente pubblico economico*) Ferrovie dello Stato into a joint stock company (*società per azioni*), accomplished pursuant the CIPE Resolution of the 12 June 1992, the State granted specific support measures to redundant personnel, including the possibility of transferring to positions within the Public Administration.

## **5. POLICIES FOR MULTINATIONAL ENTERPRISES, FOR FOREIGN DIRECT INVESTMENTS AND FOR EXPORT CREDIT**

This section constitutes the contribution of the Ministry of Economic Development – MiSE (Department for Business and Internationalisation). The Foreign Affairs Department is responsible together with the Directorate General of the MiSE for the internationalisation policies and the promotion of exchanges, which is Head of Delegation, and the Ministry of Economy and Finances for the thematic area concerning credit to export.

### **1. Promotion of the OECD Guidelines for Multinational Enterprises on responsible business conduct**

The OECD Guidelines destined to Multinational Enterprises, integral part of the OECD Declaration on International Investments, are the only intergovernmental and exhaustive code of conduct on responsible business conduct in international contexts. They commit the their signatories governments to implement them and, as far as Italy is concerned, the competence is institutionally entrusted to the Ministry of Economic Development, Directorate General for Industrial Policy and Competitiveness – NCP OECD.

The Guidelines state principles and norms, to be applied on a voluntary basis, with the objective of promoting a responsible business conduct in a global context, in accordance with legislation and international regulations in force. Governments are committed to promote a body of recommendations aimed at multinational enterprises by the same signatory governments - and, although within the limits of their capacity, to SMEs – operating from or in their own jurisdiction and covering transversally the different fields of the business world: from transparency and publication of information to human rights; from work and industrial relations, to the environment up until the fight to corruption, consumer rights, science and technology, competition and tax regimes.

In particular, a new chapter of the Guidelines is focused on the respect for human rights by enterprises, chapter inspired by the UN Guiding Principles.

Therefore the NCP will promote within enterprises the implementation of the second pillar of the UNGPs.

The Guidelines are based both on the commitment of the States in promoting them and on the responsibility of the enterprises in applying them as well as on the cooperation among governments, enterprises, stakeholders in their implementation.

In accordance with the institutional tasks under its charge, the NCP realised, in the course of the years, many activities linked also to the human rights issue, which, even if not organised in a dedicated chapter, was already present in the Guidelines before the 2011 review, implementing activities of awareness-raising, training and devising support instruments for enterprises (for further information please see the website <http://pcnitalia.sviluppoeconomico.gov.it/it/>)

In particular the MiSE NCP devoted itself to collaboration with the agencies for the internationalisation (SIMEST, SACE, INVITALIA and ACE) to promote the respect of the principles of corporate social responsibility within the Italian enterprises investing abroad, targeting public agencies. Agencies undertook the commitment of implementing different typologies of activity: informational, training, and relevant to the procedures of services/support provision to applicant enterprises which voluntarily adhere to the Guidelines. The foreign dimension being of special relevance for the implementation of human rights.



Recently special importance was given to the issue of due diligence in the provision chain, a central issue of the Guidelines updated in the year 2011, in line with the trends of the UN. It is the main instrument recommended to prevent and mitigate impacts of multinational enterprise action linked – in virtue of the transformation affecting the production processes – to the social and environmental effects deriving from the operation, products and services of the enterprises in the “business relation”, therefore, in first instance, in the provision chain but also in the relations with partners or other subjects directly linked to the enterprise actions. This is a crucial shift in the approach since extends to the corporate responsibility sphere, without prejudice to individual responsibility, going also towards the contrast to the dumping operations carried out through the outsourcing of production or through intermediations of various kind.

The due diligence in the provision chain and the multi-stakeholder involvement in the OECD Guidelines, are fundamental to face the sector challenges to the respect of human rights. To that extent, the MiSE – NCP devised, first of all, a Guide for SMEs, to help them to adopt or to be included, on demand from the large enterprises, in the due diligence in the provision chain. Sector approaches were then developed whose recent initiatives are highlighted below.

In implementation of the Memorandum of Understanding - MoU signed by MiSE – *Federorafi* (National Federation of Jewellery Manufacturers) and the RJC - Responsible Jewellery Council in 2012 a field survey was promoted among the enterprises in the sector, training activities were carried out and a practical Guide was given to SMEs to conform to the RJC international standard. Of particular relevance for human rights was the action of dissemination of the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas - Supplement on Gold*. In this frame, always in implementation of the quoted MoU, in 2014 the focus will be on the traceability of the prime matter. *Federorafi* activated a working group which will draft, jointly with MiSE, an intervention model. A SME of the sector will be identified able to represent an Italian *Case Study*.

The NCP participated to different awareness-raising initiatives on the issue at international level, including, recently, the LBMA/LPPM Precious Metals Conference 2013 in Rome (29 September- 1 October) and the Webinar OECD “Adherents’ Webinar/OECD Guidance”, to present the Italian experience to the other international partners.

For the textile sector, after the Rana Plaza accident in Bangladesh, which caused the death of over 1000 workers, the NCPs of the Governments adhering to the Guidelines signed a joint declaration to promote effective institutional initiatives, in liaison with the OECD, and initiatives targeting enterprises, to grant workers’ safety, improving their working conditions and ensure the respect for human rights.

Thus premised, the Italian NCP agreed with its own Advisory Committee, made of all the relevant Administrations as well as by the stakeholders (organisations, trade unions, consumer representation and banking system), an Action plan which implies two action lines: a) the involvement of textile enterprises operating at various title in Bangladesh, to understand their position in relation to the issues of the OECD Guidelines and due diligence in the provision chain, as well as the offer of training and accompanying actions for the implementation of international standards; b) an analysis of the provision chain in the textile sector starting from the experience of the involved enterprises, aimed at identifying the difficulties found in the provision chains in the textile sector with reference to social and environmental issues and the identification of problem resolution examples showing realistic practices with respect to the enterprises’ operational context for risk management, audit method and content, etc. The analysis will concern also subjects

different from enterprises such as audit companies, trade intermediaries, etc. The aim is to arrive to the possible preparation of recommendations for the textile sector by the NCP and dissemination of best practices.

More in general, the promotion of the frame work “business and human rights”, included in the Guidelines was dealt with within the Conference “Myanmar the new Asian Frontier. Diplomacy for Sustainable Growth” promoted by the Ministry for Economic Development and by the Ministry of Foreign Affairs in collaboration with OECD and Asia Observatory. The Conference focused on political and economical cooperation between the two countries with the participation of the respective Foreign Ministers and the importance for a stable, sustainable and inclusive growth was underlined. The OECD presented the project which is carrying out with the Italian NCP for the promotion of the Guidelines in Myanmar which will see, in the course of the year 2014, the implementation of two workshops *in loco*, in agreement with all the institutional subjects, the stakeholders and human rights workers.

In the frame work of promoting dialogue between enterprises and workers the NCP will spread the knowledge of innovative instruments such as the International Framework Agreements (IFAs) and the European Works Councils (CAE).

Last but not least, the NCP commissioned a study to the *Scuola Superiore Sant’Anna* of Pisa (Sant’Anna School of Advanced Studies in Pisa) titled “Businesses and Human Rights” aimed at analysing the Italian legal framework in the light of the UNGPs with the double aim of drafting recommendations for future action to benefit the Government and, at the same time, providing business with a knowledge tool to be able to adopt a conduct adhering to international human rights protection standards.

## 2. Direct foreign investments

This section constitutes the contribution of the Directorate General for internationalisation policies and the promotion of exchanges at MiSe.

Italy does not have a contract system of foreign investments but foreign enterprises investing in our country are requested to apply Italian regulations. The Italian Constitution, in Art.41 expressly envisages that private economic initiative can not be performed in contrast with social utility or in such a way to bring damage to safety, liberty, human dignity. The labour, social security, health and environment laws constitute a solid body of legislation within which the foreign investment can be framed without constituting a risk for human rights. It is nevertheless necessary to monitor that in a situation of great economic difficulty the implementation of such legislation may be relaxed to favour foreign investment, allowing exceptions maybe not accessible to local enterprises.

There are in Italy facilities/institutions called to ensure the respect for the implementation of regulations which could be reinforced if necessary. To facilitate the respect of our legislation by foreign investors, especially if more advanced than in their country of origin, the offices deputed to support foreign enterprises interested in establishing themselves or expand in Italy, could make available to investors a “due diligence helpdesk” offering free tutoring services on compliance to national legislation for all the duration of the investment and not only in the start-up phase.

A further step could be the provision of a preferential mechanism for those investors who, operating in a global context, respect human rights in all of the establishments involved in the production chain both in the Italian headquarters object of the IDE, both in the establishments abroad, with the result of reducing advantages deriving from the so-called social and environmental dumping.

It is to be taken into account that the conversion draft law of legislation decree 18 October 2012, n.179 laying down “Further urgent measures for the growth of the Country”, in Art. 35 provided for the institution of the Italy Desk – helpdesk to attract foreign investments as a reference point for the foreign investor, with liaison functions among the activities implemented by the ICE – Agency and by Invitalia - National Agency for attracting foreign investments and business development, with the involvement of Regions.

As a member of the United Nations, World Bank, International Labour Organisation, the Italian State adheres to many conventions aimed at regulating the general principles regarding human, social and environmental rights which cannot be circumscribed only to international relationships but must be applied also within our country. Consequently the provisions of some conventions and international recommendations can be used at best to regulate the way in which the investments coming from abroad can be received. For example the Guiding Principles on Business and Human Rights could find a place beside our legislation in force to measure the quality of the investments implemented in Italy by foreign enterprises and countries.

States parties to the Arrangement on Officially Supported Export Credit and Credit Guarantees recognise the obligation of protecting human rights and fundamental freedom and the need of protecting the environment and health. The OECD promoted in this field the Common Approaches, in whose introductory parts specific reference is made to the United Nations Guiding Principles on Business and Human Rights. The Common Approaches are a set of not legally binding, but of great ethic strength, recommendations, that must be applied to all financial transactions carried out by export credit agencies. The Italian export credit and enterprise support agencies too, SACE and SIMEST, carry out social and environmental impact evaluations according to such rules before providing any financial service.

Other reference documents are the Performance Standards of the International Finance Corporation, the Environmental Health and Safety Guidelines and the Safeguard Policies of the World Bank.

In order to evolve from best-endeavour and inspiration for action to more practical commitments, the statements contained in these documents must be accompanied by procedures of due diligence and reporting.

To that end, the “Code of Conduct” adopted by SIMEST on 12 May 2012 is worthy of mention. In the Code, valid both in Italy and abroad, it states “SIMEST supports and respect human rights, in compliance with the UN Universal Declaration on Human Rights. Relationships with stakeholders are, therefore, characterized by the observance of national and international laws and regulations, with respect to the legitimate interests of the latter. SIMEST promotes the application of principles, values and regulations in this Code, also taking into account the legal, social, economic and cultural system of reference, through the insertion in contractual models and schemes of provisions *ad hoc* which establish acceptance, by third parties with whom it entertains relationship, of observing the provisions of the Code, within their activities and organisation. In such context, SIMEST undertakes to make the enterprises, where it holds a minority stake adopt, if possible, Codes of Conduct whose principles and values are inspired, or in any case do not contrast, with those of this Code. The cultural, social and economic specificities of the different countries, where said companies where a stake is held directly or indirectly operate, do not justify in any case conducts not in line with the ethical principles of reference”.

To date, specific provisions on the protection of human rights were not introduced in the Italian Bilateral Investment Treaties, leaving such subject to be regulated by the laws of the country where the investment is being made. In future, since the competence to sign such contracts was transferred

to the European Union, the latter could recall in the introductory parts Art.3 and 21 of the Lisbon Treaty, being a framework within which human rights protection can be implemented.

Italy did not expressly take a stand on this, because the question had not yet been placed on the agenda by the EU, but she will definitely be in favour. The provisions on the issue could be translated by the provisions on non economic values, to be found also in the most recent Association Agreements concluded by the EU and in some commercial agreements. For example the Association Agreement with Central America, concluded and being ratified, includes various provisions on human rights and sustainable development: part 1, part 2, part 3 (title I, III), part 4 (title VIII).

The trade agreement EU/Colombia-Peru, under ratification by the European Parliament, can also be quoted from the very Art. 1 as well as in the articles on the protection of biodiversity and traditional knowledge and those on trade and sustainable development. To comment the draft law of 20 April 2011 “Provisions concerning Foreign Investments in Italy” is to be noted that Articles 3 and 21 of the TEU could be recalled to regulate the access to the market in certain national and environmental security strategic sectors and that Article 163 of the Association Agreement EU-AL exempts in fact from the national regime in the right of establishment in some sectors.

If the risk of a serious violation to human rights by a foreign enterprise operating on the Italian territory became manifest, it would still be possible to appeal to Art.43 of the Constitution, according to which the law can reserve from the beginning or transfer (...) enterprises or categories of enterprises which (...) have the nature of primary general interest.

### **3. Export credit**

In the past few years, the attention and sensitivity on the issue of environmental protection and social consequences of economical initiatives have notably increased.

OECD countries governments, including Italy in particular, recognising the importance both of identifying and of evaluating the environmental impact of projects and investments in capital goods and services, have formally approved, in 2003 the “Common Approaches on Environment and Officially Supported Export Credits”. The OECD “Common Approaches” have taken on the form an OECD Recommendation. These recommendations are not legally binding, but practice gives them great persuasion strength representing the political will of the member States. There is a great expectation that member States adopt the initiatives apt to favour their implementation. Subsequently, the governments of the OECD member States, the countries benefitting from export credits, as well as advisors, representatives of businesses, trade unions and civil society, stipulated two Common Approaches, respectively in 2007 and in July 2012. In comparison with the previous ones, the last version of the “Common Approaches” regulated two new sectors (for example: respect for international standards and environmental regulations of the host country; introduction of a specific regulations for the most sensitive projects). The most important innovation is in the social field. Up until now the “Common Approaches” disciplined impact on the indigenous groups or vulnerable people’s settlements and cultural heritage. The new recommendation provides for the need of including explicit minimum provisions on human rights, introducing explicit references to human rights also at the level of international regulations. In particular the Preamble states: “Recognising that Members have existing obligations to protect human rights and fundamental freedoms, and that business enterprises have the responsibility to respect human rights, as outlined in the ‘Guiding Principles on Business and Human Rights: Implementing the United Nations

“Protect, Respect and Remedy” Framework’ endorsed unanimously by the United Nations Human Rights Council on 16 June 2011” and below the body of the text says Members should encourage protection and respect for human rights, in particular in situations where the potential impacts deriving from the implementation of existing investment projects or operations can present a risk for human rights. In conclusion: Members shall give further consideration to the issue of human rights, including with regard to relevant standards, due diligence tools and other implementation issues, with the aim of reviewing how project-related human rights impacts are being addressed and/or might be further addressed in relation to the provision of officially supported export credits. Members shall report to the ECG on their work not later than two years from the date of adoption of this Recommendation.” Therefore in the next two years there will be a review on how the human rights-related investment projects will be taken into consideration in the criteria of export credit concession.

Italy is at the forefront in this process. The OECD Human Rights (HR) Sub-Group is actually made of: Australia, Austria, Canada, France, Finland, Germany, Italy (Italian Ministry of Foreign Affairs), Norway, Sweden, Switzerland, United Kingdom, United States of America. One of the Sub-Group aims is to assist the OECD Export Credit Group on the human rights issue, offering in particular an overview of the key concepts on “human rights and business” applicable to export credit agencies. The group identified the following main thematic areas: a) identification of relevant human rights for export credit agencies and their clients; b) comparing important issues of rights governed by IFC and World Bank standards; c) identifying due diligence standards of human rights related to the Guiding Principles.

## 6. POLICIES ON PUBLIC PROCUREMENT

This section constitutes the contribution of the Ministry for Infrastructure and Transport, the Ministry of Labour and Social Policy and the Ministry for the Environment, Land and Sea.

The issue of the promotion of human rights is not specifically covered within the Community rules governing public procurement, but, rather, it is underlying the same *ratio legis*.

In fact, on public procurement, Directives 2004/18/EC and 2204/17/CE, and transposing them, the national legislation (Legislative Decree no. N. 163/06 and Presidential Decree no. 207/10) are certainly aimed, among other things, at promoting respect for human rights.

European legislation with the EU Directive 2204/17/CE wanted to include in the introduction that employment and working conditions are key elements in guaranteeing equal opportunities for all and contribute to integration in society. But the same directive provides not only for the application of the legislation on health and safety in the workplace, but also for the creation of sheltered workshops and sheltered employment programs that contribute efficiently towards the integration or reintegration of people with disabilities in the job market. However, such workshops might not be able to obtain contracts under normal conditions of competition. It is therefore appropriate to provide that Member States may reserve participation in procedures for the award of public contracts to such workshops or reserve performance of contracts to the context of sheltered employment programs.

In addition, the participation of small and medium-sized enterprises to public procurement procedures wanted to be encouraged through training on the procedures of contracting and control of the supply chain relationship.

The above mentioned EU Directive 2004/17/CE specified that “Contract performance conditions are compatible with this Directive provided that they are not directly or indirectly discriminatory and are indicated in the contract notice or in the contract documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment or the protection of the environment. For instance, mention may be made, amongst other things, of the requirements - applicable during performance of the contract - to recruit long-term job-seekers or to implement training measures for the unemployed or young persons, to comply in substance with the provisions of the basic International Labour Organisation (ILO) Conventions, assuming that such provisions have not been implemented in national law, and to recruit more handicapped persons than are required under national legislation”.

EU Directive 2204/18/CE, endorsing the previous Directive, has meant to extend the issue of public contracts also to public service contracts and required for their concession that contracting authorities insert the environmental and eco-sustainability among the evaluation criteria, as well as the respect for free competition and fight against corruption.

In such context where the public contract is aimed at people with disabilities the Ministry of Labour and Social Policies adhered to the European Network for the Corporate Social Responsibility and Disability (CSR+ D) and initiated a work still in progress for the integration of environmental and/or social criteria linked to Social Responsibility within the procedures for purchase and/or contract of works and services. Therefore, Guidelines for the insertion of social criteria, connected to disability, in the procedure for public purchase and contract are being drawn up.

Specifically, Art. 38 of the Legislative Decree 163/06 – Code of Public Contracts – para.1 lett. c), e), i), l) provides for, respectively, the exclusion from participation to selection procedures to a candidate who:

- c) has been convicted by a judgment which has the force of *res judicata*, or irrevocably convicted of a criminal offence, or has been passed a judgment imposing the penalty/sanction requested (by the parties), pursuant article 444 of Criminal Procedure Code, for serious offences against the State or the Community concerning his professional conduct; the conviction by a judgment which has the force of *res judicata*, for one or more offences of involvement in a criminal organisation, corruption, fraud, money laundering, as defined in the EU acts quoted at Art.45, para.1, Directive CE 2004/18 is in any case cause for exclusion;
- has committed serious infringements, duly verified, to the norms on safety and to any other obligation deriving from the labour relations;
- has committed serious violations, definitively proven, to obligations relating to the payment of social security contributions in accordance with the legal provisions of the Italian legislation or those of the country in which he is established;
- does not comply to the norms disciplining the right to work of disabled people as stated in the Law n.68 of 12 March 1999.

In relation to letter e) reference is made to the provisions in the Legislative Decree n.81/2008 “Implementation of Art.1 of Law n.123 of 3 August 2007, on safeguarding health and safety on the workplace”. Indeed the Consolidated Act on Safety in Art.6 provides for, in the establishment of the Permanent Commission in charge pursuant para.8 lett. g), defining the qualification of enterprises also pursuant EU Directives 2004/18/CE and 2204/17/CE, combining the provisions in Art. 6 and 27, as well art. 30 of Legislative Decree 81/2008.

In relation to letter l) in general, in recalling Law n. 68/1999 laying down “*Norms for the right to work of people with disabilities*”, without doubt it can be stated that the norm *de qua* obliges to the respect of the discipline on the right to work of people with disabilities and finds its *ratio* in the guarantee for the public administration of contracting with an economic operator complying with the requirements safeguarding people with disabilities. It will be, then, for the administrations, at the verification of the requirements, to carry out the necessary checks at the provincial services exercising job placement functions.. The provision herein reported, as well as safeguarding “vulnerable” categories, has also a clear content of public order and its application does not depend from the insertion, of the obligation here provided for, among the specific terms of each competition, with the effect that, even if the call does not make any reference to the obligations deriving from the legislative norm above, the call must be intended as integrated, meaning that the candidate violating such prescriptions cannot be admitted to the selection procedure.

Let. i) refers to the Unified Tax Compliance Certificate – D.U.R.C., whose compliance, following the coming into force of the discipline set out in Art. 2 of the Legislative Decree n.210 of 25 September 2002, (converted in law, with modifications, by Law n.266 of 22 November 2002) and 3, para.8, lett. b-*bis* of the Legislative Decree n.494 of 14 August 1996 (see now the Legislative Decree n.81 9 April 2008) has become compulsory, since it states, at the same time, the position of an economic operator for what concerns the INPS and INAIL obligations, as well as the construction workers’ social security fund, verified on the basis of the relevant respective

normative. To that respect, the Decree of 24 October 2007 of the Ministry of Labour and Social Security is recalled, which, in disciplining the modalities for the issuance and the contents of the D.U.R.C., defines its evaluation parameters, establishing a threshold for the “seriousness” of the non-compliance and eliminating the margins of discretion of the contracting authorities regarding the verification activity demanded of the latter on the existence of the requirement. In particular Art.8, para.3 of the Decree *de quo*, envisages that, only for the aims of participation to tender processes, a non serious deviation between the due sums and the paid sums, with reference to each social security institution and each construction workers’ fund, does not preclude the issuance of the D.U.R.C. Non-serious deviation is considered the one equal or inferior to 5% between due sums and paid sums with reference to each period of pay or contributions or, in any case, a deviation less than 100.00 Euro – without prejudice to the obligation of payment of said sum within thirty days after the D.U.R.C. has been issued.

Moreover, Law 98 of 2013, the so called “*Decreto del fare*”, simplified further the procedures, providing for the D.U.R.C. to be drafted, to award the contract, by whom has decision-making authority and the authority to incur in expenses related to the management of the contract in question.

In such context, article 26, para.3 *bis* of the Legislative Decree 81/2008, textually provides that “in cases where the contracts is awarded by subjects specified in Art.3, para.34, of the Legislative Decree 12 April 2006, n.163, or in all cases where the employer does not coincide with the contracting authority, the subject awarding the contract drafts the Assessment of risks generated by interference between activities conducted simultaneously in the workplace (D.U.V.R.I.) laying down an evaluation of the standard risks relevant to the activity which could potentially derive from the implementation of the contract. The subject where the contract must be carried out, before the start of the work, integrates the said document referring it to the specific risks generated by interference present in the places where the contract will be carried out; the integration, signed for acceptance by the contractor, integrates the contractual acts”.

The provisions on workers’ protections are included also in the Presidential Decree n. 207/100 – implementing rules for the Code of Contracts – and in particular at Art. 4, 5 and 6.

*Art. 4 para. 1 expressly states that “For contracts relevant to works, services and supply, the contractor, the sub contractor and those who are subcontracted and putting out to piecework, laid down in art.118, para.8, last line, of the code must observe the norms and prescriptions of national and local collective labour agreements stipulated between the comparatively more representative social parties signatories of national collective labour agreements, the laws and regulations on workers’ protection, health, insurance, assistance, contributions and pay.”*

*The subsequent para. 2 disposes that “In the hypothesis envisaged by art.6, paragraphs 3 and 4, in the case that the person in charge of the proceeding of the Unified Tax Compliance Certificate reporting a tax non compliance by one or more subjects employed in the performance of the contract, the same retains from the payment certificate the sum corresponding to the non compliance. The payment of what due for the non compliances verified through the Unified Tax Compliance Certificate is disposed by subjects laid down in art.3, para.1, letter b), directly to the social security authorities, included, in works, the construction workers’ security fund.”*

Therefore, the substitutive intervention of the contracting authority is envisaged to protect workers in case of contributory non-compliance of the contractor and subcontractor.



Art. 5 of the said implementing rules, to which reference should be made, governs also the substitutive intervention of the contracting authority in case of non-compliance in pay of the contractor and subcontractor.

Lastly, Art.6 governs the tax compliance (D.U.R.C.) referred to all public contracts, being works contracts, service contracts or supply contracts.

In particular, pursuant para 3 to the said Art.6 the D.U.R.C. is due:

- a) for the verification of the declaration in place relevant to the requirement set out in art.38, para.1, letter i), of the code;
- b) for the adjudication of the contract;
- c) for the stipulation of the contract;
- d) for the payment of the works in progress or of the activities related to services and supply;
- e) for the Test Certificate, the certification of correct completion, the certificate of verification of conformity, the statement of correct completion, and the payment of the final balance.

It is necessary to recall that, pursuant to the subsequent para.8, if the contractor gets issued a negative D.U.R.C. two times in a row, the person in charge of the proceedings, once acquired a detailed report prepared by the contractor or by the execution director, proposes, pursuant to art.135, para.1 of the Code of contracts, the termination of the contract, after notifying the allegations and setting out a time-limit of not less than fifteen days for the submission of the counter-arguments. Where the obtainment of the negative Unified Tax Compliance Certificate for two times in a row concerns the subcontractor, the contracting authority rules, after notifying the allegations and setting out a time-limit of not less than fifteen days for the submission of the counter-arguments, the revocation of the authorization of the subcontract, contemporaneously reporting it to the Observatory for the insertion in the computerised record of the Italian Supervisory Authority for Public Contracts.

Lastly, for due information, it is stressed that in this compromise text of the proposal for the Directive of the European Parliament and of the Council on public procurement (which will substitute Directive 2004/18/CE) – currently under negotiation in the trilogue – provision, as well as reference to the ILO Conventions, as been made for a ‘new’ cause for exclusion from participation to selection procedures for the award of public works contracts, public service contracts and public supply contracts in the case when the economic operator is involved in *“trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims”*.

On the promotion of human rights, moreover, the provisions included in the Code of Public Contracts are referred to, which ensure to subjects who considered themselves wronged, the *“respect for the right to an effective remedy and to a fair hearing”* (Considering art.36 of the Directive 2007/66/EC) as well as the respect of the art.47 of the Charter of Fundamental Rights of the European Union:

*“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.*

*Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.*

*Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.”*

With reference to that, it is to be stressed that in our legal system, the “Directive on Appeals” – Directive 2007/66 – which places the principles of concentration and speed of the proceedings, and, in this general frame, disciplines the fate of the contract – received with Legislative Decree n.53 of 20 March 2010, in implementation of the delegation contained in Law n.88 of 7 July 2009 (Community Law 2008), made some amendments to the Code of Public Contracts. Subsequently, with the approval of the Legislative Decree n.104 of the 2 July 2010 (Code of the Administrative procedure), part of the discipline was included within (articles from 120 to 125), leaving in the *corpus iuris* of the Legislative Decree n. 163/06 only some norms having procedural relevance (*standstill* and voluntary indicative notice – art. 11, in particular para.10, 10-bis, 10-ter, 11 and 12 – and art.79-bis, which are referred to).

In the new litigation system on public contracts, anchored to deferral time-limits for the conclusion of the contract and the need for a swift definition of the legal dispute, the prompt and exhaustive knowledge ability of the tender acts takes on particular importance in view of the activation of pre-litigation and litigation instruments.

On one hand, from the communication to all tenderers of the definite award of the contract, the standstill period for the conclusion of the contract by the contracting authority begins to run. On the other hand, from the time of the receipt by any individual tenderer of the definite award, begins to run, for everyone, the period for the purposes of bringing legal proceedings, and the further legal suspension of the time-limit for the conclusion of the contract is linked to the bringing of legal proceedings, up to the judgement of the Court.

Moreover, the EC Directive imposed an integration of the content of the award communication, since it must include also the deferral period for the conclusion of the contract, and communication must be given of the conclusion of the contract.

Therefore, to protect enterprises (and their rights), art.79 of the Code of Contracts, to which reference is made, was amended according to four main principles:

- a) enlargement of the recipients of the award communication;
- b) enlargement of the acts and deeds set out in the communication;
- c) detailed indication of the form, modalities and content of the communications;
- d) imposition to tenderers of the burden of indicating the exact address, also in electronic format, for the receipt of the communication concerning the tender.

The “Action Plan on sustainable consumption in the Public Administration sector (PAN GPP)”, adopted by the Minister of Environment and Land and Sea Protection (MATTM), in agreement with the Ministers of Economy and Finances and of Economic Development, identifies the institutional reference framework in this sector. The Plan, adopted by the inter-ministerial Decree of 11 April 2008 (Official Journal n.107 of 8 May 2008) provides a general frame for Green Public Procurement and has the aim of maximize its dissemination in public authorities so that it may achieve its full potential in terms of environmental, economic and industrial improvement...On the basis of the environmental impact produced and of the expenditure targets involved, the Action Plan identifies 11 intervention categories: furnishing, construction, waste management, urban and local area services, energy services, electronics, textiles and footwear, stationery, catering services, building management services, transports.

With a series of Ministerial Decrees, minimum environmental criteria were identified for a set of products, some general indications to steer the authority towards a rationalization of consumptions and purchases and giving some actual “environmental considerations”, linked to the various phases of the tendering procedure (subject matter of the contract, technical specifications, awarding technical characteristics linked to the way contracts are to be awarded to the most economically advantageous offer, contract performance conditions) aimed at environmentally qualifying both supplies and awards over the whole life cycle of the service/product. A Guide for the integration of the social aspects in public contracts was introduced by Decree of 6 June 2012 (Official Journal n.159 of 10 July 2012) to provide support to public administrations willing to integrate in public contracts criteria compliant with internationally-recognized standards on human rights and working conditions. It is an approach in accordance with the legal framework in force, allowing contracting authorities to demand conditions of contract execution relevant to social needs. Thus, in fact, the construction of a “structured dialogue” is promoted between the contracting authorities and suppliers, through contract clauses: it is envisaged that the Administration informs with adequate notice economical operators of the willingness of integrating social criteria in their contractual activities and that, later, the successful tenderer commit to respecting the minimum social standards and to collaborating with the Administration in monitoring the commitments undertaken, with the signing of a “Declaration of conformity to minimum social standards”.

## **7. FREEDOM OF RELIGION OR CREED**

This section constitutes the contribution of the Ministry of Interiors.

### **FUNDAMENTAL PRINCIPLES ON RELIGIOUS FREEDOM**

As known, the right to religious freedom is granted by the 1948 Italian Constitution. The Constitutional principles of equality and equal social dignity (Articles 2 and 3), equal freedom for all the religious denominations (Art.8), of religious freedom in individual and associated forms (Articles 19 and 20) are the milestones of the discipline.

*Indeed, the Constitution states:*

- *in Art. 2: “The Republic recognizes and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled”;*
- *in Art. 3 “All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions...”*
- *in Art. 8 All religious denominations are equally free before the law. Denominations other than Catholicism have the right to self-organization according to their own statutes, provided these do not conflict with Italian law.*
- *In Art. 19 “Anyone is entitled to freely profess their religious belief in any form, individually or with others, and to promote them and celebrate rites in public or in private, provided they are not offensive to public morality”.*
- *In Art. 20: “No special limitation or tax burden may be imposed on the establishment, legal capacity or activities of any organization on the ground of its religious nature or its religious or confessional aims”.*

The full protection of the freedom of religion implies, then, that freedom of cult be granted, intended as faculty of professing freely one’s own religious faith in private and in public, individually or with others; the possibility of adhering to an already existing religion, of changing one’s own faith, of creating new religions; the possibility of proselytizing and promoting , of creating associations of a religious nature or participating to the existing ones, since the legal recognition of the association does not constitute a necessary requirement for the expression of the cult with others.

### **RELIGIOUS FREEDOM ON THE WORKPLACES**

Law 300/1970 laying down “Norms on the protection of workers’ freedom and dignity, trade union freedom and activity on the workplaces and norms on job placement” (Workers’ Charter – *Statuto dei Lavoratori*) in Art.15 lays down the invalidity of pacts or acts aimed at discriminating also the workers.

The Legislative Decree 286/1998 laying down the Consolidated Text on Immigration, in art.43, is concerned with “discriminations on racial, ethnic, national or religious grounds” with reference also to the position of the employer and in Art.44 disciplines the civil action against discrimination.

The Legislative Decree 216/2003 in implementation of the Directive 2000/78/CE for the equality of treatment in employment and working conditions, makes provisions on discriminations also on religious grounds on the workplace and provides for a jurisdictional protection from both direct and

indirect discrimination. Moreover, it provides for, in Art.6, that the Ministry for Labour prepare every 5 years a report on the application of the legislation to be sent to the European Commission.

Pursuant to the above-mentioned legislation, religious discrimination is committed when:

- The employer makes a distinction, exclusion, preference based on the religious conviction of his/her employees or on the religious practices followed by them;
- The employer when hiring uses selection criteria implying distinctions or exclusions, restrictions or preferences based on religious belonging;
- The employer puts into being conducts producing a prejudicial effect, discriminating also indirectly the employees in virtue of their belonging to a religious denomination.

As well as those general provisions, freedom of religion on the workplace can be specifically covered within the “agreements” provided for by Art. 7 and 8 of the Constitution, i.e. the bilateral agreements through which the Italian State and a certain denomination intend to regulate their relationship.

As well as the Agreement with the Catholic Church, to date agreements have been stipulated and transposed into law, according to Art.8 of the Constitution, with the following other than Catholic denominations:

- *Churches represented by the Waldensian Board*
- *Assemblies of God in Italy*
- *Union of the Seventh-Day Adventist Churches*
- *Union of the Italian Jewish Communities*
- *Christian Evangelical Baptist Union of Italy*
- *Lutheran Evangelical Church in Italy*
- *The Church of Jesus Christ of Latter-day Saints*
- *Apostolic Church in Italy*
- *Sacred Archdioceses of Italy and Exarchate for Southern Europe*
- *Italian Buddhist Union*
- *Sanatana Dharma Samgha Hinduist Italian Union*

The agreements, albeit having an homogeneous approach, are different in the specificities of the religious denominations. Therefore, only some religious denominations wanted to regulate within the agreement the aspect of freedom of religion on the workplace. Such aspect is translated into the possibility for the worker to take time off in occasion of the festivities and of the weekly rests specific to the denomination s/he belongs to, without prejudice, of course, to the working requirements and the recovery of the hours not worked.

For a broader dissemination, the list of these festivities is published by the Central Directorate for Cults Affairs in the Official Journal and sent to the Prefects for further dissemination in the territory.

Independently from the agreements, also workers belonging to denominations without an agreement can equally see their religious requirements fulfilled, without prejudice equally to the working requirements and the recovery of the hours not worked.

To that respect, it should be noted that the data related to religious belonging is a sensitive data and the employer can made aware of that only following communication by the worker. It will be on the worker, then, to advance a request for the fruition of such types of leave of absence thus declaring his/her belonging to such specific denomination.

## **CENTRAL DIRECTORATE OF CULT AFFAIRS: THE OBSERVATORY ON RELIGIOUS POLICIES**

The Central Directorate of Cults Affairs as well as the administrative activity aimed at the legal recognition of the Catholic and other than Catholic bodies, carries out a study and monitoring activity on what concern the issue of religious freedom.

In this framework the work of the Observatory on Religious Policies can be placed, representing one of the priority functions attributed to the Central Directorate and a practical tool to deepen the knowledge of the different religious situations, their dissemination and their issues.

Set up in order to get acquainted, in their structuring and creed, with those “new” religious movements aggregating and developing on the national territory, in direct correlation with the growing trend that, from 1990 onwards, characterized the migratory flow, the Observatory increased its field of analysis focusing also on the social and political dynamics that the religious entities determined at local level and it presented itself as reference and consultancy body on the right to religious freedom also with respect to the critical aspects arising from the territory.

The Observatory acts through surveys targeted to the knowledge of the different aspects of development of religious pluralism. For that task it uses in particular the network of Prefectures existing on the whole territory, from which it receives the requested information.

It represents, therefore, the instruments through which any limitations to the right of religious freedom can be known, in the different aspects of daily life, and initiatives be adopted to raise awareness on such issue.

In the perspective of the “Foundations of the Plan” and of the adequate actions to put into place for 2014, the possibility of initiating a survey involving other than Catholic religious denominations is being evaluated, to verify from the point of view of workers belonging to such denominations, the sensitiveness at work on issues linked to the exercise of religious activity.

## 8. TRAINING POLICIES FOR PUBLIC ADMINISTRATION

This section is the contribution of the National School of Public Administration - *Scuola Nazionale dell'Amministrazione* (SNA).

The SNA offers, both to central and local public administrations, the following training courses strictly linked to the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs): (1) Public administration contracts, legislative and management aspects; 2) Transparency; 3) Prevention of corruption and institutional risks; 4) Instruments of support to work-life balance as lever of social development for the organisation; 5) Religions and cultures of immigration in Italy and Europe. Realities and models in comparison; 6) Fight against Drug Addiction.

### 1. Public administration contracts, legislative and management aspects

Administrative action on public contracts has a strategic role in the economic development processes of the Country.

A greater efficiency and effectiveness in the management of the implementation activities of public works, as well as services and supplies procurement, determines a qualitative improvement of outcomes of the Public Administration, favours modernisation and innovation, frees previously engaged resources, making them available for other uses. Moreover, the spending review in public procurement can determine relevant effects on the containment and rationalisation of public expenditures.

Faced with such a scenario, the public administrations highlight a consistent and growing demand for highly specialized professional figures in the area of public contract, with multidisciplinary competences hard to find on the market. It is in fact necessary to combine in-depth juridical knowledge needed to grant correctness in the tender and contract procedures with as highly specialized economical and technical competences, aimed at identifying the correct architecture of the tender notice and in the criteria for the award of the contract, also in order to avoid collusive conduct by companies, and in order to issue more complex invitations to tender, such as, for example, those for sophisticated technological products.

Ultimately, the public contract matter is characterized, more than others, by the requirement that the “know what”– i.e. the knowledge acquisition, be strictly linked to the “know how”, i.e. the application of the knowledge to practical action.

In such context, the SNA developed a training approach with the following objectives:

- defining, starting from the legal framework in force, an operational protocol of the actions that managers and civil servants must follow in tender and contract management cycle;
- analysing the economic profiles of public contract from the point of view of the correct identification of the need also with reference to the qualitative aspect, in the pursuit of the administrative efficiency through the rationalisation of expenditures and the correct safeguard of competition processes;
- analysing the opportunities, instruments and methodologies of the recourse to the public-private partnership tool;
- defining the role of offices and facilities in charge of on contract management; as well as building adequate evaluation and performance measurement models, in implementation of what set out in Legislative Decree n.150 of 2009.

The course aims at pursuing these objectives through an articulated training approach, using a methodology based on the description of practical experiences, as well as on the analysis of cases and best practices. That in order of providing participants with instruments useful for the real improvement of their own competences and abilities to know how to manage complex procedures in a perspective of problem resolutions.

## **2. Transparency**

In recent years the growing attention given, both at national and European (as well as international), level to the role that digital competences can represent as a strategic factor for social inclusion, literacy teaching, innovation, active citizenship and competitiveness for the Country, and the implications deriving from that in terms of development of *e-government* services and use of the web to increase the degree of transparency and openness of public action, led a large number of public administrations to intensify the initiatives and projects aimed at making available new public services, accessible thanks to the Net technologies, to citizens and businesses.

Thanks to new technologies the range of services on offer increases, as well as the possibility of improving the quality profile of services bringing closer what offered by the Administration to the demands of citizens and businesses. The migration to digital obliges moreover the Administration to review their model of production and optimise functions, processes and organisational schemes.

But not only that. Thanks to new technologies, it becomes possible to give wide meaning to principles of *Open Government*. In the e-Gov 2.0. scenario, practices such as transparency and citizens' participation to decision-making processes, which up until a few years ago could deploy their effects in an objectively limited manner, acquire new meanings while unexplored possibilities of interacting and knowing citizens' opinions and expectations reveal themselves.

Aware of the strategic role that technological innovation has in the redefinition of relationships among Public Administration, citizens and business, the School has long enriched its training offer inserting in its planning a system of intervention aimed at increasing Public Administration workers' competences on new technologies.

It is a system of training actions articulated, which develops in function of a plurality of different training targets. Both interventions aimed at increasing the general culture of public employees on ICT and on new web technologies and training courses aimed at the consolidation of the specialised knowledge of those who, within the public administration, are directly involved in the definition and implementation of new services management systems, are envisaged. Considering the specific issues of some large sectors of the Public Administration on using new web technologies (justice, health, etc.), specific training pathways are also organised focused on specific issues and their relevant solutions.

## **3. Prevention of corruption and management of institutional risks**

The link between corruption and violation of human rights is nowadays an ascertained risk in the theoretical approach adopted by Government and International organisation in the fight against corruption. The corruption is evidently a barrier to the affirmation not only of primary rights such as for example the political and civil ones, but also of the so-called social and economical rights generally defined as "secondary", related to the effective economical opportunities and to the just distribution of wealth.

The United Nations Development Program defines corruption as "the misuse of entrusted power for private gain". Recently the United Nation Secretary-General Ban Ki-Moon restated vigorously how "Corruption undermines democracy and the rule of law. It leads to violations of human rights. It erodes public trust in government".

Also in the UN "Guiding Principles on Business and Human Rights" (UNGPs), the fight against corruption is naturally recalled as a fundamental prerequisite for the promotion of an effective and



efficient strategy aimed at promoting and safeguarding relationships among business, public administration itself and human rights.

The recent evolution in legislation apt at preventing and contrasting corruption in the Italian public administration assigned to SNA a central role in the prevention and fight against corruption, as it can be deduced by the provisions of Law 190 of 2012. In such context the School decided to provide an innovative training support which does not end to the individual but will also deal with the organisational dynamics the individuals themselves operate in.

In this view, we deem essential the acquisition by public managers – but also, it can be added, by all those who hold managerial functions of special responsibility – of robust competences allowing to promote the assimilation of procedures of prevention of and fight against corruption in a wider range of initiatives investing the category of risks management

The definition of training pathways apt at developing both individual competences and the capacity of organisations of assimilating a new culture of integrity is fundamental. The latter allows, in particular cases and in the daily run of administrative processes, a prompt and effective answer to the emergency of corruption phenomena.

In particular the envisaged training areas will include:

- International policies of prevention of the risk of corruption and their governance models in order to provide learners with a framing of the corruption problem at international level and a summary of the practical or announced contrast policies to date;
- the legislation aspect and the first technical and organisational provisions of implementation of the anti-corruption law, thus contributing to the punctual analysis of the system of norms which directly or indirectly refer to the issues of prevention and management of the corruption phenomenon;
- corruption risk business management models and systems, presenting and analysing methods of survey and measurement of corruption, as well as the constitution of adequate managerial structures, inspired to risk management models;
- human resources management policies and staff integrity development, analysing in depth staff management and development policies which State Administrations can adopt for the development of human resources' integrity there employed, making them an active part in the identification of the risk factors and of the remedies to contrast the affirmation of the corruption phenomenon and in the promotion of agreements with trade unions representations for the protection of workers reporting such practices.

#### **4. Support instruments to work-life balance as a lever of social development for the organisation**

In the current phase of serious reduction in the human resources turnover, reduction of care services available to families due to the lack of public funding, decrease in birth rate, gradual ageing of the population and a still scarce participation of women to the job market, it becomes a priority also for the public administration to follow the path that many private enterprises have already taken and optimise staff employment defining working conditions adapting them as much as possible to the needs of the work-life balance, taking notice of the issues related to home/work mobility especially in urban contexts and using at best the ITC instruments and the existing flexible working facilities.

Based on the conviction, now demonstrated in numerous field studies, that in an organization that "balances" work and family life, the rate of absence from work for health or family reasons is extremely low, individual productivity and the level of overall organizational well-being are particularly high, the sense of belonging and the involvement of the individual in relation to the institutional mission are widespread.

Against this background it appeared relevant for SNA to promote expansion of knowledge and awareness of the value and benefits that the reconciliation of the demands of private with working life produce for individuals, their organization and the society as a whole, demonstrating how balancing is not a burden but a real opportunity, presenting itself as a countercyclical tool in times of economic crisis.

In these terms, any initiative aimed at the wider promotion of a culture of reconciliation between personal life and professional time is a powerful stimulus to social and economic development of organizations, including from a gender perspective and ensuring equal opportunities .

Within the framework outlined, the training program designed by SNA aims to:

- Raise awareness of the leadership on the organizational and economic surplus of reconciling the demands of work and family life;
- Facilitate the knowledge of the legislative instruments currently existing and addressed to redirect assets and reflect on time-saving services for workers with reconciliation needs, with a focus on new technologies and their potential also in terms of "network "within the territorial districts;
- Promote awareness of organizational solutions in support of flexible working (legal bases, logistics assumptions and system methods): telecommuting, part-time work; work "islands", time banks, flexibility in input and output, etc.;
- Describe what the second-level bargaining can do for the reconciliation of work and family life in the public sector.

## **5. Religions and cultures of immigration in Italy and Europe. Realities and models in comparison**

The phenomenon of migration in Europe presents different aspects and features in each Member State, in consideration to the number of migrants and their social, cultural and national background, and the legal and cultural contexts of the host countries, having a bearing on the integration policies that each Member State has developed over time.

For a better understanding of the phenomenon and for a more detailed answer to the question of the integration of third country nationals and the development of a sense of European belonging, it is essential to pay more attention to migrants' religious affiliation. Religion is part of the personal identity and defines attitudes, mentality and culture. Today in Europe there are large religious minorities in every State. Many migrants from countries where their religion is the majority find themselves living in a society where their belief is a minority, poorly known and sometimes object of suspicion.

The Italian context has its own characteristics which have not yet been sufficiently studied, i.e. the Orthodox presence is underestimated, Muslim groups being considered via often not adequate categories, Asian religions almost ignored.

The training program developed by SNA offers a university-level cultural specialization, to officials of central or local public administration, as well as to top figures of Local Authorities who for direct or indirect jurisdiction come into contact with immigrant communities.

The training is an opportunity to compare models, practices of integration, practical realities and trends of "living together" between citizens belonging to communities different also from the religious point of view living in Italy and in Europe. The expected outcome, in addition to the growth of knowledge and professionalism among civil servants who have the task of service coordination and organization, is also to verify if Italy is a carrier of a particular, and in one or more

aspects peculiar and innovative, model of integration to be acquainted with, and appreciated in, a more mature manner.

This perspective is also included in the guidelines offered by the European institutions in the Horizon 2020 framework program, which, in reference to humanities and social sciences, indicates as a priority the in-depth analysis of issues that will help the consolidation of inclusive, innovative and secure societies. The issue of migrants' integration is central, for Europe, even in reference to the issue of security.

## **6. Fight against Drug Addiction.**

SNA and the Department for Anti-Drugs Policies (Presidency of the Council of Ministers) recently signed a cooperation agreement aimed at supporting and incentivising a better knowledge and implementation of a National Action Plan against Drugs and the legal and technical-scientific issues relevant to the contrast to drug addiction.

Such cooperation led to the establishment of the “*DPA National School of addiction*”, i.e. a training centre granting life-long learning and certified programs whose inter-disciplinary contents are based on scientific knowledge progresses and on technological innovation on substance abuse addictions.

Among others, the projects more in line with the implementation of the “United Nations Guiding Principles on Business and Human Rights” (UNGPs) are:

- “drugs, jail and alternative measures”;
- “recovery”.

### *Drugs, jail and alternative measures*

The project intends to activate a multidisciplinary training plan finalised at the preparation and sharing of an operational protocol to increase access to measures alternative to jail for people with drug and alcohol addiction.

The general aim of the project is the one of activating a multidisciplinary institutionally recognised and accredited training plan, aimed at all the actors involved at various title in the process for the granting of measures alternative to jail, in order to share and implement a simplified, integrated and coordinated operational protocol able to really favour a greater recourse and increase in access to care and rehabilitation processes alternative to jail, by people affected by pathological addiction to drugs or psychotropic substances and/or alcohol.

The training plan envisages further multidisciplinary instruments in order to widen the training on offer and favour practically the acquisition and implementation of measures alternative to jail, in particular:

- The activation of *ad hoc* working groups in charge of identifying and analysing further instruments and methodologies, as well as those explicitly provided for by the law, such as for example, the use of the electronic tagging bracelet in territorial and semi-residential regime and of carrying out an analysis of the direct and indirect costs generated by the treatment in alternative to punishment and by the non-treatment;
- The implementation of multi-disciplinary thematic workshops on specific issues of alternative measures, with special reference to European and international best practices and to any proposals of amendments to the law.
- The organisation of training meetings for the methodological support to evaluation and the correct usage of a system of aggregated data gathering on the fruition of alternative measures to jail, in collaboration with the Observatory on Addictions of the DPA

### *Recovery*

The process defines a new theoretical and practical recovery approach and the organisation of a training path within the *National School of Addiction* to support its dissemination and the implementation in the Departments of Addiction and in Drug Rehabilitation Centres

The aim is to devise an operational model for rehabilitation processes and social and work reinsertion for drug-addicts as well as shared evidence based methodologies in order to guide the social systems and the activities of the workers towards the valorisation of a greater rehabilitation, well integrated and coordinated with therapeutic process within a growing patients' recovery, healing and full autonomy process, also through the development and consolidation of life skills.

At the same time, a model is also defined for the comparative analysis of costs/benefits and cost/effectiveness of the activities of care, rehabilitation and recovery with the one of the non treatment.

Models then are the objects of a specific training process within the *National School of Addiction* of the DPA in order to support its dissemination and implementation in Departments of Addiction and in Drug Rehabilitation Centres operational on the Italian territory.

## **THIRD PILLAR**

### **ACCESS TO REMEDY MEASURES**

## 9. POLICIES FOR THE ACCESS TO STATE JUDICIAL REMEDIES

This section represents the contribution of the Italian Ministry of Justice.

The Guiding Principles clearly sanction the importance to remove legal, practical and procedural barriers that could lead to a denial of access to effective remedy in the occurrence of business abuses.

**1) In particular, legal barriers that can prevent legitimate cases involving business-related human rights abuses from being addressed can arise where:**

A. *The way in which legal responsibility is attributed among members of a corporate group under domestic criminal and civil laws allows the avoidance of specific accountability.*

In criminal law, offences are punished by penalties involving deprivation of personal liberty (detention and imprisonment) and/or pecuniary penalties (fines), as well as additional penalties (among which, in particular, the ban of legal persons and companies from holding directive offices - Article 35-*bis* of the Italian Criminal Code). In that regard, the basic principle of responsibility is that criminal liability is personal (Article 27 of the Italian Constitution). Where criminal offences are therefore committed in the course of the economic activity of a partnership, the responsibility firstly falls on natural persons who acted on behalf of the entity and, if need be, on those who, as directors and supervisors, were required to prevent the abuse from arising. Moreover, Law No. 231 of 6 June 2001 entered into force in 2001: it sets forth the liability of entities arising from criminal abuses committed in their interests or for their benefits from persons acting in a representative, administrative or managerial capacity, or persons acting as the *de facto* managers and supervisors, as well as from persons acting under the direction and control of one of the aforementioned subjects (for more details on this point, see below).

In civil law, where offenses are punishable by compensation (Articles 1218 and 2043 of the Italian Civil Code), both natural persons who committed an abuse and entities on behalf of which these persons acted are required to pay compensation. Where abuses are committed under the protection of a body, in the absence of specific normative provisions, the law provides for different repressive measures depending on the case, which are as follows:

- a) To deny to the person who committed the abuse the benefit of separating his/her own assets from those of the entity, and to force him/her to pay a part of obligations of the entity through his/her personal assets;
- b) To allow the halt of his/her claims during proceeding by objecting the so-called *exception doli*.

B. *In the case of transnational enterprises operating abroad, a claimant faces a denial of justice in a host State and cannot access home State courts regardless of the merits of the claim.*

It should be noted that the question should be clarified by specifying the transnational element of the enterprise, the legal context of the questionnaire and its purpose. In particular, it is added that Italian law provides rules concerning jurisdiction of Italian judges (Article 3 and following of Law No. 218/1995), then the question, as formulated in the questionnaire, seems to be not clear (on one hand, it refers to *Italian law*, on the other, it refers to *extraterritorial claims*).

Making a proactive effort at interpretation, the following is noticed. On the premise that the reason of the question is to know if a “foreign” enterprise is entitled to access an Italian court, the criteria to identify civil jurisdiction are stated in Article 3 and following of Italian Private International Law (Law 218/1995). On the premise that the reason is to identify the European judge who has jurisdiction to entertain a transnational dispute, it is noticed that within the EU framework jurisdictional criteria are governed by Regulation (CE) No. 44/2001, the so-called Brussels I, which will be soon revised. In particular, Articles 2 and 55 identify EU judges who have jurisdiction to settle a transnational civil dispute.

*C. Specific groups, such as minors and irregular migrants, are excluded from the same level of legal protection of their human rights that applies to the wider population.*

It should be noted that in the administration of Juvenile Justice the rights of minors are governed by a set of legislative rules and provisions to protect the fundamental and essential rights of persons who, having not yet reached the age of eighteen, are or can be placed at a disadvantage or in a difficulty situation compared to the wider population and need to be protected. In terms of minors’ legal protection, the Italian Department of Juvenile Justice identifies, verifies and performs monitoring activities on minors’ rights protection instruments through the Directorate-General competent on the matter. The Department puts forward proposals and works out directives to improve the effectiveness of interventions which are implemented to protect the rights of minors in accordance with the fundamental principles of international regulations, such as the Beijing Rules of 1985, the Convention of the Right of the Child of 1989, and other resolutions of the Council of Europe. Among them, it should be mentioned the European Recommendation of July 2003 concerning new ways of dealing with juvenile delinquency and the role of Juvenile Justice in Europe that reaffirms the specificity of this sector, in which demands of justice should be combined with children’s rights protection. Lastly, the Lanzarote Convention, ratified by Italian Law No. 172 of 1 October 2012, which entered into force on 23 October 2012. This Convention commits adherent States to strengthen their efforts to protect children from sexual exploitation and violence by adopting common criteria and measures to prevent these circumstances, to prosecute perpetrators and to protect victims. In addition, the Department of Juvenile Justice takes part in working groups on truancy, bullying, and child labour exploitation. With regard to the promotion, defence and protection of subjective rights of children, a special attention is paid to vulnerable minors through initiatives, projects, and actions aimed at ensuring their subjective rights. In particular, they are focused on foreign children (unaccompanied, European, non-European, and migrant minors), gender differences and minors facing a greater risk of social exclusion. In that perspective, local networks are working with Prefectures and Juvenile Offices in Police headquarters in order to create a functional network between different institutional sectors and implement combined actions with social, institutional and non-institutional local partners focused on emerging problems affecting minors subject to criminal convictions or at risk of deviance.

The Italian Constitution ensures access to justice to everyone, without discrimination based on citizenship or other discrimination factors (Article 24). The access to effective judicial protection is ensured by granting legal aid to the poor in all judicial proceedings (whether contentious or not) and for all stages and levels of the trial (Articles 74 and 75 of Decree of the President of the Republic No. 115 of 30 Mai 2012).

The Directorate-General for the Enforcement of Court Orders, established at the Department for Juvenile Justice of this Minister, has contributed to the drawing up of the Ministerial Circular No. 39209 of 13 November 2012. This document focuses on Law No. 172 of 10 October 2012: “Ratification and implementation of the Council of Europe Convention on

Protection of Children against Sexual Exploitation and Sexual Abuse, concluded in Lanzarote on 25 October 2007, and provisions adapting internal law”. It was issued by the aforementioned Department to release the fundamental amendments introduced into Italian regulations by the above-mentioned Law, such as:

- 1) The support and assistance to victims of crimes related to trafficking, enslavement and sexual exploitation committed by Social Services of Local Authorities and Juvenile Justice Services, as well as by groups, foundations, associations and organizations;
- 2) The presence of psychology or child psychiatry experts to obtain information from minors during pre-trial investigations done by Police, Public Prosecutor or defending counsels;
- 3) The instigation and solicitation of minors aimed at specific crimes related to sexual exploitation;
- 4) The gratuitous exploitation of minors for sexual purpose, corruption, solicitation, and human trafficking, in addition to crimes related to sexual abuse.

As far as the protection of children’s rights is concerned, by paying a particular attention to the most vulnerable minors such as irregular migrants, the aforementioned DG has issued the following Memoranda:

- **No. 9809 of 13 March 2013** “Protection of the rights of Italian and foreign minors without legal guardians in criminal proceedings. Identification of agreements and operational procedures”. By this Memorandum, the Directorate-General for the Enforcement of Court Orders has promoted a set of initiatives aimed at granting these minors a legal guardian in criminal proceedings. This is an essential requirement to allow them to exercise their rights and it should be fulfilled through the circulation of documents, best practices and memoranda on this matter, and the collaboration with Judicial Authorities, Guardianship Courts, Child Protection Authorities, Public Guardians, Prefectures, Regions, Local Authorities, Professional Associations and private sector.
- **No. 11946 of 26 March 2013** “Protection of the rights of minors and young adults coming from foreign Countries with or without legal guardians. Directive concerning persons applying for international, humanitarian, temporary or social protection”. By this Memorandum, the Directorate-General for the Enforcement of Court Orders has provided explanations to the Centres for Juvenile Justice and Juvenile Services with regards to regulatory framework and operational procedures in criminal proceedings concerning minors and young adults from other Countries who are entitled to apply for international, humanitarian, temporary or social protection. The Memorandum also envisages the particular cases involving minors without a legal guardian or unaccompanied foreign minors. The DG has also released important documents and fundamental regulations on this matter. Among them, it should be noticed: the Directives of the Italian Ministry of Interior, the Juridical and Practical guides of the System of Protection for Asylum Seekers and Refugees (SPRAR), and the document “Data and considerations on social protection projects pursuant to article 18 of Legislative Decree 286/98” of the Inter-ministerial Commission for Support to Victims of Trafficking, Violence and Exploitation.

**2) Furthermore, practical and procedural barriers to accessing judicial remedy can arise where:**

- a) The costs of bringing claims go beyond being an appropriate deterrent to unmeritorious cases and/or cannot be reduced to reasonable levels through government support, “market-based” mechanisms (such as litigation insurance and legal fee structures), or other means;
- b) Claimants experience difficulty in securing legal representation, due to a lack of resources or of other incentives for lawyers to advise claimants in this area;



An indigent person can apply for legal aid in order to be represented by a lawyer in proceedings and could benefit from his/her assistance having recourse to legal aid. Legal aid can only be granted where claim is not considered manifestly unfounded and applicant's taxable income, as shown on his/her latest tax return, does not exceed Euros 10,766.33. The procedure for applying for legal aid - which is available in the following section of the Italian Ministry of Justice website: [datasheets-legal aid proceedings](#) - can be summarized as stated below. Legal aid can be granted for both civil proceedings and cases of non-contentious business (separations by mutual consent, uncontested divorce, etc.). Legal aid is granted for all stages of the trial, including all further connected proceedings. The same provisions also apply to administrative, accounting or fiscal proceedings. Anyone with a taxable income not exceeding Euros 10,766.33, as shown on his/her latest tax return, is entitled to legal aid. If the applicant lives with a spouse or other member of the family, the total family income for the same period, including that of the applicant, should be taken as the income. Exception: Only personal income is taken into account when personal rights are the subject matter of the proceeding or in trials where the applicant's interests are in conflict with those of the relatives with which he/she is living.

Legal aid can be granted to:

- Italian citizens,
- Foreign nationals who are legally resident in Italy at the time when the situation or fact that gave rise to legal proceedings occurred,
- Stateless persons,
- Non-profit organisations or associations that are not involved in commercial activities.

The application can be submitted for every stage and level of the trial and should be granted for all appeals. However, where the part granted with legal aid is unsuccessful, it cannot use legal aid to bring an appeal. Legal aid cannot be obtained in cases involving assignment of credits or assignment of claims of others, unless the assignment has been made in settlement of previous claims. The application for legal aid in civil proceedings should be submitted to the Secretariat of the competent Bar Association according to:

- The place where the judge is hearing the case,
- The place where the judge who knows the merits of the case is based, if the case is not pending,
- The place where the judge issued the contested ruling, if the case is at the appeal stage (Court of Cassation, Council of State, Court of Auditors).

Application forms are available at the Secretariat of the Bar Association. The application, together with a photocopy of a document proving the identity of the applicant, should be submitted by the person concerned or by his/her counsel. In the latter case, the counsel of the party concerned should authenticate applicant's signature. The application can be sent by registered letter with return receipt requested, together with a photocopy of a document proving the identity of the applicant.

The application signed by the applicant should be made on ordinary plain paper and it should contain:

- The request for legal aid;
- The personal details of the person concerned and those of the members of the his/her family, together with their tax numbers;
- A statement indicating the total income of the previous year (self-certification);
- The undertaking to notify significant fluctuations in income which would be relevant for the granting of legal aid;
- Information declaring if the case is already pending;
- The date of the next hearing;
- The personal details and the place of residence of the counterparty;

- A statement of the facts and legal situation that can be used to decide if the claim is well-founded, with specific mention of the evidence to be presented (documents, contracts, witnesses, technical advices, etc. to be enclosed)

After the application is submitted, the Bar Council:

- rules if the claim is well-founded and if the application fulfils the requirements for legal aid;
- issues one of the following provisions within 10 days:
  - a granting of the application;
  - a declaration of inadmissibility;
  - a rejection of the application;
- sends copies of its decision to the party concerned, to the judge and to the Authority responsible for collecting taxes in order to verify the income declared.

Applicants granted legal aid can nominate a lawyer from the lists of legal aid lawyers drawn up by the Bar Associations of the Court of Appeal having jurisdiction. Where the application is rejected, the applicant can submit the application for legal aid to the judge who is competent to hear the claim, who decides by decree.

Article 140-*bis* of Legislative Decree No. 206 of 6 September 2005 (Italian Consumer Code) allows consumers and users of products or services provided by enterprises to resort – in addition to ordinary individual actions - to a particular form of collective redress inspired by the Anglo-Saxon *class action* mechanism. The law provides that homogeneous, individual rights of consumers and users can also be enforced through class action. To this end, each class member can individually (in the interest of all those who decide to join the action) or through an association to which he/she grants power of attorney take action. The class action can also be taken to protect collective interests. The aim of a class action is to assess contractual and non-contractual liability of enterprises towards consumers and to claim an order to pay damages and repayments. This instrument has significantly strengthened consumers' protection against enterprises, because consumers can now easily exercise their rights before the court reducing costs of proceedings and simplifying their access to justice. In fact, consumers who wish to avail of this collective redress can join class action, also through certified mail or fax, without a counsel for the defence.

The Directorate-General for Resources, Goods and Services of the Italian Ministry of Justice provides offices of the Public Prosecutor with everything they can need, as far as it is concerned, on the basis of available financial means and offices requests. The DG is not responsible for the supply of computer equipment.

### **3) Framework of individual claims started against the Italian Government before the European Court of Human Rights.**

There is no individual claim started against the Italian Government before the European Court of Human Rights related to the failure to comply with its duty of protection against potential abuses committed by business enterprises towards subjects within its jurisdiction.

As far as the environment protection is concerned, Italy has been held in violation of ex Article 8 in three cases:

*Guerra and Others v. Italy (1998); Giacomelli v. Italy (2006); Di Sarno and Others v. Italy (2012).*

In addition, judgements for violation of ex Article 6 of ECHR should be noticed.

### **4) Management of Italian prison facilities.**

The Ministry of Justice is the only responsible for the management of prison accommodation and it is not likely that it could be entrusted to private sector in the short-term. By the new Implementing Regulation, entered into force on 6 September 2000, Italian Ministry of Justice made a special effort

to boost prison labour, remedy inadequate economic resources, and increase employment opportunities. In fact, the Regulation in force allows external companies to be entrusted with the management of Ministerial premises on a free loan, in order to use them as working environments for activities employing detained workers or cooperatives and enterprises. Prisons Directorates have entered agreements with cooperatives and enterprises in order to define mutual relationships and facilitate their access to prisons. These agreements state general provisions about timetables and contractual aspects, which should be in accordance with National Labour Agreements relevant to each division. Prisons Directorates and Surveillance Magistracy are involved, within their respective areas of responsibility, in the control of working conditions of prisoners to prevent any kind of abuse from private enterprises operating within prisons.

### **5) Liability of enterprises for administrative offenses resulting from crime**

Legislative Decree 231/2001 has introduced the liability of enterprises for administrative offenses resulting from a crime. The list of crimes, initially limited to few types of offence, has been extended (Law 146/2006 as an example) to introduce new offences such as enslavement, migrant trafficking or female genital mutilation. Despite this expansion, the occurrence of the aforementioned crimes is statistically limited, so the rules on criminal liability of enterprises can be less effective.

Legislative Decree No. 231 of 8 June 2001 has provided Italian Law with suitable instruments to fight against business crimes in its most complex forms. The Decree introduces the opportunity to assert criminal and administrative liability of legal persons and to impose pecuniary and disqualifying penalties for crimes committed by managers and employees. In particular, crimes that can invest enterprises liabilities, in accordance with Legislative Decree No. 231/2001, are mentioned within the same Decree and, to a limited extent, in additional legislation. However, a general application of these rules is not expected for all kind of crimes committed, even if the list of significant crimes concerned has been gradually extended since 2001. The last amendment has been introduced by Legislative Decree No. 109 of 16 July 2012 providing the introduction of Article 25-*duodecis*, which lays down administrative liability for crimes related to the employment of illegally staying third-country nationals. The main circumstance in which liability can be imputed to the body occurs where it did not adopt, and effectively apply, before the offence was committed, organisational and managerial systems capable of preventing offences of the kind established occurring. On this matter, Legislative Decree No. 231/2001 states that the body should establish a unit, which has independent powers of initiative and supervision, in order to monitor the proper functioning of and compliance with the systems and ensure that they are updated. The efficiency and effectiveness of these monitoring and supervision powers should be therefore verified in judicial review made in accordance with Legislative Decree No. 231/2001.

Judgments on this system have been largely positive, both on national and international level. In particular, the liability of legal persons has been one of the subject matter discussed by Justice and Home Affairs Ministers during the G8 summit held under the Italian Presidency in 2009. The comparative analysis between G8 Countries systems has shown that the mechanisms introduced in Italy in 2001 are among the most complete and efficient ones, with particular reference to transnational crimes. On another occasion, the OECD has welcomed the Italian system and has indicated it as a role model for member States that do not yet have a legislation on the liability of legal persons (Czech Republic, Slovakia, and Chile). Some factors have however obstructed the correct beginning of this system that prevents crimes through organisational models, such as:

- 1) The adoption and implementation of the model within the company, despite the costs involved, is a very weak guarantee of liability exemption. In fact, it is the mechanism of organisational models itself that naturally leads an external observer (in the first place the Prosecutor who investigate on body's offences) to infer the inadequacy of the model to prevent crimes within the company.
- 2) The absence of a specific regulation for groups of enterprises.

- 3) The absence of a specific legislation for small enterprises that have suffered from being compared to corporations.

The Italian Minister of Justice is considering an intervention to solve the above-mentioned issues and it has already identified a set of possible regulatory solutions, which will be soon submitted to political authorities.

It is to be noticed that Decree Law No. 93 of 14 August 2013 laying down “Urgent provisions on security to combat gender-based violence, as well as on civil protection, and for the appointment of external commissioner for the administration of provinces” has further extended the list of offences leading to corporate administrative liability pursuant Legislative Decree No. 231 of 2001.

In particular, Article 9 of the aforementioned Decree has included in Paragraph 1 of Article 24 bis of Legislative Decree No. 231 the following offences:

- a) Computer fraud aggravated by the substitution of a digital identity (Art. 640 *ter*);
- b) Those mentioned in Paragraph 9 of Article 55 of Legislative Decree No. 231 of 21 November 2007, such as unlawful use, falsification, alteration, possession, transfer, and purchase of credit or debit cards, as well as of any other similar documents enabling cash withdrawal, purchase of goods and supply of services;
- c) Those mentioned in Part 3, Title 3, Chapter 2 of Legislative Decree No. 196 of 30 June 2003 related to privacy infringements (unlawful processing of data, misrepresentations and false notices before the Data Protection Authority, etc.).

It can be argued that the inclusion of offenses related to privacy infringement among those leading to corporate administrative liability has a great impact, with particular reference to the unlawful processing of data, which can potentially involve all commercial companies and private associations subject to the provisions of Legislative Decree No. 231 of 2001.

## **10. POLICIES FOR THE ACCESS TO STATE NON JUDICIAL REMEDIES**

This section represents the contribution of the National Contact Point on the OECD Guidelines on Corporate Social Responsibility of the Ministry of Economic Development.

With the exception of the activities of conciliation and mediation of the National Contact Point (NCP) set up pursuant the OECD Guidelines for Multinational Enterprises of the Organisation for Economic Cooperation and Development, the Italian State does not have non-judicial mechanisms to access to remedy in case of human rights abuses by enterprises.

As early as 2010, in order to contain public expenditure, the Municipal Ombudsman Office had been suppressed, with the faculty of attributing its functions to the Provincial Ombudsman, defined as “territorial Ombudsman” (*Difensore civico territoriale*). Hundreds of Municipal Ombudsmen then ceased to exist when their mandate expired. On 21 June 2010, a Memorandum of Understanding between the Interdepartmental Centre of Research and Services on individual and people’s rights of the University of Padua and the National Coordination of Ombudsmen was signed. It officially started the activities of Italian Institute of Ombudsman. The Institute promotes studies and initiatives on the Ombudsmen’s services and human rights, also in collaboration with national, European and international institutions involved in the same issues. The Ombudsman, however, offers a non-judicial protection mechanism only towards public administration. territoriale” .

### ***OECD National Contact Point: the mechanism of dispute management***

For what concerns human rights, on 25<sup>th</sup> May 2011, the Guidelines were updated and, among the other amendments, a specific chapter on Human Rights was added (chapter 4), expressly in line with the Guiding Principles of the United Nations. The Guidelines now acknowledge that “States have the duty to protect human rights” and that all the enterprises should “respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved”, wherever they operate.

In order to ensure the correct implementation of the OECD Guidelines, each adhering country took up the commitment to set up a National Contact Point (NCP) with the task, inter alia of promoting the recommendations included in the document, with awareness-raising actions and cooperating, if appropriate, with the business community, trade unions, other non-governmental organizations and the interested public. The NCP manages also the so-called ‘Specific Instances’, through which they prevent or compose any controversies arising from the presumed lack of compliance with the Guidelines Principles by enterprises, also through the consultation of the parties involved, to arrive at the resolution of the issues raised.

In Italy, the NCP was set up at the Ministry of Economic Development (Department for Enterprise and Internationalization, Directorate General for Industrial Policy and Competitiveness). A simple and streamlined facility was conceived, thus divided:

- The Director – General of the NCP, role covered by the Director – General for Industrial Policy and Competitiveness of the Ministry of Economic Development (MiSE), who is in charge of the adoption of the final acts and the representation of the NCP;
- The Secretariat of the NCP, composed by a Head and various officials of the MiSE, who ensures the operational management of the NCP; cares for the gathering and the processing of the requests submitted to it; prepares the program of dissemination and knowledge of the Guidelines;
- The NCP Committee, made of representatives of the interested Ministries and of the social parties, invested of the consultative functions. The Committee with consultative functions, in particular, is composed by representatives of the following institutions: Ministry of the

Economic Development, Ministry of Environment and of the Protection of the Land and Sea; Ministry of Foreign Affairs; Ministry of Economy and Finances, Ministry of Justice, Ministry of Labour and Social Affairs, Ministry of the Agricultural, Food and Forestry Policies, Ministry of Health, Conference State – Regions, Unioncamere (Italian Union of Chambers of Commerce), Confindustria, ABI – Italian Banking Associations, CNA-Confartigianato (Craftsmen’s Association), National Consumer and Clients Union CNCU, CGIL, CISL, UIL. Other subjects can be called, on each occasion, to participate to the works of the Committee.

As it is indicated on the NCP website, the resolution of instances must take place in an effective, timely, impartial, predictable, equitable manner, compatible both with applicable legislation and with OECD Guidelines standards and principles. All stakeholders in an activity of an enterprise – for example, natural persons, but also entities interested to the case resolution, trade and professional unions, representing the employers or the workers on behalf of their members, non-governmental organizations, bodies in charge of collective and/or diffuse interests – can present an instance to the NCP if they believe that an enterprise adopted conduct non-compliant with the principles and recommendations stated in the Guidelines, also with regards to human rights.

Enterprises are invited to respect the Guidelines wherever they operate their activities, taking into account the specific situation of each host country. Since the Guidelines are addressed by adhering governments to enterprises operating in or from their territory, the Italian NCP intervenes when the controversy regards facts which have taken place in Italy or that were perpetrated by an Italian enterprise operating abroad. The mandate of the NCP can also extend with potentially very important repercussions for what concerns the delocalization activity of production and supply in non-member countries.

Although, generally, issues will be dealt with by the NCP of the country in which the issues have arisen, if the involved NCP is the one of the host country, it should consult with the NCP of the home country. A form of collaboration is provided for also when the issues arise from an enterprise’s activity that takes place in several adhering countries or from the activity of a group of enterprises organized as consortium, joint venture or other similar form, based in different adhering countries. In such cases the NCPs involved should consult with a view to agreeing on which NCP will take the lead in assisting the parties.

After making an initial assessment of whether the issue raised is eligible, the NCP Secretariat proceeds to dealing with the issue, ordering a preparatory enquiry, during which it gathers all the necessary elements for understanding the case. To that end, the Secretariat, can proceed to inspections and visits in loco, also using the collaboration of other subjects, and can press for an opinion from the relevant authorities and/or from the members of the Committee and/or from the representatives of the business community, trade unions, Global Compact and other governmental and non-governmental organizations and experts. In the course of the whole procedure the NCP mediates between the parties in order they reach an agreement. To that end, it adopts all useful actions to promote dialogue and the interests’ composition.

The procedure ends within 12 months from the beginning of the preliminary enquiry, unless the time-limit has been extended with due reason. In case of agreement between the parties, the NCP prepares and will make publicly available a report with the results of the proceedings, including a summary of the agreement reached. If the parties fail to reach an agreement, the NCP prepares and make publicly available a final declaration including recommendations that conducts compatible with the Guidelines be adopted.

Transparency is recognized as a general principle for the conduct of NCPs in their dealings with the public. In the course of the of the proceeding confidentiality is maintained, including on the facts and arguments brought forward by the parties. Nonetheless, their outcome is generally transparent. There are then particular circumstances when confidentiality is safeguarded. In these cases, the

NCP will take appropriate steps to protect sensitive business information or the identity of individuals involved in the procedures.

The NCP Committee, in virtue of its consultative role, expresses opinions on the outcomes of the preliminary enquiry. The conclusions, are, instead, adopted by the Director- General of the NCP as final acts.

The NCP, where deemed necessary, will ask the opinion of the International Labour Organisation on issues related to the labour standards and the implementation of ILO Conventions.

Moreover, to encourage dialogue among parties, the Secretariat could use the collaboration of the Tripartite Committee at the Ministry of Labour and set up by the Convention on tripartite consultations relevant to the international labour norms n.144, 1976.

## FINAL CONSIDERATIONS

From the Foundations of the Italian Action Plan on the implementation of the UNGPs (in this first year focused on the foundations for future action) a comforting fact becomes apparent: in Italy a role is emerging in the Public Administration which intends to promote a virtuous connection between company profit and human rights protection. Synthetically, it can be said that the Government believes that what favours human rights is good for the enterprise and for the affirmation of the Country abroad.

In the global market, today, reasoning in terms of quality and cost is no longer enough. New global consumers – and not only those in the most advanced markets – makes complex and ‘multidimensional’ evaluations and is ever more sensitive to immaterial factors such as the respect for human rights and for ethical principles underpinning them: all elements at the foundations of credibility and reputation of the product. In a context of global competition, exacerbated by medias, the product can no longer confine itself at being only “good and cheap”. It must be authentic, with traceable components to a clear and recognisable origin, and must above all inspire trust because in harmony with human rights protection.

It is not to be forgotten, then, that businesses are growingly discovering the advantages of having an active role in a group of stakeholders including investors, workers, NGO, Universities and the very communities the business operates in.

Today in Italy “social audits” are growingly being drafted, having to report to a large audience and not only to shareholders, the quality of the management actions: also the human rights protection aspect starts to carve out for itself a space in them.

The moment for this evolution is appropriate and what the Italian enterprises start autonomously to do on the UNGPs encourages also public policies to replicate its model. Foreign policy also takes on a different form, using a language appropriate to the promotion of values. Cultivating the dimension of bilateral relationships, today, means qualifying it with the values of justice, democracy and respect for the individual which we uphold in our national territory

Much realism is needed: the challenges of today are global and we face them through a common language and a level playing field. A collective awareness is needed about the different levels: Governments, international organisations, businesses, trade unions, Universities, civil society. A practical and proactive availability to the compliance with the UNGPs is also needed, both outwards, both towards one’s own internal organisation, which must be coherent with the proposed model. And “coherence” in public policies is needed, i.e. we must act in such a way that those we preach in multilateral forums coincide with what we promote in bilateral relationships.

The foundations of the Italian Action Plan on UNGPs are a relevant introduction to an action by the Public Administration apt to promote the full insertion of the Italian business community, as subject responsibly committed to UNGPs, within the ‘global value chains’, which are growingly talked about in prestigious international forums as the new frontier to explore in world trade.

Just in the last G20 Summit in Saint Petersburg, the leaders of the major twenty world economies confirmed their interest in the initiatives that OECD, WTO, UNCTAD are accomplishing in that respect, with the aim of providing especially developing countries with indications to participate to the creation and distribution of the value in a balanced and integrated manner.

Under this approach, the Italian Public Administration intends to propitiate not only a well accepted but, wherever possible, a closely interconnected action of Italian companies with the local areas and territory abroad, hopefully making them key partners for the surrounding communities.



Many Italian Ministries, each in their sphere of competence, are growingly endeavouring to ensure that in business products an environmental awareness be tracked, thanks to the attention for the energy and water consumption, the control of CO2 emissions and the use of renewable energy sources, of certified raw materials and sustainable packaging, to the recovery of waste. From activities representing a cost, managerial cost savings and operational efficiency can be had in the medium term. In many cases this translates into an opportunity to differentiate their business in a perspective, for example, of green economy contributing to sustainable development.

Then there is within the Italian Public Administration, as is clear from the present Foundations of the Plan on UNGPs, a strong sensitivity to promote the entrepreneurial attention to social development and to the workers' welfare: important topics that are answered in initiatives at various levels which will take the form of the new deliverables in future years.

Food safety, water and energy are among the cross-cutting global issues at the centre of ongoing discussions on the new Sustainable Development Goals and on the post-2015 future United Nations Development agenda.

It is no coincidence that the same issues are at the core of the most important event organised by Italy in the next few years, Milan Expo 2015, devoted to "*Feeding the Planet, Energy for Life*", an initiative the Italian Public Administration will beyond doubt considerably contribute to, in the conviction that from these contexts new expectations will emerge, if not new rights, to enforce both with the Public Administration than with the enterprises.

Not only our well-being will depend from the search for sustainable solutions, respecting the UNGPs, on water, energy and food safety, but also the stability of the international relations system and our security, growingly exposed to multidisciplinary "challenges" intertwined with lack of resources and demographic growth, financial speculation on raw materials and inefficient resources management, climate change and migration flows, lack of perspectives for the young generations and world chaos.

In a global scenario of growing competition, the enhancement of the activities safeguarding UNGPs is considered by Ministries which concurred in the drafting of these Foundations of the Plan as a forward-looking action. This is the reason why for over ten years Italy has been investing energies and resources in support of the Global Compact (GC), the UN platform to promote more ethical business, respectful for human rights, as well as in support of the OECD Guidelines as reviewed in 2011.

Anti-corruption, transparency and accountability also and not as a coincidence, emerge among the 10 GC Universal Principles, at the centre this year– with the Italian active adhesion – of the Lough Erne G8 Summit, and having a momentous role in the sector of human rights protection.

As anticipated in the introduction to the Foundations of the Plan, with respect to the "Bases of work," although the just mentioned aspects are not selectively examined in these Foundations, they will be subject to focuses and "deliverables" in the future.

Moreover, the guarantees offered by the Italian Public Administration to avoid that enterprises recur to child labour and more generally to the most varied forms of discrimination, including multiple and gender, are totally in line with the UNGPs.

Italy is also aware that in the past recent decades the world saw a rapid growth in the global dimension, sophistication and scope of the private sector and civil society, with a concentration in private hands of over half the global wealth. At the same time, the demand for interventions in support of development for States and International organisations has multiplied, while the financial crisis has drastically reduced public resources.

Italian Public Administration is aware that the prevailing trend in giving answers is the one of lever on the potential of a private sector involved with its stakeholders on issues of sustainable growth. That, both in the UNO context, and thanks to more circumscribed actions such as the promotion by the G8 of financial instruments such as the “*Social Impact Investments*”.

Italy is convinced that the Foundations of the Italian Action Plan on UNGPs are fully inserted in this virtuous process of concentration of private funds towards social inclusion goals.

Thanks to enabling contexts made available by the Public Administration, Italian large enterprises, but also growingly the SMEs, must be able to act – responsibly on foreign markets: that is why without doubt funding and an international business culture are needed, but also an ethical dimension respectful of individual and collective human rights.

Italian Public Administration and in particular its National School (SNA) started to work to help SMEs and industrial districts to comprehend the importance of sharing the UNGPs. At the same time, Ministries and SNA are in the process of helping the SMEs to make emerge their traditionally attentive to human rights “informal CSR”, enhancing their capacities of valorising the vast bundle of social activities they promote.

Supporting Italian businesses, what the Embassies do with passion wherever necessary, is easier thanks to what they build daily around their own products in line with the UNGPs and it allows us to continue to impose, beyond any economic crisis, the tradition of Italian excellence. It represents, together with our cultural soft power, the main axis of our export, which, in its turn, as data show, is fundamental for the endurance of the national economy and for the recovery of our country.

It is not just about actions to promote collective well-being or preventing the crisis, but also of key sectors for economical growth. To be able to fit into this market with innovative solutions, means taking on advantageous positions in future, as much on the most advanced markets as and even more on the emerging ones or in the still developing ones. And these are the sectors where the Public Administration is starting to invest resources, ideas and promotional actions, such as the first Italian event entirely devoted to Africa in programme for the end of 2014 at the Ministry for Foreign Affairs.

Italian Public Administration intends to express through the Foundations of the Plan on UNGPs the conviction that Italy can maintain her position only aiming to the creation of a more refined added value, which can be provided only by the matching of quality and technology with values of respect for human rights which characterises us and which can make the difference: sharing values, to create values, this is the motto guiding our action in the future.

A recent important Italian internal development was the presentation at the Chamber of Deputies, on 13 November 2013, of the Report on businesses and human rights: the Italian case, analysis of the legal framework and of the safeguard policies”. The Report was drafted by the *Istituto Superiore Sant’Anna* of Pisa commissioned by the Secretariat of the NCP of OECD Guidelines of the MiSE. Such an event favoured the increase in Members of Parliament’s attention towards the UNGPs.

To this first awareness-raising action the auspice was added, as a result of the enlarged public consultation, that in Italy be created an independent national institution for human rights, in line with the Principles of Paris, the Resolution 48/134 of the UN General Assembly of the 20 December 1993 and the Resolution of the Council of Europe (97) 30<sup>th</sup> September 1997.

And therefore, in relation to the programmatic facilities and trends, from the contributions received the following proposals emerged:

- It is necessary to define in the Plan to be prepared in 2014, programmatic lines and actions to be immediately read by the decision-makers, in order to ensure a full actuation of the Plan.
- The Plan should be developed around the three pillars of the United Nations Framework with an integrated approach. It is then to integrate the second pillar (corporate responsibility) highlighting the Government directions to the enterprises and the actions that the former intends to put into place to support enterprises in the implementation of the UNGPs. In the same way that it is necessary highlight the contribution that enterprises can give to Governmental action.
- In order to ensure coherence of policies, promoted by the UNGPs, is appropriate to analyse in depth the issue of the goals and actions of the Government within the Cooperation development in relation to the issue of “businesses and human rights” highlighting also in that case the contribution that can be provided by the private sector.
- The work carried out by the *Scuola Superiore Sant’Anna* commissioned by the NCP-MiSE can represent a foundation document for the multi-stakeholder dialogue, in particular for what concerns the proposals part of the work.

Also on the occasion of the enlarged public consultation the following broad guidelines were drafted (still to be verified within the individual departmental facilities, which could have different priorities on UNGPs), to be explored in view of the identification of first deliverables to materialise by the end of 2014:

- The definition of social criteria to insert in public contracts together with the environmental criteria, in the framework of transposing the European directives on public procurement;
- The insertion in the model tender (general administrative act issued by the Authority for the Supervision of Public Contracts for Works, Services and Supplies – AVCP to grant equal treatment among tenderers) social clauses on the compliance with human rights for competing enterprises;
- An informational toolkit for the diplomatic and consular network on the modalities of promotion and respect of the UNGPs with the aim of providing an appropriate support to enterprises which intend to invest abroad;
- The focus, being transposed from the EU Directive on non financial information of enterprises, on the dissemination of data regarding the policy of human rights protection promoted by enterprises;
- The support to action which promote dialogue among enterprises for the dissemination of existing knowledge and practices on the implementation of the UNGPs.
- The strengthening of the social dialogue within the enterprise, through the instrument of the “Global Framework Agreement”;
- The extension of the implementation of UNGPs within the subcontracting chain;
- The insertion of the following topics: LGBTI workers’ rights; people with disabilities right to work, monitoring of the non discrimination in enterprises and in employment with special reference to working women, to women career progression and participation and to the protection of motherhood; the social inclusion of Roma, Sinti and Travellers, also through the “Working Axis” and in compliance with the wider “European Framework” pursuant the European Commission Communication n. 173/2011, promptly implemented by Italy; the prevention of the ‘gang master system’; the “black or grey market” employment; the improper and masked forms of self-employment; the protection of migrants’ rights; the regularisation of irregular migrants reporting situations of slave labour or irregular employment.

- Decent labour (as defined by ILO) as a linking element between enterprise – human rights – development. That implies specific reference is made to cooperation development and the role of enterprises in the Italian cooperation development.
- The connection between the “Children’s Rights Business Principles” and the UNGPs through UNICEF company toolkits to disseminate in enterprises;
- The promotion of the follow up mechanism provided for in the ILO Tripartite Declaration on principles for multinational enterprises and social policy, in order to better face human rights abuses found in business activities;
- The awareness raising in enterprises and social cooperatives on the possible use of prison labour taking as best practice the initiatives of the Giudecca women’s prison in Venice.

For the sake of completeness of information, it should not be overlooked, in these final considerations, to mention the seminar “*Business and Human Rights workshop: Embedding human rights across departments*” organized the past 20 November by KPMG-Italy together with *Fondazione Sodalitas* and targeting essentially the private sector. It focused on the recommendations to address to the future work on the second Pillar of the Ruggie Framework, former UN Special Rapporteur of the Human Rights Council on *Business and Human Rights*.