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ECONOMIA SOCIALE E SETTORE PUBBLICO

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From Luxembourg Declaration to the European Action Plan for the Social Economy. Toward the new paradigm of co-creation of shared administration

1. Introduction

In order to make European and national initiatives on social economy concrete, it is first of all necessary to legally define a scope that consists of actors and activities. It is necessary for the European legislator, the Commission and the individual Member States (in their institutional complexity and diversity) to establish and strengthen promotional measures for the support of the social economy (in the light of the strategy defined by the Luxembourg Declaration), in its multiple relations with the public administration.

In this respect, the panel briefly proposes some general reflections and some questions to set the tone for the debate.

2. The issue of definition

The first topic to be addressed is the contribution to be given to the issue of definition.

It is significantly difficult to identify a common definition of 'social economy', both on a subjective level - the subjects of the social economy - and on an objective level - the fields of activity related to the social economy.

The idea of a European definition of 'social economy' is not exclusively a purely technical-legal issue. On the contrary, it is a properly political choice that each Member State, in accordance with its own constitutional, territorial, social and economic set-up, must make. In other words, it cannot be resolved exclusively by harmonising the laws in force in the individual Member States (and in their local forms that represent interesting workshops for experimenting innovative legal solutions with a bottom-up approach).

The Action Plan for the Social Economy identifies some guidelines, which, however, refer to the exercise of discretion by the Member States:

- 1) acceptance of the multitude of legal forms that can be assumed by social economy actors, some of which are even innovative compared to the legal tradition of the individual Member States;



- 2) enhancement of people's primary importance, as well as the social and/or environmental purpose, over profit, reinvestment of most profits and surpluses to carry out activities in the interest of members/users ('collective interest') or society at large ('general interest') and democratic and/or participatory governance;
- 3) enhancement of the variety of action models with which social economy entities operate (business activities; interaction between work and voluntary activities; activities that purely deliver goods, money or services; mutuality);
- 4) guarantee of independence from public authorities, but without excluding forms of integration and partnership.

What is the national strategy that, within the European framework, each Member State is pursuing in the perspective indicated by the European Plan?

The discussion could feed into the European Commission's issuing of the announced guidelines on appropriate legal frameworks for social enterprises, due in 2022, as well as the process of possible implementation of the European Parliament's recent resolution of 5 July 2018 (Recommendations to the Commission on a Statute for social and solidarity-based enterprises).

3. Collaboration between public administrations and social economy actors

Among the different areas in which European promotional policies are being implemented, the topic of cooperation between public administrations and social economy actors is of particular importance.

The drafting of the European Action Plan for the Social Economy shows that there is room for in-depth analysis and enrichment, which could come precisely from the initiative of the Follow-up Committee of the Luxembourg Declaration. The European Action Plan for the Social Economy, indeed, moves mainly in the tried-and-tested direction of public procurement, i.e., towards forms of using public procurement to pursue policy objectives of primary importance for EU law and domestic constitutional law (protection of the environment and ecosystems, protection of the weak, labour inclusion, social cohesion, etc.).

However, the Action Plan should develop the option of giving specific legal status to recitals 7 and 28 of Directive 2014/24/EU and recital 6 of Directive 2014/23/EU. Within this legal framework, Italy has built the so-called "shared administration" model between Third Sector entities and public administrations in the areas of activities of so-called "general interest", defined by the Third Sector Code (Legislative Decree No. 117/2017) and implemented at regional and local level. Such choice of "system" could arouse the interest of other European countries and a significant broadening of the scope of the European Action Plan, starting from the best practices that have been reported.

The institutions of shared administration are not provided for (let alone regulated) directly in the European Union law, but they have been regulated by the Italian national legislator and judged by the Italian Constitutional Court to be compatible with the law of the European Union (Constitutional Court No. 131/2020). Co-programming and co-planning constitute administrative procedures aimed at establishing collaborative relations between public administrations and the Third Sector. Such procedures are aimed, respectively, at defining a shared framework of actions to be implemented in order to meet the needs of a community and at implementing 'specific service or action projects', which are the result of the aggregation of resources and the sharing of objectives. Indeed, the model laid out in the Third Sector Code is not based - as is the case with most public contracts - on the payment of prices and fees by the public to the private party, but on an agreement that, in compliance with the principles of transparency, publicity, equal treatment effectiveness and efficiency, achieves a "convergence of objectives and on the aggregation of public and private resources for the planning and design, jointly, of

services and actions aimed at raising the levels of active citizenship, cohesion and social protection, according to a relational sphere that goes beyond the mere utilitarian exchange”.

Here follow some questions that can guide our reflection:

- a) Is a reflection under way to explore modes of collaboration (shared administration) that, in accordance with national constitutional traditions and on the basis of national legislative frameworks, could be an additional factor in promoting the social economy, beyond social clauses in procurement?
- b) How is the notion of economic services (and other services) of general interest - for which the use of forms other than public contracts is admissible - being broadened, thus supporting that broadening foreshadowed by the European Action Plan for the Social Economy, embracing, in their complexity, the sectors of green transition, digital transition, social innovation?
- c) Are research-actions being carried out to deepen the knowledge of how alternative models to public procurement actually work? Are actions being taken with respect to the skills of civil servants and social economy practitioners that are necessary to be able to design and implement shared administration initiatives?

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