

“Delegation to the Government concerning the discipline of the social enterprise”

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Article 1.

1. On the proposal of the Ministry of Labour and Social Policies, the Ministry of Productive Activities, the Ministry of Justice, the Ministry of European Community Policies and the Ministry of Internal Affairs, the Government is delegated to adopt, within a year from coming into force of the present law, one or more legislative decrees providing a general regulation for the social enterprise, integrating the provisions of the Italian private civil law system. Social enterprises are understood as the private non-profit organizations that perform continuously and mainly economic activity of production or exchange of goods and services of social utility, aimed at achieving general interest goals. This regulation has to be apprised with the following leading principles and criteria:

a) define the social nature of the social enterprise while respecting the normative framework and specificity of the social promotion bodies, as well as the general regulation of the associations, foundations, companies and cooperatives and the norms regarding the social cooperatives and the religious entities. The social nature should be based on:

1) the fields of special social importance in which the social enterprise performs the distribution of goods and services to the advantage of all the potential beneficiaries, without limiting it to the members, associates or participants only;

2) the total distribution constraint, including the indirect distribution of profits and operating surpluses as well as funds, reserves or capital to managers and other participants, legal or physical persons, collaborators or employees, in order to guarantee the non-speculative character of the participation to the activity of the enterprise;

3) the obligation to reinvest the profits and the operating surpluses in the institutional activity or in the increase of the assets;

4) the characteristics and constraints of the ownership or control structure, excluding the possibility that public entities or private for-profit enterprises can hold the control, even by appointing the majority of the managers.

b) foresee homogeneous dispositions, consistent with the social nature of the enterprise and compatible with the structure of the entity, concerning:

- 1) the electivity of the social charges and the relative situations of incompatibility;
- 2) the responsibility of the managers towards the members and the third parties;
- 3) the admission and exclusion of the members;
- 4) the obligation to write and make public the social and economic balance sheets, as well as the obligation to forecast accounting control and monitoring procedures aimed at ensuring the social objectives on the part of the enterprise;

- 5) in case of suspension, the obligation to devolve the remaining assets to another social enterprise or to non-profit organisations of social utility, associations, committees, foundations and religious entities, except for the social cooperatives, as anticipated by law no. 59 from January 31st, 1992 and further modifications;
- 6) the obligation to register into the enterprises' book;
- 7) the establishment of competition procedures applicable in case of bankruptcy;
- 8) the representation on trial by the managers and the limited liability of the enterprise for the obligations assumed by it;
- 9) the establishment of control bodies;
- 10) the forms of participation in the enterprise also for the various collaborators and beneficiaries of the activity;
- 11) the regulation of the transformation, merging and transfer of the respective enterprise to other social enterprises in such a way that the qualification and the aims are preserved and that the destination of their goods and services to general interest goals is guaranteed;
- 12) the consequences on the qualification and on the regulation of the social enterprise, arising from the noncompliance of the relative limitations of the requirements of the social enterprise and from the violation of other legislation, in particular those regarding labour and safety, as well as the collective bargaining, as long as compatible with the characteristics and the juridical

c) establishment of permanent monitoring and research functions and services necessary to evaluate the quality of the performances of the social enterprises

d) defining the regulation for social enterprises groups in accordance with the principles of transparency and protection of minorities, regulating the conflicts of interest and the abuses by the side of the prevailing enterprise.

2. In the light of the legislative decrees mentioned in paragraph 1, The Government acts to coordinate the dispositions of the legislative decrees mentioned in paragraph 1 with the dispositions in force in the same and connected subjects. Having consulted the permanent conference regarding the relationship among the State, the Regions and the Autonomous Provinces of Trento and Bolzano, as well as the representatives of the third sector, there is no prejudice to the dispositions in force concerning the legal and administrative status of the entities acknowledged by the religious confessions with which the State has stipulated pacts, deals or agreements.

3. By implementing the leading principles and criteria to which the current law refers, no additional or higher burdens for the public finance should derive.

4. The schemes of the legislative decrees adopted according to paragraph 1 are sent to the Chambers in order to allow the competent parliamentary Commissions to express opinions within 30 days from the communication date of the decree schemes.

5. Within 30 days after the expression of the opinions according to paragraph 4, if the Government does not intend to conform to the conditions eventually formulated, it sends again to the Chambers the texts annotated with the necessary integrative information elements for the final opinions of the competent parliamentary Commissions, which must be expressed within 30 days from the communication date.

6. Once passed the terms established in paragraphs 4 and 5 without the Commissions expressing opinions of their respective competence, the legislative decrees can be in any case promulgated.

Legislative Decree no. 155 of March 24th 2006

"The discipline of the social enterprise, according to law no. 118 of June 13th 2005

published in the GazzettaUfficiale of the Italian Republic of April 27th 2006, no. 97.

THE PRESIDENT OF THE REPUBLIC

Having regard to Articles 76 and 87 of the Constitution;

Having regard to Article 117, second paragraph, letter l) of the Constitution;

Having regard to the law no.118, June 13th 2005 that delegated the Government to adopt rules in order to regulate the social enterprise;

Having regard to the preliminary decision of the Cabinet, adopted in the sitting of December 2nd2005;

After having obtained the opinion of the permanent conference responsible for the relationship among the State, the Regions and the Autonomous Provinces of Trento and Bolzano, issued in the sitting of February 9th 2006;

After having consulted the representative groups of the third sector;

After having obtained the opinion of the competent Commissions of the Chamber of Deputies and of the Senate of the Republic;

Having regard to the decision of the Cabinet, adopted in the sitting of March 2nd 2006;

On the proposal of the Ministry of Labour and Social Policies, the Ministry of Productive Activities, the Ministry of Justice, the Ministry of European Community Policies and the Ministry of Internal Affairs

Issues
the following legislative decree:

Art. 1.
Definition

1. All private organisations, including the entities comprised by the 5th book of the Civil Code, can obtain the qualification of social enterprise as long as: they perform in a stable and principle way an economic activity aimed at producing or exchanging goods or services of social utility with the goal of pursuing general interest objectives; and as long as they have the characteristics provided in the following articles 2, 3, and 4.

2. Public administrations referred to in article 1, paragraph 2 of the Legislative Decree no. 165 of March 30th 2001 and in any further modifications and the organisations whose certificate of incorporation limit, also indirectly, the distribution of goods and services to the advantage of the members, associates or participant only cannot gain the qualification of social enterprise.
3. The norms of the present Decree, within the limits of the development of activities listed in article 2, apply to religious entities and entities belonging to religious confessions with whom the State stipulated pacts, deals and agreements on the condition that they adopt a private, written and certified regulation that encompasses the norms provided by this decree. For such activities, the accounting foreseen by article 10 must be kept separately. The regulation must include the prerequisites required by the present Decree for the certificate of incorporation.

Art. 2.
Social Utility

1. The goods and services of social utility are those produced or traded in the following sectors:

a) social welfare services, consistently with law no. 328 of November 8th 2000, concerning the frame law regarding the achievement of an integrated system of social interventions and services;

b) health care, for the distribution of services provided for by the Decree of the Prime Minister of November 29th 2001, concerning the “Definition of essential levels of assistance” and further modifications, published in the ordinary supplement to the *Gazzetta Ufficiale* of February 8th 2002;

c) social-sanitary care, consistently with the Decree of the Prime Minister of February 14th 2001, concerning the “Act of orientation and co-ordination in the field of social-sanitary services”, published in *Gazzetta Ufficiale* no. 129 of June 6th 2001;

d) education, formation and training, according to law no. 53 of March 28th 2003, concerning the delegation to the Government of the definition of the general rules for education and the essential levels of services to be supplied in the fields of education and vocational training;

e) protection of the environment and the ecosystem, in accordance with law no. 308 of December 15th 2004, concerning the delegation to the Government of the reorganisation, the co-ordination and the integration of the legislation regarding the environment and the measures of direct application, excepting those activities performed regularly of collecting and recycling urban, special and dangerous waste;

f) valorisation of the cultural patrimony, according to the Code of cultural goods and landscape, provided for by the Legislative Decree no. 42 of January 22nd 2004;

g) social tourism, according to article 7, paragraph 10, of the law no. 135 of March 29th 2001, concerning the reform of the national legislation for tourism;

h) graduate and post-graduate education;

i) research and supply of cultural services;

l) extra-curricular education aimed both at preventing school dispersion and contributing to the educational success;

m) servizi strumentali alle imprese sociali, resi da enti composti in misura superiore al settanta per cento da organizzazioni che esercitano un'impresa sociale.

m) support services for social enterprises, supplied by entities whose ownership is formed of at least 70% social enterprises.

2. Independently from performing economic activities in the sectors listed in paragraph 1, can obtain the qualification of social enterprise those organisations that perform entrepreneurial activities aimed at the work integration of the following categories of subjects:

a) disadvantaged workers under article 2, paragraph 1, letter f), points i), ix) and x) of the Commission Regulation (EC) No. 2204/2002 of December 12th2002 on the application of Articles 87 and 88 of the EC Treaty regarding the State aid for employment;

b) disabled workers under article 2, paragraph 1, letter g) of the cited Commission Regulation (EC) No. 2204/2002.

3. Under article 1, paragraph 1, principle activity means that activity whose relative proceeds account for more than the 70% of the total proceeds of the organization that wields the social enterprise. Quantitative and temporal criteria for the calculation of the seventy per cent of the total proceeds are defined by decree issued by the Ministry of Productive Activities and by the Ministry of Labour and Social Policies.

4. The disadvantaged workers mentioned by paragraph 2 must to account at least thirty percent of the overall workers of the enterprise, irrespective of the title in the enterprise; the relative condition of each worker must to be certified according to the legislation in force.

5. For the entities mentioned by article 1, paragraph 3, the dispositions provided for by paragraphs 3 and 4 are applicable within the limits of the activities listed in this article.

Art. 3.

Lack of a profit aim

1. The organization that wields a social enterprise sets aside profits and the operating surpluses for the development of statutory activity or for the increase of the enterprise assets.

2. Therefore, it is forbidden to distribute, even indirectly, profits and operating surpluses, notwithstanding their definition, as well as funds and reserves to the advantage of managers, members, participants, workers or collaborators. It is considered indirect distribution:

a) the payment to managers of remunerations higher than the ones foreseen in enterprises performing in the same or similar sectors and conditions, excepting justified requirements related to the need of acquiring specific skills and, in any case, with a maximum increase of twenty percent;

b) the payment of remunerations or compensations to employees and self-employed persons of a higher value than that foreseen in the collective bargain contracts for the same qualifications, excepting justified requirements related to the need of acquiring specific expertise;

c) the remuneration of financial instruments other than shares or quotas with a value higher than five percent over the official rate of reference, to persons or bodies that are different from banks or authorized financial intermediaries.

Art. 4.

Ownership structure and groups regulation

1. For the activity of direction and control of the social enterprise apply, where compatible, the norms provided for by item IX of the 5th title of the Vth book and article 2545-*septies* of the Civil Code. It is considered as exercising the activity of direction and control the subject that, according to the statute or for any other reason, has the right to appoint the majority of the administration bodies.
2. The groups of social enterprises are obliged to deposit the participation agreement at the enterprises' book. The groups of social enterprises are also obliged to draw up and to deposit the economic and social balance sheets in a consolidated form, according to the guidelines provided for by article 10.
3. Private enterprises with a profit aim and public administrations listed in article 1, paragraph 2 of the Legislative Decree no. 165 of March 30th 2001 and further modifications cannot exercise direction activities and hold the control of a social enterprise.
4. In the case of a decision taken with the vote or with the determining influence of the subjects mentioned in paragraph 3, the respective document can be invalidated and contested within 180 days in accordance with the rules of the Civil Code. The legitimation to contest it is due to the Ministry of Labour and Social Policies also.

Art. 5.

Formation

1. The organization that wields a social enterprise must be formed by a public act. In addition to what is specifically provided for each kind of organisation, according to the discipline applicable to each of them, the certificates of incorporation must render explicit the social nature of the enterprise in accordance with the norms of this decree and, in particular, to specify:
 - a) the social aim, with particular regard to the disposition provided in article 2;
 - b) the lack of a profit aim, provided in article 3.
2. The certificates of incorporation, their modifications and other facts concerning the enterprise must be deposited by the notary or the managers within 30 days at the office of the enterprises' book in whose district the legal seat was established for the registration in the appropriate section. Article 31, paragraph 2 of the law no. 340 of November 24th 2000 is applicable.
3. The Ministry of Labour and Social Policies, for the purposes of article 16, has access to the acts deposited at the office of the enterprises' book also through the web.
4. The entities listed in article 1, paragraph 3, have the obligation to deposit only the regulation and its modifications.

5. According to the Decree of the Ministry of Productive Activities and the Ministry of Labour and Social Policies, there are defined the acts that must be deposited and the procedures, as listed in this article.

Art. 6.

Patrimonial liability

1. Besides the provisions concerning the limited liability of the various legal forms already provided by the Vth book of the Civil Code, the organizations that wield a social enterprise whose patrimony is superior to 20.000 euros, from the moment of the registration in the appropriate section of the enterprises' book, are fully liable for the obligations assumed and answer with their patrimony only.

2. When it results that the patrimony shrunk of more than one third the amount mentioned in paragraph 1 due to losses, also those who acted in the name and on the account of the enterprise are personally and jointly liable for the obligations contracted.

3. The disposition referred to in the present article does not apply to the bodies mentioned in article 1, paragraph 3.

Art. 7.

Denomination

1. In the denomination it is compulsory to use the expression "social enterprise".

2. The disposition provided in paragraph 1 does not apply to the bodies mentioned in article 1, paragraph 3.

3. The use of the expression "social enterprise" or of other appropriate words or expressions with a misleading aim is forbidden to subjects others than the organizations that wield a social enterprise.

Art. 8.

Executives and Committee Members

1. In associations, the appointment of the majority of the executives and the committee members cannot be allowed to subjects external to the organisation wielding the social enterprise, except for the situations when it is provided so for each specific body by the legal and statutory norms and as long as compatible with its nature.

2. Subjects mentioned in article 4, paragraph 3 are not entitled to be appointed as executives or committee members.

3. The certificate of incorporation must establish specific requirements of respectability, professionalism and independence for those assuming an executive or member of the committee position.

Art. 9.

Admission and exclusion

1. The admission and exclusion procedures, as well as the discipline of social reports are regulated according to the non-discrimination principle, compatible with the legal form of the body.

2. The certificates of incorporation must acknowledge the right of the requesting member to appeal the members' assembly for both measures of refusal of admission and of exclusion.

Art. 10.

Accountability

1. The organisation wielding the social enterprise must keep in any case the daily accountability and the inventory, according to the provisions of articles 2216 and 2217 of the Civil Code. Besides, the social enterprise must write and deposit at the enterprises' book a special document adequately showing the patrimonial and economic situation of the enterprise.

2. The organisation wielding the social enterprise must also draw up and deposit the social balance sheet at the enterprises' book, according to the guidelines adopted by decree by the Ministry of Labour and Social Policies, after having consulted the Agency for the non-profit organisations of social utility; This duty is meant to show the compliance of the social enterprise with the social aims.

3. The provisions of this article apply only to the activities mentioned in the internal regulation for the bodies listed in article 1, paragraph 3.

Art. 11.

Auditing bodies

1. If not legally provided otherwise, the certifications of incorporation must foresee the appointment of one or more auditors when one of the two limits mentioned in article 2435-bis, paragraph 1, of the Civil Code, reduced to the half, are overcome. Auditors must monitor the compliance with the law and with the statute, as well as the following of the principles of proper administration, of the adequacy of the organizational, administrative and accounting shape.

2. The auditors monitor also the compliance of the enterprise with the social aims, considering especially the dispositions of articles 2, 3, 4, 6, 8, 9, 10, 12 and 14. The outcomes of the monitoring activities must be accounted for in the social balance sheet, as mentioned in article 10, paragraph 2.

3. The auditors are at any time entitled to perform inspections and controls. For this purpose, they can ask the managers for information also with regard to the groups of social enterprises, concerning the progress of transactions or of specific businesses.

4. In the case the social enterprise overcomes, in two consecutive financial years, two of the limits mentioned in article 2435-bis of the Civil Code, the accounting control is performed by one or more reviser auditors registered in the book established at the Ministry of Justice or by the auditors. If the accounting control is exercised by the auditors, they must be registered in the book of reviser auditors established at the Ministry of Justice.

Art. 12.

Involvement of workers and beneficiaries

1. Without prejudice to the legislation in force, the firm regulations or the certificates of incorporation must foresee measures of involvement of the workers and beneficiaries of the activity.

2. Involvement is referred to any mean, including information, consultation or participation, through which the workers and beneficiaries can influence the decisions that need to be taken in the enterprise, at least those that regarding the working conditions and the quality of goods and services produced or exchanged.

Art. 13.

Transformation, merging, splitting and transfer of the business and devolution of the patrimony

1. For the organizations that wield a social enterprise, transformation, merging and splitting must be accomplished in compliance with the preservation of the non-profit aim of the subjects mentioned in the constitution acts, as provided for by article 3; the transfer of the business must be accomplished in such a way that preserves the general interest aim provided for by article 2 by the transferee. has to be realized in order to preserve the pursuit of the general interest aims by the transferee as mentioned in article 2. In the case of the entities mentioned in article 1, paragraph 3, the provisions of this article apply only to the activities provided for by the regulation .

2. The acts mentioned in paragraph 1 must be harmonized with the guidelines adopted by decree by the Ministry of Labour and Social Policies, after having consulted the Authority for the Non-Profit Organisations of Social Utility.

3. Except as provided in the field of cooperatives, in case of suspension of the business, the remaining patrimony will be devolved to non-profit organisations of social utility, to associations, committees, foundations and religious bodies, according to the statute rules. The provision of this paragraph does not apply to the bodies listed in article 1, paragraph 3.

4. The administration bodies notify with a written dated act to the Ministry of Labour and Social Policies the intention to proceed to one of the act provided for by paragraph 1, attaching the necessary documentation for the evaluation of conformity with the guidelines mentioned in paragraph 2, or the name of the beneficiaries of the patrimonial devolution.

5. The effectiveness of the acts is subordinated to the authorisation of the Ministry of Labour and Social Policies, after having consulted the Authority for the Non-Profit Organisations of Social Utility. The authorization is considered given after 90 days from the moment the notification was received.

6. The rules provided for in this article do not apply when the beneficiary of the act is another organisation wielding social enterprise.

Art. 14.

Work in the social enterprise

1. The economic and normative treatment of the workers in the social enterprise cannot be inferior to that provided for by the collective bargains applicable.

2. Except for the specific discipline provided for the bodies mentioned in article 1, paragraph 3, the performance of voluntary activities is admitted if it does not exceed the limit of fifty percent of all

the worker employed in the social enterprise, irrespective of their qualification or type of contract. Articles 2, 4 and 17 of the law no. 266 of August 11th 1991 apply.

3. The workers of the social enterprise, irrespective of their qualification or type of contract, have the rights of information, consultation and participation in the terms and with the methods specified in the business regulations or agreed by the administrative bodies of the enterprise and their representatives. The outcomes concerning the involvement of the workers must be mentioned in the social balance sheet provided for by article 10, paragraph 2.

Art. 15.

Insolvency procedures

1. In case of insolvency, the organisations wielding a social enterprise are subject to the compulsory administrative liquidation, provided for by the royal decree no. 267 of March 16th 1942. The rule of this paragraph does not apply to the bodies mentioned in article 1, paragraph 3.

2. In case of devolution of the remaining patrimony after the end of the insolvency procedure, article 13, paragraph 3 applies.

Art. 16.

Monitoring and research functions

1. In order to develop complex actions and perform monitoring and research activities, the Ministry of Labour and Social Policies supports networking activities of the offices in charge, involving also other state administrations, the Authority for the Non-Profit Organisations of Social Utility and the social partners, the technical agencies and the research centres, on which it normally avails of for that are subjects of its auditing, and their social partners.

2. The Ministry of Labour and Social Policies, availing oneself of its own territorial structures, wields inspection functions with the aim of verifying the compliance of the social enterprises with the dispositions of this article.

3. In case of a certain infringement of the rules of this decree or of serious non-fulfilment of the provisions protecting the workers, the competent offices of the Ministry of Labour and Social Policies, equipped with the appropriate information, warn the direction bodies of the social enterprise to regularize the illicit behaviours within a proper date, after which, if uselessly, apply the sanctions mentioned in paragraph 4.

4. In case of certain infringement of the provisions provided for by articles 1, 2, 3 and 4, or in case of lack of compliance with the notice provided for by paragraph 3, the competent offices of the Ministry of Labour and Social Policies decide the loss of the qualification of social enterprise. The measure is communicated in order to cancel the registration of the social enterprise from the special section of the enterprises' book. Article 13, paragraph 3 applies.

5. The Ministry of Labour and Social Policies exercises its tasks and takes the decisions provided for by this article after having consulted the Authority for the Non-Profit Organisations of Social Utility.

Art. 17.

Coordination provisions

1. The non-profit organisations of social utility and the non commercial entities regulated by the legislative decree no. 460 of December the 4th 1997 that obtain the qualification of social enterprise, continue to enjoy from the tax rules provided by the same decree no. 460 of 1997, secondary to the subjective requirements and other conditions therein provided.
2. In article 3, paragraph 2 of the legislative decree no. 153 of May 17th 1999, after the word “instrumental” the following are inserted: “of the social enterprises”.
3. The social cooperatives and their consortia, as regulated by the law no. 381 of November 8th 1991, obtain the qualification of social enterprise if their statutes comply with the rules provided by article 10, paragraph 2 and by article 12. For the social cooperatives and their consortia that respect the dispositions provided for in the period before the law no. 381 of November 8th 1991, the dispositions of the present decree apply in compliance with the specific norms of the cooperatives.
4. Within twelve months from the coming into force of the present decree, according to paragraph 3, the social cooperatives and their consortia regulated by law no. 381 of November 8th 1991, can modify their statutes with the procedures and the majorities provided for by the deliberations of the ordinary assembly.

Art. 18.

Financial provisions

1. In order to enforce this decree, the competent administrations endow availing themselves of the human, instrumental and financial resources made available by the law in force, without new or higher expenses for the state finance. The present decree, enforced by the state seal, will be inserted in the official collection of normative acts of the Italian Republic. IT is compulsory for everyone to analyse it and determine its examination.