

Andersen Tax & Legal professionals analysed a relatively new agreement - introduced with art. 3, par. 4-ter, D.L. 5/09, subsequently converted in Law 33/09 - which is not particularly utilized, except in the agricultural sector.

The so called “Network Agreement”, a useful agreement that is not commonly used

This kind of agreement has to be mandatory stipulated by public deed, by authenticated private deed or by a digitally signed deed and, within the respect of the core business of the involved companies and their legal autonomy, it allows the identification of a common purpose which will be achieved by dedicating a governance structure.

The network agreement allows companies to achieve in a straight way all those aims that in practice are usually reached with contractual or equity joint ventures or through the incorporation of new legal entities or assets in order to carry out a dedicated business.

The aim of the legislator is therefore to allow small and medium-sized enterprises to enter in new and larger markets: *"increase, individually and collectively, their innovative capacity and their competitiveness on the market"* (art. 3, par. 4 ter).

Once the common aim has been defined, which can be either the performance of commercial or industrial activities or the exchange of know-how, one of the great advantages connected to the network agreement is the possibility to limit the risk of such particular activity or project only to the common fund that the parties have agreed to make available to the network.

This creates a limitation of liability similar to the one which would be created if the parties would incorporate a new company.

In the presence of a common fund, the network becomes a legal person. Differently, if the network has not a common fund, all parties are jointly and severally liable for the debts arising from network.

With reference to the common fund and its ownership the parties have a great discretion in order to determine *"the measure and the criteria of evaluation of the initial contributions and of the possible further contributions that each party is obliged to pay as well as the rules of management of the fund"*. (Article 17, c). So, the achievement of the aim of the network is carried out by a corporate structure that can be organized in any way deemed appropriate by the parties (legal person, individual or collective body, several persons with separate powers).

Although nowadays the tax benefits connected to the network agreement that made such kind of agreements an attractive instrument of internationalization are no more in force, it is interesting to underline that such kind of agreement is frequently used in the agricultural sector. Indeed, a survey carried out by Confagricoltura has shown that nowadays in Italy there are more than 6 thousand agricultural companies participating in network agreements.

The particular success in the agricultural field is probably due to the fact that, together with the mentioned above advantages, the network on the one hand allows to share all the assets - thus reducing fixed costs - on the other hand is supported by benefits that affect positively the employers and the tax regime of goods produced by the network.