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**“Contractual networks and inter-firm cooperation”**

Examples of multiparty contracts creating networks  
***The Italian Network Contract***

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# Outline - main questions addressed

1. What are the main **objectives** pursued by the Italian legislator when introducing the law on Network Contract?
2. What is the **relation** between the Network Contract and **other pre-existing forms** of network?
3. What are the **distinctive features** of a Network Contract compared with other forms of network?
4. Which type of projects can MSMEs implement through Network Contracts? Exploring **some examples**
5. Can Network Contract be used for **international networks**?
6. To what extent could domestic models of contractual networks benefit from **transnational guidelines** on contractual networks?

# 1. What are the main objectives pursued by the Italian legislator when introducing the law on **Network Contract** (2009, LD no. 5/09, conv. into L no. 33/09)?

- ▶ Promoting inter-firm cooperation as means for enhancing opportunities for MSMEs' growth with special regard to their competitive and innovation capability
- ▶ Enriching the menu of legal forms that businesses, esp. MSMEs, could use for implementing network projects
- ▶ Offering wider opportunity for business networks in cases in which informal links fail to support cooperation and corporate forms are perceived as too costly and not flexible enough to address the operation of a network
- ▶ Fostering private autonomy by providing guidance in the use of multi-party contracts in the field of inter-firm cooperation

## 1.1. Multi-party contracts: open menu of legal forms

### *The logics behind*

- ▶ **Variety of legal forms** enables a better choice for MSMEs
- ▶ General contract law, possibly including multiparty contracts (or not), and general company law may fail to fill in the gaps left by the **absence of distinct models of contractual network** within a given jurisdiction

## 2. Which relation with other pre-existing forms of networks?

- ▶ The Italian Network Contract does **NOT REPLACE** pre-existing forms
- ▶ It may either offer an **alternative** avenue to other forms,
  - ▶ eg, NC as an alternative to “temporary business groupings”, able to overcome the temporary and contingent setting designed by the latter
  - ▶ eg, NC as an alternative to network corporations in a preliminary phase of a joint research project (NC as a testing tool with a view to future stabilization)
- ▶ or ...

## 2. Relation with other other legal forms

- ▶ or it may **complement** other forms
  - ▶ Eg, NC as a form due to regulate cooperation among suppliers of a subcontracting chain or among franchisees of a franchising network
  - ▶ eg, NC as a form due to regulate cooperation among existing consortia or cooperative companies

➔ **NETWORK OF NETWORKS**

### 3. What are the distinctive features of the Italian Network Contract? (1/3)

- ▶ **Multi-party contract among businesses only**
  - ▶ some limited openness towards the participation of professionals
- ▶ **Strong focus on common strategic objectives generally linked with the growth of competitive and innovation capability**
  - ▶ Objectives must be measurable to a certain extent
- ▶ **Joint program (workplan) is the core**
  - ▶ wide freedom: from soft cooperation to more integrated forms of joint activities
- ▶ **Duration: defined by parties**
  - ▶ correlated with objectives, workplan, expected investments
- ▶ **Entry and exit rules: major role**
  - ▶ balancing need for skills and competences with flexibility

### 3. Distinctive features of a Network Contract (2/3)

- ▶ **Incomplete contract: decision-making procedures designed in NC**
  - ▶ Complexity of governance defined by parties (governing bodies as well as steering or auditing committees possible, not mandatory)
- ▶ **Financial structure may vary**
  - ▶ Optional institution of a common fund or other forms of co-financing (eg through segregation of assets within each party's patrimony)
- ▶ **Limited liability possible**
  - ▶ for obligations contracted for by the governing body in relation with the NC program; provided by law for *more structured NC* only (having a common fund and a governing body)
- ▶ **NC as a distinct legal entity: possible**
  - ▶ only if parties file a request and register the NC through a special procedure; for *more structured NC* only (having a common fund and a governing body)



### 3. The distinctive features of a Network Contract (3/3)

#### ***Comparing NC with other forms: some examples***

- ▶ **Compared with corporations**
  - ▶ Legal structure is mainly contractual
  - ▶ Identification of a legal entity is only optional and not distinctive
  - ▶ High flexibility in the definition of governance and financial structure
  - ▶ Limited liability available (no major constraints for parties)
- ▶ **Compared with consortia**
  - ▶ Wider freedom in the definition of objectives and program
  - ▶ Higher focus on common workplan and lower focus on governance structure (higher flexibility)
- ▶ **Compared with temporary groupings**
  - ▶ Higher focus on long-term cooperation
  - ▶ Possibility to operate as “multi-project” NC

## 4. Which type of projects can MSMEs implement through Network Contracts? *Exploring some examples*

### ✓ Example #1: Mondobio Network

- ✓ Governing the bio-food chain through a NC

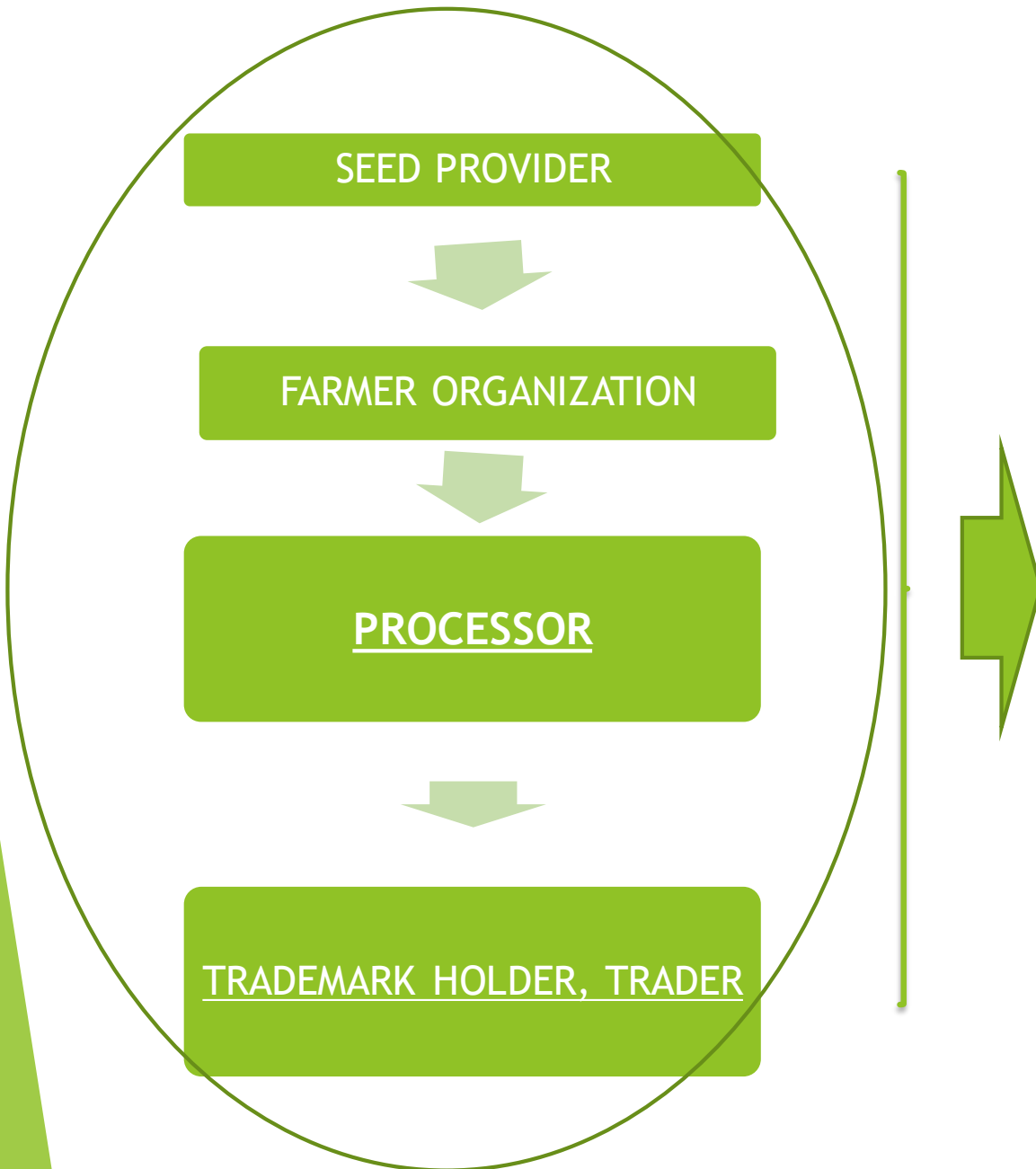
### ✓ Example #2: Etoil-Oil&Gas Network

- ✓ Joint offer of goods and services in oil-gas market

## 4.1. “Mondobio” and the NC as means for vertical coordination

- ▶ **Partaken** by four businesses operating in the agri-food sector in Central Italy: a seed provider, a farmers’ organization, a processor, a distributor holding a strong trademark.
- ▶ **Objectives:** product innovation (eg baby bio food), product quality enhancement, access to new markets (eg Far East)
- ▶ **Activity:** the Network coordinates parties’ activities in order to ensure compliance with high quality standards (eg, seed quality), the rules of bio-production processes, respect for environment.
  - ⇒ Vertical coordination
- ▶ **Strategic and specific investments by parties**
  - ▶ Restrictive **exit rules** (not allowed for a given starting period)

## 4.#1. Mondobio Network

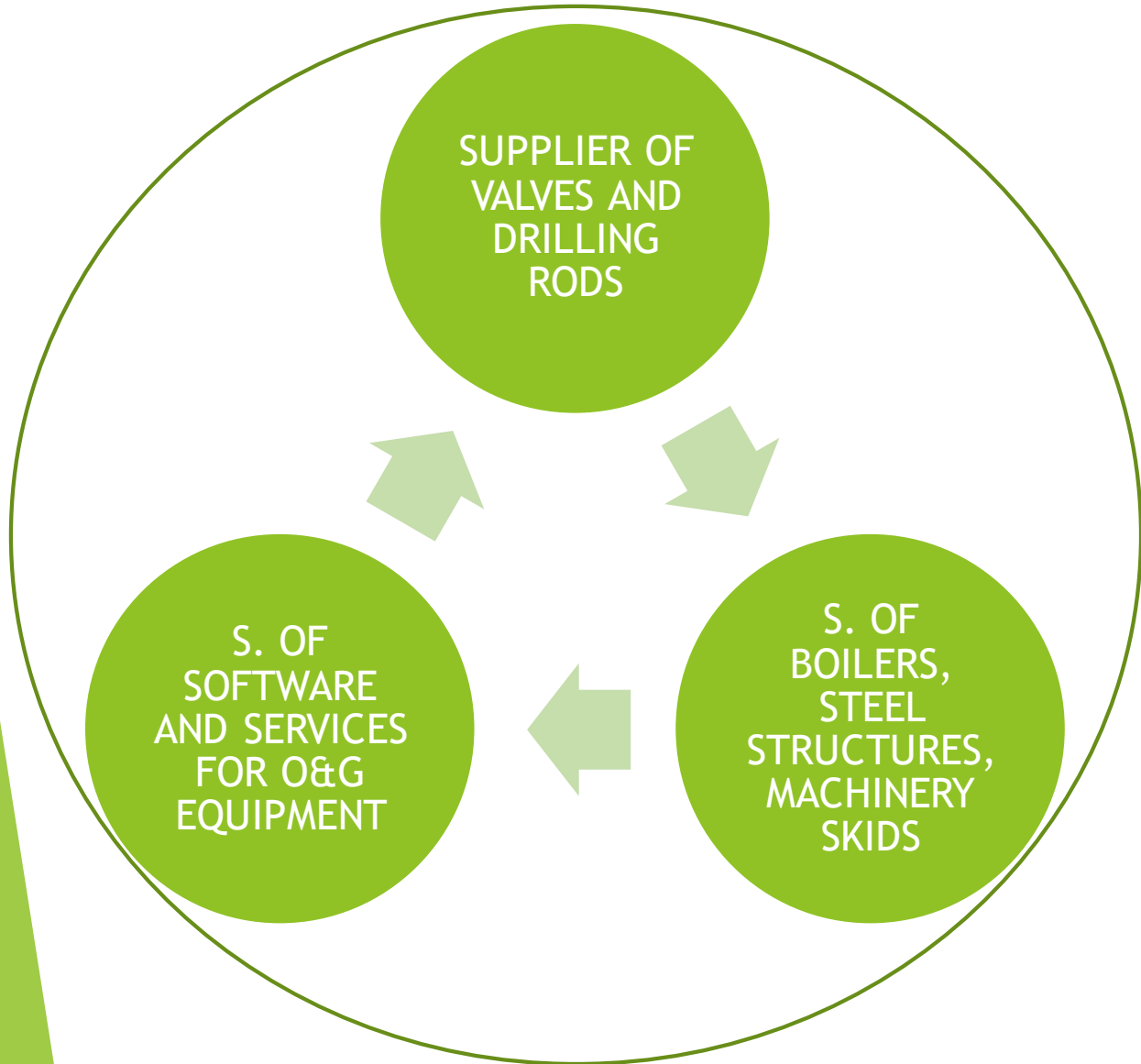


- **VERTICAL COORDINATION**
  - Specific quality and sustainability standards
- **INNOVATIVE PRODUCTS**
- **ACCESS TO NEW MARKETS**

## 4.2. Etoil and NC as means for offer integration to reach big clients

- ▶ **Partaken** by three suppliers of goods and services in the oil&gas market: a valve and drilling rods supplier, a software and service supplier for oil&gas equipment, a supplier of boilers, steel structures, machinery skids.
- ▶ **Objective:** to enable a better access to national and international markets by presenting an integrated offer as wide as possible for clients (OEM, End Users etc.) covering from design to post-installation services
- ▶ **Workplan:** integrating market strategy; fostering technology innovation capacity through common projects (product and process inn.); coordinating quality assurance systems.
- ▶ **Allocation** of products/services due by each party (specialization and complementarity).
- ▶ **New entries:** upon founders' consent, due to enlarge the menu of products and services available for clients.

## 4#2. Etoil-Oil&Gas Network



**JOINT OFFER OF  
COMPLEMENTARY GOODS OR  
SERVICES**

**INTEGRATION OF MARKET  
STRATEGY**

**PRODUCT AND PROCESS  
INNOVATION**

**COORDINATION OF QUALITY  
ASSURANCE SYSTEMS**

# 5. Can Italian Network Contracts be used for international networks?

- ▶ In principle, yes
- ▶ Some do
  - ▶ eg, “**Five for Foundry**” network includes Italian suppliers in the foundry industry together with a French trading company, a Polish supplier - having a subsidiary in Thailand - and a Czech one
- ▶ In practice, registration process requires all partners to have a registered site in Italy
- ▶ **Other forms** may (more effectively?) be used for transnational networks, eg
  - ▶ Joint Ventures
  - ▶ European Economic Interest Groupings

## 6. To what extent could domestic models of contractual networks benefit from transnational guidelines on contractual networks?

- ▶ Definitively yes, eg for transnational networks
- ▶ Also for national networks, since applicable law:
  - ▶ may provide for a limited menu of available forms
  - ▶ may fail to address important aspects in the functioning of networks, eg:
    - ▶ allocation of rights over innovative knowledge
    - ▶ participation by non-business parties



## *6. Transnational guidelines on contractual networks: possible impact on domestic models*

- ▶ As a soft law instrument, transnational guidelines may also complement existing rules on contractual networks with regard to organizational aspects not normally addressed in the law, such as impact assessment or monitoring
  - ▶ Eg: Italian law on NC requires such assessment but no guidance is provided to contract parties
- ⇒ **Hard and soft law, at both national and transnational levels, may play a complementary role in fostering MSMEs' ability to generate networks for a more viable growth.**

**I thank you for your kind attention**

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