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EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

4 September 2018

Case Document No. 1

***Unione sindacale di base* (USB) v. Italy**
Complaint No. 170/2018

COMPLAINT

Registered at the Secretariat on 9 August 2019

Department of the European Social Charter Directorate General Human Rights and Rule of Law Council of Europe F-67075, Strasbourg Cedex

FAO: Executive Secretary of the European Committee of Social Rights, acting on behalf of the Secretary General of the Council of Europe

COLLECTIVE COMPLAINT

pursuant to Article 1(c) of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints

INFORMATION RELATING TO THE COMPLAINANT TRADE UNION ORGANISATION USB

1. *USB – Unione sindacale di base* (see Statutes, Doc. 1), Via dell'Aeroporto 129 001.756-ROME, Tel: 06.59640004, Fax: 06.54070448 Email: usb@usb.it, Italian tax ID and VAT number 97207930583, represented by its current President and legal representative Ms Daniela Mencarelli, born in Peschici on 15 January 1960, is a trade union association that represents and assists public sector workers at national level and has attracted a level of membership that makes it one of the most representative.

2. The level of membership of the USB is attested by the declaration made by the ARAN (the public sector bargaining agency) which certifies that it has significant representative status within the public sector (Doc. 2).

3. The USB is represented by the above-mentioned Ms Mencarelli in this collective complaint. The email address d.mencarelli@usb.it and telephone numbers 0039 3473804420 have been chosen as contact details for the purposes of this complaint.

4. For the purposes of this complaint, *USB Unione sindacale di base* is assisted by Counsel Sergio Galleano of the Milan Bar (Italian tax ID GLLSRN52E18F205N), Counsel Vincenzo De Michele of the Foggia Bar (CF. DMCVCN62A16D643W), Counsel Ersilia De Nisco of the Rome Bar (DNSRSL79T68A783N) and Counsel Federico D'Elia of the Milan Bar (DLEFRC81A08F205B).

Reference email address: roma@studiogalleano.it

Contracting party which violated the European Social Charter: ITALY

ABSTRACT

5. This complaint concerns the specific circumstances of socially useful workers employed in the Italian regions of Campania and Sicily, and specifically the violation not only of the provisions of the European Social Charter, which will be considered after the statement of facts, but also the violation of general principles on employment laid down by Article 45 of the Treaty on the Functioning of the European Union (TFEU) as interpreted by the Court of Justice of the European Union in its judgments in *Fenoll* (Case C-316/13, EU:C:2015:200), *Betriebsrat der Ruhlandklinik GmbH*, (Case C-216/15, EU:C:2016:883), *O'Brien* (Case C-393/10, EU:C:2012:110) and above all *Sibilio* (Case C-157/11, EU:C:2012:148).

NATIONAL LEGISLATION GOVERNING SOCIALLY USEFUL WORK

6. As mentioned above, the USB is a national trade union organisation which represents and assists tens of thousands of workers in the private and public sectors, and in the latter also protects, with particular attention, workers in insecure employment, hired under temporary contracts within the public administrations.

7. It is especially prominent in the sector of socially useful work, which constitutes a specific category of insecure employment.

a) The genesis of socially useful work

8. From the autumn of 1973, the economic crisis of the 1970s severely affected the developed capitalist countries, which were engulfed by the most serious economic crisis since that of 1929.

9. The crisis was caused by overproduction during those years along with the increase in the price of oil in 1973 following OPEC's decision to limit supplies.

10. There were major knock-on effects on employment in western countries, and in particular in Italy, the productive framework of which was still weak (despite having grown vertiginously over the previous years) and lacked the mechanisms for the public redeployment of workers that were commonplace in the countries of northern Europe.

11. It therefore appeared natural as a solution to draw on the mechanisms that other western states had already used, such as "social shock absorbers" in order to maintain a level of income and find alternative employment for people who had lost their jobs.

12. The Italian Court of Cassation held as follows in judgment 23317/2015: "It must be stated at the

outset that, by judgment no. 3 of 2007 the Joint Divisions of this Court examined in detail the nature and purposes of the contracts at issue and held that, according to legal theory, socially useful work (which has special features distinct from the traditional models of social protection from unemployment) must be regarded as equivalent to a North American model defined as workfare, based on the concept that the provision of social protection to an unemployed person is a right which is conditional upon the performance of work 'outside the market' in a socially useful activity, along with a duty to take the initiative personally to end reliance on benefits. In addition, according to the case law, the concept supplements the existing social shock absorbers (inclusion on mobility lists of dismissed workers; wage guarantee scheme; unemployment benefit) and is an innovative instrument for dealing with unemployment, having been created with a clear social security intention."

13. As will be noted below, the best intentions of the Italian law-makers from the 1980s have led to the creation of major problem, namely the current insecure situation of tens of thousands of workers.

b) The legislation governing socially useful work

14. An early type of socially useful work (SUW) was governed by Article 1-bis of Decree-Law no. 244 of 28 May 1981 (converted with amendments into Law no. 390 of 1981, doc. 3), which provided for the temporary assignment to activities of public utility of workers in receipt of a wage supplement, providing that the workers "shall be paid by the public administrations concerned an amount equal to the difference between the amount paid by the INPS [National Institute for Social Security] by way of wage subsidy and the salary or wage that would have been earned had the employment relationship continued, which shall in any case not be greater than that of workers performing the same tasks within the public administration concerned".

15. SUW was then regulated in greater detail by Article 14 of Law no. 451 of 19 July 994, converting Decree-Law no. 299 of 1994 (doc. 4), which provided that recipients of either extraordinary wage subsidies or the mobility allowance, or long-term unemployed persons (pursuant to Article 25(5) of Law no. 223 of 1991: doc. 5), could be assigned to socially useful work with the public administrations.

16. For the former, remuneration for the work carried out was equal to the social security benefit received (wage guarantee scheme or mobility allowance), apart from the right to supplementary remuneration for the additional work carried out. Remuneration for unemployed persons who did not receive any social security benefits was set at 7,500 lire per hour (Article 14(4)). Law no. 451 provided that the use of the workers did not result in the establishment of an

employment relationship, did not imply the loss of the extraordinary wage subsidy and did not entail removal from placement lists or mobility lists.

17. Subsequently, Article 1(3) of Decree-Law no. 510 of 1996 (doc. 6), converted into Law no. 608 of 1996, replaced Article 14(4) of Law no. 451 of 1994 as follows: "Persons falling under paragraph 1 who do not receive any social security benefit may be used within the project for no longer than twelve months, and for such persons an allowance not exceeding 800,000 lire per month may be requested out of the fund provided for under paragraph 7. The allowance shall be disbursed by the National Institute for Social Security (INPS) and shall be governed by the provisions on mobility and the mobility allowance. The workers themselves may be paid an amount to supplement the said benefits by the sponsoring bodies or users in respect of the days actually worked".

18. "Socially useful work" was then defined by Article 1 of Legislative Decree no. 468/1997 of 1 December 1997 on the "amendment of the legislation on socially useful work", issued pursuant to Article 22 of Law no. 196 of 24 June 1997, as "activities relating to the realisation of works and the provision of services of public utility involving the use of particular categories of person".

19. Article 4 of Legislative Decree 468/97 identified the persons who could be used for socially useful work. These persons are:

- workers in search of their first job or unemployed persons who have been registered for more than 2 years on placement lists;
- workers registered on mobility lists who are not in receipt of the mobility allowance or any other special unemployment benefit;
- workers registered on mobility lists and who are in receipt of the mobility allowance or other special unemployment benefit;
- workers in receipt of the extraordinary wage subsidy benefit who are on zero-hours contracts;
- groups of workers expressly identified within agreements concerning the management of laid off workers as a result of company, sectoral or area crises;
- categories of workers identified, including for specific geographical areas, by resolution of the Regional Commission for Employment, including pursuant to Article 25(5)(c) of Law no. 223 of 23 July 1991;
- persons in custody who have been deemed eligible for external work as part of their

rehabilitation programme.

This provision stipulates that the projects must be presented to the relevant Regional Commission for Employment.

When allocating workers to the planned activities, consideration must be given to whether their background is consistent with the expertise required, and to the principle of equal opportunity.

20. Any unjustified refusal by the recipients of welfare benefits to be assigned to activities falling under SUW projects entails the loss of the benefit and removal from the regional mobility lists.

21. Mobility lists are special lists provided for under Law no. 223/1991 (provisions on the wage guarantee fund, mobility, unemployment benefits, implementation of European Community directives, job placement and other labour market provisions) and include persons who have been collectively or individually dismissed by an undertaking as a result of the cessation, transformation or reduction of operations or of their specific jobs.

22. Article 7 of Legislative Decree no. 468/97 goes on to provide that the Italian public administrations may avail themselves of persons falling under Article 4(1)(c) and (d) of that Legislative Decree for the purpose of performing socially useful work.

23. Socially useful work projects may be launched only within certain specific sectors:

- the provision of care and assistance to infants, adolescents and the elderly; the rehabilitation and recovery of drug addicts, disabled persons and prisoners; focused action for persons experiencing particular hardship and social marginalisation;
- the collection of refuse for recycling, the management of landfill sites and installations for the processing of solid urban waste, the protection of health and safety at work, the conservation of protected areas and natural parks, the decontamination of disused industrial sites and asbestos clean-up operations;
- the improvement of the water network, the protection of hydrological infrastructure and the incentivisation of organic agriculture, the carrying out of works necessary for the development and modernisation of agriculture, including within mountain areas, forestry, aquaculture and agri-tourism;
- plans for recovery, conservation and regeneration, including ensuring the safety of buildings at risk, urban areas, city districts and small towns, in particular in mountain areas; the adaptation and improvement of transport systems; initiatives to restore and exploit cultural heritage; initiatives aimed at improving conditions for the development of tourism.

Projects must be prepared with a view to carrying out long-term activities and must therefore be prepared according to a genuine business plan regarding the business activity that it is intended to be promoted at the end of the project.

24. It is clear that the use of socially useful workers is conceptually limited to the initial stage of the project which, once it has become a permanent operational structure, should necessarily use permanent employees in order to carry out routine activities.

25. Projects could be promoted by the public administrations, by economic public sector bodies, by companies entirely or predominantly under public sector ownership, by co-operatives managing health, social and educational services (type A social co-operatives) and by social co-operatives with the purpose of carrying out other agricultural, industrial or commercial activities or providing services geared towards the employment of disadvantaged persons (type B social co-operatives). Projects could also be presented by social co-operatives and consortia thereof that have been operational for at least two years, provided that they have not reduced staffing levels over the previous 12 months and, if they have already participated in other SUW projects, that they have taken on as members or as employees at least 50% of the workers assigned to the previous socially useful work project (Article 3 of Legislative Decree 468/97).

26. Article 8 of Legislative Decree no. 468/97 and Article 4 of Legislative Decree no. 81 of 28 February 2000, laying down supplements and amendments to the legislation on socially useful work, issued pursuant to Article 45(2) of Law no. 144 of 17 May 1999, provides that the use of workers for socially useful activities does not result in the establishment of an employment relationship with the user public administrations and does not entail either the suspension or removal of the individuals concerned from the placement on mobility lists.

27. Under the terms of Article 8(2) of Legislative Decree no. 468/97, socially useful workers cannot work for fewer than 20 hours per week.

28. Pursuant to Article 8(2) of Legislative Decree no. 468/97 and Article 4 of Legislative Decree no. 81/2000, socially useful workers are entitled to a fixed monthly allowance in respect of those hours, which is paid by the INPS and financed by the National Employment Fund. Any hours worked over and above the threshold of 20 hours per week are remunerated according to the basic level of remuneration applicable to employees performing similar duties at the user public administration, and social security charges are deducted from that remuneration.

29. Article 8(9)-(11) of Legislative Decree no. 468/97 then provides that socially useful workers shall be insured against occupational accidents and illnesses, shall benefit from paid leave and shall be entitled to a maximum period of absence due to illness. Pursuant to paragraphs 15-17 of

that Article, these workers are also covered by the legislation on mandatory maternity leave, parental leave and leave available in order to provide assistance to disabled persons and have the right to participate in trade union meetings on the same basis as employees of the public administration at which they work.

30. Following the entry into force of Legislative Decree no. 81/2000 and Article 78(2) of Law no. 388 of 23 December 2000 laying down "Provisions on the formation of the annual and multi-annual budget of the state" (Finance Law for 2001), no public administration may use any person in order to carry out socially useful work for a period in excess of six months, renewable up to a maximum duration of eight months.

31. Workers registered on mobility lists or in receipt of extraordinary wage subsidy benefits who are on zero-hour contracts may be assigned for a number of hours corresponding to the aforementioned benefit as a proportion of the initial remuneration, after deduction of contributions, stipulated for employees performing similar tasks at the body promoting the initiative, and under no circumstances for fewer than 20 hours per week, and for no more than eight hours per day.

32. The benefit payable for socially useful work, which is due to workers engaged on such projects who do not receive social security payments, is LIT 800,000 per month. That benefit is paid by the INPS, subject to certification of attendance. In the event that they are assigned for a greater number of hours, workers are entitled to a supplement, which is paid by the user body. The supplement must be calculated with reference to the remuneration received by an employee of the user body employed in a corresponding position.

33. The benefit may be combined with income from occasional self-employment and continuous and co-ordinated co-operation contracts that started after the project was launched, as well as with income from part-time fixed-term employment of up to LIT 600,000 per month. Workers assigned to SUW may not engage in full-time employment under a fixed-term contract.

34. The benefit is also "incompatible with direct pension payments payable out of general mandatory disability insurance", old-age pensions and survivors' pensions, and with early retirement pensions. Article 8 of Legislative Decree 468/97 made provision concerning insurance, absences, leaves of absence and assemblies for workers performing SUW. In particular, the law stipulates that user bodies must put in place appropriate arrangements to provide insurance against accidents at work, occupational accidents and illnesses as well as professional liability. Provision must be made for adequate periods of rest; certified absences due to illness do not entail the suspension of the benefit. On the other hand, absences for

personal reasons, even if justified, result in a suspension of the benefit. The user body may order that any hours lost be subsequently worked in order to avoid suspension of the benefit.

35. If absences are protracted for a period of time that is too long having regard to the requirements of the project, the user may request that the worker be replaced. Female workers assigned to SUW who are not covered by any other insurance are paid an allowance equal to 80% of the benefit by the INPS for the duration of mandatory maternity leave.

36. Female workers may participate in projects that are still ongoing at the end of the period of mandatory leave.

37. Workers assigned on a full-time basis are granted the time off provided for under Article 10 of Law 1204/71 (two hours of time off work per day until the child's first birthday).

38. Workers engaged in SUW may participate in assemblies organised by trade unions under the same conditions as the employees of the user.

39. In addition, workers used for SUW or publicly useful work [PUW] are afforded preference within public competitions held for the same position, and are entitled to a reserved quota of positions in the event that the body that uses or used them makes permanent appointments.

40. Workers engaged in SUW or PUW must perform exclusively the extraordinary work for which they have been employed and under all circumstances only the work specified in the projects.

c) The current labour situation of socially useful workers

41. Since the year 2000, the geographical distribution of the more than 80,000 socially useful or publicly useful workers hired in previous years has reflected the traditional north-south divide in Italian unemployment, with more than 70% of workers situated in the south of the country. The region that is most affected is Campania, with one third of the total number, followed by Puglia, Calabria and Lazio, which together account for another third. Sicily, Sardinia, Basilicata and Abruzzo each have had a percentage of workers of between 4 and 5% out of the total for Italy, whilst all other regions have had around 1-2%.

42. Responsibility over the use of socially useful workers and opportunities for re-employment was assigned to "Italia lavoro" ["Italy work"], which was established in 1997 on the instruction of the Office of the President of the Council of Ministers by detaching a business division from Italia Investimenti S.p.A. (formerly GEPI S.p.A.), and was tasked with using up the contingent of Social Utility Workers (SUW) in local authorities and creating employment throughout the country. The company has now been incorporated into *Ampal* (the National Agency for Active [Labour] Policies), which was specifically created following the labour market reform known as

the "Jobs Act" (Legislative Decree 150 of 14 September 2015).

43. Socially useful workers have reduced in number over the years to around 20,000 at present as a result of their re-employment, reaching retirement age or achieving stable employment at the user bodies, and are to be found above all in the regions of Campania, Sicily, Basilicata, Puglia, Calabria and Lazio.

44. The problem lies in the improper use of the socially useful workers still present within the contingent, whose employment should have been governed by the arrangements set forth in the legislation described above. However, in almost all cases they have been used for ordinary employment activities, being fully incorporated into the staff of user bodies, often since the outset or otherwise following the completion of the initial project.

45. Persons performing SUW or SUA [socially useful activities as it is termed in Sicily] therefore work at present for municipalities and other public bodies with the official status of socially useful workers, concluding annual contracts signed between 1999 and 2005, under national and regional legislation which has enabled them to be extended each year until the present time.

46. In fact, since the start of their relationship – established formally, although not in all cases, on the basis of a project for their integration into the labour market, normally involving the performance of a specific task – all people performing SUW now work for multiple user bodies in stable and permanent positions for which a competition should have been organised (or an appointment should have been made from a placement list pursuant to Article 16 of Law 56/1987 for the lowest category of workers). These positions have largely become available following the retirement of tenured employees or have been created in order to expand the services provided to the general public, and involve the same tasks as colleagues employed under permanent (or fixed-term) contracts by the same municipality.

47. As a matter of fact therefore, over the course of the last 20 years, the bodies concerned have continued, under the terms of special national and regional legislation, to extend (fake) contracts for socially useful work, using persons who have carried out and continue to carry out ordinary work, which should fall under the remit of a tenured employee.

48. As a result, although these workers carry out work which is identical to that of workers employed under permanent or fixed-term contracts, they are highly discriminated against:

    - As regards remuneration, since the collective agreement (normally for the local authorities) governing relations with all other permanent or fixed-term employees is not applied to them in order to determine their remuneration, and they are on the contrary

paid only the reduced remuneration provided for by law, consisting in the INPS benefit (subject to any supplementary payments for additional hours worked, which are often necessary in order to carry out the tasks assigned to them by user bodies, which bear the associated cost);

- As regards social security arrangements, such workers do not have any cover that guarantees them a pension similar to that of colleagues hired under permanent or fixed-term contracts since during SUW periods the INPS recognises only notional contributions, which however are valid only for the purposes of establishing entitlement to a pension, and not its amount: in practice, periods of socially useful work carried out are taken into account for the purposes of establishing the contribution period necessary for a pension, but do not result in any increase in the level of the pension, unless increased pension benefits are purchased at a particularly high cost, which are consequently inaccessible in practically all cases in account of the reduced remuneration received.

- As regards career progression since, as non-tenured workers at the user body, despite being part of the *de facto* workforce for all intents and purposes, they have been and are denied the possibility of career and occupational advancement to positions reserved to tenured staff, even though they are often assigned to perform higher level tasks (for example, municipal police officers).

THE SITUATION OF SOCIALLY USEFUL WORKERS IN THE SICILY AND CAMPANIA REGIONS

49. As mentioned above, this complaint concerns the improper use of persons formally classified as socially useful workers (persons engaged in SUW, or SUA in Sicily) in the ordinary activities of user bodies.

50. Persons engaged in SUW and SUA work at present for municipalities and other public bodies in Campania and Sicily with the official status of socially useful workers, concluding annual contracts signed between 1999 and 2005, under national and regional legislation which has enabled them to be extended each year until the present time.

51. In fact, since the start of their relationship – established formally, although not in all cases, on the basis of a project for their integration into the labour market, normally involving the performance of a specific task – all those engaged in SUW work for multiple user bodies in stable and permanent positions for which a competition should have been organised (or appointment from a placement list pursuant to Article 16 of Law 56/1987 for the lowest

category of workers). These positions have largely become available following the retirement of tenured employees or have been created in order to expand the services provided to the general public, and involve the same tasks as colleagues employed under permanent (or fixed-term) contracts by the same municipality.

52. As a matter of fact therefore, over the course of the last 20 years, the municipalities concerned have continued, under the terms of special and regrettable national and regional legislation, to perpetuate the conclusion of (fake) contracts for socially useful work, using persons who have carried out and continue to carry out ordinary work, which should fall under the remit of a tenured employee hired following a public competition (or, as mentioned above, referral from the employment office).

THE SITUATION IN SICILY

53. We shall now consider the specific situations in the regions to which this complaint relates.

54. For more than 20 years, over 20,000 persons engaged in SUA [the term used for SUW in Sicily] have been employed by Sicily Region working for municipalities and other local authorities on the island under various national laws, including specifically, as is apparent from the note of 14 July 2015 of the Regional Employment Department for Sicily (doc. 7):

- Priority workers pursuant to Regional Laws no. 85 of 1995 and no. 24 of 1996: these workers were first assigned to collective utility projects pursuant to Article 23 of Law 67 of 1988, and since 1996 have subsequently been used on projects for socially useful work pursuant to Article 12(10) of Regional Law no. 85 of 21 December 1995. Those workers continue to be used in socially useful activities under the terms of Regional Law no. 24 of 26 November which, implementing state legislation on SUW, indicates the persons who fall under the so-called transitory regional regime, as defined under Article 4(1) and (2);
- Workers assigned to socially useful activities in accordance with departmental circular no. 331/99: these workers have been used on projects involving socially useful work funded pursuant to Article 70(2) of Regional Law no. 24 of 26 November 2000 which, implementing the state legislation on SUW, indicates the persons who fall under the so-called transitory regional regime, as defined under Article 4(1) and (2);
- Workers assigned to socially useful activities pursuant to Article 4(1) of Regional Law no. 24 of 2000: these are workers assigned to socially useful work already funded out of the National Employment Fund who do not fall under Article 2 of Legislative Decree 81/2000 (persons assigned to socially useful work who have actually accumulated twelve

months of service between 1 January 1998 and 31 December 1999); such work is funded out of the regional budget pursuant to Article 6(2) of Regional Law no. 24 of 2000 where the conditions laid down by Article 4(1) of Regional Law no. 24 of 2000 have been met;

- Workers falling under Legislative Decree 280 of 1997 (extraordinary plan for publicly useful work) and type A PIP ["Planned Insertion Programme"] workers: this contingent of workers was admitted to the transitory regime for socially useful workers following the entry into force of Regional Law no. 2 of 31 March 2001 (Article 1(1)).

55. Out of this number, according to the above-mentioned note of 14 July 2015, more than 16,000 have been "stabilised" under fixed-term contracts in accordance with Regional Law no. 85 of 1995 and Regional Law no. 21 of 2003, thereby exiting the "stock" of those available for SUW.

56. The complaint registered as no. 153 of 2017, which concerns these specific positions, is already pending before this committee, to which reference is made in its entirety.

57. This means that, again according to the above-mentioned note of 14 July 2015, 5,410 people still fall under the SUW regime.

58. As mentioned, these persons perform ordinary tasks at Sicilian public bodies. Several examples will be illustrated below of their circumstances, which we have limited to three municipalities and therefore only part of the workers employed on SUA, reserving the right – should the Committee consider it useful and appropriate – to provide supplementary information concerning all interested parties.

*A. Outline of the structure of the Municipality of **GIARRE** and the employment situation of the claimant workers[*] performing SUA*

1. Giarre is a Sicilian municipality within the Province of Catania. It has a surface area of around 27 km² and a resident population of around 27,800 within its territory.

2. The designated workforce of the Giarre Municipality administration is comprised of 298 workers, and 217 of those positions have been filled. The remaining 81 are vacant.

3. At present, and for more than a decade, 4 persons engaged in SUW have been working for that municipality under successively renewed employment contracts; as a result, the workers in insecure employment are de facto working on a permanent basis in order to cover vacant positions within the designated workforce.

4. To date, the body has not taken any action to grant the workers permanent status.

5. The periods of work carried out by the claimants, who are still working for the municipality, have extended far beyond any reasonable limit associated with any single project, and are justified exclusively by a regional provision that authorised the municipality to use those workers by virtue solely of the ad hoc provision of funding by Sicily Region.

[*] Translator's note: The Italian text refers to "claimants" and this section would appear to reproduce submissions to the Italian courts describing the situation up to late 2016. The tenses in English have been retained to reflect the situation at the time of these submissions. The same applies to the submissions regarding the Campania region (see below), which appear to have been written mainly in 2017.

6. In effect, the claimants have worked in positions that form part of the designated workforce of the municipality, or which are essential for the performance of its normal and ordinary official activities, and which in any case are vacant positions within the designated workforce. In addition, they have been treated by the municipal administration as permanent, ordinary employees and are subject, inter alia, to a duty to clock on and clock off, to justify any absences, to remain at home during designated hours in the event of absence due to illness, planning of leave, etc.

7. The claimants have performed all of the tasks assigned to them from time to time in line with their professional profile under the National Collective Labour Agreement for the Regional and Local Government branch.

8. GIULISANO has worked for the Municipality of Giarre carrying out SUW, classified in Category B1, since 17 February 2008 upon the approval of her transfer to that municipality. From that time onwards, the claimant continued to work for the Municipality of Giarre under the terms of a series of renewal resolutions, which set the expiry of the worker's relationship at 31 December 2016. She was assigned to Area V, Demographic Services, at which she performed the following tasks: updating of electoral registers, dealing with user enquiries, internal protocol and completion of procedures with banks and post offices. In August 2009 she was transferred to Area II due to temporary re-organisational requirements, subsequently returning to the area of origin, where she still performs the same functions. As at November 2016, the claimant has therefore been working for the Municipality for a total of 105 months.

9. MUSUMECI has been employed as a socially useful worker at the Municipality of Giarre, classified in Category C1, since 1 April 2004 following the approval of the claimant's mobility request, having previously been engaged in SUW at the Municipality of Sant'Alfio. From that time onwards, the claimant continued to work for the Municipality of Giarre under the terms of a series of renewal resolutions, which set the expiry of the worker's relationship at 31 December 2016. She was initially assigned to Sector II, Residents' Services, Social Services Office, with the following tasks: reception, completion of internal procedures relating to maternity requests, baby allowances, home assistance for the elderly and disabled persons, social and healthcare allowances, funding requests. Subsequently, in October 2004, due to requirements associated with the reorganisation of Social Services, she was assigned to the Foreign Nationals' Desk and tasked with organising the course for Cultural Mediators, assessing the needs expressed by immigrant users for the purpose of assisting and directing such persons towards the various competent bodies (provincial health boards, employment agency, municipal offices). As regards the course for Cultural Mediators, the tasks were the following: organisation of the lesson timetable, co-ordination of relations between teachers and the sponsoring body, drafting of resolutions concerning the payment of the persons involved in providing the course, organisation of the end-of-course conference. Due to requirements to support the ICI [municipal real estate tax] service, in December 2004 she was temporarily responsible for processing case files (until the end of the year).

Upon conclusion of the immigration courses, and in the light of the need to create drop-in centres for the elderly, in April 2011 she was tasked with designing and developing socio-recreational activities at drop-in centres for the elderly throughout the territory of Giarre. This task, which she is still performing, involves the co-ordination of socio-recreational activities financed by the municipality for drop-in centres. These activities involve theatre, dance, singing and yoga workshops along with organising trips, performances and shows. This entails technical organisation including tendering procedures, the organisation of timetables, the allocation of services, purchasing of materials along with practical organisation. In view of the objectives fulfilled, in August 2014 a timetable was organised for her that was consistent with the optimum realisation of the projects. In January 2015, in view of the need to deploy staff to IT processing work, she was issued with a password in order to register outgoing post relating to Area V, Services for the General Public, Social Activities Service. In April 2016, as a consequence of the launch of the telecare project promoted by the municipality and financed by

Sicily Region, intended for the elderly and disabled persons in the area, she was authorised to work externally in order to install the devices, to ensure they were working correctly and to attend to relations between the volunteer association which manages the service along with users who had requested it. Considering the lack of tenured staff, the claimant co-ordinates the home assistance service for the elderly and disabled persons (incoming requests, prioritisation, management of relations between users and the co-operative). As at November 2016, the claimant has therefore been working for the municipality for a total of 151 months.

10. In particular, RAGAGLIA has been employed as a socially useful worker for the Municipality of Giarre, classified in Category B1, since 9 May 2007, when she was assigned to Area I Administrative Management, Health and Hygiene Office, in order to carry out the tasks associated with her category of origin. In June 2010, she was assigned to the Staff Office of the Director in order to deal with documented requirements relating to the internal organisation of the area. Subsequently, in 2011 she was assigned to Area IV, General Affairs Service, Public Works Planning Service. In 2012, considering the need to supplement the human resources assigned to Area V, Services for the General Public, she was transferred to that department, again in order to perform tasks relating to her category of origin (transfer). In 2015 her working hours were extended by one day per week in order to work at the Sala Messina to enable visits to the photography exhibition. As at November 2016, the claimant has therefore been working for the municipality for a total of 138 months.

B. Outline of the structure of the Municipality of ***CASTELLAMMARE DEL GOLFO*** *and the employment situation of the claimant ASUs*

1. Castellammare del Golfo is a Sicilian municipality in the Province of Trapani. The municipality has a surface area of around 127km^2 and a resident population of around 15,350 within its territory.

2. The designated workforce of the municipal administration of Castellammare del Golfo is 130 positions. In actual fact, there are 61 vacant positions.

3. This workforce has been supported for more than ten years by SUW staff, who have been working for that Municipality under successively renewed employment contracts; as a result, the workers in insecure employment are de facto working on a permanent basis in order to cover vacant positions within the designated workforce.

4. The claimants have worked in positions that form part of the designated workforce of the municipality, which are essential for the performance of its normal and ordinary official activities, and which in any case are vacant positions within the designated workforce. In addition, they have been treated by the municipal administration as permanent, ordinary employees and are subject, inter alia, to a duty to clock on and clock off, to justify any absences, to remain at home during designated hours in the event of absence due to illness, planning of leave, etc.

5. The claimants have performed all of the tasks assigned to them from time to time in line with their professional profile under the National Collective Labour Agreement for the Regional and Local Government branch.

6. BATTIATA has been engaged in SUW for the Municipality of Castellammare del Golfo, classified as a Category B1 junior clerical worker, since 30 August 2001. From that time, the claimant's contracts were successively renewed each year until 31 December 2016 pursuant to a series of renewal resolutions. Ultimately, as at November 2016, the claimant has been working for the municipality for a total of 83 months. She was initially assigned to the General Affairs Sector. In June 2004, she was instructed to work as a Traffic Auxiliary at the Municipal Police command centre. She was subsequently assigned to the Municipal Technical Office (as is apparent from the attendance register) in a supporting role for cleaners of municipal premises, and at times as the concierge, assisting Ms Di Benedetto V. In January 2011 she was assigned to work at the desk dealing with the issue of certificates and authorisations. In February she was transferred once again to the Town Planning Sector, returning to the Desk the following

month. In October 2011, pursuant to the decision by the Head of Sector III concerning the appointment of persons responsible for procedures, during periods in which cleaning work was carried out by other sectors the claimant was assigned to the department responsible for photocopying, concierge and links with the central office for the purpose of transporting post and various office material. In September 2012 she was assigned to Department no. 2 Territorial Control, Prevention and Punishment of Building Violations, Regularisation of Building Violations, again within Sector IV Town Planning. Following the re-organisation of offices and departments, she was assigned to Department no. 3 Territorial Control, Prevention and Punishment of Building Violations, where she performs administrative duties in conjunction with the surveyor Mr Cascio. The current duties are as follows: recording of outgoing correspondence and documents, registration, cataloguing and archival of requests for the regularisation of building violations; land register consultations, production of certificates and extracted land register maps;

preparation of files for summary examination and consideration of the merits of requests for the regularisation of building violations; she takes records of examinations carried out by the officer responsible and subsequently draws up any requests for supplementary documentation and final decisions, attending also to service on the interested parties.

7. BOSCO has been engaged in SUW at the Municipality of Castellammare del Golfo since 1 January 2005, following the resolution designating the municipality in question as the user body of 22 persons originating from the co-operative "Castellammare 2000". From that time, the claimant's contracts have been successively renewed each year until 31 December 2016 pursuant to a series of renewal resolutions. Ultimately, as at November 2016, the claimant has therefore been working for the municipality for a total of 143 months. At the time she started her period of service, the claimant was working in the Technical Office of the municipality, performing administrative support tasks. As of September 2005 she was assigned to the Protocol Office of the Sector III Technical Office with the following tasks: recording of outgoing post, reception of incoming post, registration and distribution of post to employees, registration of leave, registration of documents and administrative fees, photocopy and fax service. From June 2009, the Head of Sector III assigned her to work together with the municipal employee with the status of senior clerical worker with tasks consisting of the provision of support in drafting administrative documents relating to the planning and execution of public works, Three-year Plan for Public Works, Register of Accredited Professionals, Professional Appointments, administrative disputes relating to professional appointments and to works, financing procedures, miscellaneous certificates, relations with the monitoring body, the keeping of the register of public works, archive of public works. She still works in this sector and performs the same duties.

8. CASSARA has been engaged in SUW at the Municipality of Castellammare del Golfo since 1 January 2005, following the resolution designating the municipality in question as the user body of 22 persons originating from the co-operative "Castellammare 2000". From that time, the claimant's contracts have been successively renewed each year until 31 December 2016 pursuant to a series of renewal resolutions. Ultimately, as at November 2016, the claimant had therefore been working for the Municipality for a total of 142 months. Since she joined the service until the present time, the claimant has at all times worked in Sector I General Affairs, Public Education Office, which deals with all matters relating to schools. The claimant performs administrative tasks and provides support to the outsourcing of the canteen service and the maintenance service for kitchen equipment and heating systems; she places consultancy mandates for HACCP self-monitoring of foodstuffs; she deals with the recovery of unpaid fees; she attends to the granting of municipal subsidies for private schools; she manages school bus requests and reimbursements to commuting pupils; she co-ordinates the supply of free or subsidised textbooks and bursaries; she issues book vouchers to pupils of secondary and level I schools.

9. GRILLO has been employed as a socially useful worker at the Municipality of Castellammare del Golfo since 1 January 2005, classified as a Category B specialist

administrative executive officer, pursuant to the resolution designating the municipality in question as the user body of 22 persons originating from the co-operative "Castellammare 2000". From that time, the claimant's contracts have been successively renewed each year until 31 December 2016 pursuant to a series of renewal resolutions. Ultimately, as at November 2016, the claimant has therefore been working for the municipality for a total of 143 months. Since she joined the service she has been assigned to Sector I General Affairs, Operational Unit of the Personnel Office, with the classification of investigator. In particular, the tasks assigned to her concerned the day-to-day control of clocking-in and clocking-out, and therefore calculating the excess hours or shortfall for each worker, resolving anomalies and inputting justifications for absences. She was subsequently also tasked with drawing up documents for the Office. In February 2008, she was transferred to the Operational Unit of the Legal Office of the municipality, in the same sector. In March 2008 she was also assigned a new task, namely the operation of the Internal Protocol service of the General Affairs Sector. In that sector she frequently worked additional hours. In July 2012 she was assigned to Sector IV Town Planning and Territorial Management, and specifically to the Single Construction Desk Department. All private construction applications (e.g. Certified Report of Commencement of Activities [Segnalazione Certificata Inizio Attività, SCIA] and Declaration of Commencement of Activities [Dichiarazione Inizio Attività, DIA]) transit through this office. As she is not a technical officer, the tasks carried out in this service which may be classed as those of an administrative investigator are the following: registration of incoming and outgoing procedures; drafting of notices concerning the transmission of files; drafting of notices requesting supplementary documentation; drafting of warning notices and refusals to carry out construction work; outgoing protocol; monitoring of construction activity subject only to a requirement of notification. She still performs these tasks.

10. LENTINI has been employed as a socially useful worker at the Municipality of Castellammare del Golfo since 1 January 2005, classified as a Category C administrative investigator, pursuant to the resolution designating the municipality in question as the user body of 22 persons originating from the co-operative "Castellammare 2000". From that time, the claimant's contracts have been successively renewed each year until 31 December 2016 pursuant to a series of renewal resolutions. Ultimately, as at November 2016, the claimant has therefore been working for the municipality for a total of 143 months. Since she started work, the claimant has worked in Sector IV, Town Planning and Territorial Management – Prevention and Punishment of Building Violations, in conjunction with the Head of Department III, the Surveyor Mr M. Cascio. The tasks carried out are the following: online compilation (Computerised System to Combat Building Violations [SIAB, Sistema Informatico Abusivismo Edilizio]) mandatory forms with the Regional Department for Land and the Environment (updating of lists of building violations every 15 years); preparation of files for new procedures to punish building violations; preparation and oversight of service of documents falling under the competence of the department for combating building violations; protocol and correspondence; monthly transmission of lists of punitive and precautionary measures and official reports; letters, communications, orders, warnings and measures; classification and archival of building violation procedures and collection of the related measures; land register consultations with production of certificates and extracted land register maps; keeping of registers of orders and communications concerning the initiation of procedures; surveys and clarifications relating to demolition orders requested by the Office of the Public Prosecutor of Trapani.

11. PIAZZA has been employed as a socially useful worker at the Municipality of Castellammare del Golfo since 1 January 2005, pursuant to the resolution designating the municipality as the user body of 22 persons originating from the co-operative "Castellammare 2000". From that time, the claimant's contracts have been successively renewed each year until 31 December 2016 pursuant to a series of renewal resolutions. Ultimately, as at November 2016, the claimant has therefore been working for the municipality for a total of 143 months. Since she joined the service until October 2011, she has worked in the Municipal Technical Office (Sector III). She was subsequently transferred to the Protocol Office with the

following tasks: recording of outgoing post, unloading of incoming post, registration and distribution of post to employees, registration of leave, registration of documents and administrative fees, fax and photocopy service. In October 2011, the Head of the Sector assigned her to work together with the municipal technical officer, the Surveyor Mr G. Giacquinto, where she provided support to the Planning and Direction of Works and the final testing of public works and, in particular, the management and maintenance of municipal real estate and municipal property, co-operation and co-ordination with employment schemes for the unemployed and the monitoring of regular contributions. In April 2012 she joined the Working Group tasked with examining applications for inclusion in the Register of Trusted Firms. In December of the same year she worked together with the municipal technical officer on the computerised census of the cemetery register and on various activities prior to the creation of new burial niches. In January 2013 she joined the committee tasked with examining requests to book burial niches and the drafting of a ranking list. In February 2013 she co-operated with municipal staff from the Tenders Office on the conduct of public tenders, negotiated procedures, and direct contracts for the supply of goods and services; management of the municipality's vehicle fleet, management of lifts installed in municipal buildings. Since September 2016 she has been part of the administrative staff responsible for the management of tendering procedures and administrative acts of the Single Commissioning Unit [Centrale Unica di Committenza, CUC].

12. PIPITONE has been employed as a socially useful worker for the Municipality of Castellammare del Golfo since 10 November 1997, classified as a Category B1 junior clerical worker. From that time, the claimant's contracts have been successively renewed each year until 31 December 2016 pursuant to a series of renewal resolutions. Ultimately, as at November 2016, the claimant has therefore been working for the municipality for a total of 228 months.

She worked initially in the municipal technical office with the tasks of archivist, computer data input clerk for procedures falling under the remit of the department, the management of correspondence to be examined by the municipal building committee and data input for building procedures from 1952 to date, in conjunction with the administrative group, and co-ordinated by Mr P. Gallo. In July 2005, due to internal requirements within the Sector, she was assigned as an administrative clerk to Sector IV as an administrative clerk within the Town Planning Office Department IV "Administrative-Logistics" with the following tasks: management of incoming and outgoing post, recording of outgoing correspondence and documents, registration of incoming correspondence, management of certified email, administrative co-operation in relation to activities falling under the competence of the Head of Service. In June 2009, during the reorganisation of the activities of the Town Planning Sector, she was assigned to the staff of the Head of Sector, Ms Russo A.

13. PIRRELLO has been employed as a socially useful worker for the Municipality of Castellammare del Golfo since 30 August 2001 pursuant to Regional Law no. 2/2001. From that time, the claimant's contracts have been successively renewed each year until 31 December 2016 pursuant to a series of renewal resolutions. Ultimately, as at November 2016, the claimant has therefore been working for the municipality for a total of 183 months. She was initially assigned to the General Affairs Sector. From October of that year she was assigned to the Teaching Directorate. Since December 2002 until the present time, she has been working at the Personnel Office, Economic Department. In November 2011 she was identified as a support worker for the Head of Human Resources, Accounting and Personnel Management, carrying out tasks relating to staff remuneration, the pensions of municipal employees and the preparation of the annual accounts. In November 2015 she became the IT officer for Sector II, Human Resources. Over the years, she has performed the following tasks: mandatory online communications to the [Department of] Public Administration of any appointments, terminations, extensions or transformations of the employment relationships of employee staff; online communication to the [Department of] Public Administration of employee staff performing secondary gainful activity or any appointments as consultants or experts; annual communication to the General Accounting Office of the annual accounts and

the related report on staff spending for the body; notification of the ARAN concerning the signature of the local collective agreement; triennial notification of the ARAN of employee staff designated as trade union officials; online transmission to the INAIL [National Institute for Insurance Against Occupational Accidents] of reports of accidents involving employee staff; online transmission to the INAIL of the declaration concerning the remuneration of employee staff and payment of the INAIL premium due along with any creation of risk items; compilation of the form for the payment of the departure allowance to departing staff and the transmission of the related documentation to the INPS; online transmission to the INPS of files for staff who have taken out small loans or multi-year loans; completion of online procedures with the INPS for any employee staff who are retiring or who wish to amalgamate contribution periods or to purchase additional contribution periods; IT officer for the Human Resources Management sector; management of accounts for regional training schemes; quantification of spending on staff, electronic recording, photocopies etc.

C. <u>Outline of the structure of the Municipality of CORLEONE and the employment situation of the claimant workers employed on socially useful activities</u>

1. Corleone is a Sicilian municipality within the Province of Palermo. It has a surface area of around 23,000 ha and a resident population of around 11,300 within its territory.

2. The designated workforce of the Corleone Municipality administration is comprised of 207 workers, 70 of whom are employed as permanent workers.

3. This workforce has been supported for more than ten years by SUW staff, who have been working for that municipality under successively renewed employment contracts; as a result, the workers in insecure employment are de facto working on a permanent basis in order to cover vacant positions within the designated workforce.

4. The claimants have worked in positions that form part of the designated workforce of the body, which are essential for the performance of its normal and ordinary official activities, and which in any case are vacant positions within the designated workforce. In addition, they have been treated by the municipal administration as permanent, ordinary employees and are subject, inter alia, to a duty to clock on and clock off, to justify any absences, to remain at home during designated hours in the event of absence due to illness, planning of leave, etc.

5. The claimants have performed all of the tasks assigned to them from time to time in line with their professional profile under the National Collective Labour Agreement for the Regional and Local Government branch.

6. In particular, the claimant BAGLIO has been employed as a socially useful worker at the Municipality of Corleone since 6 December 2004 when her application for mobility from the cooperative "Lavoro e Progresso" was accepted. From that time onwards, the claimant's contracts have been renewed each year pursuant to a series of renewal resolutions (the renewal resolution for 2006 states that continuation of employment until 31 December 2005 had previously been approved). When she joined the service she was assigned to Sector IV Technical Services with the tasks of custodian for the Municipal Sports Centre. In 2009 she was assigned to provide support to the officials responsible for the Department for Private Construction, Anti-Seismic Construction and Regularisation of Building Violations with the following tasks: distribution of post, photocopies, archival searches working alongside Mr Rubino S. for the archive and Ms Pasqua G. In February 2010 the Head of Sector II ordered the claimant to work in the Social Services office in order to attend to procedures involving the elderly in accordance with the instructions of Ms Cortimiglia G. In March 2014, pursuant to a further instruction, she was assigned to the desk "Together with the Elderly" in order to provide assistance in relation to the following: the purchase of food, the collection of medicines from pharmacies, accompaniment to public offices, collection of requests and health-related auxiliary equipment from provincial health authorities and collection of prescriptions from general practitioners.

As at November 2016, the claimant has therefore been working for the municipality for a total

of 143 months.

7. CIRAVOLO has been employed as a socially useful worker with the Municipality of Corleone since 2005 when his request for mobility from the Co-operative "Idra", which had been party to a co-operation agreement with the municipality in question since 2002, was accepted. Further to a subsequent resolution, the executive approved the agreement and ordered that the workers be used until 31 December 2005. From that time, the contracts of the workers employed on SUW have been successively renewed each year pursuant to a series of renewal resolutions. The relationship with the municipality will expire on 31 December 2016. The claimant was assigned first to Sector IV, Public Works, Town Planning and Historic Centre where, working as a surveyor, he provided technical support to the Head of the Public Works Service, assisting Mr Levita B. Subsequently, in October 2009, working again within the same sector, he provided support to the Expropriations Office, assisting the Surveyor Russo P. In January 2013, he was subsequently assigned to Sector V, Systems Maintenance Management Office, where he still works. As at November 2016, the claimant has therefore been working for the municipality for a total of 131 months.

8. COMAIANNI has been employed as a socially useful worker with the Municipality of Corleone since 2005 when his request for mobility from the Co-operative "La Coritur", which had been party to a co-operation agreement with the municipality in question since 2002, was accepted. Further to a subsequent resolution, the executive approved the agreement and ordered that the workers be used until 31 December 2005. From that time, the contracts of the workers employed on SUW have been successively renewed each year pursuant to a series of renewal resolutions. The relationship with the municipality will expire on 31 December 2016. As at November 2016, the claimant has therefore been working for the municipality for a total of 131 months. In July 2007 he was transferred to Sector V Maintenance, Street Furniture and Public Green Areas, specifically to the municipal sports centre in order to carry out monitoring and caretaker duties. From April 2013 he was instructed to work as a chaperone on the minibus for disabled persons, in addition to his normal tasks.

9. CONIGLIO has been employed as a socially useful worker, classified under Category A, for the Municipality of Corleone since 15 December 2003, when his mobility request was accepted by the municipality. From that time, the claimant's contracts have been successively renewed each year until 31 December 2016 pursuant to a series of renewal resolutions. In January 2004, the claimant was assigned to Sector VII Economic Development and, considering the various requests for work on public green areas, from June 2005 the head of the sector to which he belonged assigned him to carry out weeding work and to maintain public green areas in an orderly state. From July 2006 he was assigned to Sector VI Town Planning, Historic Centre and Urban Regeneration.

In August 2007 he was instructed to work supplementary hours of 15 hours per week for a total period of 18 weeks. From March 2008, due to service requirements, the head of the Technical Office of Sector V Maintenance, Street Furniture and Public Green Areas assigned the claimant to the Corleone Municipal Cemetery. In June 2012, again the head of that sector assigned him to the maintenance of public green areas in the municipality and surrounding areas, although the instruction was revoked during the same month. In February 2013 he was ordered to work for an additional six hours during the festival dedicated to the patron saint (two periods of additional hours were also ordered in 2014, although it is not apparent in relation to what occasion). In February 2015, in order to ensure improved service functionality, the claimant was assigned to Sector II Service for the Promotion of the Territory and Development of the Local Community, Sport and Entertainment Office. Specifically, he was assigned to work at sports facilities (municipal sports centre) to perform caretaker duties and ordinary maintenance of equipment. He still works in this sector. As at November 2016, the claimant has therefore been working for the municipality for a total of 155 months.

10. DI MICELI A.M. has been employed as a socially useful worker with the Municipality of Corleone since 2005, when her request for mobility from the Co-operative "Idra", which had

been party to a co-operation agreement with the municipality in question since 2002 concerning the use by it of 20 workers for the provision of tourist services, was accepted. Further to a subsequent resolution, the executive approved the agreement and ordered that the workers be used until 31 December 2005. As at November 2016, the claimant has therefore been working for the municipality for a total of 131 months. The claimant was initially assigned to Sector I General and Institutional Affairs; however, in November she was transferred to Sector V, to the Teaching Directorate. In June 2006 the Head of the Personnel Office ordered the claimant to work in Sector IV (which should be Town Planning and Historic Centre) for a period of around three months. However, already in July of that year she was assigned to the CIDMA (Corleone Mafia and Anti-Mafia Museum). In July 2007 she was transferred to Sector II (Social Security), at which she worked throughout the Christmas holiday period; from September 2009 the claimant was assigned to work at the Corleone Unitary School [istituto comprensivo: a single institute hosting schools of all levels] in order to provide assistance on health and hygiene related matters to the disabled child Ferrara P. Throughout the Christmas holiday period she worked at the Museum (being obliged to clock-on and clock-off). In 2010 she worked first at the municipal sports centre and subsequently worked for a number of additional hours as a chaperone for children using the school bus service and as an assistant for the child Guarino S.A. The additional hours worked resulted in the granting of time off in lieu. From 3 to 5 January 2011 she worked at the municipal library and again in January she was tasked with the timetable for accompanying children using the school bus. From June she was assigned to work at the municipal sports centre.

From September 2011 she was assigned to the middle school, whilst in May 2012 she was transferred to the primary school. Also in 2012 (leaving aside a period during the summer in the municipal sports centre) and in January 2013 she was once again assigned to accompanying children using the school bus. In the summer of 2013 she was assigned to the Open Churches project and during the Christmas holidays to the Office of the Chair of the Council. In June 2014 she was assigned to the culture service at the municipal museum; in September of that year she was assigned to the Vasi Institute in Corleone. As at November 2016, the claimant has therefore been working for the municipality for a total of 136 months.

11. DI MICELI B has been employed as a socially useful worker, classified under Category A, for the Municipality of Corleone since 15 December 2003, when the worker's mobility request was accepted by the municipality. From that time, the claimant's contracts have been successively renewed each year until 31 December 2016 pursuant to a series of renewal resolutions. As at November 2016, the claimant has therefore been working for the municipality for a total of 155 months. The claimant was initially assigned to the Service Office of Sector II subject to the stipulation that, in some cases, if so instructed by the head of the department, he could be responsible for opening and closing municipal premises. In November 2005, as a result of the proven requirement to guarantee the transportation service for disabled persons, the Councillor in charge of Social Policies ordered that he be temporarily assigned as a driver of the minibus. Following a further instruction in February 2006, he ceased to perform these duties. In July 2007 he was transferred to Sector V Maintenance, Street Furniture and Public Green Areas. From September of that year, the head of the department to which he belonged ordered the claimant to work as a driver of the minibus for disabled persons. The additional hours worked were used by the claimant in order to take time off in lieu (he was instructed to do so). In January 2010, he was designated as a driver of the municipal fleet; pursuant to the decision taken by the Director of Sector V in January 2013 he was assigned to the Motor Fleet Office of the Systems Management and Maintenance Department, in order to assist Mr Grizzafi, the head of the operational arm of the motor fleet, attending to water supplies by mobile cistern and the management of the fuel service for municipal motor vehicles. The claimant was confirmed in this role and still carries out the same duties within the same sector.

12. PANZICA has been employed as a socially useful worker with the Municipality of Corleone since 2005, with a classification corresponding to Category B, when his request for mobility from the Co-operative "Idra", which had been party to a co-operation agreement with the

municipality in question since 2002 concerning the use by it of 20 workers for the provision of tourist services, was accepted. Further to a subsequent resolution, the executive approved the agreement and ordered that the workers be used until 31 December 2005. As at October 2016, the claimant has therefore been working for the municipality for a total of 131 months. On joining the department, the claimant was assigned to Sector I in order to work in the Electoral Office.

After he said that he was willing to carry out duties of a lower classification, in July 2007 he was transferred to Sector V in order to carry out maintenance on municipal real estate. During the following month he was instructed to work additional hours. In August 2008 he was transferred to Sector II Social Security, Social Activities and Family Affairs Department in order to maintain the chaperone service on the school minibus. In June 2009 the head of that sector ordered that the claimant be assigned to work in the Municipal Library; in September, again the head of the sector instructed the claimant to work on the school minibus in order to accompany children from home to school and back until completion of the minibus route. For the remaining hours until the full contingent of hours was worked, he was ordered to work at the Municipal Library; in October 2010, due to requirements within the sector, he was assigned to work at the sports centre in Contrada Santa Lucia in accordance with the instructions of the Head of Department for Promotion of the Territory and Development of the Local Community. In September 2011 he was assigned to work at the Municipal Museum and in June 2012 at the Pippo Rizzo Civil Museum (for the summer holidays). The same occurred in June 2013 and 2014. As at November 2016, the claimant has therefore been working for the municipality for a total of 130 months.

13. POMILLA has been employed as a socially useful worker, classified under Category A, for the Municipality of Corleone since 15 December 2003, when his mobility request was accepted by the municipality. From that time, the claimant's contracts have been successively renewed each year until 31 December 2016 pursuant to a series of renewal resolutions. In January of 2004 the claimant was assigned to Sector IV. Subsequently, from February 2005, due to health reasons, he was assigned to Sector II with the duties of concierge-usher. Due to service requirements, following a re-organisation of the staff to be deployed within the various departments of Sector IV, the claimant was assigned to the Municipal Cemetery in June 2006 in order to ensure the opening and closing of the facility. In August of the same year he was instructed to work 10 additional hours per week for 7 weeks. In June 2011 the claimant was assigned to Sector V, and specifically to the Systems Management and Maintenance Department, Cemetery Services Office, at which he works externally at the Corleone Cemetery. He currently performs the same tasks. As at November 2016, the claimant has therefore been working for the municipality for a total of 155 months.

14. RIGOGLIUSO has been employed as a socially useful worker, classified under Category ?, for the Municipality of Corleone since 9 November 2011, when the worker's mobility request was accepted by the municipality. From that time, the claimant's contracts have been successively renewed each year until 31 December 2016 pursuant to a series of renewal resolutions. On 27 December 2011 she was assigned to Sector IV, from which she was however transferred in January 2012, when she was assigned to Sector II, to the Teaching Directorate of the Municipality of Corleone with the following tasks: the provision of assistance to children with disabilities, the provision of assistance during the canteen service and supervision of children using the school transportation service.

From January of that year, throughout the entire summer holiday period, she returned to service at the municipal offices until the resumption of school activities, and was assigned to Sector I, Concierge Service. She replaced the employee Campissi during the summer holidays and was therefore responsible for closing premises in the municipal buildings overlooking Piazza Garibaldi. In June 2013 she returned to service at the Teaching Directorate. In June of the following year she was assigned to Sector V until the resumption of school activities in order to work in the municipal gardens. From September 2014 she worked at the G. Vasi Unitary School in Corleone. During 2015 and 2016 she was on some occasions assigned as an assistant

on the school bus (additional hours compensated by time off in lieu). As at November 2016, the claimant has therefore been working for the municipality for a total of 60 months.

15. RUBINO has been employed as a socially useful worker, classified under Category ? [sic], for the Municipality of Corleone since 9 November 2011, when her mobility request was accepted by the municipality. From that time, the claimant's contracts have been successively renewed each year until 31 December 2016 pursuant to a series of renewal resolutions. On 27 December 2011 she was assigned to Sector II, to the Teaching Directorate of the Municipality of Corleone with the following tasks: the provision of assistance to disabled children, the provision of assistance during the canteen service and supervision of children using the school transportation service. From January 2012 she was assigned to the G. Vasi Unitary School in Corleone with the same duties. From January of that year, throughout the entire summer holiday period, she returned to service at the municipal offices until the resumption of school activities, and was assigned to Sector V, Tourist Information Office. As part of the "Open Churches" project she was temporarily assigned to the Church of Saint Leoluca. From September 2013 she was transferred again to Sector II, resuming work at the G. Vasi Unitary School in Corleone with the same duties. In June 2014 she was assigned to the Cultural Department at the Museum for the entire duration of the summer holidays until her return to the school in September. As at November 2016, the claimant has therefore been working for the municipality for a total of 60 months.

16. VACCARO has been employed as a socially useful worker with the Municipality of Corleone since 2005 when her request for mobility from the Co-operative "Idra", which had been party to a co-operation agreement with the municipality in question since 2002, was accepted. Further to a subsequent resolution, the executive approved the agreement and ordered that the workers be used until 31 December 2005. From that time, the contracts of the workers employed on SUW have been successively renewed each year pursuant to a series of renewal resolutions. The claimant dealt first with tourist and promotion services, along with the recovery, use and regeneration of cultural heritage. She was first assigned within the Municipality of Corleone to Sector IV, Town Planning and Historic Centre.

She was subsequently assigned to Sector V, Public Works and Heritage, specifically to the Real Estate Heritage Office in order to investigate any action required; she was then assigned to the Systems Maintenance Management Office, where she still works, again providing support and investigating any action required. As at November 2016, the claimant has therefore been working for the municipality for a total of 131 months.

THE SITUATION IN CAMPANIA REGION

59. The position for socially useful workers in Campania Region is a similar one, being governed by the same national legislation along with specific regional provisions similar to those examined for Sicily.

60. There are currently 5,518 socially useful workers in Campania, as is apparent from the agreement concluded between Campania Region and the Italian Labour Ministry appended to the resolution of the Campania Regional Executive of 26 September 2017 (doc. 8), which provides for the possibility of stabilising workers employed on SUW for the current year, according to the list of such workers drawn up pursuant to Legislative Decree 81 of 2000 (doc. 9).

61. The conclusion of that agreement does not by any means provide any guarantee that socially useful workers will be stabilised (as will be seen below) also because, as is stated in the above

mentioned agreement, "Article 1(1156)(g-bis) of Law no. 296 of 27 December 2006 (...) 'provides, with effect from the financial year 2008, for the allocation of a further contribution of 50 million euros per year for the stabilisation of socially useful workers and for initiatives related to active employment policies in favour of the regions that fall under the convergence objectives for structural funds of the European Union through the conclusion of a dedicated agreement with the Labour Ministry', which amount shall be drawn down from that fund",

62. Similarly, the agreement also refers to "(...) decree of the Director General for Social Welfare Measures and Employment Incentives no. 7511 of 7 October 2010 committing an annual sum of 50 million euros pursuant to Article 1(1156)(g-bis) of Law no. 296 of 27 December 2006 for the year 2010".

63. In spite of these commitments, no action has been taken in order to stabilise socially useful workers, who are employed throughout the entire labour market, being assigned to work as manual workers, clerical workers, social workers and professionals such as architects in public bodies, where they carry out ordinary employee activities, as will be illustrated below with reference only – as previously for Sicily Region – to three specific situations, reserving the right – should the Committee consider it useful – to provide supplementary information concerning all other interested parties.

A) Outline of the structure of Campania Region

The region in question is a local government body with a surface area of around 13,595 km² and a resident population of around 5,836,317 within its territory.

The designated workforce of the Campania Regional Administration comprises 5,236 workers, of whom in 2015 4,913 were employed under permanent contracts and 323 under fixed-term contracts.

This workforce has been supported for more than ten years by 850 SUW staff, who have been working for that municipality under successively renewed employment contracts; as a result, these workers in insecure employment are de facto working on a permanent basis in order to cover vacant positions within the designated workforce.

To give only one example, ***Domenico Chinelli*** *has been working as a socially useful worker with the Campania Region, classified under Category C (senior clerical worker), since 23 June 1996 at the above-mentioned body.*

To date, he has therefore been working for Campania Region for 266 months: he was initially assigned to the Joint Operations Room for the Civil Protection Authority in Campania.

In March 2001 he began working as a senior clerical worker at the STAP [settori tecnico amministrativi provinciali: provincial technical-administrative sectors] Employment Service of Campania Region.

From 24 June 2002 he was assigned to the following tasks: senior clerical worker at the 01 technical-administrative department in the regional civil protection sector.

From 1 July 2003 he was assigned to the following tasks: secretarial assistant at the regional civil protection school; in 2004 he was assigned the following task: civil protection operations room technical officer.

B) Outline of the structure of the Avellino Civil Engineering Office.

Directorial Operational Unit 09 Avellino Provincial Territorial Service – Avellino Civil Engineering Office – civil protection centre (Campania Region) is based in a municipal territory comprising a surface area of 30.55 km² with a resident population within the territory of 54,561 inhabitants; however, the activities carried out also cover other municipalities (118) from the province of Avellino, which considerably increases the size of the territory over which it operates.

The Civil Engineering Department is a decentralised state body, which has the task of controlling, monitoring and supervising public works at decentralised and local level.

The designated workforce of the Avellino Civil Engineering Office comprises 129 workers (including the director), employed under permanent contracts.

These workers have been supported since 2003 by 16 socially useful workers (including two administrative officers, three surveyors and 11 architects, three of whom have been provisionally assigned to the municipalities), working under successive fixed-term contracts, with the result that these workers in insecure employment have de facto been employed on an ongoing basis in order to cover vacant positions within the designated workforce.

The applicants have worked in positions that form part of the designated workforce of the entity in question, or which are essential for the performance of its normal and ordinary official activities, and which in any case are vacant positions within the designated workforce. In addition, they have been treated by the Civil Engineering Department as ordinary permanent workers, who are subject inter alia to a duty to sign attendance sheets at the start and finish of work, to justify any absences, to remain at home during designated hours in the event of absence due to illness, to plan leave, to take medical examinations and to take workplace health

and safety courses.

The administrative staff member ***Maria Testa*** *(who provides "standard documentation" for administrative staff) along with the other administrative staff member* ***Maria Guerriero*** *have been working as socially useful workers at the Avellino Civil Engineering Office, classified under Category C, since 16 June 2003 at the above-mentioned office, and both have performed clerical office tasks since they were appointed.*

C) Outline of the structure of the Municipality of Melito di Napoli (NA)

The Municipality of Melito di Napoli is a municipality in Campania Region within the now abolished province of Naples. The municipality has a surface area of around 3.81 km² and a resident population of around 40,000.

The designated workforce of the Municipal Administration of the Municipality of Melito di Napoli is formally comprised of 59 permanent workers.

This workforce has been supported for more than ten years by 31 SUW staff, who have been working for that municipality under successively renewed employment contracts for more than 20 years; as a result, these workers in insecure employment are de facto working on a permanent basis in order to cover vacant positions within the designated workforce.

For example, ***Elena Pupazzo*** *worked as a socially useful worker for the Municipality of Caivano (NA), classified under category B/5 (senior clerical worker) from 12 January 1998 until 11 January 2012, but she has currently been working for the Municipality of Melito di Napoli classified under category A, but paid as category B on the grounds that she originated from category B, since 12 January 2012 for the same municipality. From that time onwards, she has continued to work for the Municipality of Melito pursuant to a series of renewal resolutions. At the present time in December 2017 the claimant has therefore worked for the Municipality of Caivano for 13 years and for the Municipality of Melito for 6 years. She has at all times been assigned to the Tax Office, at which she has been given the following tasks:*

Front-office every day from Mondays to Fridays from 9 am to 12 noon, and Tuesdays and Thursdays from 2.30 to 5 pm; data archival relating to tax procedures, verification of new residents, changes of address and cancellations concerning TARI [waste tax] and IMU [single municipal tax] (these are taxes and duties), calculation of annual IMU for taxpayers, TARI assessments, the management and sorting of everyday correspondence, charges to be imposed on taxpayers through the Collections Agency (Equitalia sud), repayments of IMU and TARI

along with the relative payment instructions, liaison with the persons responsible at the collections company, updates concerning appeals to the Tax Board and the Justice of the Peace, Banco Posta accounting through Equitalia, completion of procedures before the INPS desk.

D) Outline of the structure of the Municipality of Crispano

The Municipality of Crispano is a municipality in Campania within the now abolished province of Naples. The municipality has a surface area of around 2.22 km² and a resident population of around 12,326 within its territory.

The designated workforce of the Crispano Municipal Administration comprises 51 workers, of whom 23 are employed under permanent contracts and 28 under fixed-term contracts.

This workforce has been supported for more than ten years by 28 SUW staff, who have been working for that municipality under successively renewed employment contracts; as a result, these workers in insecure employment are de facto working on a permanent basis in order to cover vacant positions within the designated workforce.

*For example, **Vitale Aniello** has been working as a socially useful worker with the Municipality of Crispano, classified under Category C1 (senior clerical worker) since 15 September 1995. From that time onwards, he has continued to work for the Municipality of Crispano pursuant to a series of renewal resolutions. To date, in December 2017, the claimant has therefore been working for the **municipality for 22 years and 3 months**; initially he was assigned to the General Affairs Secretariat, at which he was entrusted with the following tasks in September 1998:*

Operation of Protocol Office (March 1998), organisation and implementation of activities at the Municipal Library (October 2001), assigned to the Organisational Position – Institutional Bodies – personnel – litigation – sport and culture (September 2005), front-office at the Municipal Police Command Centre (October 2007)

THE EUROPEAN LEGISLATION APPLICABLE TO SOCIALLY USEFUL WORK

64. In terms of European law, the problem concerns first and foremost the concept of a worker (employee) and secondly the extent to which national law can restrict the concept of employment (above all in cases in which there is no objective justification), therefore *de facto* reducing the scope of the protection provided under European law irrespective of the worker's specific performance. In the case of Italy, the question is whether socially useful workers can be considered not to benefit from the protection available under social directives where their work is comparable to that carried out by their tenured colleagues employed by the same user entity.

65. The relevant issues here are first and foremost the general principles on employment laid down by Article 45 of the Treaty on the Functioning of the European Union (TFEU) as interpreted by the Court of Justice of the European Union, *inter alia*, in the judgments *Fenoll* (Case C-316/13, EU:C:2015:200), *Betriebsrat der Ruhlandklinik GmbH*, (Case C-216/15, EU:C:2016:883), *O'Brien* (Case C-393/10, EU:C:2012:110 and above all *Sibilio* (Case C-157/11, EU:C:2012:148).

66. There is no precise definition within European law of relations equivalent to those of Italian socially useful workers.

67. However, clause 2 of EU Council Directive 99/70 of 28 June 1999 implementing the framework agreement on fixed-term contracts concluded on 18 March 1999 between the general cross-industry organisations ETUC, UNICE and CEEP (Official Journal no. L 175 of 10 July 1999 page 0043 - 0048: hereafter, "the Directive") provides as follows:

2. Member States after consultation with the social partners and/or the social partners may provide that this agreement does not apply to:

a) initial vocational training relationships and apprenticeship schemes;

b) employment contracts and relationships which have been concluded within the framework of a specific public or publicly-supported training, integration and vocational retraining programme.

68. Initially, the definition of socially useful workers provided by Directive 1999/70 would appear to coincide almost perfectly with that of workers pursuant to clause 2(b) of the Directive.

69. It follows that, as a general matter, the conclusion of a contract such as that relating to socially useful workers (given that it is a means of identifying stable employment or professional retraining and also considering the temporary purpose of income support which is conceptually associated with a limited duration) does not fall within the scope of Directive no. 70 of 1999 and, consequently, within the concept laid down by Article 45 TFEU as interpreted by the judgments cited above in paragraph 43, and therefore does not fall within the scope of the Directives.

70. It is an entirely different matter where the relationship is initially established for the specific purposes in question, but then turns out to have different characteristics that render it similar to an ordinary employment relationship, such as those of socially useful workers who have been working in the Italian public administrations for a number of years.

71. Considering that the duration of the relations under examination appears to be conceptually

incompatible with the welfare purposes of the original SUW relationships, the question has in any case been expressly put to the European Court of Justice in Luxembourg specifically with reference to Directive no. 70 of 1999 on fixed-term contracts.[1]

72. The *Tribunale di Napoli* held as regards the compatibility of national legislation with Directive 1999/70/EC that workers on mobility lists or the long-term unemployed have been used for more than a decade for publicly useful work or services and, although these were originally temporary in nature, this temporary nature has *de facto* disappeared over time. In addition, the activities carried out by socially useful workers are normally intended to satisfy the institutional requirements of user bodies and not objectives that are exceptional or limited in time.

73. The court therefore considered the problem as to whether it was possible to exclude a category of employment relations from the scope of Directive 1999/70/EC solely due to the manner in which the specific relationship was established, that is in this case due to the fact that the individuals concerned had been placed on mobility or placement lists. The questions referred for a preliminary ruling were the following:

"1) Is Directive 1999/70/EC (...) applicable to socially useful workers or should such workers be regarded, in accordance with Clause 3(1) (...) [of the framework agreement], as persons having an employment relationship entered into directly between an employer and a worker where the end of the employment relationship is determined by objective conditions such as reaching a specific date, being in the present case the end of a project?

2) Does Clause 4 [of the framework agreement] preclude a socially useful worker or a publicly useful worker from receiving less remuneration than a permanent worker who carries out the same duties and has the same length of service solely because his employment relationship was initiated on the terms described above, or does this constitute an objective reason justifying less favourable treatment in terms of pay?".

74. First and foremost, the European Commission states the following in its written observations:

the discretion enjoyed by the Member States in defining the employment relationship must be... interpreted narrowly. To conclude otherwise would in fact enable the national authorities – through the concept of employment relationship under their domestic law – to undermine the practical effect of the Directive (...) and (...) its (...) uniform application by excluding at their discretion certain categories of persons from the protection intended under those instruments. (...) the Member States cannot exclude from that concept any situations which, considered

[1] *Tribunale di Napoli*, order of 22 February 2011, unpublished, resulting in the judgment of the Court of Justice of 15 March 2012 in Case C-157/11, *Sibilio*, see below.

objectively, have all of the characteristics of an employment relationship in terms of its minimal meaning. However, according to now settled case law, the essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person, in return for which he or she receives remuneration.[2]

75. The Commission clearly stated its position, pointing out how the referral order cast a number of doubts over the effective compatibility between the legislation on SUW and the practice of its implementation:

(...) as these workers have been perfectly trained (...) they would not therefore be incorporated into any specific publicly-supported training, integration and vocational retraining programme (...) SUW may in actual fact have been used in order to procure low-cost labour for the public administration and to circumvent the rules and limits laid down governing the recruitment of public-sector employees and the use of flexible labour within public-sector employment. In such an eventuality, this would amount to an abuse of the SUW (...) of such a nature as to require that it be reclassified for the purposes of applying Directive 1999/70/EC (...).

It is necessary to verify whether the relationship effectively fell under the social welfare category or whether, having been "deviated" from its official purposes in order to satisfy the interests of user administrations, it should be classified for the purposes of the agreement as an employment relationship, and in particular as a fixed-term employment relationship.

76. In fact, the problem does not concern so much the terminology contained in the specific Directive (1999/70/EC) as rather the possibility of excluding, as a general matter, certain relationships from the scope of protection under European law in situations in which the work is carried out under the direction of a person, with remuneration paid as consideration for the work.

77. The CJEU subsequently issued a fundamental ruling concerning this issue (15 March 2013, Case C-157/11, *Sibilio*).

78. In paragraphs 36 and 37 of the judgment, the CJEU describes as follows the arguments brought by the states in their defence: *The Municipality, the Italian and Polish Governments and the European Commission consider that (...) the existence of a contract or employment relationship that is defined as such under law, collective agreements or the national practice in each Member State constitutes (...) an essential prerequisite for the application of the framework agreement.* It was therefore asserted that it was possible to exclude selectively a certain category

[2] Settled case law since the judgment of the Court of 19 March 1964 in Case C-75/63, *Unger*.

of worker.

79. The Luxembourg Court went on to state that: *the Polish Government and the Commission also state, in the alternative, that the Member States have the right, in accordance with clause 2(2)(b) of the framework agreement, to exclude its applicability to employment contracts or relationships established within the context of a specific publicly-supported training, integration and vocational retraining programme. In their opinion, socially useful work, to which the principal dispute relates, falls under that category (...).*

80. The Court held (paragraph 42) *that the definition of the employment contracts and relationships to which that framework agreement applies do not fall to it or to EU law, but to national legislation and/or practice.*

81. It therefore went on to hold that:

47. Therefore, it appears at first sight that, since they do not benefit from an employment relationship corresponding to that defined under law, collective agreements or practice in Italy, socially useful workers do not fall within the scope of the framework agreement.

48. However, it must be noted that, in the opinion of the municipality, which refers regarding this matter to the case law of the national courts, Italian law does not stipulate that any work carried out within the context of a socially useful work project cannot in practice have the characteristics of salaried employment. If this is the case, the Italian legislature cannot refuse to classify as employment relationships those which, objectively speaking, have that nature. It falls to the national court and not to this Court to verify whether such an assessment of national law is well-founded.

49. Taking account of the objectives pursued by the framework agreement... it must be pointed out that the formal classification under national law of the relationship established between a person carrying out socially useful work and the public administration for which such work is carried out cannot preclude such a person from nonetheless being granted the status of worker under national law, if such a formal classification is only notional and thereby conceals an actual employment relationship under national law.

50. Member States may not apply rules which are liable to jeopardise the achievement of the objectives pursued by a Directive and, therefore, deprive it of its effectiveness (judgment of 1 March 2012, O'Brien, Case C-393/10, not yet published in the ECR, paragraph 35).

51. Since it is apparent from the 17th recital to Directive 1999/70 that, when determining what constitutes an employment contract or relationship according to national law and/or practice,

and therefore when establishing the scope of the framework agreement, the Member States must comply with the requirements set forth therein, the definition of such concepts cannot entail the arbitrary exclusion of one category of person from the protection offered by Directive 1999/70 and the framework agreement (see by analogy the O'Brien judgment, op. cit., paragraph 51)

82. The *Sibilio* judgment therefore resolves the problem of clause 2 of the Directive, which allows for a derogation from the application of the protection under the Directive in cases involving relations focusing on training workers and finding new employment for them: the question is reduced to a mere factual analysis. It appears evident from the above and from the results of any investigation that, already by virtue of the mere duration of the relationships, such a purpose is excluded by definition and in any case the specific dynamics of the relationships and the tasks that the claimants were required to carry out, and which were performed by them on behalf of the user municipalities, are fundamentally inconsistent with the social welfare nature of the services rendered.

83. A similar conclusion was reached in the opinion of the Advocate General at the Court of Justice, Nils Wahl, in the *Halalambidis* case (Case C-270/13: which was subsequently followed in the judgment of 10 September 2014), where it is stated that:

27. As the Court has consistently held, the concept of 'worker' cannot be interpreted differently according to the rules or principles applicable in the different Member States, as it has an autonomous meaning in EU law (9). In addition, such a concept must be broadly construed so as to encompass any person who pursues activities which are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary. The essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration (10).

9. - See, among many, Case C-542/09 Commission v Netherlands [2012] ECR, paragraph 68, and Case 66/85 Lawrie-Blum [1986] ECR 2121, paragraph 16.

10. - See, inter alia, Case C-544/11 Petersen [2013] ECR, paragraph 30, and Lawrie-Blum, paragraphs 16 and 17.

84. It must be added that the theory of the existence of "special" employment relationships to which the Directive does not apply was definitively demolished in the judgment of the CJEU in *Fenoll* dated 26 March 2015 (in Case C-316/13), where it is stated that:

15. The referring court makes reference to the Court of Justice's case-law relating to Article 7

of Directive 2003/88, and to the case-law relating to the concept of a 'worker' within the meaning of Article 45 TFEU. In that respect, the referring court raises the question whether persons placed in a work rehabilitation centre (a 'CAT') who do not have the status of employee are covered by the term 'worker' within the meaning of EU law.

(...)

20 Thus, the Court has held that Directive 89/391 must necessarily be given broad scope, with the result that the exceptions to that scope, provided for in the first subparagraph of Article 2(2), must be interpreted restrictively (see, to that effect, inter alia, judgments in Simap, C-303/98, EU:C:2000:528, paragraphs 34 and 35, and Commission v Spain, C-132/04 EU:C:2006:18, paragraph 22). Those exceptions were adopted purely for the purpose of ensuring the proper operation of services essential for the protection of public health, safety and order in cases, the gravity and scale of which are exceptional (judgment in Neidel, C-337/10, EU:C:2012 :263, paragraph 21 and the case-law cited).

(...)

24. In that connection, as regards Directive 2003/88, it should be noted that, as the Advocate General maintains in point 29 of his Opinion, that directive makes no reference to the term 'worker' as appearing in Directive 89/391, or to the definition of that term under national legislation (see, to that effect, judgment in Union syndicale Solidaires Isère, C-428/09, EU:C:2010:612, paragraph 27).

25. It follows that, as regards the application of Directive 2003/88, the concept of a 'worker' may not be interpreted differently according to the law of Member States but has an autonomous meaning specific to EU law (judgment in Union syndicale Solidaires Isère, C-428/09, EU:C:2010:612, paragraph 28).

(...)

27. In that context, it should be recalled that, according to the settled case-law of the Court, the term 'worker' within the meaning of Directive 2003/88 must be defined in accordance with objective criteria that distinguish the employment relationship by reference to the rights and duties of the persons concerned. So, any person who pursues real, genuine activities, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a 'worker'. The essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration (see, to that effect, judgments in Union

syndicale Solidaires Isère, C-428/09, EU:C:2010:612, paragraph 28, and Neidel, C-337/10, EU:C:2012:263, paragraph 23).

(...)

34 According to the Court's settled case-law, neither the level of productivity of the individual concerned, nor the origin of the funds from which the remuneration is paid, nor even the limited amount of that remuneration can in any way whatsoever affect whether or not the person is a worker for the purposes of EU law (see judgments in Bettray, 344/87, EU:C:1989:226, paragraphs 15 and 16; Kurz, C-188/00, EU:C:2002:694, paragraph 32; and Trojani, C-456/02, EU:C:2004:488, paragraph 16).

85. It should be noted that the judgment cited above accepted the opinion of the Advocate General, which pursued the objective of unifying the concept of worker. In point of fact, the Italian Advocate General, Paolo Mengozzi, stated as follows in his opinion:

2. Review of the case-law on the concept of 'worker'

29. There is no single definition of worker in Community law: it varies according to the area in which the definition is to be applied.[25] Yet Directive 2003/88, the Court has already pointed out, did not refer to the definition given to the concept of worker either in Directive 89/391 or in national legislation or practice.[26] It concluded that 'for the purposes of applying Directive 2003/88, that concept may not be interpreted differently according to the laws of the Member States but has an autonomous meaning specific to EU law. The concept must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. The essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person, in return for which he receives remuneration'.[27] The Court therefore considers that the worker to whom Directive 2003/88 is addressed is defined in the same way – save for one reservation which I shall set out below – as the worker to whom Article 45 TFEU is addressed.[28] Reference may therefore usefully be made in this Opinion to the classic case-law of the Court in the field of freedom of movement for workers.

30. Furthermore, the classification of the concept of worker must be based on objective criteria and an overall assessment of all the circumstances of the case must be made.[29] In that connection, the sui generis legal nature of the employment relationship under national law cannot have any consequence in regard to whether or not the person is a worker for the purposes of EU law. That means in the specific context of this case that the fact that handicapped persons staying in a CAT are subject only to certain of the provisions of the

Employment Code cannot constitute an impediment to the potential classification of such persons as 'workers' within the meaning of Directive 2003/88.[30]

31. Finally, the Court has held that: 'any person who pursues activities which are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a worker'.[31] *It is, in principle, a matter for the national court to determine whether the condition of the pursuit of real and genuine activity for remuneration is satisfied, and the national court must base its examination on objective criteria and make an overall assessment of all the circumstances of the case*[32] *and in particular ascertain whether the services actually performed are capable of being regarded as forming part of the normal labour market.*[33]

25. O'Brien (C-393/10, EU:C:2012:110, paragraph 30 and the case-law cited). See also point 25 of the Opinion in O'Brien of Advocate General Kokott (C-393/10, EU:C:2011:746).

26. And, contrary to what the national court gives to understand, see Union syndicale Solidaires Isère (EU:C:2010:612, paragraph 27).

27. Union syndicale Solidaires Isère (EU:C:2010:612, paragraph 28).

28. See Neidel (C-337/10, EU:C:2012:263, paragraph 23).

29. Union syndicale Solidaires Isère (EU:C:2010:612, paragraph 29).

30. See, by analogy, Union syndicale Solidaires Isère (EU:C:2010:612, paragraph 30).

31. See, inter alia, Trojani (C-456/02, EU:C:2004:488, paragraph 15). EU:C:2004:488, paragraph 15).

32. Trojani (EU:C:2004:488, paragraph 17).

33. Trojani (EU:C:2004:488, paragraph 24).

86. Accordingly, the *Fenoll* judgment sets out the opinion of the European Court on the concept of employment relationship, which cannot be disregarded.

87. There is therefore no doubt that the relationships at issue in the proceedings should *prima facie*, and in any case following any investigation that may be necessary, be considered for all intents and purposes to be ordinary fixed-term employment relationships, with all related effects for the purposes of benefits which will be set out below.

THE POSITION OF SOCIALLY USEFUL WORKERS UNDER NATIONAL LAW

88. As noted above, according to Italian law, an SUW relationship is not and cannot be transformed into an employment relationship.

89. The case law of the Italian Court of Cassation prevailing until a short time ago (cf. on all points Court of Cassation judgments 23316, 23317 and 23318 of 2015) interpreted the legislation narrowly:

"The worker filed an appeal against the decision to reject the claim and the Venice Court of Appeal, partially amending the contested decision, ordered the Ministry to pay the appellant a total amount of EUR 6,607.18, in addition to ancillary amounts required by law, holding that since a deviation has been established in relation to the use of labour beyond the specific confines of the projects, the provisions governing the right to remuneration should apply in relation to the work actually carried out, as provided for under Article 2126 of the Civil Code, although no amounts could be recognised as social security contributions.

(...)

It must be stated at the outset that, by judgment no. 3 of 2007 the Joint Divisions of this Court examined in detail the nature and purposes of the contracts at issue and held that, according to legal theory, socially useful work (which has special features distinct from the traditional models of social protection from unemployment) must be regarded as equivalent to a North American model defined as workfare, based on the notion that the provision of social protection to an unemployed person is a right which is conditional upon the performance of work 'outside the market' in a socially useful activity, along with a duty to take the initiative personally to end reliance on benefits.

(...)

In judgment no. 3/2007 cited above, the Joint Divisions therefore concluded that employment law legal theory has correctly classified the case under examination as a legal relationship rooted in welfare, which is governed by legislation enacted in order to guarantee the rights of the worker, based on Article 38 of the Constitution; this prevents such a worker, when engaged in activities for the public administrations, from claiming that he or she is party to an employment relationship with the said administrations, along with his or her resulting rights.

In other words, in carrying out activity in order to further the general interest, the socially useful worker is entitled to emoluments, which cannot be recognised as remuneration, but as mentioned are classified as welfare payments (cf. for a similar finding Court of Cassation, judgment no. 21311 of 9 October 2014).

(...)

It is therefore necessary to reiterate the principle already asserted by this Court on numerous occasions that the relationship with a socially useful worker cannot be classified as an employment relationship (judgments no. 21936 of 19 November 2004, no. 14334 of 15 June 2010, no. 9811 of 14 June 2012 (order), no. 2605 of 5 February 2013 and no. 23061 of

10 October 2013)".

90. As is clear, whilst not having objected on the facts that the labour relationship under examination had departed from the initial project, the predominant view held by the Court of Cassation fundamentally excluded the possibility of recognising any employment relationship, even solely for the purposes of recognising Article 2126 of the Italian Civil Code, which provides as follows;

2126. Performance involving a breach of the law – [1] The nullity or annulment of an employment contract has no effect for the period during which the relationship was implemented, unless such nullity results from the fact that its object or cause was unlawful.

[2] If the work has been carried out in breach of provisions enacted in order to protect the employee, he or she shall under all circumstances be entitled to remuneration.

91. The Court of Cassation has recently partly altered this position by judgment no. 17101 of the Employment Division of 11 July 2017 (doc. 10) by which the Court asserted the following principle of law:

With regard to employment as socially useful or publicly useful workers, the legislative classification of that special relationship, which has welfare and training elements, does not preclude the possibility that the actual relationship may have the characteristics of an ordinary employment relationship, thereby resulting in the application of Article 2126 of the Civil Code, and that, for the purposes of the classification as employment of work performed as a de facto employee of a public administration, it is a relevant consideration that the worker is actually incorporated into the public organisation and is assigned to a department falling under the institutional goals of the administration.

92. The Italian court therefore held that the factual situation that was brought about following the distorted use of socially useful work was equivalent [to ordinary employment], and recognised that the employees thereby employed by user bodies were entitled to the same conditions as their tenured colleagues.

93. That ruling, which remains an isolated ruling, in any case resolved the problem of socially useful workers in part, since the potential recognition of only the differences in pay – as the only aspect referred to by Article 2126 of the Civil Code – compared to a comparable worker would not appear to resolve the problem of the lack of contributions and social security cover, notwithstanding the existence of an ordinary employment relationship.

94. In point of fact, under Italian law, in contrast to EU law, the pension element of pay is regarded

as a different form of remuneration (referred to as "social security") from the salary, from which as shown above socially useful workers are partially excluded.

95. In addition, the recognition of salary differences does not resolve the issue of the abuse of fixed-term contracts.

96. Socially useful workers are by definition employees whose contract is not permanent, but is comprised of successive fixed-term contracts, which are renewed from time to time normally without any interruption.

97. Once the status of the relationship as one of employment has been established, such a situation should result in an acknowledgement that an abuse has occurred pursuant to clause 5 of EU Directive no. 70 of 1999, as the use of the worker by the user body to carry out his or her own duties, which are accordingly stable and permanent, demonstrates the absence of any objective justification.

98. Furthermore, the legislation does not provide for any limits on the repetition of contracts and does not stipulate any maximum duration to the relationship, as is demonstrated by the relationships that are still ongoing with user bodies.

99. Conversely, as noted above, the formal wording of Article 2126 of the Civil Code considers only the aspect of remuneration, thereby excluding any other relief in respect of the abuse pursuant to clause 5, thereby violating EU Directive no. 70 of 1999.

100. The current situation must moreover be supplemented by reference to the recent "Madia" reform (based on the name of the sponsoring minister), namely Legislative Decree 75 of 25 May 2017 ("Amendments and supplements to Legislative Decree no. 165 of 30 March 2001, issued pursuant to Articles 16(1)(a) and (2)(b), (c), (d) and (e) and 17(1)(a), (c), (e), (f), (g), (h), (l), (m), (n), (o), (q), (r), (s) and (z) of Law no. 124 of 7 August 2015 on the reorganisation of the public administrations").

101. Article 20 of that Decree (doc. 11), entitled "Resolving insecure work in the public administrations", provides in paragraph 14 that;

14. Permanent appointments pursuant to Article 1(209), (211) and (212) of Law no. 147 of 27 December 2013[3] *shall be permitted also during the 2018-2020 three-year period. For the purposes of this paragraph, the administrations concerned may also use the resources referred to under paragraphs 3 or 4 or provided for under regional laws, subject to compliance with the*

[3] These provisions had already provided for the possibility of stabilising socially useful workers but had not been implemented due to the change in government during that year.

arrangements, limits and criteria laid down in the paragraphs cited. For the purposes of Article 1(557) and (562) of Law no. 296 of 27 December 2006, the local government bodies shall calculate their spending on staff after accounting for any joint financing disbursed by the state and the regions. The administrations concerned may extend any fixed-term contracts in accordance with the arrangements laid down in the last sentence of paragraph 4.

102. That legislation therefore leaves scope for the possibility of regularising the situation of socially useful workers; however, as is apparent, the choice as to whether to act on this possibility falls to the user bodies, which may therefore decide whether or not to stabilise workers, or to stabilise only some workers, which may result in discrimination.

103. Moreover, stabilisation will in any case have only future effect and will certainly not have any effects with regard to the past, above all as it does not entail the payment of compensation for the abuse of fixed-term contracts, but only the payment of any salary differences accumulated (which are due in full, as limitation periods do not apply where there is no stable employment relationship) and the possible regularisation of pension contributions.

THE VIOLATIONS OF THE EUROPEAN SOCIAL CHARTER REGARDING WHICH THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS IS REQUESTED TO MAKE A FINDING

104. The right to work and to fair and dignified working conditions has been enshrined by Italian law at constitutional level and is widely recognised and protected by the European Social Charter.

105. The USB is entitled as a trade union association to take action to protect the employment interests of its members, including before the national courts, as it has done in the past (see ECtHR, *Unison v. United Kingdom*, judgment of 10 January 2002, application no. 53574/99).

106. The USB has, through its lawyers, sponsored various cases before the Sicilian courts without obtaining any relief for the workers in insecure employment who are members of the trade union, which has had inevitable repercussions on its credibility.

107. The case law of the Italian courts, including above all that of the Court of Cassation, on workers in insecure employment who are engaged part time renders that situation entirely unsustainable, even though as mentioned above the only possibility open is of the payment of remuneration, whilst by contrast the issues of contributions and employment coverage remain unresolved in spite of the fact – we would repeat – that socially useful workers occupy stable and permanent positions in the Italian regions.

108. The position of the legislation and case law in Italy therefore implies an extremely serious **violation of the** following provisions **of the European Social Charter**:

Article 1, commitments l and 2 as the Italian State has failed to honour both the commitment to recognise amongst its principal objectives and responsibilities stability of employment for tens of thousands of public workers carrying out the institutional activity of local authorities in Sicily and Campania on account of the fact that they have for years been performing tasks for which there is a vacant position, the ensuring and maintaining of the highest and most stable possible level of employment with a view to the achievement of full employment, and the commitment to protect effectively the right of such workers to earn a living through work freely undertaken, by contrast rendering their work insecure in its threefold status as legislator, judge and employer, and to oversee the application of EU law in Italy;

Article 4, commitments 1 and 4 as the Italian State has failed to honour as an employer both the commitment to recognise for tens of thousands of workers in insecure employment in Sicily and Campania the right to sufficient remuneration such as to guarantee them and their families a decent standard of living by rendering their remuneration dependent upon regional contributions that are renewed from year to year, and often after considerable delays, and paying under all circumstances the minimum contractual amounts without recognising any career progression for services already rendered, along with the commitment to recognise the right of workers to a reasonable period of notice for termination of employment;

Article 5, because the Italian State has not guaranteed the freedom of Sicilian workers to form national trade union organisations such as the USB for the protection of their economic and social interests and to join those organisations, as the national legislation has undermined this freedom and has instead operated through the Sicilian courts in such a manner as to impair it, even frustrating statutory rules and the provisions of collective labour agreements which recognise the rights of workers;

Article 6, commitment no. 4, because the Italian State has failed, through both legislation and the judiciary, to recognise *de facto* the right of socially useful workers in insecure employment in Sicily and Campania to collective action through the complainant USB in cases of conflicts of interest because the collective action (provided for by law) brought before the Court of Justice of the European Union (and recognised by the *Fenoll*, *Betriebsrat der Ruhlandklinik GmbH*, *O'Brien* and *Sibilio* judgments) has been deprived of its effect of protecting rights by Italian law and the Italian courts;

Article 24, because the Italian State, as an employer and through legislation and the courts, has failed to recognise for tens of thousands of socially useful workers in Sicily and Campania who were unlawfully hired under fixed-term contracts to vacant positions within the workforce the

right of all workers not to have their employment terminated without valid reasons for such termination relating to their ability or conduct or based on the operational requirements of the public offices or service, or the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief, in addition preventing also the right to appeal to an impartial body.

- **Article E in conjunction with Article 12§1** of the Charter in respect of those persons who were hired as socially useful workers in the Sicily and Campania regions and who do not have any alternative social cover.

109. Each of the violations of the European Social Charter highlighted above was committed in parallel with the violation of Article E of the European Social Charter and the commitment by the Italian State not to discriminate against socially useful workers in Sicily and Campania, in terms of their right to be granted tenured status with the public administration which uses them, compared to workers from the private sector who are stabilised pursuant to Article 5(4-bis) of Legislative Decree no. 368/2001.

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The following documentation, referred to in the substantive submission, is appended to the complaint:

1. Statutes of the USB;

2. ARAN declaration of the representative status of the USB

3. Decree-Law no. 244 of 28 May 1981

4. Law no. 299 of 19 April 1994

5. Law no. 223/1991

6. Decree-Law 510/1996

7. Declaration by the Employment Department for Sicily of 14 July 2015

8. Campania Region resolution of 26 September 2017

9. List of possible workers to be stabilised in Campania

10. Court of Cassation, judgment no. 17101/2017

11. Law no. 75/2017, Article 20

Rome, 3 July 2018

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