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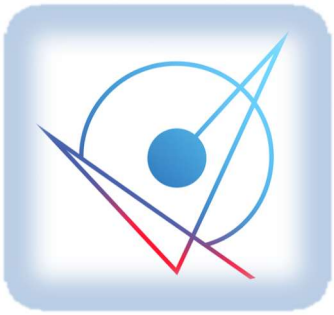

Theory of the one-contractual party apparent economy

The global organisation of multinationals as a destabilizing factor in economic and financial markets, as well as an important cog in the machinery of 21st-century social inequality

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Lidia Undiemi[1]

Introduction

The study of the development models of multinational corporations is set to play a central role in the economic, legal and political debate, not only on account of the considerable and growing influence they exert on international trade and the domestic market dynamics, but also because the the structure of the international community that has been emerging since the 2007 crisis tends to focus on aligning public governance with corporate governance, in terms of private investors' exerting a real and effective influence on the public governance of States.

Multinationals operate through sophisticated institutional and financial arrangements which is rooted in the use of a particular legal instrument: the 'corporate group'.

Corporate groups are the dominant institutions of the world economy and represent the organisational model of multinationals. Groups and multinationals are two sides of the same coin. Statistics show that international trade is increasingly characterised by exchanges between subsidiaries of the same multinational firm.

By means of an in-depth analysis, the intention is to demonstrate that the corporate group model gives rise to the one-contracting party economy, which represents a destabilising factor for financial markets, as well as being an important cog in the machine of 21st century social inequality.

The research focuses on identifying those intra-group micro-economic dynamics that can influence macroeconomic variables, and consequently local and global policy choices.

The interdisciplinary and multi-sectoral dimension of the corporate group phenomenon – labour regulations, tax regulations, company and corporate laws, technology, etc. – requires a broader scope of investigation than the strictly economic one, to such an extent that it is more appropriate to refer to micro-systemic and macro-systemic aspects, and therefore not only micro-economic and macro-economic ones.

The new Global Value Chains (GVCs or Global Supply Chains) have transformed international trade and given rise to a new order in the international division of labour. The phenomenon has been traced back to a new era of globalisation that the traditional macro-economic approach cannot explain, at least not entirely.

The OECD acknowledges that the analysis of the cross-border activities of multinational enterprises (MNEs) has become crucial for understanding the dynamics of global value chains (GVCs), whose rapid expansion is profoundly challenging not only current economic knowledge but also the political consequences of globalization, thereby reinforcing the relevance of this study.

1. *The organisational model of multinational firms*

Technological innovation and the skilful use of *regulatory leverage* have greatly facilitated the internationalisation processes of companies, whose power depends not only on their production capacity, but also, and now perhaps above all, on the trade, corporate and financial relations that ensure their integration – albeit in a fragmented manner – in global markets.

The term 'multinational' refers to a firm that organises and coordinates activities across national borders[2]. Another very effective definition considers the multinational in the modern sense as 'integration of fragmentation'[3]. Economic theory has only recently started to address this issue, starting in the 1960s, around a century later than the large-scale emergence of this new economic player in globalised markets.

The United Nations Conference on International Trade and Development (UNCTAD) proposes the following definition: 'A firm that has at least one subsidiary abroad, in which it owns at least 10 per cent of the capital and over which it exercises control'[4]. The control and shareholding of companies when identifying the multinational shows how, from a legal standpoint, the internationalisation of firms passes through the group model, namely, the organisation and management of the firm through a number of affiliated companies.

An important economic indicator of the link between the development of multinationals and the use of subsidiaries is the Foreign Direct Investment (FDI) that a market operator makes in a country other than the one in which the management centre of its activity (the holding company) is located. The investment is carried out through acquiring stakes in the company that is to be controlled abroad (Brownfield FDI or M&A), or through the creation of a subsidiary in the country in which it is to be established (Greenfield FDI); this is to allow the 'parent' company to be able to exercise the direction and management powers of the investee or incorporated company.

Global market integration has increasingly been driven by FDI through international corporate mergers and acquisitions.

FDIs can take the form of horizontal or vertical investments. The former consists of the transfer of capital, technology and more generally of the factors that enable production to take place locally in order to satisfy the local market; this strategy is defined as anti-trade as it eliminates the need for exportation. Conversely, vertical investments occur when the firm's

internationalisation process entails the delocalisation of the various production stages, whose goods, it should be noted, are not intended to be consumed where they are produced but are intended to meet the consumption needs of other countries. For this reason, this form of FDI is considered to be pro-trade, *i.e.* it stimulates international trade. This latter type of direct investment has developed considerably since the second half of the 1990s, resulting in large-scale production relocation plans.

In this respect, international intra-group trade represents a sub-category of FDI.

The control of foreign activities as an alternative to contractual transactions with firms operating in the foreign territory meets the need to ensure that the various phases of the production process are managed through a number of affiliated and/or subsidiary companies. The 'unitary' management of the firm activity is severed from the territory, becoming independent from it and company policy is designed with a view to a 'virtual' amalgamation of places and functions.

2. *Multinationals, Global Value Chains and International outsourcing: moving towards a new era of globalisation*

The vast international trade that is dominated by group companies calls for statistical insights on which the most important international organisations with various interests in the development of economic globalisation are working: IMF, Eurostat, World Trade Organisation (WTO), United Nations Industrial Development Organisation (UNIDO), International Labour Organisation (ILO), World Bank, Organisation for Economic Cooperation and Development (OECD)[5].

The effort made by these bodies to create a statistical system that allows one to understand the impact that the organisational structure of multinationals has on the global economy and on the policies of individual countries is therefore still being tested. At present, it has several shortcomings due to the non-standardisation of data from different databases, the lack of detailed information, and the need to analyse other aspects of the phenomenon which are included in new indicators[6].

The methodological basis for the statistical reporting of FDI is that provided by the IMF in the *Balance of Payments and International Investment Position Manual*. Until recently, it had reached its sixth edition (BPM6), which has now been replaced by the latest version (BPM7). The update was produced in cooperation with other international bodies, including

the ECB and Eurostat. It is in line with the System of National Accounts (SNA 2008), the European system of national and regional accounts (ESA 2010), as well as the fourth edition of the OECD's benchmark definition of foreign investment (BD4)[7].

The OECD provides a database (AMNE) containing data on trade with Foreign Affiliates Statistics (FATS) based on several variables, *i.e.* sector of activity, production, value added workforce, research and development and exports[8].

International exchanges between affiliates represent a sub-set of FDI, as the latter provide more general information with respect to the phenomenon of intra-group trade—namely, the monetary value of foreign investment flows and their scale.

It has been pointed out[9] that one of the limitations of this data is that it is not necessarily the case that the foreign counterparty company surveyed is the immediate beneficiary of the investment. A typical example is the case where money flows occasionally through countries offering tax benefits. FDIs cannot therefore provide detailed qualitative and quantitative information on financial and business relations between companies belonging to the same corporate group.

The statistical collection of data and information therefore needs to be more specialised with respect to exchange and economic and financial relations between intra-group companies.

In spite of these limitations, UNCTAD paints a fairly explanatory picture of the enormous importance of multinationals and exchanges between affiliated companies in the world economy[10]. Since 1990, global FDIs have grown exponentially, achieving USD 23 trillion in 2012[11]. Compared to the previous year, in 2015, global FDIs increased by 38 per cent to USD 1.76 trillion, the highest level since the global financial crisis.

The US, accounting for about a quarter of global inflows in 2015, remains the largest source and recipient of FDIs. The European Union (EU), Japan, Canada and Switzerland together hold around 90 per cent of the foreign direct investment stakes in the US, while the EU and Canada are the main geographical regions receiving US FDIs[12].

Statistics show that part of the growth of FDIs was due to large-scale corporate reorganisations involving major shifts in the balance of payments but little change in real terms. Cross-border mergers and acquisitions (M&As) totalling USD 721 billion were performed, compared to USD 432 billion in 2014; this was the main factor behind the global revival. The value of Greenfield investments continued to be very high at USD 766 billion[13].

Several empirical studies show that foreign affiliates account for an increasing share of total exports of intermediate inputs originating from multinational enterprises, and that, in most cases, these exports consist of intra-group transactions[14]. It is estimated that more than 30 per

cent of international trade is carried out by affiliates of multinational firms – intra-firm trade - , namely, one third of global exports[15].

Recent IMF statistics show that, in 2023, FDI stocks increased to reach 41 trillion US dollars[16].

Until 1990, sales of foreign affiliates and exports to 'independent' foreign suppliers were almost equal. After 1990, firms started to export predominantly to foreign affiliates, and within a few years this type of exchange has become one of the most important—if not the most important—channels of international trade [17].

Many activities in the Global Value Chain (or Global Supply Chain) are conducted by 'parent companies' and their affiliates. Approximately 43 per cent of total US trade relates to exchanges that take place within the same intra-firm group. US multinationals account for only 1 per cent of the total number of firms operating in the United States, and since 1990 they have contributed one-third of US GDP growth and almost half of US labour productivity growth[18].

Historically, US 'parent' companies have generated a larger share of added value than their affiliates.

In 2014, US resident 'parent' companies generated 71.9 per cent of the added value of all multinationals operating in the US, up from 69.4 per cent in 2009[19]. In the same year, it was found that 52.4 per cent of US exports were made by 'parent' companies to affiliates and that 41.3 per cent of US imports involved imports of goods from foreign affiliates to US 'parent' companies[20].

The regional distribution of exports to foreign affiliates shows that Europe is the main destination of the trade flow, with 27.7 per cent, followed by Canada with 27.2 per cent, the Asia-Pacific (23.5 per cent), and Latin America and others in the Western Hemisphere (20.5 per cent). About half of the exports are to the Netherlands (17.9 per cent), Switzerland (17.2 per cent), and the United Kingdom (16.9 per cent). Over two-fifths of US exports to foreign affiliates in the Asia-Pacific were shipped to Singapore (25.1 per cent) and China (20.1 per cent). In Latin America and other parts of the Western Hemisphere, more than two-thirds of exports to foreign affiliates were destined for the Mexican market (67.8 per cent)[21].

A significant share of US-EU trade concerns exchanges made between companies of the same multi-national group[22]. US affiliates operating in Europe contribute around 13 per cent of EU GDP (with a turnover of USD 2.1 trillion), while EU affiliates in the US account for 11 per cent of US GDP (with a turnover of USD 1.6 trillion). In 2002, trade between resident affiliates on both sides of the Atlantic accounted for 47 per cent (USD 172 billion) of total EU-US trade in goods, a 50 per cent increase (USD 307 billion) since 2012. It was also noted that

intra-firm exports accounted for 32 per cent of total US exports to Europe, a figure that remained relatively stable over the decade 2002-2012. Intra-firm imports, on the other hand, accounted for 62 per cent of total US imports from the EU. Almost half of the added value generated by US foreign affiliates in Europe was concentrated in three countries: the UK, Germany and Ireland.

Ireland is by far the country whose economy mostly depends on foreign affiliates of multinational companies. They provide around 80 per cent of added value in the manufacturing sector and 40 per cent of added value in the services sector[23].

With specific regard to Europe, the majority of foreign-controlled firms are resident in one of the EU countries[24]. In some countries, however, there is a high proportion of foreign-controlled firms outside the EU. Luxembourg is one of them, with a share of around 80 per cent.

A recent 2025 report by the IMF Statistics Department[25] places particular emphasis on the fact that intra-group transactions—i.e., those between affiliated companies—and transactions between independent entities cannot be treated as equivalent. This is because, in the former case, such transactions often result in inflated or deflated exchange values and prices, which are explicitly referred to as "distorted" and therefore essentially unreliable for statistical recording and monitoring purposes (pars. 3.113, 3.114, 3.115, 3.226, 8.18, A15.21). For debt analysis purposes as well, intercompany liabilities are identified separately, as they present different risk and "vulnerability" implications compared to liabilities between unrelated parties (par. 6.26). The report also highlights the significance of debts between related companies and of transactions among them, particularly in connection with received financing (pars. 7.20, 7.21, and 7.22).

As will be discussed further below, the phenomenon of the "single-contractor apparent economy" is corroborated by efforts to quantify intra-group exchanges of intermediate inputs, with particular attention to supply contracts between parent and subsidiary companies, and thus to the related phenomenon of outsourcing (par. 10.56 ff.).

The OECD is also closely examining the phenomenon, seeking to provide the methodological foundations for an accurate statistical representation of FDI, in light of the growing importance of intra-group transactions at the international level — that is, international trade relations — as well as credit and debt relationships among affiliated companies[26].

3. *Outsourcing and groups: the one-contracting party apparent economy*

The new world economic system therefore tends to develop not on trade between independent firms, but on a chain of companies – parent companies and subsidiaries – operating in a supranational arena, all of which refer to a single 'global' firm, whose holding company is the management centre. Each individual relationship between companies that are linked by relations of control – or which are merely invested in – does not *per se* exclude trade flows of goods and services since, in any event, the relationship between even only legally separate corporate entities nevertheless requires the entering into of commercial agreements that legally justify the *exchange*, as is the case between independent firms.

It follows that the volume of these deals is greater than or equal to the unspecified amount of corporate transactions (acquisition and sale of shareholdings, incorporation of companies, mergers and incorporations) that shape the markets.

Outsourcing and the proliferation of corporate groups are therefore strongly interdependent phenomena, since the corporate fragmentation must therefore be accompanied by a formal business relationship – a supply contract – that can justify the exchange between companies belonging to the same multinational firm.

One of the fundamental pillars of the 'new globalisation' is, in fact, international intra-firm outsourcing.

The large-scale use of intra-group trade transactions is a phenomenon that has enormous economic implications, as it would mean admitting that a substantial part of domestic and international trade is carried out within the same firm – albeit formally separated into several companies – and not, as one would expect, between competing firms.

Seller and buyer would therefore coincide, the exchange itself would become a 'fictional' economy and the apparent competition would in reality be the expression of an essentially oligopolistic market, structured on a 'one-contracting party exchange' model: the terms of the commercial trade – of the price or of any other significant decision relating to the internal affairs of a company externally directed by another company – would be dictated by the parent company, as it is formally the buyer or seller of the good or service produced whose counterparty is its subsidiary.

The market concept taken as a paradigm by economic science is unable to grasp the core of the new development of global production method, since it is based on the abstract and indiscriminate idea of the firm, whereby exchanges between independent firms and exchanges between companies of the same firm are treated equally.

4. *'Economic' firm and 'legal' firm*

Macroeconomics studies aggregate demand and aggregate supply and their interaction. Aggregate demand represents the demand for goods and services in the economy – determined by the general price level – by households, businesses and government. Aggregate supply, on the other hand, expresses the quantity of total products that entrepreneurs decide to produce in relation to the general price level.

Economic studies identify the entrepreneur by the production function that expresses the quantity of obtainable products (Y) – always in aggregate terms – given a certain use of production factors, *i.e.* capital (K) and labour (L), plus technology. According to this approach – which is simplistic but sufficient for the purposes of this initial analysis – entrepreneurs aim to produce a quantity of goods and services that allows them to obtain the maximum profit, given by the difference between costs and revenues. The costs representing the remuneration of the production factors, the surplus, negative (loss) or positive (profit), expresses the opportunity cost for the entrepreneur. It goes without saying that its receipt is contingent upon the fulfilment of at least two conditions: the performance of a productive activity and the ability to generate revenues that exceed costs. This is the only economic entity by which values on the production side (Y) are determined in any macroeconomic model. It follows that the fundamentals of economics and studies of the interplay between aggregate demand and aggregate supply – of goods and services and of money – are validly applied in a market in which the manufacturers-entrepreneurs are precisely identified by the production function.

Does the 'economic' firm coincide with 'legal' firm?

In Italy, Article 2555 of the Italian Civil Code defines the firm as the body of assets organised by the entrepreneur in order to run the business. The notion of firm therefore evokes that of entrepreneur enshrined in Article 2082 of the same Italian Civil Code from which, by derivation, one obtains that of legal firm, whose fundamental principle is the activity supported by the concept of organisation. Studies in this field have highlighted as

> '*the essential nature of the organisational phenomenon is to be found precisely in its dynamic aspect, namely in the organisational process, rather than in the organised structure: this is because the latter is, of course, inextricably linked to the (organising) activity that is at its*

origin and that continually transforms it, adapting it to the needs for which the organisation was set up…'[27].

The distinction between entrepreneurial and non-entrepreneurial activities lies in the organisational activity, to which Article 2082 attributes, by means of the expression 'organised activity', the status of a regulatory element that is essential in order to classify the activity as a firm. The organisational activity must be actually carried out by the entrepreneur and expressed through the choice of the functional and systematic use of the assets characterising the business, and through the creation of structures and the imposition of rules governing its operation.

What does this mean? Exactly what the economists mean, namely, that production is nothing more than the result of the exercise of the power of governance over the (organisational) activity that rests with a particular economic entity, the entrepreneur. In more economic terms, the transformation of individual components into a finished product (Y), which takes place through a precise combination of factors of production (function of K, L, *i.e.* capital and labour), is the embodiment of a firm structure which takes its form through the coordination of means and persons as intended by the person who runs it (namely, the entrepreneur). For example, the entrepreneur must decide whether to employ 100 workers and invest in 20 'state-of-the-art' machines or to hire 50 more workers and retain the less effective lower-technology machinery; or even to make changes to the finished product to make it more attractive rather than attempting to maintain market shares by maintaining its pre-existing characteristics. In other words, the right choice is his business, and it is taken for granted that he will do everything in order to achieve the best possible result.

The reason for this is quite intuitive; in fact, in addition to organisational power, the other essential characteristic in order to legally identify the entrepreneur is the assumption of enterprise risk, which is understood as the allocation of risk based on the result of the use of labour and the use of tangible and intangible means used in the running of the firm. Here, too, there is perfect alignment with the economic analysis, which considers profit as the positive balance of the difference between revenues and production costs (payment of wages, purchase of machinery, etc.). There is, in fact, a strict 'legal' link between the concept of risk and the concept of profit, the latter is considered as 'the remuneration, not of management or coordination, but of the risk and responsibility that the entrepreneur [...] has assumed'[28]. If profit represents the remuneration of the risk and responsibility that the entrepreneur has assumed, and if the imputation of liability and risk depends on the actual management of the firm, it follows that the profit (or loss) generated by a company that carries out an

entrepreneurial activity must be considered as the result of such activity. Thus, the financial aspect can exist only if it is instrumental to the creation of real value for the firm, and not *vice versa*.

Extremely interesting from this point of view is the summary proposed by Giorgio Oppo[29], a well-known Italian jurist, according to whom there is a fundamental link between government and the imposition (of liability) of the entrepreneurial case.

In EU law, the concept of a firm is an important benchmark for the applicability of competition and antitrust law[30]. The fundamental treaties of the EU do not provide for a definition, therefore its conceptualisation has come about through the case law of the European Court of Justice - and also through the decisions adopted by the Commission – , which specifies that the firm '*encompasses every entity engaged in an economic activity, regardless of its status and the way in which it is financed […]*'[31]

Economic activity is defined as '*any activity consisting in offering goods and services on a given market*'[32]. The enterprise risk is also expressly mentioned as a qualifying element of the firm[33].

The theoretical definition of 'enterprise' used in the United States does not differ in conceptual terms from the Italian and European definition: Enterprise is *'a unit of economic organisation or activity, especially a business organisation*'.

Therefore, at an initial analysis of the law, there can be no conflict between the notion, albeit secondary, of a legal firm and the notion of an *economic* firm, which could lead to market distortions.

5. *The group corporate group model in economics and in law*

The 'static' concept of the firm to which law and economic science refers, however, undergoes a profound transformation by adopting that particular organisational structure that is so characteristic of multinationals: the corporate group, which, as already mentioned, is the main player on the new world markets.

A parent company (holding or also holding company) incorporates one or more subsidiaries and strategically allocates to some of them activities, labour relations, supply contracts, financial assets, other corporate shareholdings, *etc.* Except in certain special cases, the holding company bears no direct legal responsibility for all that is contracted through subsidiaries. A single subsidiary may be forced to close, despite the rest of the corporate group

generating significant profits. The holding company operates as a kind of collective brain that elaborates the global strategies of the group, whose expansion on the world stage takes place with the creation of numerous 'daughter companies', which are provided with their own legal personality, as if they were separate and autonomous firms from the controlling one.

This means that the same 'group firm' can operate on the market through an unspecified number of companies.

6. *Corporate groups and market schizophrenia*

There is no law that generally attributes direct liability to parent companies with respect to the obligations undertaken by its subsidiaries, despite the fact that the former exercise significant management power over the entire group.

The corporate group is essentially an aggregation of companies that are officially autonomous and legally separate from each other, but are all united by the fact that they are subject to the management power of the parent company (or holding company), which manages them because it wholly or predominantly controls them, either directly or indirectly. Nearly all legal systems do not contain a definition of a corporate group: it follows that the most important international economic operator – the corporate group firm or multinational – cannot be regarded as a single legal entity that is directly liable for the entrepreneurial activity.

The principle of separation of legal personality between different companies is a universal legal prerequisite on which commercial transactions are based worldwide.

An equally universal principle characterising world markets is the purpose of corporate control, that is, to ensure the existence of a unitary economic firm managed by a single managerial body, even when there are a number of separate legal entities representing it.

The result of the subjective otherness between the companies belonging to the same group is that the subsidiaries should be officially independent. This assumption is essential in order to justify the legal separation from the parent company, which, in turn, allows for the separation and division of the liabilities *vis-à-vis* third parties within the group.

The imputation of direct liability of parent companies is generally provided for in cases of abuse of management power to the detriment of subsidiaries and the persons having an interest in them.

7. *The corporate group in European and International law: overview*

In Europe, the issue of the parent company's liability for prejudice caused to its subsidiaries is a fundamental aspect of German and, more recently, Italian law. In other jurisdictions, such as England, this issue is less prominent. In France, on the other hand, the legislator's and the public's awareness of this phenomenon is increasingly growing.

US law also generally recognises that if the principle of independence is compromised with the intent to harm the interests of the subsidiary's creditors, the parent company may be held liable for the debts accrued. However, even in this case, there is no comprehensive regulatory framework.

This relationship between the principle of independence and the distribution of responsibilities within the group also exists in other legal systems, which, moreover, contain a number of interesting novel approaches that are geared towards increased accountability of those in control of the company. For instance, in Russia, without prejudice to the mandatory prerequisite of legal separation between group companies – thus the inability to automatically ascribe the liabilities of subsidiaries to parent companies unless they are proven to be at fault –, joint and several liability is established for transactions entered into by the subsidiary on the basis of binding instructions given by the parent company, irrespective of whether an intent to circumvent is established. In other words, liability beyond the circumscribed cases of harm can also be perceived in the French and German legal systems, although in the latter case the regulations primarily focus on safeguarding the interests of the group as a whole.

Apart from the extremely limited cases of the pathological expression of the legal phenomenon of corporate control – the finding of abuse or dependence – global business transactions are thus carried out on the theoretical and legal assumption that the subsidiaries are independent market operators, despite their being subject to the control (management) of other economic operators.

8. *The role of sector regulations to remedy the pathological expression of the legal phenomenon of the corporate group: attempts at regulation in Europe*

The corporate group, despite being the world's largest economic player, is a quasi-legal phantom. The 'quasi' refers to the development of sectoral regulatory through which an attempt

has been made to consider the corporate group as an entity that is subject to undivided responsibility.

In this respect, the most important are the European antitrust regulations. In carrying out its competition law enforcement functions, the Commission uses the single economic entity doctrine for the purposes of attributing liability to the parent company if its subsidiary infringes antitrust law. The hypothetical prerequisite for the Commission to do so is that the subsidiary and the parent company belong to the same economic unit, *i.e.* the single firm. The economic unity doctrine applied to group relations – which, as rightly observed, is nothing more than an expression of the generic notion of 'firm' – is the result of a series of decisions of the Commission and the case law of the European Court of Justice, which for a long time now have formed the legal basis for the extension of the offence to the group as a whole. Gradually, European case law has created a rebuttable presumption (*iuris tantum*) as to the effective exercise of dominant influence by the parent company, used by the Commission in the case of total or quasi-total control of the subsidiary's capital[34], which results in a reversal of the burden of proof, considered by the ECJ as an element falling within the canons of *reasonableness*[35]. The presumption thus operates on the assumption that parent and subsidiary form a single firm. It is therefore up to the parent company to prove the charge brought against it by the Commission.

There has certainly been no shortage of criticism of this approach[36], which points out that the presumption – in the specific case where the parent company holds 100 per cent of the stakes – must be considered almost absolute due to the parent company's difficulties in proving the contrary, thereby resulting in the parent company being *de facto* directly liable for the anticompetitive conduct of its subsidiaries.

The regulatory short-circuit between the notion of firm and separate legal personality in the group context also arises with respect to another issue, that has been extensively discussed in legal doctrine[37], namely the distinction between the power (capacity) to exercise decisive influence and its effective exercise, which has been rendered almost incomprehensible by the approach taken by the ECJ and the Commission. In summary, from a theoretical point of view, the clarification that, even in the event of a wholly-owned shareholding, this is a mere and not an absolute presumption, thereby ensuring that antitrust law and the traditional principles of company law are to some extent legally compatible. From a practical point of view, however, EU case law has highlighted a very different factual reality: subsidiaries are not autonomous, especially when another entity holds a 100 per cent of their shareholding.

The need to extend the responsibility of the parent company to its subsidiaries is also gaining ground in other sectors, such as the labour, environmental and criminal law sectors. The trend appears to be to achieve direct accountability by the back door, while still retaining – it remains unclear for how long – the principle that subsidiaries are legally independent.

Yet in the European context, the attempt to regulate the phenomenon dates back many years. In December 1984[38], after several years of study, it was precisely the European Commission that proposed the drafting of the Ninth Directive on corporate groups, which was shelved due to the lack of consensus of some countries, particularly France and Great Britain. The objective of the directive was to protect the subsidiary from being subjected to external management power, in the knowledge that companies that are managed by a third party were deprived of their economic independence and that the interest of the group tended to take precedence over that of the individual companies. The project was specifically aimed at groups whose subsidiaries are in joint-stock companies, in order to protect the interests of the majority shareholders, creditors but also workers[39].

It took almost twenty years for the issue to resurface at the european level.

In 2002, a group of experts appointed by Commissioner Bolkestein submitted a report – which then became the subject of a Commission Communication to the Council and the European Parliament – outlining the need to modernise company law and strengthen corporate governance in the European Union, in which the aim of achieving an EU-wide regulation of the phenomenon was again proposed. It was, however, emphasised by the Commission that it was not one of its objectives to reintroduce the Ninth Directive, as it no longer considered it appropriate to introduce a separate piece of legislation for groups, but rather to intervene in issues concerning specific sectors, *i.e.* transparency, information and the group interests, in terms of establishing rules on the protection of creditors and minority shareholders. Particular interest was shown in the creation of abusive pyramid schemes, and even more so in those incorporating listed companies.

In later years, other initiatives were implemented at EU level[40], but the project to create a comprehensive EU legal framework for groups still remains a long way off.

Also of great interest from the perspective of mapping and monitoring corporate group structures is the recent Directive (EU) 2025/25, which entered into force on 30 January 2025. It aims to promote the digitalisation of company-related information and facilitate stakeholder access to such data, acknowledging the existing challenges in the interconnection of relevant databases. This initiative follows the path already set out by previous Directives (EU) 2017/1132 and 2019/1151.

Also worth mentioning are Directives (EU) 2014/95 and 2025/872 (DAC9). The former concerns non-financial disclosure obligations for large enterprises and thus for large corporate groups, i.e., those with more than 500 employees. The latter, DAC9, more explicitly addresses the group phenomenon, as it represents an attempt by European institutions to counter downward tax competition among states hosting group-affiliated companies. In doing so, it offers a crucial interpretative framework: from a tax perspective, it is not the states that compete with one another, but rather multinational corporations that push them into a race to the bottom—effectively dictating not only parts of fiscal policy but also of the economic and social policies of the host countries.

The numerous EU-level initiatives that separately address various aspects of group enterprises demonstrate a high level of political interest in the issue, and highlight how the standardisation of information and databases is becoming a key tool to ensure that national institutions are not forced to passively endure the pathological distortions of globalised markets.

The point worth emphasising for the purposes of this paper is that the policy direction that is being followed involves the creation of *ad hoc* rules for the protection of specific interests – such as the tax revenues of the states where multinationals are headquartered – orbiting around the corporate group, and neglecting – setting aside, at least for now – the very essence of the single group firm phenomenon, thus the need to consider the group as a single entity as a single entity to which legal liability for the exercise of business activity can be attributed, and consequently the need to provide a *universal* definition of a corporate group.

For these reasons, it is considered that the work of the European Commission through its case law represents the most tangible step to date in recognising the responsibilities of the parent company. This is clearly an underlying principle of group relations, which is practically the opposite of the German legal system, which expressly regulates the right of the holding company – through the provision of a domination agreement – to issue directives to the subsidiary, sometimes even prejudicial ones, in the name of the overriding group interest.

In general terms, it can be said that both regulatory attempts and the legal debate suffer from the inability to reconcile autonomy and external direction, thereby weakening theoretical approaches.

The prevailing models of corporate groups in the European context are the German and the Italo-French models.

The former is based on the distinction between “contractual groups,” which entail liability for the holding company and thus tend toward a substantial identity overlap between

the companies, and "de facto groups," which instead presuppose a prohibition on the parent company from exploiting the subsidiaries and, as a consequence, do not impose direct liability on the parent for the benefit of the stakeholders of the controlled companies.

The Italo-French model is theoretically grounded in the idea that the control exercised by the parent company is inevitable—thus rejecting the de facto group model from the outset—and justifies such control through the logic of "compensatory advantages," provided that the interests of the subsidiaries are not harmed.

It would be redundant to once again point out the clear terminological contradictions evident even in the brief overview of group models just mentioned. In the case of Italy, it is worth mentioning a theoretical approach[41] that proposes using the company's bylaws to hold group management accountable, by binding those who govern the group to their duties. After all, as has been highlighted, the activity of direction and coordination is already codified in primary legislation (Article 2497 of the Civil Code).

This approach shifts the focus to the intercompany level and moves toward a kind of formalisation of the actual form of control exercised by the parent company.

However, it is unlikely that corporate bylaws can effectively function as instruments to supervise the actions of the parent company. First and foremost, because external direction precedes the creation of the subsidiary, making it difficult to rely on the self-regulation of those who benefit from control—namely, the parent company. For this very reason, transposing the organisational model of the group into corporate bylaws—that is, incorporating the activity of direction and coordination into the actual corporate structure—would amount to a merely formal compliance measure, as generic and vague as possible.

But this is not the only issue. As previously mentioned, the only domain in which intra-group organisational models are actually defined is the contractual domain—that of commercial exchange—where parent and subsidiary companies assume reciprocal legal rights and obligations, with all the related economic, labour and financial consequences.

In this regard, it is worth reiterating that the tangible manifestation of the unified group enterprise lies in intra-group transactions, a phenomenon that can be described as a "dynamic system of reciprocal supply relationships"[42].

It is precisely the dynamic nature of intra-group contractual relations that renders any *ex ante* definition of group organisational models ineffective.

This practice instinctively recalls the phenomenon of cross-shareholdings, which are subject to specific legal limits to prevent abuses of dominant position and improper balance sheet manipulation.

However, such issues can also easily arise from reciprocal supply arrangements, which clearly affect all the elements that determine a company's value: economic, commercial, financial, and balance sheet-related.

9. *The legal anomaly of the coexistence of corporate autonomy and management by third parties*

Is the economic reality different from the legal reality, or is the latter so inconsistent that the firm and the market are subject to enormous distortions and instrumentalisation? Does it make sense to speak of a group firm, without autonomous legal personality, which is directly liable for (entrepreneurial) responsibility?

In order to answer this question, the starting point can only be the obvious terminological paradox between being subject to the control of others and the autonomy of the same controlled corporate entity.

The control exercised by one company over another is the benchmark used in existing legislation to enshrine the requirement of being subject to the management of others in the making of organisational, commercial and financial decisions. Formally, control can be manifested in various ways, generally referring to the majority of the stakes in the subsidiary, the holding of the majority of the exercisable voting rights, the possibility of determining the composition of the governing bodies, the power to influence in other ways how the decisions are to be taken or, it is noted, through a combination of these elements[43].

The varied forms of corporate control meet a general legal principle, namely that of identifying, first and foremost from a theoretical point of view, the cases in which corporate management by third parties is apparent, thereby establishing an absolute presumption of control, *i.e.* that of being subject to the management of others, which is considered to be lawful notwithstanding the separate legal personality of the group companies, which, in turn, is based on a diametrically opposed principle, namely that of autonomy.

The legal anomaly of the simultaneous coexistence of autonomy and management by third parties in the same company is even more evident if one investigates the relationship between entrepreneurial and corporate cases. The company is the typical form of business activity, representing the legal form of the production phenomenon from which rights and obligations are derived *vis-à-vis* third parties, *i.e. vis-à-vis* the reference market. The company

then defines the scope and limits of the allocation of responsibility – and thus of risk – in the firm.

10. Outsourcing and groups: two expressions of the same phenomenon

The legal analysis and comparison between it and the fundamentals of economics clearly shows how the 'new globalisation' is based on a 'fictional economy', which allows the world's largest market player to move around within a supranational sphere with a multitude of apparently separate legal entities, and that the main driver of this 'apparent economy' is precisely intra-firm outsourcing, *i.e.* the apparent outsourcing of something that continues to be managed internally. The only variable that is effectively outsourced is the legal accountability for certain business choices or factors, which takes the form of a wealth accumulation process in which profit – understood as the difference between revenues and costs – is only one component.

The subsidiary, that is managed by a third party, cannot be considered a firm as its business organisation and its functioning for the creation of value is the expression of a managerial-entrepreneurial power that lies beyond these legal entities. Within the corporate group, the subsidiaries therefore take on the task of performing certain functions like any other corporate division or department.

Legal independence is therefore only effective *vis-à-vis* third parties – workers, public institutions, suppliers, *etc.* – who can only claim against the subsidiary with which they have a contractual relationship, and not against the entire group company to which it belongs.

The terminological contradiction between the principle of independence and the principle of control within the same company is most clearly expressed in the outsourcing markets, where it becomes clear that the coexistence of management by third parties and independence is impossible, unless one wants to accept, politically but certainly not scientifically, the existence of a market that has been fundamentally distorted, in which it is possible to do business without a firm.

The 'borderline case' is where a parent company enters into a supply agreement with a wholly-owned subsidiary, which exclusively carries out its activities under this agreement (so-called 'single-contract' companies). The contract gives rise to a commercial transaction that therefore does not take place between two firms, but between two companies belonging to the same firm. There is, therefore, no conflict of interests, the governing power is exercised by the

parent company, which in a group context assumes the entrepreneurial function. As a result, seller and buyer would coincide, and the exchange price would be nothing more than an instrument of contractual pressure not with the formal counterparty, but with the *actual* counterparties of the subsidiaries, first and foremost the workers.

11. Corporate groups, outsourcing and wage share reduction

One might suppose that the outsourcing agreement concerns the production of a semi-finished product, for which a certain number of workers have to be employed, whose wages represent the main cost, which inevitably spills over into the entire Global Value Chain (or Global Supply Chain) of the group firm. This being the case, it is clear that the parent company commissioning the work – and pursuing the overall group interest – aims to set a 'downward' contract price, whereby it is *de facto* determined as to what share of the wages should be allocated to the workers employed by the contracting-subsidiary company. The so-called 'one-contracting party exchange' underlying this type of business transaction actually conceals an unequal exchange between the corporate group – governed by the parent company – and the outsourced workers hired by the subsidiary company and included in the Global Value Chain (or Global Supply Chain).

Indeed, a large body of scientific literature confirms that the international expansion of outsourcing (or offshoring, *i.e.* outsourcing to another country) of production is driven by the main objective of cutting costs, especially labour costs, and not by the ability of outsourcers to offer customers better quality products and services than in-house production.

Although the studies conducted so far cannot be considered to be exhaustive and do not lead to unanimous conclusions[44], it has been observed that within the OECD countries offshoring has had a negative impact not only on wages but also on employment[45].

With regard to the United States specifically, it was found[46] that between 1983 and 2002, there was an exponential increase in offshoring, with goods being produced – and then imported – in low-income countries. At the same time, jobs in the manufacturing sector declined by around 6 million with a drastic increase in income inequality. Among other things, the results also show that multinationals contributed to the increase in employment in low-income countries through their foreign affiliates.

Another study conducted on a number of European countries (Germany, Italy, France, Spain and the United Kingdom)[47] highlighted how the technological variable plays a significant role in the relationship between offshoring and wage inequality.

In particular, it was found that high-tech offshoring increases the wages of high-skilled workers, while it decreases those of low-skilled workers. In order to arrive at these conclusions, a sample of four job categories was considered, *i.e.* managers, craftsmen, white-collar and blue-collar (manual) workers. It emerged that repetitive tasks performed in factories and in the service sector – which, thanks to technology, can be easily moved around in low-income countries – have been hard hit by the use of offshoring by multinationals.

12. The alteration of the entrepreneurial function of economic models: the fragmentation of the production chain in the corporate group and corporate asymmetries

The corporate group, as the legal organisational model of multinational firms, thus alters the structure of the firm that is accepted as the model of economic science, to the extent that it undermines its founding principles.

Since one is dealing with the same organisation as a single corporate group, the individual legal entities are entrusted with the carrying out of segments of the same production activity, the ultimate purpose of which is to create goods and services for end-consumers. The collective interest of the single firm prevails over that of the individual subsidiary, which is more akin, as repeatedly emphasised, to a mere company department that is managed by a third-party central management reporting to another (or to other) company(ies).

Investments in technology, know-how and other value-enhancing elements of the individual production segments are not concentrated in a 'targeted' manner in the individual companies carrying them out, but follow a rationale of 'global' operational specialisation, designed to enable the maximisation of profits of the single corporate group.

It follows that the structure of the production function of a firm that is legally represented by a single company differs from the one of a corporate group, as in this case the production function is the sum of distinct production functions, with a different distribution of the factors and their corresponding monetary value—each representing a distinct affiliated company, according to a relationship of functional interdependence.

Some group companies are therefore in charge of capital-intensive functions, thus capable of producing high added value, while others represent worker 'vessels', aimed at maintaining a low added value, which tends to be zero.

There is, of course, no interest in increasing the profitability of the companies managing the workforce, since investments in capital and technology are made in other group companies, which then supply the former with what is needed to supplement the other factors of production by means of supply contracts, and thus enable the actual realisation of the part of the business to which the workforce is assigned.

As a result, certain group companies can be loaded with costs and deprived of revenues in order to favour the accumulation process of other group companies, generating in their favour an increase in revenues and profits that exceeds the traditional notion of profit which is obtained by the difference between revenues and costs.

13. *Experimental monitoring hypothesis of the new global production chains: proposal of an economic indicator to predict crises and simulate economic and financial policy measures*

For the experimental monitoring of such distortions, an economic indicator is proposed through which a wide range of indices can be developed. Its basic structure was, in fact, personally designed in another publication nearly twenty years ago, and is now applicable to statistical databases on global trade and, as will be further discussed below, to the public oversight of international financial flows.

The current measurement of economic systems in terms of Value Added (VA), as adopted in national and international accounting frameworks, does not allow for a full understanding of the phenomenon under consideration.

The proposed multi-level indicator can be articulated into a series of distinct indices, each designed to capture the system and its distortions from a different perspective — as many as the specific dimensions to be monitored — including, in particular: the use of labour and capital, intra-group trade, intra-group financial flows, geographical distribution, the intra-group distribution of value added and productivity, as well as the distribution and alteration of tax allocation, and so forth.

In light of recent technological innovations, it is believed that the conditions now exist for the development of databases capable of predicting economic crises — including sector-specific ones — as well as financial crises. Such tools would enhance market stability by enabling timely corrective interventions and would even allow governments, on a preventive basis, to simulate the impact of economic and financial policy measures. The indicators

proposed have been developed through a careful practical and interdisciplinary approach and are, for the time being, confidential. The design of the supporting IT tools is currently under evaluation.

14. Artificially distorted productivity and added value: the corporate group as a multiplier of social inequality

The two-way one-contracting party exchange performed within the corporate group therefore causes the added value of the activities carried out within it to be artificially channelled into some intra-group legal entities to the detriment of others.

One of the most important consequences of the one-contracting party economy is in fact the structural decoupling between productivity and labour income distribution.

The most obvious case is that of labour-intensive activities carried out by subsidiaries and rendered in favour of other associated companies, usually the parent company. In this case, the subsidiaries formally act as suppliers to their parent company, mainly employing labour, *e.g.* for the performance of activities such as customer care, back office, administrative and accounting activities or even the work performed by riders. In truth, these activities are not labour-intensive, as their performance require expensive technological infrastructures, which incorporate the know-how of the production chain in which the workforce is employed.

Since the technology and other value added elements are managed by other group companies, it happens that the one providing the workforce is not able to actually provide the service – *e.g.* customer care -, but has to turn to the other factors of production provided by other companies of its corporate group. This formally generates one or more exchanges, the contracting party of which is the parent company (or other intra-group company), which has a vested interest in the subsidiary formally hiring the workforce, so as to pay it as little as possible.

This results in a distribution between group companies of the number of workers that is functional to achieving this goal.

By possessing the technology and the power to control the company, it is a rather easy process to achieve this goal. Indeed, it is sufficient for the parent company to unilaterally set – on account of the control exercised – a price for the supply of labour that is barely sufficient to pay salaries, thus providing itself, free of charge or for consideration, the other means necessary for which to carry out the activities. In this way, improvements in know-how and technology

of the group company as a whole are not transferred to the labour factor. In other words, labour productivity is artificially reduced by subtracting the added value from the company supplying the labour.

If the workforce is located in countries where the labour protection system is strong, there is an interest on the part of the holding company to ensure that there are no regulatory or trade union pressures that would force a fairer distribution of the wealth produced.

The control and technical-organisational management of the activities carried out by the subsidiaries is fundamental in order to have an influence on the distribution of added value. Depending on the inputs intermediated and the regulatory set-up of the host country, the one-contracting party exchange method of maximising accumulation becomes apparent with varying degrees and intensity. The lower the capacity of the group's 'control room' to remotely control activities, the greater the degree of autonomy of those in charge of managing the foreign subsidiaries.

15. The neutralisation of trade union power

For the reasons outlined above, the one-contracting party exchange strategy is capable of neutralising the collective bargaining power of workers, both with regard to productivity-related wage increases and as a means of defence (also against wage and staff reductions). In this way, labour costs can be reduced to the lowest level allowed by the rules protecting workers, as well as by the workers themselves.

The entrepreneurial discrepancy of subsidiaries sometimes emerges in trade union negotiations when outsourcing operations are implemented from the parent company (seller) to the subsidiary (buyer). On such occasions, paradoxical situations arise in which it is the company that sells the goods representing the company that is supposed to buy them. The paradox reaches its climax when the buyer subsidiary has not even yet been incorporated at the time when the trade unions are negotiating about the rights of the employees to be transferred (or exchanged). This means that it is so obvious to the parties that it is the parent company that makes the decisions for the subsidiary, that in some cases one does not even bother to involve the subsidiary as a party (while at least respecting appearances).

16. One-contracting party exchanges between different group companies

Such business rationale can also be applied in trade between different group companies, within which high and low added value companies coexist. The supplier group company may in fact enter into several supply contracts for the same service to the customer company, maintaining the same organisational rationale whereby some companies will maintain high added value, while others will operate as mere suppliers of the workforce.

In such cases, the 'one-contracting party' exchange may occur in more complex forms as it involves more than two legal entities and two, rather than one, group companies.

The two most symbolic cases are:

- when the corporate group firm providing a service (or product) requiring both workforce and other means of production creates an internal exchange system – whether bidirectional or multidirectional, depending on the number of legal group companies involved – such that only one of the affiliated companies establishes a business relationship with the corporate group customer;
- when the corporate group supplier sells individual inputs to the corporate group customer through several companies, which together form the good or service supplied. In such a case, there will be several supply contracts with the customer entered into by two or more of the supplier's companies.

  This trading system can be described as 'a multi-directional one-contracting party'.

17. The role of technology in the one-contracting party exchange

The impact of the distortive effect of the one-contracting party exchange on wealth redistribution is all the stronger the greater the corporate group's ability to skilfully combine both the legal and the technical and organisational leverage.

In this respect, technology plays a major role in the expansion of the one-contracting party economy. The integration and control of the production process is essential for the group to effectively act as a *single* firm, while still operating and being perceived on the market as a plurality of companies.

Legal control must in fact be matched by the power to control and direct the organisation of means and the workers. Otherwise, the legal transfer of individual elements of the production chain would create inefficiencies that would make it economically unviable, especially in the case of relocation abroad.

In particular, for this to be possible, it is necessary that administrative and accounting functions, functions related to sales and distribution of end goods, as well as those related to customer relations, are computerised. The standardisation of data and activities becomes an indispensable success factor for the corporate group, otherwise the control and management of processes would be unattainable. For instance, employees that are assigned with a certain task, despite being located in different territories and employed by different companies, are put in a position to work in exactly the same way and using the same IT tools. Corporate control thus takes the form of employer power, which in turn is an expression of entrepreneurial power. This explains why the phenomenon is so widespread.

18. The impact of labour policies on the misalignment between productivity and wages

In Europe, one of the most important consequences of the great global financial crisis that was triggered in 2007 with the bankruptcy of Lehman Brothers was the loss of workers' bargaining power, both in an individual and collective context. The loosening of the net of rights was justified by the need to provide companies with more flexibility and streamlined handling in times of difficulty or outright crisis.

Collective agreements have incorporated this reasoning, often subordinating union power to business objectives, the most important of which are the increase in productivity and the decentralisation of collective bargaining, to the local level, *i.e.* to the level of the individual firm (or company, in the case of a group firm). This favours the distortive effects of the one-contracting party economy.

The lack of awareness of the distortive effects of the one-contracting party economy amplifies the predisposition of such reforms to address not the increase of productivity, but its redistribution between capital and labour, given the inability to determine the real nature and quantification of the *global* firm's productivity.

In fact, the decentralisation of collective bargaining is a real contradiction to the evolution of markets, which are, on the contrary, increasingly globalised, with the growing influence of multinational companies. These companies, being able to present themselves as separate, fragmented entities, are therefore able to harness this separation to their advantage.

19. Multiplier effect on wage reduction and employment volatility

One-contracting party exchanges have a multiplier effect on all those elements that in the traditional economy bring about a reduction in the wage share, thus affecting the break-even point.

Outsourcing, especially between affiliated companies, is the key instrument. If a state introduces new laws that allow firms to reduce their economic rights, the corporate group can easily and quickly replace previously hired workers with newly hired workers who cost less. If a waiver is granted from the economic treatment enshrined in collective agreements, outsourcing makes it possible to isolate the added value from the wage share.

If an industry is hit by a crisis, even a temporary one, the group firm can quickly and overwhelmingly pass on market uncertainties to wages, irrespective of the real impact that market downturns have on the group. Or, at the very least, wages fall much faster than in the economic reality.

Multinational group firms therefore enjoy increased elasticity of labour demand. This means that their ability to artificially condition trade patterns can also have considerable consequences on employment trends, *i.e.* their volatility.

More generally, the impact of globalisation processes on employment volatility is an issue that has been widely addressed in the economic debate, and there are studies that show how both foreign outsourcing and internationalisation of ownership structures – *i.e.* the expansion of foreign branches – can be considered as contributing to this phenomenon[48].

20. The one-contracting party apparent economy in the international trade debate

Traditional economic theories regard trade as an exchange between economic entities with opposing interests. From the Ricardian theory of comparative advantages (according to which the determinant element of international trade is the specialisation of countries in the production of those goods in which they have a comparative advantage measured in terms of lower opportunity cost compared to another and given a certain level of technology taking into account the labour factor only, despite the fact that in absolute terms they have a disadvantage in the production of goods produced in both territories), to the Heckscher and Ohlin theorem (international trade is determined not only by labour productivity but also by a different input of other factors of production), the basic assumption is that the exchange between a selling and a buying company. In more recent studies, especially since the 1980s, with the realisation that

international trade incorporates phenomena that is not included in more traditional theories, the focus has been on the dynamics of the intermediate inputs of trade.

Some research has placed cost-based competitiveness and factor prices[49] at the centre of the analysis. In other cases, the property rights approach[50]has been adopted, namely, theories that consider the ownership of the means of production, *i.e.* of investments, as a crucial variable that influences the bargaining between buyers and sellers, tilting the scales in favour of the owner, by taking into account the *ex-ante* and *ex-post* negotiation phases on account of the incompleteness of the contracts regulating the exchange.

The basic assumption of exchanges between different firms entails that each of them operates in the market by investing in its own production system for the purposes of to improving factor productivity and, thus, their competitivity. In intra-firm ('one-contracting party') exchange, these dynamics are compromised.

International trade studies, therefore, analyse intra-firm trade by not considering as a basic assumption the disruption of the economic fundamentals due to the fact that trade relations between companies of the same group take the form of a one-contracting party apparent exchange. For instance, one of the most important theories on this subject[51] proposes an analysis of the vertical specialisation processes of the production of the multinational firm based on the possibility of choosing between the use of an external supplier or, alternatively, its branch (FDI) for the procurement of intermediate inputs. The model considers two levels of bargaining at the 'parent company' (principal) level: that with the manager of the branch, if he chooses the FDI, and that with the external supplier, *i.e.* a firm that is not subject to his control. Since the manager is regarded as an employee of the 'parent company', the latter can leverage managerial incentives for maximum performance, as well as an increased possibility to monitor its actions, which can occur at best to a very limited extent with an independent firm. In addition, it is noted that in the case of in-house outsourcing, the parent company bears the initial production costs, whereas in the case of outsourcing these costs are borne by the external provider. In summary, the choice of organisational form is affected by contractual constraints, which are regarded as the result of a negotiation with a counterparty, the manager or the outsourcer.

If one uses the one-contracting party economy approach, in cases where the production of inputs is delegated to foreign affiliates, the bargaining power takes a different form and nature than the one envisaged.

To fully understand the importance of this phenomenon, one must always consider the legal extent of the exchange, where the supply of intra-firm intermediate inputs and the supply

of intermediate inputs with an independent outsourcer is indeed identical, in the sense that in both cases a commercial trade contract is concluded between a seller and a buyer. However, the content of the respective contracts have structurally different economic and commercial rationales. When a holding company negotiates with an independent supplier, a bargaining takes place which reflects opposing interests of the seller and the buyer. When the contract is concluded between a parent company and a subsidiary, there is hardly any such opposition. It follows that the choice of reverting to an external firm or an affiliate depends more on the ability to monitor and manage the ordinary functioning of the activities carried out by the workforce of the foreign subsidiary, an objective that is functional to the accumulation of the added value that an independent entrepreneur generally tries to create for himself with his investments. The productivity of the subsidiaries is a figure that largely depends on the investment choices made earlier by the parent company, *i.e.* the contractual party.

Nash's game theory – invoked with regard to *ex ante* and *ex post* contractual distortions with the property rights approach – is therefore unable to explain the strategies and balances of intra-firm trade. There is only one player: the corporate group, although it operates through several legal entities. The exchange takes place within the legal sphere, whereas in the *real* economic sphere there is a *single* firm that needs to generate higher profits and lower costs as a whole. The *true* contracting party, *i.e.* the player, is not another firm, but rather a set of people who have interests in the subsidiary, including the workers and creditors.

The theory of the one-contracting party apparent economy is consistent with the results of some empirical research[52], according to which the expansion of imports of intermediate inputs from foreign affiliates is higher in host countries with low wages, lower trade costs and where other favourable variables, including more advantageous political conditions, can be exploited.

21. The legal order of the market and the basis for the 'exchange'

At this point it is necessary to ask how one can place in the economic realm an exchange that exists only legally in the economic context, where, quite rightly, the question is how to control the manager[53] and not how to negotiate the purchase price of inputs with an independent supplier. Ultimately, it is the law that gives rise to an exchange relationship. The exchange exists – because it has value *vis-à-vis* third parties, such as workers – but as it is not carried out between opposing parties, the foundation of the traditional economic rationale no longer

applies. It is a different exchange from the competitive one, and therefore requires that a new theoretical approach to be developed, which addresses a truly fundamental issue underlying the current transformation of international trade: namely, that of economics verses law.

A renowned Italian jurist, Natalino Irti, clearly and thoroughly expresses the artificiality of the market, *i.e*. its dependence on the legal order that shapes its practical actions. In this respect, the market cannot be considered as a natural place (*locus naturalis*) with laws that pre-exist and survive the man-made artificial laws.

Thus, the one-contracting party economy, by undermining the idea of exchange taken for granted by economic science – and even by the supporters of the legal order of the market, which pre-supposes the idea of mine and yours 'from which every act of exchange proceeds' – , arguably represents today the utmost form of the disruptive power of law over the economy.

In the economic debate, the tendency is also to explain international trade through the study of contractual dynamics, which are expressed by shifting attention to the organisational structures of *global* firms. The distortions produced by intra-firm trade must in fact be resolved on the legal level. Without adequate legal reform, it is in the realm of legal disputes that the *real* exchange between the single enterprise and the various particular contracting parties, ranging from the state to the workers, takes place.

In such cases, the *locus economicus* is the courtroom, where the stakeholders of the subsidiaries attempt to enforce the responsibilities of the parent companies, *i.e.,* the corporate group firm as a whole, in their capacity as actual counterparties.

22. The One-Contracting Party Apparent Economy as a destabilizing factor in financial markets: the use of the proposed indicators for monitoring economic policy, simulating economic and financial policy measures, and forecasting crises

The stability of the stock market depends on the quality of the securities traded, and thus on the quality of the companies they represent.

Financial markets are also consequently affected by these circumstances. The money advanced by investors on the stock exchange is supposed to be used by a market player who has every interest and ability to compete in the market in order to make profits. However, it is not known whether this will really happen, *i.e.,* whether the financed company will really be able to generate profits and not losses, and thus be able to pay back what it borrowed.

When a firm is listed, it is therefore assumed that the money advanced by investors is used to realise goods or services, *i.e.* to purchase what is necessary to realise the production process. If all goes well, the organised activity produces added value, and those who have purchased shares can obtain a profit, as well as the re-establishment of capital. The investor therefore bets on this future, uncertain event. It is called speculation, and it is the heart of financial capitalism.

In the one-contracting-party economy, however, the market is characterised by companies that only appear to be productive, but are in fact unable to manage entrepreneurial risk, since they are not genuine enterprises but rather branches of a single group enterprise. Share prices can therefore be easily inflated, not so much by the expectations of investors, and thus by more or less rational or irrational behavioural trends, but by a causal trend linked to a fundamentally uncoupled and pre-established business and market structure.

If the economic fundamentals of listed firms are uncoupled, one must expect that these genetic contradictions will have an impact on the markets, and in the long run, on financial stability.

In other words, the fragmentation of the global firm into several corporate entities allows significant portions of the enterprise risk to be transferred to companies without a true entrepreneurial organisation, which ultimately results in the de-empowerment of international investors through the support of 'creative' finance.

Listed subsidiaries, precisely because they are valued by the market on the basis of a range of economic, asset, and financial factors (value added, cash flows, net profit, and parameters related to capital profitability or indebtedness), transmit to financial markets the consequences of the potential manipulation of prices and transactions typical of the one-contracting-party apparent economy.

In this case as well, the greater the expansion of intra-group international trade, the stronger the negative impact on finance.

Analysing the phenomenon from a financial perspective through statistical data is an extremely complex task, with the current detection tools, its quantification would be practically impossible. Acquisitions, mergers, demergers, incorporations, transfers of shareholdings, and the establishment and closure of newcos occur on a daily basis and at an astonishing speed; each transaction corresponds to a transfer of business units and/or a fragmentation of responsibilities, that is, a transfer of enterprise risk.

Such an objective could only be achieved through a well-designed combination of innovative institutional databases and regulations supporting data collection.

As previously mentioned, it is believed that the economic indicator for detecting manipulations and anomalies in intra-group transactions may also be applied to financial flows and, consequently, to financial markets.

The result could be surprising in terms of forecasting and preventing financial crises. Before a market crisis becomes explicitly manifest, there are intermediate stages that precede it — signals arising from the geographical and corporate relocation of the internal turnover within group companies, aimed at responding to the initial signs of crisis, which management first attempts to contain by offloading workers, costs, and debts onto subsidiaries specifically designated for this purpose.

Conclusions

The expansion of multinational enterprises through the instrument of the corporate group has proved to be one of the main building blocks of the new global production chains, capable of shaping market structures as well as the scope of action of politics and intermediate social bodies such as trade unions and business associations.
The interest shown by international organisations such as the OECD and the IMF is mainly of a statistical nature, whereas that of international political institutions, such as the EU, is primarily regulatory.

By maintaining a more or less constant interdisciplinary approach, this study shows that without a properly defined theoretical economic and legal model, both fields of study are subject to limits that cannot be resolved in a self-referential manner: the dialogue between jurists and economists is inevitable.

From a legal perspective, the terminological contradiction between autonomy and subjection to external control represents a serious limitation, as it is, by its very nature, an insoluble one. It might therefore be useful to restore relevance to theoretical approaches centred on the concept of the enterprise — that is, on the link between governance and the attribution of entrepreneurial responsibility — to be considered as the cornerstone for identifying the anomalies of the various group law systems currently in force in different parts of the world.

From an economic point of view, it is necessary to become fully aware that this anomaly has also represented an obstacle for sectoral studies based on the classical enterprise paradigm. Only recently has it begun to be understood that the model of the multinational firm — and, consequently, the new global production chains — requires a paradigm shift, within which the

exchanges carried out by independent firms and those carried out between companies belonging to the same group cannot be treated on the same level.

In this regard, it may be useful to recall the idea that the production function of a single-firm enterprise is structurally different from that of a corporate group, which is given by the summation of distinct production functions — as many as the number of subsidiaries — and in each of these, the distribution of the factors determining productivity, value added, and profit is distorted, since it follows the organisational logic of the parent company's interest.

On this point, significant progress has been made in terms of statistical detection, mainly by the aforementioned international institutions. However, we are still far from producing sufficiently realistic data, bearing in mind that no statistical solution can exist without also being regulatory, and no regulatory solution can exist without also being statistical.

A basic theoretical model is therefore needed on which to build new studies and statistical models, and it is believed that the "theory of the one-contracting-party apparent economy" — which is at once economic and legal — can fulfil this function, since the core of the phenomenon lies precisely in the theoretical and factual notion that transactions carried out between a parent company and a subsidiary are distorted or potentially manipulated exchanges, given that buyer and seller ultimately coincide in a single market operator, making the exchange, as repeatedly stated, a true economic fiction.

Starting from this premise, some of the most important consequences of this new paradigm of enterprise and exchange have been outlined — consequences that carry remarkable scientific and political significance: the uncontrolled manipulation of transactions and of price setting radically changes the very notion of productivity, of value added, and of profit as conventionally understood in both scientific and political discourse; it causes a dangerous alteration in the distribution of income between labour and capital, inevitably leading to the neutralisation of trade union power; and it may trigger and amplify dangerous financial crises.

Moreover, as shown by the work of European institutions and other international organisations, unjust fiscal advantages can easily be derived — to the detriment of public institutions — by strategically positioning subsidiaries on the global chessboard, while intra-group credit and debt relations have major financial consequences for the territories in which these entities operate.

Consequently, the theory of the one-contracting-party apparent economy could serve as a theoretical model for constructing statistical frameworks and databases that are as realistic as possible.

To this end, it is intended to propose an economic and statistical indicator based on the model of the aggregate production function of multinational groups.

A carefully designed data collection system, supported by mandatory disclosure obligations for transnational enterprises in all productive sectors, could lead to the creation of databases and technological tools capable of anticipating — and possibly preventing — financial crises.

Without adequate regulation, technological evolution will only further amplify the distortive potential of one-contracting-party exchanges, dragging states ever deeper into a condition of structural impotence in the face of the evolution of global markets. The development of Artificial Intelligence (AI) will, in fact, unfold largely within the existing model of the global enterprise, thereby exponentially increasing the risks described above.

For these reasons, it is also evident that so-called anti-globalisation political measures, such as tariffs, may create some organisational and financial challenges for multinational corporate groups; however, with the regulatory and technological tools at their disposal, these groups can quite easily shift the resulting higher costs — paradoxically even onto the very governments driving the trade war — through targeted organisational restructuring of plants and subsidiaries, a process that current statistical systems can only record *ex post*.

Great caution must also be exercised regarding the social and humanitarian consequences arising from the restructuring of global production chains, which could prove disastrous for countries that, for one reason or another, become — or will become — less economically advantageous.
Another risk is that of triggering or accelerating financial crises, the consequences of which are currently impossible to predict.

Only the ability of governments and parliaments to engage in dialogue and find a global statistical and regulatory solution can lead the way out of the crisis induced by globalisation. Moreover, the moment is a delicate one: we have just entered a risky phase of both technological and regulatory transition — and mistakes in legislation or international agreements could prove disastrous.

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[2] See Andrea Goldstein and Lucia Piscitello, *Le multinazionali* [Multinationals], Il Mulino, Bologna, 2007, p. 9.

[3] See Giovanni Balcet, *Economia dell'impresa multinazionale*, [Economics of the multinational firm] Giappichelli, Turin, 2009, Introduction.

[4] *Ibid*, p. 9.

[5] See Timothy J. Sturgeon, *Global Value Chains and Economic Globalization. Towards a New Measurement Framework, Report to Eurostat*, Industrial Performance Center, Massachusetts Institute of Technology, May 2013.

[6] On the importance of statistics in understanding economic phenomena and the need for further analysis and insights, see *Working Party on International Trade in Goods and Trade in Services Statistics*, STD/CSSP/WPTGS/M(2016).

[7] Source: http://ec.europa.eu/eurostat/documents/39118/6581752/Communication-changes-FDI.pdf.

[8] OECD website.

[9] Alessandro Borin and Riccardo Cristadoro, *Gli investimenti diretti esteri e le multinazionali* [Foreign direct investment and multinationals], 'Bank of Italy Occasional Papers', no. 243, October 2014.

[10] See UNCTAD, *World Investment Report 2016: Investor Nationality*: *Policy Challenges*, New York-Geneva, 2016.

[11] See UNCTAD, *Global Value Chains: Investment and Trade for Development*, New York-Geneva, 2013. For less recent studies on the phenomenon, see Marcos Bonturi and Kiichiro Fukasaku, *Globalisation and intra-firm trade: an empirical note*, OECD, 'Economic Studies', no. 20, Spring, 1993

[12] See M. Ayhan Kose, Csilla Lakatos, Franziska Ohnsorge and Marc Stocker, *The Global Role of the U.S. Economy Linkages – Policies and Spillovers*, in Policy Research Working Paper 7962, World Bank Group, February 2017.

[13] See *UNCTAD, World Investment Report 2016*, *cit*.

[14] See Frances Ruane, *FDI Affiliates, Fragmentation and intra-firm trade*, 5 September 2014, p. 3.

[15] See UNCTAD, *World Investment Report 2011: Non Equity Modes of International Production and Development, New York-Geneva*, 2011. Also see, Unctad paper TAD/TC(2016)6/REV1.

[16] See *Integrated Balance of Payment and Internationale Position Manual, Seventh Edition (BPM7)*, Statistic Department IMF, in www.imf.org.

[17] See Sandra Stojadinović Jovanović, *Interdependence of International Trade Investment Flows in the Post Crisis Period*, in 'Ekonomika', vol. 16, no. 2, 2016.

[18] See Kose, Lakatos, Ohnsorge and Stocker, *The Global Role of the U.S. Economy Linkages. Policies and Spillovers*, *cit*.

[19] See Sarah P. Scott, *Activities of U.S. Multinational Enterprises in the United States and Abroad – Preliminary Results From the 2014 Benchmark Survey*, Bureau of Economic Analysis (BEA), December 2016, p. 4.

[20] *Ivi*, p. 3.

[21] *Ivi*, p. 11.

[22] For the following data, see Csilla Lakatos and Tani Fukui, *EU-US Economic Linkages: The Role of Multinationals and Intra-Firm Trade*, European Commission, Issue Paper 2-2013.

[23] Heike Joebges, *Crisis Recovery in a Country with a high Presence of Foreign Owned Companies. The Case of Ireland,* in Hans-Böckler-Stiftung, Working Paper, no. 175, January 2017.

[24] *Foreign affiliates statistics – FATS*, Eurostat, in http://ec.europa.eu/eurostat/statistics-explained/index.php/Main_Page, 2014.

[25] See *Integrated Balance of Payments and International Position Manual,* Seventh Edition (BPM7), Statistics Department, IMF, available at www.imf.org.

[26] OECD (2025), *OECD Benchmark Definition of Foreign Direct Investment* (Fifth Edition), OECD Publishing, Paris, https://doi.org/10.1787/7f05c0a3-en.

[27] See A. Nigro, *Imprese commerciali e imprese soggette a registrazione* [Commercial firms and firms subject to registration], in P. Rescigno (edited by) *Trattato di diritto privato, I: Impresa e lavoro* [Treatise on Private Law, I: Business and Labour] , UTET, Turin, 2001, p. 650, footnote 236.

[28] See G. Alpa, M. Bessone and V. Zeno-Zencovich, *I criteri d'imputazione: colpa, dolo, rischio* [The criteria of imputation: fault, intent, risk], in Rescigno (edited by), *Trattato di diritto privato, VI: Obbligazioni e contratti* [Treatise on Private Law, VI: Obligations and Contracts], *cit*., 1995, p. 103.

[29] See G. Oppo, *L'impresa come fattispecie* [The firm as a case in point] , in *Dir. imp., Scritti giuridici* [Business Law Review, Legal essays] *, I*, Padua, 1992, in particular 244-246-255.

[30] For further information, see Giandonato Caggiano, *Il concetto di impresa* [The concept of a firm], in *Dizionario sistematico del diritto della concorrenza* [Systematic Dictionary of Competition Law], edited by Lorenzo F. Pace, Cedam, Padua, 2013, pp. 47 ff.

[31] Case C-55/96, *Job Centre coop. Arl.*

[32] Court of Justice of the European Union, judgment 18 June 1998, case C-35/96.

[33] Communication from the Commission — *Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest*, 2014/C 188/02.

[34] An approach recently reaffirmed by the Court of Justice of the European Union; Division IV; Judgment of 10 April 2014, Joined Cases C-247/11 P and C-253/11 P.

[35] Court, 18-7-2013, case C-501/11, *Schindler Holding Ltd*, § 108; 29-9-2011, case C-521/09 P, *Elf Aquitaine*, § 59.

[36] Opinion of Advocate General Bot, delivered on 26-10-2010, joined cases C-201/09 P, C-216/09 P, *ArcelorMittal Luxembourg*: '[...] I am none the less still convinced that the liability of the parent company cannot be established solely on the basis of a presumption derived from the holding of capital. If a 100% holding is sufficient to establish the existence of a group link, I do not think that it can in itself presume the actual exercise of a power to issue instructions constituting connivance in the commission of the infringement. To my mind, it is necessary for the Commission to produce further evidence capable of showing that the subsidiary had no autonomy, in order to preserve the fundamental rights recognised to undertakings…. however, the presumption of liability is essentially an exception to the principle of the presumption of innocence'.

[37] Federico Ghezzi and Maria Teresa Maggiolino, *L'imputazione delle sanzioni antitrust* [The levying of antitrust sanctions], in '*Rivista delle società'* [Company review], 2015.

[38] For the text of the directive, see in 'Società' [Company], 1987, pp. 1308 ff.

[39] For these and other aspects of the project, see AA.VV., *Percorsi di diritto societario europeo* [Routes in European Company Law], Elisabetta Pederzini (edited by), Giappichelli, Turin, 2016, p. 66-67.

[40] European initiatives that, in various ways, address the issue of corporate groups are indeed numerous. Below is a non-exhaustive list: Regulation (EC) No. 2157/2001 on the Statute for a European Company (SE); Directive 2003/123/EC on business aggregation; Directives 2006/68/EC and 2012/30/EU on the protection of shareholders and creditors of public limited companies, from their incorporation to their operation; Directive 2013/34/EU on annual financial statements and consolidated financial statements; Directive 2014/95/EU on non-financial reporting obligations for large companies and, consequently, large corporate groups; Regulation (EU) 848/2015 on cross-border insolvency proceedings; Directives (EU) 2017/1132 and 2019/1151 on the standardisation of company law among Member States and the interconnection of business registers; Directive (EU) 2019/2121 on cross-border conversions, mergers and divisions; and Directive (EU) 2025/872 (DAC9) aimed at countering harmful tax competition among Member States.

[41] See Giuliana Scognamiglio, *I Gruppi di società: poteri e responsabilità*, in *Il diritto societario europeo: quo vadis?*, Giuffrè, 2023, p. 247 ss.

[42] A scenario that falls within the more general provision set out in the third paragraph of Article 2359 of the Italian Civil Code, which establishes that subsidiaries are to be considered as companies 'under the dominant influence of another company by virtue of specific contractual ties with it'.

[43] For everything, see, *René Reich-Graefe, Relational Networks and Enterprise Law: Comparative Trends of Network Liability in the United States and Europe*, p. 3.

[44] See William Milberg and Deborah Minkler, *Outsourcing Economics: Global Value Chains in Capitalist*, Cambridge, Cambridge University Press, 2013, p. 174. For an overview of the main studies conducted on the impact of offshoring on employment, please refer to the recent paper by A. Bramucci, *Offshoring, Employment and Wages*, Berlin School of Economics and Law, Institute for International Political Economy (IPE), IPE Working Papers no. 71, 2016.

[45] See Milberg and Minkler, *Outsourcing Economics: Global Value Chains in Capitalist*, *cit*., p. 174.

[46] Avraham Ebenstein, Ann Harrison, Margaret McMillan and Shannon Phillips, *Estimating the impact of trade and offshoring on american workers using the current population surveys*, NBER Working Paper Series, no. 15107, National Bureau of Economic Research, 2009.

[47] Bramucci, *Offshoring, Employment and Wages*, *cit.*

[48] See among others and also for a summary of studies on the subject, Jaanika Meriküll and Tairi Rõõm, *Are Foreign-Owned Firms Different? Comparision of Employment Volatility and Elasticity of Labour Demand*, European Central Bank, Working Paper Series, no. 1704, August 2014; on the issue of the impact of outsourcing on volatility, see Paul R. Bergin, Robert C. Feenstra and Gordon H. Hanson, *Outsourcing and volatility*, NBER Working Paper Series, 13144, in www.nber.org, National Bureau of Economic Research, Cambridge, 2007;

[49] See Elhanan Helpman and Paul Krugman (*Market Structure and Foreign Trade: Increasing Returns, Imperfect Competition and the International Economy*, in 'Journal of International Economics', 1986, vol. 21, pp. 183-187) which take into account the existence of internal (but also external) economies of scale within the firm participating in international trade, as well as other microeconomic variables such as consumer tastes.

[50] Theory first expounded by Sanford J. Grossman and Oliver D. Hart (*The Costs and Benefits of Ownership: A Theory of Vertical and Lateral Integration*, in 'J. Political Econ.', 1986, 94, pp. 691-719), which were joined by contributions from Oliver Hart and John Moore (*Property Rights and the Nature of the Firm*, in 'J. Political Econ.', 1990, 98, pp. 1119- 1158.) and Oliver Hart (*Firms, Contracts and Financial Structure*, Oxford, Oxford University Press, 1995). More recently, in a critical manner, Oliver Williamson (*The Theory of the Firm as Governance Structure: From Choice to Contract*, in 'J. Econ. Perspect.', 2002, 16, pp. 171-195.). See, the studies of Pol Antràs for a specific focus on intra-firm trade, *Firms, Contracts, and Trade Structure*, in 'The Quarterly Journal of Economics*',* vol. 118, November 2003, pp. 1375-1418. See also for a summary of the relevant theories, the recent paper by Daniel Müller and Patrick W. Schmitz, *Transaction Costs and the Property Rights Approach to the Theory of the Firm*, in 'European Economic Review', vol. 87, August 2016, pp. 92-107.

[51] See Gene Grossman and Elhanan Helpman, *Managerial Incentives and the International Organization of Production*, in 'Journal of International Economics', no. 63, 2044, pp. 237-262. On this issue, also see Pol Antràs, *Firms, Contracts, and Trade Structure*, in 'The Quarterly Journal of Economics', MIT Press, vol. 118(4), pp. 1375-1418; Toshiyuki Matsuura and

Banri Ito, *Intra-firm Trade and Contract Completeness: Evidence from Japanese Affiliate Firms*, in 'Internationalization of Japanese Firms: Evidence from Firm-level Data', Springer Japan, 2013, pp. 151-169.

[52] See Gordon H. Hanson, Raymond J. Mataloni, Jr. and Matthew J. Slaughter, *Vertical Production Networks in Multinational Firms*, in 'The Review of Economics and Statistics', 2005, 87(4), pp. 664-678.

[53] See Grossman and Helpman, *Managerial Incentives and the International Organization of Production*, *cit.*