

Business and Human Rights in Italy: Strengths, Weaknesses and Developments

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Italy is progressively moving towards a human rights corporate responsibility approach, as opposed to the traditional one based on corporate social responsibility, as demonstrated by the several recent initiatives showing its willingness to implement the legislative framework established by the UN Guiding Principles on Business and Human Rights. With the latter's tripartite structure in mind, I will focus on the most significant legislation and sketch potential future developments that Italy will have to introduce, in the event that the draft Directive on corporate due diligence and corporate accountability (hereinafter "the Draft Directive"), recently proposed at the EU level, is adopted.

With respect to the corporate protection of human rights, it is worth mentioning that Italy has introduced the possibility to constitute benefit corporations (Legislative Decree 1882/2015) and implemented EU Directive 2014/95 on disclosure of non-financial and diversity information by large enterprises and groups (Legislative Decree 254/2016). Moreover, Legislative Decree 231/2001 establishes that corporations are administratively/criminally liable for the commission of any of the several crimes provided in an exhaustive list. Unfortunately, the Decree does not include universal human rights coverage: among the crimes triggering corporate liability are corruption and misappropriation of public funds, money laundering, environmental crimes, terrorism and subversion of the democratic order, mutilation of female genitals and crimes against persons, IT crimes, the violation of the rules on safety in the workplace, and immigration crimes. Companies may be exonerated from such liability through the adoption of management and control models adequate to prevent managers, executives and employees from committing infractions, and suitable to identify the procedures and processes to avoid their occurrence within the development of corporate activities. Until now the Decree has mainly provided grounds for liability in cases of corruption, environmental crimes and labor rights violations.

However, notwithstanding these interesting legal trends, Italy does not yet have a specific, overarching legislative framework on corporate human rights due diligence (HRDD). The Italian National Action Plan on Business and Human Rights 2016/2021, adopted by the

Human Rights Interministerial Committee (CIDU) in December 2016 and revised in November 2018, identifies the promotion of HRDD processes as one of its main areas of interest, together with fighting discrimination and *caporalato* (i.e. treatment practices, mainly concerning agricultural workers, that disregard core labor standards), the promotion of labor rights within the global supply chain, cooperation in development based on the promotion of human rights, and environmental protection. As regards the HRDD, the NAP recommends to “conduct a comprehensive review of the existing commercial and civil law to assess and evaluate legislative reform introducing provisions such as the ‘duty of care’ or due diligence for companies”. This process will certainly be bolstered by the introduction of a HRDD obligation at EU level.

When it comes to access to remedies for victims of corporate human rights violations, Italy has adopted important legislation providing the right to file class actions for torts liability against corporations (Law n. 31, 12 April 2019). The law will enter into force in May 2021 and is likely to become a crucial tool, as it will give victims of human rights violations the right to file collective claims against corporations. On the side of extrajudicial remedies, the Italian National Contact Point for the OECD Guidelines, set up pursuant to Law 273/2002, has recently come to settle interesting matters, such as *Egbema Voice of Freedom et al v. ENI* . An interesting development could be for the institutions to consider integrating the OECD NCP to form an inter-ministerial body, rendering its actions more effective.

Finally, Italian law explicitly provides neither for jurisdiction criteria nor for choice of law provisions for disputes concerning corporate civil liability for human rights violations. Therefore, should the amendments to Regulations Rome II and Brussels I *bis*, recently proposed at the EU level, be adopted, it will be interesting to see how Italy will apply the newly introduced rules (i.e. a title of jurisdiction more favorable to victims, a *forum necessitatis*, and a specific conflict-of-law provision on corporate human rights violations).

In light of these observations, some conclusions can be drawn about Italy’s compliance with its state duty to protect human rights. Despite the interesting trends at Italian law level mentioned above, areas in need of improvement remain, along with, unfortunately, some remarkable failures. These include Italy’s recent condemnation by the European Court of Human Rights in *Cordella v. Italy* , for its violation of Articles 8 and 13 of the European Convention, with regard to activities conducted by the steel company ILVA that resulted in damage to human health.

In addition to all this, given the tragic impacts of the COVID-19 pandemic and the related economic crisis, it is urgent that the institutions offer reliable solutions and restructure the B&HRs legal framework so as to take into account new and pressing needs. This is the call, the hope and the challenge I put to the Italian government.

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