

BUSINESS & HUMAN RIGHTS

Italy



Business & Human Rights

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Quick reference guide enabling side-by-side comparison of local insights, including into the applicable international and national legal and policy framework; corporate reporting and disclosure; corporate due diligence; criminal liability; civil liability; judicial redress, including class and collective actions and public interest litigation; non-judicial grievance mechanisms; and other recent trends.

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LEGAL AND POLICY FRAMEWORK

International law

Which international and regional human rights treaties has your jurisdiction signed or ratified?

Italy has entered into the following conventions:

- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force on 12 January 1989; and its Optional Protocol, which entered into force on 3 April 2013;
- the International Covenant on Civil and Political Rights, which entered into force on 15 September 1978 (including reservations with reference to article 15, paragraph 1, and article 19, paragraph 3); and its Second Optional Protocol aiming at the abolition of the death penalty, which entered into force on 14 February 1995;
- the International Convention for the Protection of All Persons from Enforced Disappearance, which entered into force on 8 October 2015;
- the Convention on the Elimination of All Forms of Discrimination against Women, which entered into force on 10 June 1985;
- the International Convention on the Elimination of All Forms of Racial Discrimination, which entered into force on 5 January 1976 (including declarations with reference to articles 4 and 6);
- the International Covenant on Economic, Social and Cultural Rights, which entered into force on 15 September 1978;
- the Convention on the Rights of the Child, which entered into force on 5 September 1991; its Optional Protocol on child prostitution and child pornography, which entered into force on 9 May 2002; and its Optional Protocol on the involvement of children in armed conflict, which entered into force on 9 May 2002 and in which Italy declares, in compliance with article 3, that:
 - Italian legislation on voluntary recruitment provides that a minimum age of 17 years is required in respect of requests for early recruitment for compulsory military service or voluntary recruitment (military duty on a short-term and yearly basis); and
 - the legislation in force guarantees the application, at the time of voluntary recruitment, of the provisions of article 3, paragraph 3 of the Optional Protocol, among other things, in respect of the requirement of the consent of the parent or guardian of the recruit; and
- the Convention on the Rights of Persons with Disabilities, which entered into force on 15 May 2009.

Other regional treaties to which Italy is a party include:

- the European Convention on Human Rights, which entered into force on 26 October 1955;
- the European Convention on the Legal Status of Migrant Workers, which entered into force on 1 May 1995; and
- the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, which entered into force on 1 August 2014.

Law stated - 31 January 2023

Has your jurisdiction signed and ratified the eight core conventions of the International Labour Organization?

Italy has ratified the core conventions of the International Labour Organization, which are:

- the Forced Labour Convention 1930, which entered into force on 18 June 1934;
- the Freedom of Association and Protection of the Right to Organise Convention 1948, which entered into force on 13 May 1958;
- the Right to Organise and Collective Bargaining Convention 1949, which entered into force on 13 May 1958;
- the Equal Remuneration Convention 1951, which entered into force on 8 June 1956;
- the Abolition of Forced Labour Convention 1957, which entered into force on 15 March 1968;
- the Discrimination (Employment and Occupation) Convention 1958, which entered into force on 12 August 1963;
- the Minimum Age Convention 1973, which entered into force on 28 July 1981; and
- the Worst Forms of Child Labour Convention 1999, which entered into force on 7 June 2000.

On 29 October 2022, Italy also ratified the International Labour Organization Violence and Harassment Convention 2019 (No. 190).

Law stated - 31 January 2023

How would you describe the general level of compliance with international human rights law and principles in your jurisdiction?

Italy is committed to multiple initiatives for the protection and promotion of human rights in line with the obligations undertaken at the international level. However, the following human rights areas seem to necessitate legal intervention:

- In terms of the migrant and refugee phenomenon, interceptions at sea may result in a risk of ill treatment or onward refoulement. Moreover, there is a lack of clarity concerning the migrants' hosting and resettlement regime, and the legal framework applicable to them. Additional hurdles relate to difficulties in obtaining residence registration, income-related requirements for naturalisation and the non-acquisition of Italian nationality by children born to refugees in Italy. Asylum seekers and beneficiaries of international protection need more support in accessing employment, language training, civic education and professional training. Italy is still not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- Through the introduction of Law No. 85/2006, penalties against incitement to racial discrimination and violence have become more lenient in Italy. Many concerns remain over article 631-bis of the Criminal Code regarding the crime of torture, specifically on the article's effectiveness, which is subject to potential misinterpretation and impunity of the perpetrators.
- Other issues include overcrowding in prisons, the excessive length of court proceedings, anti-defamation laws that undermine the freedom of the press and the spread of phenomena such as irregular employment practices with inadequate and unsafe working conditions.

Law stated - 31 January 2023

Does your jurisdiction support the development of a treaty on the regulation of international human rights law in relation to the activities of transnational corporations and other business enterprises?

On the contrary; in 2014, Italy voted against the United Nations Human Rights Council Resolution on the elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to

human rights.

Law stated - 31 January 2023

National law

Has your jurisdiction enacted any of its international human rights obligations into national law so as to place duties on businesses or create causes of action against businesses?

Legislative Decree 231/2001 (on the administrative liability of companies) introduced regulatory provisions that should prevent and sanction certain company behaviour, including preventing the managers, officers, employees or third parties acting on behalf of the company from violating human rights standards (ie, safety in the workplace).

The Italian legal system transposed EU Directive 2009/52/EC through Legislative Decree 109/2012 (the Rosarno Law), which enables irregular workers to request the legal recognition of an employment relationship to obtain outstanding salaries and the recovery of social security contributions (to be paid by the employer).

Nevertheless, the scope of this mechanism is partially undermined by Legislative Decree 286/1998, which regulates the crime of illegal entry or stay. If an irregular worker who is also an illegal migrant reported an employer violating the Rosarno Law to the authorities, they would risk being expelled for illegal entry or stay.

Law stated - 31 January 2023

Has your jurisdiction published a national action plan on business and human rights?

On 15 December 2016, the government presented its first national action plan on Business and Human Rights 2016–2021, which focused on:

- promoting due diligence processes, with particular attention paid to small and medium-sized enterprises;
- promoting the protection of environmental sustainability;
- the fight against corporal labour and forms of exploitation, forced labour, slavery and irregular labour, with particular attention paid to migrants and victims of trafficking;
- promoting fundamental labour rights in the process of company internalisation, with particular reference to global production processes;
- combating discrimination and inequality and promoting equal opportunities; and
- strengthening Italy's role in the framework of international cooperation for development based on human rights.

On 10 December 2020, the government also presented its national action plan on Women, Peace and Security 2020–2024, pursuing four objectives to promote and strengthen:

- the role of women in peace processes and decision-making;
- the gender perspective in peace operations;
- women's empowerment, gender equality and the protection of the human rights of women and children in conflict and post-conflict areas; and
- communication, advocacy and training activities, at all levels, on the Women, Peace and Security Agenda and related issues.

On 2 December 2021, the government approved the second national action plan on Business and Human Rights 2021–

2026. The plan updates and ensures continuity with the commitments already made in the previous plan. It also introduces new voluntary commitments, with the intention of ensuring consistency between the national approach and the United Nations Guiding Principles on Business and Human Rights.

Law stated - 31 January 2023

CORPORATE REPORTING AND DISCLOSURE

Statutory and regulatory requirements

Are businesses in your jurisdiction subject to any statutory or regulatory human rights-related reporting or disclosure requirements?

Legislative Decree 254/2016 , implementing Directive 2014/95/EU on the disclosure of non-financial and diversity information, imposes the obligation to draw up, for each financial year, a statement that allows an understanding of the company's activity and performance in respect of environmental, social, human resources management, human rights and anti-corruption issues. Public-interest entities must make a declaration for each financial year in which they had, on average, more than 500 employees and had exceeded, on the balance sheet date, at least one of the following two size limits:

- balance sheet total: €20 million; or
- total net revenues from sales and services: €40 million.

On 14 December 2022, Directive 2022/2464/EU amended Directive 2014/95/EU and introduced to large companies and listed SMEs detailed reporting requirements on sustainability matters such as human rights. The Directive must be received by the Italian government and will apply from 2024.

According to the national legislation, the following Italian purpose-driven companies, among others, are required to publish an annual report on the social and environmental impact of their activities and the achievement of their purposes and mission:

- social enterprises (regulated by Legislative Decree 112/2017);
- social cooperatives (regulated by Legislative Decree 112/2017 and Law 381/1991);
- innovative start-ups with social vocation (regulated by Decree Law 179/2012); and
- benefit corporations (regulated by Law 208/2015).

Law stated - 31 January 2023

What is the nature and extent of the required reporting or disclosure?

Under the current Legislative Decree 254/2016, the disclosure of non-financial and diversity information must include the activity implemented by the enterprise regarding:

- social and personnel management, including action taken to ensure gender equality, measures to implement relevant conventions of international and supranational organisations, and details of the way in which dialogue with social partners is conducted; and
- respect for human rights, including measures taken to prevent violations and action taken to prevent

discriminatory attitudes and actions.

Concerning purpose-driven companies, the information to be provided within the annual report must comply with specific standards provided by the legislator for each legal status. In particular:

- according to Law 208/2015, benefit corporations must draft a report providing all information related to the achievement of the common benefit goals incorporated in the by-laws and measuring the impact generated by the company in relevant areas, such as governance, employees, stakeholders and the environment;
- in 2015, Circular 3677/C of the Ministry of Economic Development introduced the obligation for innovative start-ups with social vocation to publish a social impact assessment annually, drafted in accordance with the guidelines under the circular; and
- according to article 9 of Legislative Decree 112/2017, social enterprises and social cooperatives must also publish a report in accordance with the guidelines issued by the Decree of the Minister of Labour, Health and Social Policies of 4 July 2019.

Law stated - 31 January 2023

Which bodies enforce these requirements, and what is the extent of their powers?

On the one hand, it is a prerogative of the board of directors to ensure that the disclosure of non-financial and diversity information is drawn up and published. Pursuant to article 8 of Legislative Decree 254/2016, financial penalties will be established and applied to directors for non-compliance.

On the other hand, the board of auditors monitors disclosure, mainly considering:

- compliance with the law and by-laws, as well as with the principles of correct administration;
- the adequacy of the organisational, administrative and accounting systems, and of the internal control system; and
- the adequacy of processes for the identification and management of business risks, and in the extraction and reporting of data pertinent to the disclosure.

The disclosure is also subject to external control by the entity in charge of the statutory audit of the annual financial statements of the company. Such control is related to implementation and compliance with Legislative Decree 254/2016. The entity must issue certification regarding the compliance of the information provided in the disclosure with the requirements set by the legislative decree.

Concerning purpose-driven companies:

- benefit corporations are subject to the control and sanctions of the antitrust authority concerning misleading advertising (Legislative Decree 145/2007) and unfair commercial practices (the Consumer Code);
- innovative start-ups with social vocation are subject to annual checks on compliance with legal requirements by the Chamber of Commerce;
- social enterprises are under the control of the Ministry of Labour, Health and Social Policies, which establishes inspections and may order the loss of status; and
- social cooperatives are under state control and, in the event of irregularities, consequences include cancellation from the official register, dissolution by an act of authority and the obligation to devolve assets.

Voluntary standards

What voluntary standards should businesses refer to for guidance on best practice in relation to any applicable human rights-related corporate reporting and disclosure regimes?

Most companies – mainly corporations – publicly certify their commitment to comply with intergovernmental principles on human rights, labour rights and environmental protection through the adoption of codes of conduct based on those principles.

Useful tools to increase human rights standards include:

- international principles and frameworks (ie, the United Nations Guiding Principles on Business and Human Rights, the Organisation for Economic Co-operation and Development Guidelines and the United Nations Global Compact Sustainable Development Goals); and
- private certifications evaluation standards (ie, SA 8000, ISO 26000, B Impact Assessment and the Global Reporting Initiative Standards).

CORPORATE DUE DILIGENCE

Statutory and regulatory requirements

Are businesses in your jurisdiction subject to any statutory or regulatory human rights-related due diligence requirements?

Specific requirements for businesses are provided by Legislative Decree 231/2001.

Regulation (EU) 2017/821 lays down due diligence, supply chain, management system, disclosure and third-party audit obligations for EU importers of minerals or metals containing or comprising tin, tantalum, tungsten or gold.

What is the nature and extent of the required due diligence?

Under Legislative Decree 231/2001, a management organisation model must be adopted. It must provide:

- compliance with the technical structural standards of the law relating to equipment, plants and workplaces, and chemical, physical and biological agents;
- risk assessment activities and the preparation of consequent prevention and protection measures;
- activities of an organisational nature, such as for emergencies, first aid, contract management, periodic safety meetings and consultation with workers' safety representatives;
- health surveillance activities;
- information and training activities for workers;
- surveillance activities with reference to compliance with procedures and instructions for safe work by workers;

- the acquisition of documents and certifications required by law; and
- periodic checks on the application and effectiveness of the procedures adopted.

A code of conduct must also be adopted to:

- inform people within the company and third parties of the nature and content of the company's commitment to fighting crimes and unlawful conduct, asking them to sign an explicit commitment to respect the law and the rules of the code itself;
- increase awareness and knowledge of ethics and corporate policies among employees to obtain their consent and support in the fight against corruption and fraud, and against negligence in matters of occupational safety and environmental protection; and
- support the reputation of the company to increase public confidence.

Both the management organisation model and the code of conduct must be published.

Law stated - 31 January 2023

Which bodies enforce these requirements, and what is the extent of their powers?

A supervisory body must be elected to:

- supervise the effectiveness and suitability of the management organisation model;
- evaluate and propose any necessary updates or adjustments to the model;
- carry out checks on the model; and
- receive reports relating to possible offences or corporate irregularities.

Law stated - 31 January 2023

What voluntary standards should businesses refer to for guidance on best practice in relation to any applicable human-rights related corporate due diligence regimes?

To assess their specific human rights risks, organisations can apply:

- international principles and frameworks (ie, the United Nations Guiding Principles on Business and Human Rights, the Organisation for Economic Co-operation and Development Guidelines and the United Nations Global Compact Sustainable Development Goals); and
- private certifications evaluation standards (ie, SA 8000, ISO 26000, B Impact Assessment and the Global Reporting Initiative Standards).

Law stated - 31 January 2023

CRIMINAL LIABILITY

Primary liability

What criminal charges can be asserted against businesses for the commission of human rights abuses or involvement or complicity in abuses? What elements are required to establish guilt?

The introduction of Legislative Decree 231/2001 provides that companies are subject to monetary penalties or interdiction (or restraining measures, depending on the crime committed and its gravity) for any typical offence committed or attempted – in Italy or abroad – in the interest or to the advantage of the company itself by individuals who are:

- representatives, directors or managers of the company or of one of its organisational units that have financial and functional independence, or by individuals who are responsible for managing or controlling the company (top-level managers); and
- managed or supervised by an individual in a top-level managerial position.

Among the typical crimes contained in Legislative Decree 231/2001, the following examples relating to human rights violations can be considered:

- the hiring of employees with irregular residence permits (article 22 of Legislative Decree 286/1998);
- the exploitation of workers (article 603-bis of the Criminal Code);
- the employment of illegal immigrants (article 2 of Law No. 109/2012);
- reducing a person to, or holding a person in, a condition of slavery (article 600 of the Criminal Code);
- manslaughter (article 589 of the Criminal Code);
- human trafficking (article 601 of the Criminal Code);
- female genital mutilation practices (article 583-bis of the Criminal Code); and
- child prostitution (article 600-bis of the Criminal Code) or child pornography (article 600-ter of the Criminal Code).

More recently, within the implementation of Framework Decision 2008/913/JHA concerning the fight against all racial and xenophobic forms and expressions, a new paragraph (25-terdecies) on the fight against racism and xenophobia was added to the rules of Legislative Decree 231/2001.

Finally, in regulating the hypothesis in which the offence is committed 'by persons who hold positions of representation, administration or management of the organisation or of one of its organisational units with financial and functional autonomy', article 6, paragraph 1 of Legislative Decree 231/2001 implements a complete reversal of the burden of proof, providing that the organisation is not liable if it demonstrates that it has taken the necessary measures to prevent the commission of offences.

On the other hand, when the crime was committed by someone subject to a person in a top-level managerial position, the burden of proof returns to the prosecutor. The company will be liable only when it is proven that the realisation of the crime was made possible by the failure of top-level subjects to comply with their obligations of management or supervision.

Law stated - 31 January 2023

What defences are available to and commonly asserted by parties accused of criminal human rights offences committed in the course of business?

There are no circumstances in which directors and officers can be held criminally liable for human rights abuses committed by their business. Companies may avoid or significantly reduce the risk of incurring company liability and being sanctioned by adopting and implementing an effective organisational, management and control model under Legislative Decree 231/2001.

In addition to an effective compliance programme, the creation of an internal control body tasked with monitoring the operation, effective implementation and observance of the model is the primary method by which a company can exclude or mitigate potential punishment.

The most relevant requisites of the model are:

- identifying the risky activities or areas of activity within the company's business;
- identifying the modalities for handling financial resources suitable for preventing crimes;
- outlining specific protocols or policies aimed at planning the formation and implementation of the company's resolutions in respect of the prevention of potential crimes;
- appointing a monitoring body with autonomous powers of control and in charge of controlling the proper implementation and updating of the model;
- providing continuous training to company employees and representatives on the model; and
- outlining specific disciplinary sanctions applicable in the case of non-compliance with the guidelines provided for in Legislative Decree 231/2001.

To draft a comprehensive model, a preliminary analysis must be carried out identifying the gaps within the organisational set-up of the company that might otherwise facilitate the commission of the crimes listed by Legislative Decree 231/2001.

Law stated - 31 January 2023

Director and officer liability

In what circumstances and to what extent can directors and officers be held criminally liable for involvement or complicity in human rights abuses? What elements are required to establish liability?

A company can be criminally liable only for the typical offences contained in Legislative Decree 231/2001 (including human rights abuses) committed in the interest or to the advantage of the business itself by top-level managers, or by individuals that they manage or supervise; therefore, there are no circumstances under which directors and officers can be held criminally liable for human rights abuses committed by their business.

Law stated - 31 January 2023

Piercing the corporate veil

When can the courts disregard the separate legal personalities of corporate entities within a group in relation to human rights issues so as to hold a parent company liable for the acts or omissions of a subsidiary?

It is not expressly provided by Legislative Decree 231/2001, nor by the Criminal Code, that a parent company can be held criminally liable for the acts or omissions committed in the interest or to the advantage of a subsidiary.

However, according to recent jurisprudence of the Italian Supreme Court of Cassation, a parent company may be held liable for offences committed within the scope of the activities of its subsidiaries on the condition that the person acting on behalf of the parent company concurs with the person committing the offence on behalf of the controlled legal entity, and that the parent company can be considered to have received a concrete advantage or to have pursued an effective interest by means of the offence committed within the scope of the activities carried out by the subsidiary (ie, Supreme Court of Cassation Ruling 52316/2016).

Law stated - 31 January 2023

Secondary liability

In what circumstances and to what extent can businesses be held liable for human rights abuses committed by third parties?

Notwithstanding the position of the individuals committing any of the typical offences listed in Legislative Decree 231/2001 (including human rights abuses) and the company they are working for (ie, employees of the same company in the interest or advantage of which crimes are committed or contractors' employees), businesses can be held criminally liable or defended in the case of prosecution if they meet the relevant criteria enshrined in legislation such as Legislative Decree 231/2001 and the Criminal Code.

In particular, despite the fact that, especially for contractors, there is no corporate connection (ie, no parent–subsidiary situation), clients are still required to comply with a supervisory obligation making sure no crimes, including human rights abuses, are committed by anyone working for the contractors while they perform the activity that they have been appointed for. In the case of absent or insufficient supervision, businesses may still be held criminally liable for not adopting the necessary supervisory efforts, which could and should have been implemented knowing the potential risks.

The actual business interest or advantage gained by the crimes must also be proven.

Law stated - 31 January 2023

Prosecution

Who may commence a criminal prosecution against a business? To what extent do state criminal authorities exercise discretion to pursue prosecutions?

Criminal prosecutions against a business may be commenced only by the state and, in particular, by the public prosecutor competent and responsible in the geographical area where acts were committed.

Criminal prosecutions cannot be commenced by the public prosecutor unless a complaint by the offended person has been filed. In cases concerning more serious crimes, public prosecutors are entitled to commence a criminal prosecution as soon as they receive notice of them (notwithstanding by whom and in which form).

Law stated - 31 January 2023

What is the procedure for commencing a prosecution? Do any special rules or considerations apply to the prosecution of human rights cases?

Once the public prosecutor has received notice of the crime or a complaint by the offended person has been filed, the public prosecutor opens an investigation (this phase is maintained in full secrecy) to decide whether investigations should be closed and archived with no further prosecution or if a request of indictment should be filed to a judge.

No specific rules or considerations apply to the prosecution of human rights cases.

Law stated - 31 January 2023

CIVIL LIABILITY

Primary liability

What civil law causes of action are available against businesses for human rights abuses?

The civil liability of companies and corporations follows the rules of contractual and tortious liability (respectively, articles 1,218 and 2,043 et seq of the Civil Code). Protection is granted both against the natural persons responsible for the abuse and against the legal entities on behalf of which those natural persons acted, and aims to obtain compensation for the damage suffered.

With regard to businesses' tortious liability, article 2,043 et seq of the Civil Code represents the civil remedy to obtain compensation for material and non-material damage.

Under article 2,059 of the Civil Code, non-material damage includes damage suffered in cases in which a crime was committed, as well as any hypothesis of violation of constitutional personal interests. In this sense, article 2,059 requires proof of the intentional or negligent behaviour carried out by the company and the resulting suffered damage.

Other special laws specifically grant compensation for non-material damage (ie, article 28 of Legislative Decree 150/2011) against discriminatory acts connected to racial, ethnic, linguistic, national, geographical or religious reasons, as well as relating to age, disability, sexual orientation, personal beliefs and equal opportunities.

Finally, should a criminal proceeding be pending, the civil action for compensation for damage may be introduced directly in those criminal proceedings by filing the relevant defences. There are no specific or ad hoc defences available.

Law stated - 31 January 2023

Director and officer liability

In what circumstances and to what extent are directors and officers of businesses subject to civil liability for involvement or complicity in human rights abuses?

All directors, as members of the board, are jointly responsible for the general management of the company and the conduct of its business. They are jointly liable for any damage caused to the company or third parties because of their failure to comply with their duties relating to the general management of the company as board members.

Moreover, directors are not only liable for their failure to carry out the actions required of them, but also for failure to control and supervise the other directors' activities and the company's conduct of the business. Nonetheless, the degree of the directors' liability strictly depends on their professionalism and expertise.

Generally, the potential liability of a non-executive director is lower than that of an executive director (ie, a director vested with specific powers and authority), given the different role and involvement in the management of the company. However, the non-executive director's liability cannot be totally excluded, since all board members are collectively responsible for the management of the company and its supervision. With regard to single decisions, there are practical ways to exclude non-executive directors' liability, for instance, if:

- the dissent is the result of a board decision that is recorded in the minutes of a board meeting; and
- the non-executive director had reported concerns regarding the conduct not being in the interest of the company to the board of auditors or to the court, depending on the circumstances.

Directors' liability may be extended to general officers, pursuant to the Civil Code. According to Italian case law and doctrine, shadow directors (individuals that become part of the company's management and interact with third parties, despite not being vested with the powers and authority of a company director) are subject to the same liability as that set forth for directors in Italian law.

Regarding the available defences and remedies, the company's shareholders may take legal action against the liable director or directors.

In addition, the single shareholder or third party that suffered damage because of the director's misbehaviour may take legal action against the latter to obtain compensation for the damage.

Law stated - 31 January 2023

Piercing the corporate veil

When can the courts disregard the separate legal personalities of corporate entities within a group in relation to human rights issues so as to hold a parent company liable for the acts or omissions of a subsidiary?

The possibility of piercing the corporate veil exists only if the parent company exercises an unlawful influence over the subsidiary, affecting the rights of the subsidiary itself or of its creditors. In this case, the parent company is liable for the subsidiary's conduct if, under article 2,497 of the Civil Code:

- the parent company operates in its own business and entrepreneurial interest or in the interest of another company;
- the parent company carries out activities in breach of the principles of correct corporate management; or
- a detriment was caused to the profitability and value of the corporate holding as well as towards the company's creditors.

Should the parent company be held liable, the subsidiary and the creditors are able to implement measures against the abuses of dominant position (ie, applying the rules governing the liability of directors).

Law stated - 31 January 2023

Secondary liability

In what circumstances and to what extent can businesses be held liable for human rights abuses committed by third parties?

Article 1,228 of the Civil Code provides for 'liability for acts of auxiliaries' in the case of contractual non-fulfilment or breaches resulting from the acts of a third party appointed by the debtor for the performance of contractual obligations. Unless otherwise intended by the parties, the debtor is liable for the intentional or negligent behaviour of the auxiliaries.

On the other hand, article 2,049 of the Civil Code provides for non-contractual or tortious strict liability of masters and

employers for damage caused by an unlawful act carried out by their workers and employees in the performance of their functions. Therefore, in the event of any unlawful acts on the workers' or employees' side, protection is granted against the legal person on behalf of whom they were acting and aims to obtain compensation for the suffered damage. Proof of the link between the work performance and the damage is found whenever the damaging event has been produced or facilitated by conduct attributable to the work performance, even if the employee has acted without the knowledge of the employer.

The businesses' civil liability is excluded if the actions carried out by a third party (eg, an employee) are not, under any circumstances, attributable to work performed on behalf of the business.

Law stated - 31 January 2023

Shareholder liability

In what circumstances can shareholders be held liable for involvement or complicity in human rights abuses?

This can happen in the event of unlawful behaviour on the shareholders' side, which relates to any exercise of corporate powers by the shareholders that conflicts with the principles and rules of the corporate organisation.

However, on a civil law level, there are no specific rules to concretely determine the liability of the shareholders for the business's commission of, or involvement or complicity in, human rights abuses.

Law stated - 31 January 2023

JUDICIAL REDRESS

Jurisdiction

Under what criteria do the criminal or civil courts have jurisdiction to entertain human rights claims against a business in your jurisdiction?

To determine whether an Italian civil or criminal court has jurisdiction in a dispute against a company, it is necessary to refer to Regulation (EU) No. 1215/2012 (the Brussels I-bis Regulation). Regardless of the place in which the alleged violation of human rights has taken place, the Italian courts have jurisdiction if the business is domiciled in Italy.

According to article 63 of the Brussels I-bis Regulation, 'a company or other legal person or association of natural or legal persons is domiciled at the place where it has its: (a) statutory seat; (b) central administration; or (c) principal place of business.'

However, this general principle could be subject to different exemptions under the Brussels I-bis Regulation.

Law stated - 31 January 2023

What jurisdictional principles do the courts apply to accept or reject claims against businesses based on acts or omissions that have taken place overseas and parties that are domiciled or located overseas?

According to article 6 of the Brussels I-bis Regulation, if the defendant is not domiciled in an EU member state, the jurisdiction of the courts of each member state shall be determined by the law of that member state.

To this extent, article 3 of Law 218/1995 rules that, in circumstances involving a party not domiciled in an EU member

state, Italian courts have jurisdiction in accordance with the criteria established by Chapter 2, sections 2, 3 and 4 of the Brussels I-bis Regulation and further amendments, when the issue at stake falls within the scope of application of the Brussels I-bis Regulation itself.

In the same scenario, the relevant disposition would be article 7 of the Brussels I-bis Regulation concerning tort, delict or quasi-delict, according to which a company domiciled overseas could be sued in Italy if 'the harmful event occurred or may occur' in Italy.

Law stated - 31 January 2023

Class and collective actions

Is it possible to bring class-based claims or other collective redress procedures against businesses for human rights abuses?

Yes, for instance, in relation to trade union freedom, non-discrimination and consumer protection.

The local bodies of the national trade union associations may act to protect trade union freedom and the workers' right to strike in the event of any abuses of these rights on the company's side. In accordance with Legislative Decree 286/1998 and Legislative Decree 216/2003, they might also bring a claim in cases of discriminatory behaviour of a collective nature, even in cases where collective discrimination exists without it being possible to clearly discern the victims.

Furthermore, Legislative Decree 215/2003 provides for the ability of associations and legal entities – listed in a specific registry approved at government level – to lodge a complaint on behalf of the victim of discrimination.

Regarding consumer protection, article 140-bis of the Consumer Code grants consumers the ability to bring class-based claims. The claim may be brought by each member of the class in the interest of every other member, or by an association vested with the specific power. The decision of the judge will be effective in relation to all the members of the class.

Law stated - 31 January 2023

Public interest litigation

Are any public interest litigation mechanisms available for human rights cases against businesses?

The Italian legal system does not provide for any mechanisms of public interest litigation. Pursuant to article 100 of the Code of Civil Procedure, any person or entity bringing a claim before a court must be entitled to do so by a personal, actual and concrete interest.

The Italian legal system, particularly Italian administrative law, admits 'popular action'. For instance, pursuant to Legislative Decree 267/2009, each voter may bring before the court claims relating to the forfeiture of public offices (president of the municipality, mayor and so on); however, these mechanisms are distant from those of public interest litigation.

Law stated - 31 January 2023

STATE-BASED NON-JUDICIAL GRIEVANCE MECHANISMS



Available mechanisms

What state-based non-judicial grievance mechanisms are available to hear business-related human rights complaints? Which bodies administer these mechanisms?

Italy remains one of the few remaining countries in Europe without a national human rights institution. A pivotal role is instead played by the Italian National Contact Point (NCP) for responsible business conduct, which aims, under the Ministry of Economic Development, to actively contribute to the enactment of the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (the OECD Guidelines). One of its most important responsibilities is to handle specific instances submitted by stakeholders alleging that one or more enterprises have breached the OECD Guidelines and violated human rights. In those cases, through mediation and conciliation between the conflicting parties, the NCP works to find a consensual solution.

Another fundamental non-judicial grievance mechanism provided in the Italian national action plan on Business and Human Rights is the Banking and Financial Ombudsman, an independent and impartial alternative dispute resolution system for customer complaints about banks and other financial intermediaries.

Finally, although it is not a non-judicial grievance mechanism, it is worth mentioning the Working Group on Business and Human Rights, established within the Inter-ministerial Committee for Human Rights, the main goal of which is to ensure the implementation of the Italian national action plan.

Law stated - 31 January 2023

Filing complaints

What is the procedure for filing complaints under these mechanisms?

Every person or entity that has a legitimate interest in the relevant case (eg, private persons, non-governmental organisations, trade unions and other companies) can file a complaint with the NCP.

After submission of the case in writing, the NCP assesses whether it deserves further examination, based on the criteria set out in the OECD Guidelines. The NCP can contact the parties to remind them of their duty to act in good faith. At the end of the evaluation, the NCP can either accept the complaint or publish a statement explaining the reason for rejecting it.

In the case of the former, the NCP offers its 'good offices' (dialogue and conciliation services) to try and reach a consensual solution among the parties. The parties must accept the good offices by subscribing to the terms of reference of the conciliation procedure. Furthermore, at this stage of the procedure and depending on the complexity of the case, the NCP can engage the assistance of an authoritative and impartial third party. The NCP then issues a final statement or a report regarding the case, support and conclusion, with recommendations.

There could also be a follow-up phase aimed at determining whether the parties have followed the NCP's recommendations.

Regarding the Banking and Financial Ombudsman, before triggering proceedings, the customer must send a written complaint to the intermediary. The latter has 30 days to reply. If the customer has not received an answer or is not satisfied with the response provided by the intermediary within this time frame, they can start proceedings before the Banking and Financial Ombudsman within 12 months.

Law stated - 31 January 2023

Remedies

What remedies are provided under these mechanisms?

There are several remedies provided by the NCP. In some cases, where no evidence of serious human rights violations is found, the mechanism could simply lead to an agreement between the parties in which the company undertakes the obligation to develop and improve internal policies on human rights. However, in the most serious circumstances, this may not be sufficient. Other forms of remedy provided by the NCP include:

- acknowledgement of wrongdoing;
- cessation of the violation; and
- reparation of the harm in the form of financial compensation to the victims.

Law stated - 31 January 2023

Enforcement

What powers do these mechanisms have? Are the decisions rendered by the relevant bodies enforceable?

The NCP has conciliative and mediation powers. Its final aim is to reach a compromise between the parties. Within the proceedings, the NCP can:

- listen to and convene the parties, separately or jointly;
- listen to other persons;
- request the opinion of competent authorities, representatives of business environments and trade unions, as well as experts; and
- consult the NCPs of other countries.

The Banking and Financial Ombudsman, insofar as it is an alternative dispute resolution mechanism, has adjudicative powers. Nonetheless, its decisions are not legally binding for the parties.

Law stated - 31 January 2023

Publication

Are these processes public and are decisions published?

In compliance with transparency and accountability principles, a record of all cases handled by the NCP is available online through the OECD database of specific instances. They can also be found on the Ministry of Economic Development's website.

If the intermediary does not comply with the Banking and Financial Ombudsman's recommendations, its non-compliance is made public.

Law stated - 31 January 2023

NON-JUDICIAL NON-STATE-BASED GRIEVANCE MECHANISMS

Available mechanisms

Are any non-judicial non-state-based grievance mechanisms associated with your jurisdiction?

The following international and regional bodies are relevant in Italy:

- the World Bank Inspection Panel;
- the Office of the Compliance Advisor Ombudsman of the International Finance Corporation and Multilateral Investment Guarantee Agency;
- the United Nations Working Group on Business and Human Rights;
- the European Investment Bank Complaints Mechanism;
- the European Bank for Reconstruction and Development Project Complaint Mechanism; and
- the European Ombudsman.

Regarding multilateral stakeholder mechanisms, involving a commitment of two or more companies to adhere to external schemes (ie, codes of conduct and sets of principles), the following apply:

- the United Nations Global Compact;
- the Fair Labor Association; and
- the Bangladesh Accord on Fire and Building Safety, which has been signed by some Italian companies.

The following mechanisms that enforce international framework agreements, usually concluded by multinational companies and organisations representing employees and workers (ie, international trade unions), apply:

- the Global Framework Agreement on International Industrial Relations and Corporate Social Responsibility, in particular the dispute settlement under article 8(6) thereof; and
- the International Framework Agreement to Promote and Protect Workers' Rights.

Law stated - 31 January 2023

UPDATE AND TRENDS

Recent developments

What are the key recent developments, hot topics and future trends relating to business and human rights in your jurisdiction?

On 29 October 2020, Commission I of the Chamber of Deputies adopted a unified text of the various proposals aimed at establishing a national body for the promotion and protection of human rights to implement United Nations General Assembly Resolution No. 48/134 of 20 December 1993. The new text provides for the establishment of the National Commission for the Promotion and Protection of Human Rights and the Fight against Discrimination (the National Commission). On 3 November 2021, the government reaffirmed its full support for the establishment of the National Commission and the proposal is currently under examination; updates are expected in 2023.


The ratification of ILO (International Labour Organization) Convention No. 190 of 29 October 2022 should also give

impetus to future changes in national legislation in preventing and combating violence and harassment in the workplace. In particular, of great impact on the Italian system could be:

- the adjustment of the notion of 'violence and harassment in the world of work';
- the extension of protection against harassment and violence at work to freelance workers; and
- the need to strengthen law enforcement measures and adopt adequate and effective remedies and compensation, which could then lead to the introduction of harassment and violence reporting systems at the company level.

Law stated - 31 January 2023

Jurisdictions

 Italy	Legance
 Switzerland	Schellenberg Wittmer
 United Kingdom	Leigh Day