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Future Perspectives of Corporate Criminal Liability in Italy in Light of Directive (EU) 2024/1760: The Value of Human Dignity within a Sustainable Economic Growth*

This paper analyses the Corporate Sustainability Due Diligence Directive (Directive (EU) 2024/1760), as amended by Directive (EU) 2026/470, and the prospects for reform arising from it in relation to the corporate criminal liability regime currently in force in Italy. Specifically, I argue that the CSDDD should be implemented by introducing a risk-based offence, i.e. an offence of mere conduct where a corporate failure to exercise due diligence is punished (not the actual causation of a negative impact resulting from this failure). Given that the CSDDD requires a company to organise itself not to prevent the commission of offences within its own organisation but to address the negative impacts that may occur outside its perimeter, the company itself cannot legitimately be expected to prevent the offence from occurring, but it can reasonably be required to make a serious effort in terms of compliance in order to promote sustainability throughout its supply chain. At the same time I highlight the need, in implementing the CSDDD, to resolve some critical issues regarding both the clarity of the due diligence provisions and the enforceability of their observance.

Prospettive future della responsabilità penale degli enti in Italia alla luce della Direttiva (UE) 2024/1760: il valore della dignità umana nel contesto di una crescita economica sostenibile

Nel presente contributo si prende in esame la cd. Corporate Sustainability Due Diligence Directive *(Direttiva (UE) 2024/1760), come modificata dalla Direttiva (UE) 2026/470, e si riflette sulle prospettive di riforma da essa derivanti con riferimento al regime di responsabilità penale degli enti vigente in Italia. In particolare si sostiene che si dovrebbe implementare la CSDDD introducendo un illecito di rischio al fine di punire la mancata adozione della* due diligence *da parte dell'impresa (non l'effettiva causazione di un impatto negativo come conseguenza di tale inadempimento). Nel merito la* CSDDD *richiede all'ente di organizzarsi non per impedire la commissione di reati all'interno della propria organizzazione bensì per fronteggiare il rischio di impatti negativi al di fuori del proprio perimetro; pertanto la pretesa che si può legittimamente rivolgere all'ente ha ad oggetto non la prevenzione del reato, bensì un serio sforzo di* compliance *al fine di promuovere la sostenibilità lungo la catena di fornitura. Inoltre nel contributo si riflette sulla circostanza che in sede di implemetazione nazionale si renderà necessario sanare alcune criticità che la* CSDDD *presenta sul piano della determinatezza del precetto nonché dell'esigibilità della sua osservanza.*

1. *Introduction: Human Dignity as a Pillar of Environmental and Social Sustainability in the Corporate Sustainability Due Diligence Directive (CSDDD).* A significant step forward in EU legislation on the protection of human dignity is represented by Directive (EU) 2024/1760 on corporate sustainability due diligence, also known as CSDDD or CS3D and recently amended by Directive (EU) 2026/470.

This Directive should be seen in the context of the gradual emergence of a new dimension of sustainability that complements the typically environmental one and has a distinctly social value, whereby business activities must be carried out in such a way as to avoid negative impacts not only on the ecosystem but also on social rights and, more generally, the quality of life of all those who come into contact with the company, starting with its workers.

The social evolution of the concept of sustainability is evidenced by the adoption at EU level of legislative acts such as Directive (EU) 2022/2464 on corporate sustainability reporting (also known as CSRD) and policy documents such as Communication COM(2020) 14 final (14.1.2020) on a «Strong social Europe for a just transition» and Communication COM(2022) 66 final (23.2.2022) on «Decent work worldwide for a global just transition and a sustainable recovery».

Within this framework, the CSDDD assumes a position of primary importance, as it addresses the crux of today's globalised production, where the dominant production system is not concentrated in a single company but is rather fragmented into multiple centres, variously organised into networked structures (which also extend globally) identified by terms such as supply chain, value chain or chain of activities.

In particular, this phenomenon gives rise to a dispersion of the risk of offences, as criminal acts are often carried out not in the large companies at the top of the chain but within other medium-sized or small organisations with which the former have commercial relations. Correlatively, such fragmentation pro-

duces an accountability gap, insofar as large companies (often exploiting the absence of legal ownership relationships with their suppliers, with whom they have only contractual ties) are mostly able to evade their responsibilities precisely because of the distance that separates them from the production hub where the offences are committed (often the peripheral nodes of the supply chain network, located in developing economies).

In such a context, the CSDDD, by laying down due diligence obligations and not just exhortatory recommendations, requires corporations to take on the task of promoting sustainable corporate governance not only internally but also in the other nodes that make up their supply chain network, by «using their influence to contribute to an adequate standard of living in chains of activities» (Recital no. 34).[1]

More specifically, in implementing the CSDDD, Member States are required to adopt regulations that oblige companies to identify, assess, prevent and bring to an end potential or actual adverse impacts on human rights and the environment, in relation not only to their own activities, but also to those of their subsidiaries as well as business partners. Such harmonisation is justified by the need to ensure that all companies operating within the EU compete on a level playing field by committing themselves to uniform standards of protec-

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[1] Previously only soft law instruments such as notably the *UN Guiding Principles on Business and Human Rights* (also known as *Ruggie Principles*) were adopted at the supranational level. At the national level, France and Germany stand out as examples with, respectively, *Loi* no. 2017-399 (March 2017) and the *Lieferkettensorgfaltspflichtengesetz* (July 2021), which paved the way for the introduction of due diligence obligations for companies and became precursors of the regulatory model that would later be adopted by the CSDDD. In the literature, on the subject of the criminal liability of companies, particularly multinationals, for human rights violations in relation to supply chains, see: RUGGIE, *Just business multinational corporations and human rights*, New York, 2013; DELMAS-MARTY, *Une boussole des possibles. Gouvernance mondiale et humanismes juridiques*, Paris, 2020; NIETO MARTÍN, *Towards a European economic criminal law of human rights*, in *EuCLR*, 2021, 11, 1, 6 ff.; ID., *Global criminal law: postnational criminal justice in the twenty-first century*, Cham, 2022. Generally speaking, on supranational inputs into protecting human dignity, see ZAPPALÀ, *Human dignity in international criminal law*, in *Protecting human dignity through criminal law. Italy's international obligations and the challenge of implementation*, Forlati, Sicurella, Capone, Bartolini (eds.), Torino, 2026; FORLATI, *Human dignity and transnational criminal law, ivi*; SICURELLA, *Dynamics and challenges in the implementation of international and European obligations to protect human dignity through criminal law, ivi*.

tion of human dignity; the latter value being explicitly mentioned in Recital no. 1, which, referring to Article 2 of the TEU and the Charter of Fundamental Rights of the European Union, states that the EU is founded on the respect for human dignity.

Actually, it should be noted that the scope of the CSDDD has recently been scaled back by the so-called «Omnibus package» (presented by the EU Commission on 26 February 2025), aimed at simplifying the EU regulation on sustainability and reducing the administrative burden and compliance costs imposed on companies. In particular, in the framework of a comprehensive reform of EU sustainability legislation, Directive (EU) 2025/794 (the so-called «Stop the Clock» Directive) first postponed the transposition deadline and the first phase of application of the CSDDD.

More recently, Directive (EU) 2026/470 has introduced a number of significant changes to the CSDDD, including the following: the size criteria for companies required to comply with the due diligence obligations have been amended so that the scope of application of the CSDDD has been substantially narrowed (Article 2 of the CSDDD); the general clause that previously provided for pecuniary penalties commensurate with the net worldwide turnover of the company and, in particular, the rule according to which the maximum limit of penalties would be no less than 5% of the company's net worldwide turnover have been removed (Article 27); the harmonised conditions for an EU-wide civil liability regulation have been removed, as the EU legislator has preferred to rely on national regulations, allowing MSs to maintain their own regimes of corporate civil liability (Article 29).

Nevertheless, even after such a scaling back, the CSDDD remains a piece of legislation of revolutionary significance, as it has introduced the general principle that large companies at the top of supply chains can no longer turn a blind eye to what happens at their suppliers'premises, but are required to promote the sustainability of the overall chain of which they form part.

Now, from the particular perspective of criminal law, the question arises as to which role this branch of the legal system should play in the implementation of the CSDDD, which, in addition to explicitly envisaging the civil liability of companies for due diligence violations, imposes a general obligation on MSs

to introduce penalties that are «effective, proportionate and dissuasive» (Article 27).

Against this backdrop, my discussion will be structured around the following main steps. Firstly, I will review, albeit briefly, the main contents of the Directive, highlighting its most characteristic features.

Secondly, the status quo regarding corporate criminal liability in Italy will be outlined, with particular reference to the responsibility of a corporation for offences committed by other companies within the supply chain where it operates.

Thirdly, on the basis of the above considerations, I will reflect on the potential implications of the CSDDD in the Italian legal system and discuss the ways in which its implementation may affect the regime of corporate criminal liability at national level.

2. *Brief Overview of the CSDDD.* The CSDDD requires companies to address two types of negative impacts, namely «adverse human rights impacts» and «adverse environmental impacts», which may be either «actual» or «potential» and must be attributable to «their own operations, the operations of their subsidiaries, and the operations carried out by their business partners in the chains of activities of those companies» (Article 1).[2]

In particular, the scope of application of the Directive is defined by reference to the size criteria that a corporation must meet in terms of number of employees and net turnover (Article 2). These criteria are set separately depending on whether the company is established in accordance with the legislation of a Member State or of a third country. It should also be noted that, even if the due diligence requirement imposed by the Directive does not extend to small and medium-sized enterprises (as defined in Article 3(1)(i)), «they could be impacted by its provisions as contractors or subcontractors to the companies which are in the scope» (Recital no. 69).[3]

[2]The concepts of "adverse human rights impact" and "adverse environmental impact" are related to the violation of one of the environmental provisions and the abuse of one of the human rights which are included in the international and EU instruments listed in the Annex to the CSDDD.

[3]Not coincidentally, companies subject to due diligence are required to take measures to ensure that the transition to a sustainable economy does not harm small businesses, for example «by providing targeted

The extent of due diligence imposed on the abovementioned corporations is defined by the notions of «subsidiary», which presupposes a controlling relationship between the parent company and the subsidiary company, as well as «business partner», which is given a broad meaning in that it encompasses not only direct partners but also any company which, although not a direct business partner of the corporation whose responsibility is being discussed, nevertheless performs business operations related to the operations, products or services of that corporation (Article 3).
In relation to this chain of activities, the CSDDD introduces the general principle that companies meeting the size criteria mentioned above must promote respect for human rights and the environment by exercising their leverage over their subsidiaries and business partners, in compliance with the specific obligations illustrated below.

2.1. *The Preventive and Reactive Contents of Due Diligence.* The CSDDD adopts a risk-based approach, requiring companies to adopt a due diligence process divided into the following main steps (Article 5 et seq.).
Firstly, the corporation is required to integrate due diligence into its company policies and risk management systems. This means that the company must adopt a due diligence policy, which outlines: the company's approach to due diligence; a code of conduct describing rules and principles to be followed throughout not only the company itself but also its subsidiaries and its business partners; and a description of the processes put in place to implement due diligence.
Secondly the company is required to carry out a scoping exercise in order to identify general areas across its own operations, as well as those of its subsidiaries and business partners where adverse impacts are most likely to occur and to be most severe.
In the identified areas the company must carry out an in-depth assessment and take appropriate steps to ensure the prevention, cessation or minimisa-

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and proportionate financial support» where compliance with the code of conduct or the prevention action plan «would jeopardise the viability of the SME» or by seeking from SMEs contractual assurances which «shall be fair, reasonable and non-discriminatory» (Arts. 10-11).

tion of adverse impacts. The dual preventive and reactive nature of due diligence emerges here, insofar as the company has to address both the potential adverse impact that may be caused and the actual adverse impact that has been, or should have been, identified (Articles 10-11).[4]

By way of example, in order to prevent potential impacts or bring to an end current ones, the company is asked to take measures such as: to adopt a prevention or corrective action plan, which provides for a specific and appropriate timeline for the implementation of adequate measures and quantitative and qualitative indicators to check progress; to seek contractual assurances from a direct business partner that it will ensure compliance with the company's code of conduct and, as necessary, corresponding contractual assurances from its partners (to the extent that their activities are part of the company's chain of activities); and to modify or improve facilities, production or other operational processes and infrastructures. As a last resort, the company should temporarily suspend business relationships, provided that the adverse impacts of doing so cannot be reasonably expected to be manifestly more severe than the potential (or actual) adverse impact that could not be prevented (or that could not be brought to an end).[5]

2.2. *Sustainability as the Aim of a Collective and Participatory Process.* The CSDDD sets out a framework of rules aimed at encouraging the circulation of information within the supply chain and with stakeholders, as well as the participation of public authorities in the due diligence process.

In particular it imposes on the company the obligation of a «meaningful engagement with stakeholders», i.e. individuals or communities (starting with the company's employees) whose rights or interests are or could be directly affected by the products, services and operations of the company, its subsidiaries and its business partners (Article 3(1)(n); Article 13).

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[4] On the crucial relevance of the reaction in the framework of corporate liability, see ORSINA, *La responsabilità da reato dell'ente tra colpa di organizzazione e colpa di reazione*, Torino, 2024; EAD., *La colpa di reazione e il suo coordinamento con la colpa di organizzazione*, in *Dir. pen. cont.*, 2025, 1, 131 ff.

[5] It should be highlighted that the previous version of Arts. 10-11 of the CSDDD indicated the termination of the commercial relationship as a last resort; Directive (EU) 2026/470 has removed this measure as too drastic for companies.

With regard to dialogue with public authorities, it is noteworthy that the EU Commission – in consultation with MSs, EU Agencies and international organisations – will issue guidelines with the aim of supporting companies in fulfilling their due diligence obligations (Recital no. 67; Article 19).
Furthermore, the Directive mentions the following three tools to support companies: independent third-party verification; industry or multi-stakeholder initiatives; and model contractual clauses.
First of all, the enterprise may turn to a third-party verifier (which may be another company or an industry or multi-stakeholder initiative), which, operating in conditions of objectivity and complete independence from the company itself, ascertains and certifies the fulfilment of due diligence in the field of human rights and the environment (Article 3(1)(h)).
In turn, industry or multi-stakeholder initiatives represent a set of due diligence procedures, tools and mechanisms that can be produced by governments, industry associations, interested organisations, including civil society organisations, or groupings or combinations thereof, which companies can adhere to on a voluntary basis with a view to strengthening compliance (Article 3(1)(j)).
A third tool is represented by model contractual clauses, with regard to which the Commission is expected to develop guidance aimed at orienting companies in preparing contractual assurances to be provided to their business partners in order to prevent or bring to an end adverse impacts (Article 10(2)(b); Article 11(3)(c); Article 18).
In any case, it should be noted that the three aforementioned instruments cannot, on their own, ensure compliance with due diligence, meaning that companies that have relied on them «may nevertheless be held liable» in the event of failure to comply with the due diligence requirements imposed by the Directive (Article 29(4)).

2.3 *Enforcement and Penalties Regime*. Pursuant to Article 24, each Member State is required to designate a national supervisory authority, which must be competent to supervise compliance with the obligations laid down in the provisions of national law adopted in implementation of the CSDDD. This authority will exercise its powers: directly; in cooperation with other authorities;

or by application to the competent judicial authorities (Article 25(6)).
According to Article 25(5)(b), this authority, if during its investigations it identifies a failure to comply with those provisions, has the power to impose penalties in accordance with Article 27; under paragraph 4 it should also grant the company concerned an appropriate period of time to take remedial action, even if such remedial action «shall not preclude the imposition of penalties or the triggering of civil liability, in accordance with Articles 27 and 29, respectively».[6]
In turn, Articles 27 and 29 properly define the penalty regime governing the CSDDD. In particular, pursuant to Article 27 (together with Recital no. 76), MSs are required to introduce «penalties» that are «effective, proportionate and dissuasive», including at least: pecuniary penalties, the maximum limit of which is set at 3 % of the net worldwide turnover of the company in the financial year preceding that of the decision to impose the fine; and a public statement (indicating the company responsible and the nature of the infringement) if the company fails to comply with a decision imposing a pecuniary penalty within the applicable timeframe.
Article 27 also provides a (non-exhaustive) list of factors to be taken into account in determining the *an* and *quantum* of the penalty, including the nature, gravity and duration of the infringement, the severity of the impacts resulting from that infringement, and any remedial action.
Article 29, as recently amended by Directive (EU) 2026/470, provides for the civil liability of a company, by establishing that «where a company is held liable pursuant to national law for damage caused to a natural or legal person by a failure to comply with the due diligence requirements under this Directive, Member States shall ensure that those persons have a right to full compensation». Under this newer version of Article 29 the role played by the civil liability regime in the overall framework of the CSDDD has been downsized, as the harmonised conditions for an EU-wide civil liability regulation (which were provided for by the previous version of the provision in question) have

[6] Art. 25(9) specifies that «Decisions of supervisory authorities regarding a company's compliance with the provisions of national law adopted pursuant to this Directive shall be without prejudice to the company's civil liability under Article 29».

been removed and MSs are allowed to maintain their own liability regimes.[7]
This recent choice of the EU legislator has therefore increased the scope for introducing a form of criminal or punitive liability, which in any case was already conceivable in light of Article 27, where the use of the standard clause of "effective, proportionate and dissuasive sanctions" opens up the possibility for national legislators to introduce criminal liability for companies that fail to comply with their due diligence obligations.

3. *Corporate Criminal Liability with regard to the Chain of Activities: the Status Quo in Italy.* At this point in the discussion, in order to reflect on the potential role of criminal law in the national transposition of the CSDDD, it is necessary to outline, albeit briefly, the system of corporate criminal liability in force in Italy, focusing on the status quo with particular reference to the matter of supply chains.
In particular, firstly, I need to refer to the provisions of Legislative Decree no. 231/2001, focusing specifically on the difficulties that arise in its application with regard to offences committed within supply chains.
Secondly, it will be appropriate to mention an alternative strategy that has recently been tested through case law in order to overcome the aforementioned difficulties.

3.1 *Legislative Decree no. 231/2001 and the Limitations of its Application.* Through Decree no. 231, Italy adopted a form of corporate liability which is generally considered as criminal in substance (even if it is formally labelled as "administrative" liability hinging on criminal offences committed by individuals).[8] Under this regime, a corporation can be declared liable if the follo-

[7] The previous version of Article 29 set a harmonised civil liability regulation, providing for corporate liability in the presence of the following elements: the intentional or negligent failure to comply with the due diligence obligations of preventing potential adverse impacts and bringing actual adverse impacts to an end; the causing of damage, as a result of the failure, to the legal interests of a natural or legal person that are protected under national law.
[8] See *ex multis* PALIERO-PIERGALLINI, *La colpa di organizzazione*, in *Resp. amm. soc. enti*, 2006, 3, 167 ff.; DE VERO, *La responsabilità penale delle persone giuridiche*, in *Trattato di diritto penale*, Grosso-Padovani-Pagliaro (eds.), Milano, 2008; FIORELLA, *Responsabilità da reato degli enti collettivi*, in *Dizionario di diritto pubblico*, Cassese (ed.), Milano, 2006; DE SIMONE, *Persone giuridiche e responsabilità da reato. Profili storici, dogmatici e comparatistici*, Pisa, 2012; MONGILLO, *La*

wing criteria are satisfied.
On the objective level, it is necessary that: the offence committed within the corporation is included in a catalogue selected by the legislator; the offence was committed in the interest or to the benefit of the corporation; the individual offender is one of its top managers or their subordinates (Article 5).
On the subjective level, an organisational deficiency is required, i.e. the corporation will be liable if, at the time of the offence, it had not adopted (and effectively implemented) adequate organisational models to prevent the type of offence that was committed (Articles 6-7).
In particular, the logic of compliance programmes, which represents the most innovative aspect of the 231 system, responds to a need for guarantees and also fulfils a preventive function. On the guarantee side, it lends substance to the meaning of corporate blameworthiness, providing that a corporation can be considered blameworthy when it fails to adopt adequate compliance programmes aimed at avoiding offences within it, so that the culpability principle pursuant to Article 27 of the Italian Constitution can be fully respected with regard to the corporation.
As regards the prevention of corporate offences, corporations are involved in proactively neutralising the risk of offences being committed within them. In fact, by linking corporate liability to organisational flaws, the legislator made the company a key player in a process of self-regulation aimed at promoting a culture of legality within the company itself.
For our purposes here, it is necessary to assess whether the abovementioned constituent elements of corporate liability, as set forth by Article 5 et seq. of Decree no. 231, can be found in the specific type of cases involving the commission of offences within supply chains.
With reference to the first of the requirements at issue – namely, the commission of an offence which is included in the 231 catalogue – it should be noted that this catalogue certainly includes offences that represent criminal phenomena typical of supply chains and that, having been included by the legislator

responsabilità penale tra individuo ed ente collettivo, Torino, 2018; SCOLETTA, *La disciplina della responsabilità da reato degli enti collettivi: teoria e prassi giurisprudenziale*, in *Diritto penale delle società. Accertamento delle responsabilità individuali e processo alla persona giuridica*, Canzio-Cerqua-Luparia (eds.), Padova, 2016, 817 ff.

within the operational scope of Decree no. 231, may trigger corporate liability in addition to individual liability.[9] Let us consider, in particular, the crimes against the individual person referred to in Article 25 *quinquies* of Decree no. 231 (such as the offences of reduction to or maintenance in slavery or servitude, trafficking in persons, purchase and sale of slaves, illegal intermediation and exploitation of labour), manslaughter and serious injury committed in violation of health and safety at work legislation pursuant to Article 25 *septies*, environmental offences listed in Article 25 *undecies*, as well as the offence of employing third-country nationals whose stay is irregular under Article 25 *duodecies*.

Moreover, considering the position held by natural persons within a company, it should be noted that suppliers in a broad sense – i.e. all those (natural and legal persons) who carry out outsourced activities for the company in the production and distribution process – could theoretically fall within the category of "subordinates" referred to in Article 5(1)(b) since, although legally distinct from the lead firm, they are in fact dependent on it.

In turn, the criterion of interest-advantage is easily met, given the fact that it is often the lead company that benefits from the offence committed by the supplier. In fact, the offences that take place in other parts of the economic-commercial chain allow the lead firm to achieve a reduction in production costs (due to the payment of lower wages and the lack of adequate investment in health and safety at the workplace) and a corresponding increase in productivity and profits.

Finally, with respect to organisational fault, one might consider that the offence risks that a corporation must take into account in its risk assessment and management include that connected with supply chains. In this perspective the company has the duty to monitor the outsourced stages of the production process and, if an offence is committed by other companies contractually linked to it, it is blameworthy if it has not organised itself in such a way as to ensure that its suppliers operate legally and respect the environment as well as

[9] On this point see in particular MONGILLO, Forced labour *e sfruttamento lavorativo nella catena di fornitura delle imprese: strategie globali di prevenzione e repressione*, in *Riv. trim. dir. pen. econ.*, 2019, 3-4, 651.

the human dignity of workers and those potentially affected by their activities.
However, on closer inspection, there are significant obstacles and uncertainties that stand in the way of the application of Decree no. 231 to supply chains, two of which are worth mentioning here: the identity of the persons whose criminal conduct can trigger the mechanism for attributing liability to the corporation; and the extent to which the corporation is required to take measures to prevent illegal activities within other companies.
With regard to the first aspect, it should be highlighted that it is not clear whether the galaxy of suppliers, subcontractors, and, more generally, individuals operating within the supply chain in order to procure goods or services or supply workers to the client company can be included in the category of "subordinates" under Article 5(1)(b).
More precisely, it is true that the concept of "subordinates" referred to in Article 5 is broader than the civil law concept of subordination, insofar as it also includes persons who, although not organically linked to the corporation by a civil law relationship of employment, are subject to the «management or supervision» that the corporation exercises through its senior managers.
Nevertheless, it should be noted that the supply chain is a complex and varied reality, consisting of both vertical group relationships and horizontal commercial relationships (the latter referring to cases in which there is a contractual link between legally autonomous companies, without there being any direct control of one company over another in legal and formal terms).
Therefore, insofar as Decree no. 231 lacks any provisions defining corporate liability either within corporate groups or in relation to cases of *de facto* control of one company over another, in terms of positive law there is no definitive answer to the question as to under which conditions persons who do not properly belong to the corporate structure of the company whose liability is in question (as they are representatives of an autonomous organisation such as a contractor or subcontractor) may fall within the scope of "subordinates" under Article 5 and can therefore qualify as persons triggering the liability of that company.[10]

[10] On these issues, see MONGILLO, Forced labour *e sfruttamento lavorativo nella catena di fornitura delle imprese: strategie globali di prevenzione e repressione*, cit., 630 ff.; AMODIO, *Rischio penale*

Given these uncertainties, *de lege lata*, the commission of an offence by a third party could trigger the liability of a company pursuant to Decree no. 231 only if the involvement of an individual fully belonging to the organisational structure of that company is ascertained.[11]

However, such a finding is greatly hindered by the accountability gap resulting from the high degree of dispersion within value chains; precisely because of the fragmentation of production and distribution activities, it could be rather difficult to prove the involvement of the director of a large company (especially if it is a multinational) in the commission of an offence that occurs at intermediate or peripheral levels of the supply chain network.

With regard to the second problematic aspect – namely the extent to which the corporation can be required to take measures to prevent illegal activities within other companies – it should be emphasised that, if the lead company's duty of control over the acts committed by other companies contractually linked to it is not carefully defined, there is a risk of recognising a form of strict liability in violation of Article 27 of the Constitution.

More specifically, to ensure compliance with the culpability principle, it is necessary to define with certainty the exact boundaries of the compliance responsibilities of the corporation, that is, to establish the extent to which the company itself must assess and manage the offence risks related to the actions of third parties (such as consultants, suppliers, contractors, resellers, subcontractors, sub-suppliers, etc.). In terms of positive law, this problem remains entirely unresolved, given the silence of the legislator and lack of clear guidance on how to develop organisational models suitable for preventing illicit

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d'impresa e responsabilità degli enti nei gruppi multinazionali, in *Riv. it. dir. proc. pen.*, 2007, 4, 1287 ff.; SGUBBI, *Gruppo societario e responsabilità delle persone giuridiche ai sensi del D.lgs. 231/2001,* in *Resp. amm. soc. enti,* 2006, 1, 7 ff.; SCAROINA, Societas delinquere potest. *Il problema del gruppo d'impresa,* Milano, 2006; SANTORIELLO, *Gruppi di società e sistema sanzionatorio del d.lgs. 231/2001*, in *Resp. amm. soc. enti,* 2007, 4, 41 ff.

[11] In particular, case law has examined this issue in depth with specific reference to corporate groups, in relation to which it is argued that, in order to recognise the liability of the holding company under Decree no. 231 for offences committed by representatives of another company belonging to the group, it must be ascertained that a natural person acting on behalf of the holding company and actually pursuing the latter's interests was involved in the commission of the offence. On this point, see Court of Cassation, Section V, 20 June 2011, no. 24583; Section II, 9 December 2016 no. 52316; Section IV, 6 September 2021, no. 32899.

actions of third parties.[12]
In conclusion, although Decree no. 231 contains provisions that theoretically allow for an interpretative extension of corporate prevention obligations to the offence risks connected with outsourced activities, it was primarily designed by the legislator to impose an obligation on companies to prevent internal offences. As such, it is unsuitable for properly addressing the issue of corporate criminal liability in relation to supply chains.[13]

3.2 *Alternative Solutions to Decree no. 231 in Case Law.* In order to overcome the abovementioned constraints tied to the application of Decree no. 231, the courts have developed an alternative strategy by relying on asset-related prevention measures – in particular, the «Judicial administration of assets related to economic activities and companies» pursuant to Article 34 of Legislative Decree no. 159/2011 (the so-called Anti-Mafia Code) and «Judicial control of companies» pursuant to Article 34 *bis*.[14]
These were originally conceived as anti-Mafia tools to promote the rehabilitation of companies affected by links with organised crime, but have recently revealed their potential as a tool for managing offence risks related to supply chains.[15]

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[12] On this point, see in detail *infra* para. 4(2).
[13] Decree no. 231 is also deficient in terms of defining jurisdiction and this poses a problem in relation to cross-border value chains. In this regard see PADOVANI, *La disciplina italiana della responsabilità degli enti nello spazio transnazionale,* in *Riv. it. dir. proc. pen.*, 2021, 2, 409 ff.; MANACORDA, *Limiti spaziali della responsabilità degli enti e criteri d'imputazione,* in *Riv. it. dir. proc. pen.*, 2012, 1, 91 ff.; SCOLETTA, *Enti stranieri e "territorialità universale" della legge penale italiana: vincoli e limiti applicativi del D.Lgs. n. 231/2001*, in *Società*, 2020, 5, 621 ff.; TRIPODI, *Il diritto penale degli enti nello spazio: deantropomorfizzazione e globalizzazione a confronto,* in *Arch. pen.*, 2019, 1, 1 ff.; DI VETTA, *La responsabilità da reato degli enti nella dimensione transnazionale*, Torino, 2023.
[14] The translation is the Author's own.
[15] See MAUGERI, *La funzione rieducativa della sanzione nel sistema della responsabilità amministrativa da reato degli enti* ex *d.lgs. 231/2001*, Torino, 2022, *passim* and in particular 157-158; SCOLETTA, *L'amministrazione giudiziaria come strumento di sostenibilità della* supply chain*: potenzialità e limiti del "modello milanese"*, relazione inedita al Convegno *Verso un diritto europeo della sostenibilità?* (Modena, 24-26 October 2024); COLACURCI, *L'illecito "riparato" dell'ente Uno studio sulle funzioni della* compliance *penalistica nel d.lgs. n. 231/2001*, Torino, 2022, 342 ff.; LUCIFORA, *Lo sfruttamento del lavoro. La costruzione del "tipo" tra istanze di determinatezza e obblighi sovranazionali di tutela,* Torino, 2024, 470 ff.; MERLO, *Il contrasto allo sfruttamento del lavoro e del caporalato dai braccianti ai* riders*. La fattispecie dell'art. 603* bis *c.p. e il ruolo del diritto penale,* Torino, 2020, 100 ff.; DI LELLO FINUOLI, *La* compliance *riparativa: un "giunto cardanico" tra responsabilità da reato degli enti e misure*

According to Article 34 of the Anti-Mafia Code, when «there is sufficient evidence to believe that the free exercise of certain economic activities, including those of an entrepreneurial nature, [...] may in any case facilitate the activities of persons against whom one of the personal or asset-related prevention measures provided for in Articles 6 and 24 of this Decree has been proposed or applied, or of persons subject to criminal proceedings»[16] for certain specific offences, including the offence of illegal intermediation and labour exploitation pursuant to Article 603 *bis* of the Criminal Code,[17] the court may order the judicial administration of companies or assets that can be used, directly or indirectly, to engage in the aforementioned economic activities (provided that the conditions for the application of the preventive measures of seizure and confiscation do not apply). Specifically, this measure involves the temporary dispossession of the company, in respect of which the administrator appointed by the court may exercise all the powers vested in the owners of the rights to the assets and companies subject to the measure.

In turn, the measure of «Judicial control of companies», referred to in Article 34 *bis*, is ordered by the court when the facilitation referred to in Article 34(1) is «occasional» and «there are factual circumstances from which it may be inferred that there is a real danger of mafia infiltration capable of influencing» the activities of the company.[18] This is a milder measure than the one provided for by Article 34, as it involves the imposition of a series of requirements and obligations on the corporation, the fulfilment of which can be monitored by a judicial administrator.

In general, the abovementioned measures respond to the underlying philosophy that, in relation to business activities, if the conditions for confiscation are not met but there are links to criminal organisations, the primary objective to be achieved, far from being merely punitive, is to rid the company of illegal infiltration. This "therapeutic" logic explains the appointment of a judicial administrator who is tasked with guiding the administered company in elimi-

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di prevenzione, in *Arch. pen.*, 2023, 2, 1 ff.

[16] The translation is the Author's own.

[17] The environmental offences have been added by Decree Law no. 116/2025, which amended Art. 34 of the Anti-Mafia Code.

[18] The translation is the Author's own.

nating the factual and legal situations that led to the adoption of the preventive measure, so that it can re-enter the legal economy.[19]

For the sake of completeness, it is also worth mentioning the measure of «Judicial control of the company and removal of conditions of exploitation» referred to in Art. 3 of Law no. 199/2016, which is a precautionary measure of a real nature.

It is relevant to note here that in recent years the aforementioned measures have become central to a peculiar judicial strategy aimed at tackling the phenomenon whereby a lead company, although not directly involved in the commission of illegal conduct, through the systematic omission of control and surveillance on its commercial partners negligently facilitates their illegal practices, while benefiting from the consequent structural cost reductions and a corresponding increase in profits.[20]

In such contexts, the aforementioned provisions of the Anti-Mafia Code allow the appointment of a judicial administrator who, working where possible in coordination with the company's management bodies, assists the corporation in a process of organisational restructuring through targeted actions such as severing existing contractual relationships with third parties involved in illegal practices and implementing robust internal control measures.

In particular, case law has experimented with the application of judicial admi-

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[19] See generally MAUGERI, *Le moderne sanzioni patrimoniali tra funzionalità e garantismo,* Milano, 2001, 345 ff.; EAD., *La riforma delle misure di prevenzione patrimoniali ad opera della l. 161/2017 tra istanze efficientiste e tentativi incompiuti di giurisdizionalizzazione del procedimento di prevenzione,* in *Arch. pen.,* 2018, 1, 325 ff.; EAD., *Prevenire il condizionamento criminale dell'economia: dal modello ablatorio al controllo terapeutico delle aziende,* in *Dir. pen. cont.*, 2022, 1, 106 ff.; VISCONTI, *Il controllo giudiziario "volontario": una moderna "messa alla prova" aziendale per una tutela recuperatoria contro le infiltrazioni mafiose*, in *Le interdittive antimafia e le altre misure di contrasto*, Amarelli-Sticchi Damiani (eds.), Torino, 2019, 237 ff.; VISCONTI, *La tutela delle imprese dal pericolo mafioso*, in *Questione Giustizia*, 2020 at <https://www.questionegiustizia.it/articolo/la-tutela-delle-imprese-dal-pericolo-mafioso> last accessed on 19 March 2026; MONGILLO, *Anatomia della prevenzione economico-aziendale antimafia,* in *Riv. trim. dir. pen. econ.*, 2023, 3-4, 515 ff.; GULLO-MONGILLO (eds.), *Manuale della prevenzione economico-aziendale antimafia*, Torino, 2024.

[20] Lastly, see Tribunal of Milan, Autonomous Prevention Measures Section, case *Loro Piana S.p.A.*, 8 July 2025 (for a comment, see VULCANO, *Sfruttamento lavorativo e colpa di organizzazione nella filiera: l'amministrazione giudiziaria tra risanamento, riforma della* governance *e modelli d'impresa evoluti,* in *Giur. pen. web*, 2025, 7-8, 1 ff.); Tribunal of Florence, case *Piazza Italia S.p.a.*, January 2026 (for a comment, see AMARELLI, *Il Tribunale di Firenze adotta il primo decreto di amministrazione giudiziaria per agevolazione colposa del 'caporalato' su proposta di una procura circondariale*, in *Sist. pen.*, 7 February 2026).

nistration under Article 34 of the Anti-Mafia Code in an unprecedented soft version, i.e. one that does not entail an actual takeover of the management of the company but, similarly to what is provided for by Article 34 *bis* with regard to judicial control, provides for the support of management bodies by the appointed judicial administrator.[21]

Furthermore, it should be noted that the measures which are provided for by the Anti-Mafia Code tend to replace the system of corporate liability governed by Decree no. 231. Indeed, on the one hand, they refer to the logic of organisational fault, insofar as the basis for recourse to these measures is the finding of organisational deficiencies in the lead company; and, correlatively, among the remedial actions whose implementation must be supervised by the judicial administrator, a central role is played by the adoption, pursuant to Decree no. 231, of organisational models suitable for preventing offences in the context of contracted and subcontracted activities.

On the other hand, the measures in question prove to be a more agile and streamlined response than the 231 system, given the significant simplification of the relevant application requirements (of a purely circumstantial nature). In particular, for the purposes of judicial administration, it is sufficient that the company facilitates the economic activity of a person suspected of/charged with certain offences (like the offence of illegal intermediation and labour exploitation pursuant to Article 603 *bis* of the Criminal Code), without there being a need to prove the constituent elements of corporate criminal liability under Decree no. 231 beyond a reasonable doubt, i.e. the commission of a predicate offence by an internal person and the connection of that individual offence to the company through the criteria of interest-advantage and organisational fault.

It is no coincidence that some authors criticise the reliance on asset-related prevention measures to face the offence risks connected with the supply chain, pointing out that it tends to circumvent the substantive and procedural guarantees that the 2001 decree imposes in order to comply with the principles of legality and culpability.

[21] See, for example, Tribunal of Milan, Autonomous Prevention Measures Section, Decree of 3 March 2021, case *Uber Italy s.r.l.*

In particular, the following issues should be noted: the vagueness of the legal basis of the case law at issue, as it is inspired by the North American model of deferred prosecution agreements which is not incorporated into Italian legal system; the problematic nature of the concept of negligent facilitation underlying the use of the asset-related prevention measures; the undue interference by prosecutors in business activities, without the oversight of a judge.
Conversely, some argue that the measures at issue avoid the potentially destructive consequences of seizure and confiscation for companies; furthermore, there is no risk of interference by prosecutors in business activities, as the area of their intervention is limited to ensuring that a corporation sets up adequate compliance programs in order to deal with future offence risks.[22]
In any case, the scenario is certainly destined to change with the implementation of the CSDDD, which requires the design of a specific punitive model in light of the new general principle that companies that reach certain size thresholds cannot ignore what happens in the rest of the production chain, but are instead burdened with a duty to monitor the sustainability of the chain as a whole.

4. *Futures Perspectives in Light of the CSDDD.* In order to assess future prospects related to the implementation of the CSDDD with particular reference to the Italian legal system, I shall consider the potential interaction between the CSDDD and the 231 system.
In the debate on this subject, it has been noted that, on the one hand, the two regulatory systems are based on an analogous risk-based approach whereby, in a logic of self-regulation, a corporation is required to identify, assess and manage risk factors in relation to their severity and the probability of their occurrence through suitable compliance measures.
On the other hand, they show some differences, such as the fact that under

[22] Lastly, on this debate see: MANES, *La resistibile ascesa della "prevenzione mite"*, 30 July 2025, at <https://dirittodidifesa.eu> last accessed on 19 March 2026; AMARELLI, *La prevenzione mite: tra fiducia legislativa e resistenze applicative*, 12 August 2025, *ivi*; VISCONTI, *Lo struzzo s'è desto?' Noterelle polemiche sulle misure di prevenzione "terapeutiche"*, 19 August 2025, *ivi*; LUPÀRIA DONATI, *L'ardire dello struzzo e* les amoureux *della giustizia terapeutica. In risposta a Costantino Visconti*, 30 August 2025, *ivi*. See also *supra* note 15.

the 2001 decree companies are required to address the risk of individual offences, while under the CSDDD they are required to manage the risk of adverse impacts (regardless of whether they constitute criminal offences). Furthermore, the adverse impacts in question must relate to specific areas, namely the environment and human rights, in order to fall within the scope of the CSDDD; therefore, the Directive has a more sectoral scope of application than the broad catalogue of predicate offences covered by Decree no. 231.[23]
In any case, as we will now see, the biggest reason why the 2001 decree cannot constitute a means of transposing the CSDDD into the national legal system concerns the structure of the respective corporate offences.
On this point I agree with the opinion, which has already emerged in the debate, that, while in the 231 system the corporate offence has to be interpreted as an event-based offence, when implementing the CSDDD it will be necessary to introduce a corporate risk-based offence, i.e. a mere conduct offence.[24]
In particular I will put forward the argument whereby the risk-based model is the most preferable option, as the CSDDD requires a company to organise itself to address the negative impacts that may occur not internally but outside its perimeter.
Then I will also reflect on some critical issues that undermine the regulatory model adopted in the CSDDD in terms of, respectively, the certainty of the precept and the enforceability of its observance; if not adequately addressed

[23] For comments on the CSDDD and the prospects for its implementation in Italy, see MONGILLO, *Nuovi obblighi di sostenibilità ed effetti sul sistema della responsabilità da reato degli enti: la stratificazione scoordinata dei binari di intervento*, in press; SCOLETTA, *L'amministrazione giudiziaria come strumento di sostenibilità della* supply chain*: potenzialità e limiti del "modello milanese"*, cit.; DI VETTA, *Le prospettive di sviluppo della responsabilità degli enti nel diritto penale economico dei diritti umani*, in *Riv. trim. dir. pen. econ.*, 2025, 1-2, 231 ff.; TAVERRITI, *L'autocontrollo penale. Sistematica e funzionalità politico-criminale del diritto riflessivo*, Milano, 2025, 148 ff. For comments on the national legislations of the MSs which paved the way for the introduction of the CSDDD (*supra* note 1) see GULLO, *Compliance*, in *Studi in onore di Carlo Enrico Paliero*, Mannozzi-Perini-Consulich-Piergallini-Scoletta-Sotis (eds.), Milano, 2022, 1295 ff.; SABIA, *The accountability of multinational companies for human rights violations, regulatory trends and new punitive approaches across Europe*, in *EuCLR*, 2021, 1, 36 ff. Generally for an extensive research on corporate liability with regard to the value chains see DI VETTA, *La responsabilità da reato degli enti nella dimensione transnazionale*, cit.

[24] See MONGILLO, *Nuovi obblighi di sostenibilità ed effetti sul sistema della responsabilità da reato degli enti: la stratificazione scoordinata dei binari di intervento*, cit.; for a partially different position see DI VETTA, *La responsabilità da reato degli enti nella dimensione transnazionale*, cit., *passim* and in particular 581 ff.

by the national legislator, these issues could have a knock-on effect on transposition legislation.

4.1. *The Structure of the Corporate Offence.* In order to reflect on the offence model to be developed when implementing the CSDDD, it is first necessary to briefly digress on the structure of the corporate offence in the 231 system.

On this point, it should be noted that, in Decree no. 231, a corporate offence could theoretically be interpreted on the basis of two alternative qualifying options.[25]

According to the first approach, it is structured as an event-based offence, which requires a thorough assessment of the causal link between a specific organisational flaw and the individual offence.

According to an alternative approach, preference should be given to the risk-based offence model, whereby a predicate offence committed by an individual does not qualify as an event within the structure of the corporate offence, but is rather reduced to a mere objective condition for the punishment of the corporation; this means that the individual offence is deemed symptomatic of the general disorganisation of the corporation, without there being a need to ascertain a causal correlation between a specific gap in prevention and the commission of the individual offence.

In my opinion, the approach to be preferred is that of the event-based offence, insofar as, in order to comply with the culpability principle, corporate liability must be anchored to a specific failure in terms of prevention that caused or otherwise facilitated the commission of the individual offence.[26] In contrast, if the risk-based offence model were chosen, the alleged liability of a corporation would be unduly based on a generic disorganisation or a deviant corpora-

[25] See PALIERO, *La società punita: del come, del perché e del per cosa,* in *Riv. it. dir. proc. pen.*, 2008, 4, 1545; ID., *La responsabilità degli enti: profili di diritto sostanziale*, in *Impresa e giustizia penale: tra passato e futuro*, Beria di Argentine (ed.), Milano, 2009, 301; PIERGALLINI, *Paradigmatica dell'autocontrollo penale (dalla funzione alla struttura del "modello organizzativo"* ex *D.Lgs. 231/2001)*, in *Studi in onore di Mario Romano*, Bertolino-Eusebi-Forti (eds.), vol. III, Napoli, 2011, 2099; MONGILLO, *La responsabilità penale tra individuo ed ente collettivo*, cit., 140 ff.

[26] On this issue, see in detail ORSINA, *La responsabilità da reato dell'ente tra colpa di organizzazione e colpa di reazione*, cit., 77 ff. and 880 ff.

te culture to be inferred from the commission of the individual offence, precisely because, on the basis of this approach, no specific shortcoming in prevention causally relevant to the individual offence needs to be ascertained.
Moreover, this interpretation of the corporate offence as defined in Decree no. 231 as an event-based offence was recently confirmed in a famous ruling handed down by the Court of Cassation at the conclusion of the Impregilo case[27]. The Court affirmed the need for an assessment to be conducted in accordance with the criteria of *crimen culposum* (negligent offence) in the strict sense, with particular attention to the two requirements of: the ascertainment that the offence committed by the individual corresponds precisely to the offence risk that the organisational precautionary rule (violated by the corporation) was intended to prevent; and the ascertainment that diligent organisational conduct (if it had been duly implemented by the corporation) would have eliminated the risk of the offence being committed.[28]
Lastly, the event-based offence model was also confirmed in the proposed reform of Decree 231, which was drafted by the Technical Committee at the Ministry of Justice's Cabinet Office, coordinated by President Fidelbo. This proposal explicitly qualifies the individual offence as the harmful event within the corporate offence structure.[29]
However, the aforementioned logic inherent in the event-based offence model – which concerns the 231 system, where (as mentioned above)[30] a corporation is typically held liable for offences committed within its own organisation – cannot continue to be valid when it comes to holding the corporation liable for acts committed by persons who do not belong to its own organisational structure, as is the case of supply chains.
In this different context considered by the CSDDD, it is clearly not possible to expect the establishment of a causal link in criminal law terms, given the distance of the adverse impact (on the environment and human rights) from

[27] Court of Cassation, Section VI, 15 June 2022, no. 23401.
[28] For subsequent consistent case law, see Court of Cassation, Section V, 19 May 2023, no. 21640, in *Giur. it.*, 2024, 413 ff.
[29] The reform proposal, which was presented in November 2025, is available at <https://www.sistemapenale.it/pdf_contenuti/1768574114_relazione-conclusiva.pdf> last accessed on 19 March 2026 (in particular see p. 7).
[30] See *supra* para. 3(1).

the lead company whose liability is being discussed; in fact the dynamics of the impact unfold along complex production chains, so that the specific violation that occurs to the detriment of the environment and human rights takes place within an entity which is different from the lead company, even if it is contractually linked to it.

It follows that the corporate wrongdoing should be structured as a mere conduct offence, since the basis of the reprimand is not that the lead company caused the adverse impact, but that it failed to exercise its leverage effect on its business partners.

In my opinion, this is the most reasonable and legitimate interpretation insofar as, considering that the CSDDD requires a company to organise itself to deal with the negative impacts that may occur outside its perimeter, the company cannot legitimately be expected to prevent the offence from occurring, but it can reasonably be required to make a serious effort in terms of compliance in order to promote sustainability throughout the chain. Consequently, according to this perspective, the company can be punished for not having adequately mapped, assessed and managed the risk factors inherent in the supply chain processes, thereby contributing to the risk of negative impacts.

In this regard, I highlight that a systematic confirmation of the above approach lies in the circumstance that the Directive centres on "the company's leverage", that is, the company's ability to influence its contractual counterparties, and not, therefore, the company's ability to prevent, in the strict sense, the impact from occurring within the partner's sphere of operations (e.g. Recital no. 19 and Arts. 10-11).

Precisely this circumstance confirms that, when implementing the CSDDD, the national legislator should set up a model of corporate offences whose key element lies essentially in the failure to adopt compliance measures, regardless of whether an adverse impact occurs.

In this perspective it is possible to envisage a scenario in which – as pertains to the level of liability of a corporation for offences committed internally (i.e. by one of its top managers or subordinates) in its own interest and to its own advantage – the punitive paradigm set out in Decree 231 will apply and the corporate offence will be interpreted as an event-based offence; therefore the

corporation will be held liable not merely for the lack of an adequate organisation but for the failure to prevent the individual offence occurring within its own organisation.
Conversely, when it comes to the liability of a company for facts committed by its business partners which are out of its strict control, a punitive framework structured in accordance with the CSDDD should apply, considering the corporate offence as a risk-based offence, that is, an offence of mere conduct, whereby the failure to exercise due diligence will be punished (not the actual causation of a negative impact resulting from this failure).
Moreover, by introducing such a risk-based offence, the implementation of the CSDDD could make it possible to overcome the aforementioned case law, which exploits asset-related preventive measures as a judicial substitute for Decree 231 where the latter fails to regulate supply chains.[31] Indeed, the adoption of a risk-based offence in transposing the CSDDD could serve as an *ad hoc* regulatory solution that makes the lead company liable for a breach of a duty of control, but without the distortions of the case law, which raises so many concerns regarding compliance with fundamental principles, starting with the principle of legality.

4.2. *Critical Issues about the Clarity in the Due Diligence Provisions and the Enforceability of their Observance.* As I continue to reflect on the future scenarios opened up by the implementation of the CSDDD, I would like now to focus on the critical issues that affect the drafting of the Directive in terms of, respectively, the lack of certainty of its due diligence provisions and the lack of reasonable expectations of compliance with these provisions.
With regard to the vagueness of the content of the compliance measures, the Directive contains broadly worded provisions such as Article 10 on «Preventing potential adverse impacts» and Article 11 on «Bringing actual adverse impacts to an end», which stipulate, for instance, that the corporation must «take *appropriate measures to prevent*, or where prevention is not possible or not immediately possible, *adequately mitigate*, potential adverse impacts that

[31] See *supra* para. 3(2).

have been, or should have been, identified»; «*where necessary due to the nature or complexity of the measures required for prevention*, without undue delay develop and implement a prevention action plan»; «make *necessary* financial or non-financial investments in adjustments or upgrades of, *for example*, facilities, production or other operational processes and infrastructures»; «collaborate with other entities, including, *where relevant*, in order to increase the company's ability to prevent or mitigate the adverse impact, in particular *where no other measure is suitable or effective*» [emphasis added].

Apparently, these precautionary requirements have no specific prescriptive content, but they are rather generic guidelines that leave the definition of due diligence in concrete terms up to the company; consequently, the latter remains exposed to the risk that the measures actually adopted may be deemed inadequate by a judge according to the deleterious *post hoc propter hoc* logic (whereby the inadequacy of the measure is presumed from the verified impact).

On this point, it should be noted that the autopoietic dimension of the so-called "self-organisation obligation" implies that only the corporation itself can devise organisational solutions specifically tailored to the particularities of its business context. Nevertheless, a balanced implementation of the logic of self-regulation requires a serious regulatory effort by the public authority, which must in any case equip the private company with reliable parameters of diligence in order to avoid placing the burden of risk assessment and management on it alone.

There is likely awareness of this issue, as the EU legislator has provided for an institutionalised support for corporations, specifically establishing the adoption by the Commission of guidelines and best practices on how to implement due diligence, including guidance about model contractual clauses with regard to the contractual assurances that the company has to seek from its business partners in order to prevent or bring to an end adverse impacts (Articles 18-19).[32]

However, the fact remains that, at present, the lack of precise due diligence rules for the corporation leads to uncertainty in the parameters available to

[32] See *supra* para. 2(2).

the judge who must assess its liability.
In this respect, by way of further illustration, it is worth mentioning Article 9 («Prioritisation of identified actual and potential adverse impacts»), according to which, where it is not feasible to deal with all the identified adverse impacts at the same time and to their full extent, it should be ensured that «companies prioritise adverse impacts» on the basis of their severity and likelihood and «the mere fact of not having addressed a less significant adverse impact shall not expose the company to penalties pursuant to Article 27».
With regard to this provision, Recital no. 80 remarks that, even though «a company should not be liable under this Directive for any damage stemming from any less significant adverse impacts that were not yet addressed», the correctness of the company's prioritisation of adverse impacts should, however, be assessed when determining «whether the company breached its obligation to adequately address the adverse impacts it identified». Therefore, the possibility that the Directive gives to a corporation to prioritise impacts becomes a potential source of liability, as the corporation itself remains entirely exposed to the discretion of the judge called on to assess the adequacy of the strategy of prioritisation it has adopted.
It is therefore to be hoped that, in the transposition stage, the Italian legislator will take steps to establish a platform of predetermined precautionary rules in order to avoid what has already been experienced at national level since Decree 231 came into force with regard to excessive judicial discretion in assessing the adequacy of organisational models.
Then a further problem arises concerning the enforceability of compliance with the due diligence provisions. On this point it should be recalled that the CSDDD, by emphasising the company's leverage over other companies with which it has commercial relationships, is founded on an innovative approach, in that it requires corporations to engage in mutual positive influence within the value chain to which they belong by working together to set up conditions of legality throughout the whole network.
However, insofar as supply chains can consist of multiple links, the question arises of how far the due diligence of the lead company should extend with respect to its commercial partners; and this issue is particularly problematic

with regard to the risk of negative impacts on the environment and human rights that may arise in global chains on a transnational scale.[33]

In this regard, the Directive contains clauses which indicate that the company's due diligence should be limited within reasonable boundaries. It is worth citing Article 3(1)(o), according to which appropriate measures are those «*reasonably available* to the company, taking into account the circumstances of the specific case, including the nature and extent of the adverse impact and relevant risk factors»; Article 11(3)(a), which specifies that measures to address adverse impacts should be «*proportionate* to the severity of the adverse impact and to the company's implication in the adverse impact», so the degree of responsibility of a company must be measured in relation to the point in the value chain where the impact occurs and the distance of the company whose responsibility is being discussed from that point; Recital no. 19, which explicitly states that «this Directive should not require companies to guarantee, in all circumstances, that adverse impacts will never occur or that they will be stopped», concluding that «the main obligations in this Directive should be *obligations of means*» [emphasis added].

Furthermore, the need to circumscribe corporate liability in a reasonable way was taken into account by Directive (EU) 2026/470, which amended Article 8(2) of the CSDDD by providing that a company is required to carry out a scoping exercise «based solely on reasonably available information», in order to identify general areas across its own operations, those of its subsidiaries and those of its business partners where adverse impacts are most likely to occur and to be most severe (see also Recital no. 39 of Directive no. 470).

In particular Directive no. 470 tends to limit due diligence obligations to the company's direct business partners (in addition to the company's own operations and those of its subsidiaries). In fact, paragraph 2a has been added to Article 8 of the CSDDD; the new paragraph states that «where adverse im-

[33] On this point concerns are expressed by Confindustria, *Corporate Sustainability Due Diligence Directive – CS3D. Proposta di Direttiva*, May 2023, 15 ff. at <https://www.confindustria.it/documenti/corporate-sustainability-due-diligence-directive-cs3d/> last accessed on 19 March 2026 (see also ASSONIME, *Sulla riforma della disciplina della responsabilità degli enti. Osservazioni e proposte*, 2025, 4, 21 at <https://www.assonime.it/attivita-editoriale/position-papers/Pagine/Position-Papers-4_2025.aspx> last accessed on 19 March 2026).

pacts are identified as equally likely to occur or equally severe in several areas, companies may prioritise assessing such areas which involve direct business partners» (see also Recital no. 40 of Directive no. 470).

However, in the CSDDD the EU legislator has adopted a very broad concept of chain of activities, given that the scope of due diligence encompasses both upstream business partners (engaged in activities such as the design, extraction, sourcing, manufacture, transport, storage and supply of raw materials, products or parts of products and the development of the product or service of the company whose responsibility is being discussed) and downstream business partners (engaged in activities such as distribution, transport and storage) (Article 3(1)(g)).

Therefore, the question of how to reasonably limit the area of corporate liability in relation to a company's value chain remains entirely open, given that, on the one hand, if due diligence were restricted to immediate suppliers, we would end up neglecting the fact that it is precisely the production hubs furthest from the parent company where the risk of negative impacts is most likely to materialise; on the other hand, imposing controls on the company that are difficult to implement, such as those covering all parties with whom the company has established any contractual relationship, may be unreasonable and thus illegitimate[34].

In conclusion, it is to be hoped that, in the national implementation of CSDDD, due attention will be paid to keeping corporate liability within legitimate limits for two reasons: guarantees and efficiency. In terms of guarantees, when introducing a form of criminal or punitive liability, it is necessary to ensure compliance with the culpability principle; in terms of efficiency, a serious proactive commitment by the company to protect human dignity can only be promoted if the company is reproached for failing to fulfil a reasonable duty.

[34] For this last consideration see also MONGILLO, Forced labour *e sfruttamento lavorativo nella catena di fornitura delle imprese: strategie globali di prevenzione e repressione*, cit., 669-670.