THE CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE AND ITS IMPACT ON ITALIAN LAW: A PRELIMINARY ANALYSIS

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Abstract: *This article offers a preliminary analysis of the European Union's Corporate Sustainability Due Diligence Directive (CSDDD) and its implications for Italian law, particularly in relation to Legislative Decree No. 231/2001. The Directive mandates that large companies implement due diligence processes addressing human rights and environmental risks across their entire value chains. The paper highlights the Directive's core obligations, enforcement mechanisms, and the anticipated challenges of its transposition into domestic law. Special attention is given to the interplay between the CSDDD and Italy's existing corporate liability framework, underscoring areas of both convergence and tension. The author warns of potential regulatory overlap and the risk of double jeopardy where the same organizational deficiency could trigger multiple sanctions. To mitigate this, the article advocates for a careful legislative approach that harmonizes the two systems and includes safeguard clauses to prevent legal redundancy.*

Keywords: Due Diligence, Corporate Sustainability, Corporate Criminal Liability, Human Rights Protection, Regulatory Overlap

INTRODUCTION

The present contribution seeks to offer a personal reflection on the Corporate Sustainability Due Diligence Directive (CSDDD), structured into three sections.

The first section provides an overview of the Directive's principal objectives, scope of application, and the core obligations it imposes on companies, with particular attention devoted to the new due diligence duties concerning human rights and environmental impacts throughout the value chain.

The second section explores the relationship between the Directive and the existing Italian legal framework, with a specific focus on Legislative Decree No. 231/2001. Particular emphasis is placed on the points of convergence between the Decree and the Directive, which are analysed in order to enhance the intelligibility of the present paper and to clarify the broader implications for corporate compliance models.

The third section highlights the principal risks and challenges associated with the transposition of the Directive into national law, focusing on potential inconsistencies, interpretative uncertainties, and the risk of overlapping regulatory obligations that may lead to an increased compliance burden for companies.

Given the necessarily selective nature of this contribution, the discussion is confined to a number of key issues, with the aim of offering a clear and targeted analysis rather than an exhaustive treatment of the subject.

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I. THE CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE

Last June, the European Parliament and the Council of the European Union formally adopted the Corporate Sustainability Due Diligence Directive (CSDDD), concluding a legislative process that proved to be both complex and highly contentious.[1] The Directive aims to ensure that major market players actively contribute to sustainable development and to the broader economic and social transition by preventing, mitigating, and remedying adverse impacts on human rights and the environment, whether occurring within their own operations, their supply chains, or through the activities of their business partners. The adoption of the CSDDD continues along the trajectory already marked by the Corporate Sustainability Reporting Directive (CSRD),[2] and it is strongly influenced by international standards, in particular the United Nations Guiding Principles on Business and Human Rights (UNGPs),[3] which advocate for corporate responsibility in respecting human rights globally. However, similar regulatory models had already emerged at the national level. France introduced the "devoir de vigilance" law in 2017,[4] establishing corporate duties of oversight over subsidiaries and subcontractors, while Germany adopted the Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz) in 2021, imposing specific obligations on companies to identify and address human rights and en-

[1] Directive (UE) 2024/1760 of The European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859. See ADDAMO, S. Le novità del testo finale della Corporate Sustainability Due Diligence Directive: un cambio di passo per la politica di sostenibilità dell'UE? *Nuove Leggi Civili Commentate*. No. 5, p. 1258; DZAFIC, A. Corporate sustainability due diligence directive: analisi preliminare dei nuovi obblighi. *Pratica Fiscale e Professionale*. 2024, No. 37, p. 29; LAUS, F. Corporate Sustainability Due Diligence e amministrazione del rischio. *Le Società*. 2024, No. 8–9, p. 913; MOSCO, G. D., FELICETTI, R. Prime riflessioni sulla proposta di direttiva UE in materia di Corporate Sustainability Due Diligence. *Analisi Giuridica dell'Economia*. 2022, No. 1, p. 185; SANTAGUIDA, B. M. M. D. Corporate Sustainability Due Diligence Proposal and the 2024 European Parliament Elections. *Amadeus International Law Review*. 2023, Vol. 7, p. 22; SICIGNANO, G. J. La Corporate Sustainability Due Diligence Directive e il diritto penale agroalimentare (con particolare riferimento alla fattispecie di cui all'art. 439 c.p.): una convergenza possibile? *Indice Penale*. 2025, p. 290.

[2] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting. See BACARO, N. M., RUSSOTTO, M., SAPORETTI, C., SOLIMENE, L. La Corporate Sustainability Reporting Directive (CSRD). *Rivista dei Dottori Commercialisti*. 2024, No. 3, p. 443.

[3] According to Article 17 of the UN Guiding Principles on Business and Human Rights (UNGPs), business enterprises are expected to conduct human rights due diligence in order to identify, prevent, mitigate, and account for their adverse impacts on human rights. This process involves assessing both actual and potential impacts, acting on the findings, monitoring the effectiveness of responses, and communicating how impacts are addressed. Human rights due diligence should encompass adverse impacts that the business may cause, contribute to, or be directly linked to through its operations, products, or business relationships. The complexity of the due diligence process depends on factors such as the enterprise's size, the severity of potential human rights impacts, and the operational context. Moreover, due diligence should be a continuous process, acknowledging that human rights risks may evolve over time as the enterprise's activities and operating environments change. See FASCIGLIONE, M. *I Principi Guida su Imprese e Diritti Umani*. Roma: Consiglio Nazionale delle Ricerche, 2020, pp. 35 ff.; FASCIGLIONE, M. *Impresa e diritti umani nel diritto internazionale. Teoria e prassi*. Torino: Giappichelli, 2024.

[4] Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre. In: *Légifrance* [online]. [2025-05-29]. Available at: <www.legifrance.gouv.fr>. See DAUGAREILH, I. La legge francese sul dovere di vigilanza al vaglio della giurisprudenza. *Giornale di diritto del lavoro e relazioni industriali*. 2021, p. 159.

vironmental risks throughout their supply chains.[5] In Italy, although a comprehensive legislative framework is still lacking, some initial steps have been taken through the National Action Plan on Business and Human Rights (Piano di Azione Nazionale su Impresa e Diritti Umani), covering the periods 2016–2021 and 2021–2026, which, however, remain largely programmatic and non-binding. Against this background, the CSDDD represents a decisive step towards the consolidation of a European model of corporate due diligence, capable of producing significant transformations not only in corporate governance structures but also in companies' risk management and compliance systems.

The Directive is composed of 39 articles, organised into four main sections.

The first four articles set out the introductory provisions, defining the subject matter, scope, and key terms relevant for the interpretation of the Directive.

Articles 5 to 26 constitute the substantive core of the instrument, establishing a comprehensive set of obligations for companies and institutions. These provisions focus in particular on the implementation of effective due diligence processes, the promotion of meaningful engagement with stakeholders, and the establishment of mechanisms for regular monitoring and assessment of adverse impacts. Articles 27 to 29 govern the enforcement regime, providing for the imposition of monetary sanctions in cases of non-compliance with national measures adopted pursuant to the Directive. They also address third-party liability and the right to seek compensation for damages caused by breaches of corporate due diligence obligations. Finally, Articles 30 to 39 (not 33 to 39) contain final provisions, including transitional rules and the mechanisms for review and amendment of the Directive itself.

As regards its scope of application, the Directive is limited to large companies. Specifically, it applies to undertakings employing more than 1,000 workers and generating a net worldwide turnover exceeding EUR 450 million. Although small and medium-sized enterprises (SMEs) are formally excluded from the Directive's direct obligations, they may nonetheless be indirectly affected, as they often form an integral part of the supply and value chains of larger corporations subject to the due diligence requirements. This indirect exposure of SMEs to compliance pressures will be further analysed in the following sections.[6]

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[5] Bundestag verabschiedet das Lieferkettengesetz. In: *Deutscher Bundestag* [online]. [2025-05-29]. Available at: <www.bundestag.de>. The German Supply Chain Act has been applicable since 1 January 2023 to companies with more than 3,000 employees and, starting in 2024, it also applies to companies with more than 1,000 employees. Similar provisions exist in other European legal systems: in June 2019, the Netherlands enacted a law on the duty of care to eliminate child labour (Wet Zorgplicht Kinderarbeid), while in July 2021 Norway adopted the Norwegian Transparency Act, introducing a due diligence obligation focused on human rights. In the United Kingdom, there has also been ongoing debate concerning the possible adoption of a similar system in the context of corruption and bribery, particularly with reference to the UK Bribery Act 2010. See PISTELLI, F. Obblighi di cura e responsabilità nella legge tedesca sulle catene di fornitura (LSKG). *Nuove leggi civili e commerciali*. 2024, p. 1030; TRONCOSO, M. Alcune considerazioni sull'applicazione dei principi di sostenibilità nel diritto societario spagnolo. *Osservatorio di diritto civile e commerciale.* 2024, pp. 65 ff.; URBANI, A. Rassegna dei principali interventi legislativi, istituzionali e di policy a livello europeo in ambito societario, bancario e dei mercati finanziari. *Rivista societaria.* 2021, No. 66, pp. 195 ff.

[6] CORVESE, C. G. La sostenibilità ambientale e sociale delle società nella proposta di Corporate Sustainability Due Diligence Directive (dalla "insostenibile leggerezza" dello scopo sociale alla "obbligatoria sostenibilità" della due diligence). *Banca Impresa Società.* 2022, No. 3, p. 405.

The Directive requires Member States to establish a regulatory framework compelling large companies to conduct due diligence processes with respect to risks arising from their own activities, as well as those of their subsidiaries and business partners, in order to prevent, mitigate, or bring to an end any "adverse impact" on human rights and the environment.[7] The true innovation introduced by the Directive lies in the extension of the due diligence obligation across the entire business chain: companies are now required to identify, assess, and address adverse impacts occurring throughout their supply and value chains.[8] Among the measures envisaged, large companies may request contractual assurances from each business partner, ensuring compliance with the parent company's code of conduct and, where applicable, with its prevention action plan.[9] Should the measures adopted prove ineffective, and following a preliminary dialogue with the concerned affiliate, companies are under an obligation to suspend or terminate business relationships with the defaulting entity.[10]

[7] The Directive defines "adverse impacts" by referring to its annexes for clarification. Adverse impacts on human rights are those arising from the violation of any rights enshrined in the international instruments listed in Part I, Section 1 of the Annex. Additionally, violations of human rights not explicitly enumerated therein, but protected by the instruments listed in Part I, Section 2 of the Annex, are also considered adverse impacts. These violations must be directly attributable to a company or legal entity and must harm a legally protected interest. The company's liability hinges on its reasonable ability to foresee the risk of such violations, based on all relevant circumstances of the case, including the nature and scope of its business activities, its supply chain, the economic sector, and the geographical and operational context in which it operates. In contrast, adverse environmental impacts are those resulting from breaches of prohibitions or obligations specified in Part II of the Annex, as well as those arising from violations of prohibitions outlined in Part I, points 15 and 16 of the Annex. See BUENO, A., BERNAZ, E., HOLLY, P., ORTEGA, M. The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise. *Business and Human Rights Journal*. 2024, No. 9, p. 295. According to the authors, with regard to human rights, the Directive diverges from the UNGPs by not explicitly referencing the Universal Declaration of Human Rights. At the same time, the inclusion of a right to food or health within the Directive appears inconsistent with international human rights standards. The same applies to environmental adverse impacts, where the European Directive extends beyond the UNGPs framework.

[8] According to the European Directive, the due diligence obligation applies primarily to the phases of distribution, transport, and storage, and does not extend to the disposal, sale, or use of products. This limitation is already outlined in Recital 24, which indicates that due diligence should address adverse impacts on human rights and the environment arising during most stages of the life cycle of a product or service–namely production, distribution, transport, and storage–within the company's own operations as well as those of its subsidiaries and business partners within the relevant value chains. Article 3(1)(g) defines the value chain as encompassing both upstream and downstream business activities related to the production and provision of goods and services. This includes activities such as design, extraction, sourcing, manufacturing, transport, storage, and product development. On the downstream side, it includes distribution, transport, and storage of the company's products, provided these are carried out for or on behalf of the company. However, activities related to the distribution and transport of goods subject to EU export controls or involving military items are excluded once export authorization has been granted.

[9] Consider, for instance, the case of state-imposed forced labour: in such circumstances, large companies are required to terminate their business relationships with entities that resort to this type of practice.

[10] Recital 54 of Directive (EU) 2024/1760 establishes that, in order to comply with the obligation to terminate or minimise actual adverse impacts, companies must adopt appropriate measures where relevant. If an adverse impact cannot be immediately remedied, companies are required to develop and implement a corrective action plan. They should also seek contractual assurances from direct business partners, ensuring adherence to the code of conduct and, if necessary, the corrective plan, with further cascading assurances along the supply chain as appropriate. These assurances must be accompanied by measures to verify compliance, although the obligation is limited to making reasonable efforts to obtain them, depending on the circumstances. Companies are also expected to make financial or non-financial investments to address adverse impacts, collaborate with other firms in compliance with EU law, and adjust their business plans, strategies, and purchasing practices to

This process must be conducted through meaningful stakeholder engagement.[11]

Businesses are required to ensure that natural and legal persons, trade unions and other workers' representatives, as well as civil society organisations operating in relevant fields, are granted the opportunity to submit complaints in cases where legitimate concerns arise regarding adverse impacts caused either by the company itself or by other actors within its business chain. The Directive also provides for the designation of one or more supervisory authorities, responsible for overseeing compliance with due diligence obligations. Such authorities must be both legally and functionally independent and are entrusted with extensive powers, including the ability to request information, carry out investigations and inspections, and impose corrective measures aimed at preventing the recurrence of unlawful conduct. Moreover, supervisory authorities are empowered to impose administrative sanctions in cases of non-compliance.[12]

As for the implementation timeline, Member States are required to transpose the Directive into national law within two years, while companies will benefit from a transitional period ranging from three to five years to fully comply with the newly adopted domestic provisions.

On 26 February 2025, the European Commission proposed a series of amendments to the Corporate Sustainability Due Diligence Directive as part of the so-called "Simplification Omnibus Package." These amendments are currently only proposals and must still undergo scrutiny and approval by both the European Parliament and the Council of the European Union. Notably, risk factor assessments would be limited to a company's direct business partners, with possible extension to indirect partners only when credible information suggests a likely adverse impact. The obligation for annual supply chain monitoring would be removed. To ease the administrative burden on SMEs, the proposals include measures to reduce the volume of data that large companies must collect in mapping their value chains. Another key amendment eliminates the mandatory requirement to terminate contractual relationships with non-compliant suppliers. Instead, where serious adverse impacts occur and all due diligence efforts have been exhausted without success, suspension of the business relationship–while continuing to engage

prevent or reduce harm, including by promoting living wages and avoiding practices that incentivise adverse impacts. Modifications to design and distribution processes should also be implemented to address risks both upstream and downstream in the supply chain. Furthermore, responsible purchasing and value-sharing practices are highlighted as essential in combating issues such as child labour. Companies are required to provide targeted support to SMEs within their supply chains, through capacity-building, training, and, where necessary, financial assistance. The concept of jeopardising an SME's viability is understood as causing or risking imminent bankruptcy.

[11] BARCELLONA, E. La sustainable corporate governance nelle proposte di riforma del diritto europeo: a proposito dei limiti strutturali del c.d. stakeholderism. *Rivista delle società.* 2022, No. 1, pp. 1 ff. For further analysis on the role of trade unions, see BRINO, F. Corporate sustainability due diligence: quali implicazioni per i diritti dei lavoratori? *Diritti umani e diritto internazionale.* 2023, No. 3, pp. 707 ff.

[12] The Directive further provides that companies are required to compensate for damages caused to a natural or legal person, provided that: (a) the company has, intentionally or negligently, failed to comply with the obligations set out in Articles 10 and 11, where the right, prohibition, or obligation listed in the Annex to the Directive is intended to protect that natural or legal person; and (b) as a result of the non-compliance referred to in point (a), damage has been caused to the legal interests of the natural or legal person, as protected under national law. However, civil liability is excluded where the damage was caused not by the company directly subject to the Directive, but by its business partners within its value chain.

with the supplier–is suggested as a last resort, potentially leveraging the suspension to encourage corrective action. The definition of "stakeholders" has also been narrowed. It now includes only workers and their representatives, as well as individuals and communities whose rights or interests are directly (in the case of actual adverse impacts) or potentially (in the case of potential adverse impacts) affected by the company's operations, products, or services, or those of its subsidiaries and business partners. Finally, the requirement to link penalties to a company's net turnover has been removed. Similarly, the provision introducing civil liability for non-compliance has been eliminated, though victims' rights to full compensation for damages remain protected under the national liability regimes of the Member States.

To date, the only proposal that has been formally adopted is the postponement of the directive's transposition deadline. With the publication in the Official Journal of the European Union on 17 April 2025, Directive (EU) 2025/794–known as the "Stop-the-Clock" Directive–entered into force. This directive amended Article 37 of Directive (EU) 2024/1760 (the Corporate Sustainability Due Diligence Directive), postponing by one year the transposition deadline for Member States. Accordingly, Member States must adopt the necessary legislative, regulatory, and administrative provisions to comply with the directive by 31 December 2025.

II. THE RELATIONSHIP BETWEEN THE CORPORATE SUSTAINABILITY DUE DILIGENCE DIRECTIVE AND CORPORATE CRIMINAL LIABILITY UNDER D.LGS. 231/2001

Let us now turn to the relationship between the Directive and the legal framework established by Legislative Decree No. 231/2001.

Before doing so, however, it is necessary to provide a brief overview of the regulatory architecture introduced by the Decree. While the topic is highly complex and would merit a far more extensive analysis, the present discussion will be limited to an essential outline.[13]

As is well known, Legislative Decree No. 231 of 8 June 2001–enacted in timely implementation of the delegation set forth in Article 11 of Law No. 300 of 29 September 2000–

[13] On this point, among many others, see ALESSANDRI, A. Article 27(1). Giuseppe Branca (ed.). *Commentario della Costituzione, Rapporti civili. Art. 27–28.* Bologna-Rome: Soc. ed. del Foro italiano, 1991, pp. 1 ff.; AMARELLI, G. Profili pratici della questione sulla natura giuridica della responsabilità degli enti. *Rivista italiana di diritto e procedura penale.* 2006, p. 151; BRICOLA, F. *Il costo del principio "societas delinquere non potest" nell'attuale dimensione del fenomeno societario* (1970). *Scritti di diritto penale.* 1997, Vol. 2, No. 2, p. 2975; CONTI, L. La responsabilità amministrativa delle persone giuridiche. Abbandonato il principio societas delinquere non potest? *Il diritto penale dell'impresa.* GALGANO, F. (ed.). *Trattato di diritto commerciale e di diritto pubblico dell'economia.* Padua, 2001, p. 861; DE FRANCESCO, G. (ed.). *La responsabilità degli enti: un nuovo modello di giustizia "punitiva".* Turin, 2004; DE SIMONE, G. *Persone giuridiche e responsabilità da reato.* Pisa, 2012; DE VERO, G. *La responsabilità penale delle persone giuridiche.* Milan, 2008; MARINUCCI, G. La responsabilità penale delle persone giuridiche. Uno schizzo storico-dogmatico. *Rivista italiana di diritto e procedura penale.* 2007, p. 445; MONGILLO, V. *La responsabilità penale tra individuo ed ente collettivo.* Turin, 2018; PASCULLI, M. A. *La responsabilità da reato degli enti collettivi nell'ordinamento italiano. Profili dogmatici ed applicativi.* Bari, 2005; PELISSERO, M. La 'nuova' responsabilità amministrativa delle persone giuridiche (d.lgs. 8 giugno 2001, n. 231). Disposizioni sostanziali. *Lavoro e Previdenza.* 2002, p. 575; SICIGNANO, G. J. Il costo del "societas saepe delinquit". *Rivista penale.* 2021, pp. 226 ff.

introduced into the Italian legal system the so-called "direct" liability of legal persons, including companies and associations without legal personality. This liability arises in connection with the commission of specific categories of criminal offences, provided that such offences are committed "in the interest or to the benefit" of the entity by individuals acting within its organizational structure.

The attribution of liability to collective entities is strictly governed by the principle of legality.[14] Most notably, it does not extend to all criminal offences under Italian law, but is confined to those explicitly enumerated in Legislative Decree No. 231/2001, which contains an extensive list of predicate offences capable of triggering corporate liability.[15]

The criteria for attributing such liability are generally divided into objective and subjective elements.[16] The objective elements, set out in Article 5(1) of the Decree, operate on two interdependent levels. The first concerns the status of the individual perpetrator, who must fall into one of the following categories: (a) persons holding representative, administrative, or managerial roles within the entity or within one of its organizational units possessing financial and functional autonomy; or individuals who, even de facto, exercise management or control functions; (b) individuals subject to the direction or supervision of those described above.

The second level pertains to the purpose of the offence, which must have been committed in the interest or for the benefit of the entity.[17] According to Article 5(2), no liability attaches where the offence was carried out exclusively in the personal interest of the perpetrator or that of third parties.[18]

On the subjective side, Articles 6 and 7 of the Decree establish a distinct form of culpability on the part of the entity, defined as "organizational fault".[19] This concept is grounded in the entity's failure to adopt and effectively implement organizational and manage-

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[14] FLORA, G. Le sanzioni punitive nei confronti delle persone giuridiche: un esempio di metamorfosi della sanzione penale? *Diritto penale e processo*. 2003, p. 1398; INSOLERA, G. Nozione di responsabilità individuale e collettiva. *Il penalista*. 1996, p. 259; GARGANI, A. Imputazione del reato agli enti collettivi e responsabilità penale dell'intraneo: due piani irrelati? *Diritto penale e processo*. 2002, p. 1061.

[15] GIUNTA, F. Attività bancaria e responsabilità ex crimine degli enti collettivi. *Rivista trimestrale di diritto penale dell'economia*. 2004, p. 1; PADOVANI, T. Il nome dei principi e il principio dei nomi: la responsabilità "amministrativa" delle persone giuridiche. In: Giovannangelo De Francesco (ed.). *La responsabilità degli enti*. Torino: Università di Pisa, 2004, p. 13; SICIGNANO, G. J. Problemi attuali in tema di responsabilità "da reato" degli enti per i delitti informatici. L'interesse e il vantaggio. I Modelli di comportamento. *La responsabilità amministrativa delle società e degli enti*. 2022, pp. 279 ff.

[16] PULITANO, D. La responsabilità "da reato" degli enti: i criteri d'imputazione. *Rivista italiana di diritto e procedura penale*. 2002, p. 415.

[17] SELVAGGI, N. *L'interesse dell'ente collettivo quale criterio di ascrizione della responsabilità da reato*. Naples, 2006; SICIGNANO, G. J. *231 e criptovalute. La responsabilità da reato dell'ente nel riciclaggio mediante monete virtuali*. Pisa, 2021; SICIGNANO, G. J. L'interesse e il vantaggio dell'ente nel riciclaggio mediante criptovalute. *La responsabilità amministrativa delle società e degli enti*. 2021, pp. 99 ff.

[18] FALZEA, A. Responsabilità penale delle persone giuridiche. In: Mario Trimarchi (ed.). *Rappresentanza e responsabilità negli enti collettivi*. Milan, 2007, p. 293.

[19] COCCO, G. L'illecito degli enti dipendente da reato ed il ruolo dei modelli di prevenzione. *Rivista italiana di diritto e procedura penale*. 2004, No. 1, pp. 90 ff.; SICIGNANO, G. J. I modelli di comportamento dell'ente nel riciclaggio mediante criptovalute. *Le Società*. 2021, pp. 1271 ff.

ment models suitable for preventing the commission of offences by those acting in its name or on its behalf. These models consist of internal protocols with a strong preventive function, aimed at mitigating the risk of the types of offences covered by the Decree. The legal relevance of these compliance models depends on the hierarchical position of the offender. In cases involving individuals in top management positions, Article 6(1) provides that the prior adoption and effective implementation of an organizational model may serve as a ground for exemption from liability. To benefit from this defence, the entity must demonstrate, inter alia: *i)* that responsibility for overseeing the functioning and compliance of the model was entrusted to a body endowed with autonomous powers of initiative and control; *ii)* that the offence was committed through fraudulent circumvention of the model; and *iii)* that there was no failure or shortcoming in the supervisory functions performed by the oversight body.[20]

In contrast, where the offence is committed by a subordinate, Article 7 establishes a different regime. In such cases, the existence and implementation of compliance models do not function as an exemption from liability but are integral to the assessment of the entity's culpability. The law presumes liability for failure to exercise proper direction or supervision unless it is shown that appropriate and effectively implemented organizational models were in place.[21] This element constitutes a positive condition for subjective attribution, and the burden of proof lies with the public prosecutor. Unlike under Article 6 – where the entity must affirmatively establish the elements of the exculpatory defence – Article 7 predicates liability on the absence of adequate compliance structures. This results in a relatively more streamlined mechanism of subjective attribution, as the presence or absence of suitable organizational safeguards largely determines the outcome of the liability assessment.

Against this background, it is now appropriate to return to the central issue of the relationship between the Corporate Sustainability Due Diligence Directive and corporate criminal liability under Legislative Decree No. 231/2001.

First of all, there is an evident correlation between the concept of due diligence, as described in the directive, and the conduct models of the 231 system. The directive requires business and institutions to strengthen their internal structure through a Code of Conduct (see recital 39 and art. 7) and an Action Plan (see recital 46 and art. 10, paragraph 2), illustrating the principles and regulations to be followed by the company and its partners. The same is required in the 231 system: to avoid incurring any liability, the company or institution shall adopt a conduct model defined by a code of ethics and an appropriate implementation system.[22] Similarly, the 231 conduct models must include adequate mapping of all operations where the risk of offence is most entrenched and, within the directive, it is expressly specified that companies must include in due diligence activities "appropriate measure to map their own operations" and those of their

[20] TRIPODI, A. F. *L'elusione fraudolenta nel sistema della responsabilità da reato degli enti*. Padua, 2013.

[21] AMODIO, E. Rischio penale d'impresa e responsabilità degli enti nei gruppi multinazionali. *Rivista italiana di diritto e procedura penale*. 2007, p. 1287.

[22] See MANACORDA, S., CENTONZE, F. (eds.). *Corporate Compliance on a Global Scale. Legitimacy and Effectiveness*. Berlin: Springer, 2022.

partners, in order to identify general areas where adverse impacts are most likely to occur (see recital 41 and art. 8).[23]

On the subject of Supervisory Bodies, the Due Diligence Directive states, as already provided for in D.lgs. 231/2001, that companies and institutions shall set up a system to "monitor and assess the effectiveness of measure" implemented (see recital 20 and art. 15).[24] The concept of due diligence, as outlined in the directive, has little in common with its traditional interpretation, widely used in civil law. Usually, in company law, the due diligence process is enacted to identify any potential risks to the company assets arising from a specific transaction; the new European directive, on the other hand, requires due diligence to be applied not for the purpose of avoiding any risks to the company, but rather to prevent risks to the outside world. This approach is similar to the one proposed by the 231 system, suggesting that companies and institutions should adopt specific conduct models not to prevent any offences to their own detriment, but those committed in their interest and to their advantage.[25]

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[23] The Directive also establishes that due diligence must be risk-based. Article 5 states that "Member States shall ensure that each company carries out risk-based due diligence". Similarly, Article 7 requires that companies integrate due diligence into all relevant policies and risk management systems, and adopt a due diligence policy that ensures a risk-based approach. Article 8 further provides that companies must take appropriate measures to map their own activities and those within their chain of activities, taking into account relevant risk factors. See ADDAMO, S. Le novità del testo finale della Corporate Sustainability Due Diligence Directive: un cambio di passo per la politica di sostenibilità dell'UE? *Nuove Leggi Civili Commentate*. 2024, No. 5, p. 1265; KURKDJIAN, A. SMEs and the Supply Chain Sustainability Directives. *Fiscalità & Commercio Internazionale*. 2024, p. 43; LAUS, F. Corporate Sustainability Due Diligence and Risk Management. *Società*. 2024, No. 8 - 9, pp. 915 ff.; NOLAN, J., MCCORQUODALE, R. The Effectiveness of Human Rights Due Diligence for Preventing Business Human Rights Abuses. *Netherlands International Law Review*. 2021, No. 68, pp. 467 ff.

[24] Recital 52 of Directive (EU) 2024/1760 highlights that companies may rely on industry or multi-stakeholder initiatives to support the implementation of their due diligence obligations, provided such initiatives are appropriate for that purpose. These initiatives may include voluntary procedures, tools, and mechanisms developed by governments, industry groups, civil society organisations, or their combinations. Companies can use or participate in these initiatives, including relevant risk assessments and collective mitigation measures, while remaining responsible for monitoring their effectiveness and ensuring compliance. Additionally, companies may employ independent third-party verification to assess the implementation of due diligence within their value chains. Such verifiers must operate independently, free from conflicts of interest or external influence, and possess expertise in human rights or environmental matters. The European Commission, together with Member States, is tasked with issuing guidance to help assess the suitability of both initiatives and verifiers, as well as ensuring the integrity of verification processes. Importantly, participation in these mechanisms does not exempt companies from liability or sanctions in the event of non-compliance or harm to affected individuals.

[25] This approach helps to address the criticisms that had been raised–already during the commentary on the original 2022 draft directive–regarding the notion of due diligence. In particular, it had been argued that the directive risked transforming due diligence from a standard of conduct into the object of a prohibition, and that it did so without clearly specifying the obligations imposed on companies. See FIMMANÒ, F. Art. 41 della Costituzione e valori ESG: esiste davvero una responsabilità sociale dell'impresa? *Giurisprudenza commerciale*. 2023, p. 803; STELLA RICHTER, M. Corporate Sustainability Due Diligence: noterelle semiserie su problemi serissimi. *Rivista delle società*. 2022, p. 720. As noted by ADDAMO, S. *Le novità del testo finale della Corporate Sustainability Due Diligence Directive: un cambio di passo per la politica di sostenibilità dell'Ue? p.* 1287, the fact that the Directive outlines a series of procedures and processes ensures greater legal certainty. The author further adds (p. 1288) that the Directive marks "a decisive shift, moving the importance of environmental factors and human rights from the realm of informational transparency or soft law recommendations to that of binding conduct standards subject to direct sanctions." This statement appears to be valid, considering that the 231-model compliance systems seem to serve as a direct precedent for the due diligence requirements set forth in the Directive.

At first glance, the two systems appear to be complementary. However, there are further aspects to consider and that would lead to different conclusions. It is a very broad subject; thus, I shall focus on just two topics that I deem most relevant.

First, I shall discuss the compulsory nature of the due diligence process and of the liability system provided for in the directive.

Within the 231 system, the company or institution has the duty to adopt a certain conduct model, but no obligation;[26] it follows that, in case of criminal liability, the sanction does not derive from the mere omission of the conduct model, but from the "failure to prevent" such offenses, as provided for in the regulation, from being committed.

Reading the directive, however, it appears that the intention of the European regulation is to set up a compulsory conduct model; in this case, the sanction would not arise from failure to prevent the adverse impacts on human rights and the environment, but rather from "failure to comply"[27] to the due diligence. Recital 19 of the directive described the obligations imposed on companies as "obligations of means".

In fact, reference to obligation of means does not necessarily entail liability irrespective of the occurrence of any adverse impact, as it may also represent merely a parameter for imputation of negligence. Moreover, in spite of the vagueness of the text, which derives from the evident lack of precision of the European legislation, it appears that, within the directive itself, some signs can be discerned, leaning towards a "failure to prevent" approach, rather than "failure to comply".

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[26] DE VERO, G. *La responsabilità penale delle persone giuridiche.* Milano, 2008, p. 177. According to SCOLETTA Art. 6 – profili penalistici. In: Donato Castronuovo – Giulio De Simone – Enrico Ginevra and Andrea Lionzo (eds.). *Compliance. Responsabilità da reato degli enti collettivi.* Milano: Wolters Kluwer Italia, 2019, p. 151. Also in agreement, PALIERO, F. La responsabilità penale della persona giuridica: profili strutturali e sistematici. In: Giovannangelo De Francesco (ed.). *La responsabilità degli enti: un nuovo modello di giustizia "punitiva".* Torino, 2004, p. 29. On the other hand, AMODIO, E. Prevenzione del rischio penale di impresa e modelli integrati di responsabilità degli enti. In: G. Dolcini – F. Paliero (eds.). *Studi in onore di Giorgio Marinucci. Parte speciale del diritto penale e legislazione speciale, diritto processuale penale, diritto, storia e società.* Milano, 2006, p. 329; PIERGALLINI, C. Paradigmatica dell'autocontrollo penale (dalla funzione alla struttura del Modello organizzativo ex D.lgs. n. 231/2001). *Studi Mario Romano.* 2011, p. 383. Furthermore, SFAMENI, P. Idoneità dei modelli organizzativi e sistema di controllo interno. *Analisi giuridica dell'economia.* 2009, No. 2, p. 279, asserts that the risk of non-compliance "cannot be considered an acceptable risk for administrators," as "acting in compliance with the law cannot be regarded as part of the discretionary power of business decisions." According to PULITANÒ, D. La responsabilità da reato degli enti: i criteri di imputazione. *Rivista italiana di diritto e procedura penale.* 2002, p. 425, adopting compliance models is mandatory for offenses committed by subordinates, but not for those committed by top-level individuals. This latter view, however, is not widely accepted, given the organizational duties imposed on company directors under Article 2381 of the Civil Code, as well as the auditors' duty to oversee the adequacy of the organizational structure under Article 2403 of the Civil Code. These, however, are merely civil obligations which, if the conditions are met, could give rise to civil rather than criminal liability. See also DI GIOVINE, O. Lineamenti sostanziali del nuovo illecito punitivo. In: P. Lattanzi (ed.). *Reati e responsabilità degli enti.* Milano, 2010, p. 120, for whom the issue "does not seem to carry excessive importance."

[27] As noted by Vincenzo Mongillo during the conference "The Corporate Sustainability Due Diligence Directive (CSDDD). Context, Content, Perspectives: An Interdisciplinary Reflection", held at the University of Pisa on October 11, 2024.

First, in several instances throughout the directive, the due diligence is linked to the actual occurrence of the adverse impact.[28] Recital 24 expressly states that *"In order for the due diligence to have a meaningful impact, it should cover human rights and environmental adverse impacts generated throughout the majority of the life-cycle of production, distribution, transport and storage of a product or provision of services, at the level of companies' own operations, operations of their subsidiaries and of their business partners in their chains of activities*".[29] Similar phrasing can be discerned in recital 32. Furthermore, European legislation requires that companies implement "appropriate" due diligence measure; the wording seems reminiscent of the 231 system, requiring "adequate" conduct models.[30] Thus, if "adequate" models lead to a "failure to prevent" approach, the same should apply to "appropriate" due diligence.[31] Even putting aside this issue, it seems clear that, if appropriateness is linked to the mere failure to adopt a plan, irrespective of the actual occurrence of a subsequent fact, any contestation would risk being too generic and indefinite, lacking any offence or criminal act. On such topic, it is worthwhile to remember that in France, in 2017, the *Conseil constitutionnel* ruled as contrary to constitutional law all *"mesures de vigilance raisonnable*" consisting of "adequate actions aimed at mitigating risks or preventing serious harm or damage," precisely because they were insufficiently clear and imprecise.[32]

The second aspect causing concerns is the scope of due diligence requirements. The directive provides for a due diligence that goes beyond compliance with the 231 system and extends not only to the company or institution concerned, but also to its whole busi-

[28] Recital 24 underlines that adverse impacts on human rights and the environment may arise not only within a company's own operations but also in those of its subsidiaries and business partners, particularly during raw material sourcing and manufacturing. To be effective, due diligence should address these risks across most stages of the product or service life cycle, including production, distribution, transport, and storage, and should extend to all relevant actors within the company's chain of activities.

[29] The Directive also introduces climate-related obligations. Recital 73 highlights that the European measure serves as a critical legislative tool to ensure the transition of businesses towards a sustainable economy. It aims to mitigate the damage and costs associated with climate change, align with the global net-zero emissions target by 2050, prevent misleading claims, and address issues such as greenwashing and the global expansion of fossil fuels. In this context, companies are required to adopt a climate change mitigation transition plan, ensuring that their business model and strategy are compatible with the transition to a sustainable economy and with the goal of limiting global warming to 1.5°C, in line with the Paris Agreement, as well as the 2050 climate neutrality objective set out in Regulation (EU) 2021/1119.

[30] "Appropriate measures" refer to those that allow companies to achieve due diligence objectives by effectively addressing negative impacts in proportion to their severity and likelihood. As outlined in Article 3, paragraph 1, letter o) of the Directive, these measures must be reasonably available to the company, taking into account the specific circumstances, including the nature and scope of the negative impact and relevant risk factors. This requirement for effectiveness seems to align due diligence with the behavior models outlined in Legislative Decree 231. The outcome-oriented aspect of due diligence is also emphasized by Stella Richter Jr and Passador, who argue that due diligence is not about how the obligation is carried out, but rather about the objective of the obligation itself.

[31] At the same time, the fact that the Directive prohibits not only actual but also potential negative impacts does not appear to be incompatible with a typical "failure to prevent" system. This is primarily because the reference to potential impacts is justified by the precautionary principle (Article 191 TFEU, expressly mentioned in Recital 2 of the Due Diligence Directive) governing environmental protection.

[32] Conseil constitutionnel, *Décision n° 2017-750 DC du 23 mars 2017* in conseil-constitutionnel.fr. See MONGILLO, V. Forced labour e sfruttamento lavorativo nella catena di fornitura delle imprese: strategie globali di prevenzione e repressione. *Rivista trimestrale di diritto penale economico.* 2019, No. 3 - 4, p. 665.

ness chain.[33] On this, however, while noting the novelty of the directive provisions, which is unprecedented in comparison with the 231 system, it is unlikely that the European legislation intends to suggest any legal instruments that significantly differ from the one provided for corporate criminal liability.

For instance, the companies don't occur liability for act of others, considering that companies and institutions are required to implement a partner monitoring system within their organization, to envisage compensation in cases where the partner does not comply and to exert influence in order to facilitate fulfillment of relevant requirements. This could, perhaps, represent the "obligation of means" mentioned above, as well as in the directive.

In fact, the European directive seems to recall a well-known institution in the Italian judicial system, namely that of negligent facilitation, as described in D.lgs. 159/2011, art. 34 outlining the framework for regulating judicial administration.[34] It is a broad topic, and an innovation compared to the 231 system, but what the present report aims to highlight is that such provisions appear to be coherent with the regulation on corporate criminal liability. The conduct of facilitation shows significant similarities with the provisions contained in the European directive. In this case, entities are required to monitor their supply chains, with the additional obligation to sever ties with any parties that fail to demonstrate adequate credentials and a strong reputation in labor management.[35] A particularly interesting ruling from the Court of Milan involved the imposition of judicial administration measures on a company operating in the luxury goods sector.

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[33] In this regard, MONGILLO, V. Forced labour e sfruttamento lavorativo nella catena di fornitura delle imprese: strategie globali di prevenzione e repressione. p. 653, argues that the extension of models to the supply chain is excluded by the requirement that the underlying offense must be committed by individuals in a hierarchical position within the entity or by others under their direction or supervision (Article 5, paragraph 1). However, the author acknowledges that in the current practice of organizational models drafted by companies under Legislative Decree No. 231/2001, a precautionary approach leads to extending the scope of these models to the activities of third parties (consultants, suppliers, contractors, resellers, etc.) with whom the company has established any contractual relationship.

[34] Article 34 of Legislative Decree 159/2011 establishes that, in the event of sufficient evidence suggesting mafia infiltration or other related offenses, the court may impose judicial administration over the relevant businesses or assets. This measure applies when conditions for other preventative asset measures are not met. Judicial administration is initially set for up to one year, with the possibility of a six-month extension, not exceeding two years in total. The court appoints a judicial administrator who assumes control over the company's assets, including the powers typically held by corporate bodies in the case of corporate entities. The measure is executed by transferring possession of the assets to the administrator, with the necessary public registry updates. The administrator is required to submit regular reports. Upon expiration, the court may revoke the measure, apply judicial control, or order the confiscation of assets deemed to be the product of illicit activities. If there is a risk of asset loss or disposal, a request for seizure may be made. See FINOCCHIARO, A. La riforma del codice antimafia (e non solo): uno sguardo d'insieme alle modifiche appena introdotte. *Diritto penale contemporaneo, Rivista trimestrale*. 2017, No. 10, pp. 251 ff.; MANGIONE, G. Le misure di prevenzione. In: Alberto Cadoppi - F. Canestrari - Adelmo Manna - G. Papa (eds.). *Trattato di diritto penale, Parte generale, III, La punibilità e le conseguenze del reato*. Torino, 2014, p. 478; MENDITTO, L. Le misure di prevenzione personali e patrimoniali. *La confisca allargata (art. 240-bis c.p.)*. 2019, Vol. 1; MERLO, M. *Il contrasto allo sfruttamento del lavoro e al "caporalato" dai braccianti ai rider. La fattispecie dell'art. 603 bis c.p. e il ruolo del diritto penale*.Torino, 2020, pp. 100 ff; TONA, G., VISCONTI, A. Nuove pericolosità e nuove misure di prevenzione: percorsi contorti e prospettive aperte nella riforma del codice antimafia. *Legislazione penale*. 2018, pp. 7 ff; ZAMBUSI, G. Le misure di prevenzione. In: G. Cocco - R. Ambrosetti (eds.). *Trattato breve di diritto penale. Parte generale II, Punibilità e pene*. Padova, 2022, p. 592 ff.

[35] Similarly, see CONSULICH, F. Controllo del comportamento economico deviante ed evoluzione del diritto penale d'impresa. *Rivista trimestrale di diritto penale dell'economia*. 2024, No. 1 - 2, p. 34.

According to the accusation, the company facilitated the commission of the offense under Article 603-bis of the Penal Code by outsourcing part of its production to companies that, in turn, subcontracted certain processes to third-party Chinese firms involved in the illegal exploitation of labor. In this case, the alleged "reckless facilitation" under Article 34 of Legislative Decree 159/2011[36] was attributed to the failure to conduct proper oversight of the supply chain.[37] Upon learning of the outsourcing arrangements, the company failed to take steps such as formally requesting verification of the subcontracting chain or authorization for the subcontracts, up to the termination of commercial relationships.[38] The connection with the 231 system is even more significant in this case. The court accepted the prosecutor's argument that the commission of the offense under Article 603-bis of the Penal Code was facilitated by the general lack of organizational models compliant with Legislative Decree 231/2001. The court instructed the newly appointed judicial administrator to adopt an organizational model in line with this regulation to prevent criminal conduct,

[36] This, at least in terms of the negligent blame arising from the company's inaction. In order to avoid liability for the actions of others, the Court of Milan, 3 April 2024, in Giurisprudenza Penale Web, 11 April 2024, affirmed that for the application of the judicial administration measure, it is necessary for the company to exhibit at least a level of culpable conduct. This is particularly important because the purpose of the institution is not punitive but preventive: the goal of Article 34 of Legislative Decree 159/2011 is not to punish the entrepreneur who is part of a criminal organization, but to counter the illegal contamination of healthy businesses by subjecting them to judicial control, with the aim of swiftly removing them from criminal infiltration and returning them to the free market once cleansed of contaminating elements. Furthermore, it is commonly accepted that judicial administration does not require that the facilitated activity be illegal, as it is sufficient that the beneficiary is at least proposed for a prevention measure or is under criminal investigation for one of the listed offenses. It is also not necessary for the "facilitating" economic activity to be carried out in an illegal manner, provided that the activity, even if lawful, contributed to benefiting certain individuals. Moreover, the only negative condition outlined by the law would be the absence of the requirements to apply a preventive measure to the entrepreneur or the individual engaging in the facilitating economic activity. The individual must be a third party in relation to the beneficiary, and their activities must be genuinely under their control; otherwise, if the entrepreneur were merely a front for the facilitated party, their assets could immediately be targeted for seizure and confiscation under preventive measures, which could affect the entire assets that the proposed individual can directly or indirectly control, even through fictitious ownership structures.

[37] Court of Milan, Preventive Measures Section, 3 April 2024, published in Giurisprudenza Penale Web, 11 April 2024.
See also: Court of Milan, Preventive Measures Section, 15 January 2024, in Giurisprudenza Penale Web, 23 January 2024; Court of Milan, Preventive Measures Section, 6 June 2024, in Giurisprudenza Penale Web, 14 June 2024; Court of Milan, Preventive Measures Section, 22 October 2024, in Giurisprudenza Penale Web, 26 October 2024. On this topic, see: CIVELLO**,** G. Negligent facilitation of "caporalato" and judicial administration as a preventive measure. *Lavoro e Giurisprudenza*. 2024, No. 8 – 9, pp. 823 ff; MERLO**,** S. The fight against "grey caporalato" between prevention and repression: Notes on Court of Milan, Preventive Measures Section, Decree of 7 May 2019, No. 59, Pres. Roia, Ceva Logistics Italia S.r.l. *Diritto Penale Contemporaneo – Rivista Trimestrale*. 2019, No. 6, pp. 171 ff.

[38] See ARBOTTI**,** G. La prevenzione patrimoniale "recuperatoria" al cospetto della realtà di impresa: ambizioni legittime, perduranti criticità, rischi occulti. *Rivista trimestrale di diritto penale dell'economia*. 2022, No. 3 – 4, pp. 695 ff; BIRRITTERI**,** R. I nuovi strumenti di bonifica aziendale nel codice antimafia: amministrazione e controllo giudiziario delle aziende. *Rivista trimestrale di diritto penale dell'economia*. 2019, No. 3 – 4, pp. 837 ff; CHIARAVIGLIO**,** M. La misura di prevenzione dell'amministrazione giudiziaria dei beni connessi ad attività economiche; due pronunce del Tribunale di Milano. *Rivista dei Dottori Commercialisti*. 2017, No. 1, pp. 137 ff; CHIONNA**,** G. I rapporti di impresa nella "novella" 2017 al codice antimafia e l'amministratore giudiziario dei beni "aziendali". *Rivista delle società*. 2018, No. 2 – 3, pp. 615 ff; MANGIONE**,** G. La contiguità alla mafia fra "prevenzione" e "repressione": tecniche normative e scelte dogmatiche. *Rivista italiana di diritto e procedura penale*. 1996, No. 2 – 3, pp. 714 ff; MAUGERI**,** S. 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. *Archivio penale*. 2018, No. 1, pp. 368 ff.

such as that prescribed under Article 603-bis.[39] The link between 231 models and judicial administration had already been emphasized in legal doctrine, where it was argued that, in determining whether the conditions for judicial administration or control over a company are met, the judge may also rely on indicators intrinsic to the organization and operations of the business. As noted, it is precisely the development of the organizational structure that explains the judicial concept of "reckless facilitation".[40] The topic is undoubtedly complex and would merit a more detailed discussion. However, what is important to highlight here is that 231 models have now become a "general paradigm for controlling criminal risk," beyond their initial focus on corporate criminal liability.[41] Therefore, extending the model to the supply chain does not seem to represent a radical departure from the legal framework governing corporate criminal responsibility.

CONCLUSIONS

The final section of this paper addresses the challenges associated with the transposition of the Directive into the national legal system. As previously noted, while certain elements of the Directive appear to complement existing regulatory frameworks, others underscore significant divergences. In some instances, the relevant regulatory regimes may even overlap or conflict, making a careful consideration of both the methods and the timing of the Directive's implementation not only advisable but essential.

Should the national legislature, in the process of transposing the Directive, choose to adopt a system distinct from that established under Legislative Decree No. 231/2001–as the Directive arguably requires–this could result in undesirable regulatory duplication. For example, in the event of an environmental offence with adverse ecological consequences, the same organisational failure could give rise to two separate sanctions: one under Legislative Decree No. 231/2001, and another pursuant to the transposed Directive.

Moreover, if one considers the potential application of preventive measures such as judicial administration–particularly in contexts involving labour exploitation practices like caporalato (i.e., the unlawful intermediation and exploitation of both migrant and domes-

[39] According to ROIA, F., RAMONI, I. L'amministrazione giudiziaria come strumento di prevenzione dello sfruttamento lavorativo nella giurisprudenza del Tribunale di Milano. In: M. Ferraresi – Sergio Seminara (eds.). *Caporalato e sfruttamento del lavoro: prevenzione, applicazione, repressione. Un'indagine di diritto penale, processuale penale e del lavoro.* 2024, *ebook*, p. 263, this represents "a reversal of perspective," where 231 models must "be concretely able to prevent their employees from committing crimes, but also to prevent their suppliers from committing crimes and, in any case, to avoid contracting with those who commit them.". See also CONSULICH, F. *Controllo del comportamento economico deviante ed evoluzione del diritto penale d'impresa.* p. 33.

[40] Ibid., p. 33. See SELVAGGI, N. Criminalità organizzata e responsabilità dell'ente. *Rivista trimestrale di diritto penale dell'economia.* 2020, No. 3 – 4, p. 747. According to VITARELLI, F. *Lo sfruttamento del lavoro dei "riders" tra prevenzione e repressione. Società.* 2023, No. 1, pp. 83 ff. See also DE FLAMMINEIS, S. La mappatura del rischio da reato nel commissariamento e nell'amministrazione giudiziaria tra attualità e prospettive. *Diritto penale contemporaneo.* 2015.

[41] MONGILLO, V. Anatomia della prevenzione economico–aziendale antimafia. *Rivista trimestrale di diritto penale dell'economia.* 2023, No. 3 – 4, p. 527. A similar obligation is explicitly provided under Article 34-bis of Legislative Decree No. 159/2011 regarding the so-called judicial control of companies: paragraph 3, letter (d) authorizes the court to require the court-appointed administrator "to adopt and effectively implement organizational measures, including those pursuant to Articles 6, 7 and 24-ter of Legislative Decree No. 231 of 8 June 2001, as subsequently amended."

tic workers in the agricultural sector)–the regulatory burdens could increase further still. A single organisational shortcoming might then simultaneously activate the 231 regime, the Directive's due diligence framework, and the relevant preventive measures, with significant implications concerning the prohibition of double jeopardy (ne bis in idem).[42]

It is true that the sanctions under Legislative Decree No. 231/2001 are imposed by criminal courts, whereas those envisaged by the Due Diligence Directive would be administered by an administrative authority. It is also indisputable that the 231 system is triggered by the commission of criminal offences, while the Directive focuses on "adverse impacts," regardless of their criminal qualification. Furthermore, judicial administration, as established by Article 34 of Legislative Decree No. 159/2011, constitutes a preventive, rather than punitive, mechanism.

Nonetheless, despite the preventive nature of judicial administration–and acknowledging that this matter warrants a more thorough examination beyond the scope of this paper–the risk remains clear: namely, the reproduction of legal dynamics already observed in the context of tax infringements under Legislative Decree No. 471/1997. In that case, although sanctions are formally imposed by the Revenue Agency, they may, in certain instances, be classified as "substantially criminal" under the Engel criteria, thereby raising ne bis in idem concerns in relation to the 231 regime.

Consider, for example, a scenario involving an environmental offence that also results in an adverse environmental impact. In such a case, a company could face dual sanctions for the same organisational fault: one under Legislative Decree No. 231/2001 and another under the Directive. Similarly, in a situation involving labour exploitation triggering judicial preventive measures, the same organisational failure could fall simultaneously within the scope of the 231 framework, the due diligence obligations imposed by the Directive, and judicial administration provisions.

In such contexts, instances of double jeopardy would be far from rare. While it is important to note the procedural distinctions–namely, that the 231 regime entails criminal sanctions adjudicated by a court, whereas the Directive involves administrative penalties–it is equally important to recognise the potential for convergence. As in the case of tax sanctions imposed under Legislative Decree No. 471/1997, administrative measures may still be regarded as "essentially criminal" within the meaning of the Engel jurisprudence, thereby engaging double jeopardy protections vis-à-vis the 231 framework.[43]

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[42] Vincenzo Mongillo gave a clear explanation of this phenomenon at the conference held on October 11, 2024, at the University of Pisa, titled *"La Corporate Sustainability Due Diligence Directive (CSDDD). Contesto, contenuti, prospettive: una riflessione interdisciplinare*".

[43] MONGILLO, V. *Anatomia della prevenzione economico – aziendale antimafia.* p. 533 notes that courts might circumvent the *ne bis in idem* prohibition between the 231 regime and judicial administration by "appealing to the different labelling" of the respective proceedings–an approach arguably supported by the general principle of procedural autonomy in preventive matters, enshrined in Article 29 of Legislative Decree No. 159/2011. Nonetheless, it appears undisputed that the aim of the measure under Article 34 of the same decree is preventive rather than punitive: its purpose is not to sanction entrepreneurs complicit in criminal organisations, but rather to safeguard legitimate businesses from unlawful contamination by subjecting them to judicial control and reintegrating them into the free market once "cleansed" of criminal infiltration. Moreover, judicial administration does not require the facilitated activity to be illicit per se; it is sufficient that the beneficiary of such facilitation is merely proposed for a preventive measure or under investigation for one of the listed offences. Nor must the facilitative conduct itself be unlawful, provided that, even when performed lawfully, it contributes to the benefit of individuals under scrutiny.

In my view, the only viable path forward lies in transposing the Directive in a manner that avoids both regulatory redundancy and ne bis in idem concerns. This would require the inclusion of a safeguard clause expressly preventing the simultaneous application of sanctions under both the 231 system and the Directive's due diligence framework.

While this conclusion may appear straightforward, it is important to recall that the debate is still in its early stages. The Directive was only published in June of this year, and any observations or critiques must, for the time being, be regarded as preliminary.