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The role of the future EU legislation on mandatory human rights and environmental due diligence in the agriculture and food supply chain

Written by
Marco Fasciglione - CNR
Martina Rubino de Ritis - CNR
Francesca Cucchiara - HRIC
Beatrice Pesce - HRIC
Maria Pia Sacco - HRIC
Marta Bordignon - HRIC
Giacomo Cremonesi - HRIC

Coordination, Assistance and Editing by
Margherita Romanelli (WeWorld) and Bianca Mizzi (WeWorld)

Layout by
Studio Cloro

WeWorld General Coordination
Margherita Romanelli (International Advocacy, Policy, Partnership and Evaluation Coordinator)
Bianca Mizzi (Policy and Advocacy Officer)
David Wiersma (Project Manager)
Camilla Serlupi (Project Manager)
Rachele Ponzellini (Communication Expert)
Stefano Piziali (Head of Advocacy Policy Partnership and European & Italian Programmes Departments)
Andrea Comollo (Head of Communication)

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Executive Summary

Key findings

- Human rights violations are a systemic problem in the agriculture and food supply sector, and in the global production model in general. Adopting EU legislation that sets obligations regarding human rights and environmental due diligence (HREDD) is certainly an important step, albeit not a sufficiently large one, in establishing global production processes that respect the human rights of individuals, local communities and populations.
- With specific reference to the agriculture and food sector, new European laws on HREDD could play an essential role in bridging the current gap in legislative tools on human rights due diligence regards: the guaranteeing of fair and decent working conditions; forms of discrimination against women, migrants and other vulnerable groups; unfair business practices that can in turn propagate or cause further human rights violations.
- The transnational framework regarding human rights due diligence stands as being highly fragmented. In fact, the existing diligence tools vary significantly in terms of legislation type, content of set obligations, scope (both regards the relevant sectors and the list of protected human rights), company size, implementation method, liability systems and envisaged remedy type. The New European legislation setting out an aligned regulatory framework would certainly be useful in overcoming this fragmentation, at least regards the European regional context.
- Adopting new legislation on HREDD obligations could stand as a valid tool for strengthening victims' access to remedy provided that the barriers preventing victims from accessing effective remedy are removed from the national legal systems of the EU states.
- Future European HREDD legislation should not find itself instituted in a national legislative context marked by a complete void. Italian national legislation in fact already contains – albeit in sector-related regulations – mechanisms that set risk-assessment obligations for enterprises, following a prevention and protection logic and with methods that are extremely similar to HRDD processes. The challenge facing Italian lawmakers will be that of coordinating the future EU legislation with all these regulations.

The research

In April 2020, the European Commissioner for Justice, Didier Reynders, announced an EU legislative initiative on mandatory due diligence in supply chains. This announcement came after an extensive series of studies and analysis conducted by EU institutions and other multilateral organisations on the subject of business and human rights. These studies highlighted an inadequate voluntary approach – based mainly on self-regulation by companies (e.g. also known as corporate social responsibility) – to the issue of the negative impact on human rights by the economic operations of enterprises on a global scale. However, these studies also underlined that States, businesses and civil society organisations are increasingly in favour of European Union legislation that aims to introduce binding corporate obligations regarding human rights and environmental due diligence that can be applied throughout the supply chain. In February 2021, the European Parliament Committee for Legal Affairs (hereinafter EP) presented an EP draft resolution recommending that the Commission adopt a legislative tool, and more specifically in the form of a European directive, to regulate due diligence and corporate liability. The resolution was approved by the EP on 10 March 2021 with an overwhelming majority (504 votes in favour, 79 against and 112 abstentions; see European Parliament Resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability [see 2020/2129(INL), A9-0018/2021]. The European Commission published the draft directive on 23 February 2022. Conducted in 2021, the present research takes into consideration both the contents of the EP resolution and the proposed directive drafted by the Commission, as benchmarks in analysis and for formulating the recommendations and advocacy activities (the article numbering present in the English version of the draft directive has also been used for the purposes of this analysis).

This study was commissioned by WeWorld within the project ***Our Food Our Future*** (CSO-LA/2020/411-443) and funded by the European Commission as part of the DEAR (Development Education and Awareness Raising) Programme, implemented with the involvement of 15 other European organisations. Its aim is to analyse the role and potential impact that the future EU legislation on corporate human rights and environmental due diligence could have on the Italian agriculture and food sector, particularly in terms of fighting human rights violations of a systemic nature that take place in this specific sector: labour exploitation, marginalisation and violence that both female and male workers are subjected to in the agriculture and food supply chain, particularly in the case of migrants and citizens from countries other than Italy.

These research activities were carried out by combining traditional research methods (reviewing the literature, cataloguing and analysing regulations and – where relevant – the jurisprudence, and studying databases) and bottom-up analysis methodologies regarding specific circumstances. The research also drew on the data and results collected in previous studies analysing the exploitation of migrants and women within the agricultural labour market. Even if the future legislation will also target environmental due diligence, the current study focuses exclusively on the impact deriving from the mandatory human rights due diligence introduced by the future legislation. The concluding recommendations list a series of directions that European institutions should pursue in order to improve the content of the future legislation on HREDD. Regarding Italian institutions, the recommendations set out which main issues may arise – in light of the current contents of the proposed directive – and which challenges might have to be tackled when implementing the EU legislation once it has been adopted. In any event, these recommendations are mutatis mutandis relevant also at a global level and to other contexts. This research does not aim to provide thorough analysis of the entire existing regulatory framework, or of the one under construction, regarding corporate human rights due diligence, nor the countless problems connected with this question. Instead, it intends to lay the foundations for further debate and research on how to ensure that the future European HREDD legislation will have a positive impact on protecting human rights in the agriculture and food sector and throughout supply chains in general.

The regulatory framework regarding Human Rights Due Diligence

The definition of corporate human rights due diligence (HRDD) is set out in various international instruments. There are two main international reference frameworks on the subject: the United Nations one, contained in the UN Guiding Principles on Business and Human Rights (UNGPs), adopted in 2011; and that by of the OECD (Organisation for Economic Co-operation and Development), contained in OECD Guidelines for Multinational Enterprises, adopted in 1976.

Generally speaking, a distinction may be made between three broad HRDD regulatory instruments, as follows: voluntary-based instruments nature; mandatory reporting instruments; and binding human rights due diligence instruments.

While the first instruments sets out a general operational framework containing expectations of what human rights due diligence is and how to put it into practice – but without setting mandatory legal obligations – the other two categories establish obligations for companies. The difference between these two latter tools is that HRDD obligations are an indirect and accessory measure accompanying the envisaged reporting obligations, while the third type forces businesses to implement due diligence to assess, prevent and mitigate human rights risks. On closer inspection, the existing tools (or those under adoption) in these three broad regulatory systems show differences – even significant ones – with respect to content, field of application, etc. This diversity sometimes generates some critical issues in terms of effectively protecting human rights in the business sector.

The future European legislation on mandatory human rights and enviromental due diligence

The debate in the European Union on business and human rights has evolved from an initial phase focusing essentially on (voluntary) social responsibility initiatives by companies to a phase characterised by growing attention to the impact on human rights caused by the activities of European enterprises, from the perspective of legislative regulation and by setting legal obligations for companies. More recently, efforts by EU institutions have been channelled towards integrating the principle of corporate governance sustainability within EU legislation on human rights and environmental protection. This process is also one of the cornerstones to what is known as the European Green Deal (www.ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal).

The future directive should introduce horizontal due diligence obligations:

- for large-scale enterprises classified on the basis of their number of employees and turnover;
- and also, for those enterprises regulated by the laws of a non-EU country but that operate within the EU market;
- for enterprises operating in specific sectors with a high violation risk (textiles and manufacturing; agriculture, forestry and fishing; mining and extraction), lower thresholds apply in terms of size and turnover.

The legislation should require enterprises to adopt a human rights due diligence strategy applying to the entire value chain and indicating the prevention and mitigation measures regarding negative impact, including potential negative effects. In the event of negligent behaviour, mechanisms are set out for managing complaints and out-of-court and court-based remedies. The future legislation will guarantee that all EU member states adopt definite and dissuasive sanctions as well as ensure appropriate compensation for victims of abuse. Although the draft directive as a whole represents an important step in the process of building an EU framework on business and human rights issues, several points in the Commission proposal raise some concerns. Above all, not always do the measures set out in the draft directive do not always seem to be aligned with international standards on the matter, and notably with the UN Guiding Principles of 2011.

The impact of the future European legislation on mandatory human rights and enviromental due diligence

For the purposes of this study, the analysis focused firstly on the impact that the future legislation could have on categories of particularly vulnerable persons and those at risk of being victims of human rights violations in the agriculture and food supply sector. From this point of view, introducing HREDD legislation in Italy could act as an effective ***prevention*** tool.

In fact, enterprises will be asked to identify and assess the nature and context (also geographical) of their operations, as well as to evaluate whether their activities and business relations cause or contribute to generating negative impact, or whether these are directly connected to the negative impact. This assessment will be conducted using a risk-based monitoring method that takes into account the likelihood, severity and urgency of the negative – both actual and potential – impact on human rights and the environment. This formulation is certainly appropriate to including the 'risk' of human rights violations that, specifically in the agricultural sector, are connected with labour exploitation, with any forms of discrimination such as those towards women, or with unfair business practices that affect fair and correct payment of wages. Furthermore, and especially in this sector, the scope for state authorities to carry out inspections to check corporate compliance with the obligations set out by the directive would definitely have the effect of making any gangmastering or high-risk situations emerge.

Lastly, it should be underlined that the future legislation should introduce mandatory due diligence regarding any negative impact not only directly caused by companies in the agriculture and food sector but also originating from established business relationships or value chains. In short, the future legislation will apply also ***to supply chains*** in the agriculture and food sector. However, some amendments to strengthen the measures currently contained in the draft directive will be necessary (see below, the recommendations emerging from this research) to enable the future legislation to actively achieve positive outcomes. For instance, with reference to the specific agriculture-sector risks described above, the draft directive correctly identifies the agriculture and food supply sector assupply sector as one of those at high risk of negatively impacting on human right on human rights, impacting on human rights, but then restricts application of mandatory due diligence solely to enterprises of a certain size (with, on average, over 250 employees and a net worldwide turnover of more than EUR 40 million in the last financial year of the financial statements), with

the exclusion of a huge percentage of SMEs that can nevertheless have a significant negative impact on human rights.

This study also analysed the feasible impact of the future legislation on the Italian national legal system. In order to make it easier to effectively conduct the various due diligence processes and to avoid over-burdening enterprises – especially small-scale ones – a complex task of coordinating future European legislation with existing regulations will have to be performed. This is particularly pertinent in relation to Legislative Decree No. 231/2001 which, in regulating the administrative liability of legal entities deriving from offences, encourages enterprises to introduce complete due diligence processes and their relative compliance systems for the purposes of preventing a series of offences, including specific human rights violations and serious environmental offences. Obviously, the scope and the aims of the administrative liability of legal entities are different from those of human rights due diligence. The need for coordination also applies in respect to Italian legislation implementing ILO Convention No. 190 on violence and harassment, and the other regulations establishing risk-assessment obligations for companies with respect to safeguarding persons' rights (see, for example, the regulations on occupational health and safety that have already been integrated with Legislative Decree No. 231/2001).

Adopting the EU legislation on HREDD can stand as a valid tool not only to prevent offences but also ***to strengthen victims' access to remedy,*** helping to remove ***the practical and legal barriers to accessing justice and effective remedy.*** Such a legislation might help in eliminating legal and practical barriers impeding access to remedy, especially for foreign citizens petitioners. These barriers are even greater when, for instance, the victims are female migrant workers; here their vulnerability to risks of multiple forms of discrimination derives from their gender and migrant status. The setting forth of corporate human rights due diligence obligations, the system of sanctions connected to this legal instrument as well as the inclusion of international private EU law reform within the future directive are all elements potentially apt to contribute to build an ***effective tool for enabling victims of human rights violations occurring in non-EU countries to pursue legal action at courts in EU member countries.*** This would allow victims to obtain compensation for damages if the violations are caused by European enterprises or if the EU enterprises have contributed to the violations or are directly connected to them through their business operations.

The ***strengthening of access to remedy*** is also at the basis of the request to EU states to provide not only for corporate criminal liability (where compatible with national legal systems) but also to establish civil liability in case of infrigments of the due diligence duty. The proposal of directive, indeed, foresees corporate civil liability for damage caused by human rights and environmental violations, with the exercise

of HREDD as a tool exonerating enterprises from liability (i.e. due diligence defence). Similarly, and within this perspective of legislation coordination and simplification of victims' access to justice, the transposition of the civil liability rules foreseen by the current text of the future legislation in the italian legal system might rely on ***class actions mechanisms***. The impact of this way of implementing the directive could be particularly significant. In fact, the reform of the class action legislation, which came into force in Italy in 2021, has extended the number of subjects entitled to propose the action, making this tool no longer reserved solely to specific consumers associations. In other words, ***all non-profit associations whose statutory objectives include protecting human rights*** (provided these associations are listed on the public register at the Ministry of Justice) ***may submit a class action***. In sum, if the implementation of the directive and the corporate civil liability system provided for by the future directive were to take place through the class action legislation, then civil society organisations would be empowered to undertake class actions also in relation to the violations of the due diligence duty established by the directive.

Similarly, the content of the draft directive establishes that enterprises must set up complaint mechanisms that enable ***specific categories of subjects*** to express their worries regarding potential or existing negative impacts connected with an enterprise's business. Included among the subjects specified in the directive are also associations and other civil society organisations active in sectors connected with the relevant value chain (the EP draft resolution of 2021 also mentioned those with statutory objectives of defending human rights). These mechanisms must be managed in compliance with international standards (in particular, Principle 31 of the UNGPs) and must guarantee the anonymity and safety of the stakeholders. Also from this perspective, the future legislation will have to be coordinated with the internal reporting procedure known as whistleblowing, already provided for in Italy under Legislative Decree No. 231/2001, for the purpose of facilitating information collection by the corporate bodies assigned to checking compliance.

Again with reference to ***the role of associations and other civil society organisations***, the directive should ascribe a central role to these, both in terms of ***monitoring*** corporate compliance with the obligations fixed by the future legislation and from the point of view of ***cooperation*** with public authorities and enterprises in planning and implementing a range of measures. The directive should set out specific measures for ***involvement*** by associations and civil society organisations in debate with enterprises to determine the due diligence strategies of this latter group, as well as for access by the associations to the ***complaint mechanisms set up by the enterprises***, for their ***consultation*** in recognition of out-of-court remedy to victims by enterprises and, lastly, for the ***hearing*** of associations by the national authorities

appointed to monitor directive implementation by enterprises. On this matter, the draft directive currently requires the consultation of stakeholders by the enterprises only 'when relevant'. Consequently, a very limited role is recognised to stakeholders – a category including the employees of an enterprise, the employees of its subsidiary companies, and other individuals, groups, communities or subjects whose rights or interests are or could be infringed.

With specific reference to the verification system, the text of the EU draft directive provides for creation of a particularly solid monitoring mechanism, structured at national and European levels. EU member states are required to institute independent regulatory authorities to undertake routine inspection as well as investigation based on 'founded and reasonable' concerns raised by third parties. The ***verification mechanism should establish sanctions for enterprises*** that fail to adopt corrective action regarding victims. Aside to the national authorities the proposal of directive foresees the establishment of a European Due Diligence Network of national regulatory authorities, operating at a European level.

Regarding the scope of application of the proposal of directive, it should be underlined that the draft by the Commission diverges significantly from the European Parliament resolution of 2021 that recommended to the Commission that the future legislation, including ***HRDD obligations, should also apply to small- and medium-sized enterprises (SMEs)***, provided that these are listed on the stock exchange or operate in high risk sectors. Impact assessment of the draft directive however reveals that the intention is to fully exclude SMEs from its field of application. The obligations established in the draft in fact only apply to large-scale companies, and the list of sectors recognised by the Commission as posing a high risk of negative impact (the list is incomplete since conflict-affected areas, for instance, are not even mentioned) only includes large-scale enterprises as addressees of due diligence obligations. ***Challenges also emerge from the use of the concept of 'established business relations' as a basis for defining the field of application for obligations deriving from the draft directive.*** This concept is unknown in international law on business and human rights (which instead relies onto the concept of an impact which is 'directly linked' to company products or services through its business relationships) and poses the risk of excluding from the directive scope negative impacts deriving from short-term business relations that nevertheless have serious and severe impacts on human rights and the environment. In particular, the use of this criterion could lead to mechanisms with an opposite incentivising effect: if short-term relations are not included in the field of application for the directive, enterprises could be tempted to regularly change suppliers in order to avoid due diligence obligations and their connected responsibilities. ***This all goes fully against the spirit and the content of the UNGPs!***

Lastly, the draft directive defines impacts on human rights by referring to an Annex, which includes an (incomplete) list of violations, and a general safeguarding clause, that refers to the pertinent United Nations and ILO tools. The list does not include particularly relevant instruments concerning the agriculture and food supply sector, such as ILO Convention No. 190 on Eliminating Violence and Harassment in the World of Work, or the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Not even regional European tools for respecting human rights are mentioned. And neither are the European Convention on Human Rights or the Charter of Fundamental Rights of the European Union.

Recommendations to European institutions

- ***Mandatory HREDD. Binding obligations on HREDD are essential.*** EU legislation introducing mandatory HREDD for European businesses is a necessary tool from the standpoint of human rights protection. The legislation should be ***consistent with the UNGPs***, which are the universally recognised international standards regarding business and human rights. Mandatory HREDD must ***apply to all*** internationally recognised ***human rights*** as well as ***environmental matters***. The list of international instruments contained in the Annex of the directive fails to include conventions and treaties that are particularly relevant for the agriculture and food supply sector, such as ILO Convention No. 190 on Eliminating Violence and Harassment in the World of Work, the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and regional European human rights tools such as the European Convention on Human Rights or the Charter of Fundamental Rights of the European Union. The mere 'existence on the books' of corporate organisational procedures and human rights due diligence tools cannot stand as automatic exemption from liability for the enterprise. These procedures and tools, indeed, must be effectively implemented. In other words, due diligence must not become a box-ticking exercise. More in general, the future legislation must include effective mechanisms for verifying compliance. ***The emphasis given to the role of 'contractual guarantees'*** from business partners and third-party checks on compliance with these guarantees raises several worrying questions. These are mechanisms known for their inadequacy in terms of effective prevention and mitigation of human rights violations. In addition, paired with the mechanism for due diligence defence, these have an effect of shifting the burden deriving from the obligations set out in the draft directive onto smaller-sized companies, despite the approach of the proposal of directive is to exonerate SMEs from the relative obligations.
- ***Access to justice.*** The future legislation should force EU member states to ensure effective access to justice for victims and the most vulnerable persons (including those in non-EU countries), such as women, migrants, children, indigenous populations, disabled persons and other groups that are commonly discriminated against or vulnerable. More specifically, the future legislation should oblige EU countries to pass ***laws that make it possible and simpler for individuals to undertake collective action,*** such as class action, regarding human rights violations connected with business activities. The future legislation should

require EU states to introduce measures to favour financial and legal support to civil society organisations, as well as the scope for these entities, national institutions for human rights, public advocates and consumer organisations to act on behalf of victims. Lastly, the future legislation should require EU countries to reform their legal assistance rules so that victims may receive legal support in the event of particularly complex and costly litigation.

- ***Removal of barriers to access to remedies for foreign victims of EU companies operations taking place outside the European Union.*** The future legislation represents an opportunity for European institutions to reform European institutions ***to reform the international private law regulations in the European Union so as to ensure easier access to remedy for petitioners from other countries, facilitating the exercise of jurisdiction by EU courts for civil actions on human rights violations committed by enterprises with registered office in or operating in an EU member state***, when: a) the damage caused in another country may be ascribed to a company controlled by that enterprise or to another with which the company has business relations; or b) in the case that the right to a fair trial or access to justice require it. Furthermore, the future legislation should induce the European institutions to reform the international private law regulations in the European Union so as to facilitate application of the laws of EU countries, allowing the petitioner to opt for: the laws of the country where the event causing the damage took place; the laws of the country where the parent enterprise has its registered office; or, should there be no registered office in an EU member state, the laws of the country where the company operates.
- ***Creation of civil liability mechanisms.*** Alongside the authority of EU states to establish criminal liability systems, the future legislation needs to confirm inclusion of corporate civil liability mechanisms for cases in which enterprises violate the HREDD obligations set for the purpose of ensuring ***appropriate compensation for damage caused to victims.***
- ***Reversal of the burden of proof.*** The future legislation should include a general measure regarding victims' access to means of proof, and one establishing the reversal of the burden of proof, from the petitioner to the enterprise, when facts and events relevant for deciding a complaint are entirely or partly, in the exclusive knowledge of the defending enterprise.
- ***Broader field of application.*** The future legislation must also include SMEs, and should fix on States the duty to adopt appropriate assistance and support measures in helping SMEs in applying the directive. Current draft content excluding SMEs is not consistent with the UNGPs. It is also contradictory, since the mechanism for making the HREDD obligations work shifts in practice, the burden of compliance onto the smaller enterprises. Furthermore, the

use of ***the concept of 'established business relations'*** needs to be revised as a basis for defining the scope of application of the directive obligations throughout the value chain. Closer examination shows that this concept is unknown in international law on business and human rights, and poses the risk of excluding from the directive field of application the negative impacts deriving from short-term business relations that nevertheless have serious and severe impacts on human rights or the environment.

- ***Inclusion of the agriculture and food supply chain among the 'high-risk' sectors.*** It is important that the agriculture and food sector remain among the high-risk business sectors with significant impact on human rights and the environment.
- ***Adopting a gender dimension.*** The text of the future legislation should be drafted without disregarding the need for a gender dimension. For this goal, although its Annex refers to the Convention on the Elimination of All Forms of Discrimination Against Women ***(CEDAW)***, the future legislation should also look to: the Gender Guidance of the UNGPs; the report by the same name by the ***UN Working Group*** on business and human rights; the General Recommendation on ***migrant women workers***; and the ***ILO*** Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Enterprises should be expressly requested to ***integrate the gender dimension in implementation of all phases of HREDD***, including the phases involving and consulting stakeholders, as well as corporate complaint mechanisms. Due diligence, in addition, should also cover both the actual and potential negative impacts on women's rights which an enterprise might cause or contribute to causing, or which might be directly connected, through its business relations, with its operations, products or services.
- ***HREDD and measures against violence and harassment in the workplace.*** In order to strengthen the gender dimension, the future legislation should establish mandatory HREDD to also include measures to prevent violence and harassment in the workplace, as ratified by ILO Convention N. 190 on Eliminating Violence and Harassment in the World of Work, which came into force in Italy on 25 June 2021. Oddly, this convention does not appear on the list of international human rights tools referred to for the draft directive.
- ***Sector action plans regarding HREDD and unfair business practices.*** Contrary to what was established by the EP resolution, the draft directive of the Commission does not require sector action plans for HRDD to be adopted by the EU states (formerly Article 11 of the EP draft). The future legislation should reinstate this important measure and integrate it regarding unfair business practices and purchase and pricing practices in the agriculture and food supply chain.

- ***Inclusion of HREDD in trade treaties*** stipulated by EU Countries with other States, and HREDD inclusion in the Policy Coherence for Development/Sustainable Development mechanism at EU and national levels.
- ***Stakeholder engagement and consultation.*** The future directive must require EU States to establish measures on the duty of enterprises to set up appropriate and effective consultation processes (including mechanisms for information, advice, document reception, reasoned responses to feedback and their publication) involving all the stakholders and vulnerable groups, such as local communities, indigenous populations, male/female workers, unions, civil society organisations, migrant women – including those from non-EU countries where the company operates or has business partners – throughout the due diligence process This consultation must always be included, and not only 'when relevant', as stated in the current text of the draft directive. Regarding this aspect, EU member States should apply what is set out in the UN Guiding Principles (Principle 18) and implement methods taking into account linguistic barriers and other potential obstacles to effective participation. In particular, it is recommended that the stakeholders mentioned in the directive should expressly include not only unions and workers' representatives, but also other potential stakeholders such as local communities, indigenous populations, male/female workers, unions, civil society organisations and migrant women – including those from non-EU countries where the enterprise operates or has business partners. The directive must also set out the obligation for companies to establish an effective complaint mechanism, and ensure that an absent or ineffectual mechanism of this type is punishable under the future law. The exclusion from the draft directive of organisations having statutory human rights protection goals – which are instead included in the EP resolution – is a serious restriction, since in many non-EU countries these organisations defending human rights are among the few that are present and able to intervene to report violations and to support victims. The directive must specifically include these organisations on these grounds.
- ***Adequate financial support to civil society associations.*** The future legislation must encourage EU states to ensure ***adequate funding*** to civil society organisations to enable them to play an effective role in supporting victims and monitoring human rights compliance by enterprises.
- ***Transparency and accountability.*** The future legislation must require enterprises to punctually and thoroughly disclose the information regarding their due diligence processes and their operational and business subsidiaries/partners/suppliers, since this is essential information for monitoring, engagement and effective access to justice.
- ***Multi-stakeholder monitoring.*** The future

legislation must include clear measures for implementing and assigning the duties for its application. Civil society organisations and all interested parties, including entities representing workers, should also play a specific role in supplying independent monitoring on the effectiveness of corporate risk-assessment tools and on legislation application.

- ***Human rights advocates.*** The future legislation must include measures to safeguard and protect environmental and human rights advocates against possible SLAPP litigations and other forms of victimisation (threats, crimes, etc.) that may be triggered by their reporting of abuse or environmental or human rights violations by the enterprises required to put the HREDD into practice. Among the various aspects, the risks that have to be identified, assessed, prevented and mitigated by the enterprises must also include retaliation against environmental and human rights advocates. Companies must devise mitigation measures in conjunction with the advocates concerned, with particular attention on gender aspects and specific issues connected with minority groups. Enterprises must be held liable, at a civil level and should bear the related burden of proof, for any retaliation or lack of its prevention and, at a criminal level, in the event that an enterprise has caused or reasonably contributed to causing serious incidents such as murder or aggression towards human rights advocates who raise questions regarding the enterprise's activities and/or business relations, including cases when an enterprise fails to prevent an incident through due diligence. In addition, the European directive must require EU states to extend the legal protection of sources – as happens for journalists in many circumstances – also to environmental and human rights advocates who undertake legal action on behalf of communities or individuals affected under the directive, so that these advocates are not forced to reveal the names of the people made vulnerable by their action, thus avoiding their exposure to potential retribution.

Recommendations to Italian institutions

- ***Coordination in regulating the administrative liability of legal entities as set out in the Italian Legislative Decree No. 231/2001.*** Introducing regulations aimed at assuring the coordination between Decree No. 231/2001 and the future legislation on HREDD is recommended, particularly in reference to occurrence of offences identified under this decree and that constitute human rights violations. This would respond to the need to introduce 'effective, proportionate and dissuasive' sanctions, as set out by Art. 20 of the draft directive.
- ***Coordination with the measures on whistleblowing contained in the Italian Legislative Decree No. 231/2001.*** The future EU legislation will have to be coordinated with the measures of Decree No. 231/2001 regarding 'internal reporting' or whistleblowing in the event of situations not complying with those set out in the decree. The two regulations will need to be coordinated in terms of the subjects listed as eligible to present a complaint. In the future directive, this list is more inclusive (the stakeholders) than those who can undertake a whistleblowing procedure under Decree No. 231/2001 (only persons working with the legal entity).
- ***Coordination with the Italian legislative decree measures regarding unfair trading practices in business-to-business relationships in the agriculture and food supply chain***. More specifically, identification of coordination mechanisms among the entities appointed to check conformity with the various regulations (HREDD and unfair practices) appears as necessary. The exchange of information on complaints and data emerging from investigations for the purpose of pinpointing unfair practices within supply chains should be facilitated.
- ***Introduction of mechanisms necessary to monitoring and implementing the law.*** Introduction of appropriate mechanisms (including competent staff, adequate financial resources and a broad spectrum of investigative action) aimed at ensuring implementation and compliance with Italian and European regulations is recommended, also setting out effective, proportionate and dissuasive sanctions in the event of discrepancy or non-compliance.
- ***Creation of a national Italian commission on human rights.*** Completion of the legislative procedure for setting up a national commission on human rights (see Establishment of a National Commission for the Promotion and Protection of Fundamental Human Rights, Italian draft bills no. 855 and no. 1323) is necessary. It is important that the contents of the draft law be integrated with the amendments so that the commission's competences include

promotion and respect for human rights within corporate business activities as well as HREDD processes for all Italian companies or in any case for those operating in Italy.

- ***Adoption of the gender dimension.*** In adopting measures to reduce the legal, practical and other barriers to Italian legislative mechanisms in the event of human rights violations deriving from business activities, all EU States must pay close attention to the additional barriers that women have to face in the agriculture and food supply sector in order to access effective remedy.
- ***Strengthening of residency permit issuing for special protection reasons.*** It is advised that the issue of residency permits for special protection reasons (formerly Art 18 of the Italian Consolidated Law on Immigration) should be reinforced, also through training activities to magistrates and other sector operators, with a specific focus on the challenges posed by the agriculture and food supply sector.
- ***Completion of Italian transposition of the 'victims of crime' directive.*** Only in 2016 did Italy transpose Directive 2012/29/EU, which establishes minimum standards on the rights, support and protection of victims of crime, and this exceeded the time limits set out by the directive. In addition, transposition was incomplete, to the extent that this action is now the object of infringement proceedings by the European Commission. Full implementation of the directive is necessary also in relation to adopting the EU legislation on HREDD.

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