



**ITALIAN LEGISLATIVE DECREE  
No. 231/2001:  
A model for Mandatory Human  
Rights Due Diligence Legislation?**

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# Italian L.D. No. 231/2001

- **Corporate responsibility for crimes** perpetrated in the interest or to the advantage of a legal entity → *tertium genus* connected to criminal liability.
- Its scope has been **extended** over the years.
- Introduced due diligence process.



**Pioneer example of HRDD legislation?**

# Italian L.D. No. 231/2001 as a pioneer example of HRDD legislation

Included Human Rights violations (Articles 24 and following):

- Slavery
- Human trafficking
- Forced labour
- Juvenile prostitution and pornography
- Female genital mutilation
- Manslaughter and serious bodily harm incurred as the result of the breach of laws governing the safeguarding of workplace health and safety → **Thyssenkrupp**
- Employment of illegally staying Third-Country nationals,
- Specific environmental crimes (environmental disaster, environmental pollution, failure to decontaminate) → **ILVA**
- Racism and xenophobia
- Transnational organised crimes - Palermo Convention

## “231 Liability” - Legal requirements to be met (Articles 5 – 8)

- a) one of the crimes listed in L.D. No. 231/2001 is committed in the **interest** or to the **advantage** of the corporation;
- b) the crime has been committed by a **representative of the corporation** → high-level employees / employees “*managed or supervised*” by persons holding senior positions;
- c) an “**organisational fault**” within the corporation has been ascertained.

# Organisational fault

Failure to adopt and effectively implement “*compliance programs*” or “*organizational models*” (so-called “231 Models”) specifically designed to prevent the commission of crimes in the context of corporate activities.

- No legal obligation to adopt the 231 Models, but condition to avoid liability.
- Implies an **ongoing due diligence process** to identify, prevent, mitigate and account for how the risk of specific crimes are addressed.
- **Internal but Independent Supervisory Body** (Organismo di Vigilanza)

# Access to justice

- **Criminal Law and Procedure applies**  
→ Public Prosecutor's powers of investigations and access to information

*but*

- **High burden of proof**
- **Admissibility of the civil action is controversial**

Court of Cassation, Dec. 05.10.2010 vs  
“*ILVA*” case (Taranto Assises Court, Ord.  
04.10.2016)

“*Andria/Corato train wreck*” case (Trani  
Tribunal, Ord. 07.05.2019)

# Multinational groups and extraterritorial effects:

## a) Foreign companies operating in Italy

*Siemens AG* case (G.i.p. Milano, Ord. 27.04.2004)

“*Viareggio train wreck*” (Lucca Tribunal, Dec. 31.07.2017,  
Firenze Court of Appeal, Dec. 20.07.2019)

## a) Crimes committed partially in Italy, partially abroad (Art. 6 of Italian CC)

*Snamprogetti/Saipem* case (Court of Cassation, Dec. 12.02.2016)

“*OPL 245*” case – pending

## a) Offences occurred entirely abroad (Art. 4 L.D. No. 231/2001)

Only for a close number of serious offences against the national interest, whether the State where the violation took place has not initiated a prosecution against the corporation.

# Comparison with HRDD requirements

## Strengths

- ▶ Most severe human rights abuses included;
- ▶ Ongoing due diligence process
- ▶ Supervisory body
- ▶ Significant sanctions
- ▶ Criminal proceedings
- ▶ Extraterritorial effects

## Weaknesses

- ▶ Some human rights abuses are still not covered
- ▶ Not compulsory adoption of 231 Models
- ▶ No requirement for stakeholder engagement
- ▶ Lack of transparency
- ▶ High burden of proof
- ▶ No reference to the admissibility of civil action against the corporation





Link to the Report on Italian L.D. No.  
231/2001:

<https://it.humanrightsic.com/post/italian-legislative-decree-no-231-2001>

**THANK YOU**

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