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Labour Rights as Human Rights: the Prospects for Substantive and Remedial Protection Offered by Directive (EU) 2024/1760

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1. *Introduction*

The valuation of workers' rights as human rights is the subject of a wide-ranging and controversial debate[1] which starts from the possible ad-

[1] For an international labour framework, Alston (ed.), *Labour Rights as Human Rights*, Oxford University Press, 2005; Leary, *The Paradox of Workers' Rights as Human Rights,* in Compa, Diamond (eds.), *Human Rights, Labor Rights and International Trade*, University of Pennsylvania Press, 1996; Collins, *The Role of Human Rights in Labour Law*, in Collins (ed.), *Putting Human Rights to Work*, Oxford University Press, 2022; Bellace, Ter Harr, *Perspectives on labour and human rights*, in Bellace, Ter Harr (eds.), *Research Handbook on Labour, Business and Human Rights Law*, Edwar Elgar Publishing, 2019; Finkin, *Worker rights as human rights: regenerative reconception or rhetorical refuge?*, in Bellace, Ter Harr (eds.), *Research Handbook on Labour, Business and Human Rights Law*, Edwar Elgar Publishing, 2019, pp. 102-129; Collins, Mantovalou, *Human Rights and the Contract of Employment*, in Collins, Mantovalou (eds.), *The Contract of Employment*, Oxford University Press, 2016. For a general overview of the debate in the Italian labour doctrine, please refer to the reflections carried out by Perulli in the introductory paper of the *10th Seminar on International and comparative labour law, Labour Rights as Human Rights*, held at the Cà Foscari University of Venice from 3 to 6 June 2024; as well as Perulli, Brino (eds.), *A Global Labour Law: Towards a New International Framework for*

vantages that this interpretation offers for the full implementation of social protections, in the face of various forms of vulnerability and new protection needs in the path towards sustainability[2]. In this problematic context, the possibility of equating the fundamental rights of workers with human rights at work has been particularly discussed, both in doctrine and in jurisprudence[3].

Equally debated is the identification of the regulatory techniques – hard or soft, private or public, unilateral or agreed – that must accompany this path, as well as the possibility of identifying a set of *labour human rights* or globally shared *human rights at work*.

Even more complex is the assessment of the remedial effects[4] of the conceptual binomial *labour rights as human rights*: not only because of the difficulties in accessing direct and immediate protection measures for victims of injury, but also because of the identification of the parties against whom such claims should be brought. In fact, while in classic international law the obligations arising from human rights are imposed only on States or, at most, on subjects acting on their behalf, in the more recent perspective of *business and human rights*[5] these obligations also extend to private individuals

Rights and Justice, Giappichelli, Torino, 2024; Ales, Bell, Deinert, Robin-Olivier, *International and European Labour Law*, Nomos, Munchen, Oxford, 2018; Ales, *Diritti sociali e discrezionalità del legislatore nell'ordinamento multilivello: una prospettiva giuslavoristica*, in *DLRI*, 2015, 3, pp. 455-495; Fornasier, Stanzione (eds.), *The European Convention on human rights and its Impact National Private Law*, Intersentia, 2023.

[2] On the topic of sustainability Caruso, Del Punta, Treu, *Il diritto del lavoro nella giusta transizione. Un contributo "oltre" il manifesto*, in *CSDLE "Massimo D'Antona"*, 2023; Perulli (ed.), *La responsabilità sociale delle imprese: idee e prassi*, Il Mulino, 2013; On the topic see Treu, Perulli, *Sustainable Development, Global Trade and Social Rights*, Wolters Kluwer, 2018; Montuschi, Tullini, *Lavoro e responsabilità sociale dell'impresa*, Zanichelli, 2006; Novitz, *Trade, Labour and Sustainable Development*, Elgar Studies in Labour Law, 2024.

[3] On this subject in international doctrine and practice, see Guarriello (ed.), *Impresa e diritti umani sul lavoro tra normativa e prassi*, Franco Angeli, 2025.

[4] For a review of the main critical issues Brino, *Governance societaria sostenibile e due diligence: nuovi orizzonti regolativi*, in *LDE*, 2022, 2, pp. 6-19. On jurisdictional conflicts limiting access to justice, Brino, *Diritti dei lavoratori e catene globali del valore: un formante giurisprudenziale in via di definizione?*, in *DLRI*, 2020, 167, 3, pp. 451-70; Bonfanti, *Accesso alla giustizia per violazioni dei diritti umani sul lavoro lungo la catena globale del valore: recenti sviluppi nella prospettiva del diritto internazionale privato*, in *DLRI*, 2021, 171, 3, pp. 369-390; Mongillo, *Imprese multinazionali, criminalità transfrontaliera ed estensione della giurisdizione penale nazionale: efficienza e garanzie "prese sul serio"*, in *DLRI*, 2021, 170, 2, pp. 179-213.

[5] For a framing of the issues Caretti, Tarli Barbieri, *I diritti fondamentali*, Giappichelli, 2022; Pisillo Mazzeschi, *Diritto internazionale dei diritti umani*, Giappichelli, 2023; Marchesi, *La*

and, in particular, to companies in the specific form of due diligence: an obligation of means consisting of preventing, mitigating and avoiding the violation of human rights[6].

However, the need for this approach to labour protection, promoted by national, international and European doctrine, can be observed from two distinct perspectives. That of the *Global North*[7], where there is a need for regulatory techniques capable of satisfying new protection needs that go beyond typological qualification[8]. That of the *Global South*, where the full affirmation of social rights within the scope of human rights is still ongoing and slowed down by dumping phenomena in global supply chains[9].

protezione internazionale dei diritti umani, Giappichelli, 2023. In particular, on business and human rights, from an internationalist perspective Fasciglione, *Impresa e diritti umani nel diritto internazionale. Teoria e prassi*, Giappichelli, 2024; from the labour perspective see Sanguineti Raymond, *Il nuovo diritto transnazionale del lavoro nelle catene globali del valore: caratteristiche e modello regolatorio*, in *DRI*, 2025, 1, pp. 1-25; Frosecchi, *Percorso di lettura sul concetto di "diritto transnazionale del lavoro"*, in *DLRI*, 2017, 153, 1, pp. 219-226, as well as most recently Carta, *Lavoro e responsabilità dell'impresa nello spazio giuridico globa*le, Giappichelli, 2025.

[6] Ales, *Tracing the Social Sustainability Discourse within EU Law: the Success of the "Labour-Rights-as-Human-Rights" Approach*, in *DLM*, 2024, p. 30; Guarriello, *Take Due Diligence Seriously: comment alla direttiva 2024/1760*, in *DLRI*, 2024, 3, pp. 245-298; Mocella, *Catene globali del valore e tutela dei diritti umani*, in *DRI*, 2025, 1, pp. 26-44; Valenti, *Riflessioni in tema di sostenibilità sociale nel diritto del lavoro tra tecniche di tutela e prove di* regulatory compliance, in *DLM*, 2024, p. 469 ff.; Ponte, *Catene di valore, diritti dei lavoratori e diritti umani: riflessioni intorno alla proposta di direttiva relativa al dovere di diligenza delle imprese ai fini della sostenibilità*, in *AmbienteDiritto.it*, 2024, 1, p. 1 ff.; Borzaga, Mussi, *Luci e ombre della recente proposta di direttiva relativa al dovere di due diligence delle imprese in materia di sostenibilità*, in *LD*, 2023, 3, pp. 495-514; Giovannone, *Dovere di diligenza e responsabilità civile nella proposta di direttiva europea*, in *DLM*, 2023, 3, pp. 469-500 ; Giovannone, *The European directive on "corporate sustainability due diligence": the potential for social dialogue, workers' information and participation rights*, in *ILLEJ*, 2024, 1, pp. 227-244 ; Murgo, *Il ruolo dei lavoratori nella due diligence sociale e ambientale*, in *DRI*, 2025, 1, pp. 45-74.

[7] See Buchanan et al. (eds.), *The Oxford book of International Law and Development,* Oxford University Press, 2023; Tyc, *Global trade, labour rights and international law a multilevel approach*, Routledge, 2021.

[8] On the subject, in the national legal system see Perulli, Treu, *"In tutte le sue forme e applicazioni": per un nuovo Statuto del lavoro*, Giappichelli, 2022; Zoppoli, *Prospettiva rimediale, fattispecie e sistema nel diritto del lavoro,* Editoriale Scientifica, 2022; Ciucciovino, *La crisi della fattispecie e l'approccio rimediale nella discussione giuslavoristica*, in *DLM*, 2024, pp. 5-22; Perulli, *Cittadinanza, subordinazione e lavoro nel diritto del lavoro che cambia*, in *LD*, 2024, 1, pp. 44-63; Tullini, *Cittadinanza sociale, nuovi diritti, universalismo delle tutele*, in *LD*, 2024, 1, pp. 65-76; Razzolini, *Effettivita e diritto del lavoro nel dialogo fra ordinamento dell'Unione e ordinamento interno*, in *LD*, 2024, 1, pp. 447-467.

[9] Borelli, Orlandini, *Lo sfruttamento dei lavoratori nelle catene di appalto*, in *DLRI*, 2022,

In this context, this essay analyses the possible impact that the valorisation of the binomial *labour rights as human rights* may have on the techniques of substantive and remedial protection of individual and collective labour rights in the context of global supply chains, starting from the recent provisions of Directive (EU) No. 2024/1760 on corporate sustainability due diligence[10].

In fact, the Directive is part of a broader and more complex path of regulatory hardening of due diligence, prompted by international market dynamics and already experienced in recent years in some EU and non-EU countries. To this end, first of all, it identifies for the first time – with an act endowed with primacy over domestic laws[11] – the individual and collective rights of workers catalogued as human rights that generate direct obligations for companies. Secondly, it regulates new participation and information rights for workers and their representatives in order to prevent possible violations of these rights by the companies themselves[12].

The potential of the Directive is thus analysed with particular reference to the prospects for participatory governance of business risk, which seems to shift the focus of human rights protection from remedial action in response to a violation that has already occurred to the prevention of the violation itself. Furthermore, the achievement of this objective is entrusted to the proceduralisation of the obligation of means – namely due diligence – whereby, through a risk-based approach, the company also contributes to determining the scope of exact fulfilment and the technical parameters for assessing its potential civil liability.

173, 1, pp. 109-133; Guarriello, Nogler, *Violazioni extraterritoriali dei diritti umani sul lavoro: un itinerario di ricerca tra rimedi nazionali e contrattazione collettiva transnazionale*, in *DLRI*, 2020, 166, 2, pp. 173-185.

[10] Directive (EU) 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 (OJEU, 5.7.2024).

[11] See on the topic Borelli, Orlandini, Tufo, *Le norme internazionali del lavoro nella giurisprudenza italiana*, in *DLRI*, 2024, 1-2, pp. 33-59.

[12] On the new voice instances Esposito, *La conformazione dello spazio e del tempo nelle relazioni di lavoro: itinerari dell'autonomia collettiva*, presentation given at the AIDLaSS Study Days in Campobasso, 25-26 May 2023.

2. *Due diligence on the human rights track: from CSR practices to hard law*

It is well known that Directive (EU) 2024/1760 represents the culmination of a broader process of regulating (unilateral and negotiated[13]) Corporate Social Responsibility practices[14], which have guided multinational companies in adopting human rights standards of conduct.

Indeed, due diligence was first defined by the 2011 UN Guiding Principles on Business and Human Rights[15] as an obligation for companies to identify, prevent and mitigate human rights risks and impacts arising from their activities and business relationships along the value chain, and to account for actions taken to address them[16]. Its implementation therefore consists of the adoption of a trans-company and trans-national risk management system anchored to respect for internationally recognised human rights.

In recent years, there have been a number of national experiments that, with varying degrees of intensity, have attempted to transfer due diligence into hard regulation pending the adoption of an international treaty (now in its third draft[17]) that recognises the direct liability of companies for violating fundamental rights along the supply chain. This has occurred in

[13] For a framing of CSR practices in the international scenario, Brino, Perulli, *Diritto Internazionale del Lavoro*, Giappichelli, 2023, pp. 197-243. For an analysis of the value and different aspects of CSR, Gottardi, *CSR da scelta unilaterale datoriale a oggetto di negoziazione collettiva: la responsabilità sociale contrattualizzata*, in Guarriello, Stanzani (eds.), *Sindacato e contrattazione nelle multinazionali. Dalla normativa internazionale all'analisi empirica*, Franco Angeli, 2018, pp. 58-75. See also the important examples of negotiated practices contained in the framework agreements respectively of Eni s.p.a., *Global Framework Agreement on International Relations and Coroporate Social Responsibility*, 2019 under renewal and Enel Group, *Global Framework Agreement on Fundamental Rights and Social Dialogue in the Enel Group*, 2013 renewed in 2023.

[14] For an analysis of the value and different aspects of CSR, Gottardi, *CSR da scelta unilaterale,* cit., pp. 58-75.

[15] On the 2011 UNPG, see Brino, *Diritto del lavoro e catene globali del valore*, Giappichelli, 2020, p. 43 ff.; Partiti, *Polycentricity and polyphony in international law: interpreting the corporate responsibility to respect human rights*, in *ICLQ*, 2021, 70, 1, pp. 133-164. Ruggie, Sherman, *The Concept of "Due Diligence" in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale*, in *EJIL*, 2017, 28, 3, pp. 921-928.

[16] Principle 15, Guiding Principles.

[17] See OHCHR, OHCHR, Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, Third Revised Draft, OEIGWG Chairmanship, 17 August 2021, available at: https://www.ohchr.org/sites/default/files/LBI3rdDRAFT.pdf.

particular in California[18], in the United Kingdom[19], in the Netherlands[20], in Norway[21] and, even more, in France[22] and in Germany[23]. Conversely, in Italy, due diligence remains an obligation to be to be established following the transposition of the Directive, albeit starting from certain devices already existing in the current legal framework, for example in the area of occupational health and safety protection and corporate compliance.

The duty of due diligence requires companies to internalise, among other things, numerous social risks that lie outside their legal jurisdiction, leveraging the economic and contractual power of multinationals; this is due to the control they exercise over satellite companies and suppliers along the supply chain.

Thus, firstly, it pushes national legal systems to incorporate sustainability, with binding legal requirements and specific sanctions. Secondly, it completes the apparatus of those duties of transparency, communication and information set out in the recent EU legislation on social matters as well as on competition[24] , addressing them to a very wide audience of stakeholders to whom new rights of participation are recognised.

The Directive has several interesting aspects and some critical issues. However, here we are interested in understanding how the introduction of the duty of due diligence and the related liability regime favour, on the one hand, the emergence of new rights of information and participation of workers and their representatives, and, on the other hand, the direct extension to companies of obligations arising from human rights. All of this, moreover, with reference to a defined – but potentially expandable – set of first, second, third and fourth generation human rights mentioned in the Annex.

In fact, the Directive obliges big companies to structure a risk management system against (actual or potential) social and environmental externalities linked to their activities along the global supply chain, requiring States

[18] California Transparency in Supply Chains Act of 2010.

[19] Modern Slavery Act of 2015.

[20] Child Labour Duty of Care Act of 2019.

[21] Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act) of 18 June 2021.

[22] Loi n° 2017-399.

[23] Lieferkettensorgtfaltgesetz of 2021. For a comparison of the German and Norwegian models, Krajewski, Tonstad, Wohltmann, *Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction?*, in *BHRJ*, 2021, 6, pp. 550-558.

[24] Reference is made, for instance, to Directive (EU) No. 2024/2831 and Regulation (EU) No. 2024/1689.

to adopt monitoring and control mechanisms and a system of sanctions to protect this obligation. The objective is to prevent and stop negative impacts that the activities of the company and its direct and indirect partners may have on a natural or legal person, causing damage to human rights, including workers' rights, and the environment. The *trait d'union* between these mechanisms, as will be seen, is the provision of specific information obligations and the involvement of a wide range of stakeholders among which workers and their representatives stand out.

3. *The human rights identification technique*

The human rights listed in the first part of the Annex are: the right to life; the prohibition of torture and cruel, inhuman, or degrading treatment; the right to liberty and security, privacy and respect for family life, freedom of thought, conscience and religion, but also the prohibition of causing any degradation of soil, water and air with harmful emissions, excessive use of water and devastating land or other natural resources such as deforestation; the right of individuals, groupings and communities to lands and resources necessary for subsistence.

In addition to these rights recognised to every human being, there are the human rights of the working person, such as the right to just working conditions, to a fair wage for employees and an adequate living income for the self-employed or smallholders, to healthy and safe working conditions and reasonable limitation of working hours; the prohibition of restrictions on access to adequate housing if provided by the employer, as well as food, clothing, water and sanitation and hygiene in the workplace; the right of children to the highest standards of health, education, an adequate standard of living, to be protected from economic exploitation and from work that is hazardous to their education or harmful to their physical, mental, spiritual, moral or social development; the prohibition of child labour before the completion of compulsory schooling and in any case under the age of 15; the prohibition of the worst forms of child labour; the prohibition of forced or compulsory labour; the prohibition of all forms of slavery, the slave trade and human trafficking; freedom of association, assembly, the right to organise, to strike and to bargain collectively; the right to equal pay and the prohibition of discrimination in employment.

The listing of human rights and fundamental freedoms is followed by a second part in which the relevant sources are indicated: the 1966 UN International Covenant on Civil and Political Rights; the 1966 UN International Covenant on Economic, Social and Cultural Rights; the 1989 UN Convention on the Rights of the Child; the fundamental ILO Conventions on Freedom of Association no. 87/1948, on the Right to Organise and Collective Bargaining No. 98/1949, on the Prohibition of Forced Labour No. 29/1930 and the 2014 Protocol, on the Abolition of Forced Labour No. 105/1957, on the Minimum Age for Employment No. 138/1973, on the Worst Forms of Child Labour No. 182/1999, on Equal Remuneration No. 100/1951 and on the Prohibition of Discrimination in Employment and Occupation No. 111/1958. As mentioned, these are the eight core ILO conventions recognised by the 1998 Declaration on Fundamental Principles and Rights at Work, to which two conventions on the protection of a safe and healthy working environment were added in 2022, not yet included in the list of the Annex, awaiting ratification by all Member States. There is no reference to the ILO conventions on health and safety at work and Convention No. 190/2019 on Violence and Harassment as they have not yet been ratified by all Member States. The second part of the Annex then contains the list and the relevant international or European Union environmental protection instruments.

The solution of listing human rights and environmental protection provisions in an annex to the Directive, instead of in the body of the Directive itself, seems to respond to the need not only to facilitate their identification in the most shared way possible, but also to facilitate their possible modification and integration over time, in relation to the emergence of new risk factors.

In this regard, in fact, Art. 3.2 provides for a specific delegation to the Commission, while Art. 36(d) provides that in the Commission's report to the European Parliament and the Council on the state of application of the Directive six years after its entry into force, and every three years thereafter, it is to be assessed, inter alia, whether it is appropriate to proceed, in the light of international developments, to update the coverage of risks of negative impact on human rights, with particular regard to good governance. Furthermore, Recital 32 states that the Directive: "aims to comprehensively cover human rights […]. In order to achieve a meaningful contribution to the sustainability transition, due diligence under this Directive should be

carried out with respect to adverse human rights impacts on persons resulting from the abuse of one of the rights as enshrined in the international instruments listed in Part I, Section 1, of the Annex to this Directive. The term 'abuse' should be interpreted in line with international human rights law. In order to ensure comprehensive coverage of human rights, an abuse of a human right not specifically listed […] should also form part of the adverse human rights impacts […]". Finally, the possibility of adoption of additional standards by companies is foreseen (see recital 33).

The technique for identifying human rights adopted by the Directive therefore appears convincing because, although it formally excludes certain ILO conventions on core labour standards for the reasons mentioned above, it aims to achieve a dynamic and progressive process of regulatory hardening of due diligence by entrusting not only national institutions and governments, but also companies themselves, with the development of additional and possibly more specific standards of protection.

4. *The civil liability regime*

Article 29(1) provides that civil liability exists when (i) the company has intentionally or negligently failed to comply with its obligations to prevent and stop adverse impacts in accordance with the rights, prohibitions and obligations contained in the Annex to the Directive; and (ii) as a result of such failure, damage has been caused to the legal interests of the natural or legal person that are protected under national law. The four conditions and due diligence obligations that satisfy the fulfilment are thus clarified[25].

The debate on the liability regime has been a very long one in the European institutions. In fact, in the text of the proposal approved by the Commission on 23 February 2022[26], Article 22 established the civil liability of the company in the event that it had not adopted a risk management system against negative social and environmental externalities (Articles 7-8), or in the event that, due to this omission, there had been a harmful nega-

[25] On this point, Borzaga, Mussi, *Luci e ombre della recente proposta di direttiva relativa al dovere di due diligence delle imprese in materia di sostenibilità*, in *LD*, 2023, 3, pp. 511-512.

[26] Proposal for a Directive of the European Parliament and of the Council on corporate sustainability due diligence and amending Directive (EU) 2019/1937 (Brussels, 23.2.2022, COM(2022) 71 final, 2022/0051 (COD)).

tive impact consisting of conduct detrimental to human rights (including workers' rights) or the environment "which should have been identified, prevented, cushioned, stopped or minimized in the entity" through specific preventive measures (par. 1). In the event that the negative impact was caused by an indirect partner (i.e. by an entity in the supply chain with which the company does not have direct contractual relationships), the liability of the company that had fulfilled these obligations was excluded "unless, in the specific case, it was unreasonable to expect that the concrete intervention, including with regard to the verification of compliance, was capable of preventing, cushioning or stopping the negative impact or minimizing its magnitude". In this circumstance, those preventive and remedial initiatives, initiated by the company, directly related to the damage in question should have been evaluated (par. 2).

The Council's amendments, dated 30 November 2022[27], made substantial changes. In particular, the company would have been held liable for damage caused to a natural or legal person in the event that it had "intentionally or negligently failed to comply with the obligations" of *due diligence* (Article 22(1)(a)) and, as a result of such non-compliance, "damage had been caused to the legal interest of the natural or legal person protected by national law" (Article 22, par. 1, letter b)). In any case, a company could not have been held liable if the damage had been caused only by its business partners. The conditions under which liability is triggered have thus been clarified – the damage, the breach of the duty of care, the causal link between the damage and the breach, the specification of fault (intent or negligence) – and the relevant law, precisely the domestic law of the Member States, has been specified in order to avoid undue interference by other jurisdictions in the field of compensation for tort[28].

The European Parliament's position of 1 June 2023, for its part, proposed a similar approach[29] by providing that civil liability is triggered when, as a result of a breach of due diligence obligations, "the company has caused or contributed to an actual adverse impact that should have been identified,

[27] EU Council, General approach to the Proposal, Brussels, 30 November 2022, 15024/1/22 REV 1.

[28] *Ibid*. Section III(E)(27).

[29] European Parliament amendments adopted on 1 June 2023 on the proposal for a directive of the European Parliament and of the Council on corporate sustainability due diligence and amending Directive (EU) 2019/1937, P9_TA(2023)0209.

prioritised, prevented, mitigated, stopped, repaired or minimised in extent by the appropriate measures provided for in this Directive, and which has caused damage". The four conditions defined by the EU Council have thus been re-proposed, with the clarification of the *due diligence* obligations that meet the fulfilment[30] and deleting the reference to national law.

The liability of directors, provided for in the original proposal, has instead been completely eliminated because it risks "compromising the duty of directors to act in the best interest of the company"[31] and, therefore, the maximization of corporate profits[32]. Thus, the system of corporate liability has definitively maintained the approach desired by the Council. Article 29(1) provides that civil liability exists when (i) the company has failed to comply with its obligations to prevent and stop adverse impacts intentionally or negligently, in compliance with the rights, prohibitions and obligations contained in the Annex to the Directive; and (ii) as a result of that non-compliance, damage has been caused to the legal interests of the natural or legal person which are protected by national law.

Anyway, the proposal to establish a liability regime for companies, as is well known, has met with much resistance. First of all, because it evokes the unresolved debate on the corporate purpose of the company and the need to balance the interests of shareholders with those of stakeholders[33], given that sustainable development should by definition take into account the

[30] In both negotiating positions, little attention is paid to the obstacles related to victims' access to justice. On this point, Borzaga, Mussi, *Lights and shadows of the recent proposal for a directive on the duty of due diligence of companies in the field of sustainability*, in *LD*, 2023, 3, p. 511-512.

[31] *Ibid.*, sec. III(F), par. 30-32.

[32] Indeed, in its resolution of 10 March 2021 that launched the legislative debate, the European Parliament called for the members of the company's administrative, management and supervisory bodies to be responsible for the adoption and implementation of its sustainability and *due diligence strategies* (recital 45 of the proposal for a directive contained therein).

[33] Libertini, *Economia sociale di mercato e responsabilità sociale dell'impresa*, in *Rivista ODC*, 2013, 3, pp. 1-27; Libertini, *Dalla responsabilità sociale all'impresa sostenibile*, in the context of the seminar *L'impresa sostenibile* held at the Department of Law of the University of Catania on 16 December 2022; Amatucci, *Responsabilità sociale dell'impresa e nuovi obblighi degli amministratori. La giusta via di alcuni legislatori*, in *GCom*, 2022, 4, p. 617/I; Keay, *The corporate objective*, Edward Elgar, 2011, p. 70 ff.; Barcellona, *La* sustainable corporate governance *nelle proposte di riforma del diritto europeo: a proposito dei limiti strutturali del c.d.* stakeholderism, in *RSoc*, 2022, 1, pp. 1-52; Kun, *How to Operationalize Open Norms in Hard and Soft Laws: Reflections Based on Two Distinct Regulatory Examples*, in *IJCL*, 2018, 34, 1, p. 39; Richter, *Long-Termism*, in *RSoc*, 2021, 1, pp. 30-31. On the hegemony *of shareholderism*, also Vitols, *What is the Sustainable Company?*, in Vitols, Kluge (eds.), *The Sustainable Company: a new approach to corporate governance*, I, Etui, 2011.

interests of those who may be harmed by the production activity – workers, trade unions, local communities – by involving them in a transparent manner in certain stages of the decision-making and production process.

Above all, however, and this is the most interesting aspect of the operational application of due diligence, there is concern that civil liability for failure to comply with social and environmental protections is too vague because it is based on principles and rights that lack sufficient prescriptive content, enshrined in international instruments addressed to the States called upon to implement them. In fact, the Annex to the Directive contains a list of principles and rights enshrined in specific international acts that should guide the exercise of due diligence, including the International Covenant on Economic, Social and Cultural Rights and the ILO Conventions[34]: the exemption resulting from compliance with the duty of due diligence would then become ambiguous, with the consequence of determining a possible objectification of civil liability on the part of entities (and directors)[35]. In other words[36], there is a risk of uncertainty in the mechanisms for determining civil liability considering the particularly afflictive repercussions that this could have on case law, which has the delicate function of safeguarding legal certainty together with the other fundamental values underlying the discipline in question.

On the other hand, however, it is important to stress how the Directive invites companies to supplement the minimum standards of protection enshrined in national and international sources with organisational and management procedures. In fact, due diligence does not translate into an obligation to "do more" than what is required by law, but rather into a

[34] On this point see O'Brien, Martin-Ortega, *Commission proposal on corporate sustainability due diligence: analysis from a human rights perspective*, In-depth analysis, European Paliament (EP/EXPO/DROI/FWC/2019-01/Lot6/1/C/16), p. 18. See also the criticism by Murgo, *La proposta di direttiva sulla* corporale sustainability due diligence *tra ambizioni e rinunce*, in *DRI*, 2022, 3, p. 946.

[35] On the risk of incurring (quasi) strict liability, Ventoruzzo, *Note minime sulla responsabilità civile nel progetto di direttiva Due Diligence*, in *RSoc*, 2021, 2-3, p. 381 ff.

[36] See Calvosa, *La governance delle società quotate italiane nella transizione verso la sostenibilità e la digitalizzazione*, in *RSoc*, 2022, 2-3, p. 314. Similarly, Presti, *La sostenibilità nel diritto dell'impresa e delle società: l'auspicabile ritorno della regolazione pubblica*, in *JUS*, 2022, 3, p. 394; Carella, *La responsabilità civile dell'impresa transnazionale per violazioni ambientali e di diritti umani: il contributo della proposta di direttiva sulla* due diligence *societaria a fini di sostenibilità*, in *FSJELS*, 2022, 2, p. 27; Mark, *Corporate sustainability due diligence: More than ticking the boxes?*, in *MJECL*, 2022, 29, 3, pp. 302-303.

duty to manage risk through a preventive system designed to mitigate the negative effects caused by the company along the chains of activities. In this logic, therefore, civil liability reinforces the organisational virtuosity of the company in terms of primary prevention. Essentially, this is civil liability for one's own actions, which derives from an obligation of means rather than results; an obligation that translates into a duty to set up a suitable organisation to prevent the negative externalities of production activities upstream. For this reason, the list of international acts contained in the Annex represents a support in identifying the social and environmental risks to be prevented, certainly not an exhaustive evaluation parameter of the fulfilment of the duty of diligence[37]. And it could not be otherwise, since the global duty of diligence cannot be based on mere compliance with disparate national laws that impose different standards of protection[38].

This interpretation is supported by the wording of Article 29 itself, which excludes liability in cases where, in the event of damage caused exclusively by a business partner, the company has fulfilled its due diligence obligations[39]. Liability is therefore based on organisational fault, if not for wilful misconduct, then for negligence (i.e., for failing to comply with the duty of diligence), and not for the direct violation of human rights and environmental protection, thereby removing the risk of incurring strict liability.

In this way, due diligence should not expand the already questionable hypotheses of strict liability, in which the obligation to compensate damages is independent of fault and, therefore, of the assessment of the diligence of conduct[40]. It is in these terms that companies seem to be called upon to

[37] Nogler, Lieferkettensorgfaltspflichtengesetz: *perché è nata e quali sono i suoi principali contenuti*, in *DLRI*, 2022, 173, 1, p. 17, interprets the list contained in the German law in the same way.

[38] See on the topic Scheltema, *An assessment of the effectiveness of international private regulation in the corporate social responsibility arena: legal perspective*, in *MJECL*, 2014, 21, 3, pp. 383-405.

[39] For this opinion also Bonfanti, *Catene globali del valore, diritti umani e ambiente, nella prospettiva del diritto internazionale privato: verso una direttiva europea sull'obbligo di diligenza delle imprese in materia di sostenibilità*, in *JUS*, 2022, 3, p. 298.

[40] Borelli, Izzi, *L'impresa tra strategie di* due diligence *e responsabilità*, in *RGL*, 2021, 4, p. 554 ff. who instead propose the use of joint and several liability of an objective nature, which disregards culpable conduct, as a remedial technique, alongside due diligence which instead is at the preventive level.

adhere more strictly to the standards of professional diligence and fairness with a view to strengthening good corporate governance through appropriate enterprise risk management policies[41], which do not alter the corporate purpose of the company but impose the conditions for achieving it[42].

Read in this sense, therefore, the liability regime appears persuasive because it promotes, in favour of the company and the people who hold primary management positions within it, an organisational culture of sustainability rather than a culture of blame, through the introduction of preventive obligations assigned, as will be seen shortly, to participatory protocols[43].

The civil liability regime, at present, is one of the profiles affected by the Omnibus Package. Firstly, restricting the subjective scope of mandatory due diligence as a preventive obligation. In fact, the proposal envisages limiting the due diligence obligation on parent companies no longer with reference to the entire chain of activities envisaged by the Directive, but only on subsidiaries and direct partners (no longer on indirect partners), unless "plausible" information, or complaints or information conveyed through credible media emerge, or NGO reports and files are published, or, again, incidents or risks already identified occur that concern indirect partners.

Secondly, the Commission's proposal has direct implications for the remedial mechanisms arising from breaches of due diligence obligations.

In fact, while preserving the regime of civil liability and the related compensation obligations, it proposes to eliminate certain aspects aimed at ensuring the harmonisation of the remedial instrument among the various countries, such as: the possibility of promoting collective action; the easing of the burden of proof on the claimant; the conferral on the relevant provisions of the status of mandatory rules, with a view to granting them extraterritorial effect, which is useful in the context of private international law.

[41] Cerrato, *Appunti per una via italiana all'ESG. L'impresa costituzionalmente solidale (anche alla luce dei nuovi artt. 9 e 41, comma 3, Cost.)*, in *An. giur. ec.*, 2022, 1, p. 93.

[42] In fact, Tombari, *Riflessioni sullo statuto organizzativo dell'impresa sostenibile tra diritto italiano e diritto europeo*, in *An. giur. ec.*, 2022,1, p. 143, concludes that, if we were waiting for an answer at the European level on the subject of the "purpose of the company" and the directors' duties, we are destined to be disappointed.

[43] Brino, *La governance societaria sostenibile: un cantiere da esplorare per il diritto del lavoro?*, in *LD*, 2023, 3, p. 445.

5. *Workers as protected subjects*

Another important aspect is the fact that the operational implementation of due diligence requires the necessary contribution of stakeholders.

Indeed, the binomial of "diligence and responsibility" is in fact conditioned by the extensive participation, *ratione materiae*, of the various stakeholders. The scope of beneficiaries of these information and participation rights is broad and includes "company's employees, the employees of its subsidiaries, trade unions and workers' representatives, consumers and other individuals, groupings, communities or entities whose rights or interests are or could be affected by the products, services and operations of the company, its subsidiaries and its business partners, including the employees of the company's business partners and their trade unions and workers' representatives, national human rights and environmental institutions, civil society organisations whose purposes include the protection of the environment, and the legitimate representatives of those individuals, groupings, communities or entities" (Article 3(n)).

For its part, Recital 65 emphasises that companies must pay particular attention to vulnerable stakeholders when taking appropriate measures to achieve effective stakeholder involvement, by expanding the list of those to be involved and informed on a case-by-case basis. On the other hand, such a broad list of stakeholders could entail the need to mediate between potentially conflicting instances[44], in relation to which companies will have to selectively recognise, for some rather than others, rights of voice and action, as well as the related representation procedures[45].

With particular regard to employees, however, a more specific reflection must be made on the definition accepted by the Directive since, in the context of "stakeholders", it mentions only "company's employees" and "employees of its subsidiaries", without any specification of the type of contract considered for this purpose. Consequently, if the reference to

[44] As has often been the case between labour and environmental protection. The reference to the Italian "Ilva case" is obvious. See, among others, Tullini, *I dilemmi del caso Ilva e i tormenti del giuslavorista*, in *Ius17*, 2012, 5, 3, pp. 163-169. For a historical reconstruction of the case, Laforgia, *Se Taranto è l'Italia: il caso Ilva*, in *LD*, 2022, 1, pp. 29-52.

[45] Cian, *Clausole statutarie per la sostenibilità dell'impresa: spazi, limiti e implicazioni*, in *RSoc*, 2021, 2-3, p. 497, which offers interesting reflections on the ability of statutory autonomy to impose "sustainable" management conduct on directors.

subordinate employment in its various forms seems to be almost taken for granted, the same cannot be said for coordinated and continuous work and self-employment. In this respect, of little prescriptive value and limited scope is Recital 34, according to which enterprises should exert their influence to ensure "a living income for self-employed workers" along the chain of activities.

On the other hand, it is also true that the subsequent reference in the definition to "trade unions and workers' representatives" suggests a potential enlargement of the subjective scope of the rights in question to include not only trade union but also direct representation, expressed by broadly understood groups and categories of workers (not already employees).

Such an extensive reading, more generally, seems consistent with the most recent European provisions on transparency in labour relationships (Directive No. 2019/1152/UE), whistleblowing (Directive No. 2019/1937/EU) and, even more, with the definition of stakeholders accepted by Directive (EU) No. 2022/2464[46] on corporate sustainability reporting. On the other hand, if the integration of sustainability in business activities is to be translated into rules of conduct and organisation, one must be prepared to broaden the range of stakeholders in the production system in order to find joint and realistically feasible organisational solutions, in a socially transactional logic.

This framework includes the provision for the direct involvement of stakeholders in management decisions and the importance given to this participatory aspect by Dir. (EU) No. 2024/1760, which supplements and strengthens the provisions of Dir. (EU) No. 2022/2464. In fact, while in the latter the obligation of disclosure on sustainability policies is limited to the communication phase, placed downstream of the risk management system[47], in Dir. (EU) No. 2024/1760 this obligation also includes the preventive phase of designing internal sustainability policies and due diligence procedures, as will be seen shortly.

[46] 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.

[47] See Rescigno, *Note sulle regole dell'impresa sostenibile. Dall'informazione non finanziaria all'informativa sulla sostenibilità*, in *An. giur. ec.*, 2022, 1, pp. 165-184; Faleri, *Diritti di informazione e principio di trasparenza per una governance societaria sostenibile*, in *LD*, 2023, 3, p. 545 ff.

6. *Prospects for the participation of employees and their representatives*

The entire due diligence policy must be developed in prior consultation with the company's employees and their representatives (Article 7.2). The policy must include: a description of the company's approach; a code of conduct containing the rules and principles to be followed; the procedures put in place to integrate due diligence into the company's relevant policies and to implement due diligence.

In addition, there is an obligation to consult interested parties at several stages of the due diligence process and, among these, preventive moments are also included (Art. 13). Above all, consultation is provided for when gathering information useful for identifying, assessing and prioritising adverse impacts, as well as for developing preventive (and corrective) action plans.

However, there is a possible "loophole". In particular, when it is not "reasonably possible to carry out effective engagement with stakeholders", companies must seek the advice of experts "who can provide credible insights into actual or potential adverse impacts" (para. 4). The use of external experts therefore seems rather discretionary and risks supplanting social dialogue.

However, it is to be welcomed that the involvement of stakeholders in the development of due diligence includes the drafting of codes of conduct. Indeed, it is desirable that the procedures for the prevention of negative impacts – a fundamental parameter for the assessment of liability and a strong point for the actual success of corporate procedures in this regard – be entrusted with operational instruments that are not unilateral but negotiated.

Therefore, the impression is that, especially in the regulation of the preventive apparatus of the due diligence system, hand can be put on a corporate governance inclined to adopt sustainable strategic choices that are as negotiated and participated in as possible[48] . This presupposes that the definition of a broad group of stakeholders corresponds to the attribution of a more structured and preventive right of participation in top-level decision-making processes, in direct relationship with shareholders and institutional investors, in order to remedy the information asymmetries

[48] See Sanguineti Raymond, *Le catene globali di produzione e la costruzione di un diritto del lavoro senza frontiere*, in *DLRI*, 2020, 166, 2, pp. 187-226.

regarding the negative social and environmental impacts of business activities, which affect not only stakeholders but also company representatives themselves[49].

This is precisely where workers' representatives come in, as they are able to guide the company's strategies and management decisions thanks to their long-standing expertise in steering the behaviour of (multinationals) companies and workers towards general, higher and global interests[50] that are not covered by the protective structures of national legal systems[51]. In fact, although the Directive treats workers and their representatives almost on a par with other stakeholders, and despite the fact that in terms of due diligence the values at stake (human rights, including workers' rights, and environmental protection) are considered to be equally important[52], in most national legal systems, workers' representatives are already privileged stakeholders because they are more institutionalised than others within the company[53]. On the other hand, it is precisely from collective bargaining that is expected to urge companies to comply with statutory rules, contractual obligations and codes of conduct that act as external limits to the exercise of private economic initiative. This is not only to protect workers, but also to safeguard the (eco)sustainable conversion[54] of enterprises in a broad sense, through atypical social bargaining[55].

[49] Strampelli, *La strategia dell'Unione europea per il capitalismo sostenibile: l'oscillazione del pendolo tra amministratori, soci e* stakeholders, in *RSoc*, 2021, 2-3, p. 371 ff.

[50] Tombari, *Corporate purpose e diritto societario: dalla "supremazia degli interessi dei soci" alla libertà di scelta dello "scopo sociale"?*, in *RSoc*, 2021, 1, p. 3. On the topic of worker participation, Ales, *Libertà sindacale vs partecipazione? Assenze, presenze e possibilità nello Statuto dei lavoratori*, in *RGL*, 2020, 1, pp. 129-147; Perulli, *Workers' Participation in the Firrn: Berween Social Freedom and Non-Domination*, in *Working Papers CSDLE "Massimo D'Antona" - INT*, 2019, p. 149. Critical on this point is Calvosa, *La governance delle società quotate italiane*, cit., p. 317 ff., according to whom the need to select the stakeholders to which to attribute some form of corporate power extends the director's managerial discretion too much.

[51] Marchetti, *Il bicchiere mezzo pieno*, in *RSoc*, 2021, 2-3, p. 344.

[52] As Ferrante, *Diritti dei lavoratori e sviluppo sostenibile*, in *Jus*, 2022, 3, p. 359, points out, workers' organisations are equated with other intermediate bodies.

[53] For a review, Malberti, *L'*environmental, social, and corporate governance *nel diritto societario italiano: svolta epocale o colpo di coda?*, in *DLRI*, 2020, 168, 4, pp. 661-680.

[54] On this topic see Barca, *On working-class environmentalism: a historical and transnational overview*, in *Interface*, 2012, 4, 2, p. 75. Doorey, *Just Transitions Law: Putting Labour Law to Work on Climate Change*, in *JELP*, 2017, 30, 2, pp. 201-239.

[55] Piglialarmi, *La contrattazione sociale territoriale: inquadramento giuridico del fenomeno attraverso l'analisi contrattuale*, in *DRI*, 2019, 2, pp. 713 ff.

Therefore, it seems that the debate on the implementation of the Directive should focus on the search for legal and negotiating devices that make due diligence effective within the company organisation, in the complex procedures of risk mapping and prevention. These are instruments that must bring together the skills and knowledge of the company and stakeholders to draw up a credible action plan that is agreed upon by all parties, remedying the lack of legitimacy and effectiveness of unilateral tools[56]. It is in these terms that the – both upstream and downstream – information and participation of workers and their representatives can contribute to preventing the social externalities of production activity and to delimiting the company's civil liability.

This scenario does not seem to be called into question by the Omnibus package, despite the downsizing of the list of stakeholders proposed by it, in which however workers and their representatives continue to feature.

7. *Some concluding remarks*

In light of what has been said so far, there is no doubt that Dir. (EU) No. 2024/1760 is part of the broader regulatory framework of transparency and information obligations placed on companies for the operational introduction of sustainability[57]. Equally evident is the fact that these new-generation duties correspond, in perspective, to new rights of (direct and indirect) participation, action and negotiation of workers and their representatives.

Then, what is particularly innovative is that the enforcement of this due diligence system is entrusted to a stringent civil liability regime, which is unprecedented compared to the milder regulatory mechanisms of Corporate Social Responsibility.

From a transdisciplinary perspective, moreover, the Directive seems to mark a turning point in the context of international human rights law for two reasons. Firstly, because it adds an important piece in the controversial process of enucleating a (globally) shared set of labour human rights, placing them on an equal footing with classic civil and political rights on the one

[56] As pointed out by Patz, *The EU's Draft Corporate Sustainability Due Diligence Directive: A First Assessment*, in *BHRJ*, 2022, 7, pp. 291-297.

[57] On the prospects for the involvement of social partners in the current transition processes, Caruso, Del Punta, Treu, *Il diritto del lavoro nella giusta transizione*, cit.

hand and new-generation environmental rights on the other. More specifically, in this regard, it should be clarified that the Directive does not equate labour rights with human rights at work, but rather between fundamental workers' rights and human rights at work. The very important consequence, from the point of view of regulatory techniques, is given by the fact that a shared set of fundamental rights of workers that have the same status as human rights, legally applicable to Member States, but also intended to operate beyond the border of the European region with extraterritorial effectiveness and, therefore, universal[58].

Moreover, because it contributes to strengthening the horizontal effect – between private parties – of human rights obligations, which in turn is functional to the greater effectiveness and immediacy of protection.

Furthermore, on the remedial level, there is the possibility that victims of human rights violations may seek compensation directly from companies, even in the absence of a legal relationship that qualifies as an employment relationship with them. In addition, the imposition of the due diligence obligation clearly encourages the prevention of injuries and, ultimately, the *ex-ante* protection of entitled parties, through a risk-based approach based on the ability of each company to proceduralise and detail its contents.

In fact, it seems no coincidence that the Directive (Articles 18 to 21) provides for the Commission's obligation to prepare support and accompanying tools for companies, stakeholders, and third parties in the chain of activities, aimed at facilitating the exercise of due diligence on the basis of models, guidelines, and best practices that can also be derived from the international soft law framework and application experiences. For their part, the Member States are called upon to provide information and support to companies, their business partners and stakeholders through accompanying measures (Article 20) consisting in the creation of dedicated websites, platforms or portals, to be managed separately or jointly with other countries. In addition, they may provide forms of financial support to SMEs and stakeholders in order to facilitate the exercise of their rights.

[58] For a return to the universal dimension of the debate on fundamental workers' rights in the context of human rights, see Loercher, Brunn, A. T. Ribeiro (eds.), *The International Covenant on Economic, Social and Cultural Rights and the Employment Relation*, Bloomsbury Publishing, 2025.

However, none of these prospects have been called into question by the Omnibus package[59] and, at the same time, they seem to be the main regulatory trajectories along which the adoption of the international treaty on business and human rights in supply chains is moving.

[59] Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements, Brussels, 26.2.2025 COM(2025) 80 final.

Abstract

The essay analyses the possible impact that the valorisation of the binomial labour rights as human rights may have on the techniques of substantive and remedial protection of individual and collective labour rights in the context of global supply chains, starting from the recent provisions of Directive (EU) No. 2024/1760 on corporate sustainability due diligence.

The potential of the Directive is analysed with particular reference to the prospects for participatory governance of business risk, which seems to shift the focus of human rights protection from remedial action in response to a violation that has already occurred to the prevention of the violation itself. Furthermore, the achievement of this objective is entrusted to the proceduralisation of the obligation of means – namely due diligence – whereby, through a risk-based approach, the company also contributes to determining the scope of exact fulfilment and the technical parameters for assessing its potential civil liability.

Keywords

Labour rights as human rights, CSR practices, Due diligence, Sustainability reporting, Employees' participation.