

Case study n°2

Promoting Environmental Compliance: A Case Study of *Italian Legislative Decree 231/2001*



Country: Italy

Level: Local, National

SDG Addressed: SDG 13 – Climate Action

Summary

The objective of this case study is to show how reference to international standards – such as certification standards (ISO 45001/ISO 14001/ISO 37001/ISO 27001) within a regulatory framework – encourage responsible business practices and penalise environmental degradation. This has the potential to enhance institutional awareness of environmental stewardship and provide a framework for enhanced business capacity in climate change mitigation.

The Decree provides a regulatory framework for corporate accountability. According to it, companies may be held liable or subject to fines and restraining orders, with a view to prohibiting the exercise of the company's activity and confiscation orders, if expressly provided for by the Decree. This is to be considered in relation to certain offences committed, or attempted, by officers, managers or their subordinates as well as by third parties (suppliers, partners, consultants, etc.). Among these offences, environmental disaster and pollution represent a priority target of the Decree. Furthermore, the company itself may be subject, directly and independently, to sanctions in connection with the offences committed by such individuals, unless they have acted exclusively to their own advantage or in the interests of third parties.

A voluntary application of certification standards (ISO 45001/ISO 14001/ISO 37001/ISO 27001) guarantee an exemption of the company's liability.

Background

Articles 24-26 of the Decree details the offences committed, for which the entity concerned can be held liable. With respect to environmental destruction, such offences fall into the following categories: (i) environmental disaster (ecosystem) and (ii) environmental pollution (water, air, land, biodiversity, etc.).

If an individual is found in violation of these offences, the Decree provides for a number of sanctions (fines, restraining orders, confiscation orders and publication of sentence), depending on the severity of the crime.

Restraining orders may include the following penalties: (i) prohibition on the exercise of business activity; (ii) suspension or revocation of authorisations or licences that have proved necessary for the commission of the offence; (iii) prohibition on dealing with the Public Administration; (iv) exclusion from Public Administration funding, contributions or financing; and (v) prohibition on advertising goods or services.

Conviction of the entity for any of the offences provided for in the Decree will always result in the imposition of a fine, set in accordance with the criteria indicated in the Decree. However, restraining orders are imposed only upon occurrence of at least one of the following conditions: (i) the entity has gained a significant profit from the offence, the commission of which has also been caused by a lack

of organisational controls within the entity; and (ii) it is a repeated offence.

Pursuant to article 6 of the Decree, the entity may be able to rely on a defence and be exempted from liability if they can prove that they have: (i) adopted, and effectively implemented, an Organizational Model (that can be proved with voluntary certifications) prior to the commission of the offence of the kind actually committed; (ii) appointed an internal control committee, known as organismo di vigilanza, with independent powers of action and control; (iii) provided proof that the officer, manager or their subordinates who committed or attempted to commit the offence fraudulently eluded the Organizational Model; and (iv) the internal control committee has conducted adequate monitoring.

Strategy

The voluntary application of one of the well-known standards (e.g. ISO 45001/ISO 14001/ISO 37001/ISO 27001) helps to exempt the company from liability. In the event of an environmental disaster, a certified (ISO 14001:2015) company is not convicted, yet the liability is limited to the employee who violated the relevant law. If this good procedure was sufficiently implemented, the top management remains immune from prosecution and the violation of the procedure is due to fraudulent individual behaviour.

Results and Impact

According to a research study, jointly carried out by Symbola Foundation and Banca Intesa, companies certified to meet specific environment-related standards have seen their revenues increase by 3.5% (around 1.5 percentage points more than the non-certified ones), while the number of their employees grew by 4% (compared to the 0.2% evidenced in non-certified firms). It is predominantly the smaller companies that gained the largest advantages; SMEs with environmental certification recorded a spread, as compared to non-certified competitors, of +4 points in turnover and +1.2 points in employment.

These are some of the studies promoted by Accredia that have pointed out the advantages of a quality investment for companies and society. Such advantages spread across the company structure through better day-to-day management, and benefit society as a whole, as they improve environmental

sustainability and contribute to an effective management of occupational safety and health.

Challenges and Lessons Learned

It is crucial to ensure the competence of the auditors, and to guarantee an effective application of the standards.

Potential for Replication

It is possible to replicate this experience; the law that is pushing the reduction of sanctions, the Italian Dlgs 231/2001, has already been replicated by Spain - Ley Orgánica 1/2015.