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The Italian implementation of the CSRD: Legislative decree 125, of September 6th, 2024

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What is it?

- Implementation of the CSRD in Italy
- It replaces both formally and substantively the legislative decree 254/2016, implementing the NFRD
- Not just for **large enterprises** (in the economic meaning, including groups) [exceeding balance sheet total: EUR 25M; net turnover: EUR 50M; average number of employees during the financial year: 250]...
- ...but also **listed (in the EU) SMEs** [balance sheet total: EUR 450k-25M; net turnover: EUR 900k-50M; average number of employees during the financial year: 11-250]...
- ...and non-European companies with a legal form comparable to those listed in Annex 1, Directive 2013/34/EU
- **Never micro-enterprises** [not exceeding balance sheet total: EUR 450k; net turnover: EUR 900k; average number of employees during the financial year: 10]

Scope of application

Legal forms, in Italy:

- Joint stock company (SPA)
 - Private company (SRL)
 - Limited partnership by shares (SAPA)
 - General partnership (SNC)*
 - Limited partnership (SAS)*
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- If they have as members companies included in the forms listed in Annex 1, Directive 2013/34/EU

 - Plus (irrespective of legal form – therefore, also cooperatives, for instance):
 - Insurances
 - Banks (but not Bank of Italy)
 - Cassa Depositi e Prestiti (just for controlled entities)

The obligations...

The usual ones:

Annual or consolidated sustainability statement, where...

- Description of:
 - The model and business strategy, highlighting the sustainability risks linked to sustainability issues
 - Opportunities for the enterprise linked to sustainability issues
 - Plans to achieve compatibility with green transition and Paris agreement
 - How the business takes stakeholders into consideration
 - Trade unions and employees in particular
 - How the business strategy will be enacted when it comes to sustainability issues
- Description of the goals (with time milestones)

The obligations...

- Description of the role of corporate governance bodies
- Description of business policies towards sustainability
- Information on incentives (remuneration)
- Description of:
 - Due diligence procedures
 - Link to CSDDD
 - Main negative impacts (either effective or potential) linked to the firm's activities and its value chain (inside-out)
 - Actions to mitigate negative impacts, if any
- Description of main risks for the enterprise, linked to sustainability issues (outside-in)
- Indicators

The business must state the procedure adopted to individuate the information to be included in the reporting: very important!

- Directors' liability, in case of non compliance!

Some exceptions

Lighter requirements (art. 3.8) for

- Listed SMEs
- Non-complex organizations
- Captive insurance firms

In these cases just more general information, limiting the indicators to the necessary ones

For third-country businesses

- Net revenues in the EU over EUR 150M in the last two years
- Subsidiaries in the EU publish the report for the parent company
 - If no EU subsidiary, even just EU branch with revenues in the EU over EUR 40M
- If parent company does not prepare the report, the subsidiary/branch must prepare it alone, asking for the relevant info
 - Comply or explain in case of lack of info

Disclose how, and disclose where?

The Sustainability report must now be included in the Directors' report on management, in a specific section

- Therefore it has its general disclosure in the Business Register

It must be machine-readable and browsable: XHTML format

- This allows to be linked to the single access point when it will be available

Disclosure on the company's website

- Or free paper version to any interested party, if no Internet website

Assurance!

Requirement of assurance not just of the formal requirement, but of the content of the declaration!

Specialised legal auditor (who can be the same in charge of the financial audit)

Currently: level of limited assurance (just formal compliance with required standards and legal provisions in force)

- The current standards are approved by the Ministry of Economy and Finance
- Concurrent competence of CONSOB for urgent matters and revision of assurance principles

After the Delegated Regulation of the EU Commission for the development of appropriate standards, reasonable assurance

Auditors

Revision of D.Lgs 39/2010 with new standards based on the Directive for Auditors and Audit firms

Specific filing in the national Register for enabled sustainability auditors

Specific training for sustainability auditors

- at least 8 months out of the overall 36
- Life-long learning (at least 10 credits out of 25 on sustainability)

Specific part of the national examination for the filing in the register

Penalties: CONSOB + Ministry of Economy and Finance in case of irregularities in the assurance and audit activity

Auditors

Not necessarily Italians

- but this might be a problem with the limited assurance in the first period

Same usual principles to be complied with (privacy, independence, professional secret)

If audit firm: at least one auditor in charge of sustainability issues

Document-keeping in case of ex post controls or claims

Auditors

If the auditors cannot perform their activities: appropriate measures and information to the competent authority (Consob/Ministry of Finance)

For third Countries: cooperation with the third-Country auditors

Auditors are appointed by the general meeting of the company, which also decides on the remuneration

Max 3 years + 2 terms; freezing period of 4 years

Dismissal: just for proper ground.

Judicial dismissal is possible, with request of shareholders (5% of capital), management auditors, CONSOB

Auditors

The report: content

- Identification of the relevant term
- Identification of activities
- Conclusions (if more auditors: agreement needed)
 - Limited assurance, now (“no reason to doubt”: more check than investigation)
 - Reasonable assurance, eventually

Independence: no interlocking charges with the company

In larger companies, audit committee must also monitor the sustainability audit, and the independence of the auditors

Auditors

Monitoring the auditors

At least once every sixth year

Monitored by other auditors with specific educational professionalism (at least 5 years of experience); in any case, independence (three years of freezing period)

Supervision

- Ministry of Finance: checks the quality of the auditors for smaller companies
- Consob: checks the audit of larger companies

Auditors

Penalties for auditors

- Ministry of Finance: administrative penalties and fines (€ 1.000-150k)
- Consob: administrative penalties and fines (€ 10k-500k)

Administrative penalties reach the striking off from the register

Penalties for companies

Same fines and administrative penalties as for financial statements (art. 193 TUF)

A few issues with Italian implementation. 1. Directors

The role of directors: they are in charge of the disclosure duties

But their role is not the same in all the legal forms: what about...

- members/partners?
- Internal audit organs?

In particular in terms of liability

A few issues with Italian implementation. 2. Timing

If the Report is a part of the financial statement

This means that it must be approved by 4 to 6 months after the end of the financial year

Is this an appropriate timeframe to ensure a consistent assessment?

Both for the single concerned enterprise...

...and the system as a whole, with all the auditors committed

A few issues with Italian implementation. 3. Structure

This leads to a conclusion: in order to have the assessment properly enacted, a more structured organization is required

To this extent, Italian Law is well equipped with the Directors' duty to establish an adequate administrative, organisational and accounting structure.

- New art. 2086 It.c.c.

The point is the supervision of the structure...

...and the ability to design a proper structure contemplating sustainability assessment, too

A few issues with Italian implementation. 4. Criminal penalty

There are some flows in the penalty part of the decree.

Contrary to the previous decree, here no specific penalties are considered

But if the report is a part of the financial accounts, then the penalties for the incorrect financial accounts are to be applied

But they are very strict (up to 5 years in jail): this is to be revised

A few issues with Italian implementation. 5. What's missing?

And... what about the non-stated relevant information?

If discovered, directors' duties, certainly...

...but who can discover them?

Thank you very much for your
attention!

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