



MINISTRY OF FOREIGN AFFAIRS
Inter-ministerial Committee for Human Rights

Italy's contribution pursuant to the Open call for inputs to
UN Working Group report
'Ensuring respect for human rights in the context of
“economic diplomacy” and investment/trade promotion’

Survey inputs: state-business nexus

March 2018



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Italian Authorities are in a position to provide the following comments to the attention of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises, in line with the contents of the 1st Italian Action Plan on Business and Human Rights.

I. Economic diplomacy and trade/investment promotion

1. Are there examples of ministries oriented to cross border trade and investment promotion that have any policy commitment to address human rights as part of their activities?

If yes, does such a commitment include any reference of the UN Guiding Principles on Business and Human Rights and other standards for responsible business conduct (e.g. OECD Guidelines; IFC Performance Standards)?

As reported in Section II of the Italian NAP (Background and context): “The NAP addresses the adverse impact that business may have on human rights and identifies specific commitments with the aim of effectively integrate UNGPs at national level and business activities. On a wider scope, it also addresses the need of facing the current global challenges with reference to competition and human rights in the context of the international market. Situations such as the distortion of market prices due to the import/export of goods and services from countries or enterprises not compliant with fundamental human rights rules and standards, or the social costs of flows of migrants recruited as illegal workers in the informal economy, have serious economic implications on labour markets and on competition. In most cases, they are leading to a ‘race to the bottom’ damaging enterprises compliant with labour standards and basic human rights and perpetuating the violation of the latter. Yet, at the same time, human rights have the potential to redress market distortions and even add value to business: addressing its impacts on human rights is not only essential to improve their better protection but it also proactively advances them by developing a sound business culture and seizing new opportunities of economic growth within a system of fair competition”.

So far the NAP mainly focuses on six priorities representing the business and human rights areas that it intends to address and that are under the competence of several Ministries (i.e. Ministry of Economic Development, Ministry of Labour and Social Policies; Ministry of Ministry of Agricultural, Food and

Forestry Policies, Ministry of Foreign Affairs and International Cooperation, Ministry of Justice, Ministry of the Environment):

1. PROMOTING HUMAN RIGHTS DUE DILIGENCE PROCESSES, AIMED AT IDENTIFY, PREVENT AND MITIGATE THE POTENTIAL RISKS, WITH PARTICULAR FOCUS ON SMEs;
2. TACKLING *CAPOALATO* (ESPECIALLY IN THE AGRICULTURAL AND CONSTRUCTION SECTOR) AND OTHER FORMS OF EXPLOITATION, FORCED LABOUR, CHILD LABOUR, SLAVERY AND IRREGULAR WORK, WITH PARTICULAR FOCUS ON MIGRANTS AND VICTIMS OF TRAFFICKING;
3. PROMOTING FUNDAMENTAL LABOUR RIGHTS IN THE INTERNATIONALIZATION PROCESS OF ENTERPRISES WITH PARTICULAR REGARD TO THE GLOBAL PRODUCTIVE PROCESSES;
4. STRENGTHENING THE ROLE OF ITALY IN A HUMAN RIGHTS-BASED INTERNATIONAL DEVELOPMENT COOPERATION;
5. TACKLING DISCRIMINATION AND INEQUALITY AND PROMOTING EQUAL OPPORTUNITIES;
6. PROMOTING ENVIRONMENTAL PROTECTION AND SUSTAINABILITY.

2. Are there examples of trade/business oriented ministries and agencies that have required businesses to demonstrate respect for human rights as set out in the UN Guiding Principles on Business and Human Rights as a condition of receiving government support through export credit, investment guarantees, and political risk insurance? If yes, how was this implemented?

In relation to GP 3(a), in the Italian NAP the following measure is worth of mentioning:

“The ‘legality rating’ was introduced in 2012 for the promotion of principles of ethical behaviour in business. The Italian Competition Authority (ICA) can issue, on request, a certification of compliance with relevant domestic legislation and of the adoption of good governance initiatives voluntarily adopted by enterprises, which entitles firms to access public funding and easier access to bank credit. One of the main aims of the ‘legality rating’ is to certify the companies’ active compliance with human rights, in particular the adherence to the guidelines provided by the Legislative Decree No. 231 of June 8th 2001 on the administrative liabilities of companies and the adoption of corporate social responsibility within their own *modus operandi*. The Decree No. 231 introduces essential provisions regulating the relationship between companies and the stakeholders, sanctioning enterprises that through their managers, company’s officers, subordinates (or third parties acting on behalf of the company), commit specific offences, including environmental crimes, unauthorized handling of information and crimes against the person (as listed in the Universal Declaration of Human Rights), and violate the safety rules in the workplace. The complete list of the companies that have obtained a rating, with their score, is published on the ICA website (www.agcm.it/rating-di-legalita/elenco.html)”.

3. Have such ministries or agencies involved with export/investment promotion, required businesses to demonstrate commitments to human rights as set out in the UN Guiding Principles as a condition for participating in trade missions, receiving export promotion assistance, and being eligible for trade advocacy services? If yes, how was this implemented?

As it concerns the implementation of GPs 4-5-6, the Italian NAP refers to the following action:

“Italy fully adheres to the principles of enforcement of socially responsible procurement and is engaged in ensuring that the respect for human rights is taken into consideration in all procurement stages. The Italian Anti-Corruption Authority (A.N.AC.) supervises and regulates the entire public procurement market in order to ensure compliance with: i) the principles of legitimacy and transparency; ii) the effective performance of contracts; iii) anti-corruption rules. In this regard A.N.AC. and the Italian Competition Authority signed a MoU in December 2014 to establish new criteria for the assignment of the legality rating to companies. In its procurement guidelines, A.N.AC. advises the contracting authorities to include the legality rating among the criteria used to select the most economically advantageous offer.

Italy has adopted the Legislative decree 19 April 2016, n.50, implementing the EU Directives, introducing a framework of a “socially responsible public procurement policy” and reputational requirements in public procurement awarding. With regard to companies directly or indirectly owned by the State, and following a joint effort with the Minister of Economy and Finance, in 2015 A.N.AC. issued guidelines on: i) public disclosure of corporate decision-making processes on the rotation of managers and executives; ii) establishment of new conflict of interest rules; iii) definition of risk areas and protection of whistle-blowers; iv) respect of the rights of workers involved.

Export Credit Agencies and Investment Insurance Agencies (ECAs) provide government-backed loans, insurance and guarantees to support business enterprises industrial projects abroad, especially with regard to complex and risky environment. The strategic role of these public agencies (SACE and SIMEST) make them more exposed to the risk of being associated or linked with human rights infringement: they both apply the OECD Recommendation on Common Approaches and Environmental Due Diligence and conduct risk analysis on environmental and social impact in their operations”.

4. Are there examples of human rights training programmes for trade officers who assist companies with export promotion and other forms of trade and investment support?

With reference to GP 8, coherence on business and human rights policies and regulations across all competent Government departments and agencies both at national and local level will be ensured through an on-going dialogue, the collaboration amongst all the parties concerned and the activity of coordination among the competent governmental department by the Interministerial Committee for Human Rights at the Italian Ministry of Foreign Affairs and International Cooperation. Among the planned measures of the Italian NAP, the following is provided for: “Development - with the assistance of CIDU - of training activities on business and human rights for competent government and public officials through the predisposition of e-learning scheme and *ad hoc* seminars which will be tailored on the specific competences of each department/ministry”.

5. If a company/business is the subject of a complaint by victims and/or civil society organizations, relating to adverse human rights impacts, are there examples of this having consequences for trade and investment-related support to the same company?

On this point, in general terms, “With regard to Criminal Law, the Italian legal system generally applies the principle of territoriality as a limit of the efficacy in space of Italian law; however, this principle is subject to exception with regard to the criminal conducts or offences against universal human values such as genocide, slavery, terrorism, etc. In particular, article 7 of the Italian penal code provides for a universal definition stating that for specific offenses the Italian penal law may apply even if the crime is totally committed abroad (outside national boundaries) both by nationals and foreigners. This article, in particular is recalled also with regard the law 231 on the administrative responsibility of entities: art. 4 of law 231 states that in cases falling under art. 7 of criminal code, the enterprise having its headquarter in the state territory is held accountable also in relation to crimes committed abroad, if the state where the offense occurred did not yet proceed against it”.

Just to make an example on this point, as reported in the Italian NAP in relation to irregular work in the agricultural sector:

“In line with this approach, the Law n. 199 of 29.10.2016 “Disposizioni in materia di contrasto ai fenomeni del lavoro nero, dello sfruttamento del lavoro in agricoltura e di riallineamento retributivo nel settore agricolo” (provisions on countering undeclared labour, labour exploitation in agriculture and wages rebalance in agricultural sector), provides for measures aimed at improving the criminal prosecution of the phenomenon (through the crimes of illicit intermediation and work exploitation) with particular regard to illicit capital accumulation by exploiters and the provision of confiscation of the goods and properties acquired through the exploitation activity. The Law provides for victims’

compensation and the activation of a plan for the treatment of seasonal workers (in particular foreign ones) with the direct involvement and control of Regions on their conditions”.

Export Processing Zones and Investment Promotion

7. Are there examples of laws, regulations, policies and procedures in place for special economic zones/export processing zones that also include provisions for ensuring that businesses operating in those zones respect the human rights of workers and other people/communities who may be impacted by their activities?

In relation to GP 7, “Italy recognizes the importance of respecting human rights especially in conflict-affected areas, whereas the promotion of human rights may yet represent a fundamental mean to guarantee peace and security. On this basis, Italy can draw on best practices of awareness raising and training activities with regard to conflict minerals, and in particular the gold sector, in line with the OECD due diligence and relevant EU regulation. Furthermore, the Government is involved in the process of elaboration of a EU Regulation “setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict affected and high-risk areas” for a responsible trading strategy from minerals from conflict zones”.

To this scope the following planned measures have been included in the Italian NAP:

- Further promote the knowledge of the OECD due diligence guidance ‘Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones’ and ‘Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas’, encouraging and supporting SMEs to follow as well this guidance tools;
- Include human rights impact of economic activities in the programs and activities of awareness raising and capacity development aimed at the respect of human rights in conflict affected countries and high-risk area to be devised and implemented through specific programmes by the National Agency for International Cooperation;
- Reinforce the action of the Italian Development Cooperation towards gender equality also by supporting women economic empowerment in post conflict countries, in line with the three pillars of the United Nations (peace and security, development, human rights) and the operational and normative framework developed within the UN Security Council Resolution 1325 “Women, Peace and Security”.