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TOWARD ETHICAL AND SUSTAINABLE BUSINESS MODELS

JUDICIAL ADMINISTRATION AND CORPORATE REVITALIZATION

Judicial administration has become a tool for economic crime prevention and corporate recovery, capable of advancing organizational change toward a more ethical and sustainable business. By examining court cases in the logistics, fashion, and food delivery sectors, the study shows how this judicial measure can prompt companies to review their organizational structures, implement 231 Compliance Models, shore up internal controls, and improve supply chain management. The goal is not only to reclaim the individual company, but to trigger a virtuous process of legality involving entire sectors, promoting a corporate culture of transparency, integrity, and sustainability.

CORPORATE LEGALITY//CORPORATE GOVERNANCE//BUSINESS ETHICS//SUSTAINABLE SUPPLY CHAIN

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INTRODUCTION

The paper analyzes the institution of judicial administration (a legal mechanism similar to court-ordered receivership), governed in Italy by Article 34 of Legislative Decree No. 159/2011, the so-called Anti-mafia Code. We explore the relationship between the competitiveness of business systems and upholding the rules governing how these systems function to ensure their sustainability and fairness over time.

The paper is structured in three parts. The first part is devoted to a legal framing of prevention law and its expansive potential as a tool for combating organized crime as well as economic crime. The second part illustrates the jurisprudential practice promulgated by the Court of Milan, with particular reference to recent case law in the area of labor-intensive service contracts involving leading fashion brands and logistics giants which abetted third parties under investigation for the crime of illicit intermediation and labor exploitation, regulated by Article 603-bis of the Criminal Code. (In some cases, crimes also included money laundering and tax evasion.) The third part delves into the implications of the institution of judicial administration, that is, how such a disruptive event can instantly accelerate the transformation towards a more ethical and sustainable business, creating notable spillover effects for the main functions that fall under the scope of the measure (procurement, compliance, legal, and internal auditing).

Special focus centers on the remediation plan adopted by companies, the importance of appropriate organizational arrangements to comply with Legislative Decree 231, and the role of the procurement function in implementing sustainable practices. All this serves to prevent and manage risks (including reputational risks) while taking a broader vision, looking beyond the individual company and directing efforts toward the supply chain and the company's industry as a whole. While the measure is in place, the court-appointed administrator ensures that the company embarks on a path aimed at comprehensively redesigning corporate structures and processes; this is accomplished by overhauling the organizational structure, governance, and corporate policies, and adopting suitable solutions that are compatible with necessary profit objectives. Finally, the authors explain how judicial administration, as a lever for ethical and sustainable business, has fulfilled its purposes and what conclusions can be drawn for business management.

PREVENTION LAW AND POTENTIAL

Legislation on prevention measures has traditionally been characterized by considerable regulatory stratification; legislative interventions are extremely episodic, often based on emergency politico-criminal scenarios and contingencies, and lacking in any organic, systematic vision. The resulting regulatory framework is a complex one, further complicated by a series of rulings by the Constitutional Court and the Supreme Court, including its United Sections. The need for a comprehensive structure of prevention measures was addressed by the Italian legislature with the Code of Anti-Mafia Laws and Prevention Measures, adopted through Legislative Decree No. 159 of 6 September 2011 (hereinafter also the "Anti-Mafia Code" or the Italian acronym "CAM"). This constitutes the culmination of a tormented legislative path that crime prevention has taken over more than a century and a half to counter mafia-style phenomena[1].

The legislature's work on crime prevention measures did not end in 2011, however. The most significant reform of the Anti-Mafia Code was ratified in Law No. 161 of 17 October 2017[2]. This was a complete overhaul of the code that not only addressed the substantive and procedural regulation of personal and property-based prevention measures, but also extended to the administration, management, and destination of confiscated property, as well as the protection of third parties. The central idea of the reform was to strike a balance between the need to prevent mafia infiltration into the non-criminal economy and the free exercise of business activity. Faced with the expansion of mafia organizations into "nontraditional" areas and their ability to infiltrate healthy businesses, the legislature introduced more flexible tools. These would replace traditional measures such as seizure and confiscation, which, to be frank, have not always proved effective in capturing the complex web of collusive relationships between mafia groups and businesses (Conzo, Roberti and Vona, 2017).

1 For a historical and systematic framing of crime prevention measures see Basile, F. (2021).
2 Law No. 161 of 17 October 2017 came into effect on 19 November 2017, containing, "Amendments to the Code of Anti-Mafia Laws and Prevention Measures, referred to in Legislative Decree No. 159 of 6 September 2011, to the Criminal Code, and to the implementation, coordination and transitional rules of the Code of Criminal Procedure and other provisions. Delegation of power to the government for the protection of labor in seized and confiscated companies."

With the reform of the Anti-Mafia Code, the legislature incorporated judicial administration[3] (Article 34 CAM) (which will be discussed in more detail in the following paragraphs) and judicial control of companies into the legal system (Article 34-bis CAM). In this way, the 2017 reform reinforced corporate remediation measures as alternatives to seizure and confiscation, based on the belief that an effective strategy to prevent criminal infiltration into economic activities must be reconciled with the equally important need to safeguard the overarching collective interests of keeping businesses open. The purpose of these instruments is to recover companies which, although subjected to attempts at mafia infiltration, still retain a degree of managerial autonomy from criminal syndicates. The legal rationale is to redeem companies whose core business is not yet entirely compromised, and is in fact sufficiently sound to function properly. For these reasons, the company merits hetero-directed intervention by the state, aimed at rectifying situations where there is illegality or interference from criminal actors or groups, with a view to reintegrating the companies in question into the non-criminal economic circuit.

The gradual expansion of a "therapeutic" model for companies that are vulnerable to criminal influence, and the decline in the expropriation-based approach, corresponds to a broader shift that has been underway over the years in the relations between businesses and criminal organizations (Visconti, 2019; Conzo and Vona, 2014). This trend is also gaining momentum on the administrative front. In fact, we can cite several examples, such as the system of anti-mafia interdictory information, a precautionary instrument that anticipates the threshold of social defense to the maximum extent; the model of entity liability designed by Decree Law No. 231/2001; the extraordinary measures for management support and business monitoring introduced by Decree Law No. 90/2014 (converted, with amendments, into Law No. 114 of 11 August 2014), adopted exclusively for anti-corruption purposes and aimed at the full performance of services covered by specific public procurement contracts; the measures affecting the reputational level, such as legality protocols and compliance programs; the corporate rating rules in the Public Contracts Code; and other pre-existing preventive tools.

A shift toward a less repressive, more inclusive, dialogue-based approach is also reflected in Decree Law No. 152/2021 (converted with amendments by Law No. 233/2022), which introduced significant changes by inserting Article 94-bis into the Anti-Mafia Code. This provision governs the new instrument of collaborative prevention, which can be enforced by the prefect when attempts at mafia infiltration are linked to occasional facilitation.

As illustrated above, an evolutionary trajectory of the legal system has been progressively solidifying. This, both in the jurisdictional and administrative spheres, goes hand in hand with a transition beyond an exclusively punitive and repressive approach to organized crime. Instead, a variety of alternative preventive and control instruments are identified and calibrated to varying degrees of criminal interference. The aim (based on a prognostic judgment) is to safeguard the continuity of business activity with a view to remediation and subsequent rehabilitation.

3 The historical antecedent of non-ablatory asset measures is the temporary suspension from the administration of assets related to economic activities, inserted in Art. 3-*quater* of Law No. 575/1965 by Decree-Law No. 306/1992, converted with amendments into Law No. 356/1992. The purpose of this legislation is to hinder the infiltration and instrumentalization of certain lawful economic activities by criminal organizations, regardless the owner's potential liability. The law also expropriates from the third party abetting the illicit activity any proceeds from the combined interests between the enterprise's own lawful economic activity and the unlawful activity of others. Following the repeal of Law no. 575/1965, (with the entry into force of Legislative Decree 159/2011) Articles 3-*quater* and 3-*quinquies* were incorporated into Article 34 of the new Anti-Mafia Code (in Chapter V dedicated to "Preventive Measures other than Confiscation"). Although the name was changed to "Judicial Administration of Assets Connected to Economic Activities," the institution remained unchanged in both form and substance. Law No. 161/2017, which represented the most significant amendment to the Anti-Mafia Code, completely redesigned the institution of judicial administration and included illegal intermediation and labor exploitation among the so-called "red-flag crimes." Through this process, judicial administration has also become a remarkably effective tool in combating the criminal conduct regulated by Article 603-*bis* of the Criminal Code, as demonstrated by the recent enforcement actions taken by the Court of Milan.

ECONOMIC CRIME AND THE APPLICATION OF JUDICIAL ADMINISTRATION

In recent years, the expansive potential of the crime prevention law has led to an evolution in its application by the courts, which have extended relevant measures to individuals who pose a different kind of danger than the system traditionally aimed to contain. In fact, crime prevention courts have begun to apply *ante delictum* measures in cases of tax evasion, fraud, bankruptcy, bribery, and similar offenses – that is, in cases of economic crime in the strict sense, involving so-called white-collar criminals[4].

This practice was later endorsed by the legislature by addressing, via Law No. 161/2017, a specific case of danger: the new sub-section *i-bis* of Article 4 of the Anti-Mafia Code, built around certain serious crimes against the Public Administration[5]. It is precisely within this framework of application that the effectiveness of so-called "mild prevention" is fully realized (Roia, 2018)[6]. There is no doubt, in fact, that an asset-based measure with a remedial scope constitutes a highly effective tool in the fight against profit-driven crime.

Judicial administration is an instrument that can be applied to legal persons (even when there is no mafia influence involved). This preventive measure centers on assets and is meant to obstruct criminal infiltration into the innermost workings of a business and ultimately the free market. The objective conditions for judicial administration, defined in Paragraph 1 of Article 34 of the Anti-Mafia Code, are based on a particular mild evidentiary standard, described by the legislature as the presence of "sufficient evidence."

Prerequisites for application

First, judicial administration can be ordered when "there is sufficient evidence to believe that the free exercise of certain economic activities, including those of an entrepreneurial nature, is directly or indirectly subjected to the conditions of intimidation or subjugation laid down in Article 416-bis of the Criminal Code." Second, the measure in question may be applied if there is sufficient reason to believe that the free exercise of economic activity could aid or abet two categories of subjects:

- Persons against whom a personal or patrimonial prevention measure has been requested or applied under Article 6 of the Anti-Mafia Code (such as, for example, special surveillance under the public security law) or under Article 24, which governs preventive confiscation.
- Persons who are subject to criminal proceedings for the following:
  - The crimes cited in Article 4, Paragraph 1, letters (a), (b), and (i-bis) of the Anti-Mafia Code, which include the crime of association with the mafia under Article 416-bis of the Criminal Code; the crimes cited in Article 51, Paragraph 3-bis of the Criminal Code; fraud against the state under Article 640-bis of the Criminal Code; and criminal association under Article 416 of the Criminal Code, when the intention is to commit specific crimes against the Public Administration.
  - The crimes of illegal intermediation and exploitation of labor under Article 603-bis of the Criminal Code; extortion and usury; and money laundering and use of illegally obtained money, goods, or utilities under Articles 648-bis and 648-ter of the Criminal Code.

4 For more on the definition of white-collar crimes and economic crimes, see Sutherland, E.H. (1940); Mucciarelli, F. (2018).

5 For some critical remarks on the introduction of (*i-bis*) see Maiello, V. (2018). "La corruzione nel prisma della prevenzione *ante delictum* prevention." *DisCrimen*, Dec. 4; Maugeri, A.M. (2018). *La riforma delle misure di prevenzione patrimoniali ad opera della l. 161/2017 tra istanze efficientiste e tentativi incompiuti di giurisdizionalizzazione del procedimento di prevenzione* (The reform of patrimonial prevention measures by law 161/2017, from appeals for efficiency and failed attempts to establish jurisdictions over prevention proceedings) *Archivio Penale (web)*, supplement to no. 1, p. 327.

6 The expression comes from the Presiding Judge of the Court of Milan F. Roia and refers to the milder form of prevention constituted by judicial control.

The company's activity does not have to be illegal per se. Instead, the rationale behind the measure is to prevent the interests of legitimate businesses from combining with those of inherently criminal enterprises. Similarly, according to case law, the activity of the abetted party need not be illicit; it is sufficient that a preventive measure has been requested against the latter, or again, that charges have been filed for any of the offenses listed in Article 34 of the Anti-Mafia Code.

Lastly, judicial administration cannot be applied in the case in which conditions exist that would trigger seizure and confiscation, i.e., a preventive measure against the asset holder who aided or abetted another party. In fact, if the latter is a front man for this party, the assets in question could be subject to preventive seizure and confiscation, which could involve all assets at their direct or indirect disposal. The purpose of the measure is not repressive (in other words, it is not intended to punish the entrepreneur who is involved in the criminal organization or against whom criminal proceedings are pending) but rather preventive. In other words, the aim is to counter the unlawful contamination of healthy businesses through a process of amendment, guided by a court-ordered technical representative: the judicial administrator.

As for the subjective prerequisites, the company that aided and abetted, i.e. the facilitating company (or more precisely, the people in the company who hold decision-making, control, or representative powers) must have engaged in negligent conduct. According to the Court of Milan, the company must have violated the "normal rules of prudence and sound business management," which may coincide with those set out in its own code of ethics, or with the standard practices that should be followed by "an entity operating at a medium-high level in the field of work and/or service contracts." However, it is a different case if the facilitating firm acts with full knowledge and intent to aid and abet the criminal activity of third parties. In such circumstances, since the company's conduct would be considered intentional, it may be complicit in the crime in question, or guilty of aiding and abetting the criminal conduct of others. In short, for judicial administration to be applicable, the company and its owners must be third parties to the guilty entity, completely uninvolved in the criminal dynamic, and must not have *knowingly* aided or abetted the commission of the crimes addressed by the measure.

The broad wording employed by the legislature in defining the objective prerequisites of judicial administration has allowed judges to apply the measure to companies that, while aiding and abetting one of the aforementioned crimes, are completely free of mafia-type influence. This new interpretative horizon, first established in judicial practice and later endorsed by the legislature, was promoted primarily by the Milanese judiciary and the pertinent authorities. In fact, in recent years there has been a veritable proliferation in the application of judicial administration under Article 34, even to entities that, while not subject to mafia coercion, have aided and abetted economic crimes.

A basic prerequisite for the application of judicial administration is continuous facilitation. If the facilitation was merely occasional, the less invasive measure of judicial control (applicable only in cases involving mafia influence) would be appropriate, in line with the principle of proportionality and reasonableness with respect to the verified circumstances and the severity of the preventive measure. This interpretative standard has been upheld by the Constitutional Court in its rulings (2019). More precisely, Milanese case law considers judicial administration applicable in the case of a facilitating company when the conduct in question is negligent, imprudent, or reckless (assessed in light of the behavior of people with the powers of decision-making, representation, and control). In such cases, the Court of Preventive Measures, when ordering the intervention, censures the company for having failed to implement the necessary and appropriate safeguards to mitigate the risk that its economic activity might facilitate individuals against whom a personal or asset-based judicial measure has been requested or applied, or who are subject to criminal proceedings for a legislatively defined offense.

Requesting parties and content of the decree

Pursuant to Article 17, Paragraph 1 of Legislative Decree No. 159/2011, the parties that may request the application of judicial administration against a company are: the Public Prosecutor at the Court of the District Capital; the Chief of Police; and the Director of the Anti-Mafia Investigative Directorate. These authorities may submit the request to the competent court when, based on the findings of any of the investigative activities identified in Article 34 CAM,[7] they consider that the measure in question is warranted.

If the competent court finds that the objective and subjective prerequisites established by the provision are met, it shall order, by reasoned decree, the judicial administration of the companies and assets that can be used to conduct business activities. In the same decree, the Court appoints a delegated judge and a judicial administrator – the latter playing a central role in implementing the measure in concrete terms. With regard to enforcement, the judicial administrator, as per Article 34 Paragraph 3 of the Anti-Mafia Code, is vested with broad powers, which vary depending on the legal form of company subject to the preventive measure.

- If the business is a sole proprietorship, the judicial administrator exercises all the powers pertaining to the owner of the property and the business in question.
- If the business is operated in the form of a company, the judicial administrator may exercise the powers assigned to the administrative bodies, as well as other corporate bodies, in accordance with the procedures established by the Court, taking into consideration the need to ensure business continuity.

The "light" version and the principle of proportionality

It is clear from the relevant regulation that the judicial administrator has the option (although not the obligation) to take over day-to-day business activity. This means that, following a reasoned decision by the Court, involvement in company management is allowed, but is not necessarily all-encompassing in terms of full takeover of the business operations.

The jurisprudence of the Court of Milan (based on the principles of proportionality and reasonableness) has often favored a "light" version of the measure, characterized by side-by-side oversight, leaving ordinary business operations in the hands of corporate governance. This approach is adopted in all cases where, for the purposes of organizational restructuring and re-legitimization of the company, it is not deemed necessary for the judicial administrator to take charge of day-to-day management. The approach of the Milan judges reflects sizeable weight of the constitutionally guaranteed principle of free exercise of entrepreneurial activity and what the Court sees as the duty to protect the economic and business sectors affected by the measure.

A juridical administration decree defines the scope of the preventive measure, in line with the principle of proportionality, based on the concrete "reclamation" needs identified in the affected corporate area and the size of the company. Said decree takes into account the primary need to ensure business continuity and employment levels, and to put a fully operational company – freed from criminal interference – back in play on the market. The judicial administrator is entrusted with the delicate task of communicating the objectives of the relative intervention to the company's management teams and establishing a cooperative relationship to encourage the organization to autonomously adopt remediation measures, wherever possible. These efforts should align with the goals of the preventive measure and the framework outlined by the Court. In the event of non-cooperation, the Court may indeed intensify the measure, replacing management and allowing the judicial administrator to take over the company's operations as well. The strategy underlying judicial administration

7 These are asset assessments under Art. 19 CAM aimed at verifying the risk of mafia infiltration under Art. 92 CAM, and other investigations carried out by the National Anti-Corruption Authority.

seeks to incentivize behaviors that lead to the reorganization of the company, directing it toward a new management and organizational model oriented toward transparency to prevent future illegal dysfunctions of the kind that triggered the measure in the first place.

As we will discuss in greater detail in the following sections, progress on the path of legal rehabilitation and organizational redevelopment undertaken by companies (under the guidance and supervision of the judicial administrator) is frequently recognized by the judicial authority, often resulting in the revocation of the measure before the deadline established by the decree.[8]

CASE LAW HISTORY IN LABOR-INTENSIVE SECTORS

In recent years, numerous domestic and international companies have been placed under judicial administration, primarily for failing to supervise and control third-party contractors. This is due to a growing tendency among companies operating in labor-intensive sectors to outsource certain stages of production and/or processing by resorting to external service providers (e.g., logistics, goods handling, porterage, transportation, assembly).

Recently, the Court of Milan placed several companies in the manufacturing sector under judicial administration for facilitating third parties under investigation for the crime of illegal intermediation and exploitation of labor, as regulated by Article 603-bis of the Criminal Code.[9] The judges of the Autonomous Section for Preventive Measures held three major fashion houses responsible for failing to monitor their supply chains. Specifically, these enterprises were charged with failing to verify the actual entrepreneurial capacity of subcontractors and omitting inspections to ascertain the real working conditions of employees. According to the investigators, the suppliers had adequate production capacity on paper only, and were able to remain competitive in the market only by outsourcing (again) to Chinese-run factories that significantly cut costs by employing undocumented workers under exploitative conditions. In these unauthorized, *de facto* production facilities, work was being carried out "under conditions of exploitation (below-threshold wages, non-compliant working hours, unhealthy work environments), with serious violations of occupational safety regulations (lack of health surveillance, failure to provide training and information), and by housing workers in illegally constructed dormitories under substandard sanitary conditions."[10]

The Judicial Authority also noted a general lack of organizational models pursuant to Legislative Decree No. 231/2001, along with ineffective internal auditing systems among major brands. Moreover,

8 Article 34 CAM stipulates that the judicial administration of assets shall remain in effect for a period not exceeding one year and may be extended by a further six months, with the mandatory period not exceeding a total of two years, at the request of the Public Prosecutor and *ex officio*, subsequent to a report by the judicial administrator attesting to the need to complete the program of support for the enterprises in question, and confirming that the factual and legal circumstances that led to the judicial measure no longer subsist. Before the expiration of the term set down in the relevant decree, the Court, in the cross-examination of the parties in closed session, may order the measure to be revoked in advance or extended, or may apply judicial control pursuant *to* Art. *34-bis* CAM, or order the confiscation of assets when there is reason to believe they are the fruit of illegal activities or that they are being reutilized. The delegated judge and the Public Prosecutor would be present in the council chamber. Objections to such orders may be brought to the Court of Appeals, and potentially escalated to the Supreme Court.

9 The current wording of Article *603-bis* of the Criminal Code (entitled "Illegal intermediation and exploitation of labor") appeared in Law no. 199/2016, in which the most notable innovation is the independent punishability of the employer guilty of exploitation of vulnerable persons, regardless of the mode of recruitment, as well as the inclusion of this incriminating case in the catalog of predicate offenses under Legislative Decree No. 231/2001, whereby the entity is held liable if the crime under Article *603-bis* of the Criminal Code is committed in its interest or to its advantage. The inclusion of Article *603-bis* of the Criminal Code among the listed crimes and the application of judicial administration is based on the Anti-Mafia Code Reform Law No. 161/2017.

10 Court of Milan, Autonomous Section for Prevention Measures: Decree of 15 January 2024, no. 1/24: Fabio Roia, Presiding Judge; Giulia Cucciniello, authoring judge; Alviero Martini SPA, defendant.
Decree of 3 April 2024, no. 10/24, Presiding and authoring judge, Paola Pendino; Giorgio Armani Operation SPA, defendant.
Decree of 6 June 2024, no. 12/24, Paola Pendino, Presiding Judge; Giulia Cucciniello, authoring judge; Manufactures Dior SRL, defendant.

the Authority recognized the prerequisites set forth in Article 34 of the Anti-Mafia Code, as these organizational deficiencies and lack of oversight culpably facilitated individuals against whom substantial evidence had been gathered regarding the offense addressed Article 603-bis of the Criminal Code.

In the same vein, the Court of Milan's Autonomous Section for Preventive Measures recently ruled on companies operating in the transport sector which made regular use of workers employed by third-party entities, resulting in tax evasion and sub-par labor conditions. These rulings formed part of broader surveillance by the Milan Public Prosecutor's Office involving multiple operators in the logistics sector. The investigation revealed a fraudulent scheme involving certain entities (set up as cooperatives, consortia, or corporations) with large workforces that acted as mere "labor pools" for client companies, using simulated contracts for low-cost porterage, logistics, and transportation services. In effect, this amounted to illicit labor supply arrangements.

The indicators of illegality characterizing these corporate entities were the following:

- The short duration of their lifecycle, as these entities were generally temporary and frequently replaced (typically every two years).
- The systematic transfer of workers from one company to another.
- The repeated use of front men as legal representatives.
- The recurrence of the same registered offices and the traceability of operations to identical management structures (both objective and subjective links).
- The systematic failure to pay VAT.
- The presence of a large workforce despite minimal social security contributions.
- The absence of entrepreneurial risk on the part of the contractors, as contracts were entirely managed by the client companies from an economic standpoint.
- The lack of formal qualifications or award procedures for the contracts, which created zones of discretion in contract assignment and fostered corrupt practices (namely, the payment of bribes by supplier companies to top managers at the commissioning companies).

According to the hypothesis formulated by investigators, the mechanisms described above were "culpably fueled" by the commissioning companies themselves, which, lacking appropriate organizational safeguards, were unable to prevent the risk of aiding and abetting the owners of these consortiums and companies that provided staffing. This, in turn, allowed the crimes to continue while the commissioning companies benefited from cost savings on procurement, enabling them to offer competitive prices in the market.

All this led to the judicial administration measure ordered by the Court of Milan, which held the commissioning companies liable, as they had failed to adopt adequate safeguards for the selection of porterage and transport service providers, specifically, safeguards that would have prevented the use of entities acting as mere labor pools. These companies were also reprimanded for failing to verify the effectiveness of the suppliers' corporate and organizational structures, the fiscal and social security compliance of the suppliers, and for permitting potential interference by the principal in managing employment contracts.

According to the Court's findings, the aiding and abetting that took place in this case constituted conduct of a continuous, ongoing nature (as said conduct was linked to the structural and endemic organization of labor by the companies involved), and aimed at maximizing profit, even at the cost of establishing long-term relationships with individuals professionally engaged in tax evasion and money laundering. This condition fully satisfied the prerequisite set down by the law: aiding and abetting money laundering activities and related labor exploitation practices are prohibited under Article 603-bis of the Criminal Code.

IMPLICATIONS FOR GOVERNANCE AND MANAGEMENT

When a company is subject to judicial administration, the court-appointed administrator analyzes corporate documents and the facts of the case pertaining to the company's organization, management systems, and control structures. Subsequently, the company is given a series of corrective actions (both substantial and structural) often involving multiple areas and functions, in order to address the shortcomings that emerged. With the support of its legal counsel and a technical consultant, in most cases, management prepares a remediation plan – that is, an organizational redevelopment strategy aimed at resolving the deficiencies. The interventions outlined in the remediation plan must necessarily include a thorough review of the company's governance, organizational structure, organization, management and control model (pursuant to Legislative Decree No. 231/2001), and its internal control system.

Serious shortcomings in organizational structures have been found in various proceedings, particularly in relation to companies with large workforces, vast operational reach, and high revenue levels. For effective resource management and oversight, the organizational structure must be proportionate to the company's size and business characteristics. A mismatch between a company's operational scale and its governance framework is a clear indicator of legal-structural inadequacy. The purpose of establishing governance arrangements suited to the nature and size of the company is to ensure effective corporate management, which means running the business efficiently, maintaining economic and financial balance, and effectively identifying and dealing with risks and critical issues.

Organizational aspects of the remediation plan serve a dual function. From a managerial standpoint, they support the alignment between structure and corporate objectives; from a control standpoint, they provide the tools that allow company management to monitor performance and goal achievement, especially in light of emerging risks. The organizational structure (functions, departments, corporate roles, etc.) affects work units and the tasks they are assigned. Specifically, the division of labor entails identifying the organizational units and individuals involved, and then precisely detailing roles and decision-making powers. Coordination among units is formalized in the organizational chart, which delineates the hierarchy of decision-making, control, and operational bodies. Internal committees and governance bodies must also be created, and their functions, mandates, and areas of competence clearly described.

In several of the judicial administration proceedings examined for this study, unequivocally defined roles and responsibilities were lacking; job descriptions were either absent, or were not disseminated throughout the organization. In some cases, a key strategic leader (such as a Chief Executive Officer or General Manager) was missing, leaving a gap in coordination between the board of directors and department heads.

To further fortify internal control and risk management, companies are advised to refer to the Corporate Governance Code for listed companies issued by the Corporate Governance Committee. This includes the appointment of independent directors to the board and the establishment of committees such as the Ethics and Sustainability and Auditing and Risk, the latter serving as an advisory body to the board in assessing the efficiency, cost-effectiveness, and adequacy of the internal control and risk management systems. If a company is controlled by a foreign parent company, it is also advisable to:

- Reinforce the oversight of the Italian subsidiary through periodic monitoring by the Executive Committee and the Group's risk, internal control, and audit departments.
- Establish a dedicated committee on the parent company's board to monitor implementation of the remediation plan.
- Ensure proper information flows to shareholders regarding the progress of the plan.

Within the overall corporate structure, the internal control system and the internal auditing function, where present, play a pivotal role. For such a system to be effective, integrated, and synergistic (particularly in large companies), it must include multiple levels of control. These are typically categorized as follows:

- First-level (line) controls, carried out by the process owner.
- Second-level controls, handled by the compliance function, risk management, and the manager in charge of financial reporting.
- Third-level controls, which are the responsibility of the internal audit function, tasked with evaluating the overall functionality of the system (also called assurance) (Carnà, 2020).

The Supervisory Body also plays a control role similar to that of the internal audit function, but with specific focus on compliance with Legislative Decree No. 231/2001. This body has more strictly regulatory functions and may also issue proposals regarding corporate procedures.

Companies subject to judicial administration often have inadequate internal control systems that are incapable of preventing, detecting, measuring, communicating, and managing business risks. The absence of precise job descriptions means roles and responsibilities are not formally assigned, rendering first-level operational controls largely ineffective. Where the compliance function is narrowly focused (e.g., on implementing group compliance policies or supporting the parent company's internal audit function), second-level controls related to compliance with Decree No. 231/2001 are often lacking. In some cases, the internal auditing function is weak or entirely absent. This aligns with the conduct observed by the Court, which frequently includes failures in supervision and control**,** the lack of control systems capable of detecting or preventing illicit conduct in a timely manner, and the absence of effective sanctioning mechanisms, including those required under Legislative Decree No. 231/2001.

Consequently, the company under judicial administration is obliged to redesign its entire organizational and internal control system, ensuring that both are adequate to stop the profit-driven crimes targeted by the preventive measures and, more generally, any crime the company may be exposed to, including those associated with outsourced activities.

231 COMPLIANCE IN JUDICIAL ADMINISTRATION

In the action plan outlined by the Court, the obligatory implementation of a suitable organizational, management, and control model serves as a safeguard for legality (pursuant to Legislative Decree No. 231/2001). The aim is to manage risk, prevent crimes, and protect the enterprise in question from further liability, while preserving its assets, business, and reputation. Case law from the Court of Milan has repeatedly underscored the central role of compliance programs in companies. The adoption and effective implementation of Model 231 are central factors in the assessments that the judicial authority must make with respect to the prerequisites for applying the preventive measure. In this regard, the absence, inadequacy, or ineffective implementation of the organizational model is seen by the Court as an organizational deficiency constituting culpable aiding and abetting of criminal conduct by third parties.

As noted, this approach has been adopted in particular by the Court of Milan. In evaluating the advisability of imposing preventive measures against companies deemed to have facilitated systems of labor exploitation implemented by third-party subcontractors, here are some of the Court's considerations:

- The existence, on the part of both commissioning companies and suppliers, of organizational models and codes of ethics.
- The suitability of these models to prevent illicit intermediation and labor exploitation, with

specific reference to the risk areas relating to supplier relationships and production chain monitoring.
- The effective implementation of these models by the commissioning company.

Under judicial administration, the company is deemed liable because the organizational shortcomings have enabled – or more precisely, facilitated – illicit conduct by a third party. From this perspective, what makes the corporate entity culpable, justifying the intervention of the judicial authority, is precisely the failure to establish behavioral standards and internal control mechanisms that can minimize the risk of the conduct that the legal system deems undesirable. For this reason, in the directives included in the "reasoned decree" ordering the measure, the Court calls on the judicial administrator to "examine the company's structure, with particular reference to the organizational and management model drawn up pursuant to Article 6, Paragraph 2, of Legislative Decree No. 231/2001, meticulously assessing the model's suitability to prevent offenses of the type that occurred."

A suitable Model 231 should be understood as a genuine risk management tool and a mechanism for shoring up corporate governance. The model must be structured not only to prevent the offenses that triggered the preventive jurisdictional measure, but also to address a broader set of risk events the company may be exposed to in its specific operational context. Particular attention should be paid to outsourced business activities, which may subject the company to third-party-related risk profiles; the aim here is to ensure broader compliance coverage. In this framework, the Court assumes an active role as a promoter of the organizational redevelopment process that guides the company, thanks to the moral suasion of the judicial administrator, in adjusting compliance structures and restoring corporate legality. In this sense, Model 231 is the result of a shared, concerted process engaging the Court, the judicial administrator, and the company.

A positive assessment of the model's suitability, together with the overall progress of the remedial plan, may contribute to the Court's decision to revoke the preventive measure (potentially even before the expiration date initially set in the decree) if the company is well on its way on the path of relegalization.

The perimeter of risk assessment and the effectiveness of Model 231

Being placed under judicial administration brings with it the obligation to adopt and/or revise the existing compliance program. In this context, in collaboration with the judicial administrator, the company must develop a structured, comprehensive system for the prevention, deterrence, and control of crime-related risks. To build an effective Model 231, company management must conduct a thorough mapping and/or revision of the policies, procedures, and controls already in place in its compliance system, including those originating from the corporate group, if applicable. Additional tasks include analyzing existing risk assessment documents, pinpointing sensitive activities, creating dedicated protocols and procedures, setting down a code of conduct to be respected by all recipients of the model, and delegating specific control activities aimed at crime prevention. In particular, risk identification (via customized protocols) should take place in risk assessment workshops involving the various corporate functions. The aim of these workshops is to ascertain the actual corporate context and outline the actions to be implemented in sensitive areas (gap analysis), both in terms of existing internal procedures and controls, and in relation to organizational requirements.

Overcompliance, cosmetic compliance and the compliance game

Mapping out sensitive activities where illicit behavior could potentially occur requires a careful analysis of the business environment and accurate identification of potential risks. In this regard, it is essential to clearly demarcate the risk assessment perimeter and define reliable criteria for appropriate safeguards. Otherwise, a phenomenon known as "compulsive proceduralization" may arise, which can lead to an uncontrollable escalation toward increasingly high behavioral standards and excessively formalized safeguards. This could happen so far in advance of any actual misconduct that the model ultimately shifts from a prevention-oriented to a precautionary paradigm (Merlo, 2022). This regulatory escalation is perfectly captured by the metaphor of the "spider-entity," which becomes entangled in the very web it has woven. The result may be counterproductive forms of overcompliance that paralyze business operations (Di Giovine, 2021). Indeed, any element of overcompliance in the organizational model risks undermining its overall effectiveness. Ultimately, when building a Model 231 during the reorganization process of a company in receivership, special care should be taken to preserve its incentivizing and pedagogical aspects. Specifically, this refers to the ability to encourage self-regulation and to "motivate collective entities toward crime prevention and the promotion of a culture of legality in complex organizational contexts" (Manes and Tripodi, 2016).

In several companies placed under judicial administration, corporate leadership adopts a cosmetic-bureaucratic approach to compliance, often resulting in what scholars call organizational decoupling, in other words, a structural mismatch between an overly elaborate procedural framework and actual work practices (Meyer and Rowan, 1977). In such scenarios, organizations operate with two parallel structures: one legal/formal, developed to meet regulatory requirements and uphold external legitimacy; the other substantive, representing actual organizational behavior. In practice, the company conforms to external expectations in its formal structure to gain legitimacy, while deliberately creating mechanisms that are incapable of producing real changes and at the same time maintaining the "business-as-usual" operating logic (Centonze and Manacorda, 2023). This dissociation fuels cosmetic compliance, or "window dressing," where compliance programs serve primarily as façades designed to shield the company behind a formal model, rather than as authentic tools for crime prevention (Esposito, 2022).

At the root of this phenomenon is the belief that adopting a compliance program is an unnecessary cost, a mere bureaucratic burden that lacks real utility in preventing criminal risks. As a result, despite the increasing role compliance plays in corporate strategy, it is often viewed instrumentally, primarily for public relations purposes: to protect or enhance corporate image and, when possible, reduce criminal exposure. In these cases, governance behavior does not reflect a genuine commitment to change or improve. Instead, it's simply a "compliance game" among stakeholders, in which relative processes and programs are not designed to transform corporate culture or conduct.[11] For this reason, it is imperative to continuously monitor the relationship between the form vs the substance of operations when implementing the action plan. Doing so will prevent a misalignment between the two, particularly when the perceived cost-benefit ratio of the compliance system is unbalanced. The risk is that the true purpose of 231 Compliance is not served: from a preventive resource that supports business development, it turns into a way to "put the Court to the test." In such cases, the company may comply with the Court's demands not out of ethical conviction or genuine intent to ensure lawful business conduct, but solely to have the judicial administration revoked and to regain market legitimacy after the reputational damage caused by prior non-compliant behavior.

Compliance in multinational groups

In the case of large companies (particularly if they are part of a multinational group), top management may question the appropriateness of adopting a

11 Laufer, W.S. (2018). "The Compliance Game." *Revista dos Tribunais*, p. 67 et seq.; Centonze, F. (2017); Forti, G. (2012) with reference to the Italian context emphasizes how " fulfilling [legal obligations] are not motivated by concern for preventing crimes and illegalities in the corporate sphere [...]" but mainly to evading charges in court, exhibiting a "façade, formal-bureaucratic activism, deemed suitable to appease the controllers on duty."

compliance model pursuant to Legislative Decree No. 231/2001. This was the situation, for example, during the judicial administration of a well-known company operating in the food delivery sector, which lacked both a Model 231 and a Supervisory Board. In that case, the Dutch parent company had difficulty understanding the necessity of adopting such a model specifically for its Italian subsidiaries, given the existence of a group-wide compliance framework that was already aligned with international standards and considered more advanced.[12] Crucial aspects in this specific context were the awareness-raising efforts of the judicial administrator, along with the foresight shown during the development of the Model 231. In the Group's compliance framework, the structured system of policies, procedures, and controls that was already in place was taken into account. Indeed, this system was deemed suitable for crime prevention and control purposes with respect to the sensitive activities identified during risk assessment and gap analysis. Therefore the aim of the final Model 231 was seamless integration between pre-existing and newly introduced tools, tailored to the compliance needs of the group's Italian subsidiaries.

A takeaway from this example is that the judicial administrator should assume the role of guide, steering the company toward a collaborative and synergistic approach to compliance – one that entails a comprehensive rethinking of organizational processes and embraces a corporate culture grounded in ethics, integrity, and sustainability. By entrusting this professional with the task of introducing organizational models capable of preventing (or at least mitigating) specific types of offenses, the Court prevents the emergence of compliance models that are nothing more than symbolic or formalistic.

THE NEW CHALLENGES OF THE PROCUREMENT FUNCTION

Recent court decisions underscore the fact that procurement departments have a duty of care in managing risk profiles associated with third parties. In fact, today sustainability issues are becoming a prerogative of the entire supply chain, rather than the sole responsibility of individual companies. In view of regulations on corporate accountability (such as the Corporate Sustainability Reporting Directive) and supply chain due diligence (Corporate Sustainability Due Diligence Directive, or CS3D), along with the transition to a circular economy and adherence to ESG criteria, companies must strive for continuous improvement in ethical standards throughout the entire value chain.

Delving into specifics in the area of governance, the Corporate Sustainability Due Diligence Directive (CSDD or CS3D), also known as the Supply Chain Act, was approved by the Council of the European Union on 24 May 2024. This legislation obliged all large companies and any entity with socio-environmental risk exposure falling within their scope to implement a preventive system of oversight across all stages of their business processes, and the entire upstream and downstream value chain (including suppliers, distribution, transport, storage, and waste management). The objective is to prevent

12 Please refer to Vulcano, M. (2023). "The new frontier of 231 Compliance: from a preventive tool in crime liability to a corrective tool in anti-mafia prevention measures." *231 Review*, no. 3. The reference is to the court case Uber Italy Srl (Autonomous Section of Preventive Measures, Court of Milan, Decree No. 9/2020). Compliance activities pertaining to Legislative Decree No. 231/2001 were entrusted to the Global Compliance Function through specific mandate from Uber Italy to the Group's EMEA Compliance and EMEA Internal Auditing Offices. Compliance coordination with the Group functions, EMEA Compliance and EMEA Internal Auditing was overseen by the Compliance Manager (or Compliance Champion). This oversight office pushed to create this new role after discovering that there was no internal compliance unit in Uber Italy SRL tasked with conducting first-level controls and ensuring compliance with internal policies and procedures by employees. One of the critical issues that most likely caused the problems cited in the decree that ordered the company into receivership was the centralization of functions at the group level and the functional dependence of the Italian legal entity on the Dutch parent company. The creation of a local compliance function, delegated to middle management and reporting directly to the general manager, served as a point of reference for relations with the employees and control bodies of the Italian companies, with the group compliance and internal audit functions, with Italian third parties and with the Italian Authorities. This protected the company from risks such as the ones that triggered the judicial intervention, i.e., lack of oversight and serious organizational deficiency on the level of true autonomy from its Dutch parent company.

or mitigate adverse impacts on the environment, working conditions, and individual rights and freedoms, while publicly demonstrating the exercise of duty of care.

Furthermore, companies must publish their due diligence policies on the European Single Access Point (ESAP) to ensure accessibility to investors. This oversight obligation has a dual purpose: to provide on one hand, transparency to investors, akin to sustainability reporting, to protect corporate assets increasingly linked to ESG logic; on the other, transparency to stakeholders, to reduce the environmental and social impacts generated by production chains. With a phased implementation approach, the directive will obligate EU companies with more than 1,000 employees and at least €450 million in turnover to deal with social and environmental impacts throughout the supply chain (including internal operations), far surpassing existing national legislation. These companies will also be required to adopt preventive and corrective measures and to report on the actions taken. Although not yet transposed into national law, compliance with CS3D will be critical for businesses seeking to operate responsibly and sustainably, avoiding penalties and negative impacts on the environment and human rights, in a risk-aware and resilience-oriented approach that fosters a fairer, more sustainable global economy.

The evolving regulatory landscape in corporate sustainability, together with heightened awareness of emerging risks, encourages companies to adopt third-party risk management models and transition to a more ethical and sustainable business approach. A disruptive event such as judicial administration often acts as an accelerator of change, profoundly affecting the key functions most impacted that are by the measure (e.g., procurement, compliance, legal, internal audit). In recent cases involving major fashion brands and logistics operators, the procurement function has played a pivotal role in restoring, consolidating, and remediating the supply chain. The strategic repositioning of procurement and production processes proved decisive in crisis management, ensuring operational continuity and the implementation of sustainable practices aimed at preventing and managing risk, including reputational risk.

This new procurement methodology, with its cascading effects, has also had an educational effect on small and medium-sized suppliers, which have begun to structure themselves more effectively, reinforce internal controls, and adopt compliance models; in doing so they are improving efficiency, legality, and transparency in business relationships. By leveraging its position of influence, the contracting firm can pressure suppliers to take action to correct potentially harmful conduct and avoid legal compliance shortcomings. This generates a shift in downstream risk perception, helping to shape the overall resilience of the entire supply chain. In many companies (even large ones) third-party selection and management practices do not align with the scale of operations or the high-level services they provide. Building a reliable, responsible, and industry-compliant supply chain, where suppliers are no longer merely external contractors but true business partners, necessitates a change in mindset. This involves supplementing traditional procurement practices with a proactive approach to managing third-party relationships, both contractually and operationally. Risk assessment for third parties must evolve from a "tick-the-box" approach, focused on checking formal compliance requirements, to taking concrete preventive actions.

In some companies placed under judicial administration, there was no procurement function in the organizational structure. Supplier management was outsourced to external consulting firms, which failed to ensure compliance with tax and labor laws and health and safety regulations, and to guarantee the legality of supplier relationships. In several instances, counterparties were not monitored at all during the term of the contract. For a transparent and sustainable supply chain, instead, a dedicated internal procurement function must be set up to select suppliers and a third-party due diligence system must be deployed, which also entails compiling a formal Supplier Register.

CASE STUDY: A JUDICIAL ADMINISTRATION PROCEDURE IN THE LOGISTICS SECTOR

The company in question has a nationwide operation in the transportation and logistics sector. Under the guidance of the judicial administrator, this is what was accomplished. The procurement function, initially supported by a technical consulting firm specializing in remediation plans, developed a structured procedure for qualifying, selecting, managing, and continuously monitoring third parties, with the objective of:

- Making a clean break with previous management practices.
- Establishing an independent supplier control system to prevent any present and future instances of misconduct, with specific attention to the offenses that triggered judicial intervention.

Due diligence procedure and qualification criteria

The procedure included the following measures:

- A thorough due diligence process was implemented, both at the onboarding phase and throughout the duration of the contract. The aim was to address an urgent need to compile a shortlist of reliable suppliers and later, a Register of suppliers compliant with regulations concerning tax, social security, occupational health and safety, and insurance.
- The Supplier Register included only companies with adequate organizational structures and production capacity, capable of sustaining the costs necessary to implement legal compliance standards. This eliminated the need or risk of interference by the personnel of the company subject to judicial administration in the day-to-day operations and union dynamics of third-party suppliers.
- A centralized procurement management system was introduced, and run directly by the procurement function, with competitive procedures and tenders limited to suppliers listed in the Register.
- A Supplier Evaluation Committee was set up with representatives from multiple departments, to eliminate discretion in supplier selection and prevent corruption.
- Control activities weighed whether or not rates offered by suppliers were reasonable to maintain sustainability over time and compliance with national collective labor agreements for relevant worker categories.
- A consolidation plan called for cutting ties with several poorly structured suppliers, to curb the excessive fragmentation of the supplier base.

Contract review and labor protection clauses

As part of the action plan, contracts with service providers (contractors) were revised to include stringent clauses to safeguard labor rights; this represented a major innovation compared to industry standards. The intention here was to compensate for the inadequacy of contractual protections in force at the time of the decree, prevent labor exploitation, and to protect the principal company from offenses committed by suppliers (e.g., unpaid wages, tax evasion, failure to fulfill social security and insurance obligations).

The provisions in question were incorporated into the procedures in the organizational model pursuant to Legislative Decree No. 231/2001, becoming part of the company's internal governance framework. As such they were subject to monitoring by the corporate bodies, particularly the Supervisory Body (SB) (Paese, 2024).

Procurement contracts also prohibited subcontracting and authorized the principal company to audit supplier employees to ensure compliance with labor law. This addressed one of the key issues that led to judicial administration in the first place – the exploitation of workers hired through procurement contracts. The relevant contractual clauses served two purposes: to work with suppliers that meet rigorous standards in terms of structure, financial reliability, governance, integrity, and ESG profiles; and to guarantee that the company performed its oversight duties and acted as a standard-setter for the entire sector, as per EU social responsibility objectives.

Stabilization of personnel and a virtuous supply chain model

In summary, in judicial administration proceedings linked to Article 603-bis of the Criminal Code (labor exploitation) and associated tax evasion and money laundering, the preventive rationale of the measure achieved one of its most impactful outcomes: the transformation of the company's organizational framework. This included adopting a Model 231 and activating internal procedures and a control system designed to prevent not only crimes by executives or employees but also by suppliers – or at least to avoid contracting with companies that committed similar offenses.

In recent rulings under Article 34 of the Anti-Mafia Code in the logistics sector, the Court did not simply order the termination of contracts with suppliers implicated in illegal labor practices or tax crimes. Instead, working alongside the top management of the administered company, the Court launched an extensive initiative to formally hire workers who had been employed for years by external cooperatives, but were actually part of the commissioning company's workforce. This complex, labor-intensive process, carried out in constant dialogue with labor unions, led to the regularization of situations (such as chronic third-party labor use tied to tax evasion and poor working conditions) that had prompted the judicial intervention in the first place. At certain strategic sites, this intervention fundamentally restructured work organization[13].

In doing so, a virtuous model was established. On the one hand, this addressed the root causes of systematic tax evasion and associated laundering practices; on the other, it contributed to greater workforce stability and an overall improvement in labor conditions. This also lowered the risk of labor exploitation and contractual or social security violations previously committed by fragile, short-lived cooperatives, which often lacked business continuity and were destined for bankruptcy.

13 Court of Milan, Autonomous Section for Preventive Measures: Decree of 23 March 2023, no. 5/23; Maria Gaetana Rispoli, Presiding Judge; Lucia Spagnuolo Vigorita, authoring judge; GEODIS CL Italy, defendant. Decree of 23 March 2023, no. 6/23; Maria Gaetana Rispoli, Presiding and authoring judge; BRT SPA, defendant.

THE EXPERIENCE OF LEGALITY PROTOCOLS

Modern asset-based preventive measures are introducing new forms of collaboration between the State and the private sector. The scope of such interventions can extend beyond recovering individual companies to requalify the entire sector with the involvement of competitors, employer associations, trade unions, and public institutions.

*The anti-*caporalato *protocol in food delivery*

In 2021, the proactive intervention of the Court, combined with the collaboration between the judicial administrator and the food delivery company subject to the court order, led to consultations convened by the competent Prefecture. At these meetings, which included trade union organizations and employer associations representing the sector, the aim was to come up with concrete solutions to prevent *caporalato* (illegal gangmastering and labor exploitation). This initiative falls under the powers reserved to the Prefectures under the Anti-Mafia Code, specifically promoting good practices to combat entrenched criminal phenomena. Following these consultations, an experimental legality protocol was signed prohibiting gangmastering, illicit intermediation, and labor exploitation in the food delivery sector. The initiative, promoted by Public Prosecutor's Office at the Court of Milan, was the outcome of discussions between employers' associations and trade unions, coordinated by the Prefecture of Milan. The legality protocol, thanks to the active contribution of the judicial administrator's office, promotes a market environment aligned with full legal compliance by establishing red flags and indicators to monitor legality. The protocol serves to combat gangmastering and all forms of labor exploitation in food delivery by designing and implementing effective tools to protect workers' rights and support the legal economy. The experience of the company that was subjected to judicial administration was top of mind during consultations and instrumental in determining the protocol's key provisions. Notably, companies in the food delivery sector agreed, in six months' time, to:

- Adopt organization, management, and control models pursuant to Legislative Decree No. 231/2001, along with a Code of Ethics.
- Introduce sanctions for unlawful conduct.
- Refrain from outsourcing deliveries to third-party companies.

The protocol also called for the establishment of a Supervisory Body composed of representatives from individual food delivery companies which would be responsible for monitoring working conditions for delivery personnel from an independent, third-party position. Trade unions were assigned the role of "sentinels on the ground," tasked with reporting potential violations. To ensure system-wide coordination, a monitor was established to oversee the activities of the Supervisory Body, with the participation of both employers' associations and labor representatives.

This result represents an unprecedented development in the Italian legal and institutional landscape. Although initially limited to the metropolitan area of Milan, the protocol served as a blueprint for other jurisdictions and inspired the creation of the "Experimental Protocol to Outlaw Gangmastering, Illicit Intermediation, and Labor Exploitation in Food Delivery," signed at the national level at the Ministry of Labor on 25 March 2021, just days after the Court of Milan revoked the preventive measure it had ordered. In the case at hand, the virtuous path undertaken by the judicial administration, together with the synergistic cooperation of all stakeholders involved in the procedure, paved the way for a landmark agreement in a highly sensitive sector. The result was measurable improvements in the gig economy and greater awareness among companies regarding the risks of labor exploitation and the phenomenon of gangmastering.

The legality protocol in logistics procurement contracts

The circumstances described above do not represent an isolated initiative. In fact, the Prefecture of Milan has endorsed the idea of a Memorandum of Understanding for the Legal Procurement

Contracts in the logistics sector too, which would serve as a shield against attempts at infiltration by organized crime and reinforce protections for logistics companies at the same time. In addition to the Prefecture, the agreement includes as institutional partners the Lombardy Region, the Court of Milan, the District Anti-Mafia Directorate, and the Polytechnic University of Milan, along with the main employers' associations, trade union federations, and the Metropolitan Labor Inspectorate. The agreement emerged from a growing awareness of the strategic importance of the logistics sector for the Italian economy and the need to ensure that logistics companies utilize transparent processes in selecting and controlling service contracts. The aim is to improve working conditions, enhance service quality, and prevent illicit intermediation, labor exploitation, and other forms of illegality that risk damaging the integrity and reputation of the sector (including tax evasion and social security violations). The objectives of the protocol include upgrading the accountability of logistics companies and encouraging transparency along the supply chain, both in relation to information about business partners and in how individual contracts and subcontracts are executed.

To this end, the agreement stipulates the creation of a Supply Chain Platform for sector operators. This will map these companies and collect detailed data on the labor force they employ. Participation in the platform will be on a voluntary basis, and member companies will be asked to constantly update the data they submit. The technical benchmarks guiding the design and development of the platform, coordinated by the Prefecture of Milan with scientific support from the Polytechnic University, will primarily focus on:

- Corporate structure.
- Minimum capitalization thresholds.
- Frequency of changes in company ownership and management.
- Tax and welfare contribution compliance.
- Adoption of Model 231 and establishment of a Supervisory Board.
- Membership in recognized trade associations.
- Regularity in employment relationships and labor conditions.
- Business model for contract execution.
- Transparency in second-tier contractual agreements.

These documents and data will be accessible to both clients and supply chain companies, based on "visibility cones" – a system that modulates access rights according to the level of subcontracting. Particularly noteworthy is the incentive mechanism introduced by the protocol: companies that join the platform will be eligible to obtain a renewable Supply Chain Certificate which is valid for three months. To earn this certificate, they must provide complete, constantly updated documentation. Participation in the regional incentive programs for businesses, established by the Lombardy Region, may also be rewarded.

Moving toward a protocol in the fashion supply chain

More recently, institutions in Milan have been calling for a legality protocol targeting gangmastering in the fashion supply chain, with the aim of combating labor exploitation and ensuring virtuous supply chains by setting up a common monitoring system. The memorandum of understanding, which is still a work in progress, will follow the structure and objectives of the protocol that has already been adopted in the logistics sector; it will be based on the principle of full transparency across the fashion supply chain for companies operating in the Lombardy Region. As in the logistics sector, the protocol establishes a Supply Chain Platform, where fashion manufacturers may voluntarily upload documentation certifying compliance with labor, tax, and social security regulations. The goal is to facilitate inspections by competent authorities and client brands, while creating a comprehensive registry of companies and detailed data on the workers they employ. The platform will be accessible to both client companies and suppliers, as well as industry associations. The new platform is expected to interoperate with existing databases (which currently function in silos), such as those of the Labor Inspectorate, INPS, INAIL, and the Chambers of Commerce. In line with the protocol adopted for logistics, a reward system will also be introduced for companies that join the platform. Rewards may include a renewable Supply Chain Certificate, and access to incentive schemes established by the Lombardy Region, designed to promote compliance and encourage sustainable practices throughout the sector.

CONCLUSIONS

Judicial administration, as consolidated by Milanese case law, is characterized by the supporting role of the judicial administrator, who assists but does not replace the management team. This "light" version of judicial intervention has proven have great potential. When used with caution, but also with an innovative and forward-looking approach, it can yield surprisingly positive outcomes. The benefits resulting from the measure emerge on multiple levels: economic, organizational, managerial-legal, and reputational.

From a reputational standpoint, it often happens that judicial administration is misrepresented by the media, and consequently misunderstood by certain clients, who may suspend or terminate business relationships with the company in question under the false assumption that the measure signifies insolvency or the commission of criminal offenses incompatible with a continued business relationship. In several proceedings, major clients promptly expressed their intention to suspend business dealings, invoking corporate codes of conduct that demand full compliance (not only by the company itself, but also by its partners) with respect to laws on labor conditions, anti-corruption, and tax compliance. Therefore, the continuation of the relationship was considered inconsistent with their internal policies, which tolerated neither direct nor indirect unlawful or unethical conduct.

When the measure is interpreted by the market as a sign of widespread illegality or contractual unreliability, there is a concrete risk of losing key customers and, consequently, revenue. In such situations, crisis management begins. Here the judicial administrator plays a crucial role in reassuring strategic clients about the path to remediation and legality that is being undertaken under court supervision. Indeed, the primary goal of judicial administration is to reposition the company within the legal market. That necessarily means promoting a corporate culture based on transparency, integrity, fairness, and compliance – a culture capable of both preventing criminal risk and encouraging the adoption of ethical business models. By carefully managing compliance risks and effectively implementing integrated compliance systems, the company can optimize results by fostering synergy between governance and control bodies, improving relations with clients, stakeholders, and investors, harmonizing internal conduct, and becoming more competitive in the medium-to-long term.

Moreover, judicial administration has proven crucial not only in curbing illicit phenomena such as gangmastering and related tax crimes, but also (as noted) in accelerating alignment with the European directives on non-financial reporting (ESG indicators) and supply chain due diligence obligations. In many proceedings, the positive impact of judicial administration has extended well beyond the individual company, reverberating throughout the entire supply chain and even reshaping industry practices. As seen with the experimental legal protocols in the food delivery, logistics, and fashion sectors, systemic change is activated thanks to the involvement of competitors, employer associations, trade unions, and institutions. In these cases, judicial administration impacted entire sectors once characterized by opacity, exploitation, and structural fragility, helping shift the focus of corporate governance from short-term profit toward long-term compliance objectives. As noted: "a virtuous path where the logic of service, respect for fundamental rights, and legitimate profit converge in the bond of legality that underpins a functioning civil society"[14].

In conclusion, as emphasized throughout this paper, judicial administration seeks to stimulate reorganization behaviors and promote a virtuous trajectory that enables the company to adopt a new governance and operational model to prevent the recurrence of illegality, while serving, when possible, as a standard setter for the broader industry. In this way, the company subject to the measure, by undertaking a major cultural, organizational, and economic transformation, is not marginalized, but rather can emerge as a benchmark of legality among its competitors. This generates a trickle-down effect, promoting ethically grounded practices and achieving a constructive synthesis between the constitutionally guaranteed right to do business (Article 41, Italian Constitution) and the need for effective crime prevention. In this collaborative paradigm, 231 Compliance assumes a central role. Model 231, when applied in the spirit of prevention, becomes a strategic tool through which the judicial administrator and the management team, as part of a shared project of corporate value, can support the company's reorganization, address internal deficiencies, and fill control gaps.

In the context of anti-mafia rehabilitative measures, organizational models evolve from preventive tools into corrective mechanisms, guiding the strategic and economic direction of companies facing legality crises due to asset-based prevention measures. This "prospective-cooperative" model of preventing corporate deviance can only arise from a solid, loyal relationship between the judicial administration and the company, with an eye to developing internal safeguards that can prevent future misconduct of the type that triggered judicial intervention.

This is what happens when the company does not perceive judicial administration as an infringement on its constitutional business freedoms, but rather as an opportunity to promote a corporate culture grounded in legality, ethics, and sustainability. In this case, the company succeeds in overcoming the false contradiction between legality and competitiveness, capitalizing on state intervention, and transforming the cost of legality into a long-term investment. All this in a shared, rather than imposed, framework of corporate value that fosters durable legal and organizational resilience. Such an approach reflects a modern vision of business policy, in which 231 Organizational Models, internal control systems, robust governance, and adequate organizational structures are not mere compliance obligations, but essential tools for ensuring efficiency, accountability, and the ethical sustainability of business activity – fully aligned with the principles of the legal system.

MANAGERIAL IMPACT FACTOR

- **Reorganization of corporate governance**: Decision-making roles should be reinforced, responsibilities clearly defined, and ethics, sustainability, and risk-control committees should be established.
- **Implementation of Model 231 as a risk management tool**: This serves not merely in terms of regulatory compliance, but as a lever for crime prevention and organizational development.
- **Strengthening of the internal control and audit function**: A multi-level structure should be set up (line, compliance, auditing), for proactive risk management.
- **Formalization of organizational processes**: Job profiles, job descriptions, and organizational charts should be introduced to provide operational transparency.
- **Reform of the procurement function**: Stringent due diligence procedures, supplier registers, centralized management, and auditing ensure legal and sustainable supply chains.
- **Sector-wide leverage effect**: By disseminating of legal norms and sustainability benchmarks among suppliers, competitors and stakeholders, the company affirms its role as a standard setter.

14 Court of Milan, Autonomous Section for Preventive Measures, Decree of 28 May2020 no. 9, Presiding Judge Roia; Uber Italy SRL, defendant.

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