

SUPPLY CHAIN: HOW THE COURT OF MILAN'S CASE LAW IS RESHAPING COMPLIANCE

Over the past year, the Court of Milan has decided to **appoint management receivers** to monitor several multinational companies (mainly involved in fashion, retail distribution and logistics) that negligently engaged with suppliers involved in the crime of illegal exploitation of labour and/or in tax offences. Management receivers closely interact with the Board of Directors and wield broad powers in order to implement self-cleaning measures on companies' supply chains.

It is important to note that the Court of Milan began to monitor some companies, even though they were not under investigation for the vicarious liability of corporate entities and their employees were not involved in any criminal proceedings. Indeed, the decision to appoint management receivers stemmed from the mere negligence in qualifying and monitoring the suppliers involved in the illegal exploitation of labour.

The Court of Milan's innovative approach is completely reshaping the concept of "compliance" which is traditionally meant to prevent crimes committed within a corporate entity and currently encompasses risk-management across the entire supply chain as well. This change reflects a broader trend in corporate governance, where environmental, social, and governance (ESG) issues are increasingly paramount: for instance, the Court's decisions align closely with the Corporate Sustainability Due Diligence Directive (CSDDD). In this perspective, the Court of Milan's case law is particularly important as it sets out **practical compliance guidelines** that are already in place.

Key points

- The Court of Milan has appointed **management receivers** to monitor several multinational companies, mainly involved in fashion, retail distribution and logistics.
- The Court of Milan's case law also affects companies that **unintentionally** engaged with suppliers that unlawfully exploited the workforce.
- The Court of Milan's case law is particularly important, as it sets out **practical compliance guidelines** that are already in place.

THE COURT OF MILAN'S DECISIONS

The Court of Milan is taking vigorous action against companies that negligently engage with suppliers involved in the crime of illegal exploitation of labour and/or in tax offences. To this end, it appointed management receivers to oversee the Boards of Directors of national and international companies. These management receivers are endowed with extensive surveillance powers and keep a constant presence within the company, requiring regular meetings with the management.

Management receivers also review all existing contracts with suppliers over a certain financial threshold, authorising new agreements and ratifying their termination. The Court of Milan's decisions require a review of companies' corporate governance as well.

The Court of Milan is targeting tax offences as well as the illegal exploitation of labour committed by suppliers.

From a tax standpoint, logistics and retail distribution companies were allegedly involved in VAT evasion schemes: they allegedly pretended to be provided with services related to procurement contracts in order to unlawfully deduct VAT credits. In reality, they were disguising **the supply of manpower, which is not VATable**. In other words, if these companies had directly employed the workforce rather than outsourcing through sham contracts, they could not have deducted any VAT credits, as VAT does not apply to employees.

In the fashion sector, the Court of Milan decided to appoint management receivers to well-known brands such as Alviero Martini, Armani and Dior, since they **allegedly engaged with suppliers involved in illegal exploitation of labour**. In particular, the suppliers' employees were paid low wages and were victims of several breaches of labour laws on working hours, rest periods, holidays, and health and safety standards.

Since the Court of Milan's case law concerns **the mere negligence** of fashion houses as they allegedly did not detect the offences committed by their suppliers, the implementation of targeted measures to prevent criminal activities in the supply chain has become of utmost importance.

PRACTICAL COMPLIANCE GUIDELINES

The Court of Milan has issued **practical compliance guidelines** to mitigate criminal risks within supply chains. These guidelines stress the importance of:

- implementing an appropriate Compliance Program under Law no. 231/01 to prevent the vicarious liability of corporate entities, notably focusing on tax crimes and illegal exploitation of labour;
- adopting a Code of Conduct;
- drafting contractual clauses prohibiting subcontracting to third parties, who might engage in criminal activities.

Moreover, the Court requires additional measures to avoid interactions with high-risk suppliers and subsequently ensure proper monitoring of the supply chain. In this regard, **audits** play a pivotal role in assessing whether suppliers (i) do not commit tax-related crimes or engage in illegal exploitation of labour

and (ii) have manufacturing plants, a suitable workforce and, in general, the capacity to provide the service: if not, the risk of outsourcing to third parties might be tangible.

Looking ahead, strengthening compliance frameworks in light of the upcoming regulations on due diligence duties is essential to prevent supply chain-related risks and, in this regard, companies should **start implementing the compliance measures set out by the Court of Milan's case law.**

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