



*The Permanent Representative of Italy
to the International Organizations
Geneva*

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Geneva, 12 May 2021

Nr. 0787

Dear Ms. Balbin,

Following UN letter (AL/ITA 6/2020), dated March 12, 2021, I have the honor to submit Italy's reply to Joint Communication by seven UN Special Procedures that have requested Italian Authorities to provide them with information related to the situation of Uyghurs in Xinjiang.

By this reply, we take the opportunity to reiterate our firm willingness to continue full and extensive cooperation with all UN Special Procedures Mandate-Holders.

Should additional information be made available, allow me to ensure you that we will promptly share it with you.

Please accept, Ms. Balbin, the assurances of my highest consideration.

Sincerely yours,


Ambassador
Gian Lorenzo Cornado

To the attention of UN Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children.



**MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL
COOPERATION**

Inter-ministerial Committee for Human Rights

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transnational corporations and other business enterprises;
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Following the Joint Communication from Special Procedures, the Italian authorities are pleased to provide the following information.

- **Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations:**

Within the UN “Protect, Respect and Remedy” Framework – UN Guiding Principles on Business and Human Rights, adopted by the Human Rights Council on 16 June 2011, Italy adopted its first National Action Plan on Business and Human Rights (BHR NAP) 2016-2021. The BHR NAP was put under mid-term review in 2018 as a unique pilot procedure.

The NAP is developed along the UNGPs, providing for a general and, as appropriate, in-depth overview about programmatic and operational measures for the implementation of commitments in the short, medium and long term.

In particular, the NAP is based on six priorities, to be achieved in six main areas of action through specific measures, as outlined in its preliminary section:

1. promoting human rights due diligence processes, aimed at identify, prevent and mitigate the potential risks, with particular focus on SMEs
2. tackling caporalato (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.

The overall implementation of the NAP has been promoted and monitored within the framework of the Working Group on Business and Human Rights (WG-BHR), set up at the CIDU, whose members are representatives of the central Administrations concerned and convened for two sessions per year. The mandate of the WG-BHR is to supervise the progressive implementation of the NAP, to coordinate the monitoring by the Administrations involved, to formulate any material amendments to the NAP due to new legislative or operational requirements introducing relevant changes in the country-system's approach on BHR.

Ad hoc meetings have also preserved dialogue undertaken in the compilation phase of the NAP with other non-institutional stakeholders: business companies, trade unions, NGOs, civil society, human rights defenders, academia, experts. The dialogue has resulted in the establishment of an advisory group, usually convened in an open meeting with the WG-BHR (following each of the two annual meetings) whose participants are invited to propose contributions on the topic.

Over the years the CIDU has launched several activities to disseminate the BHR NAP and the UN Guiding Principles in Italy through workshops, conferences, training courses. In this context, the CIDU has also devised, together with a group of Italian MNEs that are particularly active on the BHR issue (including ENI and ENEL), an innovative initiative called "Champions": MNEs will be called upon to act as driving enablers towards the world of SMEs to spread knowledge, value and positive effects of the UNGPs.

Also high appreciation for the review of the Italian BHR NAP has been expressed by the High Commissioner for Human Rights herself, Ms Bachelet, within the last UPR review (Third Cycle).

In 2021 the 2nd BHR NAP will be compiled according to structural, material and formal parameters as provided in the Guidelines prepared by the UN BHR Working Group. This process has started by launching an open online consultation on the CIDU website for a preliminary assessment of the implementation of commitments and actions by all public actors and private stakeholders as included in the first BHR NAP.

The issues raised by the seven Special Rapporteurs in the Joint communication to the Italian Government, will be addressed also in the framework of the above-mentioned activities.

- **Please indicate the measures taken by your Excellency's Government to ensure that its public procurement of goods and services is only from business enterprises which have not caused, contributed to, or are directly linked to human rights abuses such as those alleged in the present letter:**

In answer to the UN Human Rights Special Procedures' request for additional information/comments on the allegation that multinational corporations domiciled in Italy/under Italian jurisdiction might be involved through their supply chains in China and Xinjiang in alleged human rights violations, the Ministry of Foreign Affairs and International Cooperation has collected the following items of information through the Italian Embassy in Beijing.

- Concerning Candy, the company is no longer Italian, since it has been acquired by the Chinese Group Qingdao Haier in 2018. Candy is now a wholly-owned subsidiary of Qingdao Haier.
- With regards to Diesel, while the company has a presence in China, none of its production sites seem to be located in Xinjiang. The company shall provide more comprehensive information, including relevant elements on its supply chains.
- Zegna has an established presence in Shanghai since 1997. The China Representative of the company confirmed that Zegna has received the abovementioned Special Procedures' letter, to which it is preparing a comprehensive answer, including details about the company's supply chains, collaborations, Chinese clients and due diligence activities.

In sum, the companies have been alerted by the Italian Ministry of Foreign Affairs and International Trade through the diplomatic and consular network in China regarding the issue at hand.

- **Please indicate the steps that your Excellency's Government has taken, or is considering to take, to ensure effective access to domestic judicial mechanisms for victims of business-related human rights abuses, including for overseas victims of serious human abuses such as those alleged in the present letter:**
- **Please indicate the steps that your Excellency's Government has taken, or is considering to take, to ensure that business enterprises domiciled in its territory and/or jurisdiction establish effective operational-level grievance mechanisms, or cooperate with legitimate remedial processes, to address adverse human rights impacts that they have caused or contributed to:**

In 2004 the Italian Government established the National Contact Point, in charge of promoting the OECD Guidelines for multinational enterprises. The NCP is located in the Ministry of Economic Development - General Directorate for Industrial Policy, Innovation and SMEs (DG PIIPMI) Division VI) by Law 273/2002 (art. 39) and regulated by a Ministerial Decree and subsequent modifications. Within its mandate, among the other tasks, the National Contact Point furthers the Guidelines effectiveness by handling the specific instances submitted by stakeholders alleging that an enterprise's non-observance of the OECD Guidelines causes or risks to cause a negative impact. By offering its good offices, i.e. through mediation and conciliation, the NCP helps the parties find a consensual solution, compliant with the Guidelines, especially for the breach of the duty to respect human rights.

The Italian NCP also recommend companies to implement a due diligence process, through which they can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems. To this aim, it supports companies in the implementation of this process and promotes the OECD sectorial and general guidance on due diligence. The Italian government is also taking part in the EU process toward a mandatory human right due diligence. Moreover, the Ministry of Economic Development, in its quality of competent Authority for the national implementation of Regulation (EU) 2017/821 on minerals or metals from conflict-affected and high-risk areas,

has the task of carrying out ex post checks on compliance with importers' duty to implement a supply chain due diligence.

Moreover, Law Decree No. 231/2001, although not expressly providing for mandatory due diligence process, creates a strong incentive to the adoption of adequate compliance programmes and models that can exonerate a company from corporate liability for crimes committed in its interest (a draft proposal for the adoption of mandatory models under L.D. no. 231/2001 for limited companies with a certain annual profit is currently pending in the Italian Parliament).

Following the adoption of Directive 2014/95/EU 4 and its transposition through the Legislative Decree of 30 December 2016, no. 254, large enterprises and groups are obliged to publish, for each financial year a non-financial statement concerning environmental and social information, human resources, respect for human rights and fight against corruption. This also encourage the adoption of a due diligence process, and the accounting of the undertaking's business model, policies pursued and main risks related to the subject matter.

Finally, the implementation of a supply chain due diligence, including on human rights is now among the optional criteria that Italian public administrations can adopt to select textile product suppliers.

According to its 2021-2026 National Action Plan on Business and Human Rights, Italy acknowledges the need of developing appropriate non-state based grievance mechanisms. To this aim, the Government encourage civil society organizations, trade unions and business associations to set up and activate grievance mechanisms (such as online network and tools, corporate mechanisms, or multi-stakeholders instruments) to enable the formulation, reception, and evaluation of claims for alleged human rights abuses and the proposals of adequate remedies.

In addition to the non-judicial remedies offered by the National Contact Point, Italy also supports respect for human rights within the UNEP rights-based approach to environmental protection and sustainable development.

Another Italian non-judicial grievance mechanism is the Bank and Financial Arbitrator (ABF) created in 2009 and active since 2010 through its Panels in Milan, Rome and Naples (panels are likely to be established soon in other major towns). In the course of its mandate the ABF has extended the concept of 'customers' to cover individuals affected by the action of an intermediary even if the parties were not bound by contract. ABF expanded its functions to deal also with pre-contractual obligations in order to protect individuals claiming that intermediaries violated the obligations of good faith - which bind the parties to adopt fair behaviour while negotiating

In addition, by adopting the 2016-2021 National Action Plan on Business and Human Rights. Italy committed to promote and carry out key-actions to provide that, within the domestic legislative, institutional and operational framework regulating economic activities, human rights are conceived as a priority so that the eventual adverse impact of business on these rights is properly addressed.

Within this framework, companies are expected, among other things, to provide for grievance mechanisms enabling reparation to victims of abuses they may have caused or contributed to, or with which they are directly linked to. In conducting this activity, which allows to foresee and avoid potential negative human right

impact on individuals and communities, companies should refer - at a minimum - to internationally recognized human rights, as expressed in the International Bill of Human Rights and those set out in the International Labour Organization's Declaration on Fundamental Principles and Right at Work and the ILO Tripartite Declaration on Principles concerning Multinational Enterprises and Social Policy. Furthermore, depending on circumstances, companies may want to consider additional international instruments and standards (such as the international humanitarian law in case of conflicts or other UN human rights treaties).

- **Legislative Decree no. 254 of 30 December 2016 requires businesses with more than 500 employees to disclose in their annual management report information on policies, principal risks, and outcomes relating to environmental, social, employment, human rights, and corruption and anti-bribery matters. In particular, Article 3, paragraph E, details that businesses should include actions relative to “the respect of human rights, the measures adopted to prevent violations of human rights, and the actions undertaken to prevent any other discriminatory behaviour and action.” The law establishes that businesses not complying with this duty will receive a fine between 20,000 and 150,000 euros. Please indicate to what extent Legislative Decree no. 254 has been implemented so far and what the results thereof have been, including with regard to any sanctions/fines imposed on businesses not complying with labour rights:**

Legislative Decree No. 254/2016 requires large public-interest entities to publish, for each financial year, a statement on a series of non-financial topics, ranging from management and business organization profiles to sustainability and corporate social responsibility (environment, workers' rights, gender representation, respect for human rights, anti-bribery policies). Such non-financial statement must contain information concerning, among others, the measures, policies and procedures adopted by the entity to fight against both active and passive bribery.

The Decree also encourages entities other than those included in the scope of application of the non-financial information related disclosure obligations to publish a non-financial statement on a voluntary basis.

Italian law identified clearly the duties and responsibilities of the corporate bodies and the statutory auditor of the entities publishing non-financial information. In particular: (i) the directors are responsible for ensuring that the report is drafted and published in accordance with the provisions of the Decree and they shall act according to criteria of professionalism and diligence; (ii) the control body supervises compliance with the provisions set out in the decree and reports on them in the annual report on the financial statements (provided for by Art. 153 TUF); (iii) the auditing firm charged with carrying out the audit of the entity's financial statements has the task of verifying the publication of the statement. The same auditing firm (or other auditor specifically appointed) shall certify in a special report the compliance of the non-financial information with the requirements established in the decree and with the reporting principles and methods (Italy has exercised the option contained in Art. 19a(d) of Directive 2014/95/EU).

According to Italian law, Consob is the public authority responsible to supervise compliance with the non-financial disclosure related requirements and to apply the administrative sanctions in case of ascertained violations. It should be noted that Consob competence is not only on disclosure by listed issuers, but also on disclosure by non-listed entities falling within the scope of Directive 2014/95/EU and entities making such disclosure on a voluntary basis (therefore, in the area of non-financial information, Consob's remit is expanded to include entities usually not subject to its supervision).

The information that must be contained in the non-financial statement must also provide a comparison with the information provided in the previous year, according to the methodologies and principles established by reporting standards.

The reporting standards most commonly used by the companies that disclose non-financial information are the so called GRI standards drawn up by the GSSB (Global Sustainability Standards Board) available at the link <https://www.globalreporting.org/standards/gri-standards-download-center/>. GRI 205 on Antibribery establishes the requirements for reporting on antibribery and requires, among other things, to report the following information:

- a. the total number and nature of confirmed bribery incidents;
- b. the total number of confirmed bribery incidents in which the employees were dismissed or disciplined for bribery;
- c. total number of confirmed incidents when contracts with business partners were terminated or not renewed due to violations related to corruption;
- d. public legal cases regarding corruption brought against the organization or its employees during the reporting period and the outcomes of such cases.

Consob has not applied sanctions for breach of non-financial statements requirements yet. Please note that, as far as non-financial statements and related reports are concerned, the provisions of Legislative Decree No. 254/2016 on non-financial reporting apply with reference to financial years starting on January 1st, 2017.

Companies mentioned in ONU request are not included in the list of companies which published a non-financial report till December 31th 2020. Actually, such companies are not required to publish a mandatory non-financial report according to Legislative Decree No. 256/2024 and they didn't publish such report on a voluntary basis so far.

- **Please indicate if your Excellency's Government has the intention of introducing legislation which would require a disclosure of contemporary forms of slavery, including forced labour, in activities of all Italy-based businesses overseas, similar to the UK Modern Slavery Act**

The first regulatory instrument introduced in 2011 by the Italian legislator on this issue, even if related to Italy businesses on the national territory is the introduction in Art. 603 bis of the Criminal Code of the offence of unlawful brokering and labour exploitation, sanctioning situations which previously had no protection within the domestic legal system, except in the most serious cases of slavery, private violence, extortion and personal

injury. The offence was subsequently amended, with a view to striking a more significant blow against the phenomenon of *caporalato* (forced labour) by Law No. 199 of 29 October 2016, which lays down provisions to combat undeclared work, exploitation of labour in agriculture and the realignment of wages in the agricultural sector. The amendment, which provided in the second paragraph of Art. 603 bis of the Criminal Code for criminal liability also of the user or employer, also identified in the third paragraph the so-called indicators for the offence, i.e. a series of elements to prove that the offence has been committed.

Conclusion

Italian Authorities take this opportunity to reiterate their full cooperation with UN Special Procedures and all other relevant monitoring mechanisms.