

BE COMPLIANT!

Decision of the month



Italian Supreme Court's opinion

(Cassazione Penale, Sezione IV, decision no. 32899/21)



On 29 June 2009, a freight train transporting liquefied petroleum gas derailed at the railway station in Viareggio and exploded, **setting fire to the surrounding area and killing 32 people and injuring several people**; it also destroyed several buildings and damaged several motor vehicles.

The Italian Supreme Court annulled the conviction **deriving from the alleged failure to carry out controls of the train axle maintenance** of Gatx Rail Austria GmbH, Gatx Rail Germany GmbH, Jungenthal Waggon GmbH regarding the offence under article 25-septies of legislative decree no. 231/2001, because **no crime was committed**.



In particular, the Court stated that **there was no breach of the regulations on accident prevention at work**, since: (i) it has not been ascertained that a law protecting the workers' safety and health was breached; (ii) it has not been demonstrated that **the fact actually entailed a risk at work**. **The Court also pointed out that such risk «might refer to safety and health of third parties, if such third parties are in the same situation of exposure to risk as the worker».**



The Court also stated that it has jurisdiction over the administrative offences committed by foreign entities, **if the predicate offence has been committed in the territory of Italy**.

Accordingly, foreign entities operating in Italy will be held liable pursuant to Legislative Decree no. 231/2001, if the following is ascertained:



offences expressly prescribed by the law are committed



at least one person belonging to the entity's organisation is criminally liable



the entity derives an interest or an advantage



the "organisational models" for the prevention of offences was neither adopted nor applied

Please remember that FSI S.p.A., the holding company of the Italian defendant entities, had been acquitted because, *inter alia*, **it had adopted an Organisational Model adequate to prevent the claimed offences**.



As regards the individuals, the appeal's court had convicted the managing director of FSI also in view of its capacity **as de facto director of the controlled companies**. On this regard, the Italian Supreme Court established that the managing director of the holding company was held liable also for the actions taken within the scope of the controlled companies belonging to the **group**, if:



- i. he had intentionally led the director of the controlled company to breach the criminal law, by taking advantage of his higher-level position within the group;
- ii. he had operated as *de facto* director of the controlled company;
- iii. he had exercised the typical powers of direction and coordination within a group (financial control) with recklessness, negligence or incompetence.



For further information, please contact

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