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Pension funds and environmental, social and governance factors in the Italian system: transparency of investments, management rules and the new ban on financing activities linked to unconventional anti-personnel weapons

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Abstract

This paper considers the regulatory framework on sustainable investments, i.e. consistent with so-called ESG factors, with particular regard to Italian supplementary pensions. The first part of the paper offers an overview of recent developments in the stratified European and Italian legislation, showing the high degree of detail of the disclosure obligations binding institutional investors to protect the public and in particular pension fund members. The second part of the paper delves into a specificity of the Italian legal system relating to the armaments sector: the 2025 ban on financing companies operating in the anti-personnel mine and cluster bomb sector. This ban, applicable to all Italian institutional investors and the Italian branches of institutions headquartered abroad, requires a delicate investigation and advisory activity on each share and bond held by the pension fund, as well as the those planned for acquisition. Given the vagueness of the instructions formalised by the Italian supervisory authorities, the implementation of this law appears to require a strengthening of the flow of information between the governing bodies of each pension fund and the financial manager appointed to handle the portfolio.

Keywords: Supplementary pensions; Pension funds; Institutional investors; Sustainability; Accuracy and transparency of information; Worker's contractual freedom; Sustainable development; Environmental, social and corporate governance factors; Ban on the financing of anti-personnel mines and cluster bombs; Covip supervisory guidance.

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Section A: ESG factors, investments and transparency.

1. The complex EU regulatory framework on pension funds, in which ESG factors are treated as merely optional values.

Over the past decades, the supplementary pension sector has increasingly been affected by a steady flow of EU financial legislation. Even focusing solely on sustainability aspects, commonly referred to as "environmental, social and governance" (ESG) factors, numerous layers of general and sectorial legislation have been approved recently, to such an extent that the EU is now reassessing and mitigating it[1] (even too much, also in relation to other areas of the economy).[2]

Much of this EU legislation concerning financial markets applies to pension funds, as they are institutional investors. Moreover, the supplementary pension sector has its own specific

[1] On 13 November 2025, the European Parliament approved its position on reducing reporting and due diligence obligations for companies, five months after the adoption of the Council's position dating back to June 2025: *www.europarl.europa.eu/doceo/document/TA-10-2025-0264_EN.pdf*. (Last access 12 December 2025). The text was adopted in the context of the simplification package presented by the European Commission on 26 February 2025, known as Omnibus I, a set of legislative proposals in order to "ensure the Green Deal objectives are met, while businesses continue to be competitive". In particular, *see* the "Stop the Clock" Directive (EU) 2025/794 amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the scope and the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements.
Based on disclosure obligations imposed on companies by these directives, interesting monitoring mechanisms are beginning to emerge: Lena M.C., Fancello F., Altamura M.G., Anzellotti V., Bisogno C., Cocci S., Di Stefano G., Ertman R., Fabbiani I., Mencarelli M., Olita L.E., Tartaglione M., *L'integrazione dei fattori ESG nella strategia aziendale: un'analisi della disclosure societaria. Primi spunti di riflessione*, *Quaderno di finanza sostenibile* no. 5, Rome, Consob, March 2025, at *https://www.consob.it/documents/d/area-pubblica/fs5* (Last access 12 December 2025); Consob, *Rapporto 2023 sulla rendicontazione non finanziaria delle società quotate italiane*, Rome, 2023, at *www.consob.it/web/area-pubblica/report-dnf* (Last access 12 December 2025). As regards the legal consequences ad responsibilities of this disclosure (before the last amendments of the EU legislation), *see* Giovanni B., *L'informazione di sostenibilità tra invalidità e responsabilità*, Esi, Napoli, 2025. From a labour perspective *see* Guarriello F. (edited by), *Impresa e diritti umani sul lavoro tra normativa e prassi*, Franco Angeli, Milan, 2025; Giovannone M., *The European directive on 'corporate sustainability due diligence": the potential for social dialogue, workers' information and participation rights*, in *Italian Labour Law e-Journal*, 2024, 1, 227; Micheli M., *La due diligence e le caratteristiche degli strumenti di analisi e gestione dei rischi. Note a margine della direttiva (UE) 2024/1760*, in *Diritto delle relazioni industriali*, 2025, 1, 75; Murgo M., *Il ruolo dei lavoratori nella due diligence sociale e ambientale: quadro legale e prospettive di sviluppo*, in *Diritto delle relazioni industriali*, 2025, 1, 45; Treu T., *Sostenibilità, diritti umani e imprese*, in *Diritto delle relazioni industriali*, 2025, 2, 295; Treu T., *Il diritto del lavoro alla prova dell'emergenza climatica*, in *Diritto delle relazioni industriali*, 2024, 4, 891; Carta C., *Lavoro e responsabilità dell'impresa nello spazio giuridico globale*, Giappichelli, Turin, 2025.
Also as regards the welfare sector, the debate is growing: see special issue on sustainable pensions collected by Autenne A., Degoli M.C., Hartmann-Cortés K., *Do Sustainable Pensions Require Sustainable Investments?*, in *European Journal Of Social Security*, 2021, vol. 23, issue 3, 191 ff.

[2] E.g., in September 2025, a further postponement of the entry into force of Regulation (EU) 2023/1115 on combating deforestation was announced. During summer 2025 there has been a strong debate following the announcement by the EU Commission which intended postpone and reduce the Directive (EU) 2024/825 as regards empowering consumers for the green transition through better protection against unfair practices and through better information.

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European legislation,[3] specifically Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision (IORPs).[4]

This directive addresses ESG factors, providing that under the 'prudent person' principle, Member States may "allow" IORPs to take account of the potential long-term impact of investment decisions on environmental, social and governance factors (see Article 19, paragraph 1, letter b). Even at first glance, this regulatory instrument appears rather weak in this respect, as it merely permits pension funds to do so. This is confirmed by Article 28, paragraph 2, letter h, which states that "where environmental, social and governance factors are considered in investment decisions, an assessment of new or emerging risks, including risks related to climate change, use of resources and the environment, social risks and risks related to the depreciation of assets due to regulatory change".

The regulation does not mandate directing investment activity toward ESG objectives, but it does require a declaration if such objectives are pursued. A transparency rule is established whereby any consideration of ESG factors must be publicly disclosed in the statement of investment policy principles, which is mandatory under Article 30 of the same directive. Likewise, under Article 41, "information on whether and how environmental, climate, social and corporate governance factors are considered in the investment approach" must be provided to prospective members of the pension fund, whether joining explicitly or by tacit consent.

Stronger in Directive (EU) 2016/2341 are the provisions that require ESG factors to be considered not as values but as risks. The potential conflict assumed by the legislation between financial return and socio-environmental altruism is widely recognised by commentators.[5] Consider Article 25, paragraph 2, letter g, which requires pension funds to consider "environmental, social and governance risks relating to the investment portfolio and the management thereof" among the risks. Moreover, according to Article 21, the system of corporate governance "shall include consideration of environmental, social and governance factors related to investment assets in investment decisions, and shall be subject to regular internal review".

A discipline of central importance from an ESG perspective may be Regulation (EU) 2020/852 on the "taxonomy", which aims to inform investors through definitional criteria that are common throughout the EU. Also through amendments to the previous year's Regulation on the sustainability of the financial system,[6] the taxonomy Regulation aims to define the criteria for determining whether an economic activity may be considered

[3] Moreover, with regard to matters relating to supplementary pensions, the case law of the Court of Justice of the EU has repeatedly intervened to strike a balance between entrepreneurial freedoms, and above all collective social demands: *see* Squeglia M., *La previdenza complementare eurounitaria. Tra tutela dei diritti previdenziali nel mercato e tutela (dei diritti previdenziali) dal mercato*, in *Variazioni su Temi di Diritto del Lavoro*, 2023, 2, 554 ff.

[4] Directive (EU) 2016/2341 on pension funds aims to ensure that schemes are financially sound, provide greater protection and better information for members and beneficiaries, remove barriers to cross-border activity and encourage long-term, sustainable investments. *See* Candian A., Squeglia M., Tursi A., *Manuale della previdenza complementare*, Giappichelli, Turin, 2022, 57 ff., where further references are also given at the end of the chapter.

[5] Recently Tommassetti P., Previdenza complementare e fattori 'ESG', in *Lavoro diritti Europa*, 2025, 1, 3 ff.; Vianello R., Previdenza complementare e transizione ecologica, in *Diritto delle Relazioni Industriali*, 2022, 3, 738 ff..

[6] Regulation (EU) 2019/2088 on disclosures related to sustainability in the financial services sector.

environmentally sustainable with respect to six environmental objectives: climate change mitigation, climate change adaptation, the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and reduction and the protection and restoration of biodiversity and ecosystems. This is a highly detailed regulatory approach,[7] implemented through delegated regulations issued by the European Commission between 2021[8] and 2023[9] concerning the links between economic activities and climate change, as well as the protection of water and marine resources[10] and sustainability reporting.[11]

Despite the detailed provisions on environmental protection, it still seems difficult to achieve political agreement on the social criteria, which currently appear to be the weakest part of the definitional framework.[12]

2. The Italian regulatory framework on supplementary pensions.

The Italian legal system provides a twofold constitutional safeguard for workers' retirement savings. According to Article 47 of the Constitution, the Italian Republic "encourages and safeguards savings in all forms. It regulates, co-ordinates and oversees the operation of credit" and also "promotes [...] direct and indirect shareholding in the main national enterprises through the use of private savings". Furthermore, Article 38 of the Constitution prescribes that workers have "the right to be assured adequate means for their

[7] Although highly complex, this EU regulatory framework is expected to become increasingly important for all businesses, not only the larger ones, also because it is now the basis for public administration activities, including the allocation of benefits to enterprises. See for instance the Directorate Decree of 31 March 2025 issued by the Ministry of Enterprises and Made in Italy regarding the allocation of public funding for innovative, sustainable investments with a high technological content, consistent with the national Transition 4.0 plan.
[8] Delegated Regulation (EU) 2021/2139 of 4 June 2021, supplementing Regulation (EU) 2020/852, establishing the technical screening criteria to determine under what conditions an economic activity may be considered to contribute substantially to climate change mitigation or adaptation and whether it does not significantly harm any other environmental objective.
[9] Delegated Regulation (EU) 2023/2485 of 27 June 2023, amending Delegated Regulation (EU) 2021/2139, establishing additional technical screening criteria to determine under what conditions certain economic activities may be considered to contribute substantially to climate change mitigation or adaptation and whether they do not significantly harm any other environmental objective.
[10] Delegated Regulation (EU) 2023/2486 of 27 June 2023, supplementing Regulation (EU) 2020/852, establishing technical screening criteria to determine under what conditions an economic activity may be considered to contribute substantially to the sustainable use and protection of water and marine resources, the transition to a circular economy, the prevention and reduction of pollution, or the protection and restoration of biodiversity and ecosystems, and amending Delegated Regulation (EU) 2021/2178 as regards the public disclosure of specific information on such economic activities.
[11] Delegated Regulation (EU) 2023/2772 of 31 July 2023, supplementing Directive 2013/34/EU as regards sustainability reporting standards.
[12] On the problematic nature of agreeing on a specific prescriptive approach in this regard, see also European Commission, Final Report on Social Taxonomy, 2022, at *https://commission.europa.eu/system/files/2022-03/280222-sustainable-finance-platform-finance-report-social-taxonomy.pdf*. Most recently, *see* Iorlano G., Le nuove frontiere della governance della sostenibilità: SGS (Sustainable Governance Standard) e Governance Taxonomy, un percorso obbligato per integrare i fattori ESG e favorire uno sviluppo inclusivo e competitivo, in *Corporate Governance*, 2025, extraordinary issue, 203 ff., para. 2.5; more generally on the ESG taxonomy *see* the entire issue of the journal.

needs and necessities in the case of accidents, illness, disability, old age and involuntary unemployment" through "entities and institutions established by or supported by the State", while "private-sector assistance may be freely provided".

Moreover, a recent reform of the Italian Constitution is worth noting: Constitutional Law No. 1 of 2022 amended Article 41 of the Constitution, adding environmental protection to the limits of freedom of enterprise and, more generally, amended Article 9 which now includes the protection of the "environment, biodiversity, and ecosystems, also in the interest of future generations".[13]

The so-called second pension pillar (additional to the first pillar, which is publicly managed) consists of supplementary pensions, primarily through pension funds. There is ongoing debate as to whether the constitutional significance of this form of additional (not alternative) pension provision derives more from the second paragraph of Article 38 on social security, or from the final paragraph on the freedom of private welfare guaranteed by the same article. The prevailing view for pension funds is a median one: they represent a form of private pension initiative that contributes to overall social security, while diversifying the method of implementation. Thus, in a perspective based on subsidiarity (Article 118 of the Italian Constitution), ordinary legislation is precluded from excessively constraining the autonomy that these private pension institutions enjoy.[14] Their operation is in any case encouraged through tax incentives, justified by the public purpose of this form of pension provision (e.g. partial deduction of contributions from annual income, reduced tax rate on financial returns during the accumulation phase, favourable tax rate on the benefits paid to workers).

The above-mentioned EU legislation is implemented in Italy through the main national statute on pension funds, Italian Legislative Decree no. 252/2005. The interpretation given by the Italian Constitutional Court to Article 117 of the Constitution affirms the primacy of national legislative competence, including in the field of pensions, so that regional laws play only a marginal role.

Although during the current parliamentary term a debate arose on the possibility of making supplementary pensions mandatory for young workers,[15] as of today Italian pension

[13] From a labour law point of view, *see* the comment by Malzani F., *Lavoro e ambiente: sostenibilità e inclusione alla luce dell'art. 41 Cost. riformato*, in *Argomenti di diritto del lavoro*, 2025, 3, 373.

[14] *See* Ciocca G., *La libertà della previdenza privata*, Giuffrè, Milan, 1998; Zampini G., *La previdenza complementare. Fondamento costituzionale e modelli organizzativi*, Cedam, Padua, 2004, 11 ff.; Bonardi O., *Tassonomie, concetti e principi della previdenza complementare*, in Tursi A. (ed.), *La nuova disciplina della previdenza complementare*, Cedam, Padua, 2007, 577 ff.; Vianello R., *Previdenza complementare e autonomia collettiva*, Cedam, Padua, 2004, *passim*; Giubboni S., *La previdenza complementare tra libertà individuale ed interesse collettivo*, Cacucci, Bari, 2009, 15 ff.; Gambacciani M., *L'evoluzione della previdenza sociale tra previdenza complementare e trattamento di fine rapporto*, Jovene, Naples, 2011, 258 ff.; Cinelli M., *La previdenza volontaria nel sistema italiano e comunitario di sicurezza sociale*, in Cinelli M. (ed.), *Art. 2123. La previdenza complementare*, in Schlesinger P., Busnelli F.D. (editorial directors), *Il Codice civile. Commentario*, Giuffrè, Milan, 2010, 22 ff.; Sigillò Massara G., *Sul fondamento costituzionale della previdenza complementare*, in Pessi R. (ed.), *La previdenza complementare in Italia*, vol. I by Various Authors, *Le fonti normative e negoziali della previdenza complementare in Europa*, Giappichelli, Turin, 2011, 33 ff.; Carinci F., Zampini G., *La previdenza complementare. Uno sguardo di sintesi a vent'anni dal d.lgs. 124/1993*, in *Il lavoro nella Giurisprudenza*., 2013, 5, 437 ff.; Ferluga L., *La previdenza complementare nel disegno costituzionale*, in *Diritto del Mercato del Lavoro*, 2017, 1, 39 ff.; Persiani M., *La previdenza complementare*, Cacucci, Bari, 2022.

[15] *See* Miracolini M., *La previdenza complementare nell'era delle transizioni*, in *Ambiente diritto*, 2025, 1, 13 ff.

funds remain voluntary rather than mandatory. Nonetheless, enrolment is incentivised not only through tax benefits, but also via opt-out rules that automatically enrol the worker unless they express a different intention within six months of the start of the employment relationship.[16]

After enrolment, the Italian legal framework grants the worker only limited decision-making autonomy. While it is possible to change fund (generally not before two years and in any case subject to some limits on portability of the amount of the individual contribution[17]), withdrawal from the scheme is not permitted. For certain defined personal reasons relating to health, family or personal circumstances, the worker is entitled to an advance on the funds accrued[18]: these cases are also limited by law in order to safeguard the use of the amounts set aside by each individual for retirement.

In terms of financial management, pension funds operate on the basis of individual capitalisation accounting mechanisms.[19] Self-employed persons can be offered supplementary pension schemes with a predefined final benefit, with the consequence that in such cases the amount of contribution due varies each year. By contrast, for subordinate employees Italian law only permits defined-contribution schemes. This obviously means that

[16] Article 8, paragraph 7, of Italian Legislative Decree no. 252/2005. Recent legislation has also endorsed the possibility of collective bargaining agreements enrolling the worker in supplementary pension schemes without their consent, provided that the contributions come from the employer: *see* Article 1, paragraphs 171-173, of the Stability Law of 27 December 2017, no. 205, discussed in Della Sega M., *La nuova 'via italiana' alla previdenza complementare obbligatoria: risposte e questioni ancora aperte sui meccanismi di adesione contrattuale*, in *Massimario di Giurisprudenza del lavoro*, 2024, 3, 429 ff.

[17] The main restriction on transferring the amount accrued to a different fund is found in the controversial Article 8, paragraph 10, which provides that if the worker is entitled to an employer's contribution under collective agreements, including company-level agreements, such contribution shall be paid to the pension scheme chosen by the worker only "within the limits and under the conditions established by said agreements or contracts". In other words, the employer's contribution may not be transferred to a different pension fund from the contractual fund designated by the collective agreement that created the obligation. Only contributions from employees can be transferred. This provision limits full competition among different pension funds, favouring instead the collective interest represented by the trade union during negotiations with the employer. This legislative choice is supported by commentators more sympathetic to safeguarding the union's role, given that the union is the party that obtains the employer's commitment to make such contributions during negotiations. *See* Mezzacapo D., *La portabilità della posizione previdenziale*, in Santoro Passarelli G., *Trattamento di fine rapporto e previdenza complementare*, Giappichelli, Turin, 2007, 185 ff.; Zampini G., "Trasferimento e riscatto delle posizioni individuali", in Cinelli M. (ed.), *Art. 2123. La previdenza complementare*, in Schlesinger P., Busnelli F.D. (editorial directors), *Il Codice civile. Commentario*, Giuffrè, Milan, 2010, 541 ff.; Pessi R., Ferrante V., Emiliani S.P., Sandulli P., *Le Sezioni unite e la «portabilità» delle posizioni individuali di previdenza complementare nei «fondi preesistenti». Opinioni a confronto*, in *Rivista di Diritto della Sicurezza Sociale*, 2015, no. 2, 353 ff. On the issue of the portability of the amount of the individual contribution in the funds before the 1993 reform managed on a pay-as-you-go basis, judged unconditional by the united chambers of the Civil Cassation in ruling no. 12209 on 14 April 2022, in *Argomenti di Diritto del Lavoro*, 2022, 522, *see* the different opinions of Persiani M., *Una regola rovesciata: l'interesse individuale ed egoistico di un lavoratore prevale sull'interesse comune di tutti gli altri a più elevati livelli di copertura previdenziale*, ibid., and of Ferrante V., *Le «Sezioni unite» ribadiscono il diritto al trasferimento della posizione individuale nei fondi preesistenti della previdenza complementare*, in *Labor*, 2022, 5, 559, and of Sandulli P., *Nei fondi pensione le Sezioni unite, attraverso la portabilità, trasformano la prestazione definita in contribuzione definita*, in *Rivista di Diritto della Sicurezza Sociale*, 2022, 4, 653 ff.

[18] Candian A., Squeglia M., Tursi A., *Manuale della previdenza complementare*, Giappichelli, Turin, 2022, 238-246, where further references are also given at the end of the chapter; Zampini G., *Il diritto di riscatto nel sistema di previdenza complementare*, in *Rivista di Diritto della Sicurezza Sociale*, 2020, 1, 63 ff.

[19] For a critical overview, *see* Squeglia M., *Il regime finanziario della capitalizzazione nella previdenza complementare: un sistema "perfetto" per le generazioni future?*, in *Diritto delle Relazioni Industriali*, 2019, 1, 81 ff.

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the future pension outcome will vary for these employees. That outcome cannot be precisely predicted, as the amount of the individual pension depends not only on the amount of annual contributions, but also on the duration and performance of the investments made by the pension fund using the contributions accumulated.

3. Continued. Pension fund governance.

Italian Legislative Decree no. 252/2005 sets out detailed governance rules for pension funds, classifying them primarily according to the type of private initiative that established them. The main distinction is between pension funds established by collective agreements – so-called occupational pension funds – and those created by financial intermediaries for profit. The latter are open to workers from different categories and are governed by decisions taken by the governing bodies of the financial intermediaries themselves. There are also individual pension plans (IPPs) set up by insurance companies, which can be joined irrespective of one's employment status.

Occupational pension funds, on the other hand, which are aimed at workers covered by the collective agreement that established the fund, must by law be structured with mechanisms ensuring the representation of its members. The composition of the governing and supervisory bodies of supplementary pension schemes established by collective agreements must comply with the principle of equal representation of workers' and employers' representatives. Workers' representatives on the governing bodies are elected with voting procedures and criteria defined by the articles of association annexed to the collective agreement that establishes the pension fund.[20] Typically a broad general meeting is envisaged, ensuring equal representation of workers and employers and elected from multiple competing slates submitted by trade unions and companies. This general meeting appoints (and may also remove) the members of the board of directors and the board of statutory auditors, approves the annual financial statements and is responsible for extraordinary decisions such as amendments to the articles of association.

The monetary resources collected by the pension fund – namely the contributions paid by workers and employers and the related investment returns – are held by a custodian, generally a bank,[21] selected through a transparent procedure. The custodian bank is required to execute the instructions of the asset manager while ensuring that they are not in breach of the law or the secondary legislation defining pension fund investment criteria, nor of the fund's articles of association and regulations or the investment rules set by the pension fund's governance bodies for the relevant pension savings line (the so-called sub-fund, e.g. equity, bond, mixed, etc.).

To protect members of supplementary pension schemes, a clear separation of duties is established between the custodian bank and the manager, i.e. the entity responsible for

[20] Article 5 of Italian Legislative Decree no. 252/2005.
[21] Article 7 of Italian Legislative Decree no. 252/2005, referring to Article 47 of Italian Legislative Decree no. 58/1998, Consolidated Law on Financial Intermediation.

investment decisions and asset management.[22] The manager is a financial intermediary – typically an asset management company, bank or authorised insurance company – which takes single buy and sell decisions regarding securities,[23] continuously assessing the related risks.

The selection of the manager is also conducted according to transparent rules, through a publicly disclosed tender process,[24] using pre-established criteria aimed at ensuring consistency between the manager's future decisions and the objectives and management policies set by the pension fund's directors. A benchmark may be identified for each sub-fund, as well as a numerical indicator of the maximum acceptable risk (to be defined using explicit metrics), and maximum risk thresholds may also be specified (e.g. percentage of assets that may be invested in each macro-category of securities, or maximum exposure to currency risk, etc.).

Following this selection process, which typically includes written questionnaires, a manager is selected on the basis of a specific financial offer, taking into account the management fee charged to the fund, which ultimately affects the cost borne by contributing members. As is well known, portfolios with a higher equity component and greater dynamism require more active management, and therefore these sub-funds typically have higher average percentage fees. There are also significant differences in average management costs between occupational funds governed by worker and employer representatives compared to the considerably higher costs of funds managed by banks and insurance companies.[25]

The manager is bound to the fund by a multi-year mandate contract, under which – by law – the pension fund retains ownership of the voting rights attached to the securities in which the fund's assets are invested. However, the fund may engage advisers to determine its voting policies based on a technical analysis of the individual company. Thus, the pension fund retains a strategic role in steering the businesses it invests in.

[22] On the relevant regulatory aspects *see* Righini E., *La gestione "finanziaria" del patrimonio dei fondi pensione chiusi*, Giuffrè, Milan, 2006; Squeglia M., *Gestione finanziaria nei fondi pensione negoziali tra vincolo previdenziale, massimizzazione dei rendimenti e modelli alternativi di gestione*, in *Massimario di Giurisprudenza del lavoro*, 2011, 5, 345 ff., Landini S., *Soggetti gestori, modelli gestionali e strutture di controllo*, in Cinelli M. (ed.), *Art. 2123. La previdenza complementare*, in Schlesinger P., Busnelli F.D. (editorial directors), *Il Codice civile. Commentario*, Giuffrè, Milan, 2010, 171 ff.; Casillo R., *La gestione del patrimonio dei fondi di previdenza complementare*, in Ferraro G. (ed.), *La previdenza complementare nella riforma del Welfare*, vol. 1, Giuffrè, Milan, 2000, 168 ff.

[23] On the limited possibility for the pension fund to make individual investment decisions directly, and only "for limited periods and in the presence of temporary and particular market conditions", *see* the restrictions set out by Covip, opinion of June 2014, at *www.covip.it/normativa/fondi-pensione/quesiti/risposta-quesito-materia-mandati-gestione*.

[24] Covip, decision of 9 December 1999, Instructions for the process of selecting pension fund asset managers. On the potential replacement of the asset manager during the contractual term, *see* Covip, Communication no. 2272 of 24 May 2001.

[25] As shown in Covip's *2023 Annual Report*, Rome, 2024, pp. 65 ff. and 133 ff., occupational pension funds had lower average values for the standardised summary cost indicator: over a ten-year participation period the average value was 0.50%. By contrast, open pension funds and IPPs had average respective summary cost indicator values over the same time horizon of 1.35% and 2.17% (Table 1.49).

4. National legislation on ESG.

In 2018,[26] Italian Legislative Decree no. 252/2005 was amended to implement the aforementioned EU law on investment transparency and ESG factors. This Italian legislation mirrors the EU framework, and thus shares its approach whereby ESG factors are regarded as merely optional objectives: "Supplementary pension schemes may take into account the potential long-term impact of their investment decisions on environmental, social and corporate governance factors",[27] while being required to assess them as investment risks.

The legislation does not impose substantive ESG obligations, but only transparency requirements[28] in the documents published by the fund and in the annual disclosure provided to each member.[29] Italian secondary legislation on qualitative and quantitative limits for pension fund investments dating back to 2014[30] likewise imposes only a disclosure obligation regarding the potential adoption of ESG criteria.

More recently, specific transparency requirements were introduced by the administrative authority responsible for pension funds in Italy, i.e. the Pension Fund Supervisory Commission (Covip). This authority issued a circular in 2022[31] that also took account of Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022, which supplemented the disclosure and transparency obligations set out in Regulation (EU) 2019/2088 by specifying the regulatory technical standards for the "do no significant harm" principle.

According to Delegated Regulation (EU) 2022/1288, the information must be provided free of charge, in a manner that is easily accessible, non-discriminatory, prominent, simple, concise, comprehensible, fair, clear and not misleading. Financial market participants must present the required information in a searchable, readable electronic format using legible fonts and a layout that facilitates understanding. They must clearly indicate the date on which the information was published and any subsequent updates. If the information is provided as a downloadable file, financial market participants and financial advisers must include the

[26] Italian Legislative Decree no. 147 of 13 December 2018.
[27] Article 6, paragraph 14, of Italian Legislative Decree no. 252/2005.
[28] This observation is shared for example by Squeglia M., *Fattori ESG e previdenza complementare: problema di metodo e di merito, prima ancora che di obbligo?*, , in *Lateran Law Review*, 1, 2023, 91 ff., at: https://indd.adobe.com/view/60c504f9-bc51-4c94-b6d8-b8f42c0518f8.
[29] Article 13 quater, paragraph 2, letter h, Italian Legislative Decree no. 252/2005.
[30] Interministerial Decree of 02/09/2014 no. 166 of the Ministry of Economy and Finance in agreement with the Ministry of Labour, Implementation regulation of Article 6, paragraph 5-bis, of Italian Legislative Decree no. 252 of 5 December 2005, laying down rules on the investment criteria and limits for pension fund assets and on conflict of interest requirements, in Official Journal no. 264 dated 13 November 2014, at www.covip.it/normativa/fondi-pensione/legislazione-nazionale/decreto-ministeriale-2-settembre-2014-n166: Article 3, paragraph 6 of the decree provides that "Using the investment policy document referred to in Article 6, paragraph 5-quater, of Italian Legislative Decree no. 252 of 5 December 2005, the pension fund shall notify Covip of the parameters defined pursuant to paragraph 5, the policies and procedures established pursuant to paragraph 3 and the description of the organisational, professional and technical structure, illustrating their compatibility and consistency with the investment policy adopted and the related risks. The pension fund shall notify Covip of the ethical, environmental, social and corporate governance factors taken into account in its investments. The pension fund shall notify Covip of any changes to the information referred to in this paragraph".
[31] Covip Circular 21/12/2022 no. 0005910/22 titled "Requirements under Regulation (EU) 2019/2088 and Delegated Regulation (EU) 2022/1288 on sustainability disclosures in the financial services sector".

version history in the file name. Identifiers of the legal entity (LEI) and the international securities identification numbers (ISIN) must also be specified.

The national implementing rules define the content, methodologies and presentation of information on sustainability indicators and on the promotion of environmental or social characteristics or investment objectives, to be included in pre-contractual documents, periodic reports and online communications. This secondary legislation prescribes the specific content of websites – including for pension funds – the mandatory annual disclosure by the end of March, as well as the annual financial statements and reports,[32] and the mandatory investment policy document.[33] Covip also updated the templates for the Key Information Document and the membership form for joining a pension fund.

Following the EU regulations specific to the insurance sector,[34] highly detailed legislation (including secondary regulations[35]) on transparency in communication, also with regard to ESG factors,[36] was issued by the Italian insurance supervisory authority, IVASS, which has certain responsibilities over individual pension plans.

5. "Light green" and "dark green" pension funds, with some risk of "green bleaching" and possibly even "greenwashing".

Among "green" financial products, Regulation (EU) 2019/2088 distinguishes between the financial product that "promotes, among other characteristics, environmental or social characteristics, or a combination of those characteristics" (commonly referred to as Article 8 or "light green" products), and on the other hand the financial product that has "sustainable

[32] Article 17-*bis*, paragraph 5, introduced into Italian Legislative Decree no. 252/2005 in 2018, requires that "The financial statements referred to in paragraph 1 and the reports referred to in paragraph 2 must state whether and to what extent environmental, social and corporate governance factors have been considered in asset management and in the exercise of the rights deriving from the ownership of securities in the portfolio".
[33] Article 6, paragraph 5-*quater*, as amended in 2018, of Italian Legislative Decree no. 252/2005, provides that: "According to procedures defined by Covip, pension funds shall inform members of their investment decisions, prepare and make publicly available a document on the objectives and criteria of their investment policy, also illustrating the risk measurement methods and investment risk management techniques used and the strategic asset allocation with respect to the nature and duration of the pension benefits to be provided, and the way in which the investment policy takes account of environmental, social and corporate governance factors. The document must be reviewed at least every three years, and promptly in the event of any significant changes to the investment policy, and must be made available to members and, where interested, to beneficiaries of the pension fund or their representatives upon request".
[34] Commission Delegated Regulation (EU) 2021/1256 of 21 April 2021 (amending Delegated Regulation (EU) 2015/35 as regards the integration of sustainability risks in the governance of insurance and reinsurance undertakings) and Delegated Regulation (EU) 2021/1257 of 21 April 2021 (amending Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359 as regards the integration of sustainability factors, risks and preferences into the product oversight and governance requirements for insurance undertakings and insurance distributors and into the rules on conduct of business and investment advice for insurance-based investment products).
[35] IVASS Regulatory Provision no. 147 of 20 June 2024 "Amending and supplementing IVASS Regulation no. 41 of 2 August 2018 containing provisions on disclosure, advertising and product design for insurance products under Italian Legislative Decree no. 209 of 7 September 2005, Italian Private Insurance Code".
[36] *See* Manes P., *Compliance e corporate governance assicurativa: da Solvency II alle sfide ESG*, in *Corporate Governance*, 2024, 3, 479 ff. Prior to last year's secondary legislation on insurance, *see* Landini S., ESG, *Green Finance, assicurazioni e previdenza complementare,* in *Corporate Governance*, 2022, 1, 222 ff.

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investment as its objective and an index [...] designated as a reference benchmark" (commonly referred to as Article 9 or "dark green" product).

This distinction also applies to pension funds. Indeed, for the past couple of years the Italian supervisory authority Covip has included the results of its census of Italian pension funds in its annual report,[37] broken down by sub-fund. Based on the data declared in the appendix that each Italian fund is required to publish as an annex to its disclosure, this analysis includes all sub-funds of collective agreement pension funds, open-ended pension funds and individual pension plans, as well as a sample of pension funds that existed prior to the Italian legislative reform of 1993, for a total of 555 sub-funds.

In 2023, 42 Italian supplementary pension schemes declared that they integrate sustainability factors into their investment processes with regard to at least one of the sub-funds they offer. In all such cases, the sub-funds (109 in total) were declared to be of the Article 8 variety, i.e. "light green".[38] In the previous year, the number of such funds was higher, and some pension funds had also declared certain sub-funds as "dark green". The supervisory authority hypothesises that the disappearance of dark green sub-funds and the reduction in the light green versions may be due to instances of so-called "green bleaching", i.e. a strategy of avoiding sustainability labelling in order to circumvent the resulting regulatory, disclosure and operational obligations.

By contrast, interesting unofficial industry research,[39] while based on a sample and methodology that is not comparable with Covip's census, shows most Italian pension funds' growing attention to these issues. It is therefore legitimate to ask whether Italian pension funds are doing more on ESG than they officially claim – as Covip suggests – or whether in unofficial settings they say more than they actually do. In the latter case, this would amount to some extent to so-called greenwashing, a practice that the financial sector as a whole is certainly not exempt from.[40]

Nevertheless, the supplementary pension sector is among those best suited to ESG strategies given the long-term horizon of its investments. Moreover, in the case of occupational pension funds the presence of delegates elected by workers to their governing bodies fosters greater sensitivity to the social impact of investments. More generally, among individual investors, those with greater financial awareness are also more likely to view ESG factors favourably.[41]

[37] Covip, *Relazione per l'anno 2023*, Rome, 2024, table 2.3 on p. 89.
[38] These sub-funds are mostly found in the following occupational pension funds: Cometa, Solidarietà Veneto, Laborfonds, Pegaso, Fondapi, Byblos, Prevedi, Fondoposte, Perseo Sirio, as reported by Rossi M., *Preferenze e orizzonte temporale negli investimenti delle famiglie*, report on the study meeting "Preferenze, rischi, sostenibilità e tutele negli investimenti ESG", Bologna, 3 April 2025.
[39] *See* especially *Indagine sugli investimenti sostenibili degli investitori previdenziali italiani*, conducted by the Forum for Sustainable Finance in cooperation with Mefop and MondoInstitutional, tenth edition 2024, at www.sonoprevidente.it/news/notizie/investitori-previdenziali-criteri-esg-sostenibilita.
[40] ESMA, *Final Report on Greenwashing. Response to the European Commission's request for input on greenwashing risks and the supervision of sustainable finance policies*, 4 June 2024, at www.esma.europa.eu/document/final-report-greenwashing.
[41] Castagno E., Oggero N., Rossi M., *Preferences for Sustainable Investing: The Role of Financial Literacy*, CeRP Working Paper 218/2025, at www.cerp.carloalberto.org/category/publications/working-papers.

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6. Portfolio strategies incorporating ESG factors.

ESG criteria may be integrated into investment portfolios through a range of strategies, usually a blend of several approaches.

The simplest and most widespread strategy is the exclusion of certain industrial or economic sectors, such as tobacco, alcohol, pornography, deforestation, gambling and fossil fuels. This is a very clear and effective approach, but one that can only be applied selectively to specific sectors. Sometimes exclusion does not apply to an entire sector but rather to specific segments, for example not the whole mining sector but only hydrocarbon extraction by hydraulic fracturing. In other cases, exclusion concerns not the core business but specific practices, such as animal testing in the cosmetics industry.

The selection of which sectors to exclude is sometimes highly value-laden and debatable. For example, the pharmaceutical sector, which is at times accused of global inequity yet also offers hope of cures for currently untreatable diseases and the potential for lowering treatment costs. The same applies to the nuclear energy sector, which is seen by some as a serious ecological risk due to radioactive waste management and the precautionary principle, but by others – at least with regard to newer technologies – as a less polluting alternative to fossil fuels.

The defence sector is one of the most frequently excluded, but numerous distinctions are made: sporting and hunting weapons, as well as collectors' items, are often exempted. Sometimes further distinctions are made between automatic and non-automatic weapons; or only weapons of war are excluded, or only nuclear or non-conventional arms. These distinctions are highly significant, especially given the likelihood that defence-related investments will grow as they are expected to receive an increasing share of public spending in Europe.[42]

This is a particularly relevant issue for pension funds, which are among the investors most attuned to it given that many worker representatives on governing bodies oppose such investments. However, due to geopolitical developments in recent years, investments in the defence sector have taken on a new framing as protecting European democratic systems, though this broader geopolitical debate falls outside the scope of this paper. From a strictly financial standpoint, it is regrettably undeniable that the defence sector currently presents investment opportunities.[43]

A strategy similar to sectoral exclusion consists in avoiding investment in individual countries that rank poorly with respect to human rights and fundamental freedoms. In this regard, the most delicate issue is choosing which statistics and rankings to trust, as official international reporting may be influenced or moderated by the lobbying of the countries

[42] On 17 June 2025 the European Commission has adopted the Defence Readiness Omnibus V, a comprehensive package aimed at establishing a defence-readiness mindset across the European Union. *See* also European Commission, *White Paper for European Defence and the ReArm Europe Plan/Readiness 2030*, at https://commission.europa.eu/topics/defence/future-european-defence_en.

[43] The Stockholm International Peace Research Institute's Yearbook 2024 (Stockholm, 2025), available at www.sipri.org, notes that global arms spending rose by 9.4% last year compared to the previous year.

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involved. On the other hand, unofficial reporting – for example by NGOs – tends to be more incisive but may be challenged by individual shareholders or investors if portfolio managers have discretion.

Sectoral and geopolitical exclusion strategies can obviously be combined, for example in cases where verifying responsible conduct is not feasible for a given geographic area's entire economic sector, such as forestry or mining.

A more sophisticated strategy entails compliance with supranational or internationally agreed standards, even if not legally binding or ratified by certain countries. Examples include the 17 Sustainable Development Goals (SDGs) of the UN 2030 Agenda, various instruments developed within the United Nations, ILO labour rights guidelines, and the OECD Guidelines for Multinational Enterprises. The 2015 Paris Agreement (COP 21), a universal and legally binding accord signed by nearly two hundred countries, aims to limit global warming to below 2°C above pre-industrial levels in order to curb the impacts of climate change. There are also regional legal frameworks, in which European Union often leads: for instance the 2021 European Green Deal, whereby the EU committed to achieving net zero greenhouse gas emissions by 2050. In this context, the practical challenge is verifying implementation and distinguishing between the roles and responsibilities of States and individual companies, which undoubtedly influence geopolitics if they are large multinationals, but are also subject to them.

Such commitments by pension funds should be clearly reflected in contractual documentation with their asset managers, as has sometimes been the case in recent years. For example, in its call for tenders last year, the fund Laborfonds[44] required candidates "to be signatories of the United Nations Principles for Responsible Investment (UN-PRI)".

An even more refined strategy is the best-in-class approach, i.e. selecting investments based on ESG ratings or numerical indicators developed by rating agencies such as carbon footprint, greenhouse gas emissions, energy-saving programmes, persistent chemical pollutants, gender issues and other types of discrimination,[45] gender balance in company boards and control bodies, also in accordance to Directive (EU) 2022/2381 on improving

[44] Supplementary Pension Fund for employees of employers operating in Trentino-Alto Adige: see the 2024 call at www.laborfonds.it/images/pdf/novita/Bando%20Selezione%20Gestori%20Finanziari.pdf. This requirement is listed as a preferential criterion in the 2024 call of the National Capitalisation Pension Fund for Workers, Members and Employees of Cooperative Enterprises and workers engaged in forestry and agricultural land and water maintenance works: www.previdenzacooperativa.it/wp-content/uploads/2024/04/240403-Previdenza-Cooperativa-Bando-di-gara.pdf, and similarly in the 2023 call from Fonchim, the pension fund for employees in the chemical, pharmaceutical, chemical fibre, abrasives, lubricants and LPG sectors, later extended to sectors covered by national collective labour agreements for LPG, glass, lamps and cathode ray tubes, insulation and mineral-metallurgical industries: www.fonchim.it/cms/resource/open/4989/fonchim-bando-selezione-gestori-finanziari.pdf.

[45] With regard to the fight against discrimination, the regulatory framework is now highly sophisticated thanks to continued efforts by EU institutions that aim also to strengthen the effectiveness and independence of equality bodies. Following the upcoming implementation of Directives 2024/1499 and 2024/1500, the mandatory legal framework will become even more stringent. As regards corporate governance, se also the Directive 2022/2381 on improving the gender balance among directors of listed companies. Nonetheless, combating discrimination will remain an area where more motivated companies can gain visibility and differentiation through a variety of good practices. Moreover, for companies subject to adverse rulings, any judicial proceedings brought under the special anti-discrimination procedural framework may also negatively impact ESG assessments.

the gender balance among directors of listed companies. Given the legally binding disclosure requirements for large companies, assessments may also include detailed scrutiny of executive pay policies to ensure moderation of compensation, avoid incentives for taking environmental risks (especially for periods beyond the executive's term) and more generally to avoid conflicts of interest[46] or to anchor performance to social or other ESG indicators. This approach not only allows the exclusion of the worst performers, but also promotes the selection of best-in-class companies in each geographic area or economic sector.

Such strategies will now need to be aligned with the recently adopted Regulation (EU) 2024/3005 on transparency and integrity in ESG ratings.[47] This is a sensitive and practical issue, as shown by recent criticism expressed by several ESG-conscious financial operators regarding policy changes made by two leading providers of ESG ratings.[48]

To ensure the effectiveness of ESG strategies in portfolio management, increasing attention is being paid to the administrative structure of asset managers, namely the existence of a team dedicated to analysing the ESG profiles of companies to be selected for investment. Indeed, the complexity of the regulations and the sector-specific ESG evaluation metrics requires specialised expertise and experience. Financial entities with a dedicated ESG team enjoy greater credibility when presenting themselves – including to pension funds – as socially responsible managers. More generally, a relevant factor is the continuity of the management team, as documented in the performance track record submitted during the manager selection process. Likewise, the assignment of clear ESG responsibilities to a specific person or committee within the board of directors is a meaningful indicator.

This makes it possible to implement a so-called engagement strategy, aimed at establishing a dialogue between the investor and individual companies to develop targeted socially responsible conduct plans. This dialogue is especially enabled through the exercise of voting rights attached to the securities the pension fund's assets are invested in. As noted, under Italian law the pension fund must retain ownership of the voting rights in the corporate bodies of the companies it invests in.

A strategy that is clearly aligned with ESG factors is that of topical sectoral investments in industries and value chains considered beneficial, focusing for example on: renewable energy and energy efficiency; water and its proper governance; low-emission transport;

[46] On this aspect, precisely with regard to pension funds, *see* Righini E., *La regolazione dei conflitti di interesse e della governance delle forme pensionistiche individuali*, in *Lavoro diritti Europa*, 2025, 2, ff.

[47] This regulation amended Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector. It also amended the recent Regulation (EU) 2023/2859 which, together with Directive (EU) 2023/2864, established a single European point of access for publicly accessible information relevant to financial services, capital markets and sustainability. *See* Gorni F., *Il nuovo panorama della finanza sostenibile: il contributo delle lezioni normative apprese dall'evoluzione del mercato delle agenzie di rating del credito allo sviluppo di successo del mercato del rating ESG*, in *Corporate Governance*, 2024, 3, 605 ff., who points out that, without the intervention of competition law, the ESG rating market risks recreating an oligopoly similar to the credit rating market, to the detriment of consumers.

[48] The reference here is to Morgan Stanley Capital International and Morningstar Sustainalytics. According to press reports, the latter "stopped using data from the United Nations Human Rights Council" and "publicly confirmed that it excluded the Israeli-Palestinian conflict from its ESG reporting" (*see* Brusini C., *Due società di rating cambiano i parametri dei fondi etici: promosse a pieni voti aziende che contribuiscono a violazioni dei diritti umani a Gaza*, 9 May 2025, at www.ilfattoquotidiano.it/2025/05/09/societa-rating-parametri-esg-promosse-a-pieni-voti-aziende-che-contribuiscono-a-violazioni-dei-diritti-umani-a-gaza/7981605).

recycling, reuse and the circular economy; inclusion programmes for vulnerable groups; sustainable building; affordable housing policies for disadvantaged groups; and urban and ecosystem regeneration. This is a portfolio strategy that limits diversification and is therefore suitable, for example, for Undertakings for collective investment in transferable securities (UCITS) or for single Exchange Traded Funds (ETF), which may adopt a sharper topical focus, especially since a single financial product is only one component of an individual final investor's overall portfolio. By contrast, a strategy of sector specialisation is not suitable for any pension fund, which must maintain broad diversification within its portfolio, the one and only repository of each worker's accumulated contributions.

Even more ambitious is the so-called impact investing strategy using "green bonds" or "social impact bonds", i.e. debt instruments tied to specific positive eco-social outcomes[49] that are ideally measurable (though it must be said not without some difficulty in adapting the instrument to complex areas such as the labour market[50]). This is certainly the most innovative frontier, but it still represents only a very narrow niche of the investment market.

At first glance, one might think that the participation of worker representatives in pension fund governing bodies could favour such financial products, particularly when aimed at achieving employment-related goals. Nonetheless, the explicit and intentional willingness of investors to forgo a portion of capital returns remains an obstacle to the meaningful – rather than merely residual or symbolic – inclusion of this type of bond in a pension investment portfolio. Such a sacrifice is more acceptable on the part of charitable foundations or other *pro bono* institutions, rather than workers.

Section B: The special case of the Italian Law on landmines

7. The restrictions introduced by Italian Law no. 220/2021 to financially counter the proliferation of unconventional anti-personnel explosive weapons.

A completely different and much more stringent approach has been adopted by the Italian legal system with respect to a specific aspect falling within ESG issues: unconventional anti-personnel explosive weapons. Indeed, with near-unanimous support in the 18th legislature, Italian Parliament passed Law no. 220 of 9 December 2021, "Measures to counter the

[49] *See* Regulation (EU) 2023/2631 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds; ICMA, *Linee Guida dei Sustainability Bond*, June 2018, www.icmagroup.org. In Italy the phenomenon is beginning to gain some ground: Abis D., Damilano M., Pia P., *Il mercato dei social bond: che cosa ci dicono i numeri?,* in *Bancaria*, 2024, 5, 53 ff.; Ragno M., *La disciplina delle obbligazioni verdi europee nel regolamento UE2023/2631*, in *Patrimoni, finanza e internazionalizzazione*, 2025, 56, 19, at: www.euroconference.it/centro_studi_tributari/patrimonifinanza_e_internazionalizzazione.

[50] With regard to labour connections, *see* Castellucci S., *La finanza sostenibile a supporto delle politiche attive del lavoro: i social impact bonds*, in *Federalismi*, 2025, forthcoming; Cristofolini C., *Social impact bonds per l'inserimento lavorativo: opportunità e limiti*, in Rossi M., Salomone R., Torricelli C. (ed.), *Finanza sostenibile per il lavoro e per il welfare*, Bologna, Mulino, 2023, 203 ff., and more generally also the other contributions in the same volume on this innovative topic.

financing of companies producing anti-personnel mines and cluster munitions and submunitions".

This law significantly strengthens Italy's domestic legal framework for implementing the international conventions signed in Ottawa on 3 December 1997 on landmines[51] and in Dublin on 30 May 2008 on the prohibition of cluster munitions,[52] as well as Italian Law no. 374/1997, which banned anti-personnel mines. Following this legislation, anti-personnel mines have not been produced in Italy for nearly 30 years. However, it is worth recalling that until the 1980s Italy was one of the world's largest producers, after the USA, the Soviet Union and a few other countries.

Conversely, Italy's legal system today appears to be at the forefront, both in terms of general arms trade control[53] and this specific area. The law passed in 2021 introduces a total ban on financing companies that engage in the construction, production, development, assembly, repair, maintenance, deployment, use, storage, warehousing, possession, promotion, sale, distribution, import, export, transfer or transport of anti-personnel mines, cluster munitions and submunitions of any kind or composition, as precisely defined by the law.[54]

The law also prohibits the financing of any business activity linked to "parts thereof", i.e. any components of anti-personnel mines and cluster munitions. Pension funds are unlikely to have direct relationships with, for example, manufacturers of military equipment. However, they may become involved through investments in sectors not inherently at risk – such as logistics or mechanical engineering – which nonetheless fall under the scope of the ban: even the supply or transport of seemingly harmless bolts may be relevant if used in assembling anti-personnel mines. The goods banned under Italian Law no. 220 of 2021 are not only those specifically designed for the exclusive purpose of such prohibited weapons.

Nonetheless, it is unrealistic to expect the law to be fully enforced with respect to the part that bans financing of companies involved merely in the "transfer or transport" of these prohibited weapons. In fact, the lists of companies currently circulating among financial

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51 Ratified and implemented in Italy by Law no. 106 of 26 March 1999.

52 Ratified and implemented in Italy by Law no. 95 of 14 June 2011. *See* also www.clusterconvention.org.

53 *See* extensively Gaspari F., *Recenti sviluppi in materia di regolazione multilivello del commercio di armi: problemi e prospettive*, in *Rivista italiana di Diritto Pubblico Comunitario*, 2, 2015, 423 ff.; on the recent geopolitics involving Italy to the east of Europe, *see* Cimiotta E., *Invio di armi e munizioni dall'Italia all'Ucraina, legislazione nazionale e trattato sul commercio delle armi,* in *Rivista di Diritto Internazionale*, 2024, 1, 133 ff. In any case the subject of arms trade is sensitive in a plurality of national legal systems, as well as in supranational fora: most recently, for example, for a specific case *see* Perrone G., *Trasferimento di armi e complicità dello Stato nella commissione dell'illecito: considerazioni a partire dal caso Nicaragua c. Germania*, in *Rivista di Diritto Internazionale*, 2024, 3, 820 ff.

54 According to Article 2 of the law, the ban applies to "anti-personnel mines": under Article 2, paragraphs 1 and 2, of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, signed in Ottawa on 3 December 1997 and implemented by Italian Law no. 106 of 26 March 1999, this refers to any mine designed to explode by the presence, proximity or contact of a person, and to incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle rather than a person and equipped with anti-handling devices are not considered anti-personnel mines solely by virtue of such design. The ban also applies to "cluster munitions and submunitions": under Article 2 of the Oslo Convention on Cluster Munitions, signed in Dublin on 30 May 2008 and implemented by Italian Law no. 95 of 14 June 2011, this refers to any conventional munition designed to disperse or release explosive submunitions, each weighing less than 20 kilograms, subject to the exclusions listed in letters a), b), and c) of paragraph 2 of the same Article 2 of the Convention.

intermediaries primarily include those that produce or sell the weapons, and lack information on logistics. Moreover, a literal application of the ban would likely imply blacklisting a substantial share of global shipping and rail companies. Indeed, if Eastern European countries[55] resume procurement of such ordnance, one could reasonably suspect that, for instance, certain Dutch ports or German railways might theoretically fall under this Italian ban.

The law further prohibits the research, manufacture, sale and transfer by any means, export, import and possession of cluster munitions and submunitions, regardless of their nature or composition.

This is not merely a ban on financing, but in essence a prohibition against any form of financial support, including through subsidiaries or affiliates[56]. Examples include the granting of credit in any form, provision of financial guarantees, acquisition of shareholdings and purchase or subscription of financial instruments issued by companies engaged in such prohibited activities. In light of the law's rationale and literal wording, it seems preferable to construe the prohibition on indirect financing as broadly as possible, without reference to quantitative thresholds of materiality.

With regard to unconventional anti-personnel explosive weapons, the legislature has thus opted for the strongest and clearest portfolio strategy: outright exclusion from any investment or financing. The matter is thus framed by Italian Law no. 220/2021 not in terms of policy guidelines but as mandatory and non-derogable legislation.

Under this law, companies involved in activities linked to such banned weapons are also excluded from all public tenders and funding programmes. Since it would appear that the production of these weapons has ceased in Italy for decades, this prohibition essentially applies to foreign weapons manufacturers. These companies, if they also produce the weapons in question, are therefore not authorised to supply the Italian Army with any military equipment. This could have significant implications, for example, considering that not all NATO member states are parties to the above-mentioned conventions banning anti-personnel explosive weapons, and in those countries production remains legal.

[55] In June 2025 the Ukrainian Republic has announced his withdraw from the Ottawa Convention: www.reuters.com/world/ukraine-track-withdraw-ottawa-anti-personnel-mines-treaty-lawmaker-says-2025-06-29. The same matter is under discussion in the Baltic countries, especially Finland: see www.reuters.com/world/europe/finland-plans-withdraw-landmines-treaty-prime-minister-says-2025-04-01. The legal consequences are controversial: although the Ottawa Convention allows States to withdraw from the agreement, this only takes effect after the end of any armed conflicts the country is involved in (and the Convention does not provide for suspensions): www.news.admin.ch/en/newnsb/XhESsBksC9QkSMArvb2uE.

[56] The law refers to the concept of affiliation under Article 2359 of the Italian Civil Code.

8. Entities subject to the law as amended in 2022.

The scope of Italian Law no. 220/2021 includes not only banks, but all authorised financial and insurance intermediaries as clearly defined in the law,[57] as well as foundations and – of particular relevance here – pension funds.

With respect to the latter, Article 1, paragraph 3, establishes a specific ban "on investing their assets" in activities linked to anti-personnel mines and cluster munitions. For pension funds and foundations, therefore, the law introduces a specific clarification extending the general ban on "financing". This is merely a specific adaptation of the general ban on direct and indirect "financing" applicable to the broad range of authorised banking, financial and insurance intermediaries. Since investment is one of several possible forms of financing, it is beyond doubt that the ban on investing in companies involved in anti-personnel mines applies not only to pension funds and foundations but also to all savings managed through UCIs (undertakings for collective investment).

Excluded from the ban are individual clients – not classified as authorised financial operators – who place specific orders to purchase shares or bonds. That is, this general prohibition on financial support does not appear to bind end-users of banking or investment services (whether consumers, professionals or commercial companies and the like). These users remain free to purchase shares or bonds issued by companies involved in the production or trade of these banned weapons.

Furthermore, the law seems to prohibit the management of assets or portfolios owned by a company involved in banned arms trade, since generating financial gains through investments constitutes "financial support", and is therefore also prohibited. In this perspective, companies involved in the production or trade of such banned weapons may not even rely on the foreign branches of Italian banks for asset management services.

Indeed, Italian Law no. 220/2021 prohibits financial activities carried out "through subsidiaries based in Italy or abroad".[58] Following the 2022 revision of Article 2, paragraph 1, letter a, it is clear that this law also binds "Italian branches of SBCs, asset managers, banks, electronic money institutions and payment institutions with head offices in another EU Member State or third country". The parent companies of foreign intermediaries are not bound by this law, nor can their Italian branches be sanctioned for actions carried out by the foreign parent company, otherwise, the Italian legal system would be asserting highly

[57] *See* Article 2, paragraph 1, letter a, of Italian Law no. 220/2021, as amended by Article 33, paragraph 1, letter b-bis, of Italian Decree-Law no. 73 of 21 June 2022, converted with amendments by Italian Law no. 122 of 4 August 2022. Compared to the original version, the amended letter a now explicitly defines "authorised intermediaries" as: Italian securities brokerage companies (SBCs), Italian banks, Italian asset managers, Italian electronic money institutions, Italian payment institutions, entities listed under Article 111 of Italian Legislative Decree no. 385 of 1 September 1993 (Consolidated Banking Act), financial intermediaries registered under Article 106 of the same Consolidated Act including loan guarantee consortia, Poste Italiane S.p.A. for its BancoPosta activities, Cassa Depositi e Prestiti S.p.A., and Italian branches of SBCs, asset managers, banks, electronic money institutions and payment institutions with head offices in another EU or third country. Also included are insurance and reinsurance undertakings and their Italian branches, stockbrokers, banking foundations and pension funds.

[58] Article 2, paragraph 1, letter a, of Italian Law no. 220/2021.

problematic extraterritorial jurisdiction. In essence, the law applies to Italian intermediaries, including those operating abroad, and to the Italian branches of foreign intermediaries.

Intermediaries from other EU Member States operating in Italy under the freedom to provide services do not appear to be subject to this compliance obligation. In practice, however, this doubt seems marginal, since any professional party to an investment or financing transaction that is Italian – and also an intermediary – must comply with Italian Law no. 220/2021. This implies that the non-Italian counterparty must also comply. So the issue may arise for a foreign intermediary with no presence in Italy that seeks to offer digital investment services to Italian retail clients.

The same principle applies to any non-Italian pension fund seeking to engage with a banking or financial intermediary based in Italy, which must comply with this law. That is, a bank with head office in Italy may not serve as custodian for a foreign pension fund that reserves the right to invest in these unconventional weapons or that in any case refuses to be bound by this Italian law.

Further reflection is warranted regarding Italian Legislative Decree no. 114/2022 implementing Regulation (EU) 2019/1238, which since March 2022 allows institutions for occupational retirement provision (IORPs) and other authorised intermediaries[59] to distribute a product called the Pan-European Personal Pension (PEPP). If the distributor is not based in Italy, they would appear to be exempt from compliance with Italian Law no. 220/2021 since their counterparty is the end consumer, who falls outside the personal scope of the law, even when enrolled in an Italian sub-account of the PEPP in question.

Practically speaking, however, the impact is likely to remain limited, not only because of the small number of PEPP schemes offered in the EU,[60] but above all because the Italian implementing legislation[61] treats these products like national pension funds in not all respects. Specifically, it does not permit the transfer of severance pay (*trattamento di fine rapporto* or TFR) accrued or accruing under Article 2120 of the Italian Civil Code as a form of contribution. This salary component for employees is one of the main sources of funding for supplementary pensions in Italy. Its exclusion thus appears to be a significant regulatory limitation.[62] Predictably, therefore, despite its commendable aim of developing a European market for pension products and supporting the mobility of EU citizens, this new kind of pension scheme is unlikely to find much success in Italy.

[59] That is, a pension fund or other financial institution referred to in Article 2, paragraph 1, point 15, (which refers to Article 6, paragraph 1) of Regulation (EU) 2019/1238 on PEPPs.
[60] *See* the relevant European register, which lists fewer than ten such products, none of which are Italian: https://pepp.eiopa.europa.eu.
[61] Legislative Decree no. 114/2022.
[62] The choice of the Italian legislature to exclude the conferrability of the severance pay was immediately deemed objectionable, for example, by Squeglia M., *L'affermazione del diritto unionale dei cross border workers e dei EU citizens: i pan-european pension products (pepp)*, in *Lavoro diritti Europa*, 2025, 1, 10.

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9. Implementing rules in force from 2025.

To ensure compliance with the financing ban, under the current version of Italian Law no. 220/2021 authorised intermediaries must adopt "appropriate procedural safeguards" and "consult at least the publicly available lists of companies that produce" anti-personnel mines and cluster munitions.[63] It is unclear which lists the law refers to, as public awareness campaign websites[64] are unlikely to contain up-to-date information on prohibited or controversial activities.

It is easier to imagine that financial intermediaries (including pension funds) may turn to professional operators specialising in credit and market reliability reporting via subscription services or related consultancy. In early 2025 a few such lists began circulating compiled by Six Financial, Refinitiv (now LSEG Data & Analytics) and Nummus, which claims to update it monthly and to disclose its information sources.[65] These lists contain no Italian companies, but include around 20 mostly non-European firms, particularly Chinese, South Korean, and a few from the United States and Israel.

The need for regular updates to these lists implies an ongoing analytical review of individual companies in the armaments sector, conducted at least annually. It also requires engaging with listed companies, giving them the opportunity to be removed in the event of factual errors or changes in business conduct. This also entails sensitive policy decisions in managing the list of companies to be banned, since, for example, any ambiguity or reluctance by companies to respond to questionnaires could be interpreted as involvement in activities linked to anti-personnel mines. Otherwise, the lack of cooperation by high-risk companies would render Italian Law no. 220/2021 ineffective.

During implementation of the law, the supervisory authorities mentioned in Italian Law no. 220/2021 rejected the idea[66] of sharing the information on companies to be banned with intermediaries. While formalising a blacklist would have greatly reduced the burden on intermediaries, it would have made the list much more rigid and imposed a highly sensitive responsibility on the authorities, one not assigned to them by the law. The original version of the bill was structured in this way.[67] Indeed, the version approved at the end of 2021

[63] Article 4 of Italian Law no. 220/2021, as replaced by Article 33, paragraph 1, letter b-ter, of Italian Decree-Law no. 73 of 21 June 2022, converted with amendments by Italian Law no. 122 of 04 August 2022.

[64] For example: International Campaign to Ban Landmines-Cluster Munition Coalition (ICBL-CMC) www.icblcmc.org. There is also the UN programme www.unmas.org, as well as numerous initiatives supported by individual States or academic and activist centres, such as: Geneva International Centre for Humanitarian Demining (GICHD) www.gichd.org; International Mine Action Standards (IMAS) framework www.mineactionstandards.org; Ammunition Management Activity Platform https://a-map.gichd.org; Information Management System for Mine Action https://mwiki.gichd.org; Life of mine www.lifeofmine.org. In Italy, the site www.banchearmate.org publishes data collected by the Ministry of Economy and Finance concerning transactions governed by Italian Law no. 185/1990 on monitoring the arms trade. For an overview of this legislation, see Gaspari F., *Recenti sviluppi in materia di regolazione multilivello del commercio di armi: problemi e prospettive,* in *Rivista italiana di Diritto Pubblico Comunitario*, 2, 2015, p. 437.

[65] *See* https://nummus.info.

[66] The issue of legal certainty in this regard had been raised especially by the Italian banking association: *see* ABI, *Position paper* in the consultation prior to the definition of the supervisory instructions, June 2023, Rome, p. 4, www.covip.it/sites/default/files/pubbliche_consultazioni/abi.pdf.

[67] *See* Bill 1813, Bill 445, Dossier no. 344, regarding the original Article 3 of the draft law of 17 September 2020.

included a specific assignment of such a responsibility to the supervisory authorities.[68] However, that provision was repealed in 2022.[69] Even if the official reason was to avoid new or increased financial burdens on public finances,[70] it is clear that the repeal had the crucial effect of relieving the supervisory authorities of the extremely delicate responsibility of creating and updating a blacklist of companies to be excluded from the Italian financial sector.

The supervisory authorities identified by the law are the Bank of Italy, the insurance supervisory authority (IVASS), the pension fund supervisory authority (Covip) and any other body charged with oversight of authorised intermediaries under current law (for example, Consob could be considered relevant even though it is not expressly mentioned). The law entrusts these authorities with issuing joint supervisory guidance, which was published in summer 2024.[71]

Effective February 2025, these secondary rules require the integration of the existing risk management system for intermediaries "according to a risk-based approach and the principle of proportionality". Detailed guidance on compliance with this law must be included in the periodic reports drawn up in accordance with the applicable industry regulations by the compliance departments of banking and financial intermediaries or by corporate bodies at least annually. Other corporate functions are also to be involved, namely those monitoring risks, including reputational risks at least for listed companies. In cases where asset management is delegated to third parties (including foreign entities), there is an obligation for pension funds to provide prior appropriate instructions to such managers, specifying the terms and methods for monitoring their activity.

Before entering into any contractual relationship with a counterparty, financial intermediaries may use all publicly available information on the companies they deal with, reasonably verifying its reliability. A relevant element in the preliminary assessment will be the identification data collected as part of the mandatory customer due diligence to prevent money laundering and terrorist financing.

In the case of financial transactions involving parties considered high-risk by the authorised intermediary, enhanced control measures must be adopted. A first indicator of

[68] Article 3, paragraph 1, of the version of Italian Law no. 220 approved at the end of 2021 included the following provision: "Within nine months of the entry into force of this law, by decree of the Ministry of Economy and Finance, a Commission shall be established – without new or increased burdens on public finances – which, by 30 June 2023, shall draw up a proposal on the information sources to be used, the procedures and timing for drafting, publishing and periodically updating the list of companies referred to in Article 1, paragraph 1, and on the entity responsible for carrying out these tasks".
[69] The repeal was introduced by Article 33, paragraph 1, letter b, of Italian Decree-Law no. 73 of 21 June 2022, converted with amendments by Italian Law no. 122 of 4 August 2022. Consequently, Article 4 of Italian Law no. 220/2021 was also rewritten, as it had presupposed the existence of such an official list of companies to be excluded from financing, to be published by the supervisory authorities.
[70] The parliamentary dossier on Italian Decree-Law 73/2022 also refers to financial reasons for the repeal of this responsibility assigned to the supervisory authorities, as well as to alignment with the government's intentions expressed during the debate on the original bill:
https://documenti.camera.it/Leg18/Dossier/Pdf/D22073.Pdf.
[71] Instructions dated 26 July 2024 by Bank of Italy, Covip, IVASS and MEF for enhanced oversight of authorised intermediaries, aimed at countering the financing of companies producing anti-personnel mines and cluster munitions and submunitions, in implementation of Article 3, paragraph 1, of Italian Law no. 220 of 9 December 2021, in *Official Journal*, no. 184 of 7 August 2024.

risk may be the share of turnover derived from the defence or arms sector. Another indicator may certainly be the geographical origin of the contractual counterparty, particularly given that the international conventions banning the weapons in question have not been ratified by all States, including some located near Italy on the southern shore of the Mediterranean sea. Moreover, following the prolonged war in Ukraine some northeastern European countries have begun debating the idea of withdrawing from such international conventions, now believing that these controversial weapons may serve as low-cost defences against possible geopolitical threats from the east.[72] As a result, the number of States not party to the ban may unfortunately increase.

In the summary table of the preliminary public consultation[73] on the adoption of supervisory guidance implementing Italian Law no. 220/2021, it was confirmed that the subscription of government debt issued by States (e.g. the USA, China, India, Israel, etc.) that have not signed the above international conventions does not fall within the scope of the law. The Italian financing ban applies solely to companies engaged in activities prohibited by this law, not to national governments.

10. The issue of trading platforms.

As stated above, individual clients – not classified as authorised financial operators – who place specific orders to purchase shares or bonds are not bound by Italian Law no. 220/2021. That is, this general prohibition on financial support does not appear to bind end-users of banking or investment services (whether consumers, professionals or commercial companies and the like). These individuals remain free to purchase shares or bonds issued by companies involved in the production or trade of these banned weapons.

However, it is necessary to examine the technical procedures used by such individuals to invest, since if the investment process involves authorised intermediaries the issue becomes more complex. To the extent that a bank or financial intermediary merely provides a technological platform for electronic trading of such securities, at first glance it would not appear to violate the law, provided that the prohibition is interpreted narrowly. Executing purchase orders on behalf of a client does not in itself appear to constitute even indirect financing, except where the platform also provides credit or financing for such transactions, such as so-called "Lombard credit", i.e. loans secured by existing financial assets held with the same platform.

[72] This issue has been raised within NATO by the Baltic States, particularly Finland. Reportedly, the chair of the Finnish parliament's Defence Committee, Jukka Kopra, stated: "The war in Ukraine has demonstrated that in a prolonged conflict, there is a risk that substitute capabilities may be exhausted, and simple weapons are needed. It is crucial that national defence forces have a broad range of tools available when necessary" (https://breakingdefense.com/2025/03/citing-russian-threat-baltic-and-polish-defense-ministers-want-out-of-anti-landmine-treaty). This position was recently confirmed by the Finnish prime minister: www.reuters.com/world/europe/finland-plans-withdraw-landmines-treaty-prime-minister-says-2025-04-01.
[73] The full consultation process is available on the Bank of Italy's website: www.bancaditalia.it/compiti/vigilanza/normativa/consultazioni/2023/mine-antipersona/index.html.

That said, the intermediary (whether Italian or operating via a secondary establishment in Italy) that provides the trading platform is certainly facilitating not only the client making the purchase but also the issuer of the securities. However, this appears to be an operational and technological facilitation, not financial. It is a form of facilitating the financing of others. If one were to interpret the law narrowly, it could be argued that had the legislature intended to prohibit this kind of facilitation as well the scope of the financing ban under Italian Law no. 220/2021 would not have been limited to authorised intermediaries (or in any case it would have prohibited any legal relationship with companies involved in banned weapons, not just financial support). But this is not what the law says. This is a crucial question, because while such a narrow interpretation of the ban may align with the current literal wording of the law, it significantly limits its impact.

It should also be noted that the original wording of Article 4 of the law instead required intermediaries to "exclude any component that constitutes financial support to the companies included in the aforementioned list from the products offered".[74] If one considers that this binding provision regarding the "offering" of products was repealed to make the legal requirement narrower and more certain for intermediaries, it could be argued that trading platforms remain free to execute purchase orders for financial products linked to these banned weapons when requested by individual clients. If on the other hand one believes that the provision banning the "offering" of such products was repealed merely to bring the law in line with the 2022 removal of the official blacklist and not to restrict the "total ban on financing" and "any form of financial support", then it would be incorrect to exclude trading platforms from the scope of the ban.

Evidence supporting this second interpretation may be found in Article 1, paragraph 2, letter a, which defines the objective scope of the law very broadly, as the ban applies to: "any form of financial support (including through subsidiaries) based in Italy or abroad, including but not limited to the granting of credit in any form, provision of financial guarantees, acquisition of shareholdings and purchase or subscription of financial instruments issued by the companies referred to in this Article". This ban wants to be wide.

However, this provision clearly prohibits intermediaries from subscribing, but does not explicitly forbid facilitating subscriptions by third parties, such as a non-professional investor who is a client of a trading platform. Thus, if legal certainty and strict construction of prohibitions are prioritised, it is at least debatable whether electronic trading platforms are directly subject to the ban.

Another issue concerns complex financial products based on underlying assets and/or composed of a basket of other securities. In the latter case in particular (e.g. Exchange Traded Funds or ETFs), the subscription does not involve securities directly "issued by the companies" banned under Italian Law no. 220/2021. It is therefore debatable whether complex instruments containing a financial component linked to securities issued by companies involved in banned weapons should also fall under the prohibition: according to

[74] Before the amendments introduced by the legislature in 2022, Article 4 of Italian Law no. 220/2021 provided that "Within ninety days of publication of the list referred to in Article 3, paragraph 1, financial intermediaries shall exclude any component that constitutes financial support to the companies included in the aforementioned list from the products offered".

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the rationale of the law, probably yes; but not according to its current wording. This is further supported by the aforementioned 2022 repeal of the binding provision that required intermediaries to "exclude from the products offered any component that constitutes financial support to the companies" producing such weapons. Moreover, it is often extremely difficult, even for professional investors, to know the precise contents of all the components embedded in a complex financial product.

Since February 2025, these questions have become real, because financial intermediaries are required to use their IT systems to tag the issuers involved in banned weapons as excluded, so that transactions involving such names are blocked at the pre-trading stage. After a period of uncertainty, the prevailing view now seems to be that equity and bond securities directly issued by companies involved in the production of these banned weapons should be excluded from trading in Italy, at least where such involvement is confirmed (or not denied) by the companies themselves. For example, at the time of writing one of the two main Italian banks has suspended trading in the shares of National Presto Industries and Northrop Grumman. One of the main Italian trading platforms has also excluded the shares of Lockheed Martin (which is also included in the S&P 500 index, replicated by many ETFs).

It is worth noting that the implementation of Italian Law no. 220/2021 has highlighted an inconsistency in the conduct of financial intermediaries that are not currently excluding from trading the securities of companies on circulating lists of those involved in the manufacture of banned mines despite having adopted policies excluding any involvement in non-conventional weapons years ago.

As far as pension funds are concerned, such questions about trading platforms only indirectly affect the actual operations of the appointed asset manager. Such manager will clearly benefit from any automated pre-screening mechanism that excludes financial products prohibited by Italian Law no. 220/2021. However, it is also true that institutional investors mainly use electronic trading platforms for smaller financial operations. Conversely, when dealing with large or strategic investments, the subscription process typically involves direct negotiation with the company that the pension fund intends to invest in, following proper due diligence, including ESG assessments.

11. The sanctions framework.

Under Italian Law no. 220 of 2021, supervisory authorities may request data, information, records and documents from intermediaries, including through reviews of activities related to compliance. They may also carry out inspections of the intermediaries' premises.

The law also provides for a sanctions framework intended to serve as a deterrent not only against the intermediaries in question, but particularly against the individuals acting on their behalf. Article 6 stipulates that intermediaries who breach the prohibitions and guidance in question are subject to administrative fines ranging from €150,000 to €1,500,000, provided the acts are committed in the interest or to the benefit of the intermediary.[75] Significant consequences also apply to individuals who perform management, administrative or supervisory functions within the intermediaries, being subject to administrative fines ranging from €50,000 to €250,000.

The imposition of an administrative fine results in the temporary loss of the integrity requirements necessary to hold management, administrative or supervisory positions at authorised intermediaries for a period of no less than two months and no more than three years. In addition, for auditors, financial promoters and legal representatives of listed companies it entails temporary disqualification from serving in such roles within listed companies and within companies belonging to the same corporate group.

In addition to sanctions, any breach must be promptly addressed by the bank, financial intermediary or pension fund concerned. If the breach is ongoing, they must bring it to an end, or otherwise eliminate its effects where possible. In essence, there is an obligation to terminate contracts and divest from financial instruments issued by companies found to be involved in non-conventional weapons banned under Italian Law no. 220 of 2021. This may in some cases lead to financial losses for the intermediary, and in the case of pension funds for their members and beneficiaries. The objective of the law is clearly imperative and overriding, without prejudice to potential liability – including for damages – on the part of directors or the custodian bank.

Given that equity or debt securities may be held for long periods, it may happen that a company begins engaging in banned activities after its securities have been acquired by a bank, financial intermediary or pension fund. In such cases, retroactive sanctions should be avoided. While the intermediary or investor must divest from the banned company, no penalty should apply if they liquidate the securities promptly after learning of the involvement, or after they reasonably should have known based on diligent monitoring.

A concrete challenge – including for pension funds – sometimes lies in accurately identifying the detailed contents of portfolio investment products due to the difficulty in obtaining full disclosure from asset managers, especially in the case of fund-of-fund structures. However, the supervisory guidance issued in 2024 does not accept the inability to determine the precise and complete composition of a complex instrument or investment basket as a valid excuse. Nor does it allow limiting verification efforts "to what is reasonably practicable", or only with respect to larger investments.

In conclusion, while the intent of Italian Law no. 220/2021 is certainly commendable, some of its provisions appear so vaguely worded that they risk causing difficulties for banks and investors seeking certainty about their compliance. The supervisory instructions issued by the competent Italian authorities have not eliminated all uncertainty, leaving decisions to the intermediaries "according to a risk-based approach and the principle of proportionality".

That said, given the specificity of the subject matter – namely, non-conventional anti-personnel weapons – the practical challenges are unlikely to be disruptive, provided that the supervisory authorities take a reasonably balanced approach. Indeed, the purpose of the law

[75] Article 5 of Italian Legislative Decree no. 231 of 8 June 2001 concerning the administrative liability of legal entities for offences committed by their representatives.

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is not retroactive punishment, but rather the termination of all financial collaboration with companies operating in the banned weapons sector once the intermediary becomes aware of the situation.

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