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## A Legal Perspective on “Social” Reporting in Contemporary Judicial System: Evaluation of Legislative Reforms’ Effects

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### Abstract

Traditionally employed by businesses to disclose environmental, social, and economic performance, social reporting is finding a novel application within the justice system. Judicial office social reports unveil court performance and stakeholder experiences, but their potential extends further. Through meticulous analysis of social reports, valuable data concerning case flow, resolution rates, and processing times can be extracted. These reports serve as a rich source of information on judicial activity, offering insights into the efficiency of a particular office. Beginning with an overview of the evolution of social reporting in the Italian justice system, it is argued that it should be utilised as a valuable tool for both *ex ante* impact assessments and *ex post* evaluations of legislative changes. Social reports could represent the foundation for substantial change in this regard, at least in the field of justice. On the one hand, the data they provide can serve as a crucial starting point for understanding the needs of judicial offices; on the other hand, they can reflect the results achieved (or not achieved) following the implementation of legislative reforms.

**Keywords** – Social reporting, judicial offices, efficiency, *ex ante* impact assessment, *ex post* evaluation.

**Paper type** – Academic Research Paper

### 1 The rise of social reporting in the justice sector

Traditionally, social accountability reporting has been used to assess the economic, social, and environmental performance of organisations. The origins of social reporting can be found in the private sector, emerging as a response to the “ethical” need for companies to account for their impact on society and the environment. In the United States, after the Watergate scandal, businesses began producing reporting documents to demonstrate their level of responsibility and transparency towards society. In Europe, France introduced the obligation to produce a “*bilan social*” for companies with more than 750 employees in 1977 and extended it to companies with more than 300 employees in 1982. In Italy,

social reporting emerged primarily from 1990, with only a few early models dating back to the 1970s and the 1980s. These first attempts were mainly undertaken by large companies like "*Ferrovie dello Stato*", which published its inaugural social report in 1992.

Over time, social reporting has undergone a dynamic transformation, adapting to the evolving needs of contemporary organisations. As a result, it is now widely used by non-profit entities and public institutions. Notably, such an expansion occurred during a period of heightened emphasis on accountability within the public sector. Social reporting has acquired a new meaning: public administrations are inherently responsible for the services they provide to the community. Therefore, the social report offers public administrations a valuable chance to shape their identity, promote participation and strengthen internal governance.

Beyond ensuring formal correctness in the expenditure process, emphasis should be placed on enhancing the efficacy (i.e. the ability to achieve desired results) and efficiency (i.e. the optimal use of resources to achieve desired results) of public service management. This is achieved through qualitative parameters aimed at reaching the desired outcomes.

The integration of social responsibility principles into the administration of justice has arisen in recent years. This phenomenon can be primarily attributed to what we can refer to as "businessification" of the justice system, meaning that a well-functioning judicial apparatus is recognised as the cornerstone for building trust in the economic environment, facilitating access to credit and fostering certainty in commercial transactions.

However, it is noteworthy that, unlike in other contexts, in the justice field it is hard to establish the "price" of the service provided and the factors used. Furthermore, judicial efficiency must take into account the fundamental rights of the individual, which are always at stake in this sector, particularly in criminal proceedings.

The social report could assist in addressing the aforementioned challenge. As well-known, the social report is a document that goes beyond the traditional monitoring of courts and serves as an innovative tool for controlling the judicial system. It provides comprehensive information on service quality, community impact, internal judicial administration and timing of various judicial activities. Moreover, unlike other reports, social reporting collects socioeconomic and organisational information. Additionally, it adopts a multi-stakeholder approach, meaning that it includes a wide dissemination of results with and a direct involvement in the subsequent decision-making process of the community.

After briefly assessing the current state of the use of social reports in Italian courts, a greater role of the social report for evaluating the results and effects of legal reforms, especially through the instruments of *ex ante* impact assessments and *ex post* evaluations will be advocated.

## 2 The evolution of social reports in Italian judicial offices

Despite its potential, social reporting is still largely underutilised in practice, especially within the judicial context. Italy currently lacks a legal obligation to enforce the production of social reports. The sole exception lies with entities operating within the third sector, encompassing social enterprises and voluntary service centers, which are subject to specific reporting requirements.

The first social reports by Italian judicial offices can be traced back to the project "Diffusion of best practices in judicial offices" launched within the framework of the European social fund 2007-2013. The aim of the project was to improve the quality of justice services, reduce operational costs, increase communication and enhance social responsibility of judicial offices. The planned activities also included the social reports development. According to the monitoring report prepared by the Ministry specifically for this activity, 133 out of the 154 judicial offices involved (86%) completed at least one social report.

During the early stages of these reporting experiences (2010-2012), the focus was primarily on economic considerations and intervention strategies. This emphasis is evident in the 2011 social report of the Milan Court. The initial document prominently featured intervention policies, organisational structures, expenditure details and resource allocation projections. However, there has been a noticeable shift in the presentation of data on judicial proceedings, overall judicial activity and stakeholder engagement. The first Milan report lacked a dedicated section for stakeholders. Conversely, subsequent editions, beginning in 2012, included a chapter titled "Crisis and Perceptions of Key Stakeholders," highlighting the active involvement of relevant institutional and socioeconomic actors from the Milan community in the development of social reports.

Therefore, social reports were evolving as a critical tool for evaluating not only financial data, but more importantly, for elucidating the nature and course of judicial activity within these institutions. Such a trajectory mirrors a growing recognition of the need for a multifaceted portrayal of judicial performance and the societal impact of the courts. The traditional emphasis on financial metrics is no longer sufficient to comprehensively capture the complexities of judicial operations.

A longitudinal examination of Italian judicial social reports reveals the rise of a distinctive contemporary format, characterised by a heightened focus on social dimensions. Four core pillars consistently underpin this structure:

1) *Identity and governance system*. The cornerstone of each social report is the presentation of the judicial office itself, serving as a necessary introduction for the community. This section establishes the office identity, nature and governance structure. The report typically delves into the organisational framework, in which information on both judicial and administrative staff can be found. This includes the number of active judicial and administrative personnel, along with information on vacancies and allocated positions.

2) *Financial statement*. The social report also incorporates a financial performance section, providing transparency regarding the economic impact of the judicial office activities and its financial sustainability. This section typically analyses revenues and financial resources alongside incurred expenses, further categorised into structural costs, personnel costs and other expenditure items.

3) *Stakeholders*. Understood as entities with varying degrees of interaction with the judicial administration, stakeholders are identified and – as already said – involved in the social reporting process. This fosters transparency, accountability and enriches the report interpretation through diverse perspectives. Stakeholder contributions are instrumental in identifying the office strengths and weaknesses, ultimately contributing to continuous improvement. Hence, social reporting may have a positive effect on the public's perception of justice and may help in identifying the needs of local communities.

4) *Judicial activity*. Finally, the core component of social reports lies in the presentation of judicial activity data. This chapter is crucial in characterising the document under discussion as a "social" report, because it fulfils the report's primary function of informing the community about the "service" provided by the court and its operational effectiveness. Typically structured with dedicated subsections for civil and criminal proceedings, this chapter offers a transparent view of the court's caseload. The following data are encompassed in this section: *initial pending cases* (proceedings already ongoing at the beginning of the reference period); *new cases* (proceedings initiated during the reference period); *resolutions* (concluded cases within the reference period); *final pending cases* (matters awaiting resolution at the end of the reference period). Additionally, the chapter explores data regarding the duration of proceedings.

While the relative prominence and presentational details of these elements may vary, they collectively constitute the foundational framework for each social report.

### **3 Using judicial social reporting for ex ante impact assessments and ex post evaluations of legal reforms**

#### **3.1 Italian documents assessing the impact of legal reforms**

At the European level, the value of normative impact assessing for a high-quality regulation was officially recognised by the 1992 European Council in Edinburgh, followed by the publication of the White Paper on "Growth, Competitiveness, and Employment". In June 2005, the European Commission outlined the "Impact Assessment Guidelines". Additionally, since the 2015 "Better Regulation Package", major *ex post* evaluations and reviews have been subject to quality control by the Regulatory Scrutiny Board.

It is noteworthy that while almost all European Union Member States provide guidance on *ex ante* assessments, only half do so for *ex post* evaluation. The

Italian legal system has established both *ex ante* analysis and *ex post* control systems on the impact of regulations.

Firstly, the 1999 "Simplification law" introduced the so-called "*Analisi dell'impatto della regolamentazione*" (Regulatory impact analysis), aimed at assessing the pre-emptive effects of proposed regulatory interventions on citizens, businesses, public administrations, market fairness and individual freedoms. According to current regulations, the competent administrative body must prepare a report that includes context and objectives, options and their comparison, reasons for the preferred option, methods and monitoring. Additionally, during this assessment the administration may involve various stakeholders to gather data, opinions and suggestions through "consultations". The scope can be broadened to governmental regulatory acts, including those proposed by ministers, albeit with some exceptions, such as constitutional bills or security-related regulations.

Furthermore, the 2005 "Simplification law" introduced the so-called "*Verifica dell'impatto della regolamentazione*" (Regulatory impact evaluation) to assess the effectiveness and concrete impact of regulations over time. Similar to *ex ante* "analysis", this *ex post* "evaluation" requires stakeholders consultations and the establishment of monitoring indicators. Such evaluation focuses on impacts, achievement of objectives, emergence of unforeseen effects and main issues identified. In particular, the Decree of the President of the Council of Ministers 169/2017 prescribes that every administration develops a biennial "Plan for the evaluation and revision of regulations" for the regulatory acts within its competence. Finally, this assessment concludes with the identification of any supplementary or corrective measures for the current regulation.

Despite the Italian system providing parameters for regulatory impact evaluation, the Country lags behind in application and developing such practices and their potential appears to be underestimated. For instance, the last biennial "Plan for the evaluation and revision of regulations" (2023-2024) of the Ministry of Justice envisages the analysis of only four regulatory measures (for example, about the institute of the exclusion of punishment for tenuousness of the fact, introduced in 2014). Moreover, the consultations on the plan outline, scheduled for December 2022, did not have any participants or involve any stakeholders, indicating a lack of contributions or observations. Additionally, there remains uncertainty regarding the sources used for impact assessments and the collecting process of the relevant data. This delay can be attributed to several factors.

The main issue stems from the lack of reliable and accessible data. Much information in the ministerial database is not publicly available, thus compromising the transparency and accessibility necessary for an accurate evaluation of regulatory impact. Recently, the Ministry has only released data on the flow of civil and criminal proceedings, allowing for the assessment of backlog and times for resolution. While these data enable the monitoring of the attainment of objectives scheduled by Italian National Recovery and Resilience

Plan (the Italian strategy to utilise European Union funds for economic recovery *post* COVID-19), they are insufficient for a thorough evaluation of the efficiency of the judicial system after a change in the legislation. For instance, they do not provide information on the organisational aspects of each judicial office. Consequently, insights into how changes in resolution times or completion rates correlate with available and utilised resources cannot be obtained.

Additionally, there is significant inconsistency in data collection and organisation among judicial offices, partly due to the multitude of organisational and managerial documents they are required to produce. This heterogeneity leads to inevitable disparity in data collection methods, compromising the coherence and reliability of the information obtained. The situation is critical in the criminal sector, where data collection requires a substantial human effort. In Italy, the “telematic criminal process” has not yet been fully implemented. Its persistent paper-based nature thus requires manual data collection, making the task not only laborious but also prone to errors. This circumstance exacerbates the discrepancies in data collection and preparation among various judicial offices, heightening the risk of errors and inaccuracies in regulatory impact evaluation.

### **3.2 The role of social reporting**

The monitoring of legislative reforms represents a complex task. Against this background, social reporting emerges as a tool capable of facilitating both prospective and retrospective studies. The prevailing structure of social reporting has revealed features that can help in overcoming challenges associated with data collection and accessibility.

Firstly, social report is an organised and articulated document, systematising information coming from the judicial office. Simultaneously, it ensures the usability of such information, adopting a clear, transparent and accessible approach.

Moreover, social report provides details regarding the court identity, the composition of its judicial and administrative staff and the governance system. This wealth of information can be crucial for understanding its internal functioning and evaluating the reforms impact, particularly concerning organisational aspects. For instance, a comparative study between two similar judicial offices in terms of size and context, but with different staffing levels, could assist in determining whether the effectiveness of a particular legal reform is influenced by organisational disparities and staffing levels themselves.

Furthermore, the “analysis” and “evaluation” of regulatory impact, as established by the Italian legislation, may include a “consultations” phase with various interested people. Social report is the only tool that necessarily requires stakeholders’ participation. Only by connecting all parties involved in the application process of legislative reforms can their effects be fully understood,

including concrete results, emerging issues, adopted organisational practices or internal protocols.

Lastly, social report provides a comprehensive overview of judicial activity within the considered office, including data on case flow and duration, but sometimes it contains other relevant information for assessing regulatory impact too, such as the type of judgments issued or special procedures activated.

The specificity of such data, contained exclusively in social reporting, allows for analysing regulatory impact in a specific context of a given judicial office, considering territorial, temporal and dimensional variables. This also enables a better comparison of results, allowing the evaluation of how legislation produces effects in similar or different contexts.

In conclusion, the analysis of structure and functions of social reports reveals its essential utility as a tool for monitoring legislative reforms within the judicial context. Its ability to provide organised and accessible information and the opportunity to engage relevant stakeholders in the assessment of regulatory impact render social report a pivotal element for understanding the effects of reforms and for promoting an informed and transparent decision-making process, both for the internal governance of court and for those working on changes in the legislature.

### **3.3 The case of probation**

To elucidate these emerging possibilities, let us consider the example of the so-called *"sospensione del processo con messa alla prova"* (suspension of proceedings pending probation), introduced in the Italian legislative framework in 2014, with the aim of mitigating the burgeoning volume of criminal proceedings. Through this special procedure, the judge can suspend the trial while the defendant undergoes a treatment program. The program involves performing community service at designated public institutions, charities and social, health or volunteer assistance entities. Successful completion of the probationary period, as determined by the judge's evaluation, results in the offense being extinguished, effectively concluding the "suspended" trial.

Through the examination of social reports – containing details about the court, judicial activities and stakeholders – it is possible to gather relevant information for evaluating the probation impact. For instance, in some social reports, the proceedings flow specifies the different procedure types, including probation. This enables the social report to provide a quantitative overview of the impact of the probation reform at a particular court.

Furthermore, it is noteworthy that the probation process encompasses a broad array of actors. The judge asks the treatment plan formulation to the so-called *"Ufficio di esecuzione penale esterna"* (an organisation of the Ministry of Justice responsible for monitoring and managing the execution of sentences and alternative measures outside of penitentiary institutions). This office, in turn,

fosters collaboration with a network of entities for the implementation of social utility work activities. These collaborations necessitate pre-existing agreements with the court. Consequently, the process efficiency hinges on the proper functioning of a diverse array of actors external to the court system. The court's agreements with the various external subjects, including the bodies affiliated with the implementation of probation, are often reported in the social reports. The application of a multi-stakeholder perspective has the potential to identify critical junctures within the probation process. A comprehensive evaluation of the effects requests not only quantify the number of probation cases but also conduct a qualitative analysis that examines various aspects of the procedure. So, we can consider other data that need to be addressed:

- Offense typology: an examination of this facet offers valuable insights into the types of offenses - among the eligible ones - for which this legal instrument finds greater applicability.
- Procedural stage of request: the probation request can be formally submitted during either the preliminary investigation phase or the preliminary hearing and trial stage, thus after the charge has been issued. This temporal dimension holds significant relevance within the analyse of the deflationary effect resulting from this reform, as it allows for an assessment of whether the option of requesting probation during the early stages of the proceedings can prevent the starting of the trial itself.
- Requesting procedural party: probation is required by the defendant. However, a recent legislative reform in 2022 introduced the possibility for the public prosecutor to propose this procedure to the defendant in court or to the suspect during the preliminary investigation. It is crucial to collect the data regarding the procedural actor who initiates this special procedure to gauge the applicability of this new law change and the effectiveness of probation proposals by the prosecutor of a judicial office.
- Order on request: while the defendant formally requests the procedure, the decision lies within the discretion of the judge. This determination hinges on verifying whether the legal grounds are met (e.g., one-time-in-a-lifetime eligibility). To understand the effectiveness and efficacy of the instrument, it is essential to analyse the acceptance and rejection rates, along with their respective reasons.
- Judicial decision on the outcome: the process concludes solely with a judgment after a positive evaluation of the completed program. Conversely, a negative evaluation triggers the resumption of the ordinary proceedings. Monitoring the outcomes of cases is essential in order to assess the effectiveness of probation in achieving the estimated reduction of caseloads.



A comprehensive assessment of the probation procedure, encompassing its efficacy in achieving legislative objectives, its operational efficiency within a specific judicial office and the potential need for legislative or organisational modifications to optimise its performance, hinges upon the systematic collection of specific data points throughout the entire process. Social reporting appears the best tool to achieve such a result.

#### 4 Conclusions

The described novel perspective on judicial office social report centres on the utilisation of tools and methodologies for monitoring the impact of legislative reforms on the judicial system efficacy and efficiency. Justice undergoes continual reform processes. Assessing the impact of such reforms poses a complex challenge, requiring in-depth analysis of judicial processes, organisational dynamics and social implications.

The current structure of social reports offers important insights into understanding the impact of legislative reforms. The classification of proceedings by type, the organisational structure of courts and stakeholder involvement are key elements in identifying strengths and weaknesses in implementing legislative reforms.

However, social reports implementation in judicial offices should be strengthen and systematised in order to gain a comprehensive view of reform effects. This would enable the collection of additional data presented in an organised manner, with a view on detecting the impact of law changes. In this context, fostering collaboration between economists and jurists becomes crucial. Economists can contribute their expertise in quantitative analysis, impact assessment methodologies, the identification of any latent trends or relationships. Through collaborative efforts, jurists and economists can refine the structure and methodology of judicial office social reporting, ensuring meaningfulness and reliability of the collected data.

The impact analysis of reforms through social reporting can assume a dual dimension: *ex ante* and *ex post*.

Firstly, in the *ex ante* analysis, the social report allows for evaluating the current functioning of judicial offices and understanding the context in which new legislation would operate. Moreover, this helps to reveal the objectives and needs that new legislation should meet, thereby informing the normative decision-making process.

Secondly, in the *ex post* evaluation, social report enables the verification of the effects of legislative reforms in judicial offices. This verification goes beyond quantitative assessment and includes a qualitative analysis of organisational practices too. Furthermore, by involving stakeholders, it is possible to identify any gaps or challenges in implementing reforms, as well as identify best practices to be shared and replicated.

In conclusion, social report represents a valuable tool for assessing the impact of legislative reforms in the judicial context. Its implementation, supported by interdisciplinary collaboration and in-depth analysis, seems capable of ensuring greater transparency and accountability in legislative and organisational decisions with regard to the legal and organisational changes that needs to be enacted. As a result, the existing mechanisms for *ex ante* and *ex post* evaluations of the legislation would greatly benefit from the widespread dissemination of social reporting in the justice field.

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