ECOSPRAY TECHNOLOGIES S.R.L.

COMPLIANCE PROGRAMME

– GENERAL PART –

approved by the Board of Directors on 4/03/2020

CONTENTS

INTRODUCTION

Legislative Decree 231 of 8 June 2001[1], with "*Regulations on the administrative liability of legal entities, companies and associations with or without legal personality*" (the "**Decree**" or "**Legislative Decree 231/2001**"), introduced criminal liability for organisations in the legal system[2].

This extension of liability targets the assets of entities in the punishment of some criminal offences, and therefore the economic interests of shareholders who, up until the law in question came into force, were not affected by any consequences in the event that directors and/or employees committed crimes to the advantage of the company.

In fact, the principle of personality in criminal liability meant that shareholders did not have criminal liability but were simply required, in applicable conditions, to pay compensation for damages and had third-party liability pursuant to articles 196 and 197 of the Criminal Code in the case of the insolvency of the offender.

The new legislation introduces consequences which are highly significant; since the law came into force, the legal person and its partners can no longer be considered as not being involved in crimes committed by directors and/or employees, and it will therefore be in their interest to adopt a control and monitoring system, that can rule out or limit the company's criminal liability[3].

The Decree changes the Italian legal system as the entity may he held liable, directly and autonomously, in the case of the commission, or attempted commission, of a crime by one or more qualified natural persons, if the crime is committed in the interest or to the advantage of the entity.

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[1] This decree, issued on the basis of Article 11 of delegated law 300/2000, aims to align internal legislation with some international conventions of which Italy is a signatory, including: the Convention of 26 July 1995 on the protection of the European Communities' financial interests; the Convention of 26 May 1997 on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union; the OECD Convention of 17 December 1997 on combating bribery of foreign public officials in international business transactions.

[2] Under the Decree, the new legislation applies to the following subjects, with the broad-ranging definition of "entity" as follows: entities with legal personality; companies; associations, also without legal personality. While the following are specifically excluded: the State; local public entities; non-economic public entities; entities with constitutionally significant functions.

[3] With reference to the nature of administrative liability pursuant to Legislative Decree 231/2001, the Explanatory Report on the Decree refers to "*the creation of a tertium genus which combines the essential aspects of the criminal system and that of the administrative system in an attempt to adapt the reasons for effective prevention with those, which are even more pressing, of the maximum guarantee*".
In fact Legislative Decree 231/2001 has introduced a form of "administrative liability" of companies – in compliance with Article 27 of the Constitution which establishes the fundamental principle according to which "*Criminal liability is personal*" – but with numerous connections with a liability that is "criminal".
In this regard – reference is made to the most significant articles of Legislative Decree 231/2001 and namely Articles 2, 8 and 34, with Article 2 affirming the principle of legality typical of criminal law; Article 8 affirms the autonomy of the entity's liability in relation to establishing the liability of the natural person committing the crime; Article 34 establishes that this liability, depending on the commission of a crime, is established in a criminal proceeding and is therefore secured by the guarantees of the criminal trial. Moreover, the nature of sanctions applicable to the company are also considered.

In particular, the crime must have been committed by certain subjects that have a functional relationship with the entity and, specifically, by persons that:

- hold a senior management position in the entity; or
- hold a position reporting to senior management positions.

As the purpose of legislation is not only to punish but also to prevent the commission of crimes, the legislator has established in some cases a general exemption and in others a reduction in the punishment, if a suitable prevention system has been adopted by the entity.

In particular, Article 6 of the Decree provides for a specific type of exemption from liability if the entity, in the event of a crime committed by a person in a senior management position, proves it has adopted and effectively implemented, before the commission of the act, compliance programmes suitable for preventing crimes of the type committed.

If the aforesaid conditions apply, overall, at the time the crime or offence was committed, liability is excluded; however, even the adoption and implementation of the "compliance programme" after a crime or offence has been committed still have positive effects as regards penalties that may be imposed on the entity (Articles 12(3), 17(1)c) and 18(1) of the Decree).

For further information on the Decree, see the Appendix of this document.

Chapter 1

ASPECTS OF THE GOVERNANCE MODEL AND GENERAL ORGANISATIONAL STRUCTURE

1.1 Ecospray Technologies S.r.l.

1.1.1 Identity

Ecospray Technologies S.r.l. ("**Ecospray**" or the "**Company**") is an Italian leader in industrial engineering, renewable energies and the shipping industry, and is specialised in consulting, design, the construction and sale of systems for air and gas treatment and cooling in industrial applications.

The Company, whose share capital, which is fully subscribed and paid up, is equal to €1,000,000.00, is owned by Costa Crociere S.p.A., that has a majority stake (60.88%), and by Viridia Holding SA (39.12%).

The Company's business purpose is:

i) consulting, design, the construction and sale of technological plants and systems in general;
ii) the design, development, management of plants for the production and sale of gaseous and/or liquefied biomethane;
iii) the sale of by-products from these plants, in the form of gas or liquid, as well as consulting for innovative technologies and systems dedicated to gaseous or liquefied biomethane production.

1.1.2 Corporate governance

Ecospray has adopted a governance system comprising a Board of Directors and a Statutory Auditor.

1.1.2.1 Board of Directors of Ecospray

Pursuant to its articles of association, the Company is managed by a Board of Directors comprising five members, not necessarily shareholders, elected by the shareholders' meeting.

The directors remain in office for three years, unless they are removed from office or resign, and may be re-elected.

The Board of Directors elects a chairman from its members, and may also elect a deputy chairman who replaces the chairman if absent or prevented from carrying out his/her duties.

The Board of Directors is convened by the chairman, usually at the head office of the company, by notice sent to all directors using any means suitable for providing proof of receipt, at least five free days before the meeting, or in urgent cases, at least one free day before.

The Board of Directors has the widest ranging powers of ordinary and extraordinary management of the Company, without exception, and may carry out all activities it considers appropriate to adopt and achieve the company's purpose, with the sole exception of activities which by law must be decided by shareholders.

Meetings of the Board of Directors are duly established, also by conference call or video link, under the following conditions, which must be recorded in the relative minutes:

a) the chairman and secretary of the meeting are in the same place;
b) the chairman of the meeting can establish the identity of participants, that the meeting is duly held, and ascertain and notify the results of voting;
c) the person taking the meeting minutes can adequately understand the events of the meeting;
d) participants can take part in the meeting and vote simultaneously on items on the agenda, as well as examine, receive or send documents.

The meetings of the Board of Directors and its resolutions are valid, even if the Board is not formally convened, when all directors in office and members of the control body are present.
In order for resolutions of the Board of Directors to be valid, which are passed in a meeting of the Board, which may also be held by conference call or video link, the majority of members in office must be present.
Resolutions are passed by the majority of members in office.
Resolutions relative to the matters indicated below are adopted by the Board of Directors, in a Board meeting, if at least four directors are present and vote in favour:

a) any transaction with related parties of the Company;
b) amendments to, termination of or withdrawal from service agreements entered into by the Company and directors, shareholders and/or companies belonging to the group of the latter, and marketing agreements entered into by the Company and directors, shareholders and/or companies belonging to the group of the latter;
c) any transaction concerning the establishment and/or acquisition of direct or indirect subsidiaries or investees, or of joint ventures;
d) the purchase, sale, disposal or transfer (even without a consideration), exchange, contribution of property of the company or of subsidiaries or investees;
e) the transfer and/or contribution of the company or a part of it or other corporate reorganisation transactions;
f) the restructuring, request to start insolvency proceedings or proposal for bankruptcy arrangements and or application for creditor arrangements, except for cases which are mandatory by law;
g) any proposal to put to the shareholders' meeting on matters for which a qualified majority is required pursuant to the articles of association.

The power to represent the Company before third parties and in legal proceedings is held by: (i) the chairman of the Board of Directors; (ii) chief executive officers, within the limits of the powers assigned to them; (iii) the directors, agents and representatives within the limits of the powers assigned to them by the board of directors on their appointment.

1.1.2.2 Control body of Ecospray

The company appointed an auditor on 3 May 2018, who will remain in office until the date of the shareholders' meeting convened to approve the financial statements for the year ended 2020.

1.1.2.3 Independent auditors

The Company appointed independent auditors on 3 May 2018, who will remain in office until the date of the shareholders' meeting convened to approve the financial statements for the year ended 2020.

1.1.3 Organisational structure

The governance and organisational structure of the Company is summarised in **Attachment 1** and may be updated by the administrative body if any relative changes are made**.**

Chapter 2
THE COMPLIANCE PROGRAMME OF ECOSPRAY

This document, implementing Articles 6 and 7 of the Decree governs the compliance programme of the Company, aimed at preventing the commission of the crimes indicated in the Decree and related laws by senior managers and their subordinates (the "**Programme**").

The adoption of a Programme pursuant to the Decree not only contributes – together with other circumstances – to excluding the Company's liability in the commission of some types of crime, but is also an indicator of the Company's social accountability, benefiting numerous players whose interests are linked to the life of the company.

The existence of a system that controls business operations and which also establishes and promotes ethical principles, improving the standards of conduct adopted by the Company, increases trust and the excellent reputation that the company has with third parties, and, above all, it performs a regulatory function as it governs the conduct and decisions of people who operate in favour of the Company on a daily basis, in compliance with the aforesaid ethical principles and standards of conduct.

In this context, the Company has therefore started a number of activities so that its own compliance programme conforms to the requirements of the Decree and is aligned with the applicable regulatory and legal context, with principles already anchored in its own culture of governance, and with indications contained in category guidelines issued by the most representative industry associations (first and foremost Confindustria).

With reference to the current standards of conduct adopted by the Company, the rules it implements for its activities as well as the principles that everyone operating in its interest must observe, are contained, among others, in the following documents:

- articles of association;
- code of ethics.

2.1 Methodology adopted to devise the Programme

In particular, the process of activities functional to the Company evaluating, processing, preparing and updating its Programme, comprises four stages:

- stage 1: identification of risk areas;
- stage 2: identification of the "as is" situation;
- stage 3: gap analysis and action plan;
- stage 4: design of the compliance programme.

The objectives and activities of each stage are summarised below.

2.1.1 identification of risk areas

Article 6(2) a) of the Decree states that programme requirements include the identification of processes and activities for which crimes that are significant for the purposes of the administrative

liability of entities may be committed. In other words, these are the company activities and processes that are commonly defined as "sensitive" ("*risk areas*").

In this context, the objectives of stage 1 apply. These are:
- the identification of company areas covered by the programme and the preliminary identification of the processes and sensitive activities, as well as
- the heads of processes/sensitive activities, i.e. the resources with an in-depth knowledge of the processes/sensitive activities and controls currently in place ("key officers").

Prior to identifying the sensitive activities, the corporate and organisational structure of the Company is analysed, mainly through documents, in order to better understand the activities of the Company and identify the corporate areas to target.

Collecting significant documents and their analysis in technical/organisational and legal terms has made it possible to identify sensitive processes/activities and, on a preliminary basis, the functions responsible for them.

2.1.2 Identification of the "as is"situation

The purpose of stage 2 was to analyse and assess, through interviews with key officers, the sensitive activities previously identified, with a particular focus on existing controls.

Specifically, for each sensitive process/activity identified in stage 1, the main stages, functions and roles/responsibilities of the internal and external subjects involved, as well as the existing control elements were analysed, in order to verify in which area/sectors of activity, and according to which procedures, violations, that are significant for the purposes of the administrative liability of entities, could occur, in the abstract.

The analysis was conducted by holding personal interviews with key officers, which also aimed to establish for each sensitive activity the management processes and control tools, with particular attention paid to compliance aspects and existing preventive controls to safeguard these aspects.

In identifying the existing control system, the following main controls were considered as the reference:
- the existence of formalised procedures;
- the traceability and verifiability ex post of transactions using adequate supporting documents/information;
- the segregation of duties;
- the existence of formal controls in line with assigned organisational responsibilities.

In Stage 2, structured interviews were held with key officers, and with the personnel they indicated, in order to collect information for the sensitive processes/activities identified in the previous stage, necessary to understand:
- the basic processes/activities carried out;
- the internal/external subjects involved;
- the relative roles/responsibilities;

– the system of existing controls.

2.1.3 Gap analysis and action plan

The purpose of stage 3 was to identify the organisational requirements of a compliance programme suitable for preventing violations that are significant for the purposes of the administrative liability of entities and the actions to improve existing control measures.

To identify and analyse in detail existing control measures to monitor the risks detected and identified during the above analysis and to assess the conformity of the programme to provisions in the Decree, the Company performed gap analysis on existing (as is) control measures and the abstract reference model assessed based on requirements indicated by Decree provisions, with a particular focus on the internal organisation, company control measures and compliance with legal obligations relative to the *"sensitive activities"* specifically referred to ("*to be*").

Through a comparison with gap analysis, it was possible to infer the areas to improve in the existing internal control system and, based on findings, an implementation plan was prepared to identify the organisational requirements of a compliance programme conforming to the provisions of the Decree and the actions to improve the internal control system.

At the end of stage 3, (shared) records were produced, presenting in a single context the results of as-is analysis and gap analysis and the action plan.

2.1.4 Design of the compliance programme

The purpose of stage 4 was to define the compliance programme with all its components and operating rules, suitable for preventing crimes and customised for the company context, in conformity to provisions in the Decree and to guidelines of the most representative trade associations (above all Confindustria[4]).

Stage 4 was carried out supported by the results of the previous stages and the choices made by the Company's decision-making bodies.

2.2 Adoption of the programme and its implementation

2.2.1 In general

This Programme, prepared and produced as described previously, was adopted by resolution of the Board of Directors of the Company, in compliance with Article 6(1) a) of the Decree.

The Programme is therefore a set of principles, rules and provisions that: i) govern the internal functioning of the Company and the procedures it adopts in its external relations, and that (ii) govern the diligent management of a system to control sensitive activities, aimed at preventing the commission, or attempted commission, of violations significant for the purposes of the administrative liability of entities, that the Company has taken into consideration based on the nature of its activities.

[4] Confindustria, Guidelines for creating compliance programmes pursuant to Legislative Decree 231 of 8 June 2001, approved on 7 March 2002 and updated at March 2014 ("**Confindustria Guidelines**").

Under its exclusive liability, the Company adopts the Programme in its own organisational context in relation to its characteristics and activities carried out in risk areas.

2.2.2 Amendments and additions to the Programme

As this Programme is "issued by the management body" (in conformity to Article 6(1) a) of the Decree), subsequent substantial amendments and additions to the Programme are overseen by the Board of Directors.
The Chief Executive Officer or other party appointed by the administrative body of the Company may also make any formal amendments or additions to the wording of the Programme (such as those necessary to align the wording of the Programme with any future changes in legislation).

In addition, some parts of this Programme may by overseen exclusively by the Chief Executive Officer and other parts exclusively by the Supervisory Body, to make specific additions.

2.3 Content, structure and function

The Programme has been prepared based on the provisions in the Decree and on guidelines produced by the most representative trade associations (including Confindustria Guidelines) and also takes into account applicable legal guidance and developments.

The Programme, which consists of a structured set of documents, comprises the following aspects:

- the identification of company activities in which violations that are significant for the purposes of the administrative liability of entities may be committed, that the Company has taken into consideration based on the nature of its activities;
- control protocols put in place, regarding the sensitive activities identified;
- the identification of suitable financial management methods for preventing the crimes from being committed;
- the adoption of a Code of Ethics containing the fundamental principles which the organisational, administrative and accounting system – that the Programme is a part of – are based on;
- the establishment of a Supervisory Body assigned the functions indicated in the Decree;
- the definition of information flows from and to the Supervisory Body and specific information obligations of the supervisory body;
- a programme of periodic controls of sensitive and instrumental activities and relative control protocols;
- a disciplinary system with penalties administered for violations of the Programme;
- a training and communication plan for employees and other subjects that interact with the Company;
- criteria for updating and aligning the Programme.

To ensure the Programme is suitable for preventing violations that are significant pursuant to the Decree, the following guidelines – prepared from previous international experience[5] and also inspired by the Italian legislator were considered:

- the organisation must establish standards and control procedures, for personnel (and other recipients), that are reasonably aimed at limiting the possibility of unlawful conduct;
- one or more high-level persons of the organisation must be assigned responsibility for supervising conformity to defined standards and procedures;
- the organisation must pay sufficient attention and must not assign significant discretionary powers to people who have or might have a known tendency out carry out unlawful activities, as identified through normal due diligence;
- the organisation must take concrete steps to effectively communicate standards and procedures to all personnel (and other recipients), for example arranging for their participation in training programmes or distributing publications that explain requirements in practical terms;
- the organisation must adopt reasonable measures, intended to achieve actual compliance with standards, for example using monitoring and auditing systems reasonably adapted to identify the nonconforming conduct of employees (and other recipients), and introducing and disseminating a reporting system that enables personnel (and other recipients), to disclose violations of regulations (by others within the organisation), without fear of retaliation;
- standards must be adopted consistently with an appropriate disciplinary system, that includes, if necessary, penalties for persons responsible for not having identified a violation, due to omitted or insufficient supervision. Adequate penalties for people liable for a violation is a necessary part of the system; however, the suitability of the sanction must refer to the specific case examined;
- after identifying a violation, the organisation must take all reasonable steps necessary to appropriately respond to the violation and prevent the occurrence of similar violations in the future; this includes any necessary amendment to the Programme, in order to prevent and identify violations of laws.

The Programme includes (i) a General Part, explaining the applicable legal context, objectives, structure lines and procedures for implementation; and (ii) a Special Part relative to the types of crimes that are significant for the purposes of the Decree, that the Company has taken into consideration based on the nature of its activities.

The Programme identifies sensitive activities in relation to which the risk of committing crimes is greater, and introduces systems to proceduralize and control activities, also to carry out on a preventive basis.

[5] As indicated in the Guidelines, reference is made in particular to the Internal Control Integrated Framework ("CoSO Report"), issued by the Committee of Sponsoring Organizations Commission (CoSO) in 1992 and updated in May 2013 on the internal control system, and the Enterprise Risk Management Framework (ERM), also issued by CoSO in 2004 on risk management. Although not specifically mentioned, the conceptual reference to the CoSO Report in some Italian regulations is evident, including Operating Guidance for Boards of Statutory Auditors, and IVASS and Bank of Italy Circulars.

The identification of risk areas and proceduralization of activities makes it possible to (i) raise the awareness of employees and management on areas and respective aspects of company management that call for greater attention; (ii) punish all conduct that constitutes a crime; (iii) adopt a continual monitoring and control system for these areas, which are functional to immediate action in the event of crimes being committed.

2.4 Periodic controls and updates

This Programme is continually monitored by the Company's Supervisory Body (as defined and identified in section 2.6 below) that – through establishing violations – checks the functionality, identifying any gaps and indicating any opportunities for change.

In particular, the Company's Supervisory Body:

- periodically presents (at least every six months)[6] a report to the Board of Directors on the status of the implementation and effectiveness of the Programme at the Company, indicating the tools used to disseminate the programme, any violations, the type and frequency of crimes committed, as well as the conduct leading to the commission of the crimes;
- proposes changes to the Programme, based on the above, which are submitted to the Board of Directors for approval;
- verifies the implementation and effectiveness of the Programme at the Company, following the changes made.

Additional duties of the Supervisory Body regarding the Programme are indicated in Chapter 6 below.

2.5 Relations with the Code of Ethics

The Programme is legally separate from and independent of the Code of Ethics, adopted by the Company along with the Programme of which it is an attachment (**Attachment 2**), as resolved by the Board of Directors. The Code of Ethics is an integral part of the compliance programme, as well as the prevention measures adopted by the Company.

In particular:

- the Code of Ethics is a tool adopted by the Company, which contains all the rights, duties and responsibilities of the entity with employees, customers, suppliers, the public administration, the financial market (in general, therefore with reference to the Company's stakeholders);
- the Code of Ethics aims to recommend, promote or prohibit certain conduct, regardless of and above and beyond the provisions of the Decree or applicable laws;
- The Programme is a tool adopted based on regulatory indications contained in the Decree, geared towards reducing the risk of the crimes contemplated by the Decree being committed by the senior managers of the Company and their staff.

2.6 Definitions

[6] Confindustria, Guidelines, page 61.

In addition to expressions defined from time to time in the text and not indicated in this section, the Programme contains the following expressions that have the meanings given to them below:

"**Code of Ethics**" the code of ethics adopted by the Company, along with any attachments, supplemented or amended from time to time;

"**Customers**" natural or private legal persons with whom the Company negotiates and/or enters into contractual agreements for the sale of its goods and/or provision of its services;

"External staff" subjects that have agency, business dealer relations or other working relations on a continual basis with the Company, that are mainly personal but are not employees (including but not limited to project work, agency work; work placements; summer work placements) or any other relationship contemplated by Article 409 of the Code of Civil Procedure[7], occasional work, as well as any other person managed or supervised by any person holding a senior management position in the Company pursuant to Legislative Decree 231/2001;

"Consultants" external consultants appointed to assist the Company in its operations, on a continual or occasional basis;

"Recipients" the subjects to whom the provision of this Programme apply and, in particular, the Employees, Managers, External Staff and Company Officers, and in cases specifically referred to in this Programme, the Consultants and Partners;

"Employees" the subjects that have paid employment with the Company (including senior managers and Heads of company functions), including temporary or part-time workers (as well as workers seconded under employment contracts pursuant to Law 30 of 23 February 2003);

"**Company Officers**" appointed from time to time, the Chairman of the Board of Directors, members of the Board of Directors, the executive board (if any), general managers (if any) as well as members of other corporate bodies of the Company, established, as applicable, pursuant to Article 2380 of the Civil Code or special laws, the Auditor or members of the board of statutory auditors, as well as any subject in a senior position, meaning any person that

[7] Article 409. *Individual labour disputes*. – The provisions in this section on disputes relative to the following are observed: 1) private employment relationships, even if not concerning the activities of a business; 2) tenant farming, share cropping, agricultural association, self-employed agricultural tenancy, as well as relationships arising from other agricultural contracts, save for the competency of specialist agricultural sections; 3) agency relationships, business representation and other types of relationships that comprise the provision of ongoing work, mainly personal, even if not as an employee; 4) employees of public entities that exclusively or mainly manage economic activities; 5) employees of public entities and other public working relationships, provided they are not overseen, by law, by another judge.

represents, administers or manages the Company pursuant to Legislative Decree 231/2001; to this end, for the purposes of the aforesaid Legislative Decree, a subject in a senior position is a person that has functions to represent the Company (for example the Chairman of the Board of Directors of the Company), as well as administer or manage it (for example directors and general managers) or an organisational unit with financial and functional independence;

"Body" or "**Supervisory Body**", the supervisory body of the Company with independent powers of initiative and control in compliance with Legislative Decree 231/2001, defined and established pursuant to Chapter 3 of this General Part of the Programme;

"**Programme**" the programme of the Company and in particular this document with its attachments as amended, along with all procedures, instructions, circulars and other documents referred to;

"**Partner**" third-party subjects that have medium/long-term contractual relations with the Company (for a duration of 18 months or more, considering any contract renewals), including, but not limited to, suppliers (also based on outsourcing agreements), sub-contractors, sponsors or entities that are sponsored or with whom special agreements are established, firms participating in joint ventures with the Company, all types of consortia which the Company is a member of, companies in which the Company has joint control or is an associate pursuant to Article 2359 of the Civil Code (as well as partners of the Company in these joint control companies), or other subjects specifically identified as business partners by the Company in one or more transactions. To avoid doubts, subjects that come under one of the other categories of Recipients (in particular Customers, Consultants or External Staff) are not classified as Partners. When implementing this Programme and in order to facilitate its application, the Supervisory Body, in specific circulars identifies in greater detail the subjects classified as Partners, also preparing a specific explanatory list, considering the activities actually performed by the Company;

"Heads" each head of one or more Company divisions or organisational units with financial and/or functional independence, in compliance with the Company's organisation chart, in effect from time to time;

Chapter 3
THE SUPERVISORY BODY

3.1 The Supervisory Body of Ecospray

Pursuant to Article 6(1) a) b) of the Decree, if a crime is committed by one of the qualified subjects pursuant to Article 5, the liability of the entity may be excluded if the management body:

- has adopted and effectively implemented compliance programmes that are suitable for preventing the type of crime committed;
- has tasked a body of the organisation, with full powers of initiative and control, to monitor the functioning of and compliance with the programme.

A similar provision is provided, as regards the specific area of occupational health and safety by Article 30(4) of Legislative Decree 81/2008 pursuant to which the compliance programme must provide for *"[…] a suitable system to control the adoption of the programme and the ongoing suitability of adopted measures"*.

Assigning these tasks to a body with independent powers of initiative and the correct performance of such tasks are therefore essential requirements for excluding the administrative liability of the entity as indicated by the Decree[8].

Confindustria Guidelines, which represent the first code of conduct of an industry association for preparing the compliance programmes referred to in the Decree, consider autonomy, independence, professionalism and constant activity as the main requirements of the supervisory body.

In particular, according to Confindustria:

(i) the requirements of autonomy and independence call for: the inclusion of a supervisory body "*as a staff unit in the highest hierarchical position possible*", the "*reporting*" of the supervisory body to the highest operational levels of senior management, the absence of operating tasks of the supervisory body which – by involving it in decisions and operating activities – would affect its impartial judgement;

(ii) the meaning of professionalism must refer to the "*tools and techniques*"[9] necessary to effectively carry out the activities of the supervisory body;

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[8] In the opinion of Assonime, the Italian Association of Public Limited Companies, the solutions that companies may adopt for establishing the Supervisory Body, can differ, as they may consider other options instead of an internal control function. According to this opinion, there is no one, ideal Supervisory Body. In fact, the Legislator did not intend providing specific indications, but instead gave general guidelines, preferring the definition of the Supervisory Body to be based on the individual and concrete organisational choices of companies, suitable for identifying the most efficient and effective solution for each operating context (see the *Assonime Circular*, *cit.*, 9, according to which "*Based on the operating efficiency characteristics* which *the supervisory body must have regarding the duties assigned to it and the need to establish a supervisory body within the organisation, the Board of Directors or Board of Statutory Auditors cannot be appointed as the supervisory body.*

[9] "*The programme must require members of the supervisory body to have expertise in auditing, consulting, or the knowledge of specific techniques, suitable for guaranteeing the effectiveness of the powers of control and proactive involvement assigned to them'* (Court of Naples, 26 June 2007)", Confindustria, Guidelines, 59. By way of example, the Guidelines refer to the following techniques, mentioned by case law: statistical sampling; techniques to analyse and

assess risks and risk containment measures (authorised procedures; cross-checking mechanisms); the flow-charting of procedures and processes to identify weaknesses; preparing and assessing questionnaires; methods to identify fraud.

(iii) constant action, which guarantees an effective and continual adoption of a compliance programme that is particularly structured and complex in large and medium-sized companies, thanks to a dedicated structure that monitors the programme "*without operating duties that may lead it to take decisions with economic/financial effects*".

As regards the identification of the supervisory body and its composition, the Decree exclusively establishes the following:

- in small organisations, the duties of the supervisory body may be carried out directly by the management body (Article 6(4)[10];
- in corporations, the board of statutory auditors, the supervisory board and the management control committee may perform the functions of the supervisory body (Article 6(4)-*bis*)[11].

Confindustria Guidelines[12] indicate the possible options for organisations, when identifying and configuring the supervisory body:

(i) the assignment of the functions of supervisory body to the board of statutory auditors;
(ii) the assignment of the role of supervisory body to the internal control committee, where existing, provided the body consists entirely of non-executive, independent directors;
(iii) the assignment of the role of supervisory body to the internal auditing function, if existing;
(iv) the creation of an ad hoc body, with one or more subjects, comprising in the latter case subjects from the organisation (e.g. the head of internal audit, of the legal function etc. and/or a non-executive director and/or an independent director and/or an auditor), and/or external subjects (e.g. consultants, experts, etc.);
(v) for small companies, the assignment of the role of supervisory body to the management body.

With specific reference to "small" organisations as in point (v) above, the Decree does not contain a definition of such entities. However, indications in this regard are provided by Confindustria

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In particular, techniques may be used: as a preventive measure, to adopt – when drawing up the Programme and subsequent amendments – the most appropriate measures to prevent, with reasonable certainty, the commission of crimes (advisory-type approach); or afterwards, to establish how the predicate crime could have occurred (inspection-type approach).

[10] Confindustria Guidelines state that the provisions in Legislative Decree 231/2001 "*do not provide specific indications as to the composition of the Supervisory Body. This makes it possible to opt for a single or multi-subject composition. In the latter case, internal subjects or subjects outside the entity may be requested to sit on the Supervisory Body […]. Unlike the legislator's indifference over the composition of the body, the choice or one or the other solution must take into account the aims of the law, and therefore, ensure effective controls. Like all aspects of the programme, the composition of the Supervisory Body shall be based on the dimensions, type of activity and organisational complexity of the organisation. For example, Article 6(4) of Decree 231 allows small companies to assign the duties of the Supervisory Body to the management body. If the organisation does not intend using this option, a monocratic composition would guarantee the functions assigned to the Supervisory Body. Instead, in medium and large companies, a collective type composition appears preferable. Moreover, if the organisation has a board of statutory auditors (or equivalent body if non-traditional forms of corporate governance are adopted), it could select another option indicated by Decree 231 (following amendments introduced by Law 183 of 2011): the assignment of Supervisory Body functions to the Board of Statutory Auditors*" Confindustria, Guidelines, 55 as amended.

[11] Paragraph 4-*bis* as added by paragraph 12 of Article 14, Law 183 of 12 November 2011, as from 1 January 2012, pursuant to provisions in Article 36(1) of Law 183/2011.

[12] Confindustria, Guidelines, page 63 and following.

Guidelines, according to which "*the essential nature of the internal hierarchical and functional structure should be considered, rather than quantitative parameters*"[13].

In accordance with the Decree and considering the specific characteristics of its own organisational structure, the Company, by resolution of the Board of Directors, has assigned the function of Supervisory Body, tasked with monitoring the functioning of and compliance with this Programme and its updates, to a body comprising several members, indicated in **Attachment 1**.

The Supervisory Body, as established above, has independent powers of initiative and control, as required by the decree, and operates independently and autonomously.

The independence and autonomy which the Supervisory Body must have are guaranteed by its position in the company organisation, as well as the reporting lines to the Board of Directors assigned to it under the Programme.

Professionalism is guaranteed by specific expertise gained in the sector in which the Company operates, as well as by the possibility for the Supervisory Body to be assisted by specific professional competencies and heads of various company functions as well as external consultants to carry out technical operations necessary to perform its functions.

Constant action is guaranteed by the fact that the Supervisory Body is dedicated above all to supervision and has no operating powers in the Company.

Considering the specific nature of the duties assigned to the Supervisory Body and the professional expertise required, in carrying out supervision, control and update activities, the Supervisory Body is assisted by competent internal company functions.

Moreover, where specialisations are required that are not available in the above functions, the Supervisory Body may be assisted by external consultants, who will be appointed by resolution of the Board of Directors, on the specific request and indication of the Supervisory Body.

The Supervisory Body is responsible for overseeing the adoption of the Programme at the Company.

3.2 Appointment

The Supervisory Body is established by resolution of the Board of Directors, after consultation with the Company's control body.

The Supervisory Body remains in office for the number of financial years established by the Board of Directors on its appointment and in any case (in the absence of indications on its appointment) for no more than three financial years. The Supervisory Body may be re-elected.

Unless otherwise resolved by the Board of Directors on its appointment, the Supervisory Body is removed from office at the date of the shareholders' meeting convened to approve the financial

[13] Confindustria, Guidelines, page 80.

statements relative to the last financial year of its appointment, although it will continue to carry out its functions ad interim (on a *prorogatio* basis) until the appointment of a new Supervisory Body.

3.3 Requirements and termination of office

The appointment of the Supervisory Body, or of each member in the case of a composition with several members, is subject to meeting the requirements for appointment, listed and described below[14].

In particular, on appointment, the subject that will hold the position of Supervisory Body (or several subjects, as applicable), must issue a statement, basically conforming to the template in **Attachment 3**, in which he/she certifies the absence of:

- family members, spouses (or cohabitants equivalent to spouses) or relatives to the fourth degree[15] on the Board of Directors, control body or independent auditors, if appointed, as well as in senior management positions of the Company;
- conflicts of interest, even potential, with the Company that affect the independence required of the role and the duties of the Supervisory Body, as well as coinciding interests with the Company which goes beyond ordinary interests based on any relationship of employment of provision of intellectual work;
- direct or indirect ownership of shares of the entity that make it possible to exercise a dominant or significant influence on the Company, pursuant to Article 2359 of the Civil Code;
- functions of Company director with executive duties at the Company or its subsidiaries;

[14] "*In order to ensure the actual existence of the requirements described, in the case of a Supervisory Body comprising one or more internal resources, and in the case of a Supervisory Body comprising external positions, it is advisable for the members to meet the formal subjective requirements that further guarantee the autonomy and independence required of their duties, such as good standing, the absence of conflicts of interest and absence of family relationships with senior management. These requirements will be specified in the Compliance Programme. The requirements of autonomy, good standing and independence may also be defined by referring to the provisions of other sectors of corporate regulations. This applies, in particular, when opting for a composition of the Supervisory Body with several members that have all the various professional expertise to oversee control of a company which adopts a traditional corporate governance model (for example, a member of the Board of Statutory Auditors or the internal control officer). In these cases, the requirements referred to may already be met, even in the absence of further indications, by the personal and professional requirements indicated in regulations for auditors or for internal control officers*." Confindustria, Guidelines, 58.

[15] In order to identify the notion of "*relatives and relatives by marriage to the 4th degree*" reference must be made to the provisions in Article 74 and subsequent of the Civil Code. Pursuant to these provisions, being relatives means people from the same family (for example two brothers are relatives as they come from the same family, represented by the parent). Relatives may be of lineal or collateral descent: relatives of lineal descent are persons that descend from the other (e.g. grandfather, father and son), while relatives of collateral descent are persons from the same family, but who do not descend from the other (e.g. two brothers, or an uncle and nephew). In lineal descent, the degrees are equal to the generations, excluding the progenitor (e.g. father and son are relatives of the first degree, grandfather and grandson are relatives of the second degree); in collateral descent, the degrees are calculated from the generations, going up from one of the relatives to the common progenitor and from here descending to the other relative, excluding the progenitor (for example two brothers are relatives of the second degree). Therefore relatives to the fourth degree are a) in lineal descent: parents and children as well as grandparents, great-parents, great, great grand-parents and b) in collateral descent: brothers and sisters, brothers and sisters and children of a same person, children and children of the children of the children of a same person, the children of two brothers and sisters).
Pursuant to these provisions, kinship is the bond between a spouse and the relatives of the other spouse. In the line and to the degree to which someone is a relative of one of the spouses, the person is also a relative of the other spouse (for example a person is a relative in lineal descent without the fourth degree of his/her closest cousins, meaning the children of the brothers and sisters of his/her parents, and is a relative by marriage of the same line and degree of the spouses of these cousins).

- administration functions – in the three financial years prior to the appointment as member/officer of the Supervisory Body – of companies that are insolvent, in compulsory liquidation or subject to other insolvency proceedings;
- public employment with central or local administrations in the three years prior to the appointment as member/officer of the Supervisory Body;
- a conviction, even if not final, or ruling that in any case establishes liability, in Italy or abroad, for crimes referred to in the Decree or similar crimes;
- a conviction, even if not final, or ruling that in any case establishes liability, with a ban, also temporary, on holding public offices, or a temporary ban on managerial functions of legal persons and enterprises.

If any of the above reasons for not being appointed apply to the Supervisory Body or one of its members, said shall notify the Chief Executive Officer and control body and will automatically be removed from office.

3.4 Resignation and replacement

The Supervisory Body (or, in the case of a Supervisory Body with several members, each of the members), that resigns from the position must notify the chief executive officer in writing and the control body.

The resignation has immediate effect. The Board of Directors will replace the Supervisory Body, appointing a new one (or in the case of a Supervisory Body with several members, each of the members) in as short a time as possible, with the opinion of the Company control body.

The members of the Supervisory Body who are appointed will remain in office for the term of the replaced members.

3.5 Independence and removal from office

The adoption of disciplinary sanctions as well as any act amending or stopping the relationship between the Company and the Supervisory Body (or in the case of a Supervisory Body with several members, each of the members) is approved in advance by the Board of Directors and control body. If amendments or interruptions adopted without a unanimous decision are approved, the Board of Directors, or in its absence, the control body duly informs the shareholders' meeting on the first possible occasion.

Without prejudice to the above, to guarantee necessary stability for the Supervisory Body, (or in the case of a Supervisory Body with several members, each of the members) the Body may be removed from office and assigned powers removed, only for just cause.

In this regard, "*just cause*" means gross negligence in carrying out duties connected with the appointment, including by way of example only: failure to prepare periodic reporting for the Board of Directors and control body on activities carried out; failure to prepare a six-monthly or annual programme of audits or failure to implement the programme; in particular, gross negligence includes "*failure to provide or insufficient supervision*" by the Supervisory Body – as

referred to in Article 6(1) d) of the Decree – resulting from a conviction, even if not final, of the Company pursuant to the Decree or a ruling establishing its liability.

Assigning operating functions and responsibilities within the company organisation to the subject that acts as Supervisory Body or in any case functions and responsibilities that are incompatible with the requirements of "autonomy and independence" and "constant action" of the Supervisory Body means that said subject is not compatible for the position of Supervisory Body. This incompatibility must be promptly notified to the Board of Directors and control body and as soon as established, the subject will be removed from office and replaced, by resolution of the Board.

In particularly serious cases, the Board of Directors may arrange – after consulting with the control body – to suspend the powers of the Supervisory Body (or in the case of a Supervisory Body with several members, each of the members) and appoint ad interim a Supervisory Body (or in the case of a Supervisory Body with several members, a member).

3.6 Conflicts of interest and competition

If, with reference to a given transaction at risk or category of transactions at risk, the Supervisory Body (or in the case of a Supervisory Body with several members, a member) is, or considers it/he/she is or might be in situation of a potential or actual conflict of interests with the Company in carrying out supervisory functions, this subject must immediately notify the Board of Directors and the Company control body (as well as other members of the Supervisory Body, if applicable).

The existence of a potential or actual conflict of interest means that the subject must refrain from carrying out activities connected with or related to the transaction in exercising supervisory functions; in this case, the Supervisory Body will:

- request the appointment of another subject as the replacement to exercise supervisory functions in relation to the transaction or category of transactions in question, or
- in the case of a Supervisory Body with several members, where the conflict of interest concerns only one member, it will delegate supervision of the transaction or category of transactions in question to the other members of the Supervisory Body.

By way of example, a conflict of interest concerning a given transaction or category of transactions includes the fact that a subject is related to one or more other subjects involved in a transaction or category of transactions due to company positions held, relations with the spouse, relatives or relatives by marriage to within the fourth degree, working relationships, consultancies or the provision of paid services, or other financial relations that affect independence pursuant to Article 2399 of the Civil Code.

The Supervisory Body (or in the case of a Supervisory Body with several members, each of the members) will apply the ban on competition pursuant to Article 2390 of the Civil Code.

3.7 Remuneration and reimbursement of expenses

Any remuneration owing to the Supervisory Body (or in the case of a Supervisory Body with several members, each of the members) is decided on appointment or by a subsequent decision of the Board of Directors, after consulting with the control body.

The Supervisory Body (or in the case of a Supervisory Body with several members, each of the members), is reimbursed for expenses sustained for its position.

3.8 Powers of expenditure and external consultants

The Supervisory Body has unlimited powers of expenditure, that may be exercised without prior authorisation from the management body (excluding in any case actions resulting in structural company innovations), without prejudice to compliance with internal procedures in effect from

time to time on pre- and post-disclosure to competent functions of the Company, also for the purpose of preparing the Company's annual or interim – usually every six months – estimate or final budgets.

The Supervisory Body may be assisted – under its direct responsibility – in carrying out its duties, by all other Company functions and structures, or by external consultants.

On appointment, external consultants must issue a specific statement, certifying:
- that none of the above reasons for not being elected or for not carrying out the appointment (for example: conflicts of interest; family ties with members of the Board of Directors, senior managers in general, members of the Company control body and independent auditors etc.) apply;
- that they have been adequately informed of the provisions and rules of conduct in the Programme, and undertake to comply with them.

3.9 Functions and powers

The Supervisory Body has the following functions:
- monitoring the actual and concrete adoption of the Programme, assessing the consistency of conduct within the Company as regards the programme;
- assessing the actual adequacy of the Programme as a tool to prevent crimes;
- analysing the Programme in terms of it remaining robust and functional;
- liaising with competent bodies on the implementation status of the Programme;
- overseeing, developing and promoting continual updates to the Programme, preparing and submitting to the management body, in presentations and/or written reports, proposals to amend and update the Programme intended (i) to correct any malfunctions or gaps, identified from time to time; (ii) aligning the Programme to significant changes in the Company's internal organisation and/or procedures for carrying out business activities; or (iii) taking into account any legal developments[16];
- ensuring the periodic updating of the system to identify, map and classify sensitive and instrumental activities;
- submitting proposals for additions or the adoption of instructions to implement this Programme to competent bodies;
- verifying the adoption and actual functioning of changes made to this Programme (follow-up).

In carrying out these functions, the Supervisory Body has the following tasks:
- proposing and promoting all initiatives necessary to ensure knowledge of the Programme inside and outside the Company;
- maintaining continual contact with the independent auditors, safeguarding necessary independence, and with other consultants and external staff involved in activities for the effective implementation of the Programme;

[16] In this regard, reference is made to Article 30(4) of Legislative Decree 81/2008 on occupational health and safety, according to which "*…. the review of and any amendments to the compliance programme must be adopted, when significant violations of the regulations relative to the prevention of occupational health and safety have been identified, or in the event of changes in the organisation and activity in relation to scientific and technological progress*".

- controlling the activity carried out by various functions within the Company, accessing relative documentation and, in particular, checking that the documentation required by the Special Part for various types of crimes envisaged, is available, and duly kept and effective;
- carrying out specific controls on certain sectors or specific procedures of company activity, and conducting internal investigations to establish alleged violations of the provisions of the Programme;
- identifying any deviations in conduct that are identified from the analysis of information flows and reporting which must be overseen by the heads of various functions;
- checking that the items required by the Special Part for the various types of crimes contemplated (system procedures, operating instructions, technical documents, forms, standard clauses, etc.), are in any case adequate and meet the requirements for compliance set out in the Decree, arranging, on the contrary, for relative updates;
- coordinating with other company functions, in order to study the map of risk areas, monitor the implementation status of the Programme and prepare improvements or additions for aspects concerning the coordinated adoption of the Programme (instructions for implementing the Programme, inspection criteria, definition of standard clauses, training, disciplinary measures, etc.);
- freely accessing the head offices of the Company, or convening any unit, officer or employee of the Company – without the need for any prior consent – to request and obtain information, documentation and data, considered necessary to carry out the duties indicated in the Decree, by all senior managers and employees;
- collecting, processing and retaining data and information on the implementation of the Programme;
- taking disciplinary proceedings and proposing sanctions as indicated in this Programme;
- managing relations with auditors, giving them adequate information, in the case of controls, investigations, requests for information from the competent authorities in order to verify the Programme's conformity to the Decree;
- governing its own functioning, after consulting with the Company control body, also by introducing rules for its activities, that regulate, among others, the deadlines for controls, and the identification of analysis criteria and procedures[17];
- adopting an activities programme, on a six-monthly basis, with particular reference to controls to carry out, with the results reported to the management and control bodies.

The Board of Directors adequately and promptly notifies the powers and functions of the Supervisory Body to company structures, establishing specific disciplinary measures if the Supervisory Body is not assisted, as indicated in more detail in the next sections.

3.10 Obligations to provide disclosure to the Supervisory Body of Ecospray

3.10.1 General obligations

[17] In this regard, reference is made to Confindustria Guidelines, *cit.*, page 61.

To protect the Company's integrity and ensure that the Supervisory Body carries out its functions correctly and efficiently, all information in risk areas, and all data on conduct functional to the commission of crimes must be made available.

To this end, specific information channels have been set up, for recipients of the Programme to disclose specific information on unlawful conduct, which is significant pursuant to the Decree and based on specific, concordant facts, or violations of this Programme, which have come to their knowledge in carrying out their functions.

These channels guarantee the confidentiality of the reporting person's identity in activities to manage the disclosure.

The above disclosures are sent to the Supervisory Body.

Within the Company, senior managers and their staff must inform the Supervisory Body of the following:

- the information and documentation indicated in the Special Part of this Programme, with reference to the individual crimes referred to;
- all conduct that contrasts with or deviates from or in any case that is not in line with the provisions in this Programme;
- all useful information regarding the actual implementation of this Programme, at all company levels;
- all other information or news on the Company's activities in risk areas, that the Supervisory Body obtains, from time to time.

Disclosures of conduct that does not conform to this Programme will concern violations or alleged violations of the Programme. The Supervisory Body will take action to guarantee that people reporting information are protected from any form of retaliation, discrimination or penalisation, also ensuring the confidentiality of the reporting party's identity, save for legal obligations and the protection of the rights of the Company or people who have been accused erroneously and/or in bad faith.

These disclosures shall be made only through one or more of the "dedicated information channels" to be set up by the Company, one of which will be digital, according to procedures established and notified from time to time, with the function of facilitating the flow of reporting and information to the Supervisory Body and of promptly reporting any clarifications to the Supervisory Body.

3.10.2 Specific obligations

In addition to disclosures on general violations, as described above, Company Heads and Officers are required to give the Supervisory Body all information on the following facts, regarding themselves and other Recipients, which comes to their knowledge (along with a copy of supporting documentation, if available or accessible, and if unavailable or inaccessible, along with an indication of where and how the documentation may presumably be reasonably obtained):

- rulings and/or information from the judicial police, or from any other authority, indicating investigations, also against unknown persons, concerning the crimes contemplated in the Decree;
- requests for legal assistance forwarded by Recipients in the case of legal proceedings concerning crimes which are significant for the purposes of the Decree, unless specifically prohibited by the judicial authorities;
- reports prepared by the heads of other company functions as part of their control activities, identifying facts, activities, events or omissions with critical aspects regarding compliance with the provisions of the Decree;
- decisions on the request, disbursement and use of public funds;
- decisions on the request and award of permits and authorisations issued by the public administration or by public bodies;
- tables summarising contracts awarded following national, European or private tenders, or information relative to contracts assigned by public entities that have public utility functions.

External staff and employees of the Company must give the Supervisory Body all information (with a copy of the documentation they have) regarding the above facts, if relative to themselves or other Recipients. Supporting documentation, if not available to Employees, will be collected by the Supervisory Body, using its audit powers.

Competent corporate functions of the Company will promptly give the Supervisory Body all information on proceedings carried out and any sanctions imposed or other measures adopted (including disciplinary rulings against Employees), including any rulings to dismiss the proceedings with relative reasons.

As regards agents, business partners, consultants, external staff, etc., their contract requires them to provide immediate disclosure if they receive, directly or indirectly, from an employee/representative of the Company a request to adopt a conduct that could be a violation of the Programme.

On a regular basis, the Supervisory Body proposes any changes or additions to make to this section to the chief executive officer.

3.10.3 Reporting lines

In carrying out its activities, the Supervisory Body reports:

a) to the Board of Directors and Company control body on a regular basis (at least six-monthly[18]), on all activities carried out and the implementation status of the Programme (see section 2.4);
b) to the Chairman of the Board of Directors or chief executive officer of the Company, on a continual basis, in written reports, concerning specific aspects of its activities, considered to be particularly significant and important in the context of prevention and control activities. The Supervisory Body may also be convened by the above bodies whenever

[18] Confindustria, Guidelines, page 61.

deemed appropriate, to report on specific facts or events or to discuss matters of particular importance in the context of preventing crimes.

Moreover, the Supervisory Body may report to the above bodies on specific factors or events, whenever deemed appropriate.

In the event of a violation of the Programme by a member of the Board of Directors or control body, the Supervisory Body reports to these entities in order for adequate measures to be adopted, pursuant to section 5.3.1 above.

Moreover, given the need to guarantee the independence of the Supervisory Body, where it considers, due to serious and proven circumstances, that is it necessary to report information on violations of the Programme by the Board of Directors or the control body [19] directly to the shareholders' meeting of the Company, it is authorised, by requesting the Chief Executive Officer (or if absent, prevented or involved in the alleged violation, the control body), to be admitted to the first possible shareholders meeting, in order to report on extremely serious and urgent cases, to request that a specific shareholders' meeting is promptly convened.

[19] Although the auditors cannot be considered – in principle – as holding management positions, as stated in the Explanatory Report on the Decree (page 7), it is possible, in the abstract, that the auditors are involved, even indirectly, in the commission of the crimes indicated in Legislative Decree 231/2001 (including in association with senior managers).

3.10.4 Controls

The programme is subject, among others, to the following controls, that will be conducted by the Supervisory Body with the cooperation of competent company functions:

(i) controls of documents: the Supervisory Body controls main corporate documents and the most significant contracts stipulated by the Company in risk areas, according to established criteria, on a six-monthly basis;

(ii) controls of procedures: the Supervisory Body continually checks the effective adoption and functioning of the Programme. On a six-monthly basis, the Supervisory Body assesses, overall, all disclosures received during the period, the actions taken in relation and events considered risky, with the assistance of competent functions.

The Supervisory Body explains the above controls, indicating the methods adopted and results obtained, in its periodic report to the management body of the Company.

3.10.5 Independence

The Board of Directors adopts protection mechanisms for the Supervisory Body to avoid risks of retaliation, discriminatory behaviour or in any case conduct that is detrimental, due to activities carried out.

The adoption of disciplinary sanctions as well as any act amending or stopping the relationship between the Company and the Supervisory Body (or its members) is approved in advance by the Board of Directors and, if the amendments or interruption are approved without a unanimous decision, adequate disclosure is given by the chief executive officer, or if prevented, by the control body, to the shareholders' meeting on the first possible occasion.

Chapter 4

TRAINING AND COMMUNICATION PLAN

4.1 Personnel recruitment and training

4.1.1 Training system

The effectiveness and efficiency of the Programme calls for senior managers of the Company and their staff, and in particular Company personnel at all levels, to be familiar with and implement the Programme.

To this end, training and communication activities, which are diversified and calibrated to the individual Recipient and the levels of functions held, are in any case based on principles of completeness, clarity, accessibility and continuity in order to allow the various recipients to be fully aware of the company provisions they must observe and the ethical norms their conduct must be based on.

Training and communication activities are supervised and supplemented by the Supervisory Body, assisted by competent company functions, that are assigned, among others, duties to promote and define initiatives to increase knowledge and understanding of the Programme, as well as personnel training and awareness on compliance with the contents of the Programme, and to promote and devise communication and training initiatives on the contents of the Decree, on regulations governing company activities and on rules of conduct.

Specifically, the following are required:

a) the inclusion, in personnel recruitment criteria, of the sharing of the values set out in the Programme and compliance with them;
b) promotion of the knowledge of this Programme, through the following training initiatives:
    - Company Officers that act as representatives or have powers of signature valid for external relations:
        - initial seminar (in a group, or individually, as applicable);
        - the signing of a statement declaring the person will observe the contents of the Programme;
        - continual professional development seminars;
        - occasional professional development notices, in case of need or urgent circumstances, which may also be posted in a specific section of the company intranet, if available, dedicated to the matter and updated by the Supervisory Body;
    - Employees and external staff:
        - an internal notice;
        - a notice on the contents of the Programme for new recruits;
        - occasional professional development notices, in case of need or urgent circumstances, which may also be posted in a specific section of the company intranet, if available, dedicated to the matter and updated by the Supervisory Body.

Without prejudice to the above, the Employee has the following obligations: i) become familiar with the contents of the Programme and participate (mandatory) in training sessions organised by the Company; ii) become familiar with the operating procedures to follow in carrying out activities; iii) actively contribute, in relation to their role and responsibilities, to the effective implementation of the Programme, reporting any inefficiencies identified.

The Company pursues quality training and for this purpose is assisted by expert tutors on legal and organisational aspects concerning the Decree, whose expertise is proven by relative CVs, checked beforehand by the Supervisory Body.
To this end, Employees and External Staff must be guaranteed the possibility to access and consult Programme documentation also directly on the company intranet where available. All Employees and External Staff must also be able to obtain a hard copy of the Programme. Moreover, in order to facilitate the understanding of the Programme, the Employees and External Staff, with different procedures according to their degree of involvement in activities identified as sensitive pursuant to Legislative Decree 231/2001, are required to participate in specific training.

On employment, new employees will be given a copy of the Document describing the Programme and Code of Ethics, and will be requested to sign a statement that they observe the relative contents.

Members of the Company's corporate bodies will be given a copy of the full version of the Programme. As provided for Employees, new members of corporate bodies will be given a copy of the full version of the Programme, when they accept their appointment and will be requested to sign a statement that they observe the relative contents.

Suitable communication tools will be adopted to update Employees about any changes made to the Programme, as well as all significant chances to procedures, regulations or the organisation. Equivalent measures will be adopted in relation to External Staff.

4.1.2 Training programme

The knowledge of all Employees and Staff of the Company, of the principles, provisions, procedures and documents referred to in the Programme is of fundamental importance for the effective adoption of the Programme.

The Company aims to raise awareness at all times on issues regarding the Programme, through an adequate training programme for all Employees and External Staff, to enable recipients to become fully aware of and be in a position to comply in full with company directives.

The Company prepares training initiatives, assisted by external consultants with specific expertise on the administrative liability of entities, for all Company Officers and Staff, in order to ensure an adequate knowledge, understanding and dissemination of the contents of the Programme and to also disseminate a company culture focussed on achieving an even greater transparency and ethical approach.

Training initiatives cover the following:

- a general part concerning the applicable legal framework (Legislative Decree 231/2001 and crimes and administrative offences significant for the administrative liability of entities), and the Compliance Programme (its parts, the Supervisory Body, the disciplinary system, the Code of Ethics, etc.);
- a special part on the activities identified as sensitive (or instrumental) pursuant to Legislative Decree 231/2001 and the control protocols relative to these activities;
- controls on the learning from the training received.

Training is delivered in a way considered most appropriate for the Company in order to involve the most resources (e.g. classroom sessions, e-learning, etc.).

The contents of the training are continually revised in relation to any Programme updates and/or alignments.

Participation in training is mandatory. The Supervisory Body collects and files evidence/certification on actual participation in training.

4.2 Recruitment and training of Consultants and Partners

The effectiveness of the Programme may be impacted by working or business partnerships with subjects that do not share the Programme's objectives and values.

In particular, the purpose of the Company is to disseminate the Programme's contents not only to its Employees but also to people who, although not formally employees – operate – even occasionally – to achieve the Company's objectives based on contractual relations.

To this end, the Company adopts criteria to select Consultants and Partners that promote compliance with and the implementation of this Programme and informs these Consultants and Partners of the procedures and criteria adopted by the Company. The Consultants and Partners will also be requested to sign a statement in which they declare they are familiar with the Programme adopted by the Company and the resulting obligations and undertake to observe the contents of the Programme and the principles of the Code of Ethics applicable to it.

4.3 Other recipients

Activities to notify the contents of the Programme are also for third parties that have relations with the Company governed by contracts or that represent the Company without being employees and who, although not Consultants or Partners, carry out significant activities in risk areas.

To this end, the Company will give an excerpt of the Document describing the Programme and Code of Ethics to the most significant third parties. These third parties will declare they are familiar with the Programme and Code of Ethics and undertake to observe the contents.

The Company, considering the purposes of the Programme, will assess the advisability of notifying its contents to third parties, who are not classified as the above positions, for example, and more in general to the market.

Chapter 5
DISCIPLINARY SYSTEM

5.1 Penalties for employees

An essential aspect in order for the Programme to be effective, pursuant to Article 6(2) e) and Article 7(4) b) of the Decree is the preparation of an adequate system of penalties for the violation of rules of conduct established to prevent the crimes indicated in the Decree and, in general, the procedures and internal instructions in the Programme.

To encourage compliance and promote the implementation of the Programme, the Company has prepared a disciplinary system, aimed at imposing penalties in the case of conduct and behaviour that goes against the Programme's provisions.

Compliance with the provisions and rules of conduct set out in the Programme constitutes Company employees meeting their obligations under Article 2104(2) of the Civil Code; the content of the Programme is a substantial and integral part of these obligations.

the conduct adopted by employees violating the provisions of the Programme is therefore classified as a disciplinary offence; the Company imposes sanctions if disciplinary offences are committed, in compliance with the procedures in Article 7 of Law 300 of 20 May 1970 (Workers' Statute), and the provisions of the applicable collective bargaining agreement, in particular if a more serious sanction than a verbal warning is imposed.

As the rules of conduct in this Programme are undertaken by the Company entirely independently of the criminal aspects ensuing from the conduct, the adoption of disciplinary measures is not related to the outcome of any criminal proceedings brought against the employee[20].

The Company refers to the applicable national collective bargaining agreement to govern relations with its employees.

Disciplinary measures will be taken by the employer based on the extent of the inefficiencies and the related circumstances, in full compliance with the principle of a gradual and proportional approach between the violation committed and the penalty imposed, in compliance with Article 7 of the Workers' Statute.

By way of example only, anyone who (i) retaliates or adopts a discriminatory behaviour, directly or indirectly, against persons making disclosures for reasons connected directly or indirectly to the disclosures; (ii) violates the measures to protect subjects making disclosures; (iii) makes

[20] "*The disciplinary evaluation of conduct by employers, save naturally for any subsequent control by the judge, must not necessarily coincide with the evaluation of the judge in criminal proceedings, given the independence of the violation of the code of ethics and internal procedures in relation to the violation of the law resulting in the commission of a crime. The employer is not therefore required, before acting, to wait for the end of any criminal proceedings that are in progress. The principles of a prompt, immediate sanction in fact mean not only is it unsuitable, but also inadvisable to delay issuing a disciplinary measure pending the outcome of a ruling from a criminal judge*". Confindustria, Guidelines, cit. in the version updated at 31 March 2008, p. 30.

disclosures intentionally or with gross negligence, that are without grounds, will be subject to penalties.

By way of example only, disciplinary dismissal (Article 7 of the Workers' Statute) applies in cases where the worker:

a) violates safety regulations in Legislative Decree 81/2008, violating this Programme;
b) abuses trust, is involved in unfair competition, violates non-disclosure obligations, violating this Programme;
c) carries out work on own behalf or on behalf of third parties, which competes with company activities, outside working hours, violating this Programme;
d) the commission of crimes and/or facts that are criminally significant in the light of the regulations referred to in Legislative Decree 231/2001, in carrying out work activities, also during contacts and/or negotiations (face to face and/or over the telephone and, in general, remote), with customers, suppliers and third parties in general.

In cases which are not listed, the penalties will be applied referring to the same type of severity of those listed.

In the case of repeat offending, penalties of a degree immediately above those imposed for previous offences, may be applied.

In any case, the Company may request compensation for damages arising from the violation of the Programme by an employee. Compensation for damages, if requested, will also be commensurate with:

- the level of responsibility and independence of the employee committing the disciplinary offence;
- any previous disciplinary measures taken;
- the degree of intention of the conduct;
- the severity of the effects, meaning the level of risk the Company can reasonably expect to be exposed to – pursuant to and for the purposes of Legislative Decree 231/2001 – following the conduct in question.

In compliance with applicable national collective bargaining agreements, disciplinary measures are adopted in relation to the severity of the inefficiency, by the body in charge.

This Programme (or significant parts for the purposes of this Section), must be affixed permanently in work places accessible to everyone, pursuant to and for the purposes of Article 7 of the Workers' Statute.

Workers affected by disciplinary measures who intend appealing against the lawfulness of the measure may also seek settlement procedures, as indicated in Article 7 of the Workers' Statute or in National Collective Bargaining Agreements.

Disciplinary measures are imposed, in compliance with applicable procedural and substantial regulations, also on request or notification of the Supervisory Body.

5.2 Penalties for senior managers

If senior managers violate the internal procedures and instructions indicated in this Programme or its adoption, in carrying out sensitive or instrumental activities, adopting a conduct that does not conform to the requirements of the Programme, the most suitable measures will be adopted in compliance with the applicable National Collective Bargaining Agreement for senior management.

If the violation of the Programme jeopardises the trust between the Company and senior manager, the penalty will be dismissal for just cause.

5.3 Penalties for other subjects

5.3.1 Directors and Auditor

Without prejudice to section 3.10.3 above, in the case of the violation of this Programme by any director or the auditor of the Company, the Supervisory Body will inform the Board of Directors and control body of this violation in order to adopt adequate measures, that may comprise the following, based on the severity of the conduct:

- a written and verbal warning;
- suspension from being entitled to an attendance fee or indemnity for the position held, up to a maximum amount corresponding to three meetings of the corporate body;
- disclosure to the shareholders' meeting in order for appropriate measures to be adopted (withdrawal for just case, liability action, other).

5.3.2 Consultants and Partners

In the case of the violation of this Programme by self-employed workers, suppliers, Consultants, Partners or other subjects that have contractual relations with the Company, of an extent that causes a risk of the commission of a crime in the Decree, the Supervisory Body informs competent corporate functions in order for appropriate measures to be adopted, such as the termination of contractual relations or adoption of penalties, in compliance with laws governing relations with these subjects and specific contract clauses that will be added to relative contracts, save for any claim for compensation for damages if this conduct results in actual harm to the Company.

These clauses, referring specifically to compliance with provisions and rules of conduct in the Programme may, for example require these third parties to not adopt a behaviour or conduct that can result in a violation of the Programme and/or Decree by the Company. In the case of a violation of this obligation, the contract will be terminated, with penalties imposed as applicable.

Chapter 6
UPDATING THE PROGRAMME

Pursuant to Article 6(1) b) of the Decree, the Supervisory Body is tasked with overseeing Programme updates.

To this end, the Supervisory Body, also assisted by corporate functions in charge of monitoring legal developments, organisational changes and changes concerning the types of activities carried out by the Company – and in particular relative information flows for these purposes, with a continuity ensured in favour of the Supervisory Body – identifies and reports to the Board of Directors on the need to update the Programme, also providing indications as to the relative procedures to adopt.

The Board of Directors assesses the need to update the Programme reported by the Supervisory Body, and after consulting with the Company control body, resolves on updates to the Programme in relation to amendments and/or additions which are necessary as a consequence of:

- regulatory changes concerning the administrative liability of entities and significant changes in the interpretation of applicable provisions;
- the identification of new sensitive (and instrumental) activities, or changes in previously identified activities, also connected with the start of new business activities, changes to the internal organisation of the Company and/or changes in how it does business;
- the issue and amendment of guidelines by applicable trade associations, notified to the Ministry of Justice in accordance with Article 6 of the Decree and Articles 5 and following of Ministerial Decree 201 of 26 June 2003;
- the commission of significant violations for the purposes of the administrative liability of entities by recipients of the Programme, or more generally, of significant violations of the Programme;
- the identification of inefficiencies and/or gaps in Programme provisions, following controls on its effectiveness.

At the same time as undertaking its decisions on carrying out activities to update the Programme, the Board of Directors identifies the company functions that will be required to deal with the development and adoption of these updates and related procedures, authorising the start of a specific project.

The functions appointed to carry out activities according to instructions received, and after the Supervisory Body has been informed, submit proposals to update the Programme, resulting from the outcomes of the relative project, to the Board of Directors.

The Board of Directors, after consulting with the control body, approves the project outcomes, arranges for the updates to the Programme and identifies the company functions that will be required to implement the amendments/additions arising from the project outcomes and the dissemination of the relative contents within and outside the Company.

The approval of Programme updates is immediately notified to the Supervisory Body that, in turn, monitors their correct adoption and dissemination.

The Supervisory Body also informs, in a specific report, the Board of Directors on the outcome of supervisory activities undertaken in compliance with the decision to update the Programme.

In any case, the Programme is revised every three years, as resolved by the Board of Directors.

APPENDIX
ADMINISTRATIVE LIABILITY OF ENTITIES PURSUANT TO LEGISLATIVE DECREE 231/2001

I. Crimes

The crimes for which the entity may be held liable pursuant to Legislative Decree 231/2001 – if committed in the interest or to the advantage of qualified subjects pursuant to Article 5(1) of the Decree – may, for the sake of presentation, be included in the following categories:

- crimes against the public administration (referred to in Articles 24 and 25 of Legislative Decree 231/2001)[21];
- cybercrime and unlawful data processing (referred to in Article 24 *bis* of Legislative Decree 231/2001)[22];

[21] The following crimes are included: Embezzlement of funds from the State (Article 316-*bis* of the Criminal Code); undue receipt of funds against the State (Article 316-*ter* of the Criminal Code) extortion (Article 317 of the Criminal Code); bribery of a public official (Article 318 of the Criminal Code); bribery for the performance of an act in breach of official duties (Article 319 and 319-*bis* of the Criminal Code); bribery in judicial proceedings (Article 319-*ter* of the Criminal Code); unlawful inducement to give or promise benefits (Article 319-*quater* of the Criminal Code); corruption of a public service officer (Articles 320 and 321 of the Criminal Code); incitement to corruption (Article 322 of the Criminal Code); embezzlement, extortion, illegal inducement to give or promise benefits, bribery and incitement to bribery of international Courts or of the bodies of the European Communities or of international parliamentary assemblies or international organisations and officials of the European Communities and Foreign states (Article 322-*bis* of the Criminal Code); embezzlement (Article 346-*bis* of the Criminal Code); fraud (Article 640(2)(1) of the Criminal Code aggravated fraud for the purpose of obtaining public funds (Article 640-*bis* of the Criminal Code; computer fraud (Article 640-*ter* of the Criminal Code).

[22]Article 24-*bis* was added to Legislative Decree 231/2001 by Article 7 of Law 48 of 18 March 2008. These crimes refer to forgery concerning concern digital documents (Article 491-*bis* of the Criminal Code); malicious hacking of a computer or telematic system (Article 615-*ter* of the Criminal Code); unauthorised possession and distribution of access codes to computer or telematic systems (Article 615-*quater* of the Criminal Code); distribution of computer equipment, devices or computer programmes for the purpose of damaging or blocking a computer or telematic system (Article 615-*quinquies* of the Criminal Code); unlawful interception, impediment or interruption of IT or telematic communications (Article 617-*quater* of the Criminal Code); installation of equipment intended to intercept, prevent or interrupt IT or telematic communications (Article 617-*quinquies* of the Criminal Code); damaging computer information, data and programmes (Article 635-*bis* of the Criminal Code); damaging computer information, data and programmes used by the Government or any other public entity (Article 635-*ter* of the Criminal Code); damaging computer or telematic systems (Article 635-*quater* of the Criminal Code); Damaging public utility information or computer systems (Article 635-*quinquies*) and computer fraud by providers of electronic signature certification services (Article 640-*quinquies* of the Criminal Code).

Moreover, on 13 November 2019 the Senate finally approved the law converting Decree-Law 105 of 21 September 2019 on "*Urgent provisions protecting national cyber security*", published in the Gazzetta Ufficiale no. 222 of 21 September 2019. This law protects the IT networks, systems and services of public and private entities, on which the operation of an essential function of the State depends, or the provision of an essential service for the maintenance of civil, social or economic activities which are fundamental for the interests of the State and of which the malfunctioning, interruption or improper use may harm national security.

With subsequent implementing decrees and regulations, adopted pursuant to Article 17(1) of Law 400/1988, the following shall be identified, among others: (i) public administrations, public or private national entities and operators, included in the perimeter of national cyber security; (ii) the criteria based on which the subjects in point (i) prepare and update the list of IT networks, systems and services they provide, included in the perimeter of national cyber security; (iii) the procedures based on which the subjects in point (i) will be required to notify the National Security Incident Response Team about incidents impacting the IT networks, systems and services identified in the lists in point (ii); (iv) the measures intended to guarantee high levels of security for the IT networks, systems and services indicated in point (ii); (v) the procedures, methods and terms used by the subjects in point (i) that intend using supplies of ICT goods or services intended for use on IT networks and systems, or that are functional to performing the IT services in point (ii)

- organised crime offences (referred to in Article 24 *ter* of Legislative Decree 231/2001)[23];
- forgery of money, public credit instruments, revenue stamps and distinctive signs and instruments (referred to in Article 25 *bis* of Legislative Decree 231/2001)[24];
- crimes against industry and trade (referred to in Article; 25 *bis*.1 of Legislative Decree 231/2001)[25];

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shall notify the National Assessment and Certification Centre of the Ministry for Economic Development; (vi) the procedures, methods and terms adopted by the Prime Minister's Office and by the Ministry for Economic Development to carry out inspections and controls regarding, among others, the correct preparation of the lists in point (ii), the specific notification of incidents that may impact the IT networks, systems and services identified in the lists in point (ii), the notification of the use of suppliers of ICT goods or services as indicated in point (v).
The violation of requirements defined as indicated above will constitute the liability of the entity pursuant to Article 24-*bis* of Legislative Decree 231/2001.

[23]Article 24-*ter* was added to Legislative Decree 231/2001 by Article 2(29) of Law 94 of 15 July 2009. The following crimes are included: criminal association for enslaving or holding in slavery or servitude (Article 600 of the Criminal Code), child prostitution (Article 600-*bis* of the Criminal Code), child pornography (Article 600-*ter* of the Criminal Code), possession of pornographic material (Article 600- *quater* of the Criminal Code), virtual pornography (Article 600-*quater*(1) of the Criminal Code), tourism aimed at the exploitation of child prostitution (Article 600-*quinquies* of the Criminal Code), trafficking in persons (Article 601 of the Criminal Code), trade in organs taken from a living person (Article 601-*bis* of the Criminal Code), purchase and sale of slaves (Article 602 of the Criminal Code), sexual violence (Article 609-*bis* of the Criminal Code), when committed against a minor, sexual acts with a minor (Article 609-*quater* of the Criminal Code, corruption of a minor (Article 609-*quinquies* of the Criminal Code), group sexual violence (Article 609-*octies* of the Criminal Code), when committed against a minor, grooming of minors (Article 609-*undecies* of the Criminal Code), illegal immigration (Article 12, (3)-*bis* of Legislative Decree 286/1998), referred to in Article 416(5)(6) of the Criminal Code; mafia-type association, also foreign (Article 416-*bis* of the Criminal Code); mafia vote buying (Article 416-*ter* of the Criminal Code); kidnapping for the purpose of extortion (Article 630 of the Criminal Code); crimes committed that come under the conditions referred to in Article 416-*bis* of the Criminal Code (all crimes committed using intimidatory force connected with membership of the association, together with subjugation and the code of silence); crimes committed to facilitate the activities of associations referred to in Article 416-*bis*; criminal association for the purposes of the illegal trafficking of narcotics and psychotropic substances (Article 74 Presidential Decree 309/1990); criminal association, apart from cases referred to in paragraph 6 of the same article (Article 416 of the Criminal Code); crimes of illegal manufacture, import into Italy, offer for sale, sale, possession and carrying in a public place or place open to the public of weapons of war or military weapons or parts thereof, explosives, illegal weapons and more common firearms, except those referred to in Article 2(3) of Law 110 of 18 April 1975 (crimes referred to in Article 407(2) a) no. 5 of the Code of Criminal Procedure.

[24]Article 25-*bis* was introduced to Legislative Decree 231/2001 by Article 6 of Decree Law 350 of 25 September 2001, converted into law, with amendments, by Article 1 of Law 409 of 23 November 2001. These crimes concern the forgery of money, spending and import into the State, through intermediaries, of counterfeit money (Article 453 of the Criminal Code), alteration of money (Article 454 of the Criminal Code), spending and introduction into the State, without intermediaries, of counterfeit money (Article 455 of the Criminal Code), spending of counterfeit money received in good faith (Article 457 of the Criminal Code) counterfeiting of duty stamps, introduction into the State, purchase, possession or circulation of counterfeit duty stamps (Article 459 of the Criminal Code) counterfeiting of watermarked paper used for the manufacture of public credit instruments or duty stamps (Article 460 of the Criminal Code), manufacture or possession of watermarks or instruments for the forgery of money, duty stamps or watermarked paper (Article 461 of the Criminal Code), use of counterfeit or altered duty stamps (Article 464 of the Criminal Code).
The list of predicate crimes was further expanded by Article 15(7) of Law 99 of 23 July 2009, under which the crimes in Article 473 of the Criminal Code (counterfeiting, alteration or use of marks, trademarks or distinguishing signs or patents, models and designs) and Article 474 of the Criminal Code (Introduction into the State and trade of products with false markings) are significant for the purposes of the existence of the criminal liability of the entity.

[25]Article 25-*bis*.1 was introduced to Legislative Decree 231/2001 by Article 15(7) b) of Law 99 of 23 July 2009. The following crimes are included: disruption to the freedom of industry or trade (Article 513 of the Criminal Code); unlawful competition with threats or violence (Article 513-*bis* of the Criminal Code); fraud against national industries (Article 514 of the Criminal Code); fraudulent trading (Article 515 of the Criminal Code); sale of non-genuine foodstuffs as genuine (Article 516 of the Criminal Code); sale of industrial products with false marks (Article 517 of the Criminal Code); manufacturing and sale of goods produced encroaching on industrial property rights (Article 517-*ter* of the Criminal

- corporate crimes (referred to in Article 25-*ter* of Legislative Decree 231/2001)[26];
- crimes for the purposes of terrorism or subversion of democracy (referred to by Article; 25-*quater* of Legislative Decree 231/2001)[27];

Code); infringement of geographical indications or designations of origin for agrifood products (Article 517-*quater* of the Criminal Code).

[26]Article 25-*ter* was added to Legislative Decree 231/2001 by Article 3 of Legislative Decree 61 of 11 April 2002. This concerns misleading corporate communication (Articles 2621, 2621-*bis* and 2622 of the Civil Code); false information in prospectuses (Article 2623 of the Civil Code, repealed by Article 34(2) of Law 262 of 28 December 2005, but the same type of crime is punished by Article 173- *bis* of the Consolidated Law on Finance), false reporting or communications by external auditors (Article 2624 of the Civil Code was repealed by Article 37(34) of Legislative Decree 39 of 27 January 2010, but the same crime is punished by Article 27 of the same Legislative Decree), prevented control (Article 2625(2) of the Civil Code); unlawful return of capital (Article 2626 of the Civil Code); unlawful allocation of profits and reserves (Article 2627 of the Civil Code); unlawful transactions involving shares or quotas of the company or the parent company (Article 2628 of the Civil Code); transactions to the detriment of creditors (Article 2629 of the Civil Code); failure to disclose a conflict of interest (Article 2629-*bis* of the Criminal Code), false creation of share capital (Article 2632 of the Civil Code); improper allocation of company assets by liquidators (Article 2633 of the Civil Code); private-to-private corruption (Article 2635 of the Civil Code); Incitement to private-to-private corruption (Article 2635-*bis* of the Civil Code); unlawful influence on the shareholders' meeting (Article 2636 of the Civil Code); market rigging (Article 2637 of the Civil Code); obstructing the duties of public supervisory authorities (Article 2638 of the Civil Code). Law 69 of 27 May 2015 amended the crime of misleading corporate communication referred to in Article 2621 of the Civil Code and the crime of false corporate disclosures to the detriment of the company, shareholders or creditors referred to in Article 2622 of the Civil Code (now entitled "*False corporate disclosures by listed companies* "), eliminating the criminally significant thresholds and establishing stricter penalties (imprisonment instead of arrest), and introduce Articles 2621-*bis* and 2621-*ter*, which reduce the penalty and exclude punishment respectively, considering how the crimes were committed and their effects, as well as the nature of the company. The above law also amended Article 25-*ter* of Legislative Decree 231/2001, with stricter penalties for the crimes referred to in Articles 2621 and 2622 of the Civil Code, and including under predicate crimes for which the entity has administrative liability, the new crime referred to in Article 2621-*bis*.

[27] Article 25-*quater* was introduced in Legislative Decree 231/2001 by Article 3 of Law 7 of 14 January 2003. These crimes are "*crimes for the purposes of terrorism or subversion of democracy, contemplated by the criminal code and special laws*", as well as crimes, other than the above, "*that in any case have been committed in violation of Article 2 of the International Convention for the Suppression of the Financing of Terrorism, New York, 9 December 1999*". This Convention punishes any person who, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: (i) an act intended to cause death – or serious bodily injury – to a civilian, when the action is intended to intimidate a population or compel a government or international organisation; (ii) other acts that are crimes under conventions on: flight safety, the protection of nuclear material, the protection of diplomats, the repression of attacks using explosives. The category of "*crimes for the purposes of terrorism or subversion of democracy, contemplated by the criminal code and special laws" is* mentioned by the legislator in general, without indicating specific regulations the violation of which would result in this article being adopted. In any case, the main predicate crimes are contained in Article 270-*bis* of the criminal code (*Associations for the purposes of terrorism, including international terrorism, or subversion of democracy*) that punishes the individual who establishes, manages or finances an association that intends performing acts of violence for the purpose of terrorism or subversion of democracy; Article 270-*ter* of the Criminal Code ("*Assisting association members"*) punishes anyone who provides shelter or food, hospitality, means of transport, means of communication to any individual participating in associations with the purpose of terrorism or subversion of democracy; Article 270-*quater* of the Criminal Code ("– *Recruitment for the purposes of terrorism"),* that punishes anyone who recruits one or more people to carry out acts of violence or of sabotage of essential public services, for the purposes of terrorism; Article 270-*quater*(1) of the Criminal Code ("*Travel organisation for terrorist purposes"*) that punishes anyone who organises, finances or promotes travel in foreign countries aimed at carrying out the conduct for the purposes of terrorism; Article 270-*quinquies* c.p. ("*Training in activities for the purposes of terrorism, including international terrorism"*) that punishes anyone who trains or provides instructions on the preparation and use of weapons, chemical substances, etc. as well as any other technique or method for carrying out acts of violence or of sabotage of essential public services, for the purposes of terrorism; Article 280 of the Criminal Code ("*Attack for the purposes of terrorism"*), that punishes anyone who, for the purposes of terrorism or subversion of democracy, makes

- female genital mutilation practices (referred to in Article 25-*quater*.1 of Legislative Decree 231/2001)[28];
- crimes against the individual (referred to in Article; 25-*quinquies* of Legislative Decree 231/2001)[29];
- market abuse (referred to in Article 25-*sexies* of Legislative Decree 231/2001)[30];
- transactional (referred to in Article 10 of Law 146 of 16 March 2006 "*Ratification and implementation of the United Nations Convention against Transnational Organised Crime and its Protocols adopted by the General Assembly on 15 November 2000 and 31 May 2001)*[31]";
- crimes committed violating rules on occupational health and safety (referred to in Article 25-*septies* of Legislative Decree 231/2001)[32];

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an attack against the life or safety of another person; Article 280-*bis* of the Criminal Code ("*Act of terrorism with deadly or explosive devices"*) that punishes anyone who, for the purposes of terrorism, carries out any act intended to damage movable or immovable property, through the use of explosives or deadly devices; Article 280-*bis* of the Criminal Code ("*Kidnapping for the purposes of terrorism or subversion "*) that punishes anyone who kidnaps a person for the purposes of terrorism or subversion.

[28]Article 25-*quater*.1 was added to Legislative Decree 231/2001 by Article 8 of Law 7 of 9 January 2006. The crimes refer to female genital mutilation practices (Article 583-*bis* of the Criminal Code).

[29]Article 25-*quinquies* was added to Legislative Decree 231/2001 by Article 5 of Law 228 of 11 August 2003. The crimes refer to enslaving or holding in slavery or servitude (Article 600 of the Criminal Code); child prostitution (Article 600-bis of the Criminal Code); child pornography (Article 600-ter of the Criminal Code); possession of pornographic material (Article 600-quater of the Criminal Code); virtual pornography (Article 600-quater.1 of the Criminal Code); tourist initiatives aimed at the exploitation of child prostitution (Article 600-quinquies of the Criminal Code); .); trafficking in persons (Article 601 of the Criminal Code); purchase and sale of slaves (Article 602 of the Criminal Code); illicit intermediation and exploitation of labour (Article 603-bis of the Civil Code.) and grooming of minors (Article 609-undecies of the Criminal Code).

[30]Article 25-*sexies* was introduced to Legislative Decree 231/2001 by Article 9 of Law 62 of 18 April 2005 (2004 EU law). The crimes refer to insider dealing (Article 184 of Legislative Decree 58/1998) and market manipulation (Article 185 of Legislative Decree 58/1998).

[31] The definition of "transnational crime" is contained in Article 3 of the above Law 146/2006, which considers a transnational crime *"as a crime punished with imprisonment for a term of no less than a maximum of four years, if an organised crime group is involved"*, with the further condition that at least one of the following applies: "*the crime is committed in more than one State*" or "*the crime is committed in one State, but a substantial part of its preparation, planning, direction or supervision takes place in another State*" or "*the crime is committed in one State, but an organised criminal group involved in criminal activities in one or more State is implicated*" or "*the crime is committed in one State but has significant effects in another State*" [Article 3 a), b), c) and d)]. Transnational crimes in relation to which Article 10 of Law 146/2006 establishes the administrative liabilities of entities are as follows: crimes of association referred to in Article 416 of the Criminal Code ("*Criminal association*") and 416-*bis* of the Criminal Code ("*Mafia-type association*"), Article 291-*quater* of Presidential Decree 43 of 23 January 1973 ("*Criminal association involving the contraband of tobacco processed abroad*"), and Article 74 of Presidential Decree 309 of 9 October 1990 ("*Association aimed at illicit trafficking of narcotic or psychotropic substances*"); crimes concerning the "trafficking of migrants" indicated in Article 12(3)(3-*bis*)(3-ter) and 5 of Legislative Decree 286 of 25 July 1998; crimes concerning "the obstruction of justice" indicated in Article 377-*bis* of the Criminal Code ("*Inducement not to make statements or to make false statements to the judicial authorities "*) and Article 378 of the Criminal Code ("*Personal aiding and abetting*").
In this case, the additional crimes involving the liability of the entity were not included in Legislative Decree 231/2001, as additional provisions. Instead, a separate provision was included in Article 10 of Law 146/2006, which establishes the specific administrative penalties applicable to the above crimes – making reference to the fact, in the last paragraph, that "*the provisions in Legislative Decree 231 of 8 June 2001 apply to the administrative offences referred to in the article*".

[32]Article 25-*septies* was added to Legislative Decree 231/2001 by Article 9 of Law 123, 81 of 3 August 2007, and subsequently replaced by Article 300(1) of Legislative Decree 81 of 8 April 2008. The crimes concern manslaughter (Article 589 of the Criminal Code) grievous or very grievous bodily harm (Article 590(3) of the Criminal Code), committed in violation of rules on occupational health and safety.

- crimes of receiving, laundering and using money, goods or benefits of unlawful origin, as well as self-laundering (referred to in Article 25-*octies* of Legislative Decree 231/2001)[33];
- copyright infringement crimes (referred to in Article 25-*novies* of Legislative Decree 231/2001)[34];
- crime of the inducement to refrain from making statements or to make false statements to the legal authorities (referred to in Article 25-*decies* of Legislative Decree 231/2001)[35];
- environmental crimes (referred to in Article 25-*undecies* of Legislative Decree 231/2001)[36];
- the crime of the employment of illegally staying third-country nationals (referred to in Article 25-*duodecies* of Legislative Decree 231/2001)[37];

[33]Article 25-*octies* was added to Legislative Decree 231/2001 by Article 63 of Legislative Decree 231 of 21 November 2007. The crimes concern receiving stolen goods (Article 648 of the Criminal Code), money laundering (Article 648-*bis* of the Criminal Code) and the use of money, goods or benefits of unlawful origin (Article 648-*ter* of the Criminal Code). Article 25-*octies* was amended by Article 3(5) a) of Law 186 of 15 December 2014, which introduced the crime of self-laundering (Article 648-*ter*.1), also extending the list of predicate crimes regarding the administrative liability of entities.

[34]Article 25-*novies* was introduced to Legislative Decree 231/2001 by Article 15(7) of Law 99 of 23 July 2009. The crimes concerning industrial property, as contemplated by Article 171(1) a)-*bis*, Article 171(3), Article 171-*bis*, Article 171-*ter*, Article 171-*septies* and Article 171-*octies* of Law 633 of 22 April 1941 ("*Protection of copyright and other rights connected to the exercise of this right* ").

[35] Article 25-*decies* was introduced to Legislative Decree 231/2001 by Article 4(1) of Law 116 of 3 August 2009 on "*Ratifying and implementing the United Nations Convention against Corruption, adopted by the UN General Assembly on 31 October 2003 with Resolution 58/4, signed by the Italian Government on 9 December 2003, as well regulations for internal alignment and amendments to the criminal code and code of criminal procedure*", which considers, for the purposes of the administrative liability of entities, the circumstances in Article 377-*bis* of the Criminal Code as significant, regardless of the transnational nature of the conduct.

[36]Article 25-*undecies* was introduced to Legislative Decree 231/2001 by Article 2(2) of Legislative Decree 121 of 7 July 2011. The same Decree also introduced two new crimes in the criminal code (i.e. Article 727-*bis*, the Protection of animal or protected plant species; Article 733-*bis*, the Destruction or deterioration of habitats within a protected area). Besides the two new articles in the Criminal Code, Article 25-*undecies* of Legislative Decree 231/2001 establishes other environmental crimes, already regulated by Italian law, as new types of conduct that constitute the liability of entities, and namely: (i) Legislative Decree 152/2006 (the "Environmental Code"), regarding the disposal of industrial waste water containing hazardous substances; the collection, transport, disposal, trade of waste without authorisation; the pollution of the soil, subsoil, surface or underground waters, exceeding threshold concentrations; the violation of communication obligations, and the obligation to keep mandatory registers and forms; the illegal traffic of waste; organised activities for the illegal traffic of waste (transport, export, import); the false indication of waste characteristics in certificates and its use; exceeding emission limit values; (ii) Law 150/1992 (on the trade of animal and plant species in extinction), (iii) Law 549/1993 (on measures to protect the ozone layer and environment) and (iv) Legislative Decree 202/2007 (on pollution caused by ships and in particular the negligent or intentional spillage of harmful substances into the sea).
Law 68 of 22 May 2015 "*Provisions on environmental crimes*" introduced six new crimes in the criminal code (i.e. Article 452–*bis*, "Environmental pollution"; Article 452-*ter*, "Death or injury as a consequence of an environmental crime"; Article 452-*quater*, "Environmental disaster"; Article 452-*sexies* – "Trafficking and abandonment of high-level radioactive material"; Article 452-*septies*, "Prevented control"; Article 452-*terdecies*, "Omitted clean-up". Article 452-*quinquies*, with reference to the crimes in Articles 452-*bis* and 452-*quater* also punishes the criminal conduct.
The above law also amended Article 25-*undecies* of Legislative Decree 231/2001, further extending the administrative liability of entities to include the crimes in Articles 452-*bis*, 452-*quater*, 452-*quinquies* of the Criminal Code and for the cases of aggravated association in Article 452-*octies*.

[37]Article 25-*duodecies* was added to Legislative Decree 231/2001 by Article 2(1) of Legislative Decree 109 of 16 July 2012. This crime is indicated in Article 22(12-bis) of Legislative Decree 286/1998, and punishes the employer who employs at least three workers without a residence permit (or even just one if a minor and not of a working age or if the person is exploited as indicated in paragraph 3 of Article 603-*bis* of the Criminal Code).

- the crime of racism and xenophobia (referred to in Article 25- *terdecies* of Legislative Decree 231/2001)[38];
- the crime of fraud in sports competitions, illegal exercise of gambling or betting and games of chance by means of prohibited devices (referred to in Article 25-*quaterdecies* of Legislative Decree 231/2001)[39].

Based on Article 187-*quinquies* of Legislative Decree 58/1998, the entity may be considered liable for the payment of a fine for violations of the ban indicated in Article 14 or the ban in Article 15 of Regulation (EU) 596/2014 (*i.e.* insider dealing and the unlawful disclosure of inside information; ban on market manipulation), committed in its interests or to its advantage, by persons defined as "senior managers" and "subjects managed or supervised by others". Moreover, the last paragraph of Article 187-*quinquies* establishes that the provisions in Legislative Decree 231/2001, specifically referred to therein, and concerning compliance programmes that effectively provide for exemption apply to the above violations[40].
Lastly, Article 39(2) of Decree-Law 124 of 26 October 2019 introduced Article 25-*quinquesdecies* of Legislative Decree 231/2001, entitled "Tax crimes". The Article establishes that "*In relation to the commission of the crime of false tax returns using invoices of other documents for non-existent operations indicated in Article 2 of Legislative Decree 74 of 10 March 2000, a financial penalty of up to five hundred units is imposed on the entity*".
However, paragraph 3 of Article 39 establishes that this provision will be effective from the date of publication of the relative ratifying law in the Gazzetta Ufficiale.

II. Penalties

[38] Article 25-*terdecies* was introduced to Legislative Decree 231/2001 by Article 5(2) of Law 167 of 20 November 2017. Paragraph 3-*bis* of Article 3 of Law 654 of 13 October 1975 was repealed by Article 7 of Legislative Decree 21 of 1 March 2018, therefore the reference made in Article 25-*terdecies* of Legislative Decree 231/2001 is meant to refer to Article 604-*bis* of the Criminal Code "Propaganda and incitement to commit offences for reasons of racial, ethnic and religious discrimination.

39Article 25-quaterdecies was added to Legislative Decree 231/2001 by Article 5 of Law 29 of 3 May 2019. The crime is referred to in Articles 1 and 4 of Law 401 of 13 December 1989.

[40] As amended by Article 4(13) of Legislative Decree no. 107 of 10 August 2018, Article 187-*quinquies* of Legislative Decree 58/1998 establishes the following: *Liability of the entity - 1. The entity is punished with an administrative fine ranging from twenty thousand euros up to fifteen million euros, or up to fifteen percent of the turnover, when this amount is greater than fifteen million euros and the turnover can be determined pursuant to Article 195, paragraph 1-bis, if a violation of the prohibition set forth in Article 14 or of the prohibition set forth in Article 15 of Regulation (EU) No. 596/2014 is committed in its interest or to its advantage: a) by individuals who hold the position of representatives, directors or managers of the entity or of one of its organisational units that enjoys financial and functional independence, in addition to individuals who are responsible for the management or control of the entity; b) by individuals subject to the management or supervision of one of the persons/entities referred to in letter a). 2. If as a result of the commission of offences referred to in paragraph 1, the product or profit obtained by the entity is of a significant amount, the penalty is increased by up to ten times the value of said product or profit. 3. The entity is not liable if it demonstrates that the persons indicated in paragraph 1 acted exclusively in their own interests or the interests of third parties. 4. In relation to the offences referred to in paragraph 1, the Articles 6, 7, 8 and 12 Legislative Decree 231 of 8 June 2001 apply insofar as compatible. The Ministry of Justice formulates the observations referred to in Article 6 Legislative Decree 231 of 8 June 2001, upon consultation with Consob, regarding the offences under this title."*

As regards the (significant) penalties applicable to a company that is liable under the Decree, said may be financial (currently up to a maximum of approximately 1.55 million euros)[41] prohibitory, such as bans on dealing with the public administration[42], on advertising goods or services, on carrying out activities, on a temporary or permanent basis, the suspension or withdrawal of authorisations, licences or concessions functional to committing the offence, exclusion from subsidies, financing, contributions or financial assistance and the withdrawal of items already granted and depending on an increasing level of severity or repeat offending[43].

[41] Financial penalties are decided by the criminal judge on a system based on "units", which are not less than one hundred and not more than one thousand, of an amount varying from a minimum of €258.22 to a maximum of €1549.37. When imposing financial penalties, the judge determines:

- the number of units, the gravity of the case, the extent of the company's liability and what has been done to eliminate or mitigate the consequences of the offence and prevent the commission of similar offences;
- the amount of the single unit, based on the company's financial conditions.

[42] The Siemens-Enelpower case constitutes a significant legal precedent on bans. The preliminary investigating judge of Milan, Guido Salvini, imposed, for the first time as a precautionary measure – on 27 April 2004 – a ban on Siemens Ag dealing with the public administration for one year, in the Enelpower investigation. Subsequently, on 5 May 2004, the judge ordered the original ruling to only be applied to the specific business unit in which the alleged corruption by the Siemens manager of two Enelpower directors had taken place. In other words, the ban on participating in public tenders was limited to the business unit of the Power Generation division (one of the 14 divisions of the German group), that dealt with the production of electricity by turbogas. The ban on dealing with the public administration did not cover any of the companies of the Siemens group in Italy, that could therefore continue their activities in the public tender sector.

The additional ruling of the Preliminary investigating judge of Milan appears to refer to the aforesaid Article 14(1) of Legislative Decree 231/2001, pursuant to which "*Bans concern the specific activity the entity's offence refers to*". Moreover, paragraph two of the provision establishes that "*The ban on negotiating with the public administration can also be limited to specific types of contract or to specific types of public administration.*" Moreover, pursuant to Article 46 of Legislative Decree 231/2001 "*When ordering precautionary measures, the judge takes into account the specific suitability of each of the available measures in relation to the nature and the degree of the need for precautionary measures in the case in question. Each precautionary measure must be proportional to the gravity of the fact and to the penalty that could be applied to the entity. The ban on performing the activity can only be applied as a precautionary measure when all other measures are judged to be inadequate.*

The same explanatory report on Legislative Decree 231/2001 states that the prohibitory penalty must not be inspired by a criterion that is general or indiscriminate: "*As far as possible, sanctions must affect the business unit where the offence was committed, based on principles of financial aspects and proportion. The need for this selection – it should be noted – is due to the considerable fragmentation of production areas that characterise the life of businesses*".

[43] In addition, the economic benefit for the company as a consequence of the crime is always confiscated. This may take place by the judge confiscating any company asset or account of an equivalent value and, in some cases, the conviction is published.

As regards financial penalties, said are imposed, based on Article 10(1) in all cases of administrative liability arising from a crime, while other penalties are in addition to financial penalties and possible, depending on the crime actually committed or attempted.

There are two types of rules for proportioning financial penalties:

a) objective, related to the severity of the fact and degree of the entity's liability, as well as the activities adopted to eliminate or mitigate the harmful consequences of the fact and prevent the commission of additional offences, that affect the determination of the number of units applied;
b) subjective, related to the financial conditions of the entity, that affect the determination of the financial value of the unit, in order to ensure the effectiveness of the sanction.

Financial penalties may also be reduced from one third to half, based on certain objective facts, that could be defined as attenuating.

As regards prohibitory penalties, the criteria for determining the type and duration of the prohibitory penalty are the same as for financial penalties, with reference to their suitability for preventing additional offences; they are therefore for preventive reasons, as well as for punishing the offence.

The law establishes that instead of a ban on activities – that may become an actual "death sentence"[44] for the entity – the judge may order the activity to be continued by a specifically appointed court-appointed administrator, for the main reason of avoiding serious harm to the community[45] or significant repercussions on employment. In this case, the profit deriving from the continuation of the activity will be confiscated.

Lastly, Article 17 of the Decree excludes prohibitory penalties where, before first instance proceedings start, the organisational deficiencies that caused the offence are eliminated by adopting suitable compliance programs and provided that the damage has been compensated and the profit realised is made available for confiscation.

For the sake of completeness, pursuant to Articles 9-11 of Presidential Decree 313 of 14 November 2002 (formerly Article 80 of the Decree), a national register of administrative penalties imposed on companies or other entities will be established with the central criminal records office. This register lists the penalties that have become irrevocable or that are effective for five years from the application of the financial penalty, or for ten years from the application of the ban, if a further administrative offence has not been committed in the same periods.

III. Conditions of the entity's liability

The entity may be liable in the event of the commission, or attempted commission, of a crime by one or more qualified natural persons, or if such a crime has been committed in the interest of the entity or to its advantage.

[44] See Article 16 of Legislative Decree 231/2001, which provides for a prohibitory penalty imposed on a permanent basis.
[45] In the case of an entity that performs a public service or a public utility service.

In particular, the crime must have been committed by certain subjects that have a functional relationship with the entity and, specifically, by persons that:

- hold a senior management position in the entity; or
- hold a position reporting to senior management positions.

moreover, the company is not liable, as specifically provided for by law (Article 5(2) of the Decree), if the above persons have acted exclusively in their own interests or in the interests of third parties.

IV. Modifications to entities

Legislative Decree 231/2001 governs regulations on the financial liability of the entity also in relation to modifications to entities such as the transformation, merger, demerger and disposal of the company.

According to Article 27, paragraph 1 of Legislative Decree 231/2001, the obligation to pay a financial penalty must be met by the entity with its own assets or common funds, where the notion of assets must be referred to companies and entities with legal personality, while the notion of "common funds" concerns associations that are not recognised. This provision is a form of protection in favour of the company's shareholders, people and members of associations, eliminating the risk that they may be held liable with their own assets for obligations arising from financial penalties being imposed on the entity[46]. The provision in question also reflects the Legislator's intention of identifying the entity's independent liability in relation not only to the offender (in this regard, see Article 8 of Legislative Decree 231/2001)[47] but also to individual members of the corporate structure[48].

Articles 28-33 of Legislative Decree 231/2001 govern the impact of modifications related to transformations, mergers, demergers and disposals of companies, on the liability of the entity. The Legislator considered two opposing needs:

- on the one hand, avoiding the above transactions representing a means to easily avoid the entity's administrative liability;
- on the other hand, avoiding the criminalisation of reorganisation operations with no intentions of evasion. The Explanatory Report on Legislative Decree 231/2001 states that "*The general criterion adopted was to govern the use of financial penalties in compliance with the principles in the Civil Code regarding general aspects of other debts of the original entity, maintaining,*

[46] Gennai-Traversi, op. cit., 164: "*this departs from the general provisions according to which shareholders are also liable for company obligations on an unlimited basis (Articles 2267, 2304 and 2318 of the Civil Code), and likewise members for the obligations of the association (Article 38 of the Civil Code)*".

[47] Article 8 of Legislative Decree 231/2001: "Autonomy of the entity's liability – 1. the entity also has liability when: a) the perpetrator of the crime has not been identified or cannot be charged; b) the crime is no longer punishable for a reason other than an amnesty. 2. Unless the law states differently, an entity is not prosecuted if an amnesty has been granted for a crime for which it is held liable and the individual in question has declined the application of the amnesty. 3. An entity can decline the application of an amnesty."

[48] Roberti, La responsabilità amministrativa delle persone giuridiche, delle società e delle associazioni prive di personalità giuridica e le vicende modificative *[The administrative liability of legal persons, companies and associations without legal personality and modifications]* in Nuove leggi civile commentate, 2001, 1135.

vice versa, the connection of prohibitory penalties with the business unit where the crime was committed".

In the case of a transformation, Article 28 of Legislative Decree 231/2001 states (in keeping with the nature of the operation that implies a simple change in the type of company, without causing the original legal body to be cancelled), that the entity is still liable for crimes committed prior to the date of the transformation.

In the case of a merger, the entity arising from the merger (also by absorption), is liable for the crimes which the entities participating in the merger were liable for (Article 29 of Legislative Decree 231/2001). The entity resulting from the merger in fact takes on all rights and obligations of the companies participating in the operation (Article 2504-*bis*, paragraph one, of the Civil Code)[49] and, in carrying out its company activities, also groups activities in the area in which the crimes companies participating in the merger could have been liable for[50].

Article 30 of Legislative Decree 231/2001 which establishes that, in the case of a partial demerger, the demerged company is still liable for crimes committed prior to the date on which the demerger took effect.

The beneficiaries of the demerger, whether total or partial, are jointly liable to pay the financial penalties due from the demerged entity for crimes committed prior to the date on which the demerger took effect, within the limit of the actual value of equity transferred to the individual entity.

[49] Article 2504-*bis* of the Civil Code: "Effects of the merger – *The company resulting from the merger or the incorporating company undertakes the rights and obligations of the cancelled companies.*" Legislative Decree 6/2003 amended the text of Article 2504-*bis* as follows: "Effects of the merger – *The company resulting from the merger or the incorporating company undertakes the rights and obligations of companies participating in the merger, continuing all relations, including legal proceedings, prior to the merger.*"

[50] The Explanatory Report on Legislative Decree 231/2001 clarifies that "*To prevent, with particular reference to prohibitory penalties, the rule indicated from "expanding" the punishment, inappropriately, involving "healthy" companies in direct measures that affect "unhealthy" companies (for example a modest company, liable for an offence that may be punished by a ban on dealing with the public administration, that is incorporated under a large company with listed shares) – providing, on the one hand, for the general provision that limits in any case penalties prohibiting the activity or the structures where the offence was committed (Article 14(1) of the scheme); and, moreover, the* (…) *faculty of the entity resulting from the merger to request, in appropriate cases, the replacement of the penalties with financial penalties.*" In this regard, the Legislator refers to Article 31(2) of Legislative Decree 231/2001, according to which "*Without prejudice to the provisions of Article 17, the entity that results from the merger and the entity which, in the case of a demerger, is responsible for the prohibitory penalties can request the judge to replace the prohibitory penalties with financial penalties if, following the merger or demerger, the conditions contained in letter b) of paragraph 1 of Article 17 are applicable and if the conditions contained in letters a) and c) of the same Article apply*". Article 17 provides for the following: "1. *Without prejudice to the application of financial penalties, prohibitory penalties are not applied when the following conditions exist before the first-instance court hearing begins: a) the Entity has completely refunded the damage and has either eliminated the damaging or dangerous consequences of the crime or taken effective action in this regard; b) the entity has eliminated the organisational deficiencies that allowed the crime to be committed by adopting and implementing compliance programmes suitable for preventing crimes of the same type; c) the entity has made available for confiscation the profit realised from the crime.*"

This limit does not apply to beneficiary companies, assigned, even only partially, the business unit where the crime was committed.[51].

The prohibitory penalties relating to the crimes committed prior to the date on which the demerger took effect apply to the entities where the business division within which the crime was committed is found or has been transferred even in part.

Article 31 of Legislative Decree 231/2001 establishes common provisions on mergers and demergers, concerning the determination of sanctions in the case that such extraordinary transactions took place before the end of the ruling. In particular, the principle based on which the judge must proportion the financial penalties, according to the criteria in Article 11(2) of Legislative Decree 231/2001 [52] is clarified, referring to the financial conditions of the entity originally responsible for the offence, and not to those of the entity that should pay the penalty following the merger or demerger.

In the case of a prohibitory ban, the entity that is liable following the merger or demerger may request the judge to convert the prohibitory penalty into a financial penalty, on condition that: (i) the organisational inefficiency which made it possible for the crime to be committed has been eliminated, and (ii) the entity has compensated the damage and made available (for confiscation) any profit realised[53]. Article 32 of Legislative Decree 231/2001 enables the judge to take into account convictions already handed down to entities participating in the merger or the demerged entity in order to constitute a repeat offence, in accordance with Article 20 of Legislative Decree 231/2001, in relation to the offences of the entity resulting from the merger or the beneficiary of

[51] This provision appears partially in line with Article 2504-*decies* (2) of the Civil Code, pursuant to which "*Each company is jointly liable, within the limits of the actual value of the equity transferred or remaining, for the debts of the demerged company that have not been paid by the merging company.*" Legislative Decree 6/2003 transferred this provision to Article 2506-*quater* of the Civil Code, amending it as follows: "*Each company is jointly liable, within the limits of the actual value of the equity transferred or remaining, for the debts of the demerged company that have not been paid by the merging company*". According to Gennai-Traversi, *op. cit.*, 175: "*As regards a total merger, Article 30(2) – although not establishing a specific provision – indicates that administrative liability for offences due to crimes committed prior to the merger, refers not to the demerged company, but only to the beneficiaries of the demerger, as they are the entities indicated by law that are jointly liable for the payment of financial penalties due from the demerged entity. This is also a consequence of the fact that once the total merger has taken place, the original company is normally cancelled and, in any case, is without its assets*".

[52] Article 11 of Legislative Decree 231/2001: *Rules for proportioning for financial penalties - 1. When establishing the financial penalty, the judge determines the number of units considering the gravity of the case, the extent of the entity's liability and what has been done to eliminate or mitigate the consequences of the crime and prevent the commission of similar crimes. 2. The amount of each unit is based on the financial situation and earnings of the entity in order to ensure the effectiveness of the penalties (…)*".

[53] The Explanatory Report on Legislative Decree 231/2001 clarifies the following: "*The entity resulting from the merger and the entity which, in the event of a demerger, would be exposed to a prohibitory ban may clearly avoid the adoption of the penalty, by remedying the consequences of the crime, in accordance with the terms indicated in general in Article 17. However, it was considered appropriate to establish* (…)*, that when the aforesaid provision is precluded from the time limit on starting proceedings being exceeded, the entity considered may, in any case, request the judge to replace the prohibitory penalty with a financial penalty of an amount equal to one or two times that are imposed on the entity for the same crime. The replacement is admitted on condition that, following the merger or demerger, an organisational change has taken place that is suitable for preventing the commission of new crimes of the same kind and, moreover, the entity has compensated the damage or eliminated the consequences of the crime and made available for confiscation any profit realised (meaning the part referable to the entity). In any case, the foregoing is without prejudice to the possibility to request a conversion also as an enforceable action in compliance with Article 78*".

the demerger, relative to the crimes subsequently committed[54]. In the case of disposals and company transfers, unitary provisions (Article 33 of Legislative Decree 231/2001)[55] apply, modelled on the general provision of Article 2560 of the Civil Code[56]; the transferee, in the case of the disposal of a company in whose activities the crime was committed, is jointly liable for the payment of the financial penalty imposed on the transferor, with the following limitations:

- the foregoing is without prejudice to the transferor's right to enforcement;
- the purchaser's obligations are limited to the value of the company sold and the financial penalties shown in the mandatory accounts, as a result of administrative offences which the purchaser was aware of.

On the contrary, the prohibitory penalties imposed on the transferor are not extended to the purchaser[57].

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[54] Article 32 of Legislative Decree 231/2001: "Relevance of mergers or demergers in case of repeat offending - *1. In cases of the liability of the entity that results from a merger or benefits from a demerger for crimes committed after the date of the merger or demerger, the judge may consider that repeat offending has taken place, in accordance with Article 20, if a conviction was obtained against the entities involved in the merger or the demerger for offences committed before the date. 2. In this context, the judge will take into consideration the nature of the offence and the activity involved as well as the characteristics of the merger or demerger. 3. With respect to the entities benefiting from the demerger, repeat offending can be considered, in accordance with paragraphs 1 and 2, only if they have been transferred, even in part, the business unit in which the offence for which the demerged entity was convicted was committed.* The Explanatory Report on Legislative Decree 231/2001 clarifies that "*In this case, repeat offending is not automatic, but at the discretion of the judge, in relation to the concrete circumstances. As regards the beneficiaries of the merger, the crime only applies if the entity was transferred, even partially, the business unit where the previous crime was committed*".

[55] Article 33 of Legislative Decree 231/2001: "Disposals. - *1. In the case of the disposal of a company where a crime has been committed, the purchaser is obliged, except for the benefits from the examination estimate of the seller and within the limits of the value of the company, to pay the financial penalties. 2. The purchaser's obligations are limited to the financial penalties shown in the accounts, as a result of administrative offences which the purchaser was aware of. 3. The provisions of this article are also applied in the case of the transfer of a company.* Regarding this point, the Explanatory Report on Legislative Decree 231/2001 clarifies the following: "*This also means transactions that may be carried out to avoid liability: and although more meaningful, there are, in relation to them, opposing needs to protect the transfer and security of the legal condition, as they concern a presumed specific succession that does not change the identify (and liability) of the purchaser or transferee*".

[56] Article 2560 of the Civil Code: "Debts of the sold company– *The transferor is not free of debts concerning the operation of the sold company prior to the transfer, unless permitted by creditors. In the transfer of a business company, the purchaser of the company is also liable for the aforesaid debts, if they result from mandatory accounts*".

[57] According to Roberti, *op. cit.*, 1141, the disposal of a company would rule out prohibitory penalties. More in general, on the issue of administrative liability regarding modifications to entities, see, among others, Castellini, *Per trasformazioni e fusioni si segue il Codice Civile [Follow the Civil Code for transformations and mergers],* in *Guida al Diritto*, 2001, no. 26, 80, Roberti, *op. cit.*, 1127 and following; De Marzo, *Il d.lgs. n. 231/2001: responsabilità patrimoniale e vicende modificative dell'ente [Legislative Decree 231/2001: financial liability and modifications to entities]*, in *Corriere Giuridico*, 2001, no. 11, 1527 and following; Busson, *Responsabilità patrimoniale e vicende modificative dell'ente [Financial liability and modifications to entities],* in AA.VV., *Responsabilità degli enti*, *cit.* edited by Garuti, 183 and following.; Iannacci, *Operazioni straordinarie – Le vicende modificative dell'ente e la responsabilità amministrativa [Modifications to entities and administrative liability],* in *Diritto e Pratica delle Società*, 2002, no. 3, 12 and following; Apice, *Responsabilità amministrativa degli enti: profili civilistici [Administrative liability of entities: statutory profiles]* in *Diritto e Pratica delle Società*, 2002, no. 3, 8 and following; De Angelis, *Responsabilità patrimoniale e vicende modificative dell'ente (trasformazione, fusione, scissione, cessione d'azienda) [Financial liability and modifications to entities (transformations, mergers, demergers, company disposals]*, in *Le Società*, 2001, no. 11, 1326 and following; Napoleoni, *Le vicende modificative dell'ente [Modifications to entities],* in *Responsabilità degli enti per i reati commessi nel loro interesse [The liability of entities for crimes committed in their interest],* supplement to no. 6/03 *Cassazione penale*, 99 and following.

V. Crimes committed abroad

According to Article 4 of Legislative Decree 231/2001, the entity may be liable in Italy regarding crimes – which are significant for the purposes of the administrative liability of entities – also committed abroad[58]. The Explanatory Report on Legislative Decree 231/2001 underscores the need to apply penalties to a type of crime that occurs often, also in order to avoid the easy circumvention of the entire legislation in question.

The conditions (established by regulations or that may be inferred from Legislative Decree 231/2001) on which the entity's liability for crimes committed abroad are based are as follows:

(i) the crime must be committed abroad by a subject functionally related to the entity, pursuant to Article 5(1) of Legislative Decree 231/2001;

b) the entity must have its registered office in Italy;

(iii) the entity may only be liable in the cases and conditions indicated in Articles 7, 8, 9, 10 of the Criminal Code (in cases where the law states that the guilty party – a natural person – is punished as requested by the Minister of Justice, proceedings are brought against the entity only if the request is also made against the entity)[59]. Reference to Articles 7-10 of the

[58]Article 4 of Legislative Decree 231/2001 establishes the following: "1. In the cases and under the conditions envisaged in Articles 7, 8, 9 and 10 of the Criminal Code, those entities that have their head offices in Italy are also liable to prosecution for crimes committed abroad, provided that the State where the offence was committed does not intend to prosecute. 2. In those cases where the law provides that the offender is punished on request of the Minister of Justice, the entity in question will only be prosecuted if the request from the Minister also involves the entity itself".

[59] Article 7 of the Criminal Code: "Crimes committed abroad – The citizen or foreigner who commits one of the following crimes abroad is liable according to Italian law: 1) crimes against the personality of the Italian State; 2) crimes of the forgery of the seal of the State and using said forged seal; 3) crimes of the forgery of money, public credit instruments, duty stamps and distinctive signs or instruments; 4) crimes committed by public officers serving the State, abusing their powers or violating the duties of their office; 5) any other crime for which special legal provisions or international conventions establish that Italian criminal law is applicable". Article 8 of the Criminal Code: ""*Political crimes committed abroad – The citizen or foreigner who commits a political crime abroad not included in the crimes listed in number 1 above, is liable according to Italian law, on request of the Ministry of Justice. If the crime can be punished following a complaint filed by the injured party, the lawsuit is necessary, besides the request. Under criminal law, a political crime is any crime committed to the detriment of a political interest of the State, or a political right of the citizen. A common crime committed entirely or in part for political reasons is also considered as a political crime*." Article 9 of the Criminal Code: "*A common crime committed by a citizen abroad – The citizen who, apart from the cases indicated in the previous two articles, commits a crime abroad for which Italian law imposes a life sentence or imprisonment of at least three years, is punished according to the same law, provided they are in the territory of the State. If the crime envisages a shorter term of imprisonment, the offender is punished on request of the Minister of Justice or following an application or lawsuit filed by the injured party. In cases established in previous provisions, if the crime is committed to the detriment of the European Community, a foreign state or a foreigner, the offender is punished on request of the Minister of Justice, if extradition has not been granted, or not accepted by the Government of the State where the crime was committed. In cases established in previous provisions, the request of the Minister of Justice or the application or lawsuit of the injured party are not necessary for the crimes contemplated in Articles 320, 321 and 346-bis.*" Article 10 of the Criminal Code: "*Common crime committed by a foreigner abroad – A foreigner who, apart from the cases indicated in Articles 7 and 8, commits a crime abroad, to the detriment of the State or a citizen, for which Italian law imposes a life sentence or imprisonment of at least one year, is punished according to the same law, provided they are in the territory of the State and a request bas been made by the Minister of Justice or following an application or lawsuit filed by the injured party. If the crime is committed to the detriment of the European Communities of a foreign state or a foreigner, the offender is punished according to Italian law, on request of the Minister of Justice, provided that: 1) he/she is in the territory of the State; 2) the crime is punished by a life sentence or imprisonment of at least three years; 3) extradition has not been granted, or not accepted by the Government of the State where the crime was committed, or by the State the person belongs to. The request of the Minister of Justice or the application or lawsuit of the injured party are not necessary for the crimes contemplated in Articles 317, 318, 319, 319-bis, 319-ter, 319-quater, 320, 321, 322 and 322-bis*".

Criminal Code should be linked to provisions in Articles 24 to 25-*octies* of Legislative Decree 231/2001, therefore – also in compliance with the principle of legality in Article 2 of Legislative Decree 231/2001 – with regard to the crimes referred to in Articles 7-10 of the Criminal Code, the company may only be liable for those crimes for which it is liable according to specific legislation[60];

(iv) there are cases and conditions as of the above articles of the criminal code, against the entity where the State does not proceed in the place where the crime was committed.

VI. Proceedings for establishing the offence

Liability for an administrative offence arises from an offence which is established in criminal proceedings. In this regard, Article 36 of Legislative Decree 231/2001 states that "*The judges who are responsible for dealing with administrative offences committed by entities are those responsible for the crimes from which the offences arise. The investigation proceedings for administrative offences committed by entities are based on the provisions on the competence of the courts and the related trial provisions relative to the crimes from which the administrative offences arise*".

Another rule, inspired by the rationale of effective, uniform and efficient trial proceedings, [61], is the mandatory merging of proceedings: a trial must, as far as possible, centre on the criminal trial brought against the natural person committing the predicate crime for which the entity is liable (Article 38 of Legislative Decree 231/2001). This rule is reconciled in the provisions of Article 38(2) of Legislative Decree 231/2001 which, instead, regulates cases in which separate proceedings take place for the administrative offence[62]. The entity is present at the criminal proceedings together with their legal representative, unless the legal representative is accused of the crime from which the administrative offence arises[63]; when the legal representative is not present, the

[60] De Simone, *op. cit.*, 96 and following, that provides further clarifications on the crime.

[61] As indicated by Explanatory Report on Legislative Decree 231/2001.

[62] Article 38(2) of Legislative Decree 231/2001: "*Administrative offences committed by an entity are subject to separate proceedings only when: a) the proceedings have been suspended in accordance with Article 71 of the Code of Criminal Procedure* [suspension of proceedings due to the incapacity of the accused, Ed.]*; b) the proceedings have been settled by summary judgment an accelerated procedure or by the application of the penalty in accordance with Article 444 of the Code of Criminal Procedure, or a penalty order has been issued;* [application of the penalty on request, Ed..]*, or a penalty order has been issued; c) compliance with the procedural requirements make it necessary.*" For the sake of completeness, reference is also made to Article 37 of Legislative Decree 231/2001, pursuant to which "*An investigation of an administrative offence committed by an entity does not proceed when the criminal proceedings can no longer begin or continue against the perpetrator of the crime due to one of the conditions for prosecution not being met*" (the conditions in Part III of Book V of the Code of Criminal Procedure: lawsuit, application for proceedings, request for proceedings or authorisation to proceed, indicated in Articles 336, 341, 342 and 343 respectively of the Code of Criminal Procedure).

[63] "*The rationale of the provision that excludes the possibility of the entity's representative being the same person charged with the offence appears evident: as the first subject has the duty of ensuring the defence of the entity in proceedings relative to the offence, the potential conflict between the interests of the two positions could make the defence incompatible. If this is the case, there is no doubt that the same ban would also apply when the legal representative of the entity is charged with a crime related to or connected with that which the administrative offence refers to*"; Ceresa– Gastaldo, *Il "processo alle società" nel d.lgs. 8 giugno 2001 ["Companies on trial"] in Legislative Decree of 8 June 2001], no. 231*, Turin, 24.

entity is represented by a court-appointed lawyer (Article 39(1)(4) of Legislative Decree 231/2001)[64].

VII. The Compliance Programme for preventing crimes

As the purpose of the Decree is not only to punish but to prevent the commission of crimes, the legislator has established in some cases a general exemption, and in others, a reduction in penalties, if a suitable prevention system is present.

In particular, Article 6 of the Decree, in introducing administrative liability, establishes a specific form of exemption from this liability if the entity, in the case of a crime committed by a person holding a senior management position, can demonstrate that:

a) the management body of the entity has adopted compliance programmes designed to prevent the type of crimes committed;
b) the task of ensuring that the compliance programmes function and are observed, and that they are kept up-to-date, has been allocated to a unit of the entity with autonomous powers of initiative and control;
c) the persons committed the crime by fraudulently circumventing the aforesaid compliance programmes;
d) there was neither insufficient supervision nor a lack of supervision by the body referred to in letter b).

If the aforesaid conditions apply, overall, at the time the crime or offence was committed, liability is excluded; however, even the adoption and implementation of the "compliance programme" after a crime or offence has been committed still have positive effects as regards penalties that may be imposed on the entity (Articles 12(2), 17(1) b) of the Decree).

In cases where, instead, a crime is committed by subjects managed or supervised by others, the company is liable if the commission of the crime was made possible due to the violation of the company's management and supervision obligations[65]. In this regard, however, Article 7 of Legislative Decree 231/2001 establishes that the company has not violated its management and supervision obligations if, prior to the crime being committed, it adopted and effectively implemented a compliance programme suitable for preventing the types of crimes committed.

The Decree identifies the needs that compliance programmes must meet in relation to extending delegated powers and the risk of the commission of crimes, basically indicating the scheme of the programmes, and namely:

a) identifying the activities within which crimes may be committed;

[64] "*Where the legal representative of the entity is also charged for the crime which the administrative offence refers to, the entity will participate in the criminal proceedings by appointing a different legal representative for the trial* " (Garuti, in AA.VV., *Responsabilità degli enti [Liability of entities], cit*., 282 s.).

[65] In this regard, reference is made, among others, to the decision of the Court of Milan of 27 April 2004, according to which "*In order for the entity to have liability for crimes committed by subjects managed or supervised by others (Article 5, paragraph 1(b)), it is necessary, pursuant to Article 7 of Legislative Decree 231 of 2001, for the commission of the crime to have been made possible due to the violation of the supervision and control obligations that the entity is required to observe*".

b) establishing specific programmes designed to assist management in formulating and implementing the entity's decisions in relation to the crimes to be prevented;
c) identifying methods for managing the financial resources necessary for preventing the crimes;
d) setting out obligations for sending information to the unit responsible for supervising the functioning and observance of the compliance programmes;
e) introducing a disciplinary system penalising failure to comply with the measures set out in the compliance programme.

It also establishes that the programme is effectively adopted, only if the following apply:
a) periodic verification and eventual modification of the programme when significant violations of the regulations have been identified or when the organisation or its business activities change;
b) a disciplinary system penalising failure to comply with the measures set out in the programme.

VIII. Characteristics of compliance programmes pursuant to Article 30 of Legislative Decree 81/2008 ("Consolidated Safety Act")

From the outset, the problem was posed regarding the interpretation of the relationship between the compliance programmes contemplated in Legislative Decree 231/2001 and specific existing rules on occupational safety based on a structured *"procedural approach"* aimed at limiting the risk of occupational accidents[66].

The coordination between regulations on the administrative liability of companies (Legislative Decree 231/2001) and on *"occupational health and safety"* is currently regulated by Article 30 of the Consolidated Safety Act (Legislative Decree 81/2008), in which the legislator establishes the characteristics that the programme must have to effectively provide for the exemption from administrative liability of natural persons pursuant to Legislative Decree 231/2001.

Article 30 comes under Section II of Part III of Legislative Decree 81/2008, governing the specific stage of the risk assessment, demonstrating the close relationship between the risk assessment stage and compliance programmes, confirming that a suitable "risk governance" system can only be created based on an in-depth risk assessment.

[66] Aldovrandi, *I "modelli di organizzazione e gestione" nel D.Lgs. 8 giugno 2001, n. 231: aspetti problematici "dell'ingerenza penalistica" nel "governo" delle società [Compliance programmes in Legislative Decree 231 of 8 June 2001 problematic aspects of "criminal interference" in the "governance" of companies]* in *the Paper presented at the conference "Corporate Governance – strutture ed esperienze a confronto* [*Corporate Governance – comparing structures and experiences]* held at Studi di Milano Bicocca University on 7 June 2007.

The result of the risk assessment (also provided for in Article 6(2) a) and Article 7(3) of Legislative Decree 231/2001) must also indicate the company activities in relation to which the above crimes may be committed due to the violation of accident prevention regulations (*"sensitive activities"*), and therefore the profiles of these activities which require compliance with law, the preparation of safeguards to promptly identify risk situations, identifying – consequently – the relevant regulatory provisions on prevention.

It is therefore clear that the first requirement of the compliance programme, to avoid occupational accidents occurring or in any case, to effectively exempt the administrative liability of companies regarding accident prevention regulations pursuant to Article 25-*septies* is to ensure compliance with regulations on prevention.

Thus Article 30(1) of Legislative Decree 81/2008 states that the compliance programme must ensure, on a priority basis and as a prerequisite, the legal conformity of the company to occupational health and safety requirements, and in particular, to all legal obligations concerning:
"a) compliance with technical and structural legal standards relating to equipment, facilities, workplaces and chemical agents;
b) risk assessment activities and consequent prevention and protection measures;
c) organisational activities, such as emergencies, first aid, contract management, periodic safety meetings, consultation of safety representatives;
d) health surveillance;
e) worker information and training;
f) supervisory activities with reference to compliance by personnel with procedures and work instructions in terms of safety;
g) obtaining documentation and mandatory certification;
h) periodic checks on the application and effectiveness of procedures adopted.

It is therefore necessary for the company, based on its own corporate processes (normal, abnormal, including potential emergency situations), to prepare suitable procedures that guarantee the conformity of its conduct as regards applicable legislation, training control activities carried out, in a specific register (Article 30(2).

Similarly, it is necessary for the compliance programme to establish functions that can safeguard protected interests.

in fact, organising safety means ensuring a stable result, through the adoption of appropriate measures and updating them by cooperating with several subjects that – based on their different, necessary expertise – share the work, allocating duties.

Therefore, in relation to the nature, dimensions and type of activity carried out, the company must therefore establish how to organise – from a functional viewpoint – management activities**,** identifying which duties must be carried out by each player that takes part in the decision-making processes (Article 30(3).

The functional organisational structure, with occupational health and safety duties and responsibilities, must be formally defined, identifying at least the person with specific professional expertise and experience, in order to meet all applicable legal obligations.

This functional definition shall ensure, for each position identified, the technical expertise, the powers necessary to verify, assess, manage and control the risk.

Moreover, the compliance programme occupational health and safety must also provide for a suitable system to control its adoption and to check that suitable conditions for adopted measures are maintained over time (Article 30(4).

This control system must be able to:

- verify the adequacy of the programme regarding its actual capacity to prevent occupational health and safety crimes;
- monitor the effectiveness of the programme (verifying the consistency of actual conduct and the programme adopted);
- analyse the suitability of adopted prevention measures over time;
- update the programme when *"significant violations of regulations on occupational health and safety are identified or during changes to the organisation and in activities regarding scientific and technological progress"* (Article 30(4) b).

Lastly, the amendment to Article 51 of Legislative Decree 81/2008 by Article 30(1) a) of Legislative Decree 106 of 3 August 2009 on *Provisions amending Legislative Decree 81 of 9 April 2008 on occupational health and safety*", which, introducing paragraph 3-*bis*, establishes the possibility for companies to request the approval of the adoption and effective implementation of compliance programmes for occupational health and safety by joint bodies set up by one or more employers' and workers' associations which are more representative at national level[67].

IX. Codes of conduct prepared by associations representing entities

Article 6(3) of Legislative Decree 231/2001 states that "*compliance programmes may be adopted, ensuring the requirements of paragraph 2, based on the codes of conduct drawn up by the associations representing the entities, communicated to the Ministry of Justice which, in agreement with the competent Ministries, may make, within thirty days, observations on the suitability of the programmes for preventing offences*".

In compliance with Article 6(3) of Legislative Decree 231/2001, Confindustria was the first association to issue a code of conduct for the development of compliance programmes (*Guidelines for creating compliance programmes pursuant to Legislative Decree 231 of 8 June 2001*) providing, among others, methodological indications for identifying risk areas and the structure of the compliance programme.

On this point, Confindustria Guidelines suggest using risk assessment and risk management processes and establish the following stages for defining the compliance programme:

- the identification of risks;
- the planning of a preventive control system;

[67] "Joint bodies" refers to the definition in Article 2(1) ee) of Legislative Decree 81/2008, according to which "*joint bodies are bodies set up on the initiative of one or more employers and workers' associations which are most representative at national level, as the means to: planning training activities and developing and acquiring good practices for prevention purposes developing actions concerning occupational health and safety; providing assistance for companies in meeting applicable obligations; all other activities or functions assigned by law or by applicable collective agreements*".

- the adoption of some general tools, of which the main ones are a code of ethics and a disciplinary system;
- the identification of criteria for selecting the control body.

X. Review of suitability

The company's liability is ascertained by the criminal judge based on:

a) verifying the existence of the predicate crime for the company's liability; and
b) reviewing the suitability of the compliance programmes adopted.

The review of the abstract suitability of the compliance programme in preventing the crimes indicated in Legislative Decree 231/2001 is conducted on a "post prognosis" basis.

The opinion on suitability is provided based on a criterion that is basically *ex ante* so the judge will ideally consider the company context at the time when the offence was committed in order to assess the suitability of the programme adopted[68].

In other words, the compliance programme which, before the crime is committed, could and should have been considered as being able to eliminate or at least minimise, with reasonable certainty, the risk of the commission of the crime which subsequently occurred is considered as "suitable for preventing crimes"[69].

[68] Paliero, *La responsabilità della persona giuridica per i reati commessi dai soggetti in posizione apicale [The liability of the legal person for crimes committed by senior managers]* Paper presented at the Paradigma Conference, Milan, 2002, page 12 of the proceedings. Rordorf, *La normativa sui modelli di organizzazione dell'ente [Regulations on the compliance programmes of entities]*, in *Responsabilità degli enti [The liability of entities], cit.*, supplement to no. 6/03 *Cassazione penale*, 88 s.

[69] In this sense, see Amato, in the comment on the ruling of 4-14 April 2003 of the Preliminary Investigating Judge of Rome, in *Guida al diritto no. 31 of 9 August 2003*.