ORGANIZATION, MANAGEMENT AND CONTROL MODEL

EXACER S.R.L.

pursuant to Legislative Decree no. 231 of 8 June 2001 and subsequent amendments and additions

approved by resolution of the Board of Directors on 27 October 2022

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Summary

1. LEGISLATIVE DECREE NO. 231 OF 8 JUNE 2001

Introduction

The Legislative Decree no. 231 of 8 June 2001 (hereinafter Legislative Decree 231/01 or the Decree) implementing article 11 of Law no. 300 of 29 September 2000, has introduced into our legal system, in addition to the criminal liability of the natural person who materially commits the "crime", the "criminal" liability ([1]) of the entity to which he "belongs" that gains interest or benefit from the commission of the offense.

In accordance with international and community obligations ([2]), the Decree in question has introduced into our legal system a form of direct and autonomous responsibility of collective bodies, linked to the commission of specific crimes; responsibility defined as "administrative", but in substance configurable as a real form of criminal liability ([3]).

The subjects to whose criminal action the Decree associates the rise of the responsibility of the institution, must be linked to the company by a functional relationship of dependence.

In particular, article 5 of Legislative Decree 231/2001 identifies:

- Subjects who hold functions of representation, administration, management of the entity or of one of its organizational units, with functional financial autonomy, so-called "apical";
- Subjects subject to the direction or supervision of representatives and top management;
- Subjects who exercise *de facto* management and control of the institution.

The legislator has also given specific importance to "*de facto*" situations, i.e. those situations in which the powers necessary to act autonomously are not immediately deducible from the role played within the organizational structure or from official documentation (proxies, powers of attorney, etc.).

Principle of legality

The liability of the entity arises within the limits established by law: the entity "cannot be held responsible for a fact constituting a crime, if its [criminal] liability in relation to that crime and the related sanctions are not expressly provided for by a law that came into force before the commission of the fact" (article 2 of the Decree).

([1]) On the exact legal qualification of the responsibility of the Body, the jurisprudence has repeatedly been expressed stating that "*despite the* nomen iuris *the new liability, nominally administrative, conceals its essentially criminal nature; perhaps hidden so as not to open delicate conflicts with the personalistic dogmas of criminal imputation, of constitutional rank (article 27) that can be interpreted in a reductive sense, as a prohibition of responsibility for the acts of others or, in a more varied one, as a prohibition of liability for innocent fact*". Court of Milan, Section of Judges for Preliminary Investigations – Dr. Alessandra Cerreti (order 18.03.2008). See: Court of Cassation judgment no. 3615/20.12.2005.

([2]) Namely, in particular: (a) the Brussels Convention of 26 July 1995 on the protection of the European Community's financial interests; (b) the Brussels Convention of 26 May 1997 on combating corruption of public officials of both the European Community and the Member States; (c) OECD Convention of 17 December 1997 on Combating Bribery of Foreign Public Officials in Economic and International Transactions.

([3]) The "criminal" nature of this responsibility can be deduced from four elements: a) it derives from a crime in the sense that the crime constitutes a prerequisite for the sanction; b) it is ascertained with the guarantees of the criminal trial and by a criminal magistrate; c) involves the application of criminal sanctions (pecuniary sanctions and disqualification sanctions); 4) the role of guilt is central, operating the principle of guilt.

1.2. THE CRITERIA FOR ATTRIBUTING LIABILITY

The system of administrative liability of the bodies is based on three cornerstones:

- Realization of a so-called predicate crime by a natural person (i.e. a type of crime indicated in the Decree from article 24 to article 25 *duodevicies*);
- Interest or advantage of the entity;
- Type of functional relationship (management, administration, control or dependence) that binds the natural person who committed the predicate crime to the entity.

Realization of a so-called predicate crime by a natural person

The liability of the body arises in connection with the realization of a crime, included among those strictly indicated by the legislator, by a natural person who is linked to the body by a functional relationship, which may be representative or subordination ([4]).

Interest or advantage of the entity

A constituent element of the liability in question is represented by the need that the alleged unlawful conduct has been implemented in the interest or for the advantage of the entity.

The interest or advantage of the entity is considered at the basis of the responsibility of the latter even if the interests or advantages of the offender or third parties coexist, with the sole limit of the hypothesis in which the interest in the commission of the crime by the person in a qualified position within the institution is exclusive of the offender or third parties.

Since no effect has been recognized exempt from the exclusive "advantage" of the offender or third parties, but only – as mentioned – to the exclusive interest of these subjects, the responsibility of the body must be considered even if it does not obtain any advantage or when there is an exclusive

([4]) The principle of exhaustiveness of offences which may involve the liability of the entity has been called into question by a recent doctrinal interpretative approach that has emerged in relation to the predicate offence of self-laundering (Article 25 *octies* Decree 231). In this regard, there are two orientations: on the one hand, that liability 231 is limited to cases in which the basic offence of self-laundering is also one of the predicate offences indicated in Decree 231; on the other hand, that for which the aforementioned responsibility would also arise in the presence of further types of basic crime. It should be noted that, as a result of the extensive interpretation (the second mentioned above), the entity could incur liability 231 also in relation to crimes unrelated to the catalog contained in Decree 231. This catalogue would lose its exhaustive nature and would be integrated through the indeterminate reference to further types of crime, with the consequent difficulty of preparing adequate prevention measures and the risk of widening the scope of application of the 231 Models to further areas of compliance not included in the scope of Decree 231.
See, finally, Court of Cassation, judgment no. 2234 of 20 January 2022, which established the principle according to which a legal person cannot be convicted of a predicate offense not strictly included in the catalog referred to in Legislative Decree 231/2001, based on an analogical interpretation.
The Court of Cassation, in particular, annulled with this reason the declaration of responsibility of a company, accused of an environmental crime, "*because the fact does not constitute an administrative offense*".
In the trial on the merits, the company was found guilty of spilling hydrocarbons, an offense governed by article 6, letters a) and d), Legislative Decree 172/2008.
The judges of legitimacy have excluded an analogous interpretation of article 256 Legislative Decree no. 152/2006 such as to also include the aforementioned criminal case.
"*From all the rules of Legislative Decree no. 231 of 2001, in fact, it emerges that the Italian system, unlike other legal systems, does not provide for an extension of liability for crime to legal persons of a general nature, that is, coinciding with the entire scope of the incriminations in force for natural persons, but limits this liability only to the criminal offenses strictly indicated in the decree itself.*".

advantage of the offender or third parties, provided that the entity has an interest, possibly competing with that of third parties, to the commission of the crime perpetrated by persons in a qualified position in its organization.

Beyond the aforementioned clarifications, the liability provided for by the Decree therefore arises not only when the unlawful conduct has determined an advantage for the society itself, but also in the hypothesis in which, even in the absence of such a concrete result, the unlawful act has found reason in the interest of the entity.

In short, the two words express legally different concepts and represent alternative assumptions, each with its own autonomy and its own scope of application.

On the meaning of the terms "interest" and "advantage", the Government Report accompanying the Decree attributes to the first a markedly subjective value, susceptible to an *ex ante* evaluation – so-called purpose of utility – as well as to the second a markedly objective value referring therefore to the actual results of the conduct of the acting subject who, although not directly targeted by an interest of the entity, has, however, achieved an advantage in its favour by its conduct – which is susceptible to *ex post* verification.

The essential characteristics of the interest have been identified in:

- Objectivity, understood as independence from the personal psychological convictions of the agent and in its necessary correlative rooting in external elements susceptible to verification by any observer;
- Concreteness, understood as the inscription of interest in relationships that are not merely hypothetical and abstract, but really existing, to safeguard the principle of offensiveness;
- Actuality, in the sense that the interest must be objectively subsisting and recognizable at the time when the fact was recognized and must not be future and uncertain, otherwise lacking the injury to the asset necessary for any offense that is not configured as a mere danger;
- Not necessarily economic importance, but also attributable to a company policy.

In terms of content, the advantage attributable to the body – which must be kept distinct from profit – can be:

- Direct, i.e. attributable exclusively and directly to the body;
- Indirect, i.e. mediated by results acquired by third parties, but susceptible to positive effects for the Institution;
- Cheap, although not necessarily immediate.

The legislation on the criminal liability of entities is generally based on predicate offences of an intentional nature.

The introduction of culpable offences in the field of safety in the workplace – carried out by Law no. 123 of 3 August 2007 ("new" article 25 *septies* then repealed and replaced by article 300 of Legislative Decree no. 81 of 9 April 2008) – has, however, re-proposed the absolute centrality of the question inherent in the subjective matrix of the imputation criteria.

From this point of view, if on the one hand it is stated that in culpable crimes the conceptual couple interest/advantage must be referred not to the unintended unlawful events, but to the conduct that the natural person has held in the performance of his activity, on the other hand it is maintained that the culpable crime, from a structural point of view, does not reconcile with the concept of interest.

The jurisprudence has considered that in culpable crimes the interest or advantage of the entity should be assessed with regard to the entire type of crime, not with respect to the event of the same. In fact, while in intentional predicate offences the event of the offence may well correspond to the interest of the entity, the same cannot be said in the offences based on culpability, given the counter-will that characterizes the latter pursuant to article 43 of the Italian Criminal Code.
Think, in fact, of crimes in the field of health and safety: hardly the event injury or death of the worker can express the interest of the institution or translate into an advantage for the same.
In these cases, therefore, the interest or advantage should rather refer to conduct that does not comply with the precautionary rules. Thus, the interest or advantage of the institution could be seen in the saving of costs for safety or in the enhancement of the speed of execution of services or in the increase in productivity, sacrificing the adoption of accident prevention devices, as recently reiterated by the Court of Cassation (see also Court of Cassation, judgment no. 16713/2018, Court of Cassation judgment no. 48779/2019, Court of Cassation, judgment no. 3157/2019, Court of Cassation, judgement no. 3731/2020).
On the basis of these premises, some case-law rulings have identified the interest in the "*finalistic tension of the unlawful conduct of the author aimed at benefiting the entity itself, by virtue of an ex ante judgment, that is to be reported at the time of the violation of the precautionary rule*". Only conscious and voluntary conduct aimed at favoring the entity is considered attributable to the institution.
On the other hand, conduct resulting from simple inexperience, from the mere underestimation of the risk or even from the imperfect execution of the accident prevention measures to be adopted is irrelevant.
Another part of the jurisprudence and doctrine has instead also understood the criterion of interest in an objective key, referring to the objective or externally recognizable tendency of the crime to realize an interest of the entity. It should, therefore, be ascertained from time to time only whether the conduct that led to the event of the crime was or was not determined by choices objectively falling within the sphere of interest of the entity.
With the consequence that ultimately, with respect to culpable crimes, the only criterion really suitable for identifying a link between the action of the natural person and the responsibility of the entity, would be that of the advantage, to be assessed objectively and *ex post*.
The first thesis, which distinguishes interest and advantage even in culpable crimes, seems to reflect more faithfully the system of decree 231, which shows to consider the two concepts separately.

The concept of "group" interest

The thesis that supports the unitary characterization between the corporate purpose of the *holding company* and its subsidiaries, inevitably brings with it the affirmation of the legitimacy of the pursuit of a global and unitary interest within the group. This is an assumption, however, not peaceful and in any case not always shared in doctrine and jurisprudence.

The currents of doctrinal thought that emerged on the subject, prior to the reform, were basically three.
A first orientation ([5]) reconstructed as an essential feature of the group the belonging to an enlarged community, based on a general coordination action of the group leader.
A second and opposite line of interpretation ([6]) held, however, that the group interest was an empty and dangerous formula, which masked, in reality, exclusively the protection of the interests of the parent company and its controlling shareholders, to the detriment of the subsidiaries.
A third, median, orientation ([7]), affirming the idea of ownership in the parent company of a "power-duty" of influence in the management of individual companies, specified the concept of group interest, in relation to the limits and conditions under which transactions inspired by the interest of the group can be considered legitimate.
On the basis of this reconstructive framework, in particular, it was argued that three different interests emerged within the group: the interest of the parent company, the interest of the subsidiaries and the interest of the group, which, therefore, is nothing more than one of the "further interests" that emerge where the companies are organized in the form of a group.
In support of this assumption, it was pointed out both the indefectible socio-notional reality of control itself. In partial acceptance of this last doctrinal orientation, the jurisprudence of the Supreme Court in an arrest of 1992 upheld on the one hand the recognizability within the corporate system, of the notion of group interest, stating that "*there are no legal obstacles to the decisions taken at the level of the managing body of the parent company being then implemented by the companies of the group*"; but it specified, on the other hand, that "*activities that in pursuing group interests, contrast with those of companies, to the point of prejudicing them, cannot be considered legitimate*". Although, therefore, with this significant ruling the right of citizenship of the concept of group interest is recognized at the jurisprudential level, the Supreme Court does not go so far as to consider the sacrifice, even temporary or partial, of the subsidiaries to be legitimate.
Therefore, the recognition of the foundations of the innovative theory of compensatory advantages, which was then taking its first steps, as will be seen more widely, is denied. Finally, the concept of group interest has entered the reform of corporations. Indicative of this express legislative recognition, are the provisions of article 2497 of the Italian Civil Code, relating to the liability of the parent company, which admits, as will be better seen, the exclusion from this responsibility in the presence of an "overall result of the management and coordination action"; and article 2497 *ter* of the Italian Civil Code.ai according to which "the *decisions of companies subject to management and coordination activities, when influenced by it, must be analytically motivated*".
The non-exclusivity of the interest of the body as well as the possibility of recognizing an interest of the body without the advantage of these constitute the basis on which the possibility of recognizing the

([5]) It is the current of thought that is headed by A. Mignoli.
([6]) The hermeneutic option in analysis is headed by R. Sacchi, *Sulla responsabilità da direzione e coordinamento nella riforma delle società di capitali*, in *Giur. comm.* 2003, p. 673 et seq.; but also L. Enriques, *Vaghezza e furore. Ancora sul conflitto di interessi nei gruppi di società in vista dell'attuazione della delega per la riforma del diritto societario*, in *Verso un nuovo diritto societario, Associazione Disiano Preite*, Bologna 2002.
([7]) This current of thought is headed by: P. Montalenti, *Conflitto di interesse nei gruppi di società e teoria dei vantaggi compensativi*, in *Giur. comm.* 1995, p. 710 ff.

requirement of interest for corporate groups has been built. There are two lines of case-law in this regard.

According to a first approach, the liability of the entity, for an offence dependent on a crime that has benefited another entity belonging to the same aggregate, would be based precisely on the recognition, by the general legal system, of a group interest, which can be reconstructed through the statutory rules on consolidated financial statements, management liability and management and coordination of companies.

The group interest, recognised as relevant by the legal system (albeit in other sectors), would therefore be common to all entities belonging to the same aggregate and as such would integrate the assumption of interest for all the entities of the group, allowing each entity to contest liability for tort dependent on a criminal offence provided that the perpetrator, at the time of its perpetration, holds a qualified position within the entity to which the dispute is made, with consequent indiscriminate expansion of responsibility in the group on the basis of relationships that can be reconstructed by virtue of purely formal profiles, such as control or shareholder connection, the powers connected to offices held in the parent company or the holding nature of one of the entities involved (Section of Judges for Preliminary Investigations Trib. Milan, 20 September 2004, in *Foro it*., 2005, 556).

On the basis of a second jurisprudential orientation, it is not so much the reference to formal rules and criteria of a civil nature, provided for commercial companies and for purposes other than those considered here, to found the responsibility of the entities belonging to the same aggregate. Nor is it the future and uncertain distribution of profits that constitutes the distinction of the extension of liability, since it is a phenomenon that concerns the different requirement of advantage, which may not even occur even if there is the fundamental interest of the entity for the tort. On the contrary, it is considered that, to base the responsibility of the entity in which the offender occupies a qualified position in order to obtain advantages for other entities, is the existence of links or links between the entities involved that do not allow the favored entity to be considered as a "third party"; this is in consideration of the effects that the conditions of one entity have on the conditions of the other and of the fact that the crime is objectively intended to satisfy the interest of several subjects, including the entity in which the offender occupies a qualified position (Section of Judges for Preliminary Investigations Trib. Milan, 14 December 2004, in *Foro it*., 2005, 539).

Type of functional relationship (apical or subordinate)

The offence must be committed by:

1. **Subjects in apical position**, namely:

(a) "persons who are representational, administrative or management of the institution or of an organisational unit thereof with financial and functional autonomy";

(b) "persons who, even *de facto*, exercise the management and control of the company itself";

2. Other subjects "subject to the direction or supervision of one of the subjects indicated above".

Complicity in the crime and the "231 system"

It is important to underline that the liability of the entity may exist even where the employee who committed the offense has contributed to its realization with subjects unrelated to the organization of the entity itself.
This hypothesis is clearly represented in the Italian Criminal Code and, in particular, in Articles 110 ([8]) and 113 ([9]).
There may be several *business* sectors in which the risk of employee involvement in competition can more easily lurk and therefore, if the conditions of interest and / or advantage of the institution are met. In particular, they are relevant to contracts and, in general, partnership contracts.
The contribution in the crime can be relevant for the purposes of the responsibility of the entity also in the particular hypothesis of the so-called *extraneus* contribution in the "own" crime. In particular, the liability in competition - pursuant to article 110 Italian Criminal Code – of *extraneus* can resort where he, aware of the particular subjective qualification of his criminal partner (e.g. public official, witness, mayor, etc.), contributes in the conduct of crime precisely attributable to the latter (e.g. abuse in official acts).
In this case, the *extraneus* will respond in conjunction with the same offense provided for against the qualified person ([10]).

([8]) "*Where several persons participate in the same offence, each of them is subject to the penalty laid down for that offence".*
([9]) "*In the culpable crime, when the event has been caused by the cooperation of several persons, each of these is subject to the penalties established for the crime itself".*
([10]) In that regard, the case-law on legality has clarified that "*For the purposes of the applicability of article 117 of the Italian Criminal Code, which regulates the change of the title of the crime for some of the competitors, is necessary, for the extension of the title of crime to the competitor* extraneus, *the knowability of the subjective qualification of the competitor* intraneus" (Court of Cassation, judgment no. 25390/2019.

1.3. TYPES OF OFFENCES COVERED

The operational scope of the Decree concerns the following crimes:

Undue receipt of disbursements, fraud to the detriment of the State, a public body or the European Union or for the achievement of public funds, computer fraud to the detriment of the State or a public body and fraud in public supplies (Article 24)

Embezzlement of public disbursements (Article 316 *bis* of the Italian Criminal Code)
Undue receipt of public disbursements (Article 316 *ter* of the Italian Criminal Code)
Fraud to the detriment of the State or other public body or the European Communities (Article 640, paragraph 2, no.1, of the Italian Criminal Code)
Aggravated fraud for the achievement of public disbursements (Article 640 *bis* of the Italian Criminal Code)
Computer fraud to the detriment of the State or other public body (Article 640 *ter* of the Italian Criminal Code)
Fraud in public supplies (Article 356 of the Italian Criminal Code)
Fraud against the European Agricultural Fund (Article 2 Law 23/12/1986, no. 898)

Computer crimes and unlawful processing of data (Article 24 bis)

Electronic documents (Article 491 *bis* of the Italian Criminal Code)
Unauthorized access to a computer or telematic system (Article 615 *ter* of the Italian Criminal Code)
Possession, dissemination and abusive installation of equipment, codes and other means of access to computer or telematic systems (Article 615 *quater* of the Italian Criminal Code)
Possession, dissemination and abusive installation of equipment, devices or computer programs aimed at damaging or interrupting a computer or telematic system (Article 615 *quinquies* of the Italian Criminal Code)
Interception, impediment or unlawful interruption of computer or telematic communications (Article 617 *quater* of the Italian Criminal Code)
Possession, dissemination and abusive installation of equipment and other means to intercept, prevent or interrupt computer or telematic communications (Article 617 *quinquies* of the Italian Criminal Code)
Damage to information, data and computer programs (Article 635 *bis* of the Italian Criminal Code)
Damage to information, data and computer programs used by the State or other public body or otherwise of public utility (Article 635 *ter* of the Italian Criminal Code)
Damage to computer or telematic systems (Article 635 *quater* of the Italian Criminal Code)
Damage to computer or telematic systems of public utility (Article 635 *quinquies* of the Italian Criminal Code)
Computer fraud of the certifier of electronic signature (Article 640 *quinquies* of the Italian Criminal Code)
Violation of the rules on the National Cyber Security Perimeter (Article 1, paragraph 11, Legislative Decree no. 105 of 21 September 2019)

Organised crime offences (Article 24 ter)

Criminal association (Article 416 of the Italian Criminal Code)
Mafia-type association, including foreign ones (Article 416 *bis* of the Italian Criminal Code)
Mafia political electoral exchange (Article 416 *ter* of the Italian Criminal Code)
Kidnapping for the purpose of extortion (Article 630 of the Italian Criminal Code)
Association aimed at illicit trafficking of narcotic or psychotropic substances (Article 74 d.P.R. 9 October 1990 no. 309)
All crimes if committed using the conditions provided for by article 416 *bis* of the Italian Criminal Code to facilitate the activities of the associations provided for in the same article (Law no. 203/91)
Illegal manufacture, introduction into the State, sale, transfer, possession and carrying in a public place or open to the public of weapons of war or parts thereof, explosives, clandestine weapons and several common guns excluding those provided for in Article 2, third paragraph, of Law no. 110 of 18 April 1975 (Article 407, paragraph 2 letter a), number 5) of the Italian Criminal Procedure Code)

Embezzlement, extortion, undue inducement to give or promise benefits, corruption and abuse of office (Article 25)

Bribery (Article 317 of the Italian Criminal Code)
Corruption for the exercise of the function (Article 318 of the Italian Criminal Code)
Corruption for an act contrary to official duties (Article 319 of the Italian Criminal Code)
Aggravating circumstances (Article 319 *bis* of the Italian Criminal Code)
Corruption in judicial acts (Article 319 *ter* of the Italian Criminal Code)
Undue inducement to give or promise benefits (Article 319 *quater* of the Italian Criminal Code)
Bribery of a person in charge of a public service (Article 320 of the Italian Criminal Code)
Penalties for the corruptor (Article 321 of the Italian Criminal Code)
Incitement to corruption (Article 322 of the Italian Criminal Code)
Embezzlement, bribery, undue inducement to give or promise benefits, corruption and incitement to corruption of members of international courts or bodies of the European Communities or of international parliamentary assemblies or international organizations and officials of the European Communities and foreign States (Article 322 *bis* of the Italian Criminal Code)
Trafficking in illicit influences (Article 346 *bis* of the Italian Criminal Code)
Embezzlement (limited to the first paragraph – Article 314 of the Italian Criminal Code)
Embezzlement by profit from the error of others (Article 316 of the Italian Criminal Code)
Abuse of office (Article 323 of the Italian Criminal Code)

Forgery in coins, public credit cards, stamp duties and identification instruments or signs (Article 25 bis)

Counterfeiting of coins, spending and introduction into the State, after concert, of counterfeit coins (Article 453 of the Italian Criminal Code)
Alteration of coins (Article 454 of the Italian Criminal Code)
Spending and introduction into the State, without concert, of counterfeit coins (Article 455 of the Italian Criminal Code)
Spent counterfeit coins received in good faith (Article 457 of the Italian Criminal Code)

Falsification of stamp values, introduction into the State, purchase, possession or putting into circulation of falsified stamp values (Article 459 of the Italian Criminal Code)
Counterfeiting of watermarked paper used for the manufacture of public credit cards or stamp values (Article 460 of the Italian Criminal Code)
Manufacture or possession of watermarks or instruments intended for counterfeiting coins, stamp values or watermarked paper (Article 461 of the Italian Criminal Code)
Use of counterfeit or altered stamp values (Article 464 of the Italian Criminal Code)
Counterfeiting, alteration or use of trademarks or distinctive signs or patents, models and designs (Article 473 of the Italian Criminal Code)
Introduction into the State and trade in products with false signs (Article 474 of the Italian Criminal Code)

Crimes against industry and commerce (Article 25 bis 1)
Disturbed freedom of industry and commerce (Article 513 of the Italian Criminal Code)
Unlawful competition with threat or violence (Article 513 *bis* of the Italian Criminal Code)
Fraud against national industries (Article 514 of the Italian Criminal Code)
Fraud in the exercise of trade (Article 515 of the Italian Criminal Code)
Sale of non-genuine food substances as genuine (Article 516 of the Italian Criminal Code)
Sale of industrial products with false signs (Article 517 of the Italian Criminal Code)
Manufacture and trade of goods made by usurping industrial property rights (Article 517 *ter* of the Italian Criminal Code)
Counterfeiting of geographical indications or designations of origin of agri-food products (Article 517 *quater* of the Italian Criminal Code)

Corporate offences (Article 25 ter)
False corporate communications (Article 2621 of the Italian Civil Code)
Minor facts (Article 2621 *bis* of the Italian Civil Code)
False corporate communications in listed companies (Article 2622 of the Italian Civil Code)
False prospectus (Article 2623 of the Italian Civil Code – Article 173 *bis* Law 24 February 1998 no. 58)
Falsehoods in the reports or communications of the auditing firms (Article 2624 of the Italian Civil Code – repealed by article 37 c. 34 D. Lgs. no. 39/2010 and replaced identical by article 27 of the same decree as follows: "Falsehood in the reports or communications of the heads of the statutory audit")
Prevented control (Article 2625 of the Italian Civil Code – paragraph 1 amended by Article 37 c. 35 Legislative Decree no. 39/2010 and referred to by Article 29 of the same decree)
Undue restitution of contributions (Article 2626 of the Italian Civil Code)
Illegal distribution of profits and reserves (Article 2627 of the Italian Civil Code)
Illicit transactions on shares or shares or of the parent company (Article 2628 of the Italian Civil Code)
Transactions to the detriment of creditors (Article 2629 of the Italian Civil Code)
Failure to communicate conflict of interest (Article 2629 bis of the Italian Civil Code)
Fictitious formation of capital (Article 2632 of the Italian Civil Code)

Undue distribution of corporate assets by liquidators (Article 2633 of the Civil Code)
Corruption between private individuals (Article 2635 of the Italian Civil Code)
Incitement to corruption between private individuals (Article 2635 *bis* of the Italian Civil Code)
Illicit influence on the shareholders' meeting (Article 2636 of the Italian Civil Code)
Rigging (Article 2637 of the Italian Civil Code)
Obstacle to the exercise of the functions of public supervisory authorities (Article 2638 of the Italian Civil Code)

Crimes with the purpose of terrorism and subversion of the democratic order provided for by the penal code and special laws (Article 25 quater)

Subversive associations (Article 270 of the Italian Criminal Code)
Associations with the purpose of terrorism, including international terrorism, or subversion of the democratic order (Article 270 *bis* of the Italian Criminal Code)
Aggravating and mitigating circumstances (Article 270 *bis* 1 of the Italian Criminal Code)
Assistance to members (Article 270 *ter* of the Italian Criminal Code)
Enlistment for the purpose of terrorism, including international terrorism, (Article 270 *quater* of the Italian Criminal Code)
Organization of transfer for terrorist purposes (Article 270 *quater* 1 of the Italian Criminal Code)
Training for activities with the purpose of terrorism, including international terrorism, (Article 270 *quinquies* of the Italian Criminal Code)
Financing of conduct for terrorist purposes (Article 270 *quinquies* 1 of the Italian Criminal Code)
Theft of assets or money subject to seizure (Article 270 *quinquies* 2 of the Italian Criminal Code)
Conduct for terrorist purposes (Article 270 *sexies* of the Italian Criminal Code)
Attack for terrorist purposes or subversion (Article 280 of the Italian Criminal Code)
Acts of terrorism with lethal or explosive devices (Article 280 *bis* of the Italian Criminal Code)
Acts of nuclear terrorism (Article 280 *ter* of the Italian Criminal Code)
Kidnapping for the purpose of terrorism or subversion (Article 289 *bis* of the Italian Criminal Code)
Seizure for the purpose of coercion (Article 289 *ter* of the Italian Criminal Code)
Incitement to commit any of the crimes provided for by the first and second chapters (Article 302 of the Italian Criminal Code)
Political conspiracy by agreement (Article 304 of the Italian Criminal Code)
Political conspiracy by association (Article 305 of the Italian Criminal Code)
Armed band: training and participation (Article 306 of the Italian Criminal Code)
Assistance to participants in conspiracy or armed gang (Article 307 of the Italian Criminal Code)
Possession, hijacking and destruction of an aircraft (Law no. 342/1976, article no. 1)
Damage to ground installations (Law no. 342/1976, article 2)
Sanctions (Law no. 422/1989, article 3)
Industrious repentance (Legislative Decree no. 625/1979, article 5)
New York Convention of 9 December 1999 (Article 2)

Female genital mutilation practices (Article 25 quater 1)

Practices of mutilation of female genital organs (Article 583 *bis* of the Italian Criminal Code)

Crimes against the individual personality (Article 25 quinquies)

Reduction or maintenance in slavery or servitude (Article 600 of the Italian Criminal Code)
Child prostitution (Article 600 *bis* of the Italian Criminal Code)
Child pornography (Article 600 *ter* of the Italian Criminal Code)
Possession or access to pornographic material (Article 600 *quater* of the Italian Criminal Code)
Virtual pornography (Article 600 *quater* 1 of the Italian Criminal Code)
Tourism initiatives aimed at the exploitation of child prostitution (Article 600 *quinquies* of the Italian Criminal Code)
Trafficking in persons (Article 601 of the Italian Criminal Code)
Purchase and alienation of slaves (Article 602 of the Italian Criminal Code)
Illicit intermediation and labor exploitation (Article 603 *bis* of the Italian Criminal Code)
Solicitation of minors (Article 609 *undecies* of the Italian Criminal Code)

Market abuse offences (Article 25 sexies)

Market manipulation (Article 185 of Legilsative Decree no. 58/1998)
Abuse or unlawful disclosure of inside information. Recommendation or inducement of others to the commission of insider dealing (Article 184 of Legislative Decree no. 58/1998)

Other cases relating to market abuse (Article 187- quinquies TUF)

Prohibition of insider dealing and unlawful disclosure of inside information (Article 14 of EU Reg. no. 596/2014)
Prohibition of market manipulation (Article 15 of EU Regulation no. 596/2014)

Offences of manslaughter and serious or very serious culpable injuries, committed with violation of accident prevention regulations and on the protection of hygiene and health at work (Article 25 septies)

Manslaughter (Article 589 of the Italian Criminal Code)
Culpable personal injury (Article 590 of the Italian Criminal Code)

Receiving stolen goods, money laundering and use of illicitly sourced money, goods or benefits, as well as self-laundering (Article 25 octies)

Receiving stolen goods (Article 648 of the Italian Criminal Code)
Recycling (Article 648 *bis* of the Italian Criminal Code)
Use of money, goods or benefits of illicit origin (Article 648 *ter* of the Italian Criminal Code)
Self-laundering (Article 648 *ter*. 1 of the Italian Criminal Code)

Offences relating to non-cash payment instruments (Article 25 octies 1)

Improper use and falsification of payment instruments other than cash (Article 493 *ter* of the Italian Criminal Code)

Possession and dissemination of equipment, devices or computer programs aimed at committing crimes concerning payment instruments other than cash (Article 493 *quater* of the Italian Criminal Code)
Computer fraud aggravated by the realization of a transfer of money, monetary value or virtual currency (Article 640 *ter* of the Italian Criminal Code)

Other cases concerning payment instruments other than cash (Article 25-octies.1, paragraph 2)

Offences relating to copyright infringement (Article 25 novies)
Making available to the public, in a system of telematic networks, through connections of any kind, of a protected intellectual work, or part of it (Article 171, Law no. 633 / 1941 paragraph 1 letter a) *bis*)
Crimes referred to in the previous point committed on works of others not intended for publication if their honor or reputation is offended (Article 171, Law no. 633/1941 paragraph 3)
Abusive duplication, for profit, of computer programs; import, distribution, sale or possession for commercial or entrepreneurial purposes or lease of programs contained in media not marked by the SIAE; provision of means to remove or circumvent the protection devices of computer programs (Article 171 *bis* Law no. 633/1941 paragraph 1)
Reproduction, transfer to another medium, distribution, communication, presentation or demonstration in public, of the contents of a database; extraction or re-utilization of the database; distribution, sale or lease of databases (Article 171 *bis* Law no. 633/1941 paragraph 2)
Abusive duplication, reproduction, transmission or dissemination in the public by any process, in whole or in part, of intellectual works intended for television, cinema, sale or rental of records, tapes or similar media or any other medium containing phonograms or videograms of similar musical, cinematographic or audiovisual works or sequences of moving images; literary, dramatic, scientific or didactic, musical or dramatic musical or multimedia works, even if included in collective or composite works or databases; reproduction, duplication, transmission or abusive dissemination, sale or trade, assignment for any reason or abusive importation of more than fifty copies or copies of works protected by copyright and related rights; introduction into a system of telematic networks, through connections of any kind, of an intellectual work protected by copyright, or part of it (Article 171 *ter* Law no .633 / 1941)
Failure to communicate to the SIAE the identification data of the media not subject to marking or false declaration (Article 171 *septies* Law no. 633/1941)
Fraudulent production, sale, import, promotion, installation, modification, use for public and private use of equipment or parts of equipment suitable for the decoding of conditional access audiovisual transmissions made over the air, satellite, cable, in both analog and digital form (Article 171 *octies* Law no. 633/1941)

Induction not to make statements or to make false statements to the judicial authority (Article 25 decies)
Induction not to make statements or to make false statements to the judging authority (Article 377 *bis* of the Italian Criminal Code), at national level

Environmental offences (Article 25 undecies)

Environmental pollution (Article 452 *bis* of the Italian Criminal Code)
Environmental disaster (Article 452 *quater* of the Italian Criminal Code)
Culpable crime against the environment (Article 452 *quinquies* of the Italian Criminal Code)
Trafficking and abandonment of highly radioactive material (Article 452 *sexies* of the Italian Criminal Code)
Aggravating circumstances (Article 452 *octies* of the Italian Criminal Code)
Killing, destruction, capture, collection, possession of specimens of protected wild animal or plant species (Article 727 *bis* of the Italian Criminal Code)
Destruction or deterioration of habitats within a protected site (Article 733 *bis* of the Italian Criminal Code)
Import, export, holding, use for profit, purchase, sale, exhibition or possession for sale or commercial purposes of protected species (Law no.150/1992, article 1, article 2, article 3 *bis* and article 6)
Industrial waste water discharges containing hazardous substances; discharges to soil, subsoil and groundwater; discharge into the sea by ships or aircraft (Legislative Decree no. 152/2006, article 137)
Unauthorized waste management activities (Legislative Decree no. 152/2006, article 256)
Pollution of soil, subsoil, surface water or groundwater (Legislative Decree no. 152/2006, article 257)
Illegal traffic of waste (Legislative Decree no. 152/2006, article 259)
Violation of the obligations of communication, keeping of mandatory registers and forms (Legislative Decree no.152/2006, article 258)
Activities organized for the illicit traffic of waste (Article 452 *quaterdecies* of the Italian Criminal Code)
False indications on the nature, composition and chemical-physical characteristics of waste in the preparation of a certificate of analysis of waste; inclusion in SISTRI of a false waste analysis certificate; omission or fraudulent alteration of the paper copy of the SISTRI card - handling area in the transport of waste (Legislative Decree no. 152/2006, article 260 *bis*)
Sanctions (Legislative Decree no. 152/2006, article 279)
Malicious pollution caused by ships (Legislative Decree no. 202/2007, article 8)
Culpable pollution caused by ships (Legislative Decree no. 202/2007, article 9)
Cessation and reduction of the use of harmful substances (Law no. 49/1993 article 3)

Employment of illegally staying third-country nationals (Article 25 duodecies)

Provisions against illegal immigration (article 12, paragraph 3, 3 *bis*, 3 *ter* and paragraph 5, Legislative Decree no. 286/1998)
Employment of illegally staying third-country nationals (Article 22, paragraph 12 *bis*, Legislative Decree no. 286/1998)

Racism and xenophobia (Article 25 terdecies)

Propaganda and incitement to crime for reasons of racial, ethnic and religious discrimination (Article 604 *bis* of the Italian Criminal Code)

Fraud in sporting competitions, abusive operation of gambling or betting and games of chance carried out by means of prohibited devices (Article 25 quaterdecies)

Fraud in sports competitions (Article 1, Law no. 401/1989)

Abusive exercise of gaming or betting activities (Article 4, Law no. 401/1989)

Tax offences (Article 25 quinquiesdecies)

Fraudulent declaration through the use of invoices or other documents for non-existent transactions (Article 2, paragraph 1, 2 bis, Legislative Decree no. 74/2000)

Fraudulent declaration by means of other artifices (Article 3 of Legislative Decree no. 74/2000)

Issuance of invoices or other documents for non-existent transactions (Article 8, paragraph 1, 2 bis of Legislative Decree no. 74/2000)

Concealment or destruction of accounting documents (Article 10 of Legislative Decree no. 74/2000)

Fraudulent subtraction from the payment of taxes (Article 11 of Legislative Decree no. 74/2000)

Unfaithful declaration (Article 4 of Legislative Decree no. 74/2000)

Failure to declare (Article 5 of Legislative Decree no. 74/2000)

Undue compensation (Article 10 *quater* of Legislative Decree no. 74/2000)

Smuggling (Article 25 sexiesdecies)

Smuggling in the movement of goods across land borders and customs areas (Article 282 Presidential Decree no. 73/1943)

Smuggling in the movement of goods in border lakes (Article 283 Presidential Decree no. 73/1943)

Smuggling in the maritime movement of goods (Article 284 Presidential Decree no. 73/1943)

Smuggling in the movement of goods by air (Article 285 Presidential Decree no. 73/1943)

Smuggling in duty-free areas (Article 286 Presidential Decree no. 73/1943)

Smuggling for improper use of imported goods with customs facilities (Article 287 Presidential Decree no. 73/1943)

Smuggling in customs warehouses (Article 288 Presidential Decree no. 73/1943)

Smuggling in cabotage and circulation (Article 289 Presidential Decree no. 73/1943)

Smuggling in the export of goods eligible for restitution of rights (Article 290 Presidential Decree no. 73/1943)

Smuggling in import or temporary export (Article 291 Presidential Decree no. 73/1943)

Smuggling of foreign manufactured tobacco (Article 291 *bis* Presidential Decree no. 73/1943)

Aggravating circumstances of the crime of smuggling foreign manufactured tobacco (Article 291 *ter* Presidential Decree no. 73/1943)

Criminal association aimed at smuggling foreign manufactured tobacco (Article 291 *quater* Presidential Decree no. 73/1943)

Other cases of smuggling (Article 292 Presidential Decree no. 73/1943)

Aggravating circumstances of smuggling (Article 295 Presidential Decree no. 73/1943)

Crimes against cultural heritage (Article. 25 septiesdecies)

Theft of cultural property (Article 518 *bis* of the Italian Criminal Code)

Misappropriation of cultural property (Article 518 *ter* of the Italian Criminal Code)
Receiving stolen cultural property (Article 518 *quater* of the Italian Criminal Code)
Falsification in private writing relating to cultural property (Article 518 *octies* of the Italian Criminal Code)
Violations regarding the alienation of cultural property (Article 518 *novies* of the Italian Criminal Code)
Illicit import of cultural goods (Article 518 *decies* of the Italian Criminal Code)
Illicit exit or export of cultural goods (Article 518 *undecies* of the Italian Criminal Code)
Destruction, dispersion, deterioration, disfigurement, soiling and illicit use of cultural or landscape assets (Article 518 *duodecies* of the Italian Criminal Code)
Counterfeiting of works of art (Article 518 *quaterdecies* of the Italian Criminal Code)

Recycling of cultural property and devastation and looting of cultural and landscape property (Article 25 duodevicies)

Recycling of cultural goods (Article 518 *sexies* of the Italian Criminal Code)
Devastation and looting of cultural and landscape heritage (Article 518 *terdecies* of the Italian Criminal Code)

Liability of entities for administrative offenses dependent on crime (Article 12, Law no. 9/2013) [They are a prerequisite for entities operating within the virgin olive oil supply chain]

Use, adulteration and counterfeiting of food substances (Article 440 of the Italian Criminal Code)
Trade in counterfeit or adulterated food substances (Article 442 of the Italian Criminal Code)
Trade in harmful food substances (Article 444 of the Italian Criminal Code)
Counterfeiting, alteration or use of distinctive signs of intellectual works or industrial products (Article 473 of the Italian Criminal Code)
Introduction into the State and trade in products with false signs (Article 474 of the Italian Criminal Code)
Fraud in the exercise of trade (Article 515 of the Italian Criminal Code)
Sale of non-genuine food substances as genuine (Article 516 of the Italian Criminal Code)
Sale of industrial products with false signs (Article 517 of the Italian Criminal Code)
Counterfeiting of geographical indications designations of origin of agri-food products (Article 517 *quater* of the Italian Criminal Code)

Transnational crimes (Law no. 146/2006)
[The following offences are a prerequisite for the administrative liability of entities when committed in a transnational manner]

Provisions against illegal immigration (Article 12, paragraphs 3, 3 *bis*, 3 *ter* and 5, of the consolidated text referred to in Legislative Decree no. 286 of 25 July 1998)
Association aimed at illicit trafficking of narcotic or psychotropic substances (Article 74 of the consolidated text referred to in Presidential Decree 9 October 1990, no. 309)
Criminal association aimed at smuggling foreign manufactured tobacco (Article 291 *quater* of the

consolidated text referred to in Presidential Decree no. 43 of 23 January 1973)
Induction not to make statements or to make false statements to the judicial authority (Article 377 *bis* of the Italian Criminal Code)
Personal aiding and abetting (Article 378 of the Italian Criminal Code)
Criminal association (Article 416 of the Italian Criminal Code)
Mafia-type association (Article 416 *bis* of the Italian Criminal Code)

For the purposes of the Decree, situations prior to the realization of the Crimes as well as the subsequent events of the entity are also relevant.

1.4. ATTEMPTED WRECK

The Decree provides for and regulates the cases in which the crime is realized only in the forms of the attempt. Article 26 of the Decree establishes that "the *pecuniary and disqualification sanctions are reduced from one third to half in relation to the commission, in the form of the attempt, of the crimes indicated in this chapter of Decree 231/2001. The institution is not liable for attempted crimes when it voluntarily prevents the completion of the action or the realization of the event*".

1.5. LIABILITY AND MODIFICATION EVENTS

The Decree regulates the liability regime if the company changes its structure after the commission of a crime (Articles 28, 29, 30, 31, 32 and 33 of the Decree).

In the event of a transformation or merger, the company resulting from the amendment is liable for the offences committed by the original entity, resulting in the application of the penalties imposed.

In the event of a partial division, the liability of the demerger for offences committed prior to the division remains unaffected. However, the entities benefiting from the division shall be jointly and severally liable, within the limits of the value of the assets transferred, to pay the financial penalties payable by the divided entity for offences prior to the division. Any disqualification sanctions imposed shall apply to entities to which the branch of activity in which the offence was committed has remained or has been transferred, even in part.

In the event of the sale or transfer of the company in which the crime was committed, the transferee is jointly and severally obliged with the transferor to pay the financial penalty, except for the benefit of the prior enforcement of the transferring entity and in any case within the limits of the value of the company transferred. In any event, the transferee' s liability is limited to financial penalties resulting from the mandatory accounting books or relating to administrative offences of which the transferee was otherwise aware.

1.6. OFFENCES COMMITTED ABROAD

Article 4 of the Decree in question expressly states that:

1. "*In the cases and under the conditions provided for in Articles 7, 8, 9 and 10 of the Italian Criminal Code, entities whose principal place of business is in the territory of the State shall also be liable in relation to offences committed abroad, provided that the State of the place where the act was committed does not proceed against them.*

2. In cases where the law provides that the offender is punished at the request of the Minister of Justice, proceedings shall be taken against the entity only if the request is also made against the latter".

The assumptions on which this responsibility is based are:

- The crime must be committed abroad by a person functionally linked to society;
- The company must have its head office in the territory of the Italian State;
- The company can respond only in the cases and under the conditions provided for by Articles 7, 8, 9 and 10 of the Italian Criminal Code and if the law provides that the guilty - a natural person - is punished at the request of the Minister of Justice, proceedings are taken against the company only if the request is also formulated against the latter;
- If the cases and conditions provided for in the aforementioned articles of the Italian Criminal Code are met, the company is liable provided that the State of the place where the act was committed does not proceed against it.

From another point of view, namely that of crimes committed in Italy by foreign law entities, it is worth remembering that the oldest jurisprudence on the merits had pronounced itself in the sense of recognition of responsibility *pursuant to* Legislative Decree 231/2001 also with regard to legal persons based abroad when the predicate crimes were committed in the territory of the State ([11]).

After almost twenty years from the introduction of Legislative Decree 231/2001, for the first time the Court of Cassation with the judgment no. 11626/2020 expressed itself on the issue of criminal liability of foreign entities, confirming the orientation hitherto shared by the judges of merit.

The Court, as a preliminary point, in giving reasons for the decision, relies on article 1 of Legislative Decree 231/2001, which does not provide for any distinction between foreign and Italian entities, but

([11]) See on this point: Court of Milan, Section of Judges for Preliminary Investigations ordinance no. 27.04.2004 – Siemens Ordinance: in the well-known Siemens case, the Court of Milan had held that both legal persons and foreign natural persons must comply with Italian law when carrying out an activity in the territory of the State and therefore also with Legislative Decree 231/2001, regardless of the existence in the country of origin of rules that regulate the same matter in a similar way. That approach was subsequently confirmed by the General Court itself in 2007 [Court Of Milan Section of Judges for Preliminary Investigations ordinance no.13.06.2007] but above all from the ruling of the Court of Lucca [Court of Lucca, judgment no. 31.07.2017 no. 222/2017] on the Viareggio disaster of 2017.
On that occasion, the Court had to judge the liability of Trenitalia and Ferrovie dello Stato, but above all that of two foreign companies, suppliers of freight trains containing that gas and required to maintain them. The latter, accused of violation of the rules on safety at work pursuant to article 25 septies Legislative Decree 231/2001 were condemned for these facts, having considered the Court applicable to foreign entities the discipline on the subject, regardless of the presence on the national territory of a secondary office or an establishment.

in particular on article 8 of the decree, a rule that establishes the autonomy of the responsibility of the entities, to emphasize that although this responsibility is autonomous, it "derives" still from a crime "*of such that the jurisdiction must be appreciated with respect to the offense-assumption, to no relevance that the fault in the organization and therefore the preparation of inadequate models took place abroad*", this consistently with the provisions of articles 36 and 38 of the decree.
In the opinion of the Supreme Court, article 4 of the Legislative Decree 231/2001, as explained above, argues in favour of this conclusion.
In accordance with what was established by the judges of merit, the Supreme Court held that, just as for foreign natural persons who commit a crime in the territory of the state, Italian law applies (articles 3 and 6 of the Italian Criminal Code), the application to foreign entities of a different discipline would achieve "*a clear and unjustified difference in treatment*" between the foreign natural person and the foreign company.
It must therefore be considered that the entity is responsible, like "anyone" for the effects of its "conduct" regardless of nationality or the place where its main office is located or the center in which it carries out its activity in a stable manner, if the predicate crime is committed in Italy, and the other criteria for attributing responsibility provided for by the decree are integrated.
Even if one wanted to support the exemption of the liability of the entity for a crime committed in Italy because in the country of origin there are rules different from those provided for by Legislative Decree 231/2001, there would be an undue alteration of free competition with respect to national bodies, allowing foreign entities "to *operate on Italian territory without having to bear the costs necessary for the preparation and implementation of suitable organizational models".*
Having made these considerations, the Supreme Court, in accordance with what is supported by the jurisprudence on the merits, affirmed the principle of law according to which "the legal *person is called to answer for the administrative offense deriving from a predicate offense for which there is national jurisdiction committed by its legal representatives or subjects subject to the direction or supervision of others, as the entity is subject to the obligation to observe Italian law and, in particular, criminal law, regardless of its nationality or the place where it has its registered office and regardless of the existence or not in the country of origin of rules that regulate the same matter in a similar way also with regard to the preparation and effective implementation of organizational and management models aimed at preventing the commission of crimes that are a source of responsibility administrative of the entity itself*".

1.7. PENALTIES

Pursuant to Legislative Decree no. 231/2001, the sanctions that can be imposed on the company for administrative offenses dependent on the crime are:

- Pecuniary sanctions;
- Prohibitive sanctions;
- Confiscation;
- The publication of the judgment.

Pecuniary sanctions

Pecuniary sanction is indefectible and is applied under the quota system. The amount of a share, in a number not less than one hundred nor more than one thousand, ranges from a minimum of € 258.23 to a maximum of € 1,549.37.

In determining the financial penalty, the judge determines the number of shares taking into account the seriousness of the fact, the degree of responsibility of the company as well as the activity carried out to eliminate or mitigate the consequences of the fact and to prevent the commission of further offenses. The value of the share is also fixed on the basis of the economic and financial conditions of the company in order to ensure the effectiveness of the sanction.

Reduced payment is not permitted.

Provision of hypotheses of reduction of the pecuniary sanction (articles 12 paragraph 1 of Legislative Decree 231/2001)

50% reduction

- If the offender committed the act in his own or a third party's exclusive interests and the institution derived no advantage from it or derived a minimum advantage from it;
- If the pecuniary damage caused is particularly tenuous.

Reduction of 33-55-66%

If, before the opening statement of the trial at first instance:

- The institution has fully compensated the damage and has eliminated the harmful or dangerous consequences of the crime or has otherwise worked effectively to do so;
- An organizational model suitable for preventing crimes of the kind that occurred was adopted and made operational.

Prohibitive sanctions

The prohibitive sanctions are:

- The prohibition from the exercise of the activity;
- The suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense;

- The prohibition to contract with the Public Administration, except to obtain the performance of a public service;
- The exclusion from subsidies, loans, contributions or subsidies and the possible revocation of those already granted;
- The prohibition to advertise goods or services.

Prohibitive sanctions shall apply in relation to offences for which they are expressly provided for, when at least one of the following conditions is met:

- The company has derived a significant profit from the crime and the crime has been committed by persons in top positions or subject to the management of others if the commission of the crime has been determined or facilitated by serious organizational deficiencies;
- In case of repetition of offenses (there is repetition when the company, already convicted definitively at least once for an offense dependent on a crime, commits another one in the five years following the final conviction).

If necessary, disqualification sanctions may also be applied jointly.

The prohibitive sanctions cannot be applied, pursuant to Article 17 of Legislative Decree 231/2001, if before the opening statement of the first instance trial:

- The institution has fully compensated the damage and has eliminated the harmful or dangerous consequences of the crime or has otherwise made effective efforts to do so;
- The institution has eliminated the organizational deficiencies that led to the crime through the adoption and implementation of organizational models suitable for preventing crimes of the kind that occurred;
- The institution made available the profit obtained for the purpose of confiscation.

Finally, Law no. 3 of 9 January 2019 on "Measures to combat crimes against the public administration and on the transparency of political parties and movements" (so-called Corrupt Sweeps Law) introduced a specific discipline for the application of disqualification sanctions to certain crimes against the Public Administration, namely extortion, simple corruption aggravated by the significant profit obtained by the entity, corruption in judicial acts, undue inducement to give or promise benefits, giving or promising to the public official or to the person in charge of public service of money or other benefit by the corruptor, incitement to corruption.
In particular, the law has ordered a tightening of the sanctioning treatment, distinguishing two different edictal scissors depending on the qualification of the offender: the disqualification sanctions may last between 4 and 7 years if the crime is committed by an apical subject and between 2 and 4 years if the offender is a subordinate subject. The law has instead provided for the application of disqualification sanctions in the basic measure referred to in article 13, paragraph 2 of decree 231 (3 months - 2 years) if the entity, for the same crimes mentioned and before the sentence of first instance, has worked to avoid further consequences of the crime and has collaborated with the judicial authority to ensure

evidence of the offense, to identify those responsible and has implemented organizational models suitable to prevent new offenses and to avoid the organizational deficiencies that led to them.

If the conditions for the application of a disqualification sanction that determines the interruption of the activity of the institution are met, the judge, instead of the application of the sanction, orders the continuation of the activity of the entity by a commissioner (article 15 of Legislative Decree 231/2001) for a period equal to the duration of the disqualification sentence that would have been applied, when at least one of the following conditions is met:

- The entity performs a public service or a service of public necessity the interruption of which may cause serious harm to the community;
- The interruption of the institution' s activities may, taking into account its size and the economic conditions of the territory in which it is situated, have significant repercussions on employment.

The court determines the duties of the judicial commissioner.
The commissioner reports every three months to the executing judge and the public prosecutor on the progress of the management and, at the end of the assignment, sends the judge a report on the activity carried out in which he gives an account of the management, also indicating the amount of profit to be confiscated and the ways in which the organizational models have been implemented.
The expenses related to the activity carried out by the commissioner and his remuneration shall be borne by the institution.
The profit from the continuation of the activity is confiscated.

The definitive prohibition from the exercise of the activity may be ordered, pursuant to article 16 of Legislative Decree 231/2001, if the company has derived a significant profit from the crime and has already been sentenced, at least three times in the last seven years, to temporary interdiction from the exercise of the activity.
The judge can definitively apply to the company the sanction of the prohibition to contract with the Public Administration or the prohibition to advertise goods or services when it has already been sentenced to the same sanction at least three times in the last seven years.
If the company or one of its organizational units is permanently used for the sole or predominant purpose of allowing or facilitating the commission of crimes for which it is envisaged, it is always ordered to be definitively banned from carrying out its activity.

Whoever, in carrying out the activity of the entity to which a sanction or a precautionary disqualification measure has been applied, violates the obligations or prohibitions inherent in such sanctions or measures, is punished, pursuant to article 23 of Legislative Decree 231/2001, with imprisonment from six months to three years.
In such a case, the pecuniary administrative penalty of two hundred six hundred shares and the confiscation of the profit shall be applied to the institution in the interest or for the benefit of which the offence was committed, in accordance with article 19.
If the institution has made a significant profit from the crime, disqualification sanctions apply, even if different from those previously imposed.

Confiscation

With the sentence of conviction, the confiscation of the price or profit of the crime is always ordered against the company, except for the part that can be returned to the injured party.
Rights acquired by bona fide third parties are reserved.
When it is not possible to carry out the confiscation indicated, it may concern sums of money, property or other benefits of a value equivalent to the price or profit of the crime.

Publication of the conviction

The publication of the sentence of conviction can be ordered when a disqualification sanction is applied against the company. The judgment is published only once, in extract or in full, in one or more newspapers indicated by the judge in the judgment, as well as by posting in the municipality where the company has its headquarters.
The publication of the judgment is carried out by the Registry of the Judge and at the expense of the company.

1.8. PRECAUTIONARY DISQUALIFICATION MEASURES

The Public Prosecutor may request the application, as a precautionary measure, of one of the prohibitive sanctions (including the commissioner or disqualification from the activity), or he can order preventive or precautionary seizure.

The precautionary disqualification measure – which consists in the temporary application of a prohibitive sanction – is ordered in the presence of two requirements: a) if there are serious indications of the existence of the entity's liability for an administrative offense dependent on a crime (the serious indications exist if results one of the conditions provided for by article 13 of the Decree: the company has derived from the crime - committed by one of its employees or by a person in an apical position - a profit of significant entity and the commission of the crime has been determined or facilitated by serious organizational deficiencies; in case of repetition of offences); b) if there are well-founded and specific elements that suggest that there is a real danger that offenses of the same nature as that for which it is proceeding.

Real precautionary measures take the form of preventive seizure and precautionary attachment.

Preventive attachment is ordered in relation to the price or profit of the crime, where the fact of the crime is attributable to the company, it does not matter that there are serious indications of guilt against the company itself.

Attachment is ordered in relation to movable or immovable property of the company as well as in relation to sums or things due to it, if there is reasonable grounds to believe that the guarantees for the payment of the financial penalty, the costs of the proceedings and any other sum due to the State Treasury are lacking or lost.

Also in this context, article 23 of Legislative Decree 231/2001, which provides for the crime of "Non-compliance with prohibitive sanctions".

This crime occurs if, in the course of the activity of the body to which a precautionary disqualification measure has been applied, the obligations or prohibitions inherent in these measures are violated.

Furthermore, if the Authority derives a significant profit from the commission of the aforementioned crime, the application of disqualification measures is also different, and additional, compared to those already imposed.

1.9. ACTIONS EXEMPT FROM ADMINISTRATIVE LIABILITY

Article 6 of the Decree provides that, in the event that the crime was committed by persons in a top position, the company is not liable if it proves that:

- The governing body has adopted and effectively implemented, before the commission of the fact, models of organization, management and control suitable to prevent crimes of the kind committed;
- The task of supervising the functioning and observance of the models, of taking care of their updating has been entrusted to a "body" endowed with autonomous powers of initiative and control;
- People have committed the crime by fraudulently circumventing organisational and management models;
- There has been no omission or insufficient vigilance on the part of the Body;

Article 6 paragraph 2 of the Decree also provides that the Model must meet the following requirements:

- Identify business risks, i.e. the activities in which crimes can be committed;
- Exclude that any person operating within the company can justify its conduct by citing ignorance of company disciplines and avoid that, in normal cases, the crime can be caused by error – also due to negligence or inexperience – in the evaluation of company directives;
- Introduce a disciplinary system suitable for sanctioning non-compliance with the measures indicated in the Model;
- Identify ways of managing financial resources to prevent the commission of such crimes;
- Provide for a system of prior controls which cannot be circumvented except intentionally;
- Provide for information obligations towards the Supervisory Body responsible for monitoring the functioning and compliance with the Model.

Article 6 paragraph 2 *bis* of the Decree – introduced by Law no. 179 of 30 November 2017 (*Whistlebowing*) – requires that the model must provide:

- One or more channels that allow the subjects indicated in Article 5, paragraph 1, letters a) and b), to present, to protect the integrity of the entity, detailed reports of illegal conduct, relevant pursuant to this decree and based on precise and consistent factual elements, or violations of the organization and management model of the entity, of which they have become aware by reason of the functions performed; these channels guarantee the confidentiality of the identity of the whistleblower in the management of the report;
- At least one alternative reporting channel suitable to guarantee, by electronic means, the confidentiality of the identity of the whistleblower;
- The prohibition of retaliatory or discriminatory acts, direct or indirect, against the whistleblower for reasons related, directly or indirectly to the report;
- In the disciplinary system adopted pursuant to paragraph 2, letter e), sanctions against those who violate the measures to protect the whistleblower, as well as those who make reports with intent or gross negligence that prove to be unfounded.

Article 7 provides that the entity is liable if the commission of the offence by a person under the direction of another person has been made possible by failure to comply with management and supervisory obligations; in any case, non-compliance with management or supervisory obligations is excluded if the entity, prior to the commission of the crime, has adopted and effectively implemented an organizational model, management and control suitable to prevent crimes of the kind that occurred. The existence of organizational models is therefore a prerequisite of defense for the institution in both cases.

The defensive potential of these instruments is associated with some requirements attributable to the same "*ratio*": the effectiveness and suitability of the models to prevent offenses, in relation to the extension of delegated powers and the risk of committing crimes, for top figures and, in relation to the nature and size of the organization, as well as the type of activity carried out, for subordinates.

These definitions are essentially organizational, aimed at identifying a correct profile of the models in relation to the functions, attributions and competences concretely deployed within the organization of the institution, whose different formulation does nothing but recognize a different scope of operation between directors and *managers*, on the one hand, and employees and collaborators, on the other, within the same sphere of interests.

2. HISTORY AND PRESENTATION OF THE COMPANY

Exacer is a limited liability company, active since 2004 with headquarters in Sassuolo.
It carries out its activities in the field of:

- Production and design of technical ceramics (own production)
- Design and production of plastic adhesives/sealants (for processing)
- Design and marketing of two-component polyurethane and epoxy systems.

Exacer makes on its own or makes realize:

- Microspheres and microcylinders for grinding and filling chemical plants;
- Pressed tiles for wall mosaic;
- Ceramic supports for catalyst for oxidation/reduction processes, used in the chemical industry both pressed and extruded;
- Two-component polyurethane and epoxy systems for the production of gaskets and adhesives used in the lighting, electromechanical, filter bonding and automotive industries.

Certifications

omitted

The events of Exacer S.r.l.

omitted

EXACER s.r.l.
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3. PURPOSE OF THE MODEL

Exacer S.r.l., in order to ensure conditions of correctness and transparency in the conduct of business and corporate activities, has deemed it necessary to adopt the model in line with the requirements of Legilsative Decree no. 231 of 2001.

The Model:

- Provides information on the contents of the Decree that introduced into our legal system an administrative liability of companies and entities for crimes committed, in their interest or for their benefit, by their own exponents or employees;
- Outlines an organization, management and control system aimed at informing about the contents of the Decree, directing company activities in line with the Model and supervising the functioning and observance of the Model itself.

In particular, the purpose of the Model is the construction of a structured and organic system of procedures as well as control activities, to be carried out also on a preventive basis (*ex ante* control), aimed at preventing the commission of crimes and offenses.

In particular, through the identification of Risk Areas ("marked sensitive areas") and their consequent proceduralization, the Model aims to:

- Determine, in all those who operate in the name and on behalf of Exacer S.r.l., especially in activities related to Risk Areas, the awareness of being able to incur, in the event of violation of the provisions contained therein, in an offense subject to sanctions, on a criminal and administrative level, not only against themselves but also against Exacer S.r.l;
- Reiterate that such forms of unlawful conduct are strongly condemned by Exacer S.r.l. as (even if Exacer S.r.l. were apparently in a position to take advantage of it) are in any case, in addition to the provisions of the law, also contrary to the ethical-social principles to which it intends to comply in the performance of its corporate mission;
- Allow Exacer S.r.l., thanks to a monitoring action on Risk Areas, to intervene promptly to prevent or combat the commission of Crimes and Offenses.

The rules contained in the Model, as well as those contained in the Code of Ethics, will apply to the following subjects:

- Board of Directors;
- Corporate control bodies (Board of Statutory Auditors; Audit firm; Supervisory Body);
- Responsible;
- Employees with permanent or fixed-term employment contracts;
- External collaborators and consultants;
- Other subjects (e.g. suppliers and business *partners*) with whom the company maintains contractual relationships for the achievement of corporate objectives, which involve even temporary work performance, or carrying out activities in the name and on behalf of the company, such as to establish a fiduciary relationship with the latter.

Furthermore, compliance with the rules and provisions contained in the Model, as well as in the Code of Ethics, is an integral and essential part of the contractual obligations deriving from employment relationships, for employees and contractual regulations, for non-subordinate collaborators.

4. THE CONSTRUCTION OF THE MODEL: METHODOLOGICAL ELEMENTS

In accordance with the provisions of the Confindustria Guidelines of 7 March 2002 (most recently updated to June 2021) and the CNDCEC Guidelines of December 2018, the construction of a suitable Organizational Model represents a complex procedure, which requires several activities, which must be carried out taking into account the objectives mentioned above and the principles explained below. Although it is not possible to separate these activities and order them chronologically in a clear and well-defined way, below is highlighted the main phases and activities that are an essential part for the development of a suitable Model.

The practical implementation of the Model is necessarily articulated through the following phases:

- Knowledge of the company's activity – of the organizational structure and internal organization
- Knowledge of the Internal Control System
- Identification of business processes and their study
- Analysis of sensitive activities
- Identification of crime risk factors
- Mapping Areas at risk of crime
- Assessment of infringement risk and crime risk
- Definition and drafting of appropriate "Specific protocols" of protection

The Model must be built according to a scheme that incorporates the Risk *Assessment* and *Risk Management* processes normally implemented in companies and be well structured, with a mandatory minimum content.

This approach must naturally be preceded by a careful analysis of the procedures to verify their updating and effective application.

The methodological approach adopted in order to draw it up must include the following phases:

As-is analysis

For the purposes of implementing the Organizational Model pursuant to Legislative Decree 231/2001, it is essential to carry out, on a preliminary basis, a *check-up* activity that allows to reach a sufficient degree of general knowledge of the body, in order to identify the aspects that will be the subject of in-depth analysis and specific examination in the subsequent phases.
In particular, the analysis in question, aimed at obtaining the necessary documentation, as well as at an initial identification of sensitive activities and risk factors, should cover the following elements:

- Representative and descriptive documentation of the organizational structure, *corporate governance*, dimensional data, type of activity carried out and business areas;
- In the case of Corporate Groups, information specifying the role of the company within the Group and the relationships of the same company with other *legal entities*, especially for distribution processes or *outsourcing* activities. In particular, the presence of contracts governing intra-group relations and the responsibilities of each corporate structure must be verified;
- Codes of ethics and conduct, self-regulatory rules, "*compliance programme*" that constitute the codification of the values and rules of the institution.

Risk assessment

The mapping of risks in business processes makes it possible to identify, with particular detail, the most risky behaviors from which the administrative liability by Legislative Decree 231/2001 may derive in the event of an offense committed in the interest or to the advantage of the entity.
The process, which appears to be preparatory to the construction of the Model, also directs continuous actions to improve and strengthen preventive measures to the commission of crimes in the area "Legislative Decree 231/2001", as it requires constant *follow-up* and updating.
Wanting to provide general indications relating to the purposes and phases of which the "*Risk Assessment* 231/2001" process is composed, it is necessary to identify, through documentary analysis and meetings with the managers of the structures:

- Areas at risk of potential commission of crimes ("sensitive macro activities").
  "Risk" means any variable or factor that within the company, alone or in correlation with other variables, may negatively affect the achievement of the objectives indicated by Legislative Decree 231 (in particular, article 6, paragraph 1, letter *a*); therefore, depending on the type of crime, the areas of activity at risk may be more or less extensive. For example, in relation to the risk of manslaughter or serious or very serious culpable injuries committed with violation of the rules on health and safety at work, the analysis will probably extend to all company areas and activities;
- The abstractly applicable types of crime and the methods of commission relating to the specific activity;
- Organizational functions/company roles involved in the process;
- Existing controls;
- Any areas for improvement;
- Suggestions for overcoming the areas of improvement identified ("specific prevention protocols").

Particularly precise must be the description, also referring to existing procedures, of the specific control points, as they allow to provide a sufficient preventive control of "behaviors at risk of crime" considerably extended in recent years.

In a nutshell, the purpose of this activity is to ascertain the presence and functioning of appropriate safeguards that can guarantee the compliance of the activity carried out with current legislation on the administrative liability of entities.

In particular, it is appropriate to verify, by way of example, the presence of:

- Formal rules that define the roles and responsibilities related to the processes analyzed as well as appropriate methods of traceability and reconstruction of decision-making processes;
- Principles of conduct and control actions on the activities carried out in order to prevent risky behavior in the context of 231/2001;
- Company policies for the management and prevention of conflicts of interest;
- Control procedures at each operational level;
- Preparation of information systems for the interception of anomalies;
- Recording of each management fact with an adequate degree of detail;
- Formalized procedures for the management of financial resources;
- Specific formalized proxies;
- Formalized procedures for the drafting of contracts;
- Any past events in which cases of crimes or critical events have already occurred.

The risk can be analyzed on the basis of two fundamental components, which allow an assessment and guide the *risk mitigation* activities to be implemented:

- The likelihood that the offence may actually occur,
- The consequences and impact of the event ([12]),

from the connection of which emerges the exposure to risk, represented by the interrelation between the probability that the risk will materialize and its potential impact on the institution.

Identification of the acceptable risk threshold and gap analysis

The assessment of the adequacy of the existing internal control system shall be examined in relation to the desirable and considered optimal level of effectiveness and efficiency of control protocols and standards. The assessment in question (*gap analysis*) and the consequent activities are therefore expressed in the adaptation of the existing control mechanisms to the prevention of the identified risk cases.

In defining or improving procedures, reference should be made to the concept of risk *appetite*, which should be established in relation to the likelihood of committing the offence and the potential burdens that would result: for the purposes of assessing the "acceptable risk", for predicate offences for which it has been assessed that there are no or very limited activities at risk, it is possible not to carry out corrective actions or to carry them out with subordinate priority with respect to the activities carried out for the activities and processes most at risk.

([12]) In the context of 231, to define the impact connected to the commission of a crime, among the main factors to be taken into consideration are certainly the sanctions potentially imposable to the institution, both pecuniary and prohibitive.

With regard to the intensity and pervasiveness of controls, in order to avoid burdening the operational activities of the entity through the establishment of excessively rigid procedures that would have the effect of slowing down their regular performance, it is necessary to use as a reference the general principle, which can also be invoked in criminal law, of the concrete enforceability of behavior, summarized by the Latin brocardo "*ad impossibilia nemo tenetur*".
The determination of the risk tolerance threshold, therefore, is configured as a fundamental operation for the implementation of the Model and the risk *response* actions to be implemented: only if the level of risk verified is considered higher than acceptable, it will be necessary to intervene through risk *reduction/risk mitigation* operations, creating specific protocols and prevention mechanisms.

Summary "as is" analysis and "risk approach"

	PHASE	DESCRIPTION	INSTRUMENTS
1	Company check-up	General and in-depth knowledge of the company and acquisition of related documentation	Permanent dossier Tax Dossier Dossier Governance Checklist Dossier Operating units
2	SCI Assessment	Analysis of the existing internal control system	Operating units
3	Identification of activities and processes	Analysis of procedures in detail "*As is analysis*"	Determination Risk of infringement
4	Identification of risk factors	Identification of strengths and weaknesses to be monitored "*Risk Assessment*"	Determination of the Risk of Infringement Compliance checks on the procedures detected (to be pooled with risk matrix)
5	Mapping sensitive areas and crime risk processes	Determination of possible and probable crimes "*Risk Assessment*"	Risk matrix Governance Dossier "*Risk Assessment*"
6	Crime risk assessment and its management	Analysis and mapping of the risk of committing one of the predicate crimes and management of the same "*Risk Management*"	Final risk classification and management of the same "*Risk management*" Dossier Governance

Returning to what has already been mentioned, a nodal concept in the construction of a preventive control system is that of acceptable risk.
In the design of control systems to protect *business* risks, defining the acceptable risk is a relatively simple operation, at least from a conceptual point of view. The risk is considered acceptable when the additional controls "cost" more than the resource to be protected (for example: ordinary cars are equipped with anti-theft devices and not even with an armed vigilante).

In the case of Legislative Decree 231 of 2001, however, the economic logic of costs cannot be an exclusively usable reference. It is therefore important that, for the purposes of applying the rules of the decree, an effective threshold is defined that allows a limit to be placed on the quantity/quality of the preventive measures to be introduced to avoid the commission of the crimes concerned. In the absence of a prior determination of the acceptable risk, the quantity/quality of preventive controls that can be established is, in fact, virtually infinite, with the obvious consequences in terms of business operations. Moreover, the general principle, which can also be invoked in criminal law, of the concrete enforceability of conduct represents an unavoidable reference criterion even if, often, it seems difficult to identify its limit in practice.

With regard to the preventive control system to be built in relation to the risk of committing the types of crime contemplated by Legislative Decree 231, the conceptual threshold of acceptability, in cases of intentional crimes, is represented by a: prevention system such that it can only be circumvented fraudulently. In perspective 231, that is, also on the basis of the wording of the rule ([13]), in relation to the safeguards and controls to be established to deal with the risk of committing the types of crime envisaged, the conceptual threshold of acceptability is represented by a prevention system such that it can only be circumvented fraudulently ([14]).

The conceptual threshold of acceptability, for the exempt effects of Decree 231, must be modulated differently in relation to the crimes of manslaughter and negligent personal injury committed with violation of the rules on health and safety at work, as well as environmental crimes punishable by negligence.

The fraudulent circumvention of organizational models, in fact, appears incompatible with the subjective element of culpable crimes, in which the intention of the event detrimental to the physical integrity of workers or the environment is lacking.

In these cases, the acceptable risk threshold is represented by the implementation of conduct in violation of the organizational model of prevention (and, in the case of crimes relating to health and safety, of the underlying mandatory obligations prescribed by the prevention rules), despite the timely observance of the supervisory obligations provided for by Legislative Decree 231 by the Supervisory Body.

According to the Guidelines, the same crimes can also be committed once the model has been implemented. However, in this case, since they are intentional crimes, the agent must have wanted both the conduct and the event (where the latter is a constituent element of the crime). In this case, the model and the related measures must be such that the agent will not only have to “want” the crime event (for

([13]) The Decree, among the conditions exempt from the responsibility of the body, cites the case in which “*people committed the crime by fraudulently circumventing organisational and management models*” (article. 6, paragraph 1, lett. *c*).

([14]) The case-law has also expressed itself on this point, sometimes not entirely clearly. For example, the Court of Cassation (Judgment no. 4677 of 2014) after establishing that “*The use of the adverb 'fraudulently' clearly indicates, not a complex interweaving of artifices and deception to the detriment of the organizational and management model, but the violation of duties by the corporate bodies and - therefore - an abuse of powers*", he then specified that "*Fraud cannot even consist in the mere violation of the requirements contained in the model, having to be determined by a circumvention of the 'security measures' suitable to force its effectiveness*”.

example, bribing a public official) but will be able to implement his criminal purpose only by fraudulently circumventing the indications of the institution.
In the hypothesis, however, of culpable crimes, the sole conduct must be wanted, not also the event.

The methodology for the implementation of a risk management system that will be presented below is of general value.

The procedure described, in fact, can be applied to various types of risk: legal (compliance with legal regulations), operational, financial *reporting* , etc.
This feature allows the same approach to be used even if the principles of Legislative Decree 231 are extended to other areas.

Integrated risk management system
It is now established that the risk of compliance, i.e. non-compliance with the rules, involves for companies the risk of incurring judicial or administrative sanctions, significant financial losses or reputational damage as a result of violations of mandatory rules or self-regulation, many of which fall within the category of crimes referred to in Legislative Decree 231/2001.
That said, the management of the numerous compliance obligations, according to a traditional approach, can be characterized by a plurality of processes, potentially inconsistent information, potentially non-optimized controls, with consequent redundancy in the activities.
An integrated approach should, therefore, include common procedures that guarantee efficiency and streamlining and that do not generate overlapping roles (or lack of supervision), duplication of checks and corrective actions, in broader terms, of compliance with the copious reference legislation, where these roles respectively affect and insist on the same processes-

Control systems for tax compliance purposes
In view of the integrated approach just described, for the purposes of adaptation to tax crimes, pursuant to article 25 *quinquiesdecies* of Legislative Decree no. 231/2001, it would be desirable to leverage what has already been implemented by companies for the purposes of: a) mitigating the tax risk, deriving from the adaptation to the provisions of the relevant legislation (so-called “tax compliance”); (b) adaptation to other legislation.
In this sense, the so-called Tax Control Framework (TFC) can be considered, which represents an additional system that allows companies to assess and mitigate tax risk as a whole (enhancing all the risk management models present) and therefore to strengthen the related supervision.
It is a structured risk management and control model that introduces a system of preventive self-assessment of tax risk and privileged dialogue with the Revenue Agency, aimed at overseeing all business processes and transactions that have a tax nature, in the convergent interest of the tax administration and the taxpayer.
Therefore, the companies that have adopted the TCF have in fact already implemented a “system for detecting, measuring, managing and controlling tax risk”, understood as “the risk of operating in violation of tax rules or contrary to the principles or purposes of the tax system”.

It is, therefore, a system that can constitute the platform to orient organizational models towards an effective containment of the risk of committing recently introduced crimes (article 25 *quinquiesdecies*, Legislative Decree no. 231/2001).
In fact, the positive opinion expressed on the TCF by the Revenue Agency for admission to the collaborative fulfillment procedure could represent a useful element of evaluation, without prejudice to the autonomous appreciation by the judicial authority, also in light of the described diversity of systems.
Finally, it should be noted that there is currently an issue of subjective limitation of the scope of the TCF system to taxpayers who are among those who can join the collaborative compliance regime by size.

Risk management of occupational diseases and accidents
The current prevention legislation on health and safety at work (Article 2087 of the Italian Civil Code, Legislative Decree no. 81 of 2008 and subsequent amendments) lays down mandatory principles and mandatory organizational obligations for risk management purposes. In this case, when the company decides to adopt an organization and management model, it must ensure the presence of a business system for the fulfillment of the provisions of Legislative Decree 81 of 2008. In this way, the institution will be able to have a system of prevention and management of risks in terms of health and safety at work that overall complies with the requirements imposed by Legislative Decree 81 (in order to minimize the risks of occupational diseases and accidents) and Legislative Decree 231 (to reduce to an "acceptable" level the risk of conduct deviating from the rules set by the organizational model).
Such a solution can allow a more effective risk prevention activity, with significant advantages in terms of rationalization and sustainability of prevention systems.

Of course, for those organizations that have already activated internal self-assessment processes, even certified, it is a matter of focusing their application, if this is not the case, on all types of risk and with all the methods contemplated by Legislative Decree no. 231 of 2001.

Risk management operating methods
In this regard, it should be remembered that risk management is a maieutic process that companies must activate internally according to the methods deemed most appropriate, obviously in compliance with the obligations established by the law. The models that will therefore be prepared and implemented at company level will be the result of the documented methodological application, by each individual entity, of the indications provided here, according to its internal operating context (organizational structure, territorial articulation, size, etc.) and external (economic sector, geographical area), as well as individual crimes hypothetically linked to the specific activities of the entity considered at risk.
As for the operating methods of risk management, especially with reference to which subjects / corporate functions can be concretely in charge, the possible methodologies are basically two:

- Evaluation by a company body that carries out this activity with the collaboration of line management;

– Self-assessment by operational management with the support of a methodological tutor/facilitator.

According to the logical approach just outlined, the operational steps that the company will have to take to activate a risk management system consistent with the requirements imposed by Legislative Decree no. 231 of 2001 will be explained below. In describing this logical process, emphasis is placed on the relevant results of the self-assessment activities carried out for the implementation of the system.

Inventory of business areas of activity

The development of this phase can take place according to different approaches, among others, by activity, by function, by process.
It involves, in particular, the completion of a periodic exhaustive review of the company, with the aim of identifying the areas that are affected by potential crime cases.
In particular, it will be necessary to identify the types of crime relevant to the entity and at the same time the areas that, due to the nature and characteristics of the activities actually carried out, are affected by any crime cases.
It will be necessary to pay particular attention to the "history" of the entity, or to any prejudicial events that may have affected the company reality and to the responses identified to overcome the weaknesses of the internal control system that have favored these events.
With regard to the crimes of homicide and serious or very serious culpable injuries committed with violation of the rules of protection of health and safety at work, it is not possible to exclude a priori any area of activity, since this case of crimes can in fact affect all the company components.

As part of this process of revision of processes / functions at risk, it is appropriate to identify the subjects subject to monitoring activity which, with reference to intentional crimes, in certain particular and exceptional circumstances, could also include those who are linked to the company by mere parasubordination relationships, such as agents, or by other collaborative relationships, such as business partners, as well employees and collaborators.
In this respect, all workers covered by the same legislation are subject to monitoring for manslaughter and personal injury offences committed in violation of the rules on health and safety at work.
In this regard, it is necessary to reiterate the absolute importance that in every risk assessment process there is precise consideration of the hypotheses of participation in the crime.

Moreover, considering that - as already mentioned - risk means any variable that directly or indirectly may negatively affect the objectives set by Legislative Decree 231, as part of the complex risk assessment process it is necessary to consider the systemic interdependence between the various risky events: each of them, that is, can become in turn a cause and generate a cascade of the cd. "domino effect".

In the same context, it is also appropriate to carry out *due diligence* exercises whenever "indicators of suspicion" have been detected during the risk assessment (for example conducting negotiations in

territories with a high rate of corruption, particularly complex procedures, presence of new personnel unknown to the institution) relating to a particular commercial transaction.

Finally, it should be emphasized that each company / sector presents its own specific areas of risk that can only be identified through a precise internal analysis.
A position of obvious importance for the purposes of the application of Legislative Decree no. 231 of 2001 cover, however, the processes of the financial area. The law, probably for this reason, highlights them with a separate treatment (article 6 paragraph 2 letter c), although an accurate analysis of the evaluation of the business areas "at risk" should still bring out the financial one as one of certain relevance.

Analysis of potential risks

The analysis of potential risks must take into account the possible methods of implementing crimes in the various business areas (identified according to the process referred to in the previous point). The analysis, preparatory to a correct design of preventive measures, must result in an exhaustive representation of how the types of crime can be implemented with respect to the internal and external operating context in which the company operates.
In this regard, it is useful to take into account both the history of the institution, that is, its past events, and the characteristics of other subjects operating in the same sector and, in particular, any offenses committed by them in the same branch of activity.
In particular, the analysis of the possible methods of implementation of the crimes of homicide and serious or very serious culpable injuries committed with violation of the obligations of protection of health and safety at work, corresponds to the assessment of work risks carried out according to the criteria provided for by article 28 Legislative Decree no. 81 of 2008 ([15]).

Evaluation/construction/adaptation of the system of prior checks

([15]) It is therefore necessary to draw up a risk assessment document containing:
- An assessment of all risks to the health and safety of workers existing in the company context;
- The prevention and protection measures taken in the light of that assessment;
- The program of appropriate measures to improve security levels over time and identify the procedures for implementing the measures and, among other things, the roles of the company organization that will have to implement them;
- The indication of the subjects who collaborated in the risk assessment (head of the prevention and protection service, workers' safety representative, competent doctor);
- The identification of the specific risks of certain tasks, which require adequate training and specific professional skills.

The risk assessment document shall be immediately revised when:
- Changes are made to the production process or to the organization of work that affect the safety or health of workers;
- Innovations are introduced, especially in the field of technology;
- Significant injuries occur;
- The results of health surveillance show the need for this.

The activities described above are completed by an assessment of any existing system of prior controls and its adaptation when this proves necessary, or with its construction when the institution does not have them.

The system of preventive controls must be such as to ensure that the risks of committing crimes, in accordance with the methods identified and documented in the previous phase, are reduced to an "acceptable level", as defined in the introduction. It is, in essence, to design those that the Legislative Decree no. 231 of 2001 defines *"specific protocols aimed at planning the formation and implementation of the decisions of the institution in relation to the crimes to be prevented"*.

The components of an internal control system (preventive), for which there are consolidated methodological references, are many.

However, it should be emphasized that the components that will be indicated must be integrated into an organic system, in which not all necessarily have to coexist and where the possible weakness of one component can be counterbalanced by the strengthening of one or more of the other components in a compensatory key.

However, it should be reiterated that, for all institutions, the system of prior checks should be such that it:

- In the case of intentional crimes, it cannot be circumvented except fraudulently;
- In the case of culpable crimes, as such incompatible with fraudulent intentionality, it is still violated, despite the timely observance of supervisory obligations by the appropriate Supervisory Body.

In particular, the following levels of supervision are outlined:

- A first level of control, which defines and manages the so-called line controls, inherent in operational processes, and the related risks. It is generally carried out by the internal resources of the structure, both in self-control by the operator and by the person in charge / manager but may involve, for specialized aspects (for example for instrumental checks) the use of other internal or external resources to the company. It is also good that the verification of organizational and procedural measures relating to health and safety is carried out by the subjects already defined in the allocation of responsibilities (generally these are managers and supervisors). Among these, the Prevention and Protection Service is of particular importance, which is called upon to develop, as far as it is competent, the control systems of the measures adopted;
- A second level of control, carried out by company technical structures competent in the field and independent from those of the first level, as well as from the sector of work subject to verification. This monitoring oversees the process of managing and controlling the risks associated with the operation of the system, ensuring its consistency with company objectives;
- For the most structured and medium-large organizations, a third level of control, carried out by Internal *Audit*, which provides *assurance*, i.e. independent assessments on the design and functioning of the overall Internal Control System, accompanied by improvement plans defined in agreement with the *Management*.

According to the indications just provided, the following are listed, with distinct reference to the intentional and negligent crimes provided for by Legislative Decree no. 231 of 2001, those that are generally considered the components (protocols) of a preventive control system, which must be implemented at company level to ensure the effectiveness of the model.

A. Systems for the preventive control of intentional offences

The most important components of the control system, according to the Guidelines proposed by Confindustria, are:

- **Code of ethics or conduct with reference to the crimes considered.**
  The adoption of ethical principles, i.e. the identification of the primary corporate values to which the company intends to conform, is an expression of a given business choice and constitutes the basis on which to implant the preventive control system.
- **Organizational system sufficiently up-to-date, formalized and clear,** especially as regards the attribution of responsibilities, the lines of hierarchical dependence and the description of tasks, with specific provision of the principles of control.
- **Manual and IT procedures (information systems)** such as to regulate the performance of activities by providing the appropriate control points (quadrature; in-depth information on particular subjects such as agents, consultants, intermediaries).
  In this context, a particular preventive effectiveness is given to the control tool represented by the separation of tasks between those who carry out crucial phases (activities) of a process at risk.
  Particular attention must be paid to financial flows that are not part of typical business processes, especially if they are areas that are not adequately proceduralized and with extemporaneous and discretionary characteristics. In any case, it is necessary that the principles of transparency, verifiability and inherence to the company's activity are always safeguarded.
  It will be advisable to evaluate over time the separation of tasks within each process at risk, verifying that company procedures and / or operating practices are periodically updated and constantly take into account changes or changes in business processes and organizational system.
- **Authorization and signature powers** assigned in accordance with the organizational and management responsibilities defined.
  Certain functions may be delegated to a person other than the one originally held; to this end, a precise indication of the approval thresholds for expenditure made by the delegate may be useful.
  It is also important to provide a coherent and integrated system that includes all company powers of attorney (including those in accident prevention and environmental matters) periodically updated in the light of both regulatory changes and any changes in the company organizational system. It would also be appropriate to ensure the documentability of the delegation system, in order to facilitate its possible reconstruction a posteriori.
- **Communication to staff and their training.**

With reference to communication, it must obviously concern the Code of Ethics, but also other instruments such as authorization powers, hierarchical dependency lines, procedures, information flows and everything that contributes to giving transparency in daily work. Communication must be : capillary, effective, authoritative (i.e. issued from an adequate level), clear and detailed, periodically repeated. In addition, access and consultation of the documentation constituting the Model must also be allowed through the company intranet.

In addition to communication, an appropriate training program must be developed according to the levels of the recipients. It must explain the reasons of expediency - as well as legal - that inspire the rules and their concrete scope. In this regard, it is appropriate to provide for the content of training courses, their periodicity, the obligatory nature of participation in courses, frequency and quality checks on the content of the programs, and the systematic updating of the contents of training events due to the updating of the Model. It is important that the training activity on Legislative Decree 231 and on the contents of the organizational models adopted by each entity is promoted and supervised by the company's Supervisory Body, which, depending on the individual realities, will be able to make use of the operational support of the competent company functions or external consultants. In addition, the model should include how training is delivered (classroom sessions, *e-learning*).

- **Integrated control systems**. They must consider all operational risks, in particular related to the potential commission of predicate crimes, in order to provide timely reporting of the existence and occurrence of situations of general and/or particular criticality. It is necessary to define appropriate indicators for the individual types of risk detected (for example brokerage agreements that provide for offshore payments) and the *risk-assessment* processes within the individual company functions.

B. Systems for the preventive control of culpable offences in the field of protection of health and safety at work and the environment

Without prejudice to what has already been specified in relation to the types of intentional crime, in this context, the most relevant components of the control system are:

- **Code of Ethics** with reference to the crimes considered; it is an expression of the company policy for health and safety at work or for respect for the environment and indicates the vision, essential values and convictions of the company in this area. It therefore serves to define the direction, the principles of action and the objectives to be pursued in this matter.
- **Organizational structure.** With reference to crimes relating to the safety and health of workers, an organizational structure is necessary with tasks and responsibilities formally defined in line with the organizational and functional scheme of the company. There must be a structure of functions that ensures the appropriate technical skills and powers necessary to assess, manage and control the risk to the health and safety of workers (Article 30, paragraph 3, Legislative Decree no. 81/2008). The degree of articulation of functions will be adapted to the nature and size of the enterprise and the characteristics of the activity carried out.

  Particular attention should also be paid to the specific figures operating in this field (RSPP - Head of the Prevention and Protection Service, ASPP - Prevention and Protection Service

Employees, MC - Competent Doctor, where required and, if present, RLS – Workers' Safety Representative, first aid workers, emergency worker in case of fire).

This approach essentially implies that:

- The tasks of the company management, managers, supervisors, workers, the RSPP, the competent doctor and all other subjects, present in the company and provided for by Legislative Decree 81 of 2008 in relation to the safety activities of their respective competence, as well as the related responsibilities, are explained;
- In particular, the tasks of the Head of the Prevention and Protection Service and any employees of the same service, the Workers' Safety Representative, the emergency management staff and the competent doctor are documented.

In order to prevent environmental offences, the organization of the undertaking must instead provide for specific operating procedures to effectively carry out the management of environmental risks that may contribute to the commission of the offences referred to in Article 25 *undecies* of Legislative Decree 231. Among the many initiatives and measures to be promoted, it would therefore be necessary to:

- Proceed and monitor the environmental risk assessment activity according to the regulatory framework and the naturalistic-environmental context on which the company insists;
- Formalize appropriate organizational provisions in order to identify those responsible for compliance with environmental legislation and operational managers for the management of environmental issues, in the light of the risk assessment mentioned above;
- To process and monitor the planning and accounting activities of expenses in the environmental field, qualification, evaluation and monitoring of suppliers (e.g. laboratories in charge of the characterization and classification of waste, the execution of environmental sampling, analysis and monitoring, rather than transporters, disposers, intermediaries in charge of waste management);
- Ensure the updating of the model to the legislation on environmental crimes, complex and constantly evolving.

– **Education and training**. The performance of tasks that can affect health and safety at work requires adequate competence, to be verified and nourished through the administration of education and training aimed at ensuring that all staff, at all levels, is aware of the importance of the compliance of their actions with the organizational model and of the possible consequences due to behaviors that deviate from the rules dictated by the model.

The company should organize training, according to the needs identified periodically, taking into account the peculiarities of the different areas of risk and the professionalism of the personnel working there.

In concrete terms, each worker/company operator must receive sufficient and adequate training with particular reference to his workplace and duties. This must take place when recruiting, transferring or changing duties or introducing new work equipment or new technology, new

dangerous substances and preparations. The company should organize training according to the needs identified periodically.

On the other hand, it is likely that education and training on environmental crimes will mainly involve professional profiles who, in carrying out their duties, are exposed to the risk of commission or participation in the commission of an environmental crime.

To the other subjects it will be sufficient to provide basic and immediately understandable information. Finally, with reference to both issues, particular attention must be paid to the need to update training needs, with respect to the modification of the techniques / technologies used, both for production purposes and for the purpose of prevention or mitigation of the identified risks.

- **Communication and involvement**: the circulation of information within the company assumes a significant value to encourage the involvement of all stakeholders and allow adequate awareness and commitment at all levels.

  Involvement, with reference to the health and safety of workers, should be achieved through:

  - Prior consultation of the RLS, where present, and of the Competent Doctor, where required, regarding the identification and assessment of risks and the definition of preventive measures;
  - Periodic meetings that take into account not only the requests set by current legislation, but also the reports received from workers and the needs or operational problems encountered**.**

  With reference to environmental crimes, moreover, the communication and involvement of the interested parties should be carried out through periodic meetings of all the competent figures for the verification of the correct management of environmental issues, downstream of which an adequate dissemination of the results (e.g. performance, accidents and near missed environmental accidents) within the organization should be provided and, therefore, also towards the workers.

- **Operational management**. The control system, with regard to risks to health and safety at work, should integrate and be congruent with the overall management of business processes.

  From the analysis of business processes and their interrelationship and from the results of the risk assessment derives the definition of the methods for the safe performance of activities that have a significant impact on health and safety at work.

  The company, having identified the areas of intervention associated with health and safety aspects, should exercise a regulated operational management. In this sense, particular attention should be paid to:

  - Recruitment and qualification of personnel;
  - Organization of work and workstations;
  - Acquisition of goods and services used by the company and communication of appropriate information to suppliers and contractors;
  - Normal and extraordinary maintenance;
  - Qualification and choice of suppliers and contractors;
  - Emergency management;

- Procedures to deal with discrepancies with respect to the objectives set and the rules of the control system;

In addition to the indications mentioned above, the model for the prevention and management of risks of environmental crimes should instead identify, on the basis of the results of the risk analysis, appropriate measures for the prevention, protection and mitigation of the risks identified. Similarly, all the issues of management of any company fleet (vehicles, boats, aircraft, etc.), plants containing ozone-depleting substances, as well as the treatment and disposal of waste, special or even dangerous, which must be regulated in specific company protocols aimed at directing the work of employees, in line with the articulated reference legislation (e.g., compliance with time constraints, volumes and physical spaces dedicated to temporary storage of materials for disposal; checks to be implemented on the access of third-party companies involved in transport and disposal).

Still on the subject of waste management and disposal, particular attention must also be paid to controls - both in the contractual phase, with the use of specific precautionary clauses, and in the actual performance - relating to the suppliers to whom these activities are entrusted;

– **Monitoring system.** The management of health and safety at work should include a phase of verification of the maintenance of the risk prevention and protection measures adopted and assessed as appropriate and effective. The technical, organizational, and procedural prevention and protection measures carried out by the company should be subject to planned monitoring.

The setting up of a monitoring plan should be developed through:

- Temporal programming of checks (frequency);
- Assignment of executive tasks and responsibilities;
- Description of the methodologies to be followed;
- How to report any non-conforming situations.

Systematic monitoring should therefore be envisaged, the modalities and responsibilities of which should be established together with the definition of the modalities and responsibilities of operational management.

According to the Confindustria Guidelines, the components described above must be organically integrated into a system architecture that respects a series of control principles, including:

– *Every operation, transaction, action must be verifiable, documented, consistent and appropriate.*

For each operation there must be an adequate documentary support on which checks can be carried out at any time that certify the characteristics and motivations of the operation and identify who authorized, carried out, registered, verified the operation itself.

– *No one can manage an entire process independently*.

The system must ensure the application of the principle of separation of functions, whereby the authorization to carry out an operation must be under the responsibility of a person other than the person who accounts, executes operationally or controls the transaction.

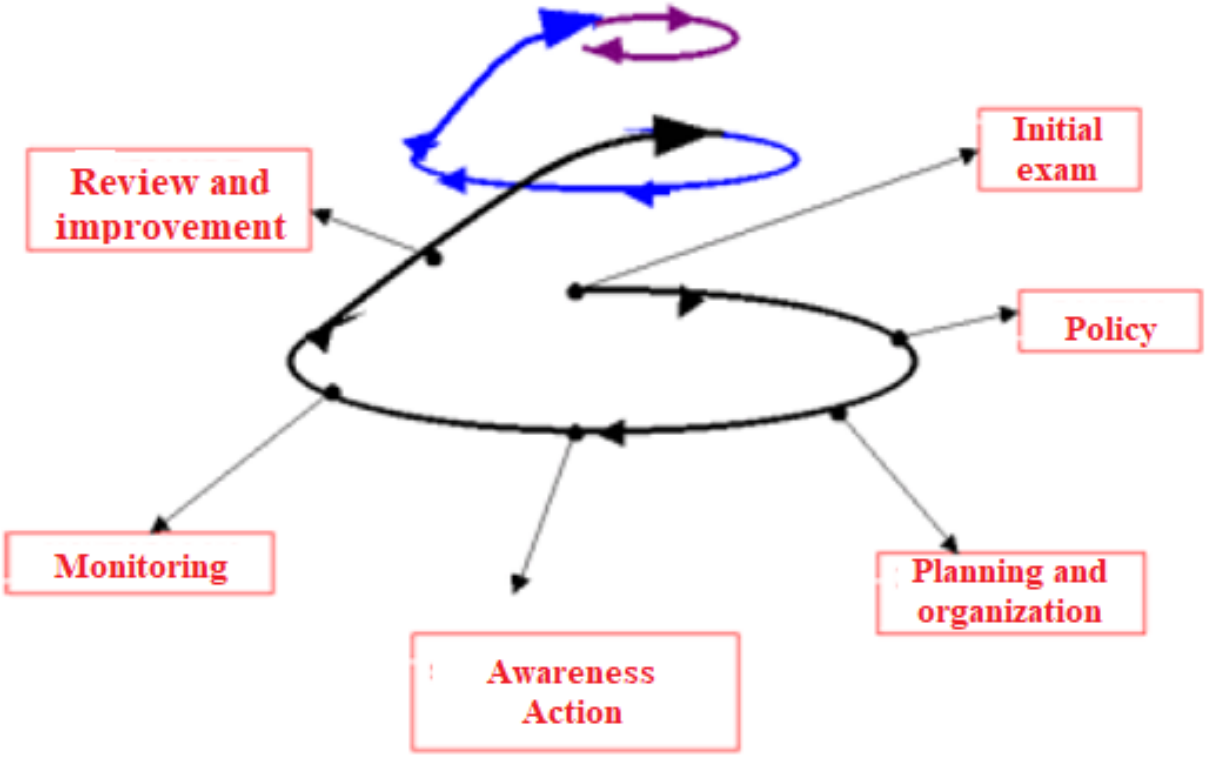
In addition, it is necessary that:

- No one is given unlimited powers;

- Powers and responsibilities are clearly defined and known within the organisation;
- The authorization and signature powers are consistent with the assigned organizational responsibilities and appropriately documented in order to ensure, if necessary, an easy *ex post* reconstruction;

– *Controls must be documented.* The control system must document (possibly through the preparation of minutes) the carrying out of controls, including supervision.

In particular, the principles of control (i.e. regulated management) can be summarized in the general scheme below.



5. THE PHASES OF IMPLEMENTATION OF THE MODEL IN EXACER S.R.L.

With a meeting on 24 February 2022, Working Group 231 presented to the company the launch of the project aimed at implementing the Organization, Management and Control Model of Exacer S.r.l., pursuant to article 6, paragraph 2, lett. *a)* of Legislative Decree 231/01.

This Model is inspired by the Confindustria Guidelines for the construction of organization, management and control models pursuant to Legislative Decree 231/2001, updated to June 2021 and is inspired by the ANCE (National Association of Building Constructors) guidelines for the construction of organization, management and control models pursuant to Legislative Decree 231/2001, as well as the CNDCEC Guidelines of December 2018.

The fundamental moments of the Model, in methodological coherence with what was stated above, were:

- Mapping of "sensitive" business activities, i.e. those activities in which the crimes referred to in Legislative Decree 231/2001 can be committed, also highlighting the activities instrumental to the commission of crimes. The mapping must highlight in detail the type of crimes that can be committed, the subject or function that can perform the offense, the implementation method through which the offense can be realized and the occasion (the "when") that makes possible the realization of the offense;
- Analysis of existing control procedures and definition of specific prevention protocols that regulate dangerous activities in the most stringent and effective way possible;
- Analysis, definition and formalization of the organizational system. This system will have to be properly updated and formalized. It should include a clear allocation of responsibilities, a clear definition of hierarchical lines of dependency and a clear description of tasks. Incentive systems will also have to be analyzed and constructed so that there are no direct incentives for the commission of offences;
- Definition of the requirements of the Supervisory Body;
- Formalization of the operating rules of the Supervisory Body and assignment of specific supervisory tasks on the effective and correct functioning of the Model. Explicit provision of appropriate measures to promptly detect and eliminate risk situations;
- Definition of information flows towards the Supervisory Body;
- Definition of a sanctioning system for both employees and top management for the violation of procedural or control obligations deriving from the introduction of the Model;
- Awareness raising and dissemination at all company levels of the rules of conduct and procedures established. The communication of the models to the staff must be authoritative, effective, capillary, clear and detailed and must be repeated and renewed periodically.
  In addition, a training programme must be expressly envisaged, which must be appropriately tailored to the levels of the recipients. This program must explicitly include the content of the courses, their attendance and the obligatory nature of participation. Finally, it will be necessary to provide for frequency and quality checks on the content of the courses;
- Definition of an ethical Code of conduct – in relation to the crimes referred to in Legislative Decree 231 – which provides for the need to observe the laws and regulations in force and to base relations with the Public Administration on principles of correctness and transparency.

This Code of conduct must then be brought to the attention and observed by Exacer S.r.l. and by all those who have relations with the company (suppliers, contractors, collaborators, employees, etc.).

The Organization, Management and Control Model, without prejudice to the specific purposes described above and relating to the exempt value provided for by the Decree, is part of the broader control system already in place and adopted in order to provide reasonable assurance regarding the achievement of company objectives in compliance with laws and regulations, the reliability of financial information and the protection of assets, also against possible fraud.
In particular, with reference to the so-called sensitive areas of activity, the company has identified the following key principles of its Model, which, by regulating these activities, represent the tools aimed at planning the formation and implementation of the company's decisions and ensuring adequate control over them, also in relation to the crimes to be prevented.

Transparency and traceability

In compliance with the general principle of verifiability, the conduct of each process must be traceable, both in terms of document archiving and at the level of information systems.
In order to comply with this principle, it is necessary to build formalized procedures thanks to which every action, operation, transaction, etc., is adequately verifiable and documented, with particular reference to the authorization and verification mechanisms of the various operational processes. This means that every initiative must be characterized by adequate support that facilitates controls and guarantees the appropriate evidence of operations. Traceability also serves to ensure greater transparency of company management, allowing to better identify the *process owners* and the subjects involved in certain operational processes. In order to build effective control controls, which also comply with the aforementioned principles of traceability and transparency, it is necessary to build a specific matrix of proxies, which identifies in a timely manner the subjects appointed to perform particularly sensitive functions or processes.

Segregation of functions

In line with what has been outlined so far, it is clear that no subject should independently manage an entire process, as in order to limit the risk-crime the different activities that compose it must not be assigned to a single individual, but divided between several actors. For this reason, the structure of company procedures must ensure the separation between the phases of:

- Decision
- Authorization
- Execution
- Control
- Recording and archiving of transactions concerning the various business activities, with specific reference to those considered most sensitive, or subject to a high risk of committing one of the alleged crimes. Think, for example, of specific activities such as relations with public bodies, participation in public tenders, the management of inspections or audits, the process of

forming social communications and so on; It is necessary to identify cross-signature mechanisms, particular authorization routes for sensitive operations for types or amounts, an adequate control system and so on.

Transparent management of financial resources

Among the few ideas offered directly by the law, it is worth underlining a specific reference to the need to identify "methods of managing financial resources suitable to prevent the commission of crimes". Particular attention must therefore be paid to this aspect, in order to define procedures that guarantee transparent and correct management of the Institution's liquidity.

The specific focus on this issue is imposed by the possibility that a mismanagement of financial resources can represent an instrumental element (for example through the creation of hidden funds) to the commission of some predicate crimes also characterized by very incisive sanctions, such as money laundering, self-laundering, corruption, etc. Consequently, the Model should provide for specific procedures aimed at establishing thresholds of amount, cross-signature mechanisms, formal delegations for banking relationships and payments and all the safeguards necessary to reduce risks in this area.

The principles described above appear consistent with the indications provided by the Guidelines issued by Confindustria, and are considered by the Company to be reasonably suitable also to prevent the crimes referred to in the Decree. For this reason, the Company considers it essential to guarantee the correct and concrete application of the aforementioned control principles in all the so-called sensitive business areas identified and described in the Special Parts of this Model.

6. FOUNDATIONS AND CONTENTS OF THE MODEL

The Model prepared by Exacer S.r.l. is based on:

- The Code of Ethics and the Code of Conduct, intended to establish the general lines of conduct;
- The organizational structure that defines the assignment of tasks - providing, as far as possible, the separation of functions or alternatively compensatory controls - and the subjects called to check the correctness of behavior;
- The mapping of sensitive business areas, i.e. the description of those processes in which it is easier for crimes to be committed;
- Processes instrumental to sensitive business areas, i.e. those processes through which financial instruments and/or substitute means are managed to support the commission of crimes in areas at risk of crime;
- The use of formalized company procedures, aimed at regulating the correct operating methods to take and implement decisions in the various sensitive business areas;
- The indication of the subjects who intervene in overseeing these activities, in the hopefully distinct roles of both executors and controllers, for the purpose of segregating management and control tasks;
- A criminal manual aimed at describing the types of crime abstractly conceivable for the company reality also indicating possible methods of implementation within the company;
- The adoption of a system of delegations and corporate powers, consistent with the responsibilities assigned and which ensures a clear and transparent representation of the company process of formation and implementation of decisions, according to the requirement of the uniqueness of the person in charge of the function;
- The identification of methodologies and tools that ensure an adequate level of monitoring and control, both direct and indirect, being the first type of control entrusted to the specific operators of a given activity and to the person in charge, as well as the second control to the management and the Supervisory Body;
- The clarification of the information supports for the traceability of monitoring and control activities (e.g. cards, printouts, reports, etc.);
- The reporting procedure, to protect the integrity of the entity, of illegal conduct, relevant pursuant to Legislative Decree 231/2001 or violations of the organization, management and control model of the entity, guaranteeing the confidentiality of the identity of the whistleblower in the management activities of the report;
- The definition of a sanctioning system for those who violate the rules of conduct established by the company. System that, on the one hand, must provide for the prohibition of acts of retaliation or discrimination, direct or indirect, against those who make reports within the terms referred to in the reporting procedure, for reasons related, directly or indirectly to the report and, on the other hand, must provide for sanctions against those who violate the measures to protect the whistleblower, as well as those who make reports with intent or gross negligence that prove to be unfounded;

- The implementation of a plan: 1) training of managerial staff and middle managers working in sensitive areas, administrators and the Supervisory Body; (2) information to all other interested parties;
- The establishment of a Supervisory Body which is assigned the task of supervising the effectiveness and correct functioning of the model, its consistency with the objectives and its periodic updating.

The documentation relating to the Model consists of the following parts:
Criminal Manual
General part
General part – internet version
Special Part A – Code of Ethics
Special Part B – Code of Conduct
Special Part C – Organizational structure
Special Part D – Regulations of the Supervisory Body
Special part E – Sanctioning System
Special Part F – Crimes against the Public Administration and against the State
Special Part G – Offences relating to counterfeiting in coins, public credit cards, stamp duties and instruments or signs of recognition
Special Part H – Corporate crimes
Special Part I – Offences against the individual personality
Special Part J – Offences of receiving stolen goods, money laundering and use of money, goods or benefits of illicit origin, as well as self-laundering
Special Part K – Offences relating to safety in the workplace
Special Part L – Offences relating to organized crime
Special Part M – Transnational crimes
Special Part N – Offences relating to cybercrime and unlawful processing of data
Special Part O – Offences relating to copyright infringement
Special Part P – Offences against industry and commerce
Special part Q – Offence referred to in article 377 bis of the Italian Criminal Code
Special Part R – Offence of employment of illegally staying third-country nationals
Special Part S – Environmental crimes
Special Part T – Tax offences
Special Part U – Smuggling offences
Special Part V - Offences relating to non-cash payment instruments
Reporting procedure to the Supervisory Body

Code of Ethics

The preparation and adoption of a Code containing the relevant ethical principles pursuant to Legislative Decree 231/2001 to which the entity must comply does not raise particular concerns and difficulties in adapting to small businesses.

The minimum contents of the Code of Ethics consist essentially in compliance with current regulations, in the monitoring of each operation carried out and in the expression of a series of principles to which the activity of the entity must be based in carrying out commercial relations with the relevant subjects. These contents, essential for the effectiveness and credibility of a Code of Ethics, are to be considered of generalized application and must therefore also be implemented by small businesses.
With reference to the Code of Ethics, it should be noted that the conduct of directors, prosecutors and special prosecutors, managers, employees, external subjects must comply with the general principles and rules of conduct as reported in the Code adopted by the company by resolution of the Board of Directors on 23 March 2022 and updated on 27 October 2022.
This Code has been developed in order to translate ethical values into principles of conduct, which the recipients of the same are required to follow in the conduct of business and their activities also in relation to behaviors that may integrate the types of crime provided for by the Decree.
The principles and rules of conduct contained in this model are integrated with what is expressed in the Code of Ethics adopted by the company, while presenting the model with a different scope than the Code itself, for the purposes that it intends to pursue in implementation of the provisions of the Decree. From this point of view, it should be specified that:

- The Code represents an instrument adopted autonomously and susceptible to application on a general level by the company in order to express a series of principles of corporate ethics that the company recognizes as its own and on which it intends to recall the observance of all its employees and all those who cooperate in the pursuit of company purposes;
- The Model, on the other hand, responds to specific provisions contained in the Decree, aimed at preventing the commission of particular types of crimes for facts that, apparently committed in the interest or to the advantage of the company, may entail administrative liability according to the provisions of the Decree itself. However, in consideration of the fact that the Code recalls principles of conduct also suitable for preventing the unlawful conduct referred to in the Decree, it acquires relevance for the purposes of the model and therefore formally constitutes an integral component of the model itself.

The company's Code of Ethics is contained in "Special Part A: Code of Ethics".

Code of Conduct

The Code of Conduct is a guarantee tool, aimed at preventing and combating any form of sexual harassment, mobbing and discrimination, with absolute respect for confidentiality.
In particular, with the adoption of this Code of Conduct, Exacer S.r.l. intends to:

- Protect the dignity and equality of women and men in the workplace, promoting and encouraging the adoption of decisions and behaviors inspired by the principles of equity, respect, equal opportunities, collaboration and fairness;
- Define conduct that, beyond individual sensitivities, constitutes situations of harassment, mobbing or discrimination;

- Ensure, in case of reporting harmful conduct, the immediate use of timely and impartial procedures, aimed at decisively and effectively reconciling cases of sexual harassment, mobbing or discrimination and preventing repetition;
- Identify the actors involved and their respective roles, as part of the action to prevent and combat harmful conduct governed by the code;
- Identify and monitor episodes of sexual harassment, mobbing, or discrimination, in order to prepare adequate management strategies for prevention and contrast;
- Promote the knowledge and application of current legislation and to protect equality and equal opportunities for all workers and promote information on the rules on sexual harassment, mobbing and discrimination in the workplace.

The Company's Code of Conduct is set out in "Special Part B: Code of Conduct".

Organizational structure

The company's organizational system is defined through the issuance of organizational provisions (service orders, *job descriptions*, internal organizational directives) by the Management Body, the President and the CEO. The formalization of the organizational structure adopted is ensured by the Chairman of the Board of Directors, or by his delegate, who periodically updates the company's organizational chart and disseminates it with an appropriate service order to all company personnel (through *e-mail* communications, on the bulletin board and *company intranet*).
The organizational structure of Exacer S.r.l., which is an integral and substantial part of the Model, is shown in "Special Part C: Organizational structure" and represents the map of the areas of the company and the related functions that are attributed to each area.

Whistleblowing procedure

On 29 December 2017, Law no. 179 entered into force on "Provisions for the protection of perpetrators of reports of crimes or irregularities of which they have become aware in the context of a public or private employment relationship".
The law aims to encourage the collaboration of workers to encourage the emergence of corruption within public and private bodies.
With regard to the private sector, article 2 of Law no. 179/17 intervenes on Legislative Decree 231 and inserts in Article 6 ("Subjects in top positions and models of organization of the entity") a new provision that frames within the scope of Model 231 the measures related to the presentation and management of reports. Consequently, the law provides for companies that adopt the Model the obligation to implement the new measures.
In particular, pursuant to the new paragraph 2 *bis* of article 6, the Organizational Model provides for the following additional measures:

- One or more channels that allow the subjects indicated in article 5, paragraph 1, letters a) and b), to present, to protect the integrity of the entity, detailed reports of illegal conduct, relevant pursuant to this decree and based on precise and consistent factual elements, or violations of the organization and management model of the entity, of which they have become aware by

reason of the functions performed; these channels guarantee the confidentiality of the identity of the whistleblower in the management of the report;

- At least one alternative reporting channel suitable to guarantee, by electronic means, the confidentiality of the identity of the whistleblower ([16]);
- The prohibition of retaliatory or discriminatory acts, direct or indirect, against the whistleblower for reasons related, directly or indirectly to the report;
- In the disciplinary system adopted pursuant to paragraph 2, letter e), adequate sanctions against those who violate the aforementioned measures to protect the whistleblower as well as against those who make, with willful misconduct or gross negligence, reports that prove to be unfounded; where, in fact, it is ascertained - even with a judgment of first instance - the criminal liability of the whistleblower for the crimes of slander or defamation or in any case for crimes committed with the complaints of the whistleblower or its civil liability, in cases of willful misconduct or gross negligence, the exclusion of the aforementioned protections is envisaged.

Article 6 paragraph 2 *ter* of Legislative Decree 231/2001 also provides that the adoption of discriminatory measures against reporting subjects can be reported to the National Labor Inspectorate, for the measures within its competence, as well as by the reporting person, also by the trade union organization indicated by the same.

Finally, article 6 paragraph 2 *quater* provides for an *anti-retaliation* measure and establishes the nullity of the retaliatory or discriminatory dismissal of the whistleblower: the rule also establishes the nullity of the change of duties pursuant to article 2013 of the Italian Civil Code, as well as any other retaliatory or discriminatory measure adopted against the whistleblower.

Moreover, it is envisaged that in the event of disputes related to the imposition of disciplinary sanctions or the adoption of further organizational measures with negative effects on the working conditions of the whistleblower (demotion, dismissals, transfers), the employer bears the burden of proving that they are based on reasons unrelated to the report itself.

The adoption of discriminatory measures – such as sanctions, demotions, dismissals, transfers, or in any case subject to other organizational measures having negative effects, direct or indirect, on working conditions – against the subjects who make the reports is communicated in any case to ANAC by the interested party or by the most representative trade unions in the administration in which they were implemented. ANAC informs the Department of Public Administration of the Presidency of the Council of Ministers or the other guarantee or disciplinary bodies for the activities and any measures falling within their competence. If the dismissal of the reporter is proven for facts related to the report,

([16]) With regard to the confidentiality of the identity of the whistleblower, it should be noted that this profile must be distinguished from that of anonymity: in fact, to guarantee the complainant adequate protection, also in terms of identity confidentiality, it is necessary that it is recognizable.
The Organizational Models may however also include channels for making reports anonymously, the validity of which will certainly be more complex to verify, with the risk of fueling unfounded complaints and mere grievances that deviate from the objective of protecting the integrity of the institution.
To contain this risk, it may be envisaged, for example, that they are adequately documented or rendered in great detail and "capable of bringing out facts and situations by relating them to specific contexts" (see ANAC Determination no. 6 of 28 April 2015 – Linee guida in materia di tutela del dipendente pubblico che segnala illeciti).

the same will have the right to reinstatement in the workplace pursuant to article 2 of Legislative Decree no. 23 of 2015 (article 1 paragraph 8).
From another point of view, according to article 1 paragraph 7 of Law no. 179/2017, the burden of proving that any discriminatory or retaliatory measures adopted against the whistleblower are motivated by reasons unrelated to the report is borne by the institution; where not justified, such acts are to be considered null and void.
In light of the regulatory changes illustrated above, as well as on the basis of the indications provided in the explanatory note of Confindustria of January 2018 and in the Assonime circular of 28 June 2018, Model 231 must contemplate a specific *Whistleblowing* procedure, which must determine *ad hoc* channels that allow any reports to be submitted, based on precise and consistent factual elements, guaranteeing the confidentiality of the identity of the whistleblower. The procedure should also take into account the following measures:

- The identification of a management system for reports of violation that allows to guarantee the anonymity of the so-called *whistleblower*;
- The specific training of top managers, as well as those subordinate to them;
- The integration of the disciplinary system prepared by Model 231, with the inclusion of sanctions against those who violate the measures to protect the whistleblower, as well as those who make reports with intent or gross negligence that prove to be unfounded.

The employee who made the report or complaint cannot not be sanctioned, demoted, dismissed, transferred, or subjected to other organizational measures having negative effects, direct or indirect, on the working conditions determined by the report.

The reporting procedure to the Supervisory Body ("Whistleblowing") is reported in *the "WHISTLEBLOWING PROCEDURE".*

Sensitive areas of activity, instrumental processes and decision-making

Below are the main sensitive activities and the main instrumental processes, subject to detailed analysis in the relative special parts.

For crimes against the Public Administration and against the State

Macro sensitive activities:
omitted

Instrumental processes:
omitted

For crimes relating to falsity in coins, public credit cards, stamp values and instruments or signs of recognition

Macro sensitive activities:

omitted

Instrumental processes:
omitted

For corporate crimes

Macro sensitive activities:
omitted

Instrumental processes:
omitted

For crimes against the individual personality

Macro sensitive activities:
omitted

Instrumental processes:
omitted

For crimes relating to receiving stolen goods, money laundering and use of money, goods or benefits of illicit origin, as well as self-laundering

Macro sensitive activities:
omitted

Instrumental processes:
omitted

For crimes relating to safety in the workplace

Macro sensitive activities:
omitted

For crimes relating to organized crime

Macro sensitive activities:
omitted

Instrumental processes:
omitted

For transnational crimes

Macro sensitive activities:
omitted

Instrumental processes:
omitted

For offences relating to cybercrime and unlawful processing of data

Macro sensitive activities:
omitted

Instrumental processes:
omitted

For offences relating to copyright infringement

Macro sensitive activities:
omitted

Instrumental processes:
omitted

For crimes against industry and commerce

Macro sensitive activities:
omitted

Instrumental processes:
omitted

For the crime referred to in article 377 *bis* of the Italian Criminal Code

Macro sensitive activities:
omitted

Instrumental processes:

omitted

For the offence of employment of illegally staying third-country nationals

Macro sensitive activities:
omitted

For environmental crimes

Macro sensitive activities:
omitted

For tax crimes

Macro sensitive activities:
omitted

Instrumental processes:
omitted

For the crime of smuggling

Macro sensitive activities:
omitted

Instrumental processes:
omitted

For offences relating to non-cash payment instruments

Macro sensitive activities:
omitted

Instrumental processes:
omitted

As regards:

- Crimes with the purpose of terrorism or subversion of the democratic order (Article 25 *quater* of the Decree),
- Crimes consisting of female genital mutilation (Article 25 *quater*. 1 of the Decree),
- Crimes relating to market abuse (Article 25 *sexies* of the Decree),

- Crimes of racism and xenophobia (Article 25 *terdecies* of the Decree),
- The crimes of fraud in sports competitions, abusive exercise of gaming or betting and games of chance exercised by means of prohibited devices (Article 25 *quaterdecies* of the Decree),
- Crimes against cultural heritage (Article 25 *septiesdecies* of the Decree),
- The crimes of laundering of cultural property and devastation and looting of cultural and landscape heritage (Article 25 *duodevicies* of the Decree)

it was considered that the specific activity carried out by the company does not present risk profiles such as to make the possibility of their commission in the interest or to the advantage of the company reasonably founded.
In this regard, it is therefore considered exhaustive to refer to the principles contained in this General Part of the Model and in the Code of Ethics, which bind the recipients of the Model itself to respect the values of solidarity, morality, respect for the laws and fairness.

Archiving documentation
The activities carried out in the context of sensitive processes are adequately formalized, with particular reference to the documentation prepared.
As part of the realization of the same, the documentation outlined above, produced and / or available on paper or electronic, is archived in an orderly and systematic manner by the functions involved in the same, or specifically identified in procedures or detailed work instructions.
To safeguard the company's documentary and information assets, adequate security measures are envisaged to protect against the risk of loss and/or alteration of documentation relating to sensitive processes or unwanted access to data/documents.

Information systems and computer applications
In order to monitor the integrity of the data and the effectiveness of the information systems and/or IT applications used to carry out operational or control activities in the context of sensitive processes, or in support of them, the presence and operation of the following is guaranteed:

- User profiling systems in relation to access to modules or environments;
- Rules for the correct use of company computer systems and aids (*hardware* and *software* supports);
- Automated systems access control mechanisms;
- Automated mechanisms of blocking or inhibiting access.

Operating procedures and instructions
The company has adopted a structure of formalized procedures governing the main activities, available to all employees on the company *intranet*.
omitted
For each procedure, the function responsible for drafting, verifying and approving it has been clearly identified.

The authorization process to which the same procedures must be subjected before they can be officially issued has also been regulated.

Request to create a procedure

The request for the issuance of a procedure can be sent to the Management by anyone who is part of the company organization. The convenience of issuing a document is evaluated by the Management together with the Head of the sector concerned.

After an analysis of the feasibility of the request, with a negative outcome, the request is archived or trashed. If the analysis follows a positive outcome, the person responsible for drafting the document and then the person responsible for verification/approval is defined, and the drafting of the document begins.

When the document has been processed, the person responsible for drafting the document signs a copy and has it reviewed by the verifier/approver. If the document is negatively assessed by the latter manager, it returns to the editor for appropriate corrections.

At this point the process is repeated until the consent of the verification / approval manager is obtained, which then starts the distribution.

Changes and revisions to procedures

Changes and revisions to procedures follow the same process as the first issue of the document.

The audit is delegated to the entity that issued the original document.

System of delegations and powers

The authorization system that translates into an articulated and coherent system of delegations of functions and powers of attorney of the Company must comply with the following requirements:

- Proxies must combine each management power with its responsibility and an appropriate position in the organization chart and be updated as a result of organizational changes;
- Each delegation must define and describe in a specific and unequivocal way the management powers of the delegate and the person to whom the delegate reports hierarchically;
- The management powers assigned with the delegations and their implementation must be consistent with the corporate objectives;
- The delegate must have spending powers commensurate with the functions conferred on him;
- Power of attorney can only be granted to persons with internal functional delegation or specific assignment and must provide for the extension of the powers of representation and, possibly, the numerical spending limits;
- Only persons with specific and formal powers may assume, in his name and on his behalf, obligations towards third parties;
- All those who have relations with the P.A. must be delegated or delegated in this regard;
- The Articles of Association define the requirements and methods for appointing the manager responsible for preparing accounting and corporate documents.

Sanctioning system

As already underlined, the effective implementation of the Organizational and Management Model requires, among other things, the adoption of a "Disciplinary System suitable for sanctioning non-compliance with the measures indicated in the model", both towards subjects in top management (Article 6, paragraph 2, letter e), and towards subjects subject to the direction of others (Article 7, paragraph 4, letter b).

This provision is of great importance as it represents one of the elements that differentiates the Model pursuant to Legislative Decree 231/2001 from other types of organizational systems.

The requirement established by the legislative provisions has also been confirmed by the jurisprudence, where, for example, the unsuitability of the Organizational and Management Model

has been sanctioned due to the lack of preparation of a disciplinary system capable of sanctioning possible violations. An adequate Disciplinary System, in general, cannot disregard compliance with current legislation and must be articulated in compliance with the principle of gradualness, providing for sanctions proportionate to the role played in the company organization by the offender, to the infringement itself and to the impact that this entails for society in terms of exposure to the risk of crime.

The main doctrinal and jurisprudential indications state that the Disciplinary System:

- Must be drawn up in writing and adequately disseminated, constituting an integral part of the effective implementation of the Model through adequate information and training of the recipients;
- Joins the external one (criminal or administrative), aimed at sanctioning the offender of the Organizational Model regardless of whether that violation has resulted in the commission of a crime;
- Must be compatible with the legislative and contractual rules governing the relations maintained by the Body with each of the subjects to whom the Model applies;
- Provides for sanctions to be imposed in compliance with the principles of specificity, timeliness and immediacy, as well as suitability to carry out an effective deterrent action, having a specific preventive function and not merely and exclusively punitive;
- Must guarantee the adversarial procedure, i.e. the possibility in favor of the person to whom the conduct has been challenged to propose, with reasonable certainty, arguments in his defense.

More specifically, a Disciplinary System, referred to Model 231/2001, must contain:

- The list of punishable violations;
- The list of sanctions, to be graduated and distinguished also according to the offender (employees, external collaborators and partners);
- The subjects targeted by sanctions;
- The procedures for applying sanctions, identifying the person responsible for their imposition and in general to monitor the observance, application and updating of the sanctioning system;
- Suitable methods of publication and dissemination;
- Sanctions against those who violate the protection measures of the person who makes a report pursuant to the reporting procedure ("*Whistleblowing")*, as well as those who make reports with intent or gross negligence that prove to be unfounded.

The disciplinary system set up in order to implement the Decree is based on the principles derived from article 7 of the Workers' Statute (Law No. 300/70), and by the National collective bargaining agreement adopted by Exacer S.r.l.
Exacer S.r.l. has drawn up and applied the sanctioning system in accordance with the above principles, which forms an integral and substantial part of the model as "Special Part E".

Information and training

Exacer S.r.l. intends to guarantee a correct and complete knowledge of the Model and the content of Legislative Decree no. 231/2001 and the obligations deriving from it.
Training and information is managed by the competent company departments under the control of the Supervisory Body, in close coordination with the managers of the areas/functions involved in the application of the Model.
This training and information effort is also extended to all those subjects who, although not belonging to the company structure, still operate in the interest and / or for the benefit of Exacer S.r.l.

Information

The dissemination of the Model is carried out by email communication to employees whose contents essentially concern:

- General information relating to the Decree;
- Structure and main operational provisions of the adopted Model;
- Procedure for reporting to the Supervisory Body for the communication by the employee of any behavior, other employees or third parties, considered potentially in contrast with the contents of the Model, by opening a special e-mail box.

The adoption of this document is communicated to all persons working for and on behalf of the company at the time of its adoption.
All employees and top management must sign a special form attesting to the knowledge and acceptance of the Model, of which they have a paper copy or on computer support.
New hires are given an information set containing the Model, including the Code of Ethics and the text of Legislative Decree no. 231/2001, with which they are assured of the knowledge considered of primary importance.

Information to external collaborators, partners and third parties in general

Policies and procedures adopted by Exacer S.r.l. on the basis of the Model, as well as on the consequences that conduct contrary to the provisions of the Model or current legislation may have with regard to contractual relationships are provided to additional recipients, in particular suppliers and consultants, by the corporate departments having institutional contacts with them, with specific information.
In any case, the contracts governing relations with these subjects must include specific clauses that indicate clear responsibilities regarding failure to comply with Exacer S.r.l.' s business policies, the Code of Ethics and this Model.

Formation

The continuous training and updating activity is organized by the competent company departments under the supervision of the Supervisory Body, using mandatory periodic meetings, modulated in content and frequency, according to the qualification of the Recipients and the function they hold.

If deemed necessary by the Supervisory Body, external professionals with specific expertise on the subject of crimes attributable to the company, the analysis of procedures and organizational processes, as well as the general principles on *compliance* legislation and related controls will take part in the meetings.

Updating and specific training interventions, also through participation in conferences and seminars, also periodically involve the members of the Supervisory Body and the subjects it uses in the performance of its functions.

Formal records must be kept of training.

In general, training can also be held *online*, that is, in relation to those employees who cannot be reached by computer, even through paper forms.

The training of personnel aims to make known the Model adopted by Exacer S.r.l. and to adequately support all those involved in carrying out activities in Risk Areas.

In this regard, the competent function periodically prepares, with the collaboration of the Supervisory Body, a training plan that takes into account the many variables present in the reference context; especially:

- The *targets* (e.g. the recipients of the interventions, their level and organizational role, etc.);
- Content (e.g. relevant topics in relation to recipients, etc.);
- Delivery tools (e.g. classroom courses, *e-learning*, etc.);
- The delivery and implementation times (e.g. preparation and duration of interventions, etc.);
- The commitment required of the recipients (e.g. the time of use, etc.);
- The actions necessary for the correct support of the intervention (e.g. promotion, support of the leaders, etc.);
- Specific needs emerged in relation to the peculiar business operations of reference, possibly also reported by the supervisory bodies.

The plan shall include:

- Basic *e-learning* training for employees;
- Specific classroom interventions for people working in facilities where the risk of unlawful conduct is greater, as well as targeted meetings *with management* and members of the Supervisory Body.

Usually, the training interventions concern the regulatory framework of reference and the Organization, Management and Control Model as a whole, but the level of detail is modulated in relation to the qualification of the recipients and the different level of involvement of the same in sensitive activities.

The training contents are updated in relation to the evolution of the legislation and the Model: therefore, if significant changes occur (e.g. extension of the administrative liability of the Entities to new types of crimes), a coherent integration of the contents is carried out, also ensuring their use.

Participation in training activities will be monitored through an attendance system.

During the courses, differentiated in content and delivery methods according to the qualification of the recipients, the level of risk of the area in which they operate, whether or not the recipients have representative functions of the company, the main contents of the rules of conduct must be illustrated as well as the potential consequences, both individual and corporate, deriving from any conduct with criminal relevance must be clarified.
At the end of each training course, participants will be subjected to a test aimed at assessing the degree of behavior achieved and to guide further training interventions.
The training courses prepared for Employees must have mandatory attendance: it is the task of the dedicated function of Exacer S.r.l. to inform the Supervisory Body on the results – in terms of adhesion – of these courses, with the collaboration of the Managers at various levels who must guarantee, in particular, the use of "remote" products by their collaborators.
The repeated unjustified non-participation in the aforementioned training programs by employees will result in the imposition of a disciplinary sanction that will be imposed according to the rules indicated in this Model.
The Supervisory Body periodically checks the state of implementation of the training plan and has the right to request periodic checks on the level of knowledge, by Employees, of the Decree, of the Model.

Management control and cash flows

Article 6, letter c) of the Decree explicitly states that the Model must "*identify ways of managing financial resources suitable to prevent the commission of crimes*". To this end, the management control system adopted by Exacer S.r.l. is divided into the various phases of preparation of the annual budget, analysis of periodic financial statements and preparation of forecasts at company level.
The system ensures that:

- All transactions related to financial management must be carried out through the use of the company's bank accounts;
- There is a specific formalized procedure for the opening, use, control and closure of current accounts;
- There is plurality of subjects involved, in terms of appropriate segregation of functions for the processing and transmission of information;
- There is the ability to provide timely reporting of the existence and occurrence of critical situations through an adequate and timely system of information flows and reporting;
- Periodically operations are carried out to verify balances and cash operations;

With specific regard to invoice payments and expense commitments, the company requires that:

- all invoices received must have attached the purchase order issued by the competent office authorized to issue; such an order must be countersigned by the controller with appropriate powers;
- the invoice is checked in all its aspects (correspondence, calculations, taxation, receipt of goods or services);
- the invoice is recorded independently from the accounting and does not give rise to payment without the specific authorization of the head of the administration and finance office as well as the ordering function;

The company establishes the controls, the methods of recording and management of anomalies to be followed during the process of settling passive invoices in the event of anomalies in the payment procedure.
With specific reference to the management of expense reimbursements, the company establishes the conditions for being able to grant financial advances to employees, reporting and verification of expenses made by them in the performance of their duties.
With respect to the credit cards used by employees, the company defines the methods of managing the nominal credit cards granted to employees.
With reference to the management of financial accounts, the company establishes the rules to be followed to verify the control of its bank and financial accounts.
With particular reference to the management of financial resources in the field of safety in the workplace – in addition to the provisions outlined above, to be considered applicable also in the context considered here -, the Company undertakes, during the management review carried out annually pursuant to article 30 of Legislative Decree no. 81/2008, to implement: the Safety Objectives Program for the following year, within which the actions and interventions to be implemented are defined (detailed with the specification of the different priorities), with the forecast of the necessary resources and the estimate of the costs to be faced. Estimated costs that will concern either the expenses related to human resources (including information/training) or the expenses related to the economic resources necessary to achieve the objectives of an objective nature. The budget that emerges from the aforementioned forecast will be established by the Board of Directors and made available for ordinary expenses in the field of safety in the workplace and will be freely managed by the employer.
Finally, liquidity management is inspired by asset conservation criteria, with a related prohibition on carrying out risky financial transactions, and possible double signature for the use of liquidity for amounts exceeding predetermined thresholds.

Supervisory Body

In compliance with the provisions of article 6 paragraph 1, lett. b), of the Decree, which provides that the task of supervising the functioning and compliance with the Model and taking care of its updating, is entrusted to a body of the Company, endowed with autonomous powers of initiative and control, called the Supervisory Body, the Company has identified and appointed this Body.
For details, please refer to “Special Part D: Regulation of the Supervisory Body”.

7. THE EFFECTIVE IMPLEMENTATION OF THE MODEL

Since this Model is an "act of emanation of the governing body" (in accordance with the provisions of Article 6, first paragraph, letter a*)* of the Decree), subsequent amendments and additions of a substantial nature to the Model itself are referred to the Board of Directors of Exacer S.r.l.

It is also recognized by the Board of Directors of Exacer S.r.l. the right to make any formal changes or additions to the text.

In both cases, the aforementioned changes may also be made following the assessments and consequent proposals by the Supervisory Body of Exacer S.r.l.

Among the circumstances that could give rise to the opportunity to update the Model are, by way of example and not limited to:

- The introduction of new predicate offences;
- Guidelines of jurisprudence and/or prevailing doctrine;
- Significant changes in the activities carried out by the Company and/or in its organizational structure;
- Experiences recorded in the context of previous business operations (cd. "historical analysis" or "*case history*").

This Model and its implementation are subject to verification activities by the Supervisory Body.

This activity is aimed at checking the suitability, adequacy and effectiveness of the Model and the system outlined by it. The frequency and specific object of the checks are defined in the Supervisory Body Plan.