

ORGANISATION, MANAGEMENT AND CONTROL MODEL

GENERAL SECTION

REGULATORY REFERENCES: LEGISLATIVE DECREE No. 231/01

APTUIT (Verona) s.r.l.

Head office in Via Alessandro Fleming, 4 - Verona

Verona Business Register - 379303

Tax code and VAT number 03954300236

Share capital Euro 8,010,000 fully paid up.

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1. ADMINISTRATIVE LIABILITY UNDER LEGISLATIVE DECREE 231/01

1.1. The Regulatory Framework

Legislative Decree no. 231 of 8 June 2001, setting forth "*Rules on the administrative liability of legal persons, companies and associations, including those without legal personality, pursuant to Article 11 of Law no. 300 of 29 September 2000*" has introduced for the first time in our legal system the criminal liability of entities, which is additional to that of the natural person who materially committed the offence¹.

The extension of liability aims to involve in the punishment of certain criminal offences the assets of the entities and, ultimately, the economic interests of the shareholders, who, until the entry into force of the law under review, did not suffer any consequences from the commission of offences committed, to the benefit of the company, by directors and/or employees.

The principle of the individual nature of criminal liability left them free from sanctions other than compensation for damage, if any. On the level of criminal consequences, in fact, only Articles 196 and 197 of the Criminal Code provided (and still provide) for a civil obligation for the payment of fines or penalties imposed, but only in the event of insolvency of the material author of the fact. The regulatory innovation, therefore, is not insignificant in that neither the entity nor the members of the companies or associations can be said to be outside the criminal proceedings for offences committed to the benefit or in the interest of the entity.

This, of course, gives rise to an interest on the part of those persons (partners, associates, etc.) who participate in the assets of the entity, in monitoring the regularity and legality of the company's operations.

The liability outlined in the regulation, despite being defined as "*administrative*", has several peculiarities typical of criminal liability; the procedural system adopted is in fact the one provided for criminally relevant conduct.

The report accompanying the decree states: "*This liability, since it results from an offence and is linked (by the express will of the delegated law) to the guarantees of the criminal trial, diverges in many points from the paradigm of the administrative offence now classically inferred from Law 689/1981, with the consequence of giving*

¹ The provision of administrative (but in practice criminal) liability of entities for certain offences was contained in Article 2 of the OECD Convention of 17 December 1997 on bribery of foreign public officials in international business transactions. This type of liability was subsequently introduced into Italian law by Article 11 of Law No 300 of 29 September 2000, ratifying and implementing the OECD and European Union conventions against corruption in international trade and against fraud to the detriment of the European Community. Article 11, in particular, delegated the Government to regulate the articulation of this type of liability. In implementation of this delegation, the Government adopted Legislative Decree no. 231/2001.

rise to a tertium genus that combines the essential features of the criminal and administrative systems in an attempt to reconcile the reasons of preventive effectiveness with those, even more inescapable, of the maximum guarantee". Administrative liability is autonomous, but is the consequence of the conduct of a natural person, in cases where such conduct constitutes an offence provided for in the Decree.

This *tertium genus* of liability has recently been qualified by case law as "*organisational*", characterised by the psychological element of guilt of the Entity which has not organised itself adequately to prevent the commission of the offences referred to in Legislative Decree 231/2001.

1.2. Objective profile: the relevant offences

The offences for which administrative liability is incurred are listed in Section III of Chapter I of Legislative Decree no. 231/01, which has been amended several times to include new offences not initially provided for.

In relation to the type of offences to which the legislation in question applies, the delegated legislator initially made a minimalist choice with respect to the indications contained in the delegated law (Law no. 300/2000). In fact, of the four categories of offences set out in Law no. 300/2000, the Government has only taken into consideration those relating to offences against the Public Administration, set out in **Articles 24 - Undue receipt of public funds, Fraud against the State or another public body or for the purpose of obtaining public funds and Computer fraud against the State or another public body and 25 - Extortion and Corruption**, pointing out, in the report accompanying Legislative Decree no. 231/2001, the foreseeable extension of the rules in question to other categories of offences. This report was prophetic, since subsequent regulatory interventions extended the catalogue of offences to which the rules of Decree No 231/2001 apply.

The following is a list of all the families of offences provided for in Legislative Decree 231/01, updated to the date of drafting this document.

Art. 24 - MISAPPROPRIATION OF FUNDS, FRAUD AGAINST THE STATE OR A PUBLIC BODY OR OF THE EUROPEAN UNION OR FOR OBTAINING PUBLIC FUNDS, COMPUTER FRAUD AGAINST THE STATE OR A PUBLIC BODY IN PUBLIC SUPPLY

Included in the original core of the Decree, following the amendments made by Legislative Decree 14/07/2020, no. 75 implementing EU Directive 2017/1371 (so-called *PIF Directive*), which has changed both the title and the content of the article, it identifies fraudulent conduct to the detriment of the public administration or the European Union and fraud affecting the financial interests of the European Union. It provides for fines of up to 600 quotas in addition to certain prohibitory sanctions.

Article 24-bis - CYBERCRIMES AND ILLICIT DATA PROCESSING

Law no. 48 of 18 March 2008, concerning the "*Ratification and implementation of the Council of Europe Convention on Cybercrime, done at Budapest on 23 November 2001, and rules for the adaptation of the internal system*" extended the types of offences that may give rise to the liability of the entity, introducing into the body of Legislative Decree no. 231/2001, Article 24-bis "*Cybercrimes and unlawful processing of data*". The new Article 24-bis of Legislative Decree no. 231/2001 has extended the administrative liability of legal persons and entities to almost all cybercrimes. As specified in the explanatory memorandum accompanying the original bill, in fact, the introduction of this article responds to the need to introduce forms of criminal liability for legal persons also with reference to the most serious cybercrimes.

In view of the application requirements of the decree, entities will be held liable for cybercrimes committed in their interest or to their advantage by persons in positions of representation, administration or management of the entity or of one of its organisational units, but also by persons subject to their direction or supervision.

The types of cybercrime, therefore, concern those unlawful behaviours carried out by persons in a senior or subordinate position (employees and/or collaborators), who use the company's computer/telematic tools and technologies to carry out their normal working activities.

The legislator with Legislative Decree no. 105 of 21/09/2019 converted by Law no. 13 of 18/11/2019 has included among the offences covered by the administrative liability of entities those integrated by commission or omission conducts supported by the specific intent to hinder or condition the procedures and prescriptions to ensure a high level of security of networks, information systems and information services of collective interest through the establishment of the so-called "*national cyber security perimeter*".

The maximum penalties are up to 500 quotas in addition to all disqualifying sanctions.

Article 24-ter - ORGANISED CRIME OFFENCES

Law no. 94 of 15 July 2009 laying down provisions on public security introduces into Legislative Decree no. 231/01 Article 24-ter "*Organised crime offences*", which has been definitively approved by the Senate. The relevant offences thus include the offences referred to in Articles 416 paragraph 6, 416-bis, 416-ter and 630 of the Criminal Code, and the offences referred to in Article 416 of the Criminal Code, excluding the sixth paragraph, or in Article 407 paragraph 2, letter a), number 5) of the Code of Criminal Procedure.

The commission of such offences carries the maximum penalties provided for both in the form of a fine of up to 1,000 quotas and in the form of disqualification penalties, including a perpetual ban on exercising the activity.

Art. 25 - EXTORTION, UNDUE INDUCTION TO GIVE OR PROMISE BENEFITS, CORRUPTION AND ABUSE OF OFFICE

Together with Article 24, it constitutes, in its original wording entitled "*Extortion and bribery*", the original nucleus of the offences provided for by Legislative Decree no. 231/01 and, like it, it relates to the sphere of relations with the Public Administration.

Law no. 190 of 6 November 2012², known as the "*anti-corruption law*", amended the heading of this article following the introduction by Law 190 of the offence of "*Undue induction to give or promise benefits*" (Article 319 quater of the Criminal Code) where the public official or public service appointee manifests a hypothesis of advantage to anyone in exchange for the giving or promising of a benefit. The person who, by accepting the mere proposal made by the public official, actually gives or promises benefits, commits an offence relevant to the administrative liability of the entities, pursuant to Legislative Decree no. 231/01.

Further amendments were made by Legislative Decree no. 75 of 14/07/2020, in implementation of EU Directive 2017/1371 (so-called *PIF Directive*), which has changed both the heading of the article (inserting the offences of embezzlement and abuse of office) and its content, inserting "*embezzlement*" and "*abuse of office*" among the predicate offences. In relation to these newly introduced offences, the administrative liability of entities is limited to cases of damage to the financial interests of the European Union.

The financial penalties for committing such offences can be up to 800 quotas and involve the application of all disqualification sanctions for a period of not less than one year.

Art. 25-bis - COUNTERFEITING OF COINS, PUBLIC CREDIT CARDS, STAMP COINS AND INSTRUMENTS OR SIGNS OF RECOGNITION

Law no. 409 of 23 November 2001³, converting Law Decree no. 350/2001 containing urgent provisions in view of the Euro, a few months after the first version of Legislative Decree no. 231/01 was issued, introduced, in Article 4, a new article of the Decree (**art. 25-bis) relating to counterfeiting of money, public credit cards and revenue stamps**, which Law 99/2009, laying down provisions for the development

² Law No. 190 of 6 November 2012 "Provisions for the prevention and suppression of corruption and illegality in the public administration" published in the Official Gazette no. 265 of 13 November 2012.

³ Law no. 409/2001 published in the Official Gazette no. 274 of 24 November 2001.

and internationalisation of businesses, as well as on energy and containing amendments to Legislative Decree no. 81 of 8 June 2001, will then amend by introducing in paragraph 2 letter f bis) and with it the offences relating to counterfeiting of trademarks, distinctive signs and patents as well as the introduction into the State and trading of products with false signs. This is the same rule that will later also introduce offences against industry and trade and copyright infringement offences.

Sanctions for violations under Article 25-bis are set at a maximum of 800 quotas and all disqualifying penalties at a maximum of one year.

Art. 25.bis1 - CRIMES AGAINST INDUSTRY AND TRADE

As mentioned in the commentary to the previous article, offences against industry become relevant for the purposes of the administrative liability of entities as a result of Law 99/2009, laying down provisions for the development and internationalisation of enterprises, as well as on energy and containing amendments to Legislative Decree No. 81 of 8 June 2001. The associated sanctions may amount to up to 800 quotas and involve the application of all disqualifying sanctions.

Art. 25-ter - COMPANY OFFENCES

The introduction of this article by Legislative Decree no. 61/2002⁴ added Article 25-ter to Legislative Decree no. 231/01, extending administrative liability to certain types of corporate offences . On 15 June 2015, the new rules on corporate offences came into force with the amendment to Article 25-ter **which incorporates the changes made to the offence of false corporate communications, introduced by Article 12 of Law no. 69 of 27 May 2015 "Provisions on offences against the public administration, mafia-type associations and false accounting"**.

The new features related to the predicate offence concern:

- different qualification of the offence: the conduct qualifying the offence is nowadays the conscious exposure, in order to make a profit, of untrue facts (or omission of relevant facts) in the financial statements or in other corporate communications on the economic, asset or financial situation of the Company or of the group to which it belongs, in a way that is concretely likely to mislead others. Thus, falsehood with the intent to make an unfair profit and no longer the intent to deceive the shareholders or the public;

⁴ Legislative Decree No 61/2002 on the regulation of criminal and administrative offences concerning commercial companies. The decree was published on 11 April 2002 in the Official Gazette - General Series No. 88 of 15 April 2002. With this measure, the Government has implemented Article 11 of the delegated law on the reform of company law (Law 366/2001), approved on 3 October 2001. These rules were subsequently amended by Law No 262/2005 referred to below.

- increase in the fine imposed on the company compared to the past: in the event of conviction of the legal person, the fine now ranges from 200 to 400 quotas;
- introduction of the offence of false corporate communications with minor facts. The financial penalty to be paid by the company ranges from 100 to 200 quotas;
- introduction of the offence of false corporate communications by listed companies. The fine to be paid by the company ranges from 400 to 600 quotas.

Article. 25-ter governs, in particular, the offences of: false accounting in reports and other corporate communications, false prospectus, false reporting or communications by the auditing firm, obstruction of control, undue return of contributions, illegal distribution of profits and reserves, unlawful transactions on shares or quotas of the company or of the parent company, transactions to the detriment of creditors, failure to disclose a conflict of interest, fictitious capital formation, unlawful distribution of corporate assets by the liquidator, bribery among private individuals, unlawful influence on the shareholders' meeting, market rigging, obstructing the exercise of the functions of public supervisory authorities.

In the past, measures aimed at modifying the rules on the administrative liability of entities were implemented by the Community Law for 2004⁵ (Article 9) which, among other things, implemented Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (so-called market abuse) by means of immediately applicable rules. market abuse), and with the law "Provisions for the protection of savings and the regulation of financial markets", which made some changes to the system of administrative liability of legal persons with regard to certain corporate offences.

The new legislation on market abuse has broadened the scope of application of Decree 231, by including in the list of "*predicate*" offences for the administrative liability of entities the cases of *insider trading* and market manipulation.

The 2004 Community Law, in particular, intervened on both the Civil Code and the Consolidated Law on Finance (TUF).

On the other hand, Law No. 262/2005⁶ on the protection of savings extended the liability of entities to the new offence of failure to disclose a conflict of interest of directors, which only concerns listed companies, and amended the rules on false corporate communications and false reporting.

⁵ Law No 62 of 18 April 2005, containing "Provisions for the fulfilment of obligations arising from Italy's membership of the European Communities. Community Law 2004". The measure was published in the Official Gazette no. 96 of 27 April 2005 - Ordinary Supplement no. 76.

⁶ Law no. 262 of 28 December 2005 on "Provisions for the protection of savings and the regulation of financial markets", published in the Official Gazette no. 301 of 28 December 2005 - Ordinary Supplement no. 208.

As regards the Civil Code, Article 2637, which punished the offence of market rigging committed in respect of both listed and unlisted financial instruments, has been amended. The rule now applies only to cases of market rigging in relation to unlisted financial instruments or those for which no application for admission to trading on a regulated market has been made, and not to listed financial instruments, to which the rules of the Consolidated Law on Market Manipulation apply. On the other hand, the new case of insider trading (or abuse of inside information) refers only to inside information concerning issuers governed by the Consolidated Law on Finance.

Finally, in November 2012, the aforementioned "*anti-corruption law*"⁷ introduced, among the offences relevant to the liability of entities, the offence of "*Bribery among private individuals*" by amending Article 2635 of the Civil Code and its reference in letter s-bis of paragraph 2. Art. 25 ter letter s-bis was then replaced by art. 6 of Legislative Decree no. 38 of 15.03.2017 with effect from 14.04.2017, following the introduction of the new case of "*Incitement to Corruption between private individuals*" (Article 2635 bis).

The sanctions for the offences referred to involve a maximum penalty of 600 quotas, which may be increased by a third in the event of achieving a "*significant profit*". For the offence of Bribery among Private Individuals (Article 2635 of the Civil Code) and of Instigation to Bribery among Private Individuals (Article 2635 bis of the Civil Code), the disqualification penalties provided for in Article 9, paragraph 2 of Legislative Decree no. 231/2001 shall also apply.

Art. 25-quater - CRIMES WITH A VIEW TO TERRORISM OR EVERSION OF DEMOCRATIC ORDER

The law "*Ratifying and executing the International Convention for the Suppression of the Financing of Terrorism*" done in New York on 9 December 1999⁸ inserted a new Article 25-quater to Decree 231, which establishes the liability of the entity in violation of the provisions of Article 2 of the International Administrative Convention also in relation to the commission of offences for the purpose of terrorism or subversion of the democratic order. The law also applies (Article 25-quater, last sentence) with reference to the commission of offences, other than those expressly referred to, "*which are in any event for the suppression of the financing of terrorism made in New York on 9 December 1999*".

The penalties provided for are up to 1,000 quotas and the application of all prohibitory sanctions, including a permanent ban on exercising the activity.

⁷ See note 2.

⁸ Law No 7/2003, in Official Gazette No 21 of 27 January 2003.

Art. 25-quater 1 - FEMALE MUTILATION

Law no. 7/2006⁹, which prohibits and punishes so-called infibulation practices, extended the scope of application of Legislative Decree no. 231/2001 to the new offence of female genital mutilation practices (Article 583-bis of the Criminal Code).

The financial penalties applied reach a maximum of 700 quotas and can lead to a permanent ban on activity.

Art. 25-quinquies - CRIMES AGAINST INDIVIDUAL PERSONALITY

The law containing "*Measures against trafficking in persons*"¹⁰ introduced a new article to the decree, 25-quinquies, which extends the regime of the administrative liability of the entity also in relation to the commission of crimes against the individual governed by Section I of Chapter III of Title XII of Book II of the Criminal Code.

Law no. 38 of 6 February 2006¹¹, containing "*Provisions on the fight against the sexual exploitation of children and child pornography, including on the Internet*", amended the scope of application of the offences of child pornography and possession of pornographic material (respectively, Articles 600-ter and 600-quater of the Criminal Code), for which the liability of the organisation was already provided for pursuant to Legislative Decree no. 231/01, by including also the hypotheses in which the pornographic material used represents virtual images of minors (so-called "*virtual child pornography*").

Article 3 of Legislative Decree no. 39 of 4 March 2014 inserted, in paragraph 1 letter c), a reference to Article 609-undecies of the Criminal Code, thus introducing the solicitation of minors among the relevant offences.

Lastly, Law no. 199 of 29 October 2016, in amending Article 603-bis of the Criminal Code on the subject of "*Illegal intermediation and exploitation of labour*", also amended Article 25-quinquies of Legislative Decree no. 231/2001, inserting in letter a) of c. 1 the provision of a pecuniary sanction also for the crime referred to in Article 603 bis of the Criminal Code.

⁹ Law No. 7 of 9 January 2006 on "Provisions concerning the prevention and prohibition of female genital mutilation practices", published in the Official Gazette No. 14 of 18 January 2006.

¹⁰ Law no. 228 of 11 August 2003 on "Measures against trafficking in persons". The measure was published in the Official Gazette no. 195 of 23 August 2003.

¹¹ Law No. 38 of 6 February 2006, containing "Provisions on the fight against the sexual exploitation of children and child pornography including through the Internet", published in the Official Gazette No. 38 of 15 February 2006.

The financial penalties applied reach a maximum of 1,000 quotas and can lead to a permanent ban on activity.

Article 25 - sexies - MARKET ABUSE

The article and its references to the offences of insider dealing and market manipulation were introduced by the aforementioned Law 62/2005¹².

For the commentary on the introductory rules, please refer to the commentary on Article 25-ter of the Decree above.

The fine can be up to 1,000 quotas or increased up to 10 times the profit derived from the offence. No disqualifying sanctions are provided for.

Article 25-septies - SAFETY AT WORK

Law no. 123 of 3 August 2007, with the introduction of Article 25-septies into the regulatory framework of Legislative Decree no. 231/2001, further extended the scope of the administrative liability of entities to include the offences of manslaughter and serious or very serious negligent injury occurring in connection with the violation of the rules for the prevention of accidents at work or relating to the protection of hygiene and health at work¹³.

The penalties provided for are up to 1,000 quotas and the application of all disqualifying sanctions for a maximum period of one year.

Art. 25-octies - RECEIPT, LAUNCHING AND USE OF MONEY, GOODS OR USE OF ILLEGAL PROPERTY AND SELF-LOCKS

With Legislative Decree no. 231 of 21 November 2007, the legislator implemented Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (so-called "Directive on the prevention of the use of the financial system for the purpose of money laundering"). III Anti-Money Laundering Directive)¹⁴. Article 72 of Legislative Decree no. 231/2007, which

¹² See previous note 6.

¹³ Law no. 123 of 3 August 2007, concerning "Measures for the protection of health and safety at work and delegation to the Government for the reorganisation and reform of the relevant legislation", published in the Official Gazette. no. 185 of 10 August 2007.

¹⁴ Legislative Decree no. 231/2007, concerning the "Implementation of the Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, and of the Directive 2006/70/EC laying down implementing measures", was published in the Official Journal no. 290 of 14 December 2007 - Ordinary Supplement No. 268. The text has been in force since 29 December 2007.

introduced this Article 25-octies, was amended by Article 5 of Legislative Decree no. 90 of 25/05/2017 with effect from 04/07/2017.

Law No. 186 of 15 December 2014, which introduced Article 648 ter of the Criminal Code, entitled "*Self-Money Laundering*", has contextually referred to the same within this article.

Recently, with Legislative Decree No. 195 of 8 November 2021, the Italian legal system transposed European Directive 2018/1673 on the fight against money laundering. Specifically, the Decree intervenes in the Criminal Code in two ways: firstly, it extends the catalogue of predicate offences for the various types of money laundering, including culpable offences and contraventions; secondly, it reshapes the penalties for the various types of offences.

It follows that the entity is punishable for the offences of receiving stolen goods, money laundering, use of illegal capital and self laundering, even if committed in a purely "*domestic*" context, provided that an interest or advantage for the entity derives therefrom.

The sanctions provided for are pecuniary sanctions of up to 1,000 quotas and the application of all prohibitory sanctions for a maximum period of two years.

Art. 25-octies.1 - CRIMES RELATING TO PAYMENT INSTRUMENTS OTHER THAN CASH

Legislative Decree No. 184 of 8 November 2021, implementing EU Directive 2019/713 (combating fraud and counterfeiting of non-cash means of payment) introduced into the Legislative Decree no. 231/2001 Article 25-octies.1. It identifies the financial penalties which apply to the Entity in relation to the commission of the offences provided for by the Criminal Code concerning non-cash payment instruments: **a)** for the offence referred to in Article 493-ter, a pecuniary sanction ranging from 300 to 800 quotas; **b)** for the offence referred to in Article 493-quater and for the offence referred to in Article 640-ter, in the hypothesis aggravated by the transfer of money, monetary value or virtual currency, a pecuniary sanction up to 500 quotas.

The second paragraph of the amendment further provides that, unless the act constitutes another administrative offence punishable more severely, in relation to the commission of any other offence against public faith, against property or which in any event offends property as provided for in the Criminal Code, involving non-cash means of payment, the following financial penalties shall apply to the entity: **a)** if the offence is punished with imprisonment of less than ten years, the pecuniary sanction up to 500 quotas; **b)** if the offence is punished with imprisonment of not less than ten years, the pecuniary sanction from 300 to 800 quotas. Furthermore, in cases of conviction for one of the offences referred to in paragraphs 1 and 2, the

disqualification sanctions provided for in Article 9, paragraph 2, shall apply to the entity.

Art. 25-novies - CRIMES RELATING TO COPYRIGHT INFRINGEMENT

Law 99/2009, laying down provisions for the development and internationalisation of enterprises, as well as on energy and containing amendments to Legislative Decree no. 81 of 8 June 2001, in addition to intervening on Articles 25-bis and 25-bis 1 of Legislative Decree 231/01, introduces a further Article 25-novies "*Inducement not to make statements or to make false statements to the judicial authorities*" with reference to Article 377-bis of the Criminal Code.

The penalties provided for are up to 500 quotas and the application of all disqualifying sanctions for a maximum period of one year.

Art. 25-decies - INDUCEMENT NOT TO MAKE STATEMENTS OR TO MAKE FALSE STATEMENTS TO THE JUDICIAL AUTHORITY

Law no. 116 of 3 August 2009 - Ratification and implementation of the United Nations Convention against Corruption, adopted by the UN General Assembly on 31 October 2003 by resolution no. 58/4, signed by the Italian State on 9 December 2003, as well as rules of internal adjustment and amendments to the Criminal Code and the Code of Criminal Procedure, inserts into Legislative Decree no. 231/01 a reference to the offence referred to in Article 377-bis of the Criminal Code, so that the inducement not to make statements by means of violence, threats or the offering or promising of money or other benefits, also constitutes a predicate offence for the administrative liability of the entities.

The penalties for the offence referred to are a maximum fine of 500 quotas. No disqualifying sanctions are provided for.

Art. 25-undecies - ENVIRONMENTAL OFFENCES

The inclusion of environmental offences among the "*predicate offences*" for which a company may be held liable was achieved by inserting a new article¹⁵ in the legislative measure containing the specific rules on the administrative liability of entities. The list of offences introduced is particularly broad; in fact, it covers numerous offences, both criminal and non-criminal, contained in the Criminal Code and recently expanded with the provision of new offences introduced by Law no. 68/2015 (Law on Ecological Offences) in the Environmental Code¹⁶, in the provisions

¹⁵ Art. 25-undecies of Legislative Decree no. 231 of 8 June 2001.

¹⁶ Legislative Decree. 3 April 2006, no. 152 - Environmental regulations.

for the protection of animal and plant species in danger of extinction¹⁷, in the rules for the protection of ozone¹⁸ and in the provisions relating to pollution caused by ships¹⁹.

The pecuniary sanctions are up to a maximum of 1,000 quotas and the prohibitory sanctions, where applicable, may also entail a permanent ban on exercising the activity.

Art. 25-duodecies - EMPLOYMENT OF THIRD COUNTRY NATIONALS WHOSE RESIDENCE IS UNREGULATED

Article 2 of Legislative Decree no. 109/2012 introduced a new article "25- *duodecies*" (Employment of third-country nationals whose stay is irregular) into Legislative Decree no. 231/01. Article 30 of Law no. 161 of 17/10/2017 added to the original Article 25 duodecies of Legislative Decree no. 231/2001, a further three paragraphs with effect from 19.11.2017 and relating to the predicate offence of promoting, directing, organising, financing, or carrying out the transport of illegal immigrants, and that of aiding and abetting the stay of illegal foreigners, referred to in Article 12 of Legislative Decree no. 286/1998 paragraphs 3, 3-bis , 3-ter and 5. The new Article 25k provides that "*1. In relation to the commission of the offence referred to in Article 22, paragraph 12-bis, of Legislative Decree no. 286 of 25 July 1998, the entity is subject to a monetary sanction of between 100 and 200 quotas, up to a limit of Euro 150,000. 1-bis. In relation to the commission of the offences referred to in Article 12, paragraphs 3, 3-bis and 3-ter, of the Consolidated Act referred to in Legislative Decree no. 286 of 25/07/1998, and subsequent amendments, the entity is liable to a monetary sanction of between four hundred and one thousand quotas. 1-ter. In relation to the commission of the offences referred to in Article 12, paragraph 5, of the Consolidated Act referred to in Legislative Decree no. 286 of 25/07/1998, and subsequent amendments, the body is subject to a monetary sanction of between one hundred and two hundred quotas. 1-quater. In cases of conviction for the offences referred to in paragraphs 1-bis and 1-ter of this Article, the disqualification sanctions provided for in Article 9(2) shall apply for a period of not less than one year*".

Therefore, if the employer employs **foreign workers without a residence permit**, with an expired residence permit whose renewal has not been requested within the

¹⁷ Law no. 150 of 7 February 1992 - Regulations governing offences relating to the application in Italy of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed in Washington on 3 March 1973, referred to in Law no. 874 of 19 December 1975 and Regulation (EEC) no. 3626/82 and subsequent amendments, as well as regulations on the marketing and possession of live specimens of mammals and reptiles that may constitute a danger to public health and safety.

¹⁸ Law no. 549 of 28 December 1993 - Measures to protect stratospheric ozone and the environment.

¹⁹ Legislative Decree. 6 November 2007, n.202 - Implementation of Directive 2005/35/EC on ship-source pollution and consequent sanctions.

terms of the law, or which has been revoked or annulled, in addition to the criminal liability of the employer, the company will also be held liable for 231 if the aggravating circumstances set out in paragraph 12-bis of art. 22 of Legislative Decree no. 286/98 explained below:

- more than three workers are employed;
- the employed workers are children of non-working age;
- the employed workers are subjected to the other particularly exploitative working conditions referred to in the third paragraph of Article 603-bis of the Criminal Code.

Similarly, if the entity derives an interest or advantage from the commission by senior or subordinate management of the offences of promoting, directing, organising, financing, or transporting illegal immigrants or aiding and abetting the stay of illegal immigrants, in addition to the criminal liability of the natural person who committed the offence, the 231 liability of the company will also be triggered.

The financial penalty is up to a maximum of one thousand quotas. For the offences referred to in paragraphs 1-bis and 1-ter, the disqualification sanction referred to in Article 9(2) shall also apply for a period of not less than one year.

Article 25-Terdecies - RACISM AND XENOPHOBIA

Article 5 of Law 20/11/2017 no. 167 introduced with effect from 12.12.2017 the new Article 25 Terdecies of Legislative Decree. 231/2001. The predicate offence is the crime referred to in Article 3, paragraph 3-bis (Propaganda/hystigation/incitement based on the apologia of crimes of genocide, against humanity and war), introduced into Law 13/10/1975 no. 654 , by Article 1 of Law 16/06/2016 no. 115 and then amended by Article 5 of Law 20/11/2017 no. 167 . The financial penalty imposed on the Entity is up to a maximum of eight hundred quotas. In the case of a permanent establishment with the sole or main purpose of enabling or facilitating the commission of offences, the definitive disqualification from exercising the activity is provided for under Article 16(3) of Legislative Decree no. 231/2001.

Art. 25-quaterdecies- FRAUD IN SPORTS COMPETITIONS, ABUSIVE GAMBLING OR BETTING AND GAMBLING WITH THE USE OF PROHIBITED EQUIPMENT

Law No. 39 of 3 May 2019 concerning the "*Ratification and implementation of the Council of Europe Convention on Sports Manipulation, done at Magglingen on 18 September 2014*", extended the liability of entities under Legislative Decree No. 231/2001 to the offences of fraud in sports competitions and abusive exercise of gaming or betting activities. It therefore introduced into Legislative Decree 231/2001 Article 25 quaterdecies, which states:

"1. In relation to the commission of the offences referred to in Articles 1 and 4 of Law no. 401 of 13 December 1989, the following monetary sanctions are applied to the entity: for offences, the monetary sanction up to five hundred quotas; for infringements, the monetary sanction up to two hundred and sixty quotas.

2. In cases of conviction for one of the offences indicated in paragraph 1, letter a), of this Article, the disqualification sanctions provided for in Article 9, paragraph 2, shall apply for a period of not less than one year".

More specifically, the offence of sporting fraud (Article 1 of Law 401/1989) incriminates "anyone who offers or promises money or other benefits or advantages to any of the participants in a sporting competition organised by recognised federations, in order to achieve a result different from that resulting from the proper and fair conduct of the competition, or who carries out other fraudulent acts aimed at the same purpose" as well as "the participant in the competition who accepts the money or other benefits or advantages, or accepts the promise thereof".

Article 4 of the same regulatory framework, on the other hand, contemplates various cases relating to the exercise, organisation, sale of gaming and betting activities in breach of authorisations or administrative concessions.

Art. 25-quinquiesdecies- TAX CRIMES

During the sitting of 17 December 2019, the Senate gave the final green light to the Law converting - with amendments - Legislative Decree no. 124 of 26 October 2019, , on "*Urgent provisions on fiscal matters and for unavoidable needs*" (so-called Tax Decree). One of the new features is the introduction of certain tax crimes among the predicate offences for the "administrative" criminal liability of entities under Legislative Decree no. 231/2001. In particular, the following will become part of the catalogue of predicate offences, under Article 25-quinquiesdecies, the offences of:

- fraudulent declaration through the use of invoices or other documents for non-existent transactions, as referred to in Article 2, paragraph 1 of Legislative Decree 74/2000, for which a financial penalty of up to 500 quotas is provided for;

• fraudulent declaration through the use of invoices or other documents for non-existent transactions, as referred to in Article 2, paragraph 2-bis, Legislative Decree no. 74/2000, for which a financial penalty of up to 400 quotas is provided for;

- fraudulent misrepresentation by means of other devices as referred to in Article 3, Legislative Decree no. 74/2000, for which a financial penalty of up to 500 quotas is provided for;

• issue of invoices or other documents for non-existent transactions, as referred to in Article 8, paragraph 1 of Legislative Decree no. 74/2000, for which a financial penalty of up to 500 quotas is provided for;

- issue of invoices or other documents for non-existent transactions referred to in Article 8, paragraph 2-bis) of Legislative Decree no. 74/2000, for which a financial penalty of up to 400 quotas is provided for;
- concealment or destruction of accounting documents referred to in Article 10, for which a pecuniary sanction of up to 400 quotas is provided for;
- fraudulent evasion of tax payments provided for in Article 11, for which a pecuniary sanction of up to 400 quotas is provided for.

Legislative Decree 14/07/2020, no. 75 implementing EU Directive 2017/1371 (so-called *The PIF Directive*) has supplemented Article 25 quinquiesdecies in question, introducing a new paragraph 1-bis which provides:

- a penalty of up to 300 quotas for the offence of false declaration;
- a penalty of up to 400 quotas for the offence of failure to make a declaration;
- a penalty of up to 400 quotas for the offence of undue compensation;

and the application of prohibitory sanctions also for the newly introduced offences.

It then provides, as conditions of sanctionability, that the conduct must be carried out:

1. in cross-border fraud schemes;
2. in order to evade value added tax for a total amount of not less than Euro 10,000,000.

Art. 25-sexiesdecies SMUGGLING

Legislative Decree 14/07/2020, no. 75 implementing EU Directive 2017/1371 (so-called *PIF Directive*) with a view to providing the fullest possible protection for the financial interests of the European Union, has introduced this new article, aimed at providing for the liability of the entity for carrying out, in its interest or to its advantage, the smuggling offences provided for in Presidential Decree no. 43 of 23 January 1973. Following the establishment of the customs union between the EU member states, customs duties are a resource of the European Union and contribute to defining its budget.

A fine of up to 200 quotas is provided for in these cases, or up to 400 quotas if the border duties due exceed EUR 100,000. In any case, the application of the

TRANSNATIONAL CRIMES

Law No. 146/2006 ratifying and implementing the Palermo Convention against Transnational Organised Crime of 15 November 2006²⁰ established the application of Decree 231 to **TRANSNATIONAL ORGANISED CRIME**. The new provisions provide for the liability of entities for administrative offences arising from the crimes of criminal conspiracy, money laundering and use of money and goods of unlawful origin, smuggling of migrants and obstruction of justice²¹.

1.3. The Subjective Profile of Administrative Responsibility and Possible Exemptions

In terms of addressees, the law indicates "*entities having legal personality, companies having legal personality and companies and associations also without legal personality*" (Art. 1 paragraph 2).

The descriptive framework is completed by the indication, in the negative, of the entities to which the law does not apply, namely "*the State, the territorial public bodies and the bodies performing functions of constitutional importance*" (Art. 1 paragraph 3).

It should be recalled that this new liability arises only when certain types of offences are committed by persons linked in various ways to the organisation and only in cases where the unlawful conduct was carried out in its interest or to its advantage.

Therefore, not only when the unlawful conduct has resulted in an advantage, whether patrimonial or not, for the entity, but also in the event that, even in the absence of such a concrete result, the offence is in the interest of the entity.

A second aspect of particular importance in order to correctly define the hypotheses in which the rules in question apply, concerns the identification of the persons who, by committing an offence, may give rise to liability on the part of the body to which they belong.

In this respect, Article 5 of the decree identifies two different categories of employees and collaborators of the company.

²⁰ Law no. 146 of 16 March 2006, on "Ratification and implementation of the United Nations Convention and Protocols against Transnational Organized Crime, adopted by the General Assembly on 15 November 2000 and 31 May 2001", published in the Official Gazette of 11 April 2006, no. 85 - Ordinary Supplement No. 91.

²¹ The provision relating to the transnational offences of money laundering and use of money and goods of unlawful origin was subsequently repealed by Legislative Decree no. 231 of 21 November 2007.

This distinction, however, is not merely formal, but is particularly important in order to understand how the company can prevent and avoid the application of the sanctions against it. The two categories of persons who may give rise to liability for the company as a result of offences committed by them are:

- persons who hold positions of representation, administration or management of the entity or of one of its organisational units with financial and functional autonomy, as well as persons who exercise, even de facto, the management and control of the entity (so-called "*top management*");
- persons subject to the direction or supervision of one of the persons mentioned in the preceding paragraph (in fact, employees and lower-level collaborators).

However, Article 6 of the provision in question provides for a form of "**exemption**" from liability for the entity if it can be shown, during criminal proceedings for one of the offences considered, that it has adopted and effectively implemented models of organisation, management and control suitable for preventing the commission of the criminal offences considered; that it has appointed a body with autonomous powers of initiative and control with the task of supervising the operation of and compliance with the Model and of keeping it updated; that the offence was committed by fraudulently evading the Model.

The system provides for the establishment of an internal control body within the entity with the task of supervising the actual effectiveness of the model. Lastly, the rule establishes that trade associations may draw up codes of conduct, on the basis of which individual organisational models are to be drawn up, to be communicated to the Ministry of Justice, which has thirty days in which to make its observations.

It should be emphasised, in this regard, that, as also reiterated below, the Entity's exemption from liability passes through the **judgement of the suitability of the internal system of organisation and controls**, a judgement which the criminal court is called upon to make. Therefore, the formulation of the Models must aim at the positive outcome of this suitability assessment.

1.4. Scope of application of the organisational model: the natural persons required to comply with it

It is particularly important to circumscribe the application of the rules in question, identifying the persons who, by committing an offence, may give rise to liability on the part of the body to which they belong. Article 5 of the decree identifies two different categories of employees and collaborators of the company: senior management and subordinates.

This distinction, however, is not merely formal, but takes on particular importance in order to understand how the Company can prevent and avoid the application of

sanctions against it. Therefore, the two categories of persons who, pursuant to the provisions of Legislative Decree no. 231/2001, may give rise to liability for the company as a result of offences committed by them are:

- persons who hold positions of representation, administration or management of the entity or of one of its organisational units with financial and functional autonomy, as well as persons who exercise, even de facto, the management and control of the entity (so-called "*top management*");
- persons subject to the direction or supervision of one of the persons mentioned in the preceding paragraph (in fact, employees and lower-level collaborators).

In an integrated vision of all the actors involved in the actions of the Entity, the approach of the Organisational Model, for an easier application, is to distinguish the individuals required to comply with the Organisational Model in:

A) PARTIES WITHIN THE ENTITY:

- those who perform, even de facto, management, administration, direction, control, as well as disciplinary, advisory and propositional functions in the company or in one of its autonomous organisational units;
- those who have powers of representation of the company;
- employees of the company, even if seconded abroad to carry out activities;
- all those persons who collaborate with the company by virtue of a para-subordinate employment relationship, such as project collaborators, temporary workers, interim workers.

B) PARTIES OUTSIDE THE ENTITY:

- Suppliers (differentiating between raw material suppliers and subcontractors);
- Consultants;
- Functions in outsourcer;
- VAT numbers;
- Counterparts of a service contract;
- Agents/representatives;

who are external to the company organisation, but linked to it by a contractual relationship and/or mandate.

For each of these, the Special Section of the Model will take into account the further distinction between:

B.1) INTERNAL RISKS: when it is the relationship with the supplier itself that is the instrument of conduct at risk of offence 231 (e.g. corruption, money laundering,) and the supplier is one of the actors in the offence. In this case, the

addressee of the Model is the internal person who manages the relationship with the supplier.

B.2) EXTERNAL RISKS: when the conduct at risk of offence occurs within the activity carried out by the supplier on behalf of the BODY (e.g. environmental offences, OSH offences, offences against industry and trade, ...) in this case the offence is not committed by the Entity, but committed for the Entity.

It is the **prerogative of the Special Section of the Organisational Model, once this assessment has been carried out and the existence of a risk, including an external risk, has been ascertained, to prepare suitable containment protocols, to create the tools for verifying its compliance (flow to the SB / SB verification power), and to contractually bind the external party to the Code of Ethics, the specific containment protocols and safeguard rules .**

1.5. The Organisational Model as an essential part of the prevention system

In view of the purpose of the provision, which is to encourage economic entities to prevent the commission of offences, the legislator has provided, in Articles 6 and 7 of the decree, that companies may in advance adopt lines of conduct such as to reduce or exclude liability (and consequently the penalties) provided for in Decree 231/01.

In particular, the two articles mentioned, separately provide for the procedures to be observed in order to avoid consequences in the two different cases referring to offences committed by persons in top positions or by employees and collaborators.

As to the first hypothesis, Article 6 provides that the company shall not be held liable if it proves that:

- a) the management body has adopted and effectively implemented, before the commission of the offence, organisational and management models capable of preventing offences of the kind committed;
- b) the task of supervising the operation of the models and their compliance and ensuring that they are kept up to date has been entrusted to a body of the entity with independent powers of initiative and control;
- c) the persons committed the offence by fraudulently circumventing the organisation and management models;
- d) there has been no or insufficient supervision by the body referred to in point (b).

Article 7, on the other hand, focusing on the hypothesis of offences committed by persons subject to the supervision of others, establishes that the company is liable if

the commission of the offence was made possible by non-compliance with management or supervisory obligations, it being understood that non-compliance with such obligations is excluded a priori if the company, before the offence was committed, adopted and effectively implemented an organisational, management and control model capable of preventing offences of the kind committed.

As is evident, therefore, the two pivots around which the system of exclusion of liability revolves are the adoption of organisational models suitable for preventing the commission of offences and the supervision of such models by a special body of the company.

With regard to the implementation of the organisational model, Art. 6, paragraph 2, of Legislative Decree no. 231/2001, indicates the essential characteristics for the construction of an organisation, management and control model.

In particular, points a) and b) of this provision expressly refer, albeit using terminology and exposition alien to business practice, to a typical risk management system²².

In fact, the rule expressly indicates the two main phases in which such a system must be articulated:

- **identification of risks:** i.e. the analysis of the company context to highlight where (in which area/sector of activity) and in what way events detrimental to the objectives set out in Legislative Decree no. 231/2001 may occur;
- design of the control system (so-called protocols for planning the formation and implementation of the entity's decisions), i.e. the assessment of the existing system within the entity and its possible adaptation, in terms of its ability to effectively counteract, i.e. reduce to an acceptable level, the identified risks. From a conceptual point of view, reducing a risk means having to act (jointly or severally) on two determining factors: i) the probability of the event occurring and ii) the impact of the event itself.

In order to operate effectively, however, the system outlined above cannot be reduced to a one-off activity, but must be translated into a continuous process (or at least carried out at an appropriate frequency), to be repeated with particular attention at times of corporate change (opening of new offices, expansion of activities, acquisitions, reorganisation, etc.).

²² "In relation to the extent of the delegated powers and the risk of offences being committed, the models referred to in paragraph 1(a) must meet the following requirements:

- a) identify the activities within the scope of which offences may be committed;
- b) provide for specific protocols aimed at planning the formation and implementation of the entity's decisions in relation to the offences to be prevented".

With regard to the risk of unlawful conduct in the field of health and safety at work, this system must necessarily take into account existing preventive legislation.

This body of legislation, in fact, outlines itself a "system" of binding principles and mandatory obligations, the application of which in terms of management - where appropriately integrated/adapted according to the "organisational model" envisaged by Legislative Decree no. 231/2001 - may be suitable for reducing to an "acceptable" level, for the purposes of exoneration under the same Legislative Decree no. 231/2001, the possibility of conduct constituting an offence of homicide or serious or very serious bodily harm committed in breach of accident prevention rules. Legislative Decree no. 231/2001, the possibility of conduct constituting an offence of homicide or serious or very serious bodily harm committed in breach of accident prevention legislation.

1.6. Definition of "Acceptable Risk"

An absolutely crucial concept in the construction of a preventive control system is that of acceptable risk.

When designing control systems to protect against business risks, defining acceptable risk is a relatively simple operation, at least from a conceptual point of view. The risk is deemed acceptable when the additional controls "cost" more than the resource to be protected (e.g. common cars are equipped with anti-theft devices and not also with an armed vigilante).

In the case of Legislative Decree No. 231/2001, 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 which allows a limit to be placed on the quantity/quality of the preventive measures to be introduced to avoid the commission of the offences considered.

In the absence of a prior determination of acceptable risk, the quantity/quality of preventive controls that can be put in place is virtually infinite, with obvious consequences in terms of business operations.

On the other hand, the general principle, which can also be invoked in criminal law, of the concrete enforceability of conduct, summarised by the Latin proverb "ad impossibilia nemo tenetur", is an inevitable criterion of reference even though it often appears difficult to identify its limit in practice.

As regards the preventive control system to be set up in relation to the risk of commission of the offences covered by Legislative Decree no. 231/2001, the conceptual threshold of acceptability, in cases of intentional offences, in line with the Guidelines drawn up by Confindustria (and approved by the Ministry of Justice), is represented by a prevention system that cannot be circumvented except fraudulently.

This solution is in line with the logic of the "*fraudulent evasion*" of the organisational model as an exemption expressed by the aforementioned legislative decree for the purposes of the exclusion of the entity's administrative liability (Article 6, paragraph 1, letter c), "*the persons committed the offence by fraudulently circumventing the organisation and management models*").

On the other hand, in cases of manslaughter and unintentional personal injury committed in breach of the rules on health and safety at work, the conceptual threshold of acceptability, for the purposes of exemption under Legislative Decree no. 231/2001, is represented by conduct (not accompanied by the intention to cause the event-death/personal injury) which violates the organisational model of prevention (and the underlying mandatory requirements prescribed by the accident prevention rules) despite the timely compliance with the supervisory obligations laid down by Legislative Decree no. 231/2001 by the appropriate body.

This is because the fraudulent evasion of organisational models appears to be incompatible with the subjective element of the offences of manslaughter and unintentional bodily harm referred to in Articles 589 and 590 of the Criminal Code.

1.7. Confindustria and Fise Guidelines - Assoambiente

In order to offer concrete help to companies and associations in drawing up Models and identifying a control body, Confindustria was the first to draw up Guidelines, which contain a series of indications and measures, essentially drawn from company practice, considered in abstract to be suitable for meeting the requirements outlined in Legislative Decree no. 231/2001.

The Guidelines therefore aim to provide concrete indications on how to implement these Models, since it is not possible to build up de-contextualised case studies to be applied directly to individual operational realities.

The Guidelines therefore play an important inspirational role in the construction of the Model and the Control Body with the relevant tasks by the individual entity, which, however, in order to better pursue the aim of preventing offences, may also depart from them, if specific business needs so require, without for this reason the requirements necessary for the preparation of a valid model of organisation, management and control can be considered as not fulfilled.

The first version of the document was drafted in 2002 by the Working Group on Administrative Liability of Legal Entities set up within the Tax, Finance and Company Law Unit of Confindustria. Representatives of the Confindustria's territorial and trade associations, representatives of member companies, as well as academics and professional experts in the field participated in the Group's work.

The Guidelines were sent to the Ministry of Justice, which in a communication sent to Confindustria (December 2003) considered them "on the whole adequate to achieve the purpose set out in Article 6, paragraph 3, of Legislative Decree no. 231/2001", identifying only minor profiles, on which it requested further clarifications and additions.

The Guidelines have therefore been updated to incorporate the observations of the Ministry - which finally approved them in June 2004 - but also to introduce the adjustments suggested by the application experience gained by associations and companies in these first years, and to adapt them to the new internal structures of joint stock companies, outlined by the reform of company law.

Subsequently, the Working Group set up at Confindustria has provided for periodic updates of the Guidelines, the last of which in June 2021, in view of the evolution of the regulatory framework of reference, new discussions on integrated compliance, new control systems in the field of tax compliance, updates on *Whistleblowing* reports and other updates that have occurred over the years.

In February 2016, FISE-ASSOAMBIENTE also drew up guidelines for the construction of the Models pursuant to Legislative Decree 231/2001 for the specific section aimed at preventing environmental offences, also following the changes introduced in 2015 by the legislator on the subject of Eco-crimes.

The drafting of the updating of the Company's organisational Model (which, as better specified below, exclusively concerned the offences referred to in Articles 25 and 25-ter, lett. s-bis) of Legislative Decree 231/01) was carried out on the basis of the indications provided by the Confindustria Guidelines, in the version available at the date of drafting²³, carrying out the necessary "customisation" aimed at setting general rules in a single operational and corporate context.

1.8. Aptuit (Verona) S.r.l.'s approach.

Aptuit (Verona) S.R.L (hereinafter referred to briefly as "Aptuit" or the "Company") is a company active in the field of pharmaceutical research for third parties ("research for third parties"). "Contract Research Operations " or "CRO"), generated by the acquisition in 2010 by the Aptuit Group of the research and development business of GlaxoSmithKline S.p.A.. Following this operation, the Aptuit Group proceeded with an overall reorganisation of its research services for third parties in order to adapt the service provided to market requirements and guarantee sustainability for the Verona research and development centre, which today employs around 800 people, most of

²³ The latest version of the Guidelines was updated in March 2014 and received final approval by the Ministry of Justice on 21 July 2014.

whom are highly specialised and qualified researchers. In January 2012, the Company adopted the first version of the Organisation, Management and Control Model pursuant to Legislative Decree 231/2001. The Company's organisational choices were thus part of the broader policy pursued by the Aptuit Group, aimed at promoting the values of correctness, transparency and legality in company management as expressed in the Group's Code of Ethics. In this first historical phase, the life of the Company was characterised by a profound commitment to the progressive reorganisation of the Company, by numerous changes in top management, and by the unavoidable need to focus most of the Company's energies on business. At the same time, the Company considered it appropriate to update the Model pursuant to Legislative Decree 231/2001. Therefore, in view of the complex changes underway, the constant commitment to the most scrupulous compliance with the rules, including those concerning the health and safety of workers, the frequent and penetrating controls by various public and private bodies, the mandatory submission of Pharmaceutical Research to fundamental ethical principles for the development, manufacture, safety and efficacy of drugs, with particular regard to Good Standard Practice (GXP), decided, by resolution of the Board of Directors of 20/01/2016, to update the Model 231 in the areas of activity and risk considered most sensitive, making a selective choice of the underlying offences and "limiting the updating activity as well as the operation of the Model and, consequently, the obligations and duties of the Supervisory Board to the following offences: a) Extortion, Undue induction to give or promise benefits and Corruption referred to in Art. 25 of Legislative Decree no. 231/2001 b) Bribery among private individuals referred to in Article 25-ter, lett. s-bis) of Legislative Decree 231/2001. (Board resolution 20/01/2016).

The new company structure and organisation following the acquisition of the Company by Evotec AG of Hamburg (now Evotec SE) and its consequent entry into the EVOTEC Group, has led the Company to resume the project of completing the organisational structure pursuant to Legislative Decree 231/2001. By resolution of the Board of Directors of 12 December 2018, the company therefore decided to

"...as a result of the changed regulatory framework, as well as of assessments shared by the directors, it is necessary to update and extend the Company's Model to the following offences: a) Corporate offences referred to in Article 25 ter of Legislative Decree no. 231/2001 in the new formulation amended by Legislative Decree no. 38 of 15/03/2017 art. 6, in force since 14/04/2017. These offences are not currently covered by the Model;

b) the offence of Bribery among private individuals referred to in Article 25-ter, letter s-bis) of Legislative Decree No. 231/2001, already provided for in the current organisational model but to be updated in the new wording of the rule amended by Legislative Decree no. 38 of 15/03/2017 art. 6 in force since 14/04/2017;

c) Misappropriation of funds, fraud against the State or a public body or for obtaining public funds and computer fraud against the State or a public body pursuant to Legislative Decree no. 231/2001 art. 24. These offences are not currently covered by the Model. “

In 2021, in view of the introduction by the legislator in 2019 of the new liability offences (tax offences and smuggling offences) under Articles 25 quinquiesdecies and 25 sexiedecies of Legislative Decree 231/2001, by resolution of the Board of Directors of 20 March 2021, the Company decided to update the Organisational Model in relation to the scope of the new offences thus introduced. It also decided, with a view to completing the organisational process for the areas not yet covered, to extend the Organisational Model to cover offences relating to health and safety at work and the environment.

The current framework is therefore given by the supervision of the offences referred to in Articles 24, 25, 25 ter, 25 septies, 25 undecies, 25 quinquiesdecies and 25 sexesdecies of Legislative Decree 231/01.

In particular, the path undertaken for the implementation of the "231" project by the Company was aimed at:

- identifying risk profiles through the mapping of existing activities/processes within the scope of the activity carried out, the subsequent analysis and monitoring of functional and organisational peculiarities and the identification of the areas representing the main potential sources of criticality in relation to the offences listed in point 1.1 above;
- assessing the compatibility of existing organisational and control mechanisms with the requirements of the Decree;
- identifying any shortcomings and define an Improvement Plan to overcome them;
- implementing an Organisational Model that complies with the provisions of the legislation and the indications of Confindustria.

Leaving aside the strictly legal-sanctioning aspect, mentioned above, the adoption of a system of rules aimed at reaffirming the entity's compliance not only with legal rules but also with ethical values may represent an opportunity.

The adoption of an Organisational Model that makes internal procedures more transparent and increases accountability, as well as guaranteeing exemption from administrative liability, **in fact constitutes an opportunity for growth and development** for stakeholders, improving, on the one hand, their relationship with the company and, therefore, their public image and, on the other, reducing transaction costs arising from any legal actions and negotiation processes.

Aware of these advantages, the Company has had: **a)** a Code of Ethics since 2012 (when it adopted the first version of the Model pursuant to Legislative Decree 231/2001); since January 2020 the Code of Conduct adopted by the entire EVOTEC group, and which replaced the local Code of Ethics. The Code of Conduct contains an

appendix entitled "*Aptuit (Verona) s.r.l. Ethical Rules*". ", only for the Italian Company, in application of Legislative Decree no. 231/2001; **b**) an Organisational, Management and Control Model, in order to implement the organisational system through the adoption of behavioural models which are now of considerable importance in market competition and which are often decisive, like sophisticated rules of corporate governance, in influencing the performance of the company; **c**) a specific Whistleblowing Procedure of Aptuit (Verona) s.r.l. backed up in line with the Evotec Group procedure "*Whistleblowing and Case Handling Policy*".

All the above-mentioned documents are available on the Aptuit intranet site, Section "Regulatory Governance", "Organisational Model", "Compliance Documents", as well as on the website of the parent company Evotec SE.

Commitment to ethical values should therefore be perceived as a means of achieving better performance, improving the organisational structure and giving a positive self-image.

The "*moralisation*" of the entity and the pursuit of the "*integrity*" of the entity itself is therefore a sure way of enhancing business activities.

2. HOW THE ORGANISATIONAL MODEL IS DRAWN UP

2.1. Principles for defining the procedure for drafting the Model

The Company's Organisational Model is based on the indications provided by current legislation, also in view of the interpretation given by the most recent case law, as well as the procedural indications drawn up by Confindustria and set out in the Guidelines, which have already been assessed and deemed suitable by the Ministry of Justice.

The Ministry has in fact specified that "*in addition to containing a concise illustration of the contents of the legislative decree that introduced the administrative liability of companies, the guidelines in fact provide members with clear and precise indications on virtually all the aspects that the aforementioned Article 6 lists for the purposes of preparing company organisational models, proposing for each of these aspects various alternatives, warning of the possible dangers or disadvantages arising from the adoption of certain business strategies, and identifying precisely the risk areas for each type of offence*".

The question that each person must consider when deciding to adopt an Organisational Model for the purposes of the exclusion of liability pursuant to Legislative Decree no. 231/2001, in fact, is that of **assessing the suitability of the Model to achieve the purpose for which it was adopted**, i.e. to prevent the commission of offences and therefore, as a mediate effect, to exclude the liability of

the entity on the basis of the similar assessment that the judge must subsequently make of that Model.

Obviously, this assessment must be made *ex ante*, i.e. by basing the examination on experience data and by setting the organisational Model in the reality of each individual subject, with specific reference to the structure considered and the activity actually carried out.

The implementation phase of the organisational model, therefore, followed the pattern followed in the preparation of the Guidelines for the construction of models, based, as already mentioned, on the most common risk assessment and risk management processes normally implemented in companies.

It is clear, however, that the concrete preparation of the Organisational Model, in order to be able to achieve the result of ensuring sufficient preventive effectiveness, has been defined and concretely put in place on the basis of the characteristics of the subject to which it applies.

The risk of offence, in fact, is closely dependent on the economic sector in which it operates, the corporate structure, the operating procedures adopted in practice, and the size of the entity.

Consequently, the structure and structure of the Organisational Model, which will be outlined later in the special section, have taken account of all these specificities.

2.2. The essential phases in implementing the Organisational Model

This Organisational Model must be suitable for preventing the offences envisaged by the Legislative Decree no. 231/2001 included in the perimeter decided by the Board of Directors.

Consequently, the first objective for the construction of an Organisational Model is the proceduralisation of the activities that entail a risk of offence, or alternatively the identification of specific control points, in order to avoid their commission.

It should be noted, in this regard, that it is clear that the same offences may still be committed even once the Model has been implemented but, in that case, where the offences are intentional, they can only be committed if the agent really intended them to be committed, both in terms of conduct and event, regardless of the internal directives which the entity has adopted.

In this case, the Model and the relevant measures must be such that the agent not only has to "*want*" the offence to be committed (e.g. bribe a public official), but can only carry out his criminal intent by fraudulently circumventing (e.g. through artifice and/or deception) the entity's instructions. The set of measures that the agent, if he

wants to commit a crime, will be "*forced*" to, shall be carried out in relation to the specific activities of the entity considered to be at risk and to the individual offences hypothetically connected to them.

This logic is consistent with the consolidated international references in terms of internal control and corporate governance and is the basis of the best systems of risk self-assessment (Control Self Assessment).

The international reference commonly accepted as a reference model in terms of governance and internal control is the Internal Control Integrated Framework ("CoSO Report"), produced in the USA in 1992 by the Committee of Sponsoring Organisations of the Treadway Commission and updated in May 2013 on the internal control system and the Enterprise Risk Management Framework (so-called ERM), also issued by the CoSo in 2014 on risk management, of which the latest version of Application Guidelines was released in November 2020²⁴.

In the case of culpable offences, however, they must be intended by the agent only as conduct and not also as an event.

Despite the necessary customisation of the implementation procedures and model characteristics, it is still possible to identify the basic characteristics of the correct methodology for implementing a risk management system.

In this regard, it is worth recalling that, with reference to the extension of Legislative Decree no. 231 to the offences of manslaughter and serious or very serious negligent personal injury committed in breach of the rules on health and safety at work, the current legislative framework on the prevention of occupational risks lays down the essential principles and criteria for the management of health and safety at work in the company, and therefore, in this context, the Organisational Model cannot disregard this precondition.

More generally, the update to the Model prepared by the Company is the result of the documented methodological application of the indications that will now be outlined, depending on the internal operating context (organisational structure, territorial articulation, size, etc.) and external context (economic sector, geographical area), as well as the individual offences hypothetically related to the specific activities of the entity considered to be at risk, within the updating perimeter outlined by the Board of Directors, which, as specified above, only includes intentional offences. From now on, therefore, the discussion will refer exclusively to perimeter offences.

The concrete implementation methods will be subsequently identified in detail in the Special Section of this Model.

²⁴ <https://www.coso.org/Documents/Compliance-Risk-Management-Applying-the-COSO-ERM-Framework.pdf>

Here, on the other hand, the procedural rules followed in defining the Model will be described, regardless of their concrete application to the company's reality.

In particular, the operational steps carried out are as follows:

a) Inventory of business areas of activity

This phase entails, in particular, an exhaustive review of the company's situation, with the aim of identifying the areas affected by potential offences.

As part of this process of reviewing the processes/functions at risk, it is appropriate to identify the persons subject to the monitoring activity which, with reference to intentional offences, in certain particular and exceptional circumstances, could also include those who are linked to the company by mere para-subordinate relationships, such as agents, or other collaborative relationships.

Finally, it should be stressed that each company/sector has its own specific risk areas that can only be identified through a detailed internal analysis. However, processes in the financial area play an obviously important role in the application of Legislative Decree no. 231/2001. The rule, probably for this very reason, highlights them with a separate treatment (Art. 6 paragraph 2, letter c)), although an accurate assessment of the company's "risk" areas should in any case highlight the financial area as one of certain importance.

b) Analysis of potential risks

The analysis of potential risks must take into account the possible ways in which offences may be committed in the various corporate areas (identified according to the process referred to in the previous point).

The analysis, preparatory to the correct design of preventive measures, must result in an exhaustive representation of how the offences may be implemented in relation to the internal and external operating context in which the company operates.

c) Assessment/construction/adaptation of the preventive control system

The activities described in points a) and b) above are supplemented by an assessment of the existing system of preventive controls and its adaptation where necessary.

The system of preventive controls shall be such as to ensure that the risks of commission of offences, as identified and documented in the previous phase, are reduced to an "acceptable level", according to the definition set out above.

In essence, this involves designing what Legislative Decree no. 231/2001 defines as "specific protocols aimed at planning the formation and implementation of the entity's decisions in relation to the offences to be prevented".

The components of a (preventive) internal control system, for which there are consolidated methodological references, are multiple and 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.

This is especially true in view of the size of the company,

However, it should be reiterated that, for all entities, whether large, medium or small, the system of preventive controls should be such that, in the case of intentional offences, it cannot be circumvented except with intent.

2.3. Control Principles underlying the Organisational Model of Aptuit (Verona) S.r.l.

The procedures described above for the implementation of the Organisational Model are aimed at setting up a system of suitable preventive controls.

These control mechanisms, however, must necessarily be integrated organically into a system architecture that respects a set of **control principles**.

The principles underlying the Organisational and Management Model adopted by the Company are as follows:

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

For each operation there must be an adequate documentary support on which it is possible to proceed at any time to carry out controls attesting to the characteristics and reasons for the operation and identifying who has authorised, carried out, recorded and verified the operation itself.

"No one can manage an entire process on their own".

The system must ensure the application of the principle of segregation of duties, whereby authorisation to carry out a transaction must be the responsibility of a person other than the person who accounts for, operationally executes or controls the transaction.

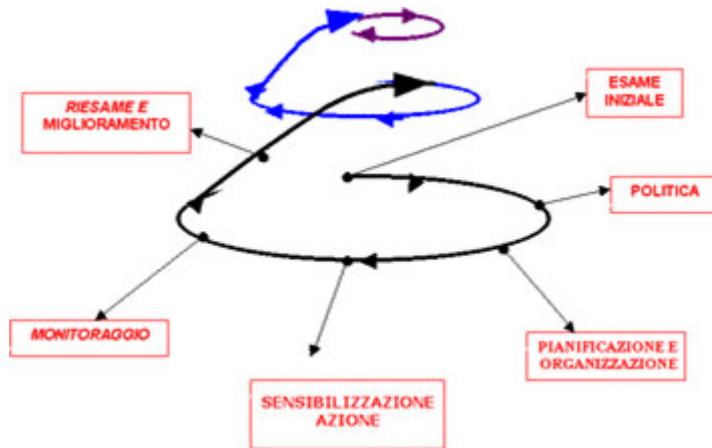
In addition, it is necessary that:

- no one is given unlimited powers;
- powers and responsibilities are clearly defined and known within the organisation;

- the powers of authorisation and signature are consistent with the organisational responsibilities assigned.

"Documentation of controls".

The control system should document (possibly by means of minutes) the performance of controls, including supervisory controls.



2.4. The main phases of implementation of the Model

After its drafting/update, the Model is submitted for approval to the Company's Administrative Body which, at the same time, identifies and appoints the Supervisory Board, as better specified in the following paragraph **Error! Reference source not found.**, and assigns the remuneration and budget.

The Company, deeming it essential to fully disseminate and disclose the Model to all interested parties, whether internal or external, is responsible for ensuring that its contents and, in particular, the Code of Conduct, are the subject of specific information and training activities, using all available tools and methods. For operating procedures, please refer to the specific procedures included in the Special Section.

Finally, the monitoring of initiatives for the dissemination of knowledge and understanding of the Model is one of the tasks assigned to the Supervisory Board, as explained in greater detail below.

3. COMPANY PROFILE

In accordance with the provisions of the Confindustria Guidelines and on the basis of the indications provided by the best case law on the subject, the Organisational Model adopted by the Company has been conceived and designed in relation to the specific features of the company, from which the risk profiles and the most consistent

structuring of internal controls and protocols aimed at preventing the relevant offences inevitably derive.

3.1. History and Activities of the Company

Aptuit (Verona) S.R.L. is a recently established company that originated from the sale by GlaxoSmithKline of the research and development branch of the Verona campus in 2010.

The Company's main activity is pharmaceutical research for third parties (so-called "Contract Research Operations" or "CRO"). The acquisition in 2010 of GlaxoSmithKline's Research and Development business unit has enabled the Company to maintain the research centre's scientific expertise in neuroscience, cardiovascular, infectious diseases and, in general, all the scientific disciplines necessary for the discovery and development of new drugs in order to offer customers a highly integrated and articulated service.

The Company's core business is basically to create and develop new drugs. The mission is to create value for shareholders and other stakeholders in a sustainable manner, integrating with the other legal entities of Evotec Group and exploiting the resulting synergies, in each case respecting the code of conduct adopted at Group level. For this purpose, the company offers a comprehensive set of integrated drug development solutions, aiming at (i) scientific excellence, (ii) excellent service and (iii) leveraging a team of some of the industry's leading scientific professionals.

As of February 2022, the Company employs approximately 776 people, most of them highly specialised researchers, enabling it to be considered a centre of excellence in pharmaceutical research in Italy. It is also characterised by the presence of the following business areas:

- **Integrated Drug Discovery and Drug Discovery Services (collectively referred to as "Discovery Sciences")**, committed in the validation of innovative biological targets for the treatment of diseases with unmet therapeutic needs, and in the identification, development and synthesis of innovative and patentable chemical molecules suitable for development as new drugs;
- **Preclinical Sciences**, committed in preclinical activities aimed at characterising molecules to enable them to be tested in accordance with the specifications required by national and international regulations. These activities include, inter alia, the assessment of the safety or possible toxicity of the drug, the development of bio-analytical techniques to measure the concentrations of drugs in biological matrices, the studies necessary to

understand the phenomena of absorption, distribution, metabolism and elimination by complex living organisms and the identification of therapeutic doses to be evaluated in research;

- **Pharmaceutical Sciences**, engaged in activities aimed at the production of pharmaceutical ingredients and products according to the so-called Good Manufacturing Practice (GMP). These are necessary to ensure the safety requirements of pharmaceutical products for their testing in humans and to identify the chemical synthesis routes and pharmaceutical forms most suitable for transferring the production processes to industrial scale

In carrying out the specific activity of pharmaceutical research and development, in order to proceed with the testing and fine-tuning of the final product, the Company is subject to stringent controls and authorisations by various Public Bodies with which it has constant relations, including the following: Ministry of Health, Istituto Superiore di Sanità (Superior Health Institute), AIFA (Agenzia Italiana del Farmaco) EMA (European Medicines Agency), Local Health Authorities (ULSS) and others.

3.2. The Organisation

A - Aptuit (Verona) Srl as part of the EVOTEC Group

Aptuit (VERONA) S.r.L. belongs, as mentioned above, to the German multinational group EVOTEC. In particular, the Company is subject to management and coordination by Evotec SE (indirect control) and Aptuit Global LLC (direct control). EVOTEC SE is a multinational company headquartered in Hamburg (Germany), 22419, Manfred Eigen Campus, Essener Bogen 7, which is particularly active in the field of "Drug Discovery" as well as a development partnership focused on fast-moving innovative product approaches with leading pharmaceutical and biotechnology companies.

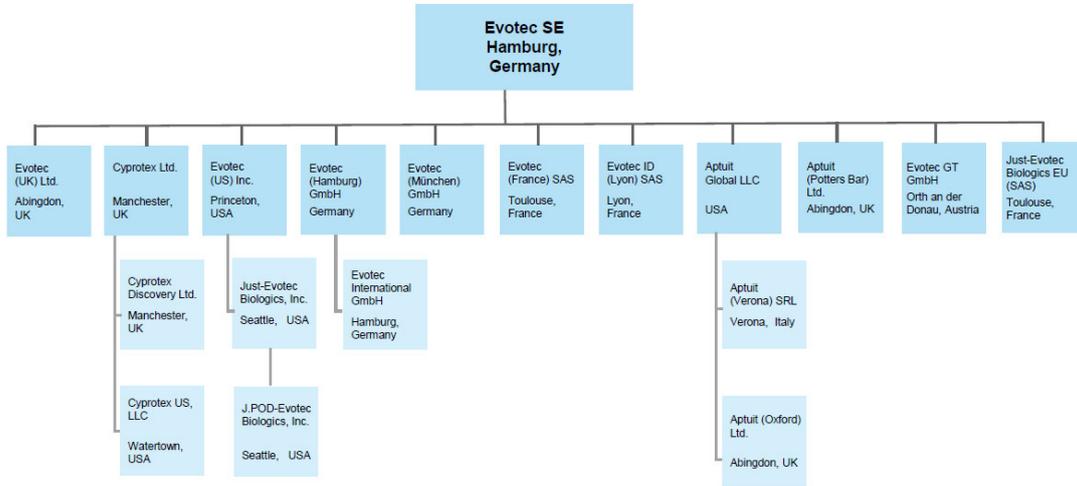
Evotec SE, already listed on the Frankfurt Stock Exchange, has also been listed on the Nasdaq since November 2021 and therefore, by virtue of this last listing, the Company is required to operate from 1 January 2022 in accordance with the Sarbanes-Oxley Procedures.

Evotec Group's core business is pharmaceutical research for third parties.

The entire share capital of the Company, equal to Euro 8,010,000.00, is held by the Sole Shareholder Aptuit Global LLC, a US company with registered office at 303B COLLEGE ROAD EAST, PRINCETON, NJ 08540, USA. In turn, Aptuit Global LLC is wholly owned by EVOTEC SE. The following diagram shows the structure of the EVOTEC Group as at 30 March 2022

The Evotec Group

Legal structure



The Company has intra-company service contracts with the other companies of the Evotec Group - Aptuit Division and Evotec Division, which are renewed annually and by virtue of which these companies exchange various types of services with each other.

B - The Internal Operating Structure

With regard to the Company's operational structure, reference is made to the Company's Organisation chart, which is periodically updated and available on the Company's intranet. It highlights reporting lines and functional dependencies which, as is typical of integrated groups, depart from the logic of the individual legal entity to embrace integrated group management.

C- Administration and Internal Control System The **administration system** adopted is that of the Board of Directors. There are currently four members of the Board of Directors with equal powers, one of whom is the Chairman of the Board. Pursuant to the Articles of Association, the directors are vested with the legal representation of the Company within the limits of the powers delegated to them. The Directors have powers to sign individually or jointly with other directors or first level managers identified by subject matter and/or value, which can be delegated in accordance with the Articles of Association. The Chairman of the Board of Directors is identified as the Employer pursuant to Article 2 letter B of Legislative Decree no. 81/2008; another Director is delegated for the purposes of personal data processing.

The **First Level Managers** are identified and appointed by a Board resolution shown in the list, which also gives evidence of certain **proxies for company areas considered particularly sensitive**.

The **external control system** is entrusted, as far as the legal control is concerned, to the Board of Statutory Auditors composed of three full members and two alternates and, as far as the accounting control is concerned, to a primary Auditing Company.

The graphic representation of the various company functions is expressed by the Organisation chart available on the company intranet, as regards the definition of the roles relevant to the application of internal procedures.

4. SUPERVISORY BOARD

4.1. Identification, Composition and Appointment

Given that the Supervisory Board is responsible for monitoring and proposing the updating of the Model and the Code of Conduct, it is clear that the Company pays attention to the fact that the competences it expresses are particularly qualified in matters relevant to the Decree and meet the requirements of respectability set out in Article 109 of Legislative Decree no. 85/93. The Company also establishes that it has autonomous powers of intervention in the areas of competence, involving internal staff and/or external collaborators for this purpose, in order to guarantee the continuous carrying out of the activity of verification of the adequacy and suitability of the Model. The specific competences are identified according to the offence risks that this Model aims to prevent.

For the checks and actions required of the Supervisory Board and concerning specific issues, the latter may use professionals identified at its discretion, informing the Administrative Body in advance. Financial coverage will be ensured by the expenditure budget made available at the time of appointment, with only the obligation to report expenditure.

4.2. Requirements

The requirements that characterise the Supervisory Board and make it effective are:

- **autonomy and independence**, as clarified in the Confindustria Guidelines, the position of the Supervisory Board within the Entity "must guarantee the autonomy of the control initiative from any form of interference and/or conditioning by any body of the Entity", including the management body. The Supervisory Board must be guaranteed hierarchical independence and its

members must neither be directly involved in management activities that are subject to control by the same Board, nor be linked to the managers of the Entity or to the Entity by any parental ties, significant economic interests (shareholdings) or any situation that may give rise to a conflict of interest;

- **professionalism**; for this purpose, the members of the said Body must have specific knowledge in relation to any technique useful for preventing the commission of offences, for detecting those already committed and identifying their causes, as well as for verifying compliance with the Organisational Model by members of the corporate organisation and, when necessary, proposing the necessary updates to the Organisational Model;
- **continuity of action**, by means of a structure dedicated to constant supervision of compliance with the Organisational Model, capable of constantly verifying the effectiveness and efficacy of the Model and providing for its continuous updating. This structure should be characterised by limited revocability and limited renewability. The duration of the office must also be long enough to allow stable and professional exercise of the function, but not so long as to create strong links with the top management that could lead to situations of conditioning;

In view of the above and of the specificities of its corporate reality, with particular regard to the current in-house legal expertise and the opportunity to outsource those of a corporate nature, the Company has deemed it appropriate, in view of the features of the Organisational Model adopted, to set up a Supervisory Board of a collegial nature composed of two members with proven experience, expertise and professionalism, as indicated below:

- a) **an external member** with specific supervisory, audit and legal expertise;
- b) **an internal member** with specific legal competences, a reference person of the Legal area, who is not in any way involved in the management activity of the Company and who ensures a high level of professionalism and autonomy.

The persons who will take on the role of members of the Supervisory Board of the Company shall perform their duties with the diligence required by the nature of the office, by the nature of the activity performed and by their specific skills.

The members of the Company's Supervisory Board shall meet the **requirements of honour laid down in Article 109 of Legislative Decree no. 385 of 1 September 1993**. The lack of such requirements constitutes a cause of ineligibility and/or disqualification of the Supervisory Board and its members.

In particular, the following constitute grounds for ineligibility and/or disqualification:

- the conditions laid down in Article 2382 of the Civil Code;

- the conviction with a sentence, even if not final, or a plea-bargaining sentence, for having committed one of the offences provided for in Legislative Decree 231/01;
- the imposition of a sanction by CONSOB, for committing one of the administrative offences relating to market abuse set out in the TUF.

It should be noted that spouses, relatives and relatives-in-law up to the fourth degree of kinship of the directors of the Company, directors, spouses, relatives and relatives-in-law up to the fourth degree of kinship of the directors of the companies controlled by the Company, of the companies controlling it and of those subject to common control cannot be appointed as members of the Supervisory Board and if appointed, lose their office.

Appointees shall self-certify that they are not in any of the above conditions, expressly undertaking to inform the Board of Directors of any changes to the content of this declaration as soon as they occur.

In cases of particular and proven severity, the Board of Directors, subject to a positive opinion of the Board of Statutory Auditors of the Company, may in any case order the suspension of the powers of the Supervisory Board and the appointment of an interim body.

The appointment and removal of the Supervisory Board is the exclusive responsibility of the Company's Board of Directors.

In order to ensure the effective and constant implementation of the Model, as well as continuity of action, the term of office of the Supervisory Board is set at three financial years expiring on the approval of the financial statements relating to the last of the three, renewable, for no more than once, by resolution of the Board of Directors of the Company. The termination of the Supervisory Board due to expiry of its term takes effect from the moment it is reconstituted by resolution of the Board of Directors, unless it is renewed.

The Board of Directors of the Company reserves the right to establish for the entire duration of the office the annual remuneration, adequately remunerating the skills and professionalism expressed, as well as the frequency and characteristics of the verification activities provided for by the Model for the participation of the individual members of the Supervisory Board.

The Board of Directors of the Company may dismiss the members of the Supervisory Board only for just cause. In the event of revocation or forfeiture, the Board of Directors of the Company shall promptly replace the revoked or forfeited member, after ascertaining that the new member meets the subjective requirements indicated above.

In order to provide the Supervisory Board with an adequate capacity to retrieve information and thus to act effectively vis-à-vis the Company's organisation, this Model also lays down the procedures for information flows to and from the Supervisory Board.

4.3. Functions and Powers

The Supervisory Board, with regard to the provisions of the Decree, is called upon to perform the following **functions**:

- ensure constant and independent monitoring of the **compliance with** and **adequacy** of the Company's procedures and processes in order to prevent, as established in the resolution of the Board of Directors of 20/01/2016, the commission of the offences limited to a) Extortion, Undue induction to give or promise benefits and Bribery referred to in Article 25 of Legislative Decree no. 231/2001 b) Bribery among private individuals referred to in Article 25-ter, lett. s-bis) of Legislative Decree 231/2001 and identified in the Company's risk map, in accordance with the provisions of the Decree;
- ascertain the **effectiveness** of the Model, i.e. ensure that the conduct provided for therein is consistent with the Company's actual operations;
- check the **functionality** of the Model, i.e. its ability to effectively prevent the commission of offences;
- analyse the applicability of the Model in order to assess, over time, the **maintenance of** its soundness and functionality;
- take care of the necessary **updating**, in a dynamic sense, of the Model, both by submitting proposals for adaptation to the Governing Body and by ascertaining, subsequently, the implementation and functionality of the proposals made and accepted;
- verify the actual **effectiveness** of the Model, in relation to the Company's structure, in preventing the commission of the offences identified;
- verify the adequacy of the **sanctions system** in relation to its applicability, effective application and effectiveness;
- monitor initiatives for the **dissemination of knowledge** and understanding of the Model and the preparation of internal documentation necessary for its operation, containing instructions, clarifications or updates;
- **report periodically**, or promptly if necessary, to the Administrative Body on the implementation of the Model's policies, with reference to the activities carried out, the reports received, the corrective actions implemented and possible corrections or implementations to the Model.

Therefore, in the context of the above-mentioned activities, the Supervisory Board shall **perform** the following **tasks**:

- verify in the context of the Company the knowledge and understanding of the principles outlined in the Model and, in particular, of the Code of Conduct;
- set up specific "dedicated information channels", aimed at facilitating the flow of reports and information to the Body by employees of the Company or other recipients of the directives given by the Company through the adoption of the Model itself also because of the new Article 6 of Legislative Decree 231/2001, paragraphs 2-bis, 2-ter and 2-quater ("*Whistleblower*") inserted by Article 2 of Law 30/11/2017, no. 179 with effect from 29/12/2017;
- promote, when necessary, the periodic review of the Code of Conduct and its implementation mechanisms.

In order to adequately and concretely perform the functions, tasks and duties listed above, the Supervisory Board is granted the **powers** to:

1. access directly, or by delegation on its behalf, to any and all documents relevant to the performance of the functions assigned to the Supervisory Board pursuant to the Decree, granting it for this purpose appropriate discretionary powers within the scope and limits of the purposes of its activity;
2. carry out periodic checks, also not pre-agreed, on the application of and compliance with the Model by all the addressees with regard to the prescriptions laid down in relation to the different types of offences covered by the Decree;
3. conducting reviews of the Company's activities for the purpose of updating corporate procedures;
4. proposing training programmes for staff on the Model and its contents in cooperation with the departmental directors/managers;
5. collecting, processing and storing relevant information on compliance with the Model, as well as updating the list of information which must be transmitted to it or kept at its disposal, constituting the "formal" database of the internal control activity;
6. coordinating with the other corporate functions in carrying out the monitoring activities falling within their competence and provided for in the procedures;
7. verify the adequacy of the internal control system in relation to these regulatory requirements, also by taking legal advice;
8. monitor the actual presence, regular maintenance and effectiveness of databases and archives supporting the activities arising from compliance with the Decree.

Moreover, in order to enable the Body to properly exercise the tasks and powers assigned to it, within the limits and under the conditions required by law, it is established that:

- the Supervisory Board must always be kept informed of the organisational, management and operational structure of the Company, in particular with regard to the facts listed in the following paragraph on the flow of information to the Board itself;
- the Supervisory Board is allocated an autonomous expenditure budget which can and must be used exclusively for disbursements which become necessary for the performance of the verification and control activities;
- all the Bodies of the Company, employees, consultants, "project" collaborators and third parties acting on behalf of the Company in any capacity whatsoever, are required to provide the utmost cooperation in facilitating the performance of the functions assigned to the Supervisory Board;
- taking into account, on the one hand, the purposes of investigation and verification connected with the tasks assigned to the Supervisory Board and, on the other hand, the structure of the Company, the control activity to be performed by the Supervisory Board also concerns the work of the Administrative Body;
- The Supervisory Board is obliged to maintain absolute secrecy with regard to any and all information of which it may become aware in the performance of its duties, both towards persons inside and outside the Company, except for persons to whom the Board must report under this Model;
- the Supervisory Board itself has its own regulations for the performance of the tasks and functions required.

4.4 Reports, Information Flow to the Supervisory Board and provisions on the protection of the activity of reporting unlawful conduct (so-called "Whistleblowing")

The Recipients of the Model are required to promptly report to the Supervisory Board those acts, behaviours or events that may constitute unlawful conduct relevant to Legislative Decree 231/2001 and/or lead to a violation of the Model or, more generally, are relevant to the prevention/sanction of the offences provided for in the Legislative Decree 231/2001.

The Supervisory Board is bound to secrecy with regard to the news and information acquired in the exercise of its functions, and to guarantee the confidentiality of the identity of the reporter in the management of the report.

The "reports" and "information" in question cannot be anonymous, must be circumstantial and based on precise and concordant facts.

Reports must be made in accordance with the procedures indicated on the company's intranet site, Section "Regulatory Governance", "Organisational Model", "Reporting".

Pursuant to the **new provisions of Article 6 of Legislative Decree 231/2001, paragraphs 2-bis, 2-ter, 2-quater ("Whistleblowing")** reports of unlawful conduct relevant under Legislative Decree 231/2001 or of violations of the Organisational Model, shall be circumstantiated and based on precise and concordant facts. Special protection is provided to ensure the confidentiality of the identity of the whistleblower in the handling of the report. Any person who maliciously or grossly negligently makes a report that turns out to be unfounded and any person who violates the measures for the protection of the person making the report shall be subject to disciplinary sanctions. Direct or indirect retaliatory or discriminatory acts against the whistleblower for reasons directly or indirectly linked to the report are prohibited. The adoption of discriminatory measures against whistleblowers may be reported to the National Labour Inspectorate, for measures within its competence, not only by the whistleblower, but also by the trade union organisation indicated by the whistleblower. Retaliatory or discriminatory dismissal of the reporting person is null and void. Any change of duties pursuant to Article 2103 of the Civil Code, as well as any other retaliatory or discriminatory measure taken against the whistleblower, shall also be null and void. It is the responsibility of the Employer, in the event of disputes related to the imposition of disciplinary sanctions, or to demotions, dismissals, transfers, or subjecting the reporter to other organisational measures having direct or indirect negative effects on working conditions, following the submission of the report, to demonstrate that such measures are based on reasons unrelated to the report itself.

As regards the **flow of information to the Supervisory Board**, the latter must be promptly informed or receive adequate documentation concerning:

- conduct and/or news related to violation of the Model;
- any initiative concerning the prevention of the commission of offences and in any case the effective functioning of this Model;
- measures and/or news coming from the judicial police, or from any other authority, from which it can be inferred that investigations are being carried out, even against unknown persons, for crimes (and administrative offences) relevant to the administrative liability of entities and which may involve the Company;
- requests for legal assistance made by employees in the event of legal proceedings being instituted against them and in relation to offences relevant to the administrative liability of entities, unless expressly prohibited by the judicial authority;

- reports prepared by the heads of other corporate functions as part of their control activities and from which facts, acts, events or omissions with critical profiles with respect to compliance with the rules of the Decree may emerge;
- information on the effective implementation, at all levels of the company, of the Model, with evidence of the disciplinary proceedings carried out and of any sanctions imposed for violation of the Model or of the measures for dismissal of such proceedings with the relevant reasons;
- any other information that may be relevant for the purposes of correct and complete supervision and updating of the Model;
- news about organisational changes;
- updates to the system of delegations and powers;
- internal reports/communications from which responsibility for the offences referred to in the Decree emerges;
- changes in risk or potentially risk situations;
- any communications from the auditors concerning aspects that may indicate shortcomings in the system of internal controls, reprehensible facts, observations on the Company's financial statements;
- minutes of the meetings of the Board of Directors, as well as any meetings with the auditing firm.
- regular reporting on occupational health and safety and any accidents that may have occurred.
- reports prepared by the auditors on the checks carried out, including on IT processes.

The Supervisory Board may propose changes to the above list to the Board of Directors.

The Body shall act in such a way as to guarantee whistleblowers against any form of retaliation, discrimination or penalisation, also ensuring the confidentiality of the identity of the whistleblower, without prejudice to legal obligations.

Any "information" or "report" must be kept by the Supervisory Board in a special computer and/or paper file. The data and information stored in the archive are made available to persons outside the Supervisory Board, subject to its authorisation.

The implementation of the rules on whistleblowing and the related procedure is coordinated with the new rules introduced by the European Regulation on the protection of personal data of natural persons No. 679/2016 (GDPR) and the Italian Code on the protection of personal data as adapted to the European Regulation (Legislative Decree 101/2018, amending the Privacy Code Legislative Decree no.

196/2003). For this purpose, the specific processing of personal data is classified and managed by the technical and organisational measures implemented to comply with the provisions of the GDPR and the Italian Privacy Code, with particular attention to:

- assessing the risk of a data breach and its consequences;
- defining the roles attributed to the various actors involved from the point of view of the privacy organisation chart;
- enter the treatment in the Register of Treatments;
- ensure adequate security measures for the personal data processed;
- identify the conditions under which the processing is lawful;
- provide ad hoc information to the people concerned by the processing;
- regulate the right of access of the reported person and possibly limit it in order to reconcile his/her right with the obligation to protect the confidentiality of the identity of the reporting person, as established by the new Article 2-undecies letter f) of the Personal Data Protection Code.

4.5 Periodic audits of the Supervisory Board

The Model provides for four types of periodic audits:

- checks **on acts**, i.e. all proceedings involving the commitment of the Company;
- checks on **procedures, regulations and internal instructions**, i.e. on the documentation outlining the prevention activities for the purposes of the Decree in accordance with the procedures laid down by the Supervisory Board;
- checks **on reports made to the Supervisory Board**, or on what is reported by any interested party concerning any event considered at risk or harmful;
- checks **on the degree to which the Model has been implemented**, or on the level of awareness and knowledge of the staff of the offences covered by the Decree, including through personal interviews.

As already set out in the preceding paragraphs, the Supervisory Board prepares a report for each audit, and keeps the supporting documentation, if any.

4.6 Reporting methods and frequency

As already mentioned with regard to the functions assigned to it, the Supervisory Board reports **at least annually**, or promptly if necessary, to the Administrative Body and the Board of Statutory Auditors on the implementation of the Model's policies, with reference to:

- activities carried out;

- reports received;
- corrective actions implemented;
- possible corrections or implementations to the Model;
- possible application of the disciplinary system, in case of violation of the Model or of the duties of management and supervision by apical subjects.

The Administrative Body may request the convening of the Supervisory Board at any time. Similarly, the Supervisory Board may, if necessary, request the convening of the Administrative Body in order to report on any unlawful acts or serious misconduct. Minutes of each meeting between them shall be drawn up by the Supervisory Board.

4.7 Management review

The procedural apparatus and the organisation set up to monitor the identified risks are periodically, at least once a year, subjected to a review of their effectiveness and adequacy during the Review Meeting. This Meeting, unless otherwise provided for, is called by the Site Head and the Supervisory Board attends as an invited guest. It will also take into account in its Annual Report the information acquired in these sites. In the individual Special Sections the following is indicated:

- the party required to convene the meeting;
- parties to be convened;
- points to be addressed.

4.8 Criminal profiles of the liability of the Supervisory Board

The general duty of surveillance incumbent on the Supervisory Board plays an absolutely central role in the effectiveness of the Model, to the extent that failure to comply with it would result in the inapplicability, for the Company, of the exemption from liability. However, it should be noted that the obligation to be vigilant does not imply an obligation to prevent the offence. The Supervisory Board is not entrusted with the obligation to supervise the commission of offences, but with the operation of and compliance with the Model, taking care of its updating and possible adaptation, since it is, in substance, the advisory body of the Administrative Body of the Company, which alone is responsible for amending the Model, according to the indications and proposals of the Supervisory Board itself.

That said, the legislator had placed specific monitoring and reporting obligations on the Supervisory Board with regard to anti-money laundering, as provided for in the case of failure to report relevant facts pursuant to Article 52 of Legislative Decree 231/07, failure to comply with which constituted an offence. As a result of Legislative Decree 90/2017 and its amendments to Legislative Decree 231/2007 and with

particular reference to the amended Article 46 of Legislative Decree 231/2007 (Reporting Obligations), the obligation of the SB to supervise compliance with the specific anti-money laundering legislation has been eliminated, with consequent exemption from any criminal liability.

5 DISCIPLINARY SANCTIONS AND SANCTIONING SYSTEM

An aspect of particular importance in the construction of the Model is the provision of an adequate system of sanctions for the violation of the rules of the Code of Conduct, the procedures laid down in the Model and the provisions of the new Article 6 of Legislative Decree 231/2001 on reporting to the Supervisory Board

Such violations in fact damage the relationship of trust established with the entity, also on the basis of the provisions of Articles 2104 and 2105 of the Civil Code, which lay down obligations in terms of diligence and loyalty of the employee towards his employer and may, as a result, lead to disciplinary action, regardless of whether criminal proceedings are instituted in cases where the conduct constitutes a criminal offence.

The disciplinary assessment of conduct carried out by employers, subject, of course, to possible subsequent review by the employment judge, does not necessarily have to coincide with the judge's assessment in criminal proceedings, given the autonomy of the violation of the Code of Conduct and internal procedures with respect to the violation of the law resulting in the commission of an offence. The employer is therefore not obliged to wait for the end of any criminal proceedings before taking action.

The principles of timeliness and immediacy of the sanction make it not only unreasonable, but also inadvisable to delay the disciplinary proceedings pending the outcome of any proceedings brought before the criminal court.

As regards the type of sanctions that can be imposed, it should first be pointed out that, in the case of an employment relationship, any sanction must comply with the procedures laid down in Article 7 of Law no. 300/70 (so-called Worker's Statute) and/or special regulations, where applicable, characterised not only by the principle of typicality of the violations, but also by the principle of typicality of the sanctions.

Failure to comply with the provisions of the Code of Conduct and, more generally, with the protocols adopted with the organisational, management and control model pursuant to Legislative Decree no. 231/2001, constitutes a disciplinary offence both in the event that it is committed by a Company employee and in the event that the failure is committed by a collaborator, consistent with the activities that may be carried out by the latter. Following the amended Article 6, paragraph 2-bis) letter d), the disciplinary system provides for disciplinary sanctions against those who breach the

measures for the protection of whistleblowers, as well as against those who maliciously or grossly negligently make reports that turn out to be unfounded.

In view of their disciplinary value, the Code of Conduct and the procedures adopted in the context of the organisation, management and control model pursuant to Legislative Decree no. 231/2001, non-compliance with which constitutes a disciplinary offence, are formally declared binding on all employees when they are informed of the adoption of the model.

The Disciplinary System, an integral part of the Organisation, Management and Control Model pursuant to Legislative Decree no. 231/2001, containing the disciplinary sanctions as well as the relevant procedural aspects applicable as a result of conduct that violates the provisions of the Code of Conduct or the protocols of the Company's Model.

The disciplinary sanctions that can be imposed are identified below.

5.1 Sanctions for employees

In relation to its employees, the Company must comply with the limits set out in Article 7 of Law 300/1970 (the so-called Workers' Statute) and the provisions contained in the applicable National Collective Labour Agreements (CCNL), both with regard to the sanctions that can be imposed and to the procedures for exercising disciplinary power.

Failure to comply - by employees - with the procedures and provisions set out in the Organisational Model, violations of the provisions and principles laid down in the Code of Conduct, engaging in conduct unlawful under Legislative Decree no. 231/2001, constitute a breach of the obligations arising from the employment relationship under Article 2104 of the Civil Code and a disciplinary offence.

More specifically, the adoption by an employee of the Company of a conduct which, on the basis of what is indicated in the preceding paragraph, can be qualified as a disciplinary offence, also constitutes a violation of the obligation of workers to perform the tasks entrusted to them with the utmost diligence, complying with the directives of the Company, as provided for in the current National Collective Labour Agreement for the category.

Following the amended Article 6, paragraph 2-bis, letter d), it is also a disciplinary offence to make, with wilful misconduct or gross negligence, reports of unlawful conduct relevant under Legislative Decree 231/2001 and of violations of the Model which prove to be unfounded.

The following sanctions may be imposed on employees: i) verbal warning, ii) written warning, iii) fine, iv) suspension from work and v) dismissal. If violations are found, the employee may be suspended from work as a precautionary measure.

These penalties shall be imposed on the basis of the importance of the individual cases considered and shall be proportionate according to their severity. The procedure, timescales and methods for imposing sanctions shall be those laid down in the applicable National Collective Labour Agreement, i.e. the Chemical Industry Contract, Chapter VII.

In order to clarify in advance the criteria for correlating workers' violations with the disciplinary measures adopted, it is specified that

- Disciplinary measures are taken against an employee who:
 - violates internal procedures or behaves in a manner that does not comply with the provisions of the Code of Conduct and the rules of conduct contained in this Model (e.g. fails to comply with the prescribed procedures, fails to notify the Supervisory Board of the prescribed information, fails to carry out checks, etc.) or adopts, when carrying out activities in areas at risk, a conduct that does not comply with the provisions contained in the Model;
 - is guilty of gross negligence in making reports that turn out to be unfounded.
- In addition, the disciplinary measures will be terminated if an employee:
 - adopts, when carrying out the activities in the areas considered to be at risk by the Company, a conduct which does not comply with the provisions contained in the Model and in the Code of Conduct, unequivocally aimed at committing an offence sanctioned by the Legislative Decree no. 231/2001, since such conduct constitutes a breach of discipline and diligence at work that is so serious as to undermine the company's trust in the employee;
 - adopts, when carrying out the activities related to the areas at risk, a conduct which is clearly in conflict with the provisions contained in the Model and in the Code of Conduct, such as to determine the concrete application against the Company of the measures provided for by Legislative Decree no. 231/2001, such behaviour being an act that causes serious moral and material damage to the Company and does not allow the relationship to continue, even temporarily;
 - maliciously makes reports pursuant to Article 6 2-bis which prove to be unfounded.

Disciplinary measures may be challenged by the employee in the trade union, according to the applicable contractual rules. Dismissal may be challenged in accordance with the rules, procedures and time limits set out in the laws in force. The worker may be assisted by a representative of the trade union association he or she belongs to or has a mandate from, or by the RSU (Unitary union representative body).

Disciplinary measures will not be taken into account for any purpose after two years from their imposition.

The principles of correlation and proportionality between the infringement committed and the penalty imposed are guaranteed by compliance with the following criteria:

- severity of the violations committed;
- task, role, responsibility and autonomy of the employee;
- foreseeability of the event;
- intentionality of the behaviour or degree of negligence, carelessness or inexperience;
- overall conduct of the infringer, with regard to the existence or otherwise of a disciplinary record;
- other special circumstances characterising the infringement.

Disciplinary sanctions (as provided for in Article 7 of Law 300/70) and the Code of Ethics are brought to the attention of workers by posting them in a place accessible to all.

5.2 Sanctions for employees with managerial status

Violation - by managers - of the provisions of the law, of the provisions of the Code of Ethics and of the prescriptions laid down in this Model, including violation of the obligations to provide information to the Supervisory Board and failure to supervise the proper application, by hierarchically subordinate workers, of the rules and procedures laid down in the Model, as well as, in general, the assumption of behaviours liable to expose the Company to the application of administrative sanctions laid down in Legislative Decree no. 231/2001. 231/2001, determines the application of the sanctions laid down in collective bargaining for other categories of employees, in compliance with Articles 2106, 2118 and 2119 of the Civil Code and Article 7 of Law 300/1970.

Following the amended Article 6 paragraph 2-bis, letter d), it is also a disciplinary offence to breach reports of unlawful conduct, violation of the measures to protect the confidentiality of the person making the report, the adoption of retaliatory measures against the person making the report, as well as the malicious or grossly negligent reporting of unlawful conduct within the meaning of Legislative Decree no. 231/2001 and of violations of the Model which prove to be unfounded.

In general, the following sanctions may be imposed on managerial staff:

- i. fine;
- ii. suspension from work;

- iii. early termination of employment.

Ascertainment of any violations, as well as inadequate supervision and failure to provide timely information to the Supervisory Board, may result in the precautionary suspension from work for workers with executive status, without prejudice to the right of the executive to remuneration, as well as, again on a provisional and precautionary basis for a period not exceeding three months, the assignment to different tasks in accordance with Article 2103 of the Civil Code.

In cases of serious violations, including behaviour not compliant with the prescriptions contained in the Model and in the Code of Ethics, unequivocally directed towards the commission of an offence sanctioned by Legislative Decree no. 231/2001 or the malicious making of reports that prove to be unfounded, the Company may terminate the employment contract without notice pursuant to Article 2119 of the Civil Code.

5.3 Measures against Directors

In the event of an ascertained violation of the Model or of the Code of Conduct by the Management Body or of its violation of the measures for the protection of the reporting person, of the adoption of retaliatory measures against the reporting person as well as of the making, with wilful misconduct or gross negligence, of reports of unlawful conduct relevant under Legislative Decree 231/2001 and of violations of the Model which prove to be unfounded, the Supervisory Board shall promptly inform the Shareholders' Meeting and the Board of Statutory Auditors.

The sanctioning measures (such as, by way of example, temporary suspension from office and, in the most serious cases, revocation of the same) shall be adopted by the Shareholders' Meeting, which shall deliberate in accordance with the provisions of the Articles of Association.

5.4 Sanctions against Auditors

In the event of an ascertained violation of the Model or of the Code of Conduct by one or more auditors, or of violation of the measures for the protection of the whistleblower, the Board of Auditors and the Board of Directors shall take the appropriate measures provided for by the law and by the Articles of Association.

5.5 Parties with contractual/commercial relations

Violation by commercial partners, agents, consultants, external collaborators also referring to other companies of the group or other subjects having contractual relations with the Company of the provisions and rules of conduct provided for by the Model applicable to them, or the possible commission of crimes (and administrative offences) relevant to the administrative liability of entities by them, shall be

sanctioned in accordance with the provisions of the specific contractual clauses included in the relevant contracts.

In particular, the contracts entered into by the Company with self-employed workers and consultants may provide for a specific declaration of awareness of the existence of the Code of Ethics and of the relevant principles, of the obligation to comply with them, or, in the case of a foreign subject or a subject operating abroad, to comply with the international and local regulations on the prevention of risks that may give rise to liability resulting from the commission of offences by the Company.

This is obviously without prejudice to Aptuit's prerogative to claim compensation for damages resulting from the violation of the provisions and rules of conduct laid down in the Model by the aforementioned third parties.

5.6 Application of sanctions

The Administrative Body is responsible for the necessary investigations, the initiation of disciplinary proceedings and the imposition of sanctions, following a possible violation of the Model. The Company also keeps adequate documentation to support any sanctions imposed.

The Supervisory Board, in view of its function of monitoring the actual implementation and observance of the Model and all its components, shall have the task of reporting possible violations detected or of which it has become aware in the performance of its activities, and of verifying, in the event of a positive finding of the violation, the actual imposition by the Company of the sanction proportionate to the severity of the fact occurred.