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MODEL OF ORGANIZATION, MANAGEMENT AND CONTROL ADOPTED IN CONFORMITY AND IN CONSEQUENCE OF THE D. LGS N. 231/2001


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DEFINITIONS

- **COMPANY:** it is a subject practicing enterprise activity: it can be constituted by a single subject (single-person company) or by more subjects called partners (physical an/or juridical people) united in a collective enterprise. In such way, with the term company, we refer to ALLEGGRINI S.p.A.
- **D.LGS. (LAW DRECEE) N. 231/2001:** the law decree n. 231 dated June 8 2001, and its later modifications and integrations
- **ORGANIZATIONAL MODEL:** the model of organization, management and control adopted in accordance to the D.L. n. 231/01 about the Governance and prevention of presupposed crimes indicated in the above mentioned law decree.
- **SENSITIVE ACTIVITY:** Company activities within which the following is present: the risk of committing crimes to be prevented or, in any case, of one or more behaviors, however, committable and/or omissible, able by themselves or together with others, to determine the probability that a harmful or dangerous event may occur to the company.
- **AREAS OF RISK:** the areas of company activities where it is mostly present the risk of committing one or more crimes contemplated by the D.LGS. n. 231/2001, and subsequence integrations.
- **ORGANISM OF VIGILANCE:** the Organism of Vigilance in accordance with art. 6, paragraph 1, sub. b) of the law decree n. 231/2001 has the duty of vigilance about the functioning and the observance of the model and to take care of its updating. It has autonomous powers of initiative and control and it is endowed with financial resources autonomy predisposed by the company for these purposes.
- **CONFINDUSTRIA (INDUSTRIAL REPRESENTATION ORGANIZATION) GUIDE LINES:** the guide lines for the arrangements of the organizational models, management and control are diffused by "Confindustria" and approved by the Justice Ministry, at the conclusion of control procedure effected over the same in accordance with art.6, paragraph 3, of the law decree n. 231/2001 and of the Ministry Decree, n. 201 dated June 26 2003. Recently the "guide lines" have been edited by "Confindustria" together with the collaboration of the Forensic National Council (CNF), of the Italian Banking Association (ABI) and of National Council of Accountants Doctorate and Bookkeeping Experts (CNDCEC), proposing "*consolidated Principles for the editing of organizational models and the activity of the Organism of Vigilance and future revision of the d.lgs. n. 231 dated June 8 2001*";
- **RECIPIENTS:** are all those people who eventually operate for the attainment of the purposes and the objectives of the company. Among the recipients of the model are included the components of the company Organisms, the Organism of Vigilance, the employees, the external advisors, the commercial partners (such as the suppliers, etc.), the controlled corporate bodies.
- **APICAL SUBJECT:** people vested with functions of representation, of administration, of company management or of one of its branch endowed with financial and functional autonomy, as well as people that practice, even in facts, the management or the control of the company, or that, in any case, can be considered head of a business process for which to perform, even in facts, activity of coordination, or of orientation, of examination and/or monitoring.
- **SUBORDINATE SUBJECTS:** people submitted to the direction or to the vigilance of the subjects described in the preceding point.
- **SOCIAL ORGANISMS:** the Board of Directors (BoD), the Administrative Organism (CFO) as well as the company Organism of control (Board of Auditors).
- **P.A.:** the public administration, including relative officials vested with the authority of public officers or delegated to public service functions.
- **CONSULTANTS:** subjects that, because of their professional competences, perform their own intellectual work in favor or on behalf of the company on the base of a mandate or other order of professional collaboration relationship.
- **EMPLOYEES:** subject with a subordinate working contract with the company, para-subordinate or administered by employment agencies.
- **PARTNERS:** the contractual counterparts of the company, physical or juridical people, with which

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the company reaches whatsoever form of contractually regulated collaboration.

- **PROXY:** the unilateral juridical mandate with which the company attributes representation powers to third parties.
- **DELEGATION:** the internal action of functions attribution and assignments within the company organization.
- **FUNCTIONS SEGREGATION:** the set of roles and responsibility specifically indicated through delegation or proxy to one or more resources (internal or external) exactly identified within one or more relevant activities for attaining the social objective.
- **CONFLICT OF INTERESTS:** a situation and/or a condition in which a subject of the company finds himself in relation to a juridical act to be done on behalf of the company (both if the act has a decisional nature, and that it is of advisory nature, of verification or of control nature) such to be able to concretely jeopardize its genuineness or utility; the organization and management model disciplines the proper modalities to overcome the hypotheses of conflict of interests (promotion of the principle of collegiality, abstention or just the interested party declaration (see. art. 2391 c.cs.), the interest of the ODV or of different Organism of Control employed for the due diligences etc.), besides foreseeing hypothesis of incompatibility/non-conferrable duties and/or functions.
- **CRIMES:** all criminal cases contemplated by the law decree n. 231/2001 concerning the direct responsibility of the companies, as well as further criminal cases that the company intends to prevent, listed in detail in the document "matrix of risk."
- **RISK ORIGIN:** the analysis document of the internal and external context of the company, susceptible to continuous updating by the Organism of Vigilance, reporting the state of the art in relation to the subjects or the process exposed to one or more risks, the list of referenced sensitive activities, the whole prevention measures predisposed by the company in order to guarantee the company operations in terms of acceptable risk and not further compressible.
- **INFORMATIVE FLOWS:** information predefined in the risk matrix and in the standard protocol, either verbal or written, relevant to prevention purposes, that have to be furnished to the apical personnel of the Organism of Vigilance in regard to company activities;
- **BEHAVIORAL PROTOCOLS:** business directives regarding behavioral rules to follow in the exercise of the duties.
- **WHISTLEBLOWING:** reporting channel that allows employees (and third parties in general) to present circumstantial signals of illegitimate behaviors or of violations of the model, to the Organism of Vigilance or to the different autonomous and independent social Organism based upon specific and concordant factual elements of which they have knowledge while accomplishing their functions, guaranteeing the identity reservation of the reporter.
- **COMPANY PROCEDURES:** detailed sequence and logic of actions, defined more or less in a rigid way constituting basic unit of an activity that allows to make uniform and homogeneous the operations disciplined in the procedures, greatly circumscribing the discretionary power of the operator;
- **ETHICAL CODE:** the company document that contemplates all the company ethical and social norms to which the company employees have to abide.
- **REGULATORY FRAMEWORK OF REFERENCE:** the whole of norms, even of regulation nature, the orientations (more or less) maximized and uniformed of the Judicial Authority, the routine documents promulgated by Public Organisms or Category Associations, the provisions of the Authorities (among which Privacy Guarantor, Anac, Competition and Market Guarantor), the Company constitutive act and statute that, directly or indirectly concur to define, and to improve the activity of risks prevention.
- **CCNL: (CONTRATTO COLLETTIVO NAZIONALE DI LAVORO)** the National Collective Labor Contract.
- **INSTRUMENTATION OF ENFORCEMENT OF THE MODEL:** all the dispositions, the inside provisions, the acts and the company operational procedures, etc. as, for instance, the statute, delegations and authority, organization charts, job description, procedures, organizational dispositions.

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- T.U.A.: law decree, n. 152 dated April 3 2006, c.d. “environmental act” and successive modifications and integrations.
- T.U.S.: law legislative decree n. 81 dated April 9 2008, c.d. “safety act” and successive modifications and integrations.

1. LAW DECREE N. 231 DATED JUNE 8 2001

1.1. ADMINISTRATIVE RESPONSIBILITY OF THE LEGAL ENTITIES OF THE COMPANY AS WELL AS ASSOCIATIONS, EVEN IF FREE OF LEGAL ENTITIES

On June 8 2001 it has been promulgated, executing the delegation given in art. 11 of the law n. 300 dated September 29, 2000. The Law Decree 231/2001 “Disciplinary of administrative responsibility of juridical people, of companies and associations without any juridical authority” (below referred as “Decree” or “D.Lgs. 231/2001”), effective from July 4, 2001, with the intend to adequate the internal normative concerning the responsibility of juridical people to several international conventions to which Italy has adhered long time ago (in particular the *Convention of Brussels dated July 26 1995* regarding the financial interests of the European Community, *Convention of Brussels dated May 26 1997* about fighting corruption of public officers both of the European Community and of member States and, also, the OCSE Convention dated December 17 1997 about fighting corruption of foreign public officers in international economic operations) and that has introduced, for the first time in our legislation, an administrative responsibility regime - substantially referable to criminal liability - to corporate bodies for some crimes or administrative offence made, in the interest or to the advantage of the same corporate bodies, by:

(i) physical people vested with representative, administrative or directional functions within the Corporate Body or one organizational unit with its own financial and functional autonomy, as well as by people that practice, in fact, the management and the control of the same Corporate Body (c.d. “subjects” apical)¹;

(ii) physical person submitted to the supervision or to the vigilance of one of the persons described above².

If the author of the illicit act is an “apical” person a presumption of responsibility is established, considering the fact that such person expresses, represents and implements the managerial politics of the company.

In this the company assumes the responsibility to prove that the behavior of the person has not been in the interest or to advantage the company itself but that has deliberately been exclusively the result of a fraudulent behavior of the same people, for his exclusive interest.


There is not, instead, any presumption of responsibility for the company in case the author of the illicit act is among the ones contemplated on point (ii) since, in such case, the illicit act of the supervised person involves the company responsibility only if it results that its illicit act has been made possible by the non-observance of the management obligations and/or vigilance Corporate Body.

The new responsibility introduced by the Decree arises only in the hypotheses in which the illegitimate behavior has been made in the interest or to the company advantage: therefore, not only when the illegitimate act has determined an advantage, patrimonial or not, to the company, but also in the hypothesis in which, even in absence of such concrete result, the illegitimate act could be made in the interest of the company.

It is not, instead, foreseen any responsibility of the company in the case in which the author of the crime or of the illegitimate administrative act has acted exclusively for his own interest or of third parties³.

The responsibility of the company is additional and not substitutive in relation to that of the person who has materially committed the illegitimate act, which, therefore, is regulated by the common criminal law.

The Decree is applied in relation both to crimes committed in Italy than to those committed abroad, provided that the company has its principal headquarter in the territory of the Italian State and that

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against the same doesn't directly proceed the State in which the crime has been committed.

- ¹ Among the subjects in apical position can be enumerated: the CEO, the managing directors, the members of the executive committee, the procurators and the company institutors, the general managers, the responsible of an organizational unit financially and managerially autonomous (for example, the managers of a factory and a branch) and those people that practice the management of the company or some of the above mentioned tasks, even de facto.
- ² The juridical subject will also answer about external people behaviors such as (consultants, agents, salesmen, representatives, etc.) whenever these people operate in their exclusive interest and replace the apical figures for carrying out external actions.
- ³ Such responsibility seems to exist, even though in a very reduced way, if the Corporate Body has drawn an advantage c.d. "reflected" to the unlawful act accomplished by the subject in his exclusive interest. It concurs at sustaining this hypothesis the interpretation of article 6, last paragraphs, which foresee "the seizure of the profit that the Corporate Body has drawn from the crime also in an equivalent form, as disposed by art 12 that foresees a reduction to half the sanction and, however, not higher than € 103.291,00 whenever "the author of the crime has committed the fact in the prevailing interest of himself or of third parties and the Corporate Body has not drawn any advantage or only a minimal advantage from it"

According to the Cassation Court (Cass. Pen., December 20 2005, n. 3615), the concepts of interest and advantage must not be intended as unitary concept, but dissociated, being evident the distinction between what could be understood as a possible profit prefigured as a result of the illegitimate act, as regard to an advantage

clearly achieved thanks the result of the committed crime. The criminal Court of Milan has also sentenced in such way (ord. December 20 2004), according to which it is just sufficient the finalization of the criminal behavior to pursuit a given utility, regardless the fact that the same has indeed been achieved.

The company responsibility subsists not only when it has received an immediate patrimonial advantage in committing the crime, but also in the hypothesis in which, even in the absence of such result, the fact has its motivation in the interest of the company. The improvement of its own position in the market or the concealment of a situation of financial crisis, for example, are both cases that involve the interests of the company without bringing to it an immediate economic advantage.

It is also important to point out that, if the crime is committed by qualified subjects of a **corporate** company, the concept of interest can be extended in unfavorable sense to the corporate main company. The Criminal Court of Milan (ord. December 20 2004) has sentenced that the element characterizing the corporate interest is found in the fact that the interest doesn't configure itself as exclusively for one of the group members, but as common to all the subjects of the corporate companies. For this reason it is affirmed that the illegitimate act committed by the controlled company can also be ascribed to the controlling company, provided that the physical person who has committed the crime - or has concurred to the same - belongs, even functionally, to the same one.


Although the decree under examination formally qualifies the above-mentioned responsibility of the Company as "administrative", according to the majority of the doctrine that has examined this matter, this new form of responsibility would substantially have a penal nature. It is, in fact, a responsibility deriving from a crime act, that has been ascertained by the penal court.

* * * *

The responsibility ascertainment of the company employee by the penal court judge, follows the submission of the company to predetermined Sanctions listed in art. 9 of the Decree (named "Administrative Sanctions").

These are:

to) *monetary sanction*

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b) *interdictory sanctions*

c) *property confiscation*

d) *publication of the sentence*

The Decree provides a difference between sanctions that always have to be inflicted every time the subsistence of the company responsibility is ascertained, which are: monetary sanction⁴ and property confiscation and those sanctions that are, instead, provided only for some types of criminal acts: interdictory sanctions and sentence publication.

The interdictory sanctions (point b) being endowed with particular afflictive punishment, are provided only for cases retained more serious, if one of the followings conditions apply:

(i) the company has obtained from the illegitimate act a profit of remarkable entity and the illegitimate act has been committed by apical people, or by other people subject to other people's direction and vigilance, when the illegitimate act has been determined or facilitated by serious organizational deficiencies;

(ii) in case of reiteration of the illegitimate acts.

The interdictive measures, whenever serious signs of the company responsibility subsist and there are well founded and specific elements that make concrete the danger of a possible carrying out illegitimate acts of the same nature, can be applied, on request of the District Attorney, also precautionarily, even during the investigations phase.

To such sanctions have to be added, as well, the confiscation of the cost or the profit of the crime (following the conviction sentence) as well as, in determined cases, the publication of the conviction sentence.

Furthermore, upon occurrence of specific conditions, the Judge, when applying the interdictive sanction that would

determine the interruption of the company activity, has the faculty to appoint a commissioner with the duty to supervise the continuation of the company activity, for a period equal to the duration of the interdictive punishment that has been imposed.

⁴ From what disposed by the art. 17 such sanction is applied also to the Corporate Body even if it mends to the consequences of the crime.


Financial sanction: it is always applied if the judge deems the company responsible. It is calculated on the base of quotas system, that are determined by the judge in numbers and amount: the quotas number, to be applied between a minimum and a maximum varying according to the type of responsibility, depends by the seriousness of the crime, the degree of responsibility of the company, the activity performed for eliminating or attenuating the consequences of the crime or to prevent other illegitimate acts; the amount of the single quota is instead established, between a minimum of 258,00 € and a maximum of 1.549,00 €, according to the economic and patrimonial conditions of the company.

interdictory sanctions: the interdictory sanctions are applied, in addition to the monetary ones, only if expressly provided for the crime for which the company is condemned and only in case one of the following conditions recur:

- the Corporate Body has obtained from the crime a remarkable profit and the crime has been committed by an apical subject, or by a subordinate if a serious organizational deficiency has been made possible to commit the crime;
- in case of reiteration of the illegitimate acts.

The interdictory sanctions foreseen by the Decree are:

1. the interdiction to carry out the activity;
2. the suspension or the revocation of authorizations, licenses or concessions functional to commit the illegitimate act;
3. the prohibition to stipulate contracts with the public administration, except for obtaining contracts useful to bring benefits of public service;
4. the exclusion from facilitations, loans, contributes or monetary benefits and the eventual revocation of those already granted;
5. the prohibition to advertise goods or services.

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Even though exceptionally applicable with definite effects, the interdictory sanctions are temporary, with a variable duration, and they regard a specific activity of the company which the illicit act refers. Sanctions can also be applied, upon request of the District Attorney, in a precautionary way in order to protect, before the conviction sentence, if serious signs of responsibility of the company subsist as well as founded and specific elements that lead to believe that the danger of further illicit acts of the same nature of the one under examination exist.

Confiscation: With the conviction sentence it is also effected the confiscation of the amount or the profit derived from the crime or other utilities of equivalent value. Even the presumed saving can be defined as equivalent). The profit of the crime has been defined by the United Sections of the Court of Cassation (Last Instance Court)(v. Cass. Pen., S.U., march 27 2008, n. 26654) to be the economic advantage of direct and immediate cause deriving from the crime, and concretely determined to the effective utility achieved by the damage produced within the possible contractual relationship with the company; the United Sections of the Court of Cassation have also specified that from such definition it has been excluded any parameter related to the company, therefore the profit cannot be identified with the net profit realized by the company (except that in the case, provided by the law, of compulsory administration of the company). According the Court of Justice of Naples (ord. July 26 2007) it cannot be considered extraneous to the concept of profit the missing patrimonial diminution determined by the missed disbursement of sums for costs that should have been sustained.

Publication of the conviction sentence

It can be ordered when the company is sentenced to an interdictory sanction; it consists in the publication of the sentence only once, by extract or in full, in one or more newspapers indicated by the judge in the sentence as well as through posting it in notice-board of City Hall where the company has the headquarter, at company expenses.

1.2. TYPOLOGIES OF ADMINISTRATIVE AND ILLEGITIMATE CRIMES

The typologies of illegitimate and administrative crimes in charge of the corporate bodies currently foreseen in the D.Lgs. 231/2001 are the followings:

I) CRIMES COMMITTED IN DEALING WITH THE PUBLIC ADMINISTRATION (ART. 24, D.LGS. 231/01)

- a) Embezzlement against the State or other public Corporate Body (art. 316-encore c.ps.);
- b) To receive undo contributions, financings or other disbursements from the State or other public Corporate Body or the European Communities (art.316-ter c.p.);
- c) Fraud against the State or other public Corporate Body or the European Communities (art.640, paragraph 2, n.1, c.p.);
- d) Aggravated fraud for the attainment of State contributions (art. 640-encore c.ps.);
- e) Computer fraud damaging the State or other public Corporate Body (art. 640-ter c.pse.).

II) COMPUTER CRIMES AND ILLEGITIMATE DATA TREATMENT (ART. 24 ENCORE, D.LGS. 231/01)

[law article added with the Law n. 48, art. 7, dated March 18 2008]

- a) Falsity in computer public document or possibly carrying probative effectiveness (art. 491-bis c.p.);
- b) Unauthorized access to computer or electronic system (art. 615-ter c.p.);
- c) Detention and unauthorized diffusion of access codes to computer or electronic systems (art. 615-quater c.p.);
- d) Diffusion of apparatuses, devices or computer software with the intent to damage or interrupt the informatic or electronic system (art. 615-quinquies c.p.);
- e) Wiretapping, impediment or illegitimate interruption of computer or electronic communications (art. 617-quater c.p.);

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- f) Installation of apparatuses fit to wiretapping, to prevent or to interrupt computer or electronic communications (art. 615-quinquies c.p.);
- g) Damage of information, data and computer software (art. 635-encore c.p.s.);
- h) Damage of information, data and computer software utilized by the State or by other public Corporate Body or, in any, case of public utility (art. 635-ter c.p.);
- i) Damage of computer or electronic systems (art. 635-quater c.p.);
- j) Damage of computer or electronic systems of public utility (art. 635-quinquies c.p.);
- k) Computer fraud of the electronics certifier signature (art. 640-quinquies c.p.)

III) CRIMES COMMITTED IN CONNECTION WITH THE PUBLIC ADMINISTRATION (ART. 25, D.LGS. 231/01)

- a) Corruption for obtaining a public office act (art. 318 c.p.);
- b) Punishments for the briber (art. 321 c.p.);
- c) Corruption for an action contrary to office duties (art. 319 c.p.);
- d) Aggravating circumstances (art. 319-encore c.p.);
- e) Corruption in judicial acts (art. 319-ter c.p.);
- f) Instigation to corruption (art. 322 c.p.);
- g) Undue induction to give or to promise benefits (art. 319-quater c.p.);
- h) Extortion (art. 317 c.p.);
- i) Currency counterfeiting crimes (art. 25bis, D.Lgs. 231/01) [article added by the d.l. n. 350, art. 6, dated September 25 2001, with modifications of the law n. 409 dated November 23, 2001];
- j) Currency falsification, utilization and introduction, upon agreement, in the country territory counterfeit currency (art. 453 c.p.);
- k) Alteration of currency (art. 454 c.p.);
- l) Utilization and introduction in the State, without any agreement, counterfeited currency (art. 455 c.p.);
- m) Utilization of counterfeit currency received in bona fide (art. 457 c.p.);
- n) Falsification of revenue stamps, introduction in the country territory, acquisition, distribution of falsified revenue stamps (art. 459 c.p.);
- o) Counterfeiting of watermarked paper used for producing public credit paper or revenue stamps. (art. 460 c.p.);
- p) Manufacturing or detention of watermarks or tools useful for currency falsification, revenue stamps or watermarked paper (art. 461 c.p.);
- q) Use of revenue stamp counterfeited or altered. (art. 464 c.p.).
- r) Use of illegitimate influences (art. 346 bis c.p.)

IV) CORPORATE CRIMES (ART. 25TER, D.LGS. 231/01)

[Article added by the D.Lgs. n. 61, art. 3, dated April 11, 2002].

- a) False company communications (art. 2621 c.c.);
- b) False company communications in order to damage partners or creditors (art. 2622, paragraph 1 and 3, c.c.);
- c) Untruth regarding relations or communications of external auditors (art. 2624, paragraph 1 and 2, c.c.);
- d) Prevented control (art. 2625, paragraph 2, c.c.);
- e) Fictitious formation of the company's share capital (art. 2632 c.c.);
- f) Undo restitution of contributions (art. 2626 c.c.);
- g) Illegal redistribution of profits and reserves (art. 2627 c.c.);
- h) Illegitimate operations about shares of the company or the controlling companies (art. 2628 c.c.);
- i) Operations causing prejudice of the creditors (art. 2629 c.c.);
- j) Undue distribution company social goods by liquidators (art. 2633 c.c.);
- k) Corruption among private subjects (art. 2635 co. 3 c.c.);
- l) Instigation to the corruption among private subjects (art. 2635 bis c.c.);

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- m) Illegitimate influence over the board of directors (art. 2636 c.c.);
- n) Share Price Manipulation (art. 2637 c.c.);
- o) Omitted communication of the conflict of interests (art. 2629-encore c.c.) [article added to law n. 262, art. 31, dated December 28 2005];
- p) Interference with the exercise of Public Authorities of Vigilance functions (art. 2638, paragraph 1 and 2, c.c.).

V) CRIMES WITH TERRORISM FINALITY OR DESTRUCTION OF THE DEMOCRATIC ORDER AS FORESEEN BY THE PENAL CODE AND BY SPECIAL LAWS (ART. 25QUATER, D.LGS. 231/01)

[Article added by the L. January 14 2003 ns. 7, art. 3].

VI) PRACTICES OF MUTILATION OF THE FEMALE GENITAL ORGANS (ART. 583BIS C.PS.) (ART. 25QUATER1, D.LGS. 231/01)

[Article added with the Law n. 7, art. 8 dated January 9, 2006].

VII) CRIMES AGAINST THE INDIVIDUAL PERSONALITY (ART. 25QUINQUES, D.LGS. 231/01)

[Article added with the Law n. 228, art. 5 dated August 11, 2003].

- a) Reducing or keeping in slavery or servitude human beings (art. 600 c.p.s.);
- b) Juvenile prostitution (art. 600-encore c.p.);
- c) Juvenile pornography (art. 600-ter c.p.);
- d) Detention of pornographic material (art. 600-quater);
- e) Virtual pornography (art. 600-quater.1 c.p.s.) [added with the Law n. 38, art. 10, dated February 6, 2006];
- f) Touristic initiatives aiming to exploit juvenile prostitution (art. 600-quinques c.p.);
- g) People trafficking (art. 601 c.p.);
- h) Acquisition and alienation of slaves (art. 602 c.p.);
- i) Work exploitation of and illegitimate intermediation of the workers (art. 603-encore c.p.)

VIII) CRIMES OF MARKET ABUSE (ART. 25SEXIES, D.LGS. 231/01)

[Article added by Law n. 62, art. 9 dated April 18, 2005].

- a) Abuse of privileged information (D.Lgs. 24.02.1998, n. 58, art. 184);
- b) Market manipulation (D.Lgs. 24.02.1998, n. 58, art. 185).

IX) MANSLAUGHTER CRIMES AND SERIOUS OR VERY SERIOUS NEGLIGENT PHYSICAL INJURY, COMMITTED IN VIOLATION OF accident prevention LAWS AND SAFEGUARD OF HYGIENE AND HEALTH IN THE WORK PLACE (ART. 25SEPTIES, D.LGS. 231/01)

[Article added with Law ns. 123, art. 9 dated August 3 2007].

- a) Manslaughter crime (art. 589 c.p.s.);
- b) Negligent physical injury (art. 590 c.p.s.).


X) RECEIPT OF STOLEN PROPERTY, MONEY LAUNDERING, SELF MONEY LAUNDERING AND UTILIZATION OF MONEY, GOODS OR UTILITY OF ILLEGITIMATE ORIGIN (ART. 25OCTIES, D.LGS. 231/01)

[Article added with Law n. 231, art. 63, paragraph 3 dated November 21 2007].

- a) Receiving stolen goods (art. 648 c.p.)
- b) Money laundering (art. 648-encore c.p.);
- c) Utilization of money, goods or utility of illegitimate origin (art. 648-ter c.p.);
- d) Self money laundering (648-ter.1)

XI) CRIMES RELATED TO COPYRIGHT VIOLATION (ART. 25NOVIES, D.LGS. 231/01)

[Article added with Law 99/2009 (Energy Development Act)].

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Crimes foreseen by articles 171, first paragraphs, letter a-bis), and third paragraphs 171-bis, 171-ter, 171-septies and 171-octies of the Law April 22 1941, n.633 (Copyright Act) (Art. 377-bis c.p. and Art.9, paragraph 2 D.Lgs. 231/01)

XII) INDUCTION NOT TO MAKE DECLARATIONS OR MAKE MENDACIOUS DECLARATIONS TO JUDICIAL AUTHORITY (ART. 25DECIES, D.LGS. 231/01)

[Article added with the Law n.116 dated August 3 2009, to comply with the U.N. Convention against corruption, as modified with D.Lgs n.121/2011, art.2, paragraph].

Omitted or mendacious declarations (art. 377-bis c.p.)


XIII) CRIMES AGAINST ENVIRONMENT (ART. 25UNDECIES, D.LGS. 231/01)

[Article included with Law n.121, article 2 dated July 7 2011, , implementation of European Union Directives n.2008/99/CE, 2009/123/CE that modified the directive 2005/35/CE, in force since August 16 2011].

1. ENVIRONMENTAL CRIMES FORESEEN BY THE PENAL CODE:
 - a) Killing, Destruction, Capture, etc... of protected animal species (art. 727-encore c.p.)
 - b) Destruction or deterioration of protected areas (art. 733-encore c.p.)
 - c) crime related to trafficking and abandonment of high radioactivity material according to article 452-sexies;
 - d) associative crimes aggravated according to article 452-octies;
 - e) violation of article 452-quinquies
 - f) violation of article 452-quater
 - g) violation of article 452-bis

2. ENVIRONMENTAL CRIMES FORESEEN BY THE D.LGS N. 152 DATED APRIL 3 2006,:
 - a) crimes foreseen by article 137:
 - b) disposal of industrial waste waters (subparagraphs 3, 5 first period and 13)
 - c) disposal of industrial waste waters (subparagraphs 2, 5 second period 11)
 - d) crimes foreseen by article 256:
 - e) non-authorized collection, transportation and temporary storage (subparagraphs 1, letter to), and 6, first period)
 - f) non-authorized collection, transportation, and mixing of non authorized waste material (subparagraphs 1, letter b), 3, first period and 5)
 - g) non authorized landfill management (paragraph 3, second period)
 - h) crimes foreseen by article 257:
 - i) ground pollution, subsoil and superficial or underground waters (paragraph 1)
 - j) soil, under soil and superficial or underground waters pollution with dangerous material (paragraph 2)
 - k) false declarations for waste analysis certification and utilization of false certificates for transportation (art. 258, paragraph 4, second period-art. 483 c.ps.)
 - l) illegitimate traffic of waste materials (art. 259, paragraph 1)
 - m) activity organized for trafficking of illegitimate waste materials (art.260, paragraph 1 and 2)
 - n) omitted registration to SISTRI and payment of relative taxes (art. 260-bis paragraphs 6, 7, second and third period and 8 first period and second period)
 - o) violation of emission values within the authorized area (art. 279 paragraph 5)

3. ENVIRONMENTAL CRIMES FORESEEN BY THE LAW N.150 DATED FEBRUARY 7 1992,:

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- a) importation, exportation, commercialization and detention of fauna and flora of protected species (art.1, paragraph 1, art. 2, paragraphs 1 and 2, art. 6, paragraph 4)
- b) importation of objects related to fauna and flora of protected species without authorization (art.1 paragraph 2)
- c) alterations of certificat, licenses, authorizations related to fauna and flora of protected species (art. 3-bis, paragraph 1)

4. ENVIRONMENTAL CRIMES FORESEEN BY ARTICLE 3, PARAGRAPH 6, LAW N. 549 DATED DECEMBER 28 1993,
Violations regarding emissions in the atmosphere

5. ENVIRONMENTAL CRIMES FORESEEN BY LAW N. 202 DATED NOVEMBER 6 2007,
- a) negligent pollution without permanent damages caused by ships (art. 9, comma1)
 - b) negligent pollution with permanent damages or fraudulent pollution without permanent damages caused by ships (art. 8, paragraph 1 and art.9, paragraph 2)
 - c) fraudulent pollution with permanent damages caused by ships (art. 8, paragraph 2)

XIV) EMPLOYMENT OF FOREIGN WORKERS WITHOUT RESIDENCE PERMIT (ART. 25DUODECIES, D.LGS. 231/01)

[Article included by the D.Lgs n.109 dated July 16 2012, , in force from August 9 2012]

NORMATIVES OF REFERENCE

1 - Art. 22, paragraph 12-bis, D.Lgs. n. 286 July 22 1998, (c.d. Immigration Act), "Part time and full time subordinated work": Punishments for previous described acts foreseen in paragraph 12 (NDR: or the fact that "the employer that employs foreign workers without the resident permit foreseen by the present article, or whose resident permit has expired and for which has not been requested, according to the law, the renewal, either revoked or cancelled") penalties are increased from one third to half:


- a) if the employed workers are more than three;
- b) if the employed workers are underage;
- c) if the employed workers are submitted to working conditions of particular exploitation as foreseen in the third paragraph of the article 603-bis of the penal code (NDR: or to "situations of serious danger, occurred for the characteristics and conditions of the work to be done").

XV) TRANS-NATIONAL CRIMES (LAW MARCH 16 2006, N. 146, ARTS. 3 AND 10).

Art. 3 of the law defines trans-national crime punished with the imprisonment not less than 4 years imprisonment, if an organized criminal group is involved, as well as: a) it is committed in more than a country; b) or is committed in a country, but the substantial preparation, planning, direction or control happens in another country; c) or it is committed in a country, but it involves an organized criminal group operating in criminal activity in more than one country; d) or it is committed in a country but has substantial effects in another country.

- d) Criminal organization (art. 416 c.ps.);
- e) Mafia organization (art. 416-encore c.p.);
- f) Criminal organization finalized to smuggling tobacco goods produced abroad (art. 291- quater of the Law n. 43 of the President of the Republic dated January 23 1973,);
- g) Criminal organization finalized to the illegitimate drug or psychotropic trafficking (art. 74 of Law n. 309 of the decree of the President of the Republic, dated October 9 1990,);
- h) Dispositions against clandestine immigrations (art. 12, paragraphs 3, 3-bis, 3-ter and 5, of the Law n. 286 date July 25 1998,);
- i) Induction to making no declarations, as well as mendacious ones, to the legal authority (art. 377-bis c.p.);
- j) Personal soliciting (art. 378 c.ps.).

XVI) FRAUD IN SPORT COMPETITION, UNAUTHORIZED BETTING AND GAMBLING PRACTICED BY MEANS OF FORBIDDEN

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EQUIPMENTS (ART. 25QUATERDECIES, D.LGS. 231/01)

- a) Fraud in sporting competitions (art. 1 L. 401/1989)
- b) Unauthorized exercise of gambling or betting activity (art. 4 L. 401/1989).

XVII) RACISM AND XENOPHOBIA

CRIMES FORESEEN BY LAW N. 654 ARTICLE 3, PARAGRAPH 3-BIS, DATED OCTOBER 13 1975,

XVIII) TAX OFFENCES

In relation to offences for fraudulent declaration using invoices or other documents for nonexistent business operations foreseen by Law n. 74 article 2, dated March 10 2000,

1.3. ORGANIZATION, MANAGEMENT AND CONTROL MODELS

The Law Decree regulates some general principles regarding the organization, management and control model, without furnishing specific characteristics. The Model operates as causes of non criminal punishability only if:

- efficacious, or if reasonably fit to prevent the crime or the committed crimes;
- effectively actuated, or if its content applies to the company procedures and in the internal control system.
- As for the effectiveness of the Model, the Law Decree foresees that it contains at the least the following:
 - The company activities are identified within which crimes can be committed;
 - specific protocols directed to program the training and the realization of the company decisions are provided, relating to the crimes to be prevented;
 - are identified the modality of financial management of suitable resources to prevent the possibility to commit crimes;
 - A disciplinary system suitable to sanction in case of failure to respect of the measures indicated in the model is introduced;
 - Duties to inform the Organism of Vigilance are provided;
 - related to the nature and the dimension of the organization, as well as to the type of activity performed, are provided **adequate measures** suitable to guarantee the carrying out of the activity in respect of the law as well as discovering and quickly eliminate situations of risk.

The Law Decree establishes that the Model is submitted to periodic verification and updating, in the case in which meaningful violations of the provisions emerge, whenever there are meaningful changes in the organization or in the activity of the company or the referenced laws change, particularly when new crimes are introduced.

The D.Lgs. 231/2001 foresees, finally, that the Models of organization and management can be dictated, guaranteeing the demands listed above, on the base of behavior codes issued by category representative associations, submitted to the Justice Ministry (who, in concert with the competent Ministries, can formulate, within thirty days, observations about the adequacy of the models in order to prevent illegitimate acts).

1.4. CONFINDUSTRIA (GENERAL CONFEDERATION OF ITALIAN INDUSTRY) GUIDELINES AND CONSOLIDATED PRINCIPLES⁵

⁵The present paragraph contains a summary extracted from the document "Guide Lines to lay down organization models,

For the preparation of the Model the guideline emanated by Confindustria (later also referred to simply "Confindustria Guideline") has been taken into account and it has been judged, by the Justice Ministry together with the competent Ministers, "adequate for the attainment of the purpose established by art. 6, paragraph 3 of the same Law Decree."

Therefore, the fundamental points for the construction of a Model of Organization and Management can be synthesized as follows:

- 1) **identification of the risks**, meaning the analysis of the business context in order to emphasize

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where (area/activity sector) and according to which modalities prejudicial events can be verified for the objectives pointed out in the Law Decree;

- 2) **control system planning** meaning the evaluation of the Company internal existing system and, eventually, its updating, in terms of ability to effectively contrast (or to reduce it to an acceptable level) the identified risks.

The components (the protocols) of a preventive control system that must be applied within the company to guarantee the effectiveness of the model individualized by Confindustria are:

- Ethical code (or behavior) with reference to the considered crimes.
- Organizational system sufficiently formalized and clear, above all for what concerns the attribution of responsibility, lines of hierarchical addition and description of tasks.
- Manual and computerized procedures (information systems) such to be able to regulate the carrying out of the activities foreseeing the opportune checkpoints.
- Authorizing Powers and Signature Powers are assigned in coherence with the organizational and managerial responsibilities.
- The management and control system capable to furnish timely signals of the existence as well as the arising of situations of general criticality an/or (situation now strengthened with the introduction of the institute of the whistleblowing v. art. 6, paragraph 2 bis, D.L.vo n. 231/01)
- Communication to all employees and their training.


The guide lines have been recently adjourned by the “*Consolidated Principles for editing the organizational models and the activity of the Organism of Vigilance and perspectives of revision of d.lgs. n. 231 dated June 8 2001,*” (Multi Tasking work group CNF / CNDCEC / Confindustria / ABI of February 2019). The **Consolidated Principles** regarding the Models 231, confirm (see page 10, principles cit.) the necessity to get prepared for the following precautions:

1. Adoption of formal regulations that defines the roles and the responsibilities related to the analyzed processes, other than opportune formalities of traceability and reconstruction of the decisional processes;
2. Definition of behavior principles, procedures and controlling actions about the performed activities as to prevent risky behaviors as provided in Law 231/2001;
3. Predisposition of company management policy and mechanisms of functions segregation;
4. Predisposition of suitable information flows, such as, main tools of comparison about the adequacy and effective implementation of the MOG as well as later assessment of the causes that have made possible a crime to be carried out;
5. utilization of tools for the traceability of management remarkable facts to comply with the Law 231, in the consideration that the documentation system has to have the ability to show the vigilance activity carried out with reference to the context within which the crime has been committed;
6. formalized procedures for the management of financial resources;
7. formalized specific assignments;
8. formalized procedures for contracts drafting;
9. taking into consideration possible previous events in which cases of crimes occurred or, in any way, critical events.

Management and control ex D. LGS. N. 231/2001” approved on March 7 2002 and updated on March 31 2008; recently, have been published the “*Consolidated Principles for laying down the organizational models and the activity of the Organism of Vigilance and perspectives of revision of the d.lgs. June 8 2001, n. 231*” (Multi-disciplinary work group CNF / CNDCEC / Confindustria / ABI dated February 2019

What has been described above has been synthesized in the standard Protocol that delineates the fundamental principles that must inspire the company action, among which:

- “Every operation, transaction, action must be: verifiable, documented, coherent and appropriate”.

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For every operation there must be an adequate documental support over which controls can be carried out at any time to certify the characteristics and the motivations of the operation and individualize the person who has authorized, effected, recorded and verified the operation.

The protection of computerized data and procedures can be insured through the adoption of the safety measures already foreseen by the Law 196/2003 and now, by the GDPR n. 679/2016).

- “Nobody can manage autonomously a whole process.”

The system has to guarantee the application of functions separation principle, for which the authorization to carry out an operation must be under the responsibility of a person who is different from the one who is in charge to account for, operatively carries out or controls the operation. Besides it is important that:

- nobody is assigned with limitless power;
- powers and responsibilities are clearly defined and known inside the organization;
- the powers of authorization and signature powers are coherent with the assigned organizational responsibilities.

- “Controls’ documentation.”

The control system documents (eventually through written reports) the carrying out of controls, as well as supervision.

Introduction of a suitable Sanctioning System for the violations of both norms and procedures foreseen in the Model.

Individualization of an Organism of Vigilance whose principal requisite are autonomy, independence, professionalism and action continuity.

Obligation of company functions and particularly those individualized as mostly exposed to risk, to furnish information to the Organism of Vigilance.

Possibility to put into practice within the enterprises Groups, organizational solutions that centralize to the Organism of Vigilance of the group headquarter the resources to dedicate to the vigilance, even within the companies of the same Group, at the following conditions:


- it should not be a group with shareholders controlled companies or having big dimensions
- in every controlled the Company Organism of Vigilance ex art. 6, paragraph 1 must be established, letter b), with all the relative attributions of competences and responsibility, except for the possibility to directly attribute this function to the managing Organism of the controlled company, if it has small dimensions, and it is expressly foreseen by Law n. 231/2001, art. 6, paragraph 4;
- The Organism of Vigilance of the controlled Company can use, in carrying out the vigilance assignment about working and the observance of the management Model of Organization and of the resources allocated to the analogous Organism of Vigilance of the Holding Company, on the base of a predefined contractual relationship with the same company;
- It is possible, however, to utilize the Subject belonging to other entities of the Group and that a subject, part of an OdV of another company of the Group participates to the OdV of another company of the Group, unless there could be a coincidence between a “passive subject” and an “active one” of the preventive vigilance of the Organism.

Nevertheless, it remains understood, that the choice not to adequate the organization and management Model to some indications contained in the Confindustria Guide Lines, doesn’t invalidate a priori the validity of the same.

The single Model of organization and management, in fact, since it has to be compiled with reference to the concrete reality of the company, can diverge from the Guide Lines⁶ that, for their own nature and expressed admission, have a general character.

⁶In this specific case it is intended any type of “Guide Lines”, not only those of Confindustria

1.5 Essential concepts (interest and advantage)

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The Law Decree has introduced in the Italian legal code an administrative responsibility regime (substantially comparable to criminal liability) for the corporate bodies (corporate bodies vested with legal personality, the companies and the associations without juridical personality; the Countries, the territorial public bodies, non economic public bodies and those that carry out functions of constitutional importance are excluded), responsibility to be added to the responsibility of physical person who has materially carried out some specific type of crime and that aims to involve, in the punishment of the same, the Corporate Bodies whose interest or advantage such crimes have been committed.

The concept of “interest”

Referring to the Corporate Body interest (even for concurrence and to be appraised ex ante in comparison to the moment of committing the remarkable illegitimate act) it remarks, in a subjective sense, the criminal behavior of the physical person: therefore, it will be sufficient to verify that the act has been committed to favor the Corporate Body so that this will respond for it, independently from the circumstance that such objective has been achieved, as juridically clarified (ex multis cfr. G.I.P. by the Court of Justice in Milan, ordinance dated 20.09.2004).

Even the intention alone of the author of the crime to produce an advantage to the juridical person is therefore an autonomous precondition and sufficient to involve the responsibility of the juridical person. Just think, merely for example, to the behavior of instigation to the corruption provided by art. 322 c.p.s. committed by the general manager of a company operating with the Public Administration in order to guarantee to its own company relevant public contracts: in such hypothesis, even if the goal of the briber is not accomplished, the subsistence of the Corporate Body interest results absolutely indisputable, almost *in re ipsa*.

It has been clarified that the interest unlike the advantage, configures itself as “objective finalization of the crime to an economic utility for the Corporate Body”, to appraise ex ante (cfr. Sentence of Milan Penal Court of Justice, Section I, dated December 18 2008). It follows that the interest will be also existent even in the hypotheses in which the advantage is not indeed achieved.


In the hypotheses in which from the activity of the judicial police emerges that the crime of the physical person is not referable, in any way, to the Corporate Body since it has not been realized in the interest of the same, it could be recognized the “breakup” of the scheme of **Organic Identification**, with the consequence that, emerging for such way the manifested extraneousness of the moral person, nothing can be contested to the same. The Supreme Court of Cassation (Justice), with the sentence n. 15641/2009, has underlined how such comparison, in the first instance by the judicial police and thereafter by the District Attorney and the Judge, must be particularly accurate and finalized to verify if the Corporate Body has been utilized as a “screen” for exclusively personal finality of the authors of the crime, avoiding in such way to involve the Corporate Body “in illegitimate deeds of the administrators as responsible while in reality can result just to be victim”

Whereas, should instead emerge that the author has committed the crime in its own prevailing interest or of third parties interest, and the Corporate Body has not drawn from it any or a minimum advantage, it is foreseen a reduction of the monetary imposable sanction (art. 12, paragraph 1, lett. a) and the inapplicability of some interdicting sanctions.

In other words, the interest of the author of the crime can objectively coincide with the interests of the Corporate Body, however the responsibility of the latter subsists even when, pursuing his own autonomous interest, objectively the author of the crime realizes (*rectius*: his illegitimate behavior appears *ex ante* capable to accomplish) also that of the Corporate Body. Consequently, the presupposed crime can be functional to the satisfaction of concurring interest of a plurality of subjects: it can, then, be a “mixed” interest (cfr.

The concept of advantage

The requisite of the advantage, whose existence shall be verified through an objective evaluation carried out afterwards, is tied to the result, primarily remarkable under the property profile, that the Corporate Body has drawn, directly or indirectly, from the illegitimate act, aside even from the fact that who has committed it has not acted in his interest.

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In regarding to what above said, the jurisprudence court has been decreed the importance of the advantage also:

- non patrimonial (cfr. G.I.P. ordinance of Milan Court of Justice, dated 20.09.2004 and sentence of Trani Court of Justice, dated 26.10.2009);
- indirect (cfr. G.I.P. ordinance of Milan Court of Justice, dated 12.03.2008 and, Cassazione, Sez. II, Penal sentence n. 15641/2009), Particularly:

- the judge of Milan Court of Justice has recognized the relevance, also, of an indirect advantage, always

economically important and deriving from the presupposition to commit the crime, constituted by the possibility for the Corporate Body to be more competitive in the market in comparison to the competitors that have allowed him, subsequently, to win a bid due to illegitimate advantages (direct);

- the highest Organism of legitimacy has affirmed the importance of the “indirect” advantage represented by the assumption, by the Corporate Body, due to the commission of the presupposed crime, of a near monopoly position reached in the geographical area of reference.

Therefore, it will be necessary to individualize who has profited about the advantage deriving from the illegitimate behavior done in place by the physical person, and the possible benefit that from such behavior could have been derived to the Corporate Body. The recognition of the latter aspect results of extreme importance in consideration that due to this evaluation can derive the same criminal liability of the Corporate Body and the consequent subjection to sanction.

Regarding the investigation, precisely when the disclosure process put into evidence the responsibility of the Corporate Body, keeping in mind what underlined in the report accompanying the decree under review and according to what ruled by the Court of Justice of Trani (sentence dated October 26 2009), the advantage can be valorized as appreciable element *ex post* but demonstrative of its interest *ex ante*, bearing in mind that the same is destined to lose probative strength in presence of the positive proof of its own exclusive interest or third parties interest present in the behavior held by persons indicated in the first paragraph of art. 5.


It is to be noticed that on the jurisdictional level it has been clarified that the advantage doesn't have to have the character of permanency being sufficient that of instantaneousness, with the consequence that it will not assume relevance, in order of possible exclusion of the Corporate Body responsibility, the fact that the deriving profit from the presupposed crime has only momentarily transited in its patrimony and has been later released, set that it has accomplished any way, for a more or less period of time, an increment of wealth. Regarding to the preceding enunciations, the sentence n. 3615/2006 of the Cassazione., II SEZ. Penal, has confirmed that “what happens later remains therefore behavior “post factum...” suitable “to elide the historical datum of the profit already achieved by the Corporate Body.”

Conclusively, keeping in mind the indications above reported, it emerges that detective activity shall be finalized, as far as such aspect is concerned, to verify if the earning of the criminal behavior has:

- remained in the availability of the Corporate Body (even temporary);
- or reemployed for finality “related to the companies”

Accidental advantages

In the case in which from the investigation activity could arise such elements to single out that the behavior of the offender accomplished for its exclusive interest or of third parties has produced positive effects (cc.dd. “accidental” advantages) in the juridical area of the Corporate Body, it is retained opportune, even considering reasonable to conclude, for the nonexistence of administrative responsibility referring to the Corporate Body, that the possible subsistence of its responsibility shall be submitted to the competent A.G. considerations, underlining how the issue is possible, in absence of a consolidated jurisprudential orientation, to recognize two interpretations, in accordance with what sustained by the doctrine. Specifically, on one hand there is who, recalling also the illustrative report, retains in the hypothesis being discussed, the non-existence of the responsibility of the Corporate Body (in conformity with the sentence n. 32627/2006 of the Cassazione, Sez. VI, Penal,), resulting the latter completely extraneous to the contest. The other interpretation, referring to the letter of the art. 5, paragraph 2, and on the base of a systematic interpretation of the decree, assumes

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the responsibility of the Corporate Body replying, to the observations according to which in the case of accidental advantages it would be charged for acts that are not under its control, that the legislator has intended to solicit the enterprises to the adoption of organizational models in order to widen their own potentialities of control inside the company and, fit to avoid, through more sophisticated internal procedures, criminal activities of their own apical/subordinates personnel.

The “interest” and the “advantage” in unpremeditated crime regarding work safety

Bearing in mind what above underlined in respect to the concepts of “interest” and of “advantage”, it immediately emerges how the mentioned considerations, in consideration of the difference regarding the subjective element that characterizes the criminal negligence, cannot be extended *sic et simpliciter* to the hypotheses of responsibility of the Corporate Body personnel by one of the presupposed crimes referred in art. 25-septies of the D.Lgs. n. 231/2001.


In this regard it has to be observed that the concept of “interest” of the Corporate Body, that has to finalistically characterize the behavior of the author of the crime, could appear not compatible with the negligent act, withstanding the absence of conscience and willingness that characterize him, while it would be configurable, and remarkable to the subsistence of the administrative responsibility, just the “advantage” of the Corporate Body alone, assessable ex post, correlated to the connection existing between the crime and the life of the enterprise and not through the assessment of the purpose that has inspired the author of the presupposed crime.

On the issue, the jurisdiction, premising that the crimes presupposed by the art. 25-septies are crimes dictated by event and that derive from a negligent behavior, imprudence, inexperience or non-observance of laws, rules, ordinances or guidelines, it has been underlined that if from one hand death or the injuries represent the event, on the other hand just the behavior represents the negligent act that generated the event. Consequently it has been affirmed that, whenever in carrying out such behavior the subject acts in the interest of the Corporate Body, the responsibility of the latter results surely integrated, as well as in the hypothesis in which, there has been accomplished a behavior in which the Corporate Body has taken an advantage, **for instance in the form of a costs saving**, except for what provided by the second paragraph of art. 5.

From the jurisdictional orientation above mentioned it results that the judicial police, from time to time, must ascertain:

- if the behavior that has determined the event (death or personal injuries) has been or has not been determined by choices “objectively” included in the area of interest of the Corporate Body, avoiding therefore a further investigation on the finalistic element of the behavior, not demanded for the same nature of the crimes under examination;

- or, if the same behavior has produced at least one benefit to the latter without apparent exclusive interests of third parties, being this the way to interpreter the disposition of art. 5, in the part in which it requires that the crimes are “committed” in the interest or to the advantage of the Corporate Body (cfr. sentence of Trani Court of Justice, dated October 29 2009).

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2. THE ORGANIZATION MODEL OF ALLEGRINI S.P.A. MANAGEMENT AND CONTROL

2.1 GENERAL CHARACTERISTIC OF THE MODEL

Allegrini S.p.a., adopting the requirement to operate in a context of transparency, correctness and legality, has decided to proceed to the adoption of a special Model of Organization, Management and Control ex D. Lgs. 231/2001 (later referred simply as “Model”) to guarantee elevated levels of governance and to preserve, in the future, the value “enterprise.”

The Model is destined to all those people who operate for Allegrini S.p.a. and it is approved by the board of directors (BoD).

2.2 PECULIARITIES OF ALLEGRINI S.P.A. MODEL 231

Since 1945 Allegrini S.p.a. has been operating in the production of cleaning agents and professional detergents for cleaning and sanitation in the respect of the normative in force and a correct environmental politic. The range of products for the professional cleaning and sanitation concerns different sectors of utilization: from the professional cleaning for restoration, hotel and sanitary structures, to the care and the maintenance of automobiles. Finally, a specific range of products for hygiene and sanitation used by the food industry sector inside their productive location.

The production concerns detergence, degreasers, anti-scaling, disinfectants and sanitizing.

The complete range of products, systems and services in the different market segments is synthesized as follows:

- **Detergent:** automobile, industrial, hospitality, food stores, hospital, zootechnic.
- **Cosmetics:** hotel and receptive structures in general.

The company uses an effective logistic system that guarantees a full territorial coverage, supported by a capillary network of concessionaires and agents in order to guarantee quick assistance and order delivery.

The constant research is focused to the study of new formulas following technical and economic requests of the customer in the maximum respect of both the environment and product safety.

The new formulas have to satisfy our customers for the realization of products for specific uses or of wide usage.


The laboratory task is to follow the severe procedures protocols for the analysis of raw materials as well as semi-finished products.

The Company is endowed with organizational and professional structure according with its own dimensions and the operational structure individualizing, with precision, the key roles of the organization, the functions and the specific assigned responsibilities.

The organizational system and the attribution of powers and responsibilities are formalized in SGI which includes the Company organization chart, functions and procedures.

Particularly, the organizational system of the Company is described through individualization, in detail, of the roles, the responsibilities, the duties and the functional operational formalities of the structure within the principal Company's processes of reference.

In specific procedures are described, in detail, the activities and the actions to be accomplished within every Company process defining the sequence and the interactions among the various activities and resources; they establish the criterions and the methods to make sure of the effective operativity and control of the activities, they define the resources and information necessary to support the realization and the monitoring of the Company's activities and allow the measurement, the monitoring

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and the analysis of the processes, as well as the actuation of the actions necessary to achieve the anticipated results and the continuous improvement of the performances.

GOVERNANCE SYSTEM

The governance system is the traditional one, constituted by:

- **Shareholders meeting:** competent to deliberate ordinarily and extraordinarily about the meeting subjects in conformance to the Law and the Company Statute;
- **Administrative Organism (CDA, BoD):** it is vested with the amplest powers for the attainment of the social objective, without any limitation and distinction between ordinary and extraordinary administration acts, except when, according to the Law or the Statute, this is reserved to exclusive competence of each of the three administrators based on specific delegation acts.
- **Managing directors** to whom compete the representation of the company with third parties and in court of justice.
- **Board of auditors:** nominated by the shareholders meeting, this has the assignment to monitor: on the observance of the Law and the Statute, as well as the respect of the principles of correct administration; on the adequacy of the organizational structure of the Company, the internal system control and the administrative-bookkeeping system, also with reference to the reliability of this latter in correctly account for the management actions.
- **Statutory Audit.**
- **Functions delegation** ex arts. 16 and 17 of the Law Decree n. 81/08
- **Organism of Vigilance** established in accordance to the D.Lgs. n. 231/01, with the duties later on individuated.

The graphic representation of the organizational structure of ALLEGRIINI S.p.A. in the form of synthetic organization chart is reported on the document “**Functions Segregation**”, it is structured in order to distribute, through its internal delegation, roles and responsibility within the various company processes.

It constitutes also integral part of the “Duties” Model where are described the duties assigned to the various

Company functions, the minimum requisites required for each Company function, the hierarchical/functional reporting levels.

The management of economic and financial resources (financial flows) this is disciplined by a specific procedure, in accordance with art. 6 of the D.L.vo n. 231/01.

The Functions Segregation, particularly, attends to the constitution of a delegation system coherent with the assigned organizational responsibilities, that doesn't attribute to anybody unlimited powers and it is respectful of the principle of assignments and functions separation.

A budget process foresees opportune preventive evaluations/authorization for investments and Company costs based on specific mechanisms of control on deviations.


The System of Management of work health and safety doesn't contemplate, instead, any functions delegation in accordance to art. 16 of the T.U. health and safety in working places.

The delegations system has to conjugate each management power to the relative responsibility and to a suitable position in the organization and it has to be updated following organizational changes; each delegation has to define in details: i) the powers of the delegated person ii) the subject to whom the delegate reports to hierarchical seniors;

The delegate has to have expenditure powers according to the functions conferred to himself.

The delegation of specialistic assignments must be done only in favor of qualified personnel endowed with the suitable technical-professional competences.

It is understood that the penal delegation, if adopted, must respect the stringent prescriptions in accordance to the artts. 16 and 17 of the D.L.vo n. 81/2008, even in the hypothesis in which it should be extended to environmental area.

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2.3 RISK ASSESSMENT AND COMPANY ANALYSIS GAP

With such procedure the company has evaluated if, in relation to the different and numerous circumstances of crime specifically recalled by the D.L.vo n. 231/2001 there could be **areas or business processes at risk**, that is to say susceptible to make possible or potential the occurrence of the crime foreseen by the legislator, even if just attempting to it.


In the risk matrix 231, therefore, the results of such evaluation are reported, effected with interviews indicating:

- the crimes,
- the Company processes and the resources exposed to the referenced risk,
- the reasons for which such subjects result to be exposed to the risk (detail of sensitive activities),
- the prevention measures in regard to art. 7 D.L.vo n. 231/01);
- the evaluation of the risk (Px Gx K, v. *infra*).

Particularly, for the purpose of realizing the Model of Organization, Management and Control ex D.Lgs. n. 231/2001 the examination of the organizational arrangement of the Company has had fundamental importance, through which have been individualized: the essential organizational structures, the respective areas of competence and the principal responsibilities attributed to them.

In extreme synthesis, the principal non negotiable acts and/or instruments of *governance* that the Company has, can be summarized as follows.

ACTS/Instruments	Function
Statute	in conformity with the dispositions of the current law, it contemplates different forecasts related to the company governance directed to assure the correct carrying out of the management activity
Social Organisms (Supervisors board, auditors)	Within the matters of their competence, they verify their legality
Organization chart/s	Consent/s to understand the Company structure, the distribution of responsibilities and the individualization of the subjects to whom said responsibilities shall be assigned
System of protocols/procedure, included internal mandates	It controls clearly and effectively the decisions and/or the management modality of relevant company processes
Ethical code	It summarize all the company norms including the ethical and social ones which the company personnel have to follow
Disciplinary/sanctioning code	it establishes sanctions in the hypothesis of violations consequent to actions or omissions by the personnel designed to the management of the business and the company activities
Training/information	Assigned to the OdV and to the competent functions (ex. RSPP, apical, etc.), it aims to accomplish an high sense of awareness of the recipients on the utility of acting ethically and responsibly
Whistleblowing	It allows all the recipients to signal situations of illegality or violations of norms and internal procedures guaranteeing the confidentiality of the reporter
Organism of Vigilance	It verifies the respect of the management system and takes care to update it

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The Model predisposed by the Company contemplates the following:

- to spread the enterprise culture that is based on legality, since the Company condemns all sorts of behavior non conforming to the law or to internal dispositions, and particularly to the regulations contained in its own Model;
- to spread a culture of *risk management* control;
- to carry out an effective and efficient organization of the Company activity, focusing particularly on decisions making and on their transparency and traceability, on the responsabilization of the human resources devoted to the assumption of such decisions and their accomplishment, on foreseeing preventive and subsequent controls, as well as on the management of the internal and external information;
- to individualize inside each activity, the areas and/or the processes in which the risk of committing some of the crimes is foreseen by the D.Lgs. n. 231/01 is present;

On such presuppositions, the Model has been elaborated bearing in mind the activity concretely carried out by the company, its structure, as well as of the nature and the dimensions of its organization, existing at the date of its approval and the future evolutions of the same, reasonably predictable today.

The Model will be submitted to the necessary updating, in base of future evolution of the company, of the context in which the same will operate, as well as in consideration of the change (evolution) of the normative framework of reference.

The **risk matrix** underlines that the predisposition of the Model has been preceded by various activities, subdivided in different phases, directed to the construction of a system of prevention and management of risks, described as follows:

- Mapping of activities at risk
- Analysis of potential risks
- Gap Analysis and Action Plan


As far as the mapping of the activities at risk is concerned, the objective at this stage has been the analysis of the company context, in order to map the areas of activity of the Company within which could be possible, in abstract, be committed crimes foreseen by the Decree.

The identification of the company activities and the areas at risk has been carried out through a preventive examination of the company documentation (organization charts, main processes, procurements, organizational dispositions, etc.) and the execution of a series of interviews with the Process Owner of the activities, whose results have been formally validate by “first level” Managers and finally shared with the company top management.

Just for example but not exhaustively, the information have concerned particularly:

- the economic sectors in which the Company operates;
- the typical modalities of company management;
- the typology of the relationships and the activities related with the Public Administration (for instance commercial, financial, regulation control, representation, collective negotiation, etc.);
- cases of possible and presumed irregularities happened in the past;
- the internal regulation and procedural framework (for instance functions delegation, decisional processes, operational procedures, etc.);
- the documentation inherent internal communications and every other documentary evidence useful to a better understanding about the activities carried out by the Company and the organizational system.

Relatively to **negligent crimes of homicide and injuries** committed in violation of the obligations of work health and safety protection, the identification of risky activities has been effected keeping also in mind the evaluation of working risks carried out according to the criterions foreseen by the D.Lgs. n. 81/2008, also bearing into consideration the requisites foreseen by the norm UNI EN ISO 45001:2018 and the Guide Lines UNI-INAIL for a health and safety work system management dated September 28 2001.

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Relatively to **environmental crimes**, activities at risk for the company have been identified also, the types of crime potentially applicable, keeping in mind the recent changes introduced by the Law, as well as the control units also envisaged even with reference to the requisites pointed out by the international norm “UNI EN ISO 14001:2004.”

As often anticipated, the result of such activity has been represented in a document (Risk Matrix) containing the map of all company activities at “risk”.

Among the areas of activity at risk have been taken into consideration also those that, beside having a direct relevance as activities that could integrate criminal behaviors, can also have an **indirect or instrumental** relevance for committing other crimes, resulting to them instrumental for committing the same. In particular are to be intended instrumental those activities that may contain factual conditions that make possible to commit eventual crimes within areas directly responsible at accomplishing the activities specifically recalled by the type of crime.

Among the considered instrumental activities, the following deserve to be mentioned:

- activities annexed and connected to activities of fiscal declarations compilation, being the tributary crimes

able to constitute the prerequisite to commit crimes such as money laundering and self-laundering⁷;

- the prodromal activities to the prevention of company crisis in accordance to the D.L.vo n. 14/2019, being the crimes of bankruptcy or fraudulent bankruptcy able to constitute the presupposition to commit crimes such as association to racketeering, money laundering, handling stolen goods.

With reference to all the risky areas, as well the instrumental ones, have also been taken in examination the possible indirect relationships such as those that the company entertains, or could entertain, through third parties (prevention of crime for traffic of illegitimate influences).

Once individualized the potential risks, it has been subsequently analyzed the system of the existing preventive controls in risky areas with the purpose of effecting the successive suitability judgment of the same in order to prevent risks of crime.

At this stage, it has therefore been proceeded to the recognition of the present existing units of internal control (formal procedures and/or adopted routine, verifiability, documentability or “traceability” of the operations and controls, separation or segregation of functions, etc.) through the information furnished by the company’s Areas and the analysis of the documentation furnished by them.

In particular, the analysis and the evaluation has been articulated as it follows:


Organizational system

The verification of the adequacy of the organizational system has been evaluated on the base of the following criteria:

- formalization of the system.
- clear definition of the attributed responsibilities and reporting hierarchical lines;
- existence of the segregation and contraposition of the functions;
- correspondence among the activities really carried out and what is foreseen by the responsibilities described in the company organization chart ;
- existence of guide lines or behavioral protocols;
- training and informative activity;
- modality of relationships management with external subjects;
- modality of relationships management with participated and/or controlled companies.

Operational procedures

In such sphere the attention has been turned to the verification of the existence of formalized procedures for controlling the activities carried out by the structures in risky areas, keeping in mind not only some negotiable phases, but also those concerning business decisions.

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Authorization system

The analysis has concerned the existence of authorized powers and signature coherent with the organizational and managerial responsibilities assigned and/or concretely accomplished. The control has been made on the base of the examination of the released proxies and the inside managerial delegations, to the light of the company organization chart.

System of management control

In this regard the system of management control in force has been analyzed, the subjects involved in the process

⁷ It is to be noted that at the date of drafting the present document the list of crimes presupposed in the 231 results widened: art.

39 of the law decree n. 124 of 2019 has in fact included art. Art. 25-quinquiesdecies, Tributary Crimes, establishing that:

1. *In*

relation to the crime of fraudulent tax declaration using invoices or other documents for nonexistent business operations foreseen by

article 2 of the law decree dated March 10 2000, n. 74, it is applied to the Corporate Body a monetary sanction up to five hundred

shares. It relates to a disposition in enacting the Law as delegated by the European Union, and definitely approved on October 1st

2019, which delegates the Government to transpose the Directive 1371/2001 regarding the protection of the European Union

financial interest: the European Union Legislator, has for a long time, retained necessary to protect its own economic resources and,

therefore, in view of an harmonization of the national normative, it has requested the prevention and the sanction of damaging

behaviors of collective interests. As far as Italy is concerned the clear implication are for the c.d. "Normative 231" which has

introduced the VAT fraud on the list of the crimes presupposed for the administrative responsibility of the Corporate Bodies.

and the ability of the system to timely report the existence and the arising of general and/or particular critical situations (also in accordance to the D.L.vo n. 14/2019).

Monitoring System and documentation management

The analysis has been concerned with the existence of a suitable system of constant monitoring about the processes to verify the relative results and possible not conformity, as well as the existence of a suitable management documentation system, allowing the traceability of the operations.

Disciplinary system


The analysis carried out have been finalized to the verification of the adequacy of the disciplinary system in force (illustrated later on in the present document), aimed to sanction the possible violation of the principles and the dispositions directed to prevent committing crimes, both by the company employees and by the Administrative Organism, the Control Organism of and third party collaborators.

Communication to employees and their training

The inspections have been carried out to verify the existence of forms of communication and training for the employees. Considered the necessity of initiatives directed to actuate the Decree, a specific computerized software (Victoria RMS) has been implemented, this is directed to the communication of the Ethical Code, of the Model and, also, to the consequent focused training/information of the personnel.

In the elaboration of what hereby described so far it has been kept into account, furthermore, the following concepts and the elements:

2.4 CONCEPT OF RISK

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For “risk” it is intended any variable or factor that within the company, by itself or in correlation with other variables, could negatively influence on the attainment of the objectives reported on the decree 231 (particularly to art. 6, paragraph 1, letter a); therefore, according to crime typology, the areas of activity at risk will be able to be more or less extensive. For example, in relation to the risk of negligent homicide or negligent serious or very serious injuries committed in violation of work health and safety norms, the analysis shall be probably extended to the totality of the areas and company activities.

A concept absolutely nodal in drafting a system of preventive control is that of acceptable risk. In planning the systems of control to safeguard company risks, to define the acceptable risk is relatively a simple operation, at least from a conceptual point of view. The risk is retained acceptable when the additional controls “have a cost” higher than the resource to be protected (for instance: automobiles have a burglar alarm system but not an armed guard). In the case of the D. Lgs. n. 231/2001 the economic logic of the costs cannot be a reference to be utilized exclusively. It is therefore important that regarding the implementation the norms of the decree must be defined an effective threshold that allows to set a limit to the quantity/quality of the prevention measures to be introduced for avoiding to commit the considered crimes. In absence of a preventive determination of the acceptable risk, the quantity/quality of preventive controls to be established is, in fact, virtually unlimited, with the deducible consequences in terms of company activity. After all, the general principle, also mentioned in the Penal Code, of the concrete request embodies of the behavior, synthesized by the equivalent Latin “*impossibilia nemo tenetur*”, represents a non eliminable criterion of reference even if, often, it appears difficult to individualize its concrete limit (The notion of “acceptability” referred above concerns the risks of deviant behaviors from the rules of the organizational model and not the underlying working risks of health and safety of the workers that, according to the principles of the legislation about the prevention in force, have to be in any case integrally eliminated in accordance to the knowhow acquired in base of the technical progress and, where this is not possible, reduced to the minimum and, therefore, managed).

The risk naturally can be, above all, physiological (eg. A company that transports crude oil by ships it is physiological that could commit environmental crimes) or pathological (a company that produces software cannot be said that it commits corruption crimes). In any case it has to be appraised, according to a determined logical criterion, which will be explained later on. On the subject it shall be remembered that, concerning the drafting of the models ex D. Lgs. 231/2001, the Guide Lines of Confindustria introduce a different concept of acceptable risk: the conceptual threshold of acceptability is represented by a prevention system that cannot be bypassed if not intentionally and/or fraudulently.


Meetings at least once a year are promoted among subjects mostly interested by the process or by the area retained at risk c.d. Key officer/appointed to treat the company state of art, the adequacy of the measures in place and the tightness of the P*G*K. More in general, it will be the ODV to give course to the specific audits of the interested subjects and to the possible prescriptions for improving the Model.

Assumed that the risk represents the possibility that something dangerous or harmful happens, the basic formula used for measuring is the following: $R=P*G*K$ where R = Risk, P= Probability that a harmful or dangerous event happens, G=Gravity of the same, K=Factor due to the training/information and to the concrete response, by the OdV, of the realization of the measures laid down in the risk matrix for the neutralization (juridical) of the risk itself.

The ODV – in the implementation phase of the Model – can review and redefine the scale of the correlated values to P, G and K in the preventive view of MOG 231.

2.5 CRIMES OF GENERIC INTENDS AND CRIMINAL NEGLIGENCE

(The company processes, as well as every company action or protocol functional to the attenuation/annulment of the crime risk), must result organized and predisposed even in consideration of the different structural composition of the crimes to be prevented, which can be fraudulent or negligent; in this last case, not only it detects the prevention of the specific action

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expressly contemplated by the incriminating norm (fraudulent crimes), but also whatever behavior, accountable and/or omissible that, since demanded to the subject exposed to the risk, according to the technical norm, or in respects to the principles of diligence, prudence and skill, it results appropriate to determine the harmful or negligent event.

The company processes, in general, must be organized respecting the standard protocol and the ethical code, opportunely diffused to the interested parties.

2.6 SPECIFICATION OF THE P*G*K

The criterion of the evaluation proposed utilizes the following formula:

$$IR = P \times G \times K$$

Where:

- ✓ the symbol P represents the PROBABILITY
- ✓ the symbol G represents the ENTITY of the DAMAGE
- ✓ the symbol K represents TRAINING factor

and can assume the following values:

Scale of the probabilities P

Value	Level	Definition / criterions
<u>4</u>	<u>Very probable</u>	Have already occurred acts or held behavior, accountable or omissible, abstractly (attempted crime) or concretely (committed crime) fit to cause the dangerous or harmful event from which the existence of the crime depends, within the same company.
<u>3</u>	<u>Probable</u>	It is known that some episodes in which happened facts or held behavior, accountable or omissible, abstractly (attempted crime) or concretely (committed crime) fit to cause the dangerous or harmful event from which depends the existence of the crime, in similar companies or in similar operational situations.
<u>2</u>	<u>Little probable</u>	Only rare episodes are known within which have happened facts are or have been held behaviors, accountable or omissible, abstractly (attempted crime) or concretely (committed crime) fit to cause dangerous or harmful event from which derives the existence of the crime in similar operational situations.
<u>1</u>	<u>improbable</u>	Are not known Episodes in which have been verified facts or held behaviors, accountable or omissible, abstractly (attempted crime) or concretely (committed crime) fit to cause dangerous or harmful event from which derives the existence of the crime, within the same companies or in similar in similar operational situations

Scale of the damage entity G

Value	Level	Definition / criterions
4	Very Serious	When the norm associates to the crime an interdictory sanction as provided by paragraph 2 of the art. 9 lett. d) and e) (exclusion from benefits prohibition to advertise good or services) and a monetary sanction or any one of the administrative sanctions foreseen by the art. 9 of the D.Lvo 231/2001 different from the interdictory one and it can be forecasted that the Corporate Body could achieve a profit of remarkable entity (art. 13 Decree 231).

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3	Serious	When the norm combines to the crime an interdictory sanction as foreseen by paragraph 2 of art. 9 letts. d) and e) (exclusion from benefits prohibition to advertise goods or services) and a monetary sanction or of the administrative sanctions foreseen by art. 9 of the D. Lvo 231/2001 different from the interdictory one.
2	Average	When the norm combines to the crime only monetary sanction (established in quotas). Nevertheless the Corporate Body is in the condition to quickly operate to accomplish whatever necessary to eliminate or to attenuate the consequences of the fact or to prevent further illegitimate criminal acts (art. 11 D. L.vo n. 231/01), even if it cannot utilize the benefits that would derive by the fulfillment of what foreseen by art. 12 of the Decree 231
1	Light	When the norm combines to the crime a monetary sanction (established in quotas and potentially of an amount inferior to 30.000 Euro) and nevertheless the Corporate Body can benefit from one of the facilitations foreseen by the artts. 12, 13 and 14 of the D.Lvo 231/2001. The property damage caused is of particular tenuousness.

Article 9, D.I. vo n. 231/01


1. Administrative sanctions

1. The sanctions depending by illegitimate administrative crimes are:

- a) monetary sanction;
- b) interdictory) sanctions;
- c) confiscation;
- d) publication of the sentence.

2. The interdictory sanctions are:

- a) interdiction from exercising the activity;
- b) suspension or revocation of authorizations, licenses or concessions functional to committing the the illegitimate action;
- c) prohibition to deal with the public administration,
except for obtaining achievements by a public service;
- d) exclusion from benefits, funding, contributions or grants and eventual revocation of those already obtained;
- e) prohibition to advertise goods or services.

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Scale of the factor entity K

Value	Level	Definition / criterions
<u>0.2</u>	<u>High and qualified</u>	DPR (Methodologies of crimes prevention, measures ex art. 7 of the D.L.vo n. 231/01) and Training adequately planned and individualized, training carried out or regularly in progress; always the effectiveness of the training carried out and the adoption of the DPRs results of having been verified (throughout questionnaires, audit, verifications on the field, etc.).
<u>0.5</u>	<u>Medium high</u>	Training and individualized DPR, planned, or in progress to be realized but not always verified
<u>0.7</u>	<u>Average</u>	Training and DPR not exactly or sufficiently individualized; the verification of their execution is seldom verified.
<u>1</u>	<u>Limited</u>	Insufficient individualization activities of the DPRs and training; insufficient planning and execution of training activities. DPR not carried out.

Once the damage is defined, the probability and the entity of the K factor, the risk is automatically graduated throughout the previously described formula, and it is configurable in an opportune graphic-matrix representation as illustrated below, where in the x-axis is represented the gravity of the attended damage and in the y-axis is represented the probability that it may occur.


Matrix of IR risk

1	2	3	4
2	4	6	8
3	6	9	12
4	8	12	16

The highest risks will be shown in such matrix on the lowest boxes on the right (highlighted in red, serious damage, elevated probability), the smallest ones on the top boxes on the left (highlighted in green, minor damage, negligible probability), with the whole series of intermediary positions easily recognizable. Such a representation constitutes by itself a starting point for the definition of the priorities and the temporal planning of the prevention interventions to be adopted. The numerical and chromatic evaluation allows to identify a scale of interventions priority, as reported in the following chart:

Chart of criticality definitions

Code	Criticality	Color	Definition	Intervention
IR = 1	Absent			
IR = 1 < IR ≤ 4	Light		Physiological low risk or absent within the activity	Improvable, monitoring at random/possible interventions


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4 < IR ≤ 7	Moderate		Low risk requiring in any case, actions of control	Improvable, continuous monitoring/ interventions at least half-yearly (within 6 months)
IR ≥ 8	Serious		Risk with control and programs actions to be immediately carried out	Urgent

The value of Risk Index (IR) obtained, will be object of periodic revaluation, usually annually, with the attribution of a corrective on the same IR (such to improve or to worsen it) in which it will be taken into consideration also the following factors:

- **logical:** it's going to be evaluated the subject, the duties, the operational area etc. and the risk potentiality is deduced, also taking into consideration the knowledge and the specific preparation of the entrusted subject; specifically:
 - Working Seniority/Experience in the duties carried out by person potentially responsible of the crime
 - Hierarchical position of the person potentially responsible of the crime
 - Importance/value of the activity carried out by the person potentially responsible of the crime
- **Historical record of the company:** it is carried out an investigation on the company development in order to understand if there has ever been a criminal act or if the same could have happened;
- **Managerial:** it is carried out an investigation if the company already adopts a management systems (eg. quality, safety, environment, Serbanes-Oxley, Emas, etc.) and regularly put them into practice; these will have to be considered with the purpose to avoid repetitions and organizational confusions, therefore implementing the applications foreseen in the MOG 231 (submission to the ODV, information flows, training and specific information in accordance to the MOG, appraisal questionnaires, possible punishment of behaviors or omissions in violation of the MOG, ethicality...).
- **Compliance** to the guide/directive lines of the headquarter and to the national and European technical laws for the operation sector
- **Comparative:** it is evaluated if other operators/competitors, from a statistic point of view, have been interested by the referenced crime.

To such purpose it is shown that the company is currently certified as mentioned in the initial presentation. Such factors will effect positively/negatively on the aspect criticality and relative priority on the actions to undertake about it.

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2.6 ELEMENTS OF THE MODEL AND THEIR MANDATORY ATTITUDE

The Company organizational Model is articulated according to different and specific behavioral protocols as well as in specific documents (standard, ethical code, functions segregation etc.) that the recipients must follow, for not incur to the sanctions foreseen in the sanctionary code and in the CCNL of reference.

The Recipients of the Model must respect, therefore, the ethical principles and the general behavior rules in carrying out their own activities and their behavior in the relations with colleagues, business partners, customers, suppliers and Public Administration.

2.6.1 Organized delegations and functions system

since the organization of the social action has to be sufficiently formalized and clear (organization charts), mainly for what concerns the attribution of responsibility, the chain of command and the description of the assignments (*mansions* or *job descriptions*), with specific forecast of control and principles, **the assignment** represents the typical tool through which the company distributes powers, functions and responsibility.

The company uses the institute of the **power of attorney**, through which the Corporate Body top management distributes powers and duties to single subjects, even external, called to manage and supervise to the functions that are transferred to them, also with powers of expenditures in the respect of the pre-defined quantitative limits.

The attribution can also be penalistic⁸ in the sense that the attribution of functions distributes (but doesn't integrally transfer) the penal responsibilities that can derive from carrying out the delegated activity.

Currently the delegate ex art. 16 Safety T.U. doesn't exist. Neither does the delegate for the environment matters (figure of jurisprudential matrix).

2.6.2 Institution, Changes and Controls

Being the present Model an "emanation act of the power attributed to the managing Organism" (in conformity to what foreseen by art. 6, paragraph 1, letter a) of the Decree) its adoption, as well as the successive changes and integrations are normally attributed to the competence of the same Organism that has instituted it.

The Model can be object to changes and integrations on the occasion of:

- legislative changes;
- periodic revisions in relation to meaningful changes of the organizational structure and/or of the company sector of activity;
- results of controls carried out by the OdV;
- meaningful violations of the Model 231 and/or results of verifications on the effectiveness of the same one.

The adoption of changes and/or non substantial integrations can be only done by the administrative Organism.

Within every activity individualized at risk, the Company has to set specific units. Control's degree that the Company decides to actuate for every activity at risk depends, beside, by an evaluation in terms of cost-benefits,

⁸ It is stated that, in absence of a normative act regarding the institute of **Power of Attorney**, it has been above all the jurisprudence, with the purpose to avoid that it could be conferred casually, to draft a detailed list of objective and subjective requisites that explained its efficacy and determined its effectiveness. The **written mandate**, with **firm date**, the presence of undisputed **requisite of professionalism and experience of the chosen subject** regarding the specific nature of the given mansions, the attribution to the subject of all the organizational powers, of management and control always in

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conformance to the detailed nature of the functions assigned with the conferred act, the attribution of expense autonomy within the assigned functions ex art. 16 T.U. N. 81/08, the acceptance in writing of the chosen subject and its acknowledge within the operational area, are some of the specifying elements. Such instrument finds its *ratio* in the impossibility for the CEO (or the Board of Directors or the Managing Director) of large companies, to check, to supervise and to personally preside to all the activities carried out within the company, even in consideration of the elevated technicality of some activities, assuring the full respect of our existing juridical normative. The presence of a Power of Attorney attribution act underlines, therefore, a form of autonomy of the appointed subject and a general prohibition of interference of the appointee in the exercise of the powers conferred in the written document and approved in writing. The objective existence of such impossibility to “govern” the company, also determines the impossibility that the top management can be called to answer *tout court* to criminally remarkable acts, whereas the latter cannot exercise their right of checking. Therefore it appears the necessity/possibility to foresee, besides the proxies, power of attorney functions, also with the purpose of a precise individualization of subjects to be appointed in the exercise of criminally remarkable functions

also by the acceptable risk threshold considered acceptable by the Company management for that specific activity. The principles of control that will have to be assured in all the activities at risk emerged from the mapping carried out, shows the guarantee of the integrity and ethics in carrying out the activity, through the anticipation of opportune rules of behavior capable to discipline every specific activity considered at risk (protocols), and the institution of **specific informative flows** (eg. communications about changes/integrations of the organization chart).

2.7 THE ETHICAL CODE

The Ethical Code constitutes an essential part of the Model. The Code has been drafted with the objective to clearly define all the values that the company recognizes, accepts and shares, in the belief that ethics in the business management is to be pursued as the basic condition for the success of the enterprise.

The Code, that has a cogent effectiveness for the recipients, is addressed to all internal employees (including the administrators and the statutory auditors of the company as well as the personnel/s of auditing company appointed for accounting auditing), as well as to all those people that, even being external operators, directly or indirectly, for it (procurators, agents, collaborators at any title, advisors, suppliers, commercial partners, etc.).


The Code establishes the respect of the laws and the rules in force and it establishes the principles of behavior which have to be followed by all the recipients in the daily carrying out of their own working activities and duties.

Following its adoption the Ethical Code is made accessible through company network and/or distributed in a printed format to the components of the social Organisms, to all the employees, collaborators, new hired employees etc.

Furthermore the Code must be brought to knowledge of all those people with whom the company has relationships. In the contracts of cooperation, of supply and, in general, with all the people having business relationships with the company, it has to be foreseen the explicit reference to the Ethical Code, the non-observance of its norms can constitute a breach about the assumed contractual obligations.

2.8 SANCTIONS SYSTEM

An essential aspect for the effectiveness of the Model is constituted by defining a suitable disciplinary system, suitable to sanction the violation foreseen in the Model and the company rules of

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behavior/procedure referable to it, both for the subjects in apical position and for the subjects under other people's management and vigilance.

For this purpose the Company has defined that the violation of the norms of the Ethical Code as well as of the principles contained in the Model and in the procedure/behavior rules referable to it implies the application of disciplinary sanctions, withstanding that committing crimes foreseen by the Decree are already (and in any case) sanctioned by the Penal Code and that, therefore, the rules and the sanctions foreseen in the Disciplinary System integrate them and don't replace neither the Law norms nor the clauses of the collective work contract as far as disciplinary sanctions are concerned and they can be activated regardless the result of the proceeding initiated for the imposition of a penal sanction.

The whole Disciplinary Measures charged not only to employees but also to all the Recipients, as previously defined, are detailed below.

The "Sanctions System" adopted by the company as foreseen in the Decree will be duly publicized through posting in the notice board and object of specific informative documentation to all recipients.

In the determination of the entity of the sanctions have been respected the limits imposed by art. 7, paragraph 4° of the Workers Statute: *"not withstanding the possibility to proceed to the dismissal for a just cause the disciplinary sanctions cannot include definitive changes of work relations; the fine cannot be of an import higher than 4 hours of the basic salary and the suspension from the service and salary cannot be more than 10 days."*

In any case, due to the autonomy of the Ethical Code and the internal procedures in comparison to the violation of the Law that involves the commission of a crime or of an administrative illicit, the evaluation of the behaviors in contrast with the Model made by the Company may not coincide with the evaluation of the judge in the Penal Court. The previsions contained in the Disciplinary System do not preclude the faculty of the recipient subjects to exercise all their rights, included those of dispute or opposition to the measure adopted or to constitute an Arbitration Board recognized by Law rules or regulations of procedure, as well as by the negotiation, included the collective and/or the Company rules.

Particularly:

A) regarding company employees, their behaviors held in violation of the Ethical Code and the Model rules are considered as action breaching the primary obligations of the work relations and, therefore, they also have importance as disciplinary illicits, in accordance to the specific norms (particularly, CCNL and eventual applicable Business Integrative Contracts) and of the sector procedures in force (art. 7 of the Workers Statute).

The type and the entity of the sanctions foreseen by the contractual prevision in force (for example, verbal advice, written admonition, fine, suspension, dismissal) will be applied keeping in mind, particularly, the importance of the violated obligations, as well as;

- the intentionality of the behavior or degree of negligence, imprudence or evident incompetence;
- the general behavior of the employee, with a particular consideration if or not previous disciplinary sanctions subsist;
- the functional role and the duties of the involved employee;
- other particular remarkable circumstances that accompany the violation.

In general, the disciplinary sanctions can be applied to anyone in the case in which violations derive, for example, from:

- implementation of actions or behaviors non conforming to the prescriptions of the Model in accomplishing the c.d. areas or sensitive activity (Special Parts of the Model);
- implementation of actions or behaviors non conforming to the prescriptions of the Model or the omission of actions or behaviors prescribed by the Model in accomplishing activities related to sensitive activities and/or in the modalities of supplies management;
- non-observance of the obligations to inform the Organism of Vigilance foreseen by the Model,

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since it may expose the Company to an objective risk situation to accomplish one of the crimes foreseen by the Decree and/or are univocally direct to accomplish one or more crimes contemplated by the Decree and/or are such to determine the application to the Company of sanctions foreseen by the Decree.

- Following the work health and safety crimes forecasted by the Decree, it is opportune to define the possible violations concerning such "sector" graduated according to an increasing order of gravity:
- non observance of the Model, if the violation determines a concrete situation of possible injury to the physical integrity of one or more people, including the author of the violation, unless it does not configure one of the conditions foreseen in the following points;
- non observance of the Model, if the violation determines an injury to the physical integrity of one or more people, including the author of the violation, unless it does not configure one of the conditions foreseen in the following points;
- non observance of the Model, if the violation determines an injury that could be qualified as "serious" in accordance to art. 583, paragraph 1, Penal Code, to the physical integrity of one or more people, included the author of the violation and always it does not apply on the condition foreseen in the following point;
- non observance of the Model, if the violation determines an injury that could be qualified as "very serious" in accordance to art. 583, paragraph 1 Penal Code, to the physical integrity or death of one or more person, included the author of the violation.

B) regarding employees with qualification as "executives", it is valid what described above regarding all other employees, withstanding eventual CCNL specifications.

C) regarding collaborators, suppliers and/or subjects having business relation with the company, whatever the relationship is, even temporary, that ties them to the same, the non-observance of the norms of the Ethical Code and the company procedures referable to the Model, it will be able, if the case, to constitute breach of the assumed contractual obligations, with every consequence foreseen by the law, even for the resolution of the contract and/or the mandate and it can imply the reimbursement of damages suffered by the company.

D) With reference to the administrators and statutory auditors the competent social Organisms will adopt, from time to time, the more opportune protection measures, within those foreseen by the normative in force, from time to time.


The norms and the principles contained in the Model must be respected, to start with, by the subjects that have, within the organization of the Company, a position c.d. "apical". According to art. 5 letter a) of the Decree, in this category are include the *"people vested with functions of representation, of administration or the Corporate Body manager or one organizational unit endowed with financial and functional autonomy as well as by people that exercise, in deeds, the management and the control of the same."*

In such context it is relevant the position of control and administration organisms (later referred just as "Administrators" and "Statutory Auditors") whatever system is selected among those indicated by the legislator (CIO, board of directors, joined and separated administration).

Considering that for the Company it has been selected the traditional system with consequent nomination of a Board of Directors and a Supervisors Board, it implies that all the components of these Organisms are liable of the sanctions foreseen in the Disciplinary System in the hypothesis of violation of the Model.

In addition to the Administrators and the Statutory Auditors the position of the subjects that eventually operate on behalf of the auditing company, assumes relevance.

Within the subjects in "apical" position besides the Administrators, the Statutory Auditors and the Auditor have to be included again, always in reference to what foreseen by article 5 letter a) of the Decree, all the subject included in the "definition" referred to point 9.

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These subjects can be related to the Company both by subordinate work relationship (below referred as “Apical Managers”) or by other relationships of private nature such as mandate, agency, appointed preposition, etc (below referred as “Other Apical Subjects”).

E) With reference to the **Organism of Vigilance and Control**, in case the relationship with Company is of subordinate work, the dispositions above mentioned will be applied, being them compatible. In the resolution that institute the OdV the causes of its mandate decadence are indicated.

2.8.1 Remarkable behaviors

In the number remarkable behaviors are include:

- 1) the implementation of actions or behaviors non conforming to what foreseen in the Model in the accomplishment of the c.d. areas or sensitive activity (Special Parts of the Model);
- 2) the implementation of actions or behaviors non conforming to what foreseen in the Model or the omission of actions or behaviors prescribed by the Model in the accomplishment of activities connected to sensitive activities and/or in the management provisions processes;
- 3) the non-observance of the obligations to inform the Organism of Vigilance foreseen by the Model, that:
 2. exposes the Company to an objective situation commission of one of the crimes contemplated by the Decree and/or
 3. are univocally direct to accomplish one or more crimes contemplated by the Decree and/or
 4. are such to determine the application of sanctions foreseen by the Decree, to the Company.
5. Following what foreseen by the Decree about work health and safety crimes, it is opportune to define the possible violations concerning such “sector”, graduated according to an ascending order of gravity:
 - 1) missed respect of the Model, if the violation determines a situation of concrete danger for the physical integrity of one or more people, included the author of the violation, unless it does not configure one of the conditions foreseen in the next points 5, 6 and 7;
 - 2) missed respect of the Model, if the violation determines a lesion to the physical integrity of one or more people, including the author of the violation, unless it does not configure one of the conditions foreseen in the next point 6 and 7;
 - 3) missed respect of the Model, if the violation determines an injury that can be qualified as “serious” according to art. 583⁹, paragraph 1 Penal Code, to the physical integrity of one or more people, including the author of the violation unless it does not configure one of the conditions foreseen in next point 7;

⁹ Art. 583 Penal Code - Aggravating Circumstances-

- 4) missed respect of the Model, if the violation determines an injury that can be qualified as “very serious” according to art. 583, paragraph 1 Penal Code, to the physical integrity of one or more people, including the author of the violation.

2.8.2 Sanctions typology

Whenever it is verified the accomplishment of a violation by an Administrator, Statutory Auditor or Auditor, the following sanctions can be applied:

- a. written warning
- b. injunction to an accurate respect of the Model;
- c. reduction of wage/salary or the expected remuneration due to the Auditor;
- d. revocation of the assignment.

Particularly:

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1. For the implementation of actions or behaviors not conforming to what foreseen by the Model in the accomplishment of the c.d. areas or instrumental activities, of light entity (such that the single fact does not determine - objective element - of one of the crimes foreseen by the Decree) and for the violations mentioned on point 4 of the preceding paragraph, could be inflicted sanctions as mentioned on the precedent point a);
2. For the implementation of actions or behaviors not conforming to what foreseen by the Model in the accomplishment of the c.d. areas or sensitive activity of light entity (such that the single fact does not determine - objective element - one of the crimes foreseen by the Decree) and for the violations mentioned on point 5 of the preceding paragraph there could be inflicted the sanctions as mentioned on the precedent point b);
3. For the implementation of actions or behaviors not conforming to the prescriptions of the Model in the accomplishment of the c.d. areas or instrumental activity of serious entity (such to determine the single fact - objective element - of one of the crimes foreseen by the Decree) and for the violations mentioned on point 6 of the preceding paragraph there could be inflicted the sanctions as mentioned on the preceding points b) or c);
4. For the implementation of actions or behaviors not conforming to the prescriptions of the Model in the accomplishment of the c.d.s. areas or sensitive activity of serious entity (such that it determines one of the crimes foreseen by the Decree) and for the violations mentioned on point 7 of the preceding paragraph there could be inflicted the sanctions as mentioned on the preceding points c) or d);
5. For the missed obligation to inform the Organism of Vigilance which exposes the Company to an objective situation of risk to perpetrate one of the crimes foreseen by the Decree, sanctions as mentioned on the preceding point a) or b) will be inflicted;
6. For the missed obligation to inform the Organism of Vigilance that is univocally directed to perpetrate one or more crimes foreseen by the Decree and/or that it's such to cause the application of sanctions to the Company as foreseen by the Decree sanctions will be applies as mentioned on the preceding point c) or d).

If the violation is applied to an Administrator related to the Company by a subordinate job relationship, there will be imposed the sanctions foreseen for the Apical Managers or for the Employees. In such case, if it is inflicted the sanction of dismissal, with or without notice, the revocation of the Administrator from its duties will also have to be imposed.

Body injuries are to be considered serious, and could cause imprisonment from three to seven years:

- 1) if the fact produces an illness capable to put in danger the life of the offended person or an illness or an incapability to carry out the ordinary works for more than forty days;
- 2) if the act produces permanent weakening of the body sense or organ;


Personal injury can be considered to be very serious, and it could be sentenced from six to twelve years imprisonment, if from the fact derives:

- 1) an illness surely or probably incurable;
- 2) the loss of a sense;
- 3) the loss of a limb or a mutilation that makes the limb useless or the loss of the use of an organ or the ability to procreate, or a permanent and very serious speaking difficulty;
- 4) the deformation, or permanent facial scar

Apical Subjects

Whenever it is verified one of the violations above mentioned by an Apical Manager, the followings sanctions will be inflicted: ,

- verbal notice;
- written notice;
- the fine in the highest measure applicable, allowed by the collective negotiation for the concrete case;
- the suspension from the service and from the salary, up to the applicable maximum measure foreseen by the collective negotiation agreement, in the concrete case;
- dismissal with notice;

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- dismissal without notice.

Particularly:

1. For the implementation of actions or behaviors not conforming to what foreseen by the Model in the accomplishment of the c.d. areas or instrumental activities, of light entity (such that the single fact does not determine - objective element - one of the crimes foreseen by the Decree) and for the violations mentioned on point 4 of the preceding paragraph, a verbal notice sanction will be applied;
2. For the implementation of actions or behaviors not conforming to what foreseen by the Model in the accomplishment of the c.d. areas or sensitive activity of light entity (such that the single fact does not determine - objective element - one of the crimes foreseen by the Decree) and for the violations mentioned on point 5 of the preceding paragraph, the sanction will be a written notice;
3. For the implementation of actions or behaviors not conforming to what foreseen by the Model in the accomplishment of the c.d. areas or sensitive activity of serious entity (such to determine the single fact - objective element - of one of the crimes foreseen by the Decree) and for the violations mentioned on point 6 of the preceding paragraph, the sanction will be a written notice and/or a fine;
4. For the implementation of actions or behaviors non conforming to the prescriptions of the Model in the accomplishment of the c.d.s. areas or sensitive activity of serious entity (such that is to determine one of the crimes foreseen by the Decree) and for the violations mentioned on point 7 of the preceding paragraph, the sanction will be a fine or suspension from service;
5. For the missed obligation to inform the Organism of Vigilance which exposes the Company to an objective situation of risk to perpetrate one of the crimes foreseen by the Decree, the sanction will be either a written or a verbal notice;
6. For the missed obligation to inform the Organism of Vigilance that is univocally directed to perpetrate one or more crimes foreseen by the Decree and/or that it's such to cause the application of sanctions to the Company as foreseen by the Decree, the sanctions will be a fine or suspension from service.

The Employees

Whenever it is verified one of the violations above mentioned by an employee, the followings sanctions will be inflicted:

- verbal notice;
- written warning;
- fine up to 3 hours of monthly salary;
- the suspension of 3 days from the service and from the salary, up to the applicable maximum measure foreseen by the collective negotiation agreement in the concrete case;
- dismissal with notice;
- dismissal without notice.

Particularly:

1. For the implementation of actions or behaviors not conforming to what foreseen by the Model in the accomplishment of the c.d. areas or instrumental activities of light entity (such that the single fact does not determine - objective element - one of the crimes foreseen by the Decree) and for the violations mentioned on point 4 of the preceding paragraph, the sanction will be a verbal notice;
2. For the implementation of actions or behaviors not conforming to what foreseen by the Model in the accomplishment of the c.d. areas or sensitive activity of light entity (such that

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the single fact does not determine - objective element - one of the crimes foreseen by the Decree) and for the violations mentioned on point 5 of the preceding paragraph, the sanction will be a written warning;

3. For the implementation of actions or behaviors not conforming to what foreseen by the Model in the accomplishment of the c.d. areas or sensitive activities of serious entity (such that the single fact does not determine - objective element - one of the crimes foreseen by the Decree) and for the violations mentioned on point 6 of the preceding paragraph, the sanction will be a fine or dismissal with notice;
4. For the implementation of actions or behaviors non conforming to prescriptions of the Model in the accomplishment of the c.d.s. areas or sensitive activity of serious entity (such that is to determine one of the crimes foreseen by the Decree) and for the violations mentioned on point 7 of the preceding paragraph, the sanction will be dismissal without notice;
5. For the missed obligation to inform the Organism of Vigilance which can expose the Company to an objective situation of risk to perpetrate one of the crimes foreseen by the Decree, the sanction will be either a written or a verbal notice;
6. For the missed obligation to inform the Organism of Vigilance that is univocally directed to perpetrate one or more crimes foreseen by the Decree and/or that it's such to cause the application of sanctions to the Company as foreseen by the Decree, the sanction will be a fine or suspension from service.

In the case where the contested violation is of such gravity to be sanctioned, the employee could be cautiously suspended from its working activities until the application of the sanction.

The Third Parties Recipients

Whenever it is verified one of the violations foreseen in the preceding chapter accomplished by a Third Party Recipient, one of the followings sanctions will be applied:

- injunction to punctually respect the dispositions of the Model, with the application of the following penalty or the resolution of the negotiated relationship with the Company;
- application of a penalty not higher then 10% of the remuneration agreed upon for the Third Party Recipient;
- the immediate resolution of the negotiated relationship.


In the individualization of the sanction, where the application of the sanction has to take into account the principles of gradualness and adequacy, the objective and subjective profiles of the remarkable behavior assume relevance. In particular, the objective elements of the violation, according to an ascending order of gravity and referred to the concrete circumstances in which the illegitimate act is realized, are as follows:

- violations of the Model that have not led to risk exposure or have caused modest exposure to a risk;
- violations of the Model that have led to an appreciable or meaningful exposure to a risk;
- violations that have integrated a remarkable penal fact.

Under the subjective profile the following circumstances assume importance:

- modality of committed behavioral conduct;
- severity of the violation, keeping also in mind the subjective attitude of the author;
- possible commitment of more than one violation within the same behavioral conduct;
- possible involvement of more subjects in committing the violation;
- possible repeated infringement of the author;
- level of hierarchical and/or technical responsibility of the person to whom the contested behavior is referable;
- possible sharing of the decisions with other subjects that have concurred or somehow contributed to the violation of the Model.

The disciplinary system is constantly monitored by the O.d.V.

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The disciplinary procedure articulates in three phases:

- the investigation phase;
- the contestation of the violation to the interested party;
- the decision and the imposition of the sanction.

The Organism of Vigilance verifies the behaviors signaled by third parties or of which it has been known within its own control activity, guaranteeing the absolute confidentiality of the reporting subjects and facts, using to such aim, criterions and formality of communication capable to protect the honorableness of the persons mentioned in the report as well as the anonymity of the reporters, so that whoever makes a report will not be subject to retaliations.

The Organism of Vigilance, for all the reported or known behaviors, immediately carries out, in the limits of its own prerogatives and powers, the verifications and the controls retained necessary or opportune.

The Organism of Vigilance can:

- proceed to close the generic reports or not sufficiently circumstantiated, of those clearly unfounded or objectively irrelevant, as well as of all those containing facts already, in the past, object of specific inquiring activities and already closed, unless new information to make necessary further verification activities come up. In the case in which the Organism of Vigilance proceeds to close the case, it has to verbalize the reasons of such decision. In the case in which the report was referred to an employee, the Organism of Vigilance transmits copy of the closing report to the administrative Organism, for further information not connected to the behaviors evaluated by the Organism of Vigilance;
- to start an inquiry with reference to the reports that contain enough elements to carry out a verification of the illegitimate report (for instance: reports containing circumstantial account of the events, details referred to the time of the facts, to the causes and finality, to the modality of the action, etc.).

The objective of the inquiry on the reports is that to verify its validity and, to such purpose, the Organism of Vigilance can use the collaboration of external advisors or company bodies competent for subject in relation to the typology of contested behavior.

Based on the result of such inquiry the Organism of Vigilance can:


- close the report, if resulted without evidences the full belief that has been indeed committed a violation;
- to draft a report in the cases in which there are enough elements to retain the facts reported founded.

Such report will contain:

- the description of the behavior or the founded event;
- the norms or the procedures of the Model that result having been violated;
- the identification of the responsible person;
- the evidence and the findings collected;
- the evaluation of the gravity of the behaviors in order to apply the sanctions, with explicit mention that there are elements useful to the graduation of the same with reference to the principles of adequacy and proportionality of the sanctions.

2.8.3 Proceeding

The proceeding application of the sanction to employees happens in respect of the dispositions of art. 7 of the Workers Statute.

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The Organism of Vigilance transmits to the Representative Area a report containing:

- the identity of the subject responsible of the violation;
- the description of the contested behavior;
- the indication foreseen by the Model that results to have been violated;
- the eventual documentation and elements to support the dispute.

The Representative of the Human Resources area transmits to the employee a written report on the disputed act containing:

- the punctual indication of the disputed behavior;
- the foreseen indications in the Model object of violation;
- the notification of the faculty to formulate eventual deductions and/or written justification within five days

from the receipt of the communication, as well as to request for the assistance of the union representative to which the employee adhere or confers the mandate.

The administrative organ imposes the sanction.

The sanctions cannot be inflicted before five days from the receipt of the dispute and it must be enforced by the Human Resources Manager within six days after the receipt of eventual observations. The measure taken is also communicated to the Organism of Vigilance.

The employee, withstanding the possibility to appeal to the Judicial Authority can, within twenty days following the receipt of the measure taken against him, promote the constitution of a reconciliation and arbitration board in which case the sanction is suspended until the relative pronouncement.

The administrative Organism will be informed regarding the result of the adopted procedure.

In any case, the individualization and the imposition of the sanction has to take into consideration the principles of proportionality and adequacy of the same in comparison to the contested violation.

With such intention it will be relevant to consider the following elements:

- the severity of the behavior or the event that the latter has determined;
- the typology of the accomplished violation;
- the circumstances in whose sphere the behavior developed;
- the behavior modality.

For the purpose of possible exacerbation of the sanction, the following elements must be taken into consideration:

- the possibility to commit more violations within the same behavior for which case the aggravation, according to the sanction, will be treated as foreseen for the most serious violation
- the possible participation of more subjects in committing the violation
- the possible recidivism of its author.


The application of the sanctions doesn't jeopardize, in any case, the right of the Company to act against the responsible subject in order to obtain a reimbursement of the damages suffered for or in consequence of the verified behavior.

2.8.4 Measures correlated to Whistleblowing

In accordance to what foreseen by art. 6 of the D.L.vo n. 231/01, the company establishes a specific prevention system that allows the interested personnel, taken into account the aims of the company's model 231, to formalize, with confidentiality, reports to the Organism of Vigilance anomalies and/or criticalities that could be found in the exercise of their duties.

Any action of retaliation or discriminatory, direct or indirect, towards the subject that uses the instrument/channel predisposed for the circumstantial reporting of illegitimate behaviors, remarkable and substantiated of factual elements specific and concordant, or of violations of the organization model and management of the Corporate Body, of which has knowledge in reason of the functions carried out, is forbidden.

The violation of this prohibition involves, for the transgressor, the resolution of work relations with the company.


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Any discriminatory measure towards the reporting subjects can be denounced to the National Inspectorate of Labor, for the measures of their competence, other than by the reporting person and also by workers union organization indicated by the same one.

Whoever violates the safeguard measures of the reporting person, predisposed with guarantee of confidentiality, to safeguard the integrity of the company, will be subject to the sanction of dismissal. The same sanction is applied to whoever, with malice or serious misconduct, reports a misconduct that reveals to be unfounded.

The retaliation or discriminatory dismissal of the reporting subject that has made an improper use of the misconduct report is void. Are also void the change of duties according to article 2103 of the Civil Code, as well as any other measure retaliatory or discriminatory adopted towards the same person.

It is a duty of the employer, in case of controversies related to the imposition of disciplinary sanctions, or to demotions, dismissals, transfers or to submit the reporting person to other organizational measure having negative, direct or indirect effects, on the working conditions, following to the presentation of the report, to demonstrate that such measures are founded upon reasons extraneous to the action reported.

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3. SYSTEM OF MANAGEMENT AND ITS DIGITALIZATION

The main aim of the organization and management model adopted in accordance to the D.L.vo n. 231 is that of preventing the presupposed crimes mentioned in the same.

The prevention of crimes requires, in turn, to “organize” the behaviors, committable and/or omissible, that the company personnel (executives, apical, employees, advisors etc.) assume in the management of the various processes for the realization of the company objectives, guaranteeing legality and ethics.

Based on such presuppositions, the model of organization and management of Allegrini S.p.a., in an extreme synthesis, requires that the recipients carry out the company activities in the respect of an “operational technical paradigm” based on the followings main requirements:

1. Traceability of sensitive actions (eg. financial flows, the contractor’s choice etc.);
2. Sharing of impacting decisions;
3. Prevention of conflict of interests;
4. Usefulness and congruity of the operations;
5. Recording/filing of impacting activities;
6. Training/information and upgrading of the personnel;
7. Monitoring of the business context (internal and external) and of the normative one;
8. Vigilance carried out by a third party subject, autonomous and independent.

Since some of these requisites result common to all management systems (quality, environment, safety in the work site, anti-corruption, privacy and cyber security, company crisis etc.), the Model 231 aspires to the natural and progressive integration of all the measures of prevention adopted for various reasons (procedures, protocols, informative flows, monitoring etc.), in order to promote the progressive construction (and the progressive maintenance) of a management system finalized, in its whole, to the management of residual risk.

For better reaching this objective, the company will proceed to the digitalization of the activities and the prevention measures (included the construction and the management of the informative flows) to better guaranteeing the systematic involvement of the company resources as well as the self-propulsion of essential measures for preventive goals (forwarding of the procedures and the protocols, questionnaires of investigation and internal verification predisposed by the OdV, formative slides, management of the indicators etc.) and the stratification, in the future, of the activities set by the company.

4. THE VIGILANCE AND CONTROL ORGANISM


Art. 6 of the D. Lgs. 231/2001 foresees that the Corporate Body can be exonerated by the responsibility due to the perpetration of indicated crimes if the managing Organism has:

- adopted models of organization, management and control fit to prevent the considered crimes;
- entrusted the duty of vigilance on the functionality and observance of the model and to take care of its updating to an Organism of the Corporate Body endowed with autonomous powers of initiative and control;
- people have committed the crime fraudulently eluding the models of organization and management;
- there has not been omitted or insufficient by the Organism refer to letter b).

Entrusting, therefore, such duties to one of the “Corporate Body Organism” and the correct and effective carrying out of the same duties are essential presuppositions for the exemption from the responsibility. It has to be noticed therefore the importance of the role played by the Organism of the Corporate Body as well as the burdensome and the complexity of the assignments that it must carry out to the best.

4.1 Composition

The law does not say anything in respect to the composition of the Organism¹⁰, allowing to opt for a composition with a single person or with a plurality of subjects composed by internal components and/or external who, nevertheless, have to have obligatorily (in their “singleness” if it chooses a single

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person Organism or in their collegiality if the Organism is composed by a plurality of subjects) predetermined requisites (which will be better examined later on).

¹⁰ Except for what foreseen in paragraph 4 of art. 6 where it is foreseen for small dimensions corporate bodies the possibility to appoint people to carry out the duties described in the letter b) of the second paragraph of the art.6 “directly by the Managing Organism”

This Organism, must also have, in order to carry out an effective and efficacious implementation of the Model, the followings characteristic:

(i) **autonomy and independence**; these are both fundamental so that such Organism is not involved in the managerial activities that constitute the object of its inspective and control activity; the position of such Organism inside the Corporate Body, in fact, has to guarantee the autonomy of the initiative of control against every form of interference and/or of conditioning from whatever component of the Corporate Body (and, particularly, of the managing Organism). The independence has to be the characteristic of the Organism in its complex, not necessarily of each of its component. No specific normative index authorizes such a restrictive understanding, also because the concept of independence is, in our system, a polysemous notion for the different declination that it assumes when referring to statutory auditors, on one side, and to the administrators, on the other side. The expression «Organism of the Corporate Body» doesn’t legitimate the identification of the OdV with a company Organism, auditors board or auditing committee, having the necessity to prefer a separate Organism even though composed also with the participation of components of company Organisms (statutory auditors or independent administrators.);

(ii) **professionalism**, or to possess specific competences concerning inspection and control in consulting activity, necessary for the accomplishment of the delicate functions assigned to it as well as a deep knowledge of the company business and organizational activity structure; such characteristics, together with their independence, guarantee an objectivity in the judgment;

(iii) **action continuity**, or to constantly dedicate itself, with the necessary inspection and control powers, to the vigilance of the respect of the Model, to take care of its realization and to assure its periodic updating.

In carrying out what foreseen by the Decree and in relation to the dimensions and the complexity of the activities developed by the Company, the Organism of Vigilance and control of the company (hereby later defined “Organism of Vigilance” or simply “OdV”) will therefore assume the name Collegial Organism or Monocratic, according to the evaluation formalized to this purpose at the time it is appointed by the Board of Directors.


In any case, the individualization of the components will have to be, from time to time, evaluated bearing into account and coherently with the specific characteristics of the Company, and the jurisprudential evolution normative as well as the indications expressed by the doctrine and the Category Associations.

4.2 Requisite of the components

The components of the Organ of Vigilance and Control have to possess the requisite of honorableness (analogous to those of the administrators of the Company) and of professionalism adequate to the role to be assumed¹¹ and they have to be exempt from causes of incompatibility and conflict of interest with other functions and/or Company’s duties, such that can undermine the independence and the freedom of action and judgment.

The subsistence and the permanence of such subjective requisites have to be, from time to time, verified by the Board of Directors of the Company both before the nomination and periodically – at least once a year - during the entire period in which the components of the Organism of Vigilance and Control remains in charge.

It constitutes, also, cause of ineligibility or revocation for just cause of the Organism of Vigilance and Control the sentence to conviction (or plea bargain) not irreversible, with particular reference to

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illegitimate acts foreseen by the Decree.

4.3 Nomination, duration and revocation

The Organism of Vigilance is named by the Company Board of Directors that sets its decadence with the same deliberation.

With the purpose to guarantee its full autonomy and independence, the OdV reports directly to the Company Board of Directors.

¹¹ Particularly "...they have to possess a technical-professional background to be able to effectively carry out the assigned activity....:
it means techniques and specialized knowledge proper of whoever carries out "inspective" activity but also advisers of control and
juridical systems analysis and, particularly, penal" (Confindustria Guide Lines). The choice will refer preferably to an attorney
expert on economy penal code and, due to the company object, it will contemplate, preferably, also a professional technical subject with an experience on safety and environment.

Failure of not withstanding to even one of the requisite of honorableness, professionalism, absence of incompatibility and/or conflict of interest as mentioned in the preceding paragraph, during the mandate, determines the decadence of the assignment.

The eventual revocation of the components of the Organism of Vigilance and Control competes to the Board of Directors.

In case of revocation or decadence, the Board of directors provides promptly to the substitution of the revoked lapsed component, following the verification of subjective requisites mentioned above.

The Organ of Vigilance decays either for revocation or decadence of the majority of its components. In such case the Company Board of Directors provides, without delay, to its reconstitution.

The Organism of Vigilance can be revoked only for a just cause, also tied up to of Company organizational restructuring, through a specific deliberation of the Board of Directors and with the approval of the Organism of Control. Revocation for "just cause" can be intended, for example:


- the loss of the subjective requisite of honorability, integrity, respectability and independence present in the time of the nomination;
- the show up of incompatibility reason or serious negligence in accomplishing the duties connected with the assignments;
- the "omitted or insufficient vigilance" by the Organism of Vigilance - according to what foreseen by art. 6, paragraph 1, lett. d), d.lgs. 231/01- resulting from a conviction sentence, becoming final, against the Company according to what foreseen by the D.Lgs. n. 231/01 or from a requested conviction (the c.d. plea-bargain);
- the attribution of functions and operational responsibility inside the company organization incompatible with the requisites of "autonomy and independence" and "continuity of action" specific in the Organism of Vigilance.

4.4 Assignments and attributions

In carrying out its activity, the Organism of Vigilance, under its own direct surveillance and responsibility, can utilize the support of other business functions (such as, for instance, the BoD, CFO, Personnel, laboratory, etc.), as well as external advisors.

To the Organism of Vigilance and Control are conferred the following responsibilities:

- to monitor the observance of the requirements of the Model and/or the company procedures referable to it by the interested subjects, detecting and signaling possible breaching and/or behavioral deviations and the sectors that result to have more risks, in consideration of the occurred violations;
- the vigilance on the concrete effectiveness of the Model to prevent and to impede the perpetration of illegitimate acts foreseen by the D.Lgs. 231/2001, in relation to the single company

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structures and the concrete activities carried out;

- to guarantee the future preservation of the solidity and functionality requisites of the Model;
- to monitor the opportunity to proceed to an updating of the Model, whereas are present the requirements of adjustment and/or integration ,the same in relation to the change of normative conditions, the company organizational structure and/or the modality to carry out the company activities in case of meaningful violations of what is foreseen by the Model and/or the company procedures referable to it;
- to acquire, from all the Model Recipients, the company documentation and the information deemed useful to carry out its own assignments and responsibilities;
- to verify that there are carried out opportune initiatives of information and training of the Recipients about the principles, the values and the behavioral rules foreseen by the Model and in the company procedures referable to it, also for clarifying explanations request and signals received from time to time;
- to verify the adequacy of information and training initiatives carried out on principles, values and behavioral rules foreseen by the Model and by the company procedures referable to it, as well as the level of knowledge acquired by the Recipients, with particular reference to those people who operate within the “areas of activity at risk” and the “instrumental processes”;
- to carry out a periodic activity of reporting to the Social Organism;
- to carry out possible two diligences;
- to collect, elaborate and to preserve remarkable reported information transmitted by the various company functions with reference to the Model and the company procedures referable to it, and to preserve the results of the carried out activity and the relative reports.

With the purpose of managing its own responsibilities, the Organism of Vigilance can, at any time, in the light of its own autonomy and discretion, proceed to verify the application of the Model and/or of the company procedures referable to it, which can be also exercised separately by every one of its components.


In particular the following are foreseen:

- verifications of specific company operations: to such end the Organism of Vigilance will periodically proceed to a verification of the documentation and/or of the contracts regarding “the activity areas at risk” and the “instrumental processes”, according to times and formality individualized by the same;
- verifications of the procedure/rules of the adopted behavior: to such end the Organism of Vigilance will periodically proceed to a verification about the effectiveness and real actuation of the behavioral procedure/rules referable to the Model.

The OdV consequently to the effected verifications, to the normative and/or organizational modifications, from time to time occurred as well as the determination of the existence of new areas of activity at risk or in case of meaningful violations of what foreseen by the Model and/or by company procedures referable to it will inform the competent company functions about the opportunity that the Company itself proceeds to the relative adjustments and updating of the Model and/or of the relative procedures. To such intention it will also have the duty to verify, through follow-up activity, that the eventual recommended corrective actions are undertaken by the competent company functions.

In the presence of problematic interpretative and/or of queries about the Model and/or the company procedures referable to it, the Recipients can (and in some cases of elevated crime-risk, must) contact the Organism of Vigilance for explanations or the opportune reporting.

To the specific ends of the execution of the activities of vigilance and control assigned, the OdV is provided with an annually fixed expense budget that can be, previous authorization of the Boards of Directors, increased according to the specific new requirements with the purpose to allow it to carry out the duties above described with full economic and managerial autonomy.

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4.5 Functionality of the Organism of Vigilance

The Organism of Vigilance meets periodically quarterly. During every meeting a report undersigned by all the components is drafted.

In the collegial OdV the meetings of the Organism of Vigilance are validly constituted with the presence of all its components and it validly ratifies the decisions ratified by the majority of its components.

It is the faculty of the Organism of Vigilance to name a chairman who can be chosen also outside its components. Further operational aspects regarding the operation of the Organism of Vigilance and Control can be disciplined in a special Rule of Procedure by the promulgated Organism.

4.6 Informative flows toward the social organs

With reference to the reporting activity to the Company Organisms, the OdV acknowledges, through written reports and annually:

- the Board of Directors regarding the implementation of the Model;
- the Organism of accounting control.

The Organism of Vigilance can be consulted at any time by the Organisms above mentioned for reporting in relation to the functionality of the Model or, in specific situations, in case of particular necessities, it can directly inform on its own initiative, the Social Organisms.

4.7 Informative flows to the Organism of Vigilance

The Recipients of the Model are due to furnish the information required by the Organism of Vigilance according to

the contents, the formalities and the periodicity from time to time defined by the same, or contained in the standard protocol and in the risk matrix.

The Recipients forward to the OdV the information concerning the measures taken by the legal authorities, by the Judicial Police or by other Authority, from which it is deduced an investigation or judicial activity carried out for one form of illegitimate act as foreseen by the D.Lgs. 231/2001 for the Company and/or the Recipients.

The Recipients of the Model, besides, if they will know facts that integrate the carrying out of illegitimate activities as foreseen by the D.Lgs. 231/2001 or the occurrence of events or remarkable circumstances concerning the carrying out activity whose competence is the Organism of Vigilance, have to promptly inform it.

The Organism of Vigilance evaluates the received reports and activate itself for the necessary fulfillments and initiatives, motivating in writing the possible decisions not to proceed to carry out internal investigations.


Every information and reporting collected by the Organism of Vigilance is kept under its responsibility, according rules, criteria and access conditions to the appropriate data to guarantee the integrity and the reservation of the same, being the Organism qualified as “**autonomous data treatment controller**”.

For the above mentioned informative finalities (as well as for explanations and/or information), the Organism of Vigilance and Control has a specific e-mail address (odv@allegrini.com), protected with an access password to be read, and utilized exclusively by the OdV members.

The eventual violation of the reporting obligations to the Organism of Vigilance and Control which the Recipients are responsible can determine the application of disciplinary sanctions.

All the reports, the indications and the information rendered by the Organism of Vigilance to the Administrative Organism of control, where present, and to other subjects and every information, signaling, reports sent to the same organism, have to be preserved by the Organism of Vigilance for a period of ten year.

Excluding the legitimate orders of the Authorities, the data and the information files preserved can be transmitted to subjects not belonging to the Organism of Vigilance only with previous authorization of

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the same Organism.

The subjects not any longer members of the Organism of Vigilance have to follow the principles of reservation and make sure that the substitution of the filing management is carried out correctly by the new components.

5. INFORMATION AND TRAINING

In conformity to what foreseen by the D.Lgs. 231/2001 and with the purpose to an effective implementation of the Model, the company defines a specific program of communication and training directed to assure an ample divulgation to the Recipients of some principles foreseen in it, as well as the company behavioral procedure/rules referable to it.

Such plan is managed by the competent company functions that are coordinated with the Organism of Vigilance. Particularly, for what concerns the communication, it is anticipated that the Model is delivered, together to procedure/rules of behavior referable to the Model, to the Recipients and it is, furthermore, published in the Company Website

Concerning the training, it is foreseen a specific training activity regarding, in general, the normative dispositions regarding administrative responsibility of the Corporate Bodies (and, therefore, the consequences deriving to the Company by eventual illegitimate deeds perpetrated by subjects acting for the company), the essential characteristics of illegitimate deeds foreseen by the Decree and, more specifically, the principles contained in the Model and in the procedure/rules of behavior referable to it, as well as the specific preventive finalities that the Model pursues in such context.

Such activity is articulated in relation to the positions, the functions and the responsibilities that the single Recipients are vested with, as well as to the level of risk of the activity area or the business process into which the same operate, and it will be fulfilled according to the procedure related to the training of the Company System Quality personnel.

Grassobbio, May, 21st 2020