ORGANIZATION, MANAGEMENT AND CONTROL MODEL

PURSUANT TO LEGISLATIVE DECREE NO. NO. 231/2001

I. LEGISLATIVE DECREE NO 231/2001

1.1 The regulatory framework

From a regulatory point of view, Legislative Decree 231/2001 - "Regulation of the administrative liability of legal persons, organizations and associations, including those without legal personality" - transposed, on the subject of the liability of legal persons, some international conventions previously signed by Italy: the Brussels Convention of 26 July 1995 on the protection of the financial interests of the European Community, the Brussels Convention of 26 May 1997 on combating corruption of public officials of both the European Community and of the Member States and the OECD Convention of 17 December 1997 on combating corruption of foreign public officials in economic and international transactions.
With the introduction of Legislative Decree 231/2001, administrative liability was extended to legal persons, for certain crimes committed by persons who hold representation, administration or management functions of the entity or of one of its organizations with financial or functional autonomy, or by persons subject to the management or supervision of one of the above-mentioned subjects, if committed in the interest or to the advantage of the same entities.
Before the introduction of Legislative Decree 231/2001, art. 27 of the Constitution (which states that "criminal responsibility is personal"), prevented the commission of crimes from being attributed to legal persons. The qualification of these entities as legal persons allows our legal system to recognize them as centers of imputation of legal situations, i.e. holders of the rights and duties dictated for natural persons (compatibly with their different nature), as well as holders of an autonomous capacity to act, completely independently of the natural persons who compose them. In particular, the so-called "organic identification", according to which the entity, being an abstract person, necessarily acts through its organs, directly allows to attribute not only the legal effects but the performance of the act itself to the legal person and not to the natural persons who materially carried it out and of which it is composed.

The same theory also helps to understand the exclusion of the entity's liability if the crime is not committed in its interest or advantage. The nature of liability is halfway between the criminal offence and the administrative offence, sharing with the former the effect of stigma and the seriousness of the sanctioning consequences while with the latter the name and certain disciplinary profiles.

Organizations, therefore, to date, can be held responsible and consequently sanctioned for crimes committed in their interest or to their advantage by individuals in a top position or by persons subject to their direction or supervision.

1.2 Types of offences governed by Legislative Decree 231/2001

Section III of Legislative Decree 231/2001, previously entitled "Administrative liability for the crimes provided for by the Criminal Code", amended in 2002 with "Administrative liability for crime", originally provided only for articles 24 and 25, which referred to the crimes in relation to which the administrative liability of entities could be configured. To date, the hypotheses of crime for which the organization is also responsible are the following:

- **Art. 24 UNDUE RECEIPT OF DISBURSEMENTS, FRAUD TO THE DETRIMENT OF THE STATE OR A PUBLIC BODY OR TO OBTAIN PUBLIC DISBURSEMENTS,**

COMPUTER FRAUD TO THE DETRIMENT OF THE STATE OR A PUBLIC BODY AND FRAUD IN PUBLIC PROCUREMENT

Article 316 bis of the Criminal Code Misappropriation of public funds
This hypothesis of crime arises in the event that, after receiving funding or contributions from the Italian State or the European Union, the sums obtained are not used for the purposes for which they were intended, even if this distraction concerns only part of the sum disbursed, and the planned activity has actually taken place. It differs from aggravated fraud in that in embezzlement the good is legitimately obtained but its use is distorted; instead in fraud, artifices and deceptions are functional to obtaining the benefit that thus make such obtaining illegitimate.

Article 316 ter of the Criminal Code Undue perception of public disbursements
This crime occurs in the event of obtaining, without right and through the use or presentation of false declarations or documents or through the omission of due information, contributions, loans, subsidized loans or other rogations from the State, other public bodies or the European Union. The agent's conduct can be carried out in a commissive sense (presentation of false statements or documents or attesting to untrue things) or omissive (so-called undutiful silence). For example, the following are concrete cases of undue perception: the presentation of invoices indicating an increased price for the purchase of goods with public contributions, the obtaining of loans with declarations certifying a taxable income that does not correspond to the real one, the obtaining of welfare allowances for its employees by exposing untrue or incomplete personal and accounting data, as well as other attestations of untrue circumstances, but in accordance with the requirements of the Public Administration, which will allow the company to obtain public funding.

Article 353 of the Criminal Code Disturbed freedom of enchantments
The legal asset subject to protection is the interest of the public administration in the free and ordinary conduct of public tenders and private tenders. The multi-offensive nature of the crime also highlights the protection of free competition. Despite the ample description of the ways in which the case can be configured, the phrase "other fraudulent means" leads to the conclusion that it is a free-form crime, since the legislator wants to include all the means concretely suitable for disturbing the freedom of the auctions, altering the regular functioning and free participation of the bidders in the tender. Given the nature of a crime of danger, it is carried out regardless of the result of the tender, it being sufficient that its regular course is diverted. The prerequisite for the crime is the publication of the notice, since there can be no consummation, not even in the attempted form, before that moment. Fraud is generic, and consists in the desire to prevent or disturb the tender or to remove bidders through the methods set out in the law.

Article 353-bis of the Criminal Code Disturbed freedom of the procedure for choosing the contractor
The provision in question punishes conduct preparatory to the performance of acts capable of disturbing the freedom of choice of the contractor by the public administration, disturbing the administrative procedure aimed at establishing the content of the notice or other equivalent act. This provision represents a hypothesis of a crime of danger, which is committed regardless of the actual achievement of the result, and for the completion of which, therefore, it is necessary that the correctness of the procedure for preparing the tender notice be concretely endangered, but not also that the content of the act of announcing the competition is actually modified in such a way as to interfere with the identification of the successful tenderer.

In fact, the same conduct provided for in art. 353, with the difference that punishability already occurs in the preparation phase of the notice and therefore when the administration intervenes in relation to the methods of choosing the contractor.

Article 356 of the Criminal Code Fraud in public procurement
This provision protects the good performance of the public administration and, more specifically, the regular functioning of public services and public establishments. This offence can only be committed by those who are contractually bound to the State, a public body or a company providing a service of public necessity, and therefore by the supplier, the subcontractor, the mediator and the representative. The supply contract is a prerequisite for the crime, but not a specific type of contract, but, more generally, any contractual instrument intended to provide the Public Administration with things or services deemed necessary.
The subjective element of the crime is generic malice, consisting in the awareness and willingness to deliver things other than those agreed. Therefore, no specific deception is necessary or that the defects of the thing supplied are hidden, but bad faith in the execution of the contract is sufficient. In fact, the crime in question can compete with aggravated fraud against the State (art. 640), if in addition to the bad faith mentioned above there is also the use of artifices or deceptions.

Article 640, paragraph 2 n.1 of the Criminal Code Fraud to the detriment of the State, other public body or the European Union
The conduct of a crime consists in putting in place artifices or deceptions to mislead or to cause damage to the State, another public body, or the European Union, in order to make an unfair profit.
Artifices or deceptions can consist of any simulation or dissimulation put in place to mislead, including maliciously guarded silence.
For example, the following constitute criminal conducts: the issuance of bills of exchange signed with false personal details, the giving of a cheque accompanied by assurances about coverage and solvency, the presentation for reimbursement of undue expense reports, the alteration of time cards in order to receive higher salaries, the preparation of documents or data for participation in tender procedures containing untrue information, in order to obtain the award of a tender called by the Public Administration, the failure to notify the public body of circumstances that one is obliged to communicate (e.g. loss of conditions legitimizing an act/permit/authorization), the alteration of registers and documents that the company must periodically transmit to insurance and social security institutions, the unlawful offsetting in the F24 tax credit form.

Article 640 bis of the Criminal Code Aggravated fraud for the achievement of public disbursements
In this case, the fraud is carried out to unduly obtain public disbursements. With respect to aggravated fraud (Article 640, paragraph 2, no. 1 of the Criminal Code), the specialized element is constituted by the material object, namely:

- contributions and grants: non-repayable grants;
- loans: assignment of credit at advantageous conditions for specific uses;
- subsidized mortgages: advantageous credit assignments with long repayment times;
- other disbursements of the same type: open category capable of including any other subsidized economic allocation provided by the State, other public bodies or the European Union.

In order to carry out this case, it is necessary that the falsehood is accompanied by a specific fraudulent activity (artifices and deceptions to mislead), which goes far beyond the simple exposure of false data, so as to frustrate or make less easy the control activity required by the authorities in charge: e.g. preparation of documents or data for participation in calls for public funding with the inclusion of information supported by artificial documentation; submission of false or inflated

invoices to obtain reimbursement of the relevant sums from the public body; presentation of false statements, concealing or representing a distorted reality; falsification of accounting data for obtaining mortgages or other subsidized state financing; false declarations to obtain undue economic benefits from INPS by way of involuntary unemployment, maternity benefits, subsidies for socially useful work; artifices and deceptions to procure donations from the EU; presentation of untruthful reports for the receipt of public contributions aimed at the organization of professional courses, etc.

Article 640 ter of the Criminal Code Computer fraud to the detriment of the State or other public body

This hypothesis of crime arises in the event that, by altering the functioning of an IT or telematic system, or manipulating the data contained therein, an unfair profit is obtained by causing damage to the State or other public bodies. The structure and constituent elements of the case are the same as those of fraud (Article 640 of the Criminal Code), however the fraudulent activity of the agent does not directly affect the person of the public taxable person, but the computer system pertaining to the same, through the manipulation of said system.
Think of the mandatory information flows to the PA, such as tax returns to the Revenue Agency (Single Model, Model 770, VAT communications, F24, etc.), communications to the Chamber of Commerce, the sending of reports and social security data to INAIL and INPS (e.g. DM10).

Article 2 of Law No 898/1986 Community fraud

This provision punishes anyone who "*..., through the display of false data or information, unduly obtains, for himself or for others, aid, premiums, allowances, refunds, contributions or other disbursements borne in whole or in part by the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development..."* and, by virtue of the reservation clause, it applies only "*Where the fact does not constitute the most serious crime provided for by Article 640-bis of the Criminal Code*".
Art. 2 of Law no. 898/1986 revives in cases where the conduct has manifested itself through false certifications or presentation of false documents and the fact is not attributable to complex activity of artifice and deception and has been committed with reference to contributions from the European Agricultural Fund.
Between the two types of crime there is a relationship of reciprocal speciality due to the addition and specification of constituent elements. Also in art. 2 - as well as in art. 316 ter of the Criminal Code - the exposure of false data or news assumes less value, as it is a less insidious means than "artifices and deceptions". The latter are composed of fraudulent factors of greater seriousness than the first figure.
To the unjust profit of art. 640 bis, replaces, both in the provision in question and in that referred to in art. 316 ter of the Criminal Code, that of "undue achievement" of the aid. Finally, the damage, which in fraud is an event of the crime, degrades in the other two cases to an event-condition, the recurrence of which in terms of a certain amount determines the transition from administrative to criminal offence.
The figure of crime referred to in art. 2 of Law no. 898/1986, is in a bilateral specialty relationship with the provision of art. 640 bis of the Criminal Code, with a different description (by subtraction) of the provision that determines a milder sanction provision. The crime is punished by way of generic intent.
Among the specialized elements that contribute to distinguishing the autonomous figure of crime referred to in art. 2 of Law no. 898/1986, there would be a negative element, consisting of the absence of misleading elements or methods that are different and additional to the mere false declaration: the

presence of the latter would also determine the existence of only the most serious crime. And, certainly, the lower fraudulence of the means used is a consideration capable of providing a not unreasonable justification for a mitigated sanctioning treatment compared to the normal one. At the same time, however, the criminal figure referred to in art. 2 provides for a *quid pluris* with respect to the aggravated fraud referred to in art. 640 bis of the Criminal Code, consisting of the material object of the unlawful conduct. Therefore, while, as stated by the United Sections of the Court of Cassation, art. 316 ter is a subsidiary rule with respect to aggravated fraud, a similar conclusion cannot be reached with reference to the provision of art. 2 of Law no. 898/1986.

- **ART. 24-BIS COMPUTER CRIMES AND UNLAWFUL PROCESSING OF DATA**

Article 615-ter of the Criminal Code Abusive access to a computer or telematic system
The offence provides for and punishes those who illegally enter or remain in a protected computer or telematic system. The ascertainment of the specific purpose of profit or damage to the system is disregarded.
Two types of conduct are punishable:
a) abusive introduction (i.e. without the consent of the holder) into a computer or telematic system equipped with security systems;
b) the permanence in connection with the system itself, continuing to use the related services or to access the information contained therein, despite the fact that there has been the dissent, even tacit, of the owner.
This is a case that can be prosecuted by complaint by the injured party, unless the aggravating circumstances referred to in paragraph 2 occur (damage/destruction of data, programs or system; total or partial interruption of the operation of the system; abuse of the function of public official, investigator, system operator; use of violence; access to systems of public interest).

Article 617-quarter of the Criminal Code Unlawful interception, impediment or interruption of computer or telematic communications
The conducts consist of the fraudulent interception, impediment or interruption of communications relating to a computer system, as well as the disclosure to the outside world of the communications thus collected.
This is a case that can be prosecuted by complaint by the injured party, unless the aggravating circumstances referred to in paragraph 4 occur (damage to a computer or telematic system indicated in Article 615-ter, third paragraph; abuse or violation of the duties of the function of public official, or of the quality of system operator).
The typical means used for the commission of this crime are normally spyware software, the introduction of viruses, but also, for example, the installation of software not authorized by the company or not instrumental to the performance of one's duties and having the effect of slowing down telematic communication. The material conduct can also be configured in the use of a counterfeit credit card through one's own POS terminal, or in the unauthorized intrusion into the e-mail account of others protected by a special password.

Article 617-quinquies of the Criminal Code Unlawful possession, dissemination and installation of equipment and other means to intercept, prevent or interrupt computer or telematic communications
The crime, which can be prosecuted ex officio, punishes anyone who, in order to intercept communications relating to a computer or telematic system or between several systems, or to prevent

or interrupt them, procures, holds, produces, reproduces, disseminates, imports, communicates, delivers, otherwise makes available to others or installs equipment, programs, codes, keywords or other means suitable for intercepting, prevent or interrupt communications relating to an IT or telematic system or between several systems. Therefore, the implementation of the interception in concrete terms is disregarded. The unlawful installation of a camera to capture access codes of users of a telematic or computer system, as well as the use of equipment capable of copying the access codes of users of a computer system, constitutes criminal conduct pursuant to Article 617 quinquies of the Criminal Code.

Article 635-bis of the Criminal Code Damage to information, data and computer programs
The punished conduct takes the form of the destruction, deterioration, cancellation, alteration, suppression of information, data or computer programs of others.
When such conduct benefits the company (e.g. by destroying data in view of controls/inspections by the authorities, or by deleting information that gives evidence of the credit claimed by any suppliers, etc.), the latter may be called upon to respond pursuant to art. 635-bis of the Criminal Code.

Article 635-ter of the Criminal Code Damage to information, data and public computer programs or of public interest
The offence punishes the commission of acts aimed at destroying, deteriorating, erasing, altering or suppressing information, data or computer programs of military interest or relating to public order or public security or health or civil protection or in any case of public interest.
The crime can always be prosecuted ex officio and for its realization it is sufficient to carry out "direct acts" to carry out the harmful events envisaged, regardless of their concrete occurrence. Aggravating circumstances are envisaged (destruction/deterioration/cancellation/alteration/suppression of information or programs; abuse of the function of public official, investigator, system operator; use of violence or threat).

Article 635-quarter of the Criminal Code Damage to computer or telematic systems
The crime punishes the conduct referred to in art. 635 bis of the Criminal Code that cause damage to computer or telematic systems. The introduction or transmission of data, information or programs that cause the destruction, damage, uselessness or serious malfunction of computer or telematic systems is also punished. It is necessary that the harmful event occurs in practice. Aggravating circumstances are provided for in the event that the act is committed by a public official or a person in charge of a public service, with abuse of powers or with violation of the duties inherent in the function or service, or by those who exercise, even abusively, the profession of private investigator, or with abuse of the quality of system operator as well as if the culprit uses threat or violence to commit the act or if it is clearly armed.

Article 635-quinquies of the Criminal Code Damage to computer or telematic systems of public interest
This crime punishes those who, through the conduct referred to in art. 635 bis of the Criminal Code, or through the introduction or transmission of data, information or programs, carries out acts aimed at destroying, damaging or rendering, in whole or in part, computer or telematic systems of public interest unusable or to seriously hinder their operation.

Article 615-quarter of the Criminal Code Illegal possession, dissemination and installation of equipment, codes and other means of access to computer or telematic systems

The offence in question punishes the conduct of procurement, possession, production, reproduction, dissemination, importation, communication, delivery, making available to others, installation of equipment, instruments, parts of equipment or instruments, codes, keywords or other means suitable for access to a computer or telematic system protected by security measures, with the aim of obtaining an advantage or causing damage to others.
The offence can be prosecuted ex officio and criminal conduct can be limited to the mere possession of means or devices suitable for abusive access (viruses, spyware), regardless of the actual implementation of such access or damage. The possession or abusive dissemination of pics-cards, i.e. computer cards that allow you to watch encrypted television programs, or the abusive procurement of serial numbers of other people's mobile phones in order to clone it and make an illegal connection to a protected telephone network, can also constitute the crime.

Article 629, paragraph 3, of the Criminal Code Extortion (cyber)
Anyone who, through the conduct referred to in articles 615-ter, 617-quarter, 617-sexies, 635-bis, 635-quarter and 635-quinquies or with the threat of carrying them out, forces someone to do or omit something, procuring for himself or others an unjust profit with damage to others, is punished.

Article 635-quarter 1 of the Criminal Code Illegal possession, dissemination and installation of equipment, devices or computer programs aimed at damaging or interrupting a computer or telematic system
The offence punishes anyone who, with the aim of unlawfully damaging a computer or telematic system or the information, data or programmes contained therein or pertaining to it or to facilitate the interruption, total or partial, or alteration of its operation, unlawfully procures, holds, produces, reproduces, imports, disseminates, communicates, delivers or, in any case, otherwise makes available to others or installs equipment, computer devices or programs.

Article 491-bis of the Criminal Code Electronic documents
The case in question punishes the conduct of falsehood referred to in art. 476-493quarter of the Criminal Code concerning public electronic documents having probative value.
The rule punishes both the so-called "material" falsehood and the "ideological" falsehood; in the first case, reference is made to the hypothesis of a counterfeit document in the indication of the sender or in the signature itself, or even to the hypothesis of alteration of the content after its formation. The hypothesis of ideological falsehood, on the other hand, relates to the untruthfulness of the statements contained in the document itself.

Article 640-quinquies of the Criminal Code Computer fraud of the entity providing electronic signature certification services
This is a proper crime that can be committed by the person who provides electronic signature certification services. The criminal conduct takes the form of the generic violation of the legal obligations for the issuance of a qualified certificate, with the specific intent of procuring an advantage or damage to others.

Article 1, paragraph 11, of Decree-Law no. 105 of 21 September 2019
Decree Law no. 105 of 21 September 2019, converted with amendments by Law no. 133 of 18 November 2019, containing "urgent provisions on the perimeter of national cyber security and the regulation of special powers in sectors of strategic importance", provided (with art. 1, paragraph 11-bis) for the amendment of art. 24-bis, paragraph 3 and now the entity is also called upon to answer in relation to the crimes referred to in Article 1, paragraph 11 of Decree-Law 105 of 2019. With this

Decree-Law, the legislator established the so-called national cyber security perimeter, "in order to ensure a high level of security of the networks, information systems and IT services of public administrations, national, public and private bodies and operators, on which the exercise of an essential function of the State depends, i.e. the provision of an essential service for the maintenance of civil activities, fundamental social or economic interests of the State and from whose malfunctioning, interruption, even partial, or improper use, may result in a prejudice to national security" (art. 1 Legislative Decree 105/2019). The provision has been in force since 21/11/2019, although the envisaged implementing measures have not yet been published.

- **ART. 24-TER CRIMES OF ORGANIZED CRIME**

Article 416 of the Criminal Code Criminal association
The article punishes those who promote, establish or organize an association for the purpose of committing several crimes; even mere participation constitutes a crime and can also be of secondary importance as long as the contribution is appreciable, concrete and endowed with effective stability. The configuration of associative crimes as medium crimes means that the liability of the entity, pursuant to Legislative Decree 231/2001, extends to an indeterminate series of offences committed for the implementation of the criminal pact not necessarily included in the list of predicate offences. Suffice it to think, for example, of the unlawful competition with violence or threat referred to in art. 513-bis of the Criminal Code, to the disturbed freedom of tenders pursuant to art. 353 of the Criminal Code, or to the non-fulfilment of public supply contracts provided for and punished by art. 355 of the Criminal Code. The crime of criminal association could also occur in connection with the crime of organized activity for the illegal trafficking of waste pursuant to art. 260 of the Environmental Code.

Article 416, paragraphs 6 and 7, of the Criminal Code. Criminal association
Paragraph 6 of Article 416 of the Criminal Code punishes criminal conspiracy aimed at reducing or maintaining slavery, trafficking in persons, the purchase and alienation of slaves, trafficking in "living" organs and crimes concerning violations of the provisions on illegal immigration referred to in Art. 12 of Legislative Decree 286/1998.
Paragraph 7, on the other hand, provides for the punishment of associative conduct aimed at committing the crimes of child prostitution (Article 600-bis of the Criminal Code), child pornography (Article 600-ter of the Criminal Code), possession of pornographic material (Article 600-quarter of the Criminal Code), virtual pornography (Article 600-quarter.1 of the Criminal Code), tourist initiatives aimed at the exploitation of child prostitution (Article 600-quinquies of the Criminal Code), sexual violence (Article 609-bis of the Criminal Code), sexual acts on minors (Article 609-quarter of the Criminal Code), corruption of minors (Article 609-quinquies of the Criminal Code), group sexual violence (Article 609-octies of the Criminal Code), solicitation of minors (Article 609-undecies).

Article 416-bis of the Criminal Code Mafia-type associations, including foreign ones
The association is of a mafia type when those who are part of it according to one of the modalities referred to in art. 416 of the Criminal Code make use of the intimidating force of the associative bond and the condition of subjection and silence that derives from it, to commit crimes, to acquire directly or indirectly the management or in any case the control of economic activities, concessions, authorizations, contracts and public services, or to make profits or unfair advantages for themselves or for others, or in order to prevent, hinder or influence the free exercise of the vote or to procure votes for oneself or others during electoral consultations.

Finally, it should be noted that art. 24-ter of Legislative Decree no. 231/2001 provides for the liability of the entity in the event of the commission of crimes "making use of the conditions provided for by art. 416 bis" or "in order to facilitate the mafia association"; this insertion, at the limit of compliance with the principle of legality, in fact expands in an almost indefinite way the number of crimes punishable under Legislative Decree no. 231/2001.

Article 416 ter of the Criminal Code Political-mafia electoral exchange
The regulatory provision of Article 416-ter has undergone various changes over the years; the latest reform was launched with Law No. 43 of 21 May 2019, containing "*Amendment to Article 416-ter of the Criminal Code on political-mafia exchange voting*" which came into force on 11 June, which made substantial changes to the previous discipline both with regard to criminally relevant conduct and dosimetry sanctions.
As far as active subjects are concerned, the number of possible perpetrators of the crime is expanded: for both the promisor and the promissory, it is specified that an intermediary can also be the protagonist of the agreement; for the procurer of votes, it is specified that it can also be a member of the associations referred to in art. 416-bis of the Criminal Code as well as anyone who undertakes to procure votes through the use of the mafia method.
With regard to the conduct of the promissory, it is specified that he is punished, as well as in cases of giving or promising money or other benefits (already contemplated in the pre-reform text), even if he or she merely makes himself available to satisfy the interests or needs of the mafia association.
With regard to the sanctioning treatment for both parties of the political-mafia electoral exchange, the reformed regulatory text has reintroduced the sanctioning equivalence with the crime of mafia associative participation (*pursuant to* Article 416-bis*,* first paragraph) and the contracting parties involved in the illicit sinallagma (*pursuant to* Article 416-ter*,* paragraphs one and two), establishing that the penalties provided for in the first paragraph of Article 416-bis (imprisonment from ten to fifteen years) also apply to the latter.
Paragraphs 3 and 4 of Article 416-ter of the Criminal Code (as replaced *by Article* 1, Law No. 43 of 21 May 2019), introduced by the new legislative coinage, provide for an aggravating circumstance with a special effect that provides for a fixed increase of half of the basic penalty if the candidate in the elections is elected following the electoral promise of mafia origin (the penalty range reaches a dizzying increase, up to imprisonment between a minimum edict of 15 years and a maximum edict of 22 years and 6 months); In this way, the legislator comes to carry out a controversial transformation of the political-mafia electoral exchange into a "crime of event". Finally, the newly introduced paragraph 4 provides as an accessory penalty, the perpetual interdiction from public office in the event of conviction of the protagonists of the political-mafia agreement.

Article 630 of the Criminal Code Kidnapping for extortion
Kidnapping pursuant to Article 630 of the Criminal Code is carried out in the event of limitation of the personal freedom of a subject, in any form and duration, in order to obtain an unjust profit.
It is a complex crime characterized by the specific intent of the commodification of the person.
It can be considered that the realization of this case appears difficult to predict, given the need to ascertain in any case the interest or advantage derived by the entity from the commission of the offence itself.

Article 74 of Presidential Decree no. 309 of 9 October 1990, Association aimed at the illicit trafficking of narcotic or psychotropic substances
The conduct is that described in art. 416 of the Criminal Code, with the specific purpose of implementing or participating in trafficking in narcotic or psychotropic substances.

Article 407, paragraph 2, letter a), no. 5, of the Code of Criminal Procedure. Illegal manufacture, introduction into the State, offering for sale, transfer, possession and carrying in a public place or open to the public of weapons of war or war type or parts thereof, explosives, clandestine weapons as well as several common firearms excluding those provided for by art. 2, third paragraph, of Law no. 110 of 18 April 1975

All crimes if committed using the conditions provided for by Article 416-bis of the Criminal Code to facilitate the activities of the associations provided for by the same article (Law 203/91)

- **ART. 25 EMBEZZLEMENT, UNDUE USE OF MONEY OR MOVABLE PROPERTY, BRIBERY, UNDUE INDUCEMENT TO GIVE OR PROMISE BENEFITS, CORRUPTION**

Art. 314 comma 1 c.p. Peculato
Some considerations regarding the introduction of embezzlement:
- there has been a complaint about an excessive expansion of the list of predicate offences with respect to the criteria indicated by the 2018 European Delegation Law. The latter, in fact, referring to the PIF Directive, gives the Government the possibility of supplementing arts. 24 et seq., Legislative Decree no. 231/2001, with exclusive reference to crimes that "harm the financial interests of the Union";
- it is expected that the author is a public official or a person in charge of a public service who appropriates money or public goods of which he has possession or availability by reason of his office. Since the liability pursuant to Legislative Decree no. 231/2001 for the State and other public bodies must be excluded, it is not clear how such crimes can be committed by a person referable to the organization of a private entity, in its interest or advantage.

Embezzlement essentially represents the crime of embezzlement committed by a public official or a person in charge of a public service. It is a multi-offensive crime, in the sense that it is not only the regular and good performance of the Public Administration that is harmed by the conduct, but also and above all the patrimonial interests of the latter and of private individuals, carrying out a conduct that is completely incompatible with the title for which it is owned and from which derives a total exclusion of the asset from the assets of the entitled party.
It is now undisputed in jurisprudence the equalization between distracting conduct (i.e. giving the thing a destination different from that intended) and appropriation, given that the latter element also includes distraction, given that the fact of improperly allocating a thing to a different use means exercising typically proprietary powers over it.
Appropriation is in fact that behavior destined to materialize in acts incompatible with the title for which one possesses, so as to achieve a real interversio possessionis, and therefore illicitly interrupt the functional relationship between the thing and its legitimate owner.
The prerequisite of the conduct is first of all the possession or availability of the thing, where with this last term the embezzlement is also configurable in cases of mediated possession, in which the agent disposes of the thing by means of the possession of others, so that in any case the agent can return to possess at any time. Another prerequisite is the existence of a functional relationship between the thing and the agent, with the clarification that, if the thing is available to the office and not directly and exclusively to the agent, the aggravating circumstance of abuse of official relations will occur.

Article 314 bis of the Criminal Code Misuse of money or movable property
This article, introduced by Legislative Decree 92/2024, sanctions the public official or the person in charge of a public service who, outside the cases provided for by art. 314, having by reason of his office or service the possession or in any case the availability of money or other movable property of others, allocates them to a use other than that provided for by specific provisions of law or by acts having the force of law from which no margin of discretion remains and intentionally procures an unjust financial advantage for himself or others or unjust damage to others.

Article 316 of the Criminal Code Embezzlement by profiting from the mistake of others
For the purposes of the offence to be committed, the possession of someone else's property is not required, thus radically distinguishing itself from the rule referred to in art. 314, which in fact requires the possession or possession of someone else's property or money as a prerequisite for the crime. Conversely, it has also been excluded that it is a particular form of bribery (art. 317), lacking here the requirement of misleading the taxable person of the crime. The crime can only be committed by a public official or a person in charge of a public service, in the exercise of his or her duties or service. A typical fact provided for by the standard is receipt (undue acceptance) and retention (retention of what has been delivered by mistake). Money or other benefits must be retained for oneself or for third parties (the Public Administration does not fall within the notion of third party). A further and essential prerequisite of the crime is that the third party is mistakenly convinced that he must deliver money or other benefits into the hands of the public official or public service officer, who accepts it or considers it by exploiting the error.
The crime is punished by way of generic intent, i.e. the awareness of the other's error and the willingness to receive or retain the thing.
The same considerations made for art. 314 paragraph 1 of the Criminal Code regarding the perplexities of the introduction in art. 25 of Legislative Decree 231/2001 of the crimes of embezzlement among the predicate crimes by the draft legislative decree containing rules for the implementation of Directive (EU) 2017/1371.

Art. 317 c.p. Concussione
There is bribery when a public official or a person in charge of a public service, abusing his position, forces someone to give or promise to himself or to others money or other benefits that are not due. The active subject of the crime can be both a public official and a person in charge of a public service. Abuse can take two forms: as an undutiful use of public powers (use of powers pertaining to the functions exercised for purposes other than those provided for by law, in violation of the principles of good performance and impartiality) or as an abuse of quality (instrumentalization of the position of public pre-eminence held by the subject, regardless of his or her specific competences).
The one who suffers the coercion is not a co-conspirator, but an offended person, as he is faced with the blunt alternative of suffering the evil envisaged or avoiding it with the bestowal or promise of the undue amount; therefore, this case may occur for the cooperative on a residual basis, or in the form of a competition, between a top or subordinate figure of the company and the public official or person in charge of public service (provided that there is an interest/advantage for the company), or in those cases in which the cooperative manages activities of public importance.
In fact, both the legislator and the jurisprudence believe that the exponents of corporate cases of a private nature but custodians of the performance of a public service, are absolutely equated with public officials or persons in charge of a public service (e.g. subjects who can represent externally the will of the Public Administration or its authoritative, deliberative or certifying powers regardless of formal investments; top members of entities hospitals or companies providing health services affiliated with the National Health Service; operators of credit institutions; subjects belonging to

publicly owned companies or concessionaires of public services; operators of companies for the management of security guards; operators of companies responsible for the management, organization and provision of training and professional training regulated by law; builders in the context of the implementation of subsidized housing interventions, etc.).

Article 318 of the Criminal Code Bribery in the performance of the function
It is the hypothesis in which a public official unduly receives or accepts from a private individual the promise, for himself or for a third party, of money or other benefits for the exercise of his functions or powers (so-called improper corruption). It therefore includes all those behaviors, both active and omissive, that violate the duties of loyalty, impartiality and honesty that must be rigorously respected by those who exercise a public function.
The crime in question is proper to the public official, as it is punishable only if committed by the same, to whom, however, art. 320 of the Criminal Code, also equalizes the person in charge of a public service who has the quality of public employee by establishing a penalty reduced by up to one third. Unlike bribery, the parties are on an equal footing, so both are punishable. It is, in fact, a multi-subjective crime, or a necessary concurrence and both the corruptor and the corrupt are liable for it; In this regard, a distinction is made between active and passive corruption depending on whether it is looked at from the point of view of the conduct of the private individual or public official or of the person in charge of a public service pursuant to art. 320 of the Criminal Code. Law no. 3 of 9 January 2019 provided (with art. 1, paragraph 1, letter n)) for the amendment of art. 318 by tightening the sanctioning treatment.

Article 319 of the Criminal Code Corruption for an act contrary to official duties
It is the hypothesis of a public official, or person in charge of public service pursuant to art. 320 of the Criminal Code, who receives, for himself or for others, money or other advantages, or accepts the promise thereof, to omit or delay or for having omitted or delayed an act of his office or for performing or having performed an act contrary to the duties of office with an advantage in favor of the corruptor (so-called proper corruption). The reforms in the field of anti-corruption introduced by Law no. 69 of 2015 have led to a significant increase in penalties of the conduct in question in an attempt to strengthen the state reaction to an increasingly widespread and widespread corruption phenomenon.

Article 319 bis of the Criminal Code Aggravating circumstances
The penalty is increased if the act referred to in Article 319 of the Criminal Code has as its object the conferral of public employment or salaries or pensions or the stipulation of contracts in which the administration to which the public official belongs is involved, as well as the payment or reimbursement of taxes.

Article 319 ter of the Criminal Code Corruption in judicial documents
This criminal figure was introduced by art. 9 of Law 86/1990. Initially, in fact, the hypotheses considered constituted aggravating circumstances of the corruption referred to in art. 319 of the Criminal Code; Today, with the provision of an autonomous title of crime that does not distinguish between proper and improper corruption, all corrupt behavior remains sanctioned. The crime can be committed by any person who holds the status of public official and the main provision concerns the hypothesis that the acts of corruption have been committed to favor or damage a party to a civil, criminal or administrative process.

Article 319 quarter of the Criminal Code Undue inducement to give or promise utility

According to this type of crime, there is undue inducement when a public official or a person in charge of a public service, abusing his position, induces someone to procure money for himself or others for other purposes that are not due.
This case was introduced by the Legislator to restrict the scope of the crime of extortion referred to in art. 317 of the Criminal Code; Before the reform, in fact, conduct took the form of the two forms of induction and coercion. The splitting of the original case introduced art. 319 quarter, in line with the international recommendations coming in particular from the "Report on phase 3 of the application of the OECD Anti-Corruption Convention in Italy", and is characterized by suggestive and persuasive conduct with a more tenuous value conditioning the freedom of self-determination of the recipient with respect to the victim of bribery. The taxable person of the crime in question has greater decision-making margins but ends up acquiescing to the request for the undue benefit because motivated by the prospect of obtaining undue personal gain; for this reason punishability is envisaged. It is therefore the difference between these two conducts, previously included in the wording of art. 317 prior to the reform, which marks the boundary line between the concussive hypothesis (coercion) and the induction referred to in art. 319 quarter of the Criminal Code.

Article 320 of the Criminal Code Bribery of a person in charge of a public service
This provision states that the provisions of Articles 318 and 319 above also apply to the person in charge of public service, with a reduction of penalties by no more than one third.

Article 321 of the Criminal Code Penalties for the corruptor
The rule in question extends to the corruptor the penalties established for the corrupt. It is, therefore, the main provision through which entities can be called to answer – together with the public official/public service officer – for the crimes referred to in art. 318, 319, 319-bis, 319-ter, 319-quarter, 320 of the Criminal Code.

Article 322 of the Criminal Code Incitement to corruption
The conduct of the crime is that referred to in art. 318-319 of the Criminal Code, however in this case the public official refuses the offer illegally made to him.
The incitement to corruption is carried out through the same conduct provided for in the crimes of proper or improper corruption, with the specific circumstance of non-acceptance of the promise/offer of the private individual.

Article 322 bis of the Criminal Code Embezzlement, misuse of money or movable property, bribery, undue inducement to give or promise benefits, bribery and incitement to bribery of members of international courts or organs of the European Communities or of international parliamentary assemblies or international organizations and officials of the European Communities and foreign States
The article in question was introduced by art. 3, c.1 Law no. 300 of 29 September 2000, amended by Law 116/2009, Law no. 190/2012, Law 237/2012, Law 161/2017, Law 3/2019, Legislative Decree no. 75/2020 and, finally, by Law 114/2024.
This provision extends the provisions of art. 314, 316, 317, 317bis, 318, 319, 319bis, 319ter, 319 quarter, 320 and 322, paragraphs 3 and 4, of the Criminal Code, to the acts committed by the persons indicated in the article in question (members of international courts or bodies of the European Communities or of international parliamentary assemblies or international organizations and officials of the European Communities and of foreign States). It also provided that the provisions of Articles 319 quarter, second paragraph, 321 and 322, first and second paragraphs, shall also apply if the money or other benefit is given, offered or promised, in addition to the persons indicated above, to persons

exercising activities or functions corresponding to those of public officials and persons in charge of a public service within other foreign States or international public organizations, if the act is committed to procure an unfair advantage for himself or others in international economic transactions or in order to obtain or maintain an economic or financial activity.

Article 346-bis of the Criminal Code Trafficking in illicit influence
This type of crime was introduced by art. 1 of Law no. 190 of 6 November 2012 "Provisions for the prevention of corruption and illegality in the public administration".
With Law no. 3/2019 (the so-called Anti-Corruption Law), the crime of trafficking in illicit influence became part of the list of crimes in relation to which an administrative offence against the entity can be established. Law No. 114 of 9 August 2024, containing "Amendments to the Criminal Code, the Code of Criminal Procedure, the Judicial System and the Code of Military Order", has completely rewritten the crime of trafficking in illicit influence.
In particular, pursuant to the first paragraph of the aforementioned Article 346-bis, going beyond the wording contained in the Anti-Corruption Law, the mediator's relations with the public official must be "existing" (not only alleged) and effectively "used" (not just claimed); it follows that any conduct of "bragging" or "boasting" remains punishable, where the constituent elements are present, for fraud.
In addition, the use of relationships must take place with intentional intent.
Finally, the description of the conduct is amended in order to provide that the giving or promise, for oneself or for others, of the undue amount, consisting of money or other benefits of a necessarily economic nature, must be aimed at remunerating the public agent, in relation to the exercise of his functions or the implementation of another unlawful mediation.
To this end, the second paragraph contains the explicit definition of "other unlawful mediation", consisting in the intervention to induce the public agent to perform an act contrary to the duties of office constituting a crime, from which an undue advantage may derive.
The new fourth paragraph extends the aggravating circumstance provided for if the person who unduly causes money or other benefits to be given or promised is a public official or person in charge of a public service, including against members of international courts or bodies of the European Union or international parliamentary assemblies or international organisations and officials of the European Union.
In addition, in bringing the necessary coordination, the reference to the crime of abuse of office contained in the heading and text of art. 322-bis of the Criminal Code - relating to the applicability of the rules on crimes against the public administration to members of international courts or EU bodies or international parliamentary assemblies or international organizations and to EU officials - as well as in art. 323-bis of the Criminal Code - relating to the mitigating circumstance of the particular tenuousness of the fact - replaced by the reference to art. 346-bis, which is also inserted in art. 323-ter, relating to the cause of non-punishability in the presence of self-denunciation and collaboration with the judicial authority.

- **ART. 25-BIS FORGERY OF COINS, PUBLIC CREDIT CARDS, REVENUE STAMPS AND IDENTIFICATION INSTRUMENTS OR SIGNS**

Article 453 of the Criminal Code Counterfeiting of coins, spending and introduction into the State, after concert, of counterfeit coins
Through this provision, the legislature aims to ensure the certainty and reliability of monetary traffic, as essential prerequisites for regular monetary circulation. The case in question is carried out through a variety of conducts: counterfeiting (manufacture of coins by unauthorized bodies) or alteration

(modification of the value of genuine money) of coins; introduction into the State of counterfeit coins, holding, spending, putting into circulation counterfeit or altered coins; purchase or receipt of counterfeit or altered coins for the purpose of putting them into circulation; all in concert with the counterfeiter.

Article 454 of the Criminal Code Coin Alteration
This rule protects the certainty and reliability of monetary traffic and punishes those who alter coins of the quality indicated in the previous article or those who, with respect to the coins thus altered, hold, spend or put them into circulation, buy them or otherwise receive them in order to put them into circulation.

Article 455 of the Criminal Code Spending and introduction into the State, without a concert of counterfeit coins
The crime punishes the introduction, purchase, possession, in order to put them into circulation, of counterfeit coins, without consultation with the counterfeiter or with those who altered them.

Article 457 of the Criminal Code Spending counterfeit coins received in good faith
It is the putting into circulation of counterfeit coins received in good faith; in this case, the science of the falsity of the coins is subsequent to the receipt of the same, while in the criminal hypothesis referred to in art. 455 of the Criminal Code, such awareness of the falsity must exist in the culprit at the time of receipt.

Article 459 of the Criminal Code Counterfeiting of revenue stamps, introduction into the state, acquisition and possession or putting into circulation of falsified revenue stamps
The criminal conducts are those referred to in art. 453, 455, 457 of the Criminal Code, but have falsified revenue stamps as their material object. Pursuant to the second paragraph of the article in question, stamped paper, stamps and other values equivalent to them by special laws are revenue stamps.

Article 460 of the Criminal Code Counterfeiting of watermarked paper used for the manufacture of public credit cards or revenue stamps
The punishable conduct is both counterfeiting and the purchase, possession or disposal of the card in question. The rationale of this provision consists in the choice to criminalise activities preparatory to falsification in order to respond to the need to strengthen the protection of the interests protected by the rules on the falsity of revenue stamps.

Article 461 of the Criminal Code Manufacture or possession of watermarks or instruments intended for the counterfeiting of coins, revenue stamps or watermarked paper
The case in question punishes the manufacture, purchase, possession, or disposal of watermarks or instruments intended elusively for the counterfeiting of coins, revenue stamps or watermarked paper.

Article 464 of the Criminal Code Use of counterfeit or altered revenue stamps
The crime punishes the mere use of counterfeit or altered revenue stamps; The penalty is reduced if the values were received in good faith.

Article 473 of the Criminal Code Counterfeiting, alteration or use of trademarks or distinctive signs or patents, models and designs

This article, as replaced by art. 15, paragraph 1, letter a) of Law 99/2009, punishes counterfeiting, alteration as well as the use of trademarks or distinctive signs or patents, models and designs. This offence is committed by anyone who, being aware of the existence of the industrial property title, counterfeits or alters trademarks or distinctive signs, both national and foreign, of industrial products, or anyone who, without having participated in the counterfeiting or alteration, makes use of such counterfeit or altered trademarks or signs. The second paragraph provides for the punishment of anyone who infringes or alters patents, industrial designs, national or foreign, or, without being involved in the infringement or alteration, makes use of such counterfeit or altered patents, designs or models. For the purposes of punishability, the essential condition is that national laws, EU regulations and international conventions on the protection of intellectual or industrial property have been complied with.

Article 474 of the Criminal Code Introduction into the State and trade in products with false signs
The rule, except in cases of complicity in the crimes provided for in the previous article, punishes the introduction into the Italian State of products with false signs and trade in the same products.

- **ART. 25-BIS.1 CRIMES AGAINST INDUSTRY AND COMMERCE**

Article 513 of the Criminal Code Disturbed freedom of industry or commerce
An essential element for the configuration of the offence is the use of violence against things or fraudulent means aimed at disturbing the exercise of an industry or trade. The rule was introduced in order to ensure the normal exercise of industrial or commercial activity carried out by private individuals.

Article 513-bis of the Criminal Code Unlawful competition with threat or violence
The rule aims to sanction those who, in the exercise of a commercial, industrial or otherwise productive activity, carry out acts of competition with violence or threat, i.e. using those typical forms of intimidation which, in the environment of mafia organized crime, tend to control commercial, industrial or productive activities, or in any case, to condition them, affecting the fundamental law of the market that requires free and lawful competition.

Article 514 of the Criminal Code Fraud against domestic industries
This article punishes anyone who causes harm to a national industry by selling or otherwise putting into circulation on foreign national markets, industrial products with counterfeit or altered names, trademarks or distinctive signs.

Article 515 of the Criminal Code Fraud in the exercise of trade
Material conduct consists in the delivery, in the exercise of a commercial activity, of a movable thing that does not conform to the agreed one in essence, origin, provenance, quality, quantity. Fraud in commerce therefore takes the form of an unfair execution of a lawful and effective contract, even if it can be annulled.

Article 516 of the Criminal Code Sale of non-genuine substances as genuine
The punished conduct can be carried out with any operation in any case aimed at the exchange and sale of non-genuine food and drink; therefore, it is sufficient to carry out acts that clearly reveal the purpose of selling or putting on the market: public display, indication in offers to the public, presence of the non-genuine product in the seller's warehouse or warehouse, etc.

Article 517 of the Criminal Code Sale of industrial products with false signs
The conduct of the crime is carried out through the generic putting into circulation of goods with names, trademarks or distinctive signs which, even if not counterfeit, are likely to mislead consumers.

Article 517-ter of the Criminal Code Manufacture and trade of goods made by usurping industrial property rights
The punishable conduct is the manufacture or industrial use of objects or other goods made by usurping or infringing an industrial property right of which one is aware. Under the same rule, the introduction into the State, the possession for sale, the offer to consumers or the generic putting into circulation of the aforementioned goods, in order to make a profit, is punished.

Article 517-quarter of the Criminal Code Counterfeiting of geographical indications or designations of origin of agri-food products
Art. 517 quarter of the Criminal Code punishes the counterfeiting or alteration of geographical indications or indications of origin of agri-food products. Pursuant to the same provision, the introduction into the State, the possession for sale, the offer to consumers or the generic putting into circulation of agri-food products with the aforementioned counterfeit indications, in order to make a profit, is punished. Pursuant to the fourth paragraph of the same article, the offences provided for in the first and second paragraphs are punishable provided that the provisions of national laws, EU regulations and national conventions on the protection of geographical indications and designations of origin of agri-food products have been complied with.

- **ART. 25-TER CORPORATE CRIMES**

Article 2621 of the Italian Civil Code False social communications
"Except for the cases provided for by art. 2622, directors, general managers, managers in charge of preparing the company's accounting documents, statutory auditors and liquidators, who, in order to obtain an unfair profit for themselves or for others, in the financial statements, reports or other corporate communications directed to shareholders or the public, provided for by law, knowingly disclose material facts that do not correspond to the truth or omit material material facts whose communication is required by law on the economic, equity or financial situation of the company or group to which it belongs, in a manner that is concretely likely to mislead others, shall be punished with imprisonment from one to five years. The same penalty shall also apply if the falsehoods or omissions concern assets owned or administered by the company on behalf of third parties.'
Unlawful conduct, in the new Article 2621 of the Italian Civil Code, consists in knowingly exposing material facts that do not correspond to the truth or knowingly omitting material material facts, when the communication of the same is required by law, on the economic, equity or financial situation of the company or group to which it belongs, in a manner that is concretely capable of misleading others; except in cases where the fact is minor, the offence can be prosecuted ex officio.

Article 2621bis of the Italian Civil Code Minor facts
'Unless they constitute a more serious offence, a penalty of between six months and three years' imprisonment shall apply if the acts referred to in Article 2621 are minor, having regard to the nature and size of the company and the manner or effects of the conduct. Unless they constitute a more serious offence, the same penalty as in the preceding paragraph shall apply where the acts referred to in Article 2621 concern companies which do not exceed the limits set out in the second paragraph of

Article 1 of Royal Decree No 267 of 16 March 1942. In this case, the offence may be prosecuted by the company, the shareholders, the creditors or the other recipients of the corporate communication".

Article 2622 of the Italian Civil Code False corporate communications of listed companies
The unlawful conduct for false accounting in listed companies consists in knowingly exposing material facts that do not correspond to the truth or omitting material material facts whose communication is required by law on the economic, equity or financial situation of the company or group to which it belongs in a way that is concretely capable of misleading others about the economic situation of the company itself.

Article 2624 of the Italian Civil Code Falsehoods in the reports or communications of the independent auditors
Legislative Decree 39/2010 – Implementation of Directive 2006/43/EC, relating to statutory audits of annual accounts and consolidated accounts – introduced the crime of falsity in the reports or communications of the persons responsible for the statutory audit, at the same time providing for the repeal of art. 2624 of the Italian Civil Code.
Since art. 25-ter of Legislative Decree 231/2001 expressly refers to art. 2624 of the Italian Civil Code as a prerequisite for the administrative offence, the repeal of the provision of the Civil Code, not accompanied by the integration of art. 25-ter with reference to the new case of art. 27 of Legislative Decree 39/2010 should determine, as a consequence, the non-applicability of the administrative sanction pursuant to Legislative Decree 231/2001 to the new crime of falsity in the reports or communications of the Statutory Auditors. However, from a prudential point of view, it is also appropriate to take account of this case.

Art. 2625 of the Italian Civil Code Prevented control
The criminal conduct consists in preventing, or hindering, through the concealment of documents or other suitable artifices, the performance of the control activities attributed to the shareholders or other corporate bodies by law. Given the explicit reference in Legislative Decree 231/2001 to the second paragraph of art. 2625 of the Italian Civil Code, the crime can be imputed to the company only in the event that the impediment, or the simple obstacle, created by the directors to the checks provided for by art. 2625 of the Italian Civil Code, has caused damage to the shareholders.
Initially, the article in question also provided for the activity of revision in addition to that of control; art. 37, paragraph 35 letter a) of Legislative Decree 39/2010 deleted the words "or audit" from this provision and the activities of impeded control of auditors, as they are no longer governed by art. 2625 of the Italian Civil Code, which is expressly included among the predicate offences pursuant to Legislative Decree 231, are no longer to be considered relevant for the purposes of the administrative liability of entities for crime. In fact, the new case of impeded control of auditing firms is currently governed by art. 29 of Legislative Decree 39/2010 which is not expressly referred to by Legislative Decree 231/2001. However, from a prudential point of view, it is also appropriate to take account of this case.

Article 2626 of the Italian Civil Code Undue return of contributions
This type of offence is envisaged to protect the effectiveness and integrity of the share capital, to guarantee the rights of creditors and third parties, and occurs in the event that the directors return, even in a simulated manner, except in cases of legitimate reduction of the share capital, the contributions to the shareholders or free the latter from the obligation to execute them. The explicit reference of the rule only to directors excludes punishability, pursuant to art. 2626 of the Italian Civil Code, of the shareholders who are beneficiaries or released from the obligation to contribute.

Article 2627 of the Italian Civil Code Illegal distribution of profits or reserves
Such criminal conduct consists in distributing profits or advances on profits not actually achieved or allocated by law to reserves, or distributing reserves, even if not constituted with profits, which cannot be distributed by law. As far as the distribution of profits is concerned, a distinction must be made between so-called fictitious and actual profits; must be considered fictitious and therefore non-distributable, when it affects the share capital, thus translating into an unlawful reimbursement to shareholders of contributions made by them. The other hypothesis is that in which reserves are distributed, even if not constituted with profits, which cannot be distributed by law. The rule also provides that, if profits are returned, or reserves reconstituted, before the deadline for the approval of the financial statements, the crime is extinguished.

Article 2628 of the Italian Civil Code Unlawful transactions on the shares or quotas of the company or of the parent company
The offence is completed with the purchase or subscription by the directors, outside the cases permitted by law, of their own shares or quotas or those of the parent company, which causes damage to the integrity of the share capital or reserves that cannot be distributed by law. The reconstitution of the share capital or reserves before the deadline for the approval of the financial statements, relating to the financial year in which the conduct was carried out, extinguishes the offence.

Article 2629 of the Italian Civil Code Transactions to the detriment of creditors
The transactions referred to in the crime in question consist of reductions in share capital, mergers with other companies or demergers, which, carried out in violation of the rules protecting creditors, cause damage to the creditors themselves. For the crime to exist, it is necessary that such transactions result in prejudice to creditors; The offence is extinguished if the injured creditors are compensated before the trial. This rule is therefore aimed at protecting creditors rather than at the integrity of the share capital.

Article 2629 bis of the Italian Civil Code Failure to disclose conflict of interest
The offence can be configured when a member of the board of directors or management board of a company – with securities listed on regulated markets in Italy or in another State of the European Union or disseminated among the public to a significant extent pursuant to Article 116 of the Consolidated Law on Financial Intermediation, referred to in the Legislative Decree of 24 February 1998, 58, or a subject subject to supervision pursuant to the consolidated text of the laws on banking and credit, referred to in Legislative Decree no. 385 of 10 September 1993, of the aforementioned consolidated text referred to in Legislative Decree no. 58 of 1998, of Law no. 576 of 12 August 1982, or of the legislative decree of 21 April 1993, 124 – causes damage to the same or to third parties, violating the rules on the interests of directors provided for by the Civil Code. The crime exists only if the violation has resulted in damage to the company or to third parties, to be considered of a financial nature. Therefore, the interest protected by the law is the assets of the company or third parties, in harmony with the inspiring principles of the new corporate criminal system. Furthermore, the rule in question, introduced by Law 262/2005, refers to art. 2391 of the Italian Civil Code, first paragraph, which requires the members of the Board of Directors to communicate, both to the other members of the Board of Directors and to the statutory auditors, any interest that the same, on their own behalf or on behalf of third parties, have in a given transaction of the company, specifying its nature, terms, origin and scope.

Article 2632 of the Italian Civil Code Fictitious capital formation

The conduct, attributable to directors and contributing shareholders, is of three types: formation or fictitious increase of the company's capital through the assignment of shares or quotas for a sum lower than their nominal value; reciprocal subscription of shares or quotas; significant overvaluation of contributions of assets in kind, receivables, or of the company's assets in the event of transformation. The provision, to protect creditors, sanctions conduct that affects the integrity of the share capital in the formation and increase phase, preventing the so-called "watering down" phenomena or the establishment of companies without adequate capital.

Article 2633 of the Italian Civil Code Undue distribution of company assets by liquidators
It is a crime proper to liquidators who cause damage to creditors by dividing the company's assets among the shareholders or without having provided for the provision of the sums necessary to satisfy them, before the satisfaction of the creditors themselves. The offence exists only if the conduct described causes damage to creditors, and is extinguished if the damage suffered by the latter is compensated before the trial.

Art. 2635 c.3 c.c. Corruption between private individuals
This type of crime has recently been amended by Legislative Decree No. 38 of 15/03/2017. The crime in question previously was damage, and provided for the conduct as a crime, unless the fact was envisaged as a more serious crime, of directors, general managers, managers in charge of preparing the company's accounting documents, auditors and liquidators who, following the giving or promise of money or other benefits for themselves or for others, they carried out or omitted to carry out acts in violation of obligations inherent in their office or obligations of loyalty, causing harm to the company. The new offence is instead constructed in terms of the crime of mere conduct; Such conduct currently consists of soliciting or receiving, even through an intermediary, for oneself or for others, money or other benefits not due, or accepting the promise, to perform or omit an act in violation of the obligations inherent in the office of director, general manager, manager in charge of preparing corporate accounting documents, auditor, liquidator or in violation of the obligations of loyalty that derive from holding the aforementioned offices. The act committed by those who, in the organisational context of the company or private entity, exercise managerial functions other than those of the aforementioned persons is also punishable. The penalty is reduced if the act is committed by someone who is subject to the direction or supervision of one of the above-mentioned subjects. With Law no. 3/2019, the crime in question has become prosecutable ex officio and for the initiation of criminal proceedings, possibly also pursuant to Legislative Decree 231/2001, a complaint/complaint will therefore be sufficient.

Article 2635 bis of the Italian Civil Code Incitement to corruption between private individuals
The article in question was introduced with Legislative Decree 38/2017 and provides for a case that is divided into two hypotheses: the first consists of the offer or promise of money or other benefits not due to top management (directors, general managers, managers in charge of preparing corporate accounting documents, auditors; liquidators) or having managerial functions in companies or private entities aimed at carrying out or omitting an act in violation of inherent obligations to the office or obligations of loyalty, when the offer or promise is not accepted; the second conduct provides that directors, general managers, managers responsible for preparing corporate accounting documents, statutory auditors and liquidators, of companies or private entities, as well as those who carry out work in them with the exercise of managerial functions, solicit for themselves or for others, even through an intermediary, a promise or donation of money or other benefits, to perform or omit an act in violation of the obligations inherent in their office or the obligations of loyalty, if the solicitation is not accepted. In both cases, the penalties provided for corruption between private individuals are

applied, reduced by one third. Law no. 3 of 9 January 2019 (the so-called Anti-Corruption Law) amended this article by eliminating the complaint as a condition for prosecution.

Article 2636 of the Italian Civil Code Unlawful influence on the shareholders' meeting
The influence in question is the determination, by simulated acts or fraud, of the majority in the assembly in order to achieve, for oneself or for others, an unjust profit. The use of the term "determine" emphasizes that conduct consists of a causal contribution to the formation of the majority, excluding that it can be a mere influence.

Article 2637 of the Italian Civil Code Rigging the market
The case in question provides for the dissemination of false news or the implementation of simulated transactions or other artifices, concretely capable of causing a significant alteration in the price of unlisted financial instruments or for which a request for admission to trading on a regulated market has not been submitted, or to significantly affect the public's trust in the financial stability of banks or banking groups. This is a common crime, in which case the 2002 reform unified a multiplicity of figures in order to achieve greater precision of the crime. The protected legal assets are represented by the general interests of the public economy and the smooth functioning of the market.

Article 2638 of the Italian Civil Code, paragraphs 1 and 2 Obstruction of the exercise of the functions of public supervisory authorities
The offence in question can be committed in two different cases: in the first, directors, general managers, managers in charge of preparing corporate accounting documents, statutory auditors and liquidators of companies or entities and other persons subject by law to the public supervisory authorities, or required to have obligations towards them, are punished. who, in their communications to the aforementioned authorities provided for by law, in order to obstruct the exercise of supervisory functions, expose material facts that do not correspond to the truth, even if they are the subject of assessments, on the economic, equity or financial situation of the persons subject to supervision or, for the same purpose, conceal by other fraudulent means, in whole or in part, facts that they should have communicated, concerning the situation itself. The second hypothesis, on the other hand, occurs regardless of the purpose pursued by the same subjects, but only if the activity of the public supervisory authority is effectively hindered by their conduct, of whatever kind it may be, even omissive. It should also be noted that, with Legislative Decree no. 180 of 2015, paragraph 3-bis was added, according to which "for the purposes of criminal law, the resolution authorities and functions referred to in the decree transposing Directive 2014/59/EU are equated with supervisory authorities and functions".
Pursuant to the transposition decree, i.e. Legislative Decree no. 254 of 30 December 2016, the Authority vested with resolution powers is the Bank of Italy; moreover, resolution powers are those conferred on this Authority in order to be able to initiate, in the event of a bank crisis, a restructuring process, in order to avoid interruption in the services offered and its liquidation.

Art. 54 Legislative Decree 19/2023 Crime of false or omitted declarations for the issuance of the preliminary certificate provided for by the legislation implementing Directive (EU) 2019/2121, of the European Parliament and of the Council, of 27 November 2019

This article punishes anyone who, in order to make it appear that the conditions for the issuance of the preliminary certificate referred to in Article 29 - a deed issued by the notary certifying the fulfilment of the acts and formalities prior to the implementation of a cross-border merger - prepares

documents that are wholly or partly false, alters true documents, makes false declarations or omits relevant information.

- **ARTICLE 25-QUARTER CRIMES WITH THE PURPOSE OF TERRORISM OR SUBVERSION OF THE DEMOCRATIC ORDER**

Art. 25 quarter is an open rule that punishes crimes with the purpose of terrorism or subversion of the democratic order, provided for in the Italian penal code, by special laws, or in violation of the New York International Convention of 9 December 1999. The aforementioned provision does not refer to specific types of crime, thus showing some shortcomings in terms of compulsoriness. The category of crimes referred to refers to a multiplicity of cases, whose criminal conduct can be carried out in different ways.
In particular, the range of cases included in art. 270-bis and 270-sexies of the Criminal Code provides for a series of conducts ranging from the promotion, establishment, organization or financing of associations responsible for perpetrating violent actions with terrorist and/or subversive purposes, to assistance to associates with terrorist purposes, to the enlistment of individuals for the realization of acts of violence and/or sabotage related to terrorist purposes, the training and preparation of such subjects in the use of offensive weapons and tools, up to the generic conduct qualified in a true closing rule as having "terrorist purposes" (Article 270 sexies of the Criminal Code). In any case, beyond the individual cases, art. 25 quarter of Legislative Decree no. 231/2001 makes a real general reference "open" to all current and future hypotheses of terrorist and subversive crimes. In the corporate context, the risk cannot be excluded a priori, especially if we consider that the New York Convention also considers indirect (but still malicious) economic support to national or international terrorist organizations or groups to be criminally relevant. In fact, criminal liability (and therefore any administrative liability for crime of the company), arises not only at the expense of those who carry out the typical conduct described in the individual incriminating case, but also at the expense of those who participate in the crime by providing a material or moral contribution to the realization of the same.

- **ART. 25-QUARTER.1 PRACTICES OF MUTILATION OF THE FEMALE GENITAL ORGANS**

Article 583 bis of the Criminal Code Female genital mutilation practices
Law no. 7 of 2006, in order to ban the practices of mutilation of the female genital organs (the provision specifies that for the purposes of the provision, clitoridectomy, excision and infibulation and any other practice causing the same effects are to be considered as such), introduced into the penal code article 583 bis which punishes, with imprisonment from four to twelve years, "Whoever, in the absence of therapeutic needs, causes a mutilation of the female genital organs."
The rationale of the rule is to sanction entities and structures (such as, for example, health facilities, voluntary organizations, etc.) that are responsible for the implementation, within them, of prohibited mutilative practices. The offence in question, which is difficult to configure in the generic cooperative world, refers essentially to those companies whose typical corporate purpose is the provision of health, welfare, voluntary services, etc. (with particular attention to institutions where surgical activities aimed at gynaecology-obstetrics operations are carried out). These entities could incur the crime referred to in art. 583 bis of the Criminal Code, agreeing, for example, to practice infibulation or other mutilation practices in their own facilities or with their own means and personnel, outside of a specific certified therapeutic need. Art. 24quarter 1 of Legislative Decree 231/2001 intervenes on

the objective criterion of imputation: in fact, the punishability of the entity "in whose structure" the crime is committed is punishable. In other words, a strict interpretation could lead to the conclusion that the criterion of interest/advantage does not prevail: the factual fact of the performance of the mutilation in its structure could be considered sufficient, thus configuring a clear case of objective criminal liability. In any case, it will be necessary to investigate in a timely manner what is the legal-economic relationship between the health facility, in which the offending surgery may take place, and the health care provider responsible for the material execution.

ART. 25-QUINQUIES CRIMES AGAINST THE INDIVIDUAL PERSONALITY

Article 600 of the Criminal Code Reduction or maintenance in slavery or servitude
The crime consists in the exercise over a person of a power of property or continuous subjection, to force him or her to perform work or sexual services or in any case to exploit the same.

Article 600 bis of the Criminal Code Child prostitution
The first paragraph of that article criminalises anyone who recruits or induces a person under the age of eighteen into prostitution, or who facilitates, exploits, manages, organises or controls the prostitution of a person under the age of eighteen, or who makes a profit from it. The second paragraph also provides for the punishment, in a subsidiary way, for anyone who performs sexual acts with a minor between the ages of fourteen and eighteen, in exchange for a consideration of money or other benefits, even if only promised.

Article 600 ter of the Criminal Code Child pornography
This provision sanctions heterogeneous conduct such as the realization of pornographic exhibitions or shows or the production of pornographic material using minors under the age of eighteen, or the recruitment or inducement of minors to participate in pornographic exhibitions or shows, or in any case profiting from the aforementioned shows, or trading the aforementioned pornographic material. Apart from these cases, the same provision also sanctions anyone who by any means, including electronically, distributes, discloses, disseminates or advertises the pornographic material referred to above, or distributes or disseminates news or information aimed at the solicitation or sexual exploitation of minors, as well as, de residual, anyone who offers or transfers to others, even free of charge, the pornographic material in question. Finally, there is also a sanction for those who attend performances or shows in which minors are involved.

Article 600 quarter of the Criminal Code Possession of pornography
It is the conduct of those who dispose of or procure child pornography.

Article 600 quarter 1 of the Criminal Code Virtual pornography
The offence establishes the punishability of conduct relating to the production, trade, dissemination, transfer and purchase of pornographic material made with the use of minors under the age of eighteen, even if the conduct in question concerns virtual images. The legislator, in the last paragraph, specifies the notion of virtual images: they must be created with graphic processing techniques not associated in whole or in part with real situations, whose quality of representation makes non-real situations appear as real.

Article 600 quinquies of the Criminal Code Tourism initiatives aimed at exploiting child prostitution

The crime punishes the conduct of those who organize or promote trips aimed at the use of child prostitution.

Article 601 of the Criminal Code Human trafficking
This provision punishes those who "recruit, introduce into the territory of the State, transfer even outside it, transport, transfer authority over the person, host one or more persons who are in the conditions referred to in art. 600, or carries out the same conduct on one or more persons, through deception, violence, threat, abuse of authority or taking advantage of a situation of vulnerability, physical, psychological or necessity inferiority, or through the promise or giving of money or other advantages to the person who has authority over him, in order to induce or force them to perform work, or begging or in any case the performance of illegal activities that involve their exploitation or to submit to the removal of organs" or carries out such conduct against minors. Legislative Decree no. 24/2014, "Implementation of Directive 2011/36/EU, on the prevention of trafficking in human beings and the protection of victims", with which Directive 2011/36/EU was transposed, made significant changes to the article in question, which was entirely rewritten; in fact, the way in which human trafficking takes place has been specified, the aggravating circumstance with a special effect has been eliminated, by means of which, the previous wording provided for the application in the event that the crimes (pursuant to Article 601 of the Criminal Code) have minors under the age of eighteen as victims and aimed at the exploitation of prostitution and the removal of organs. For the offence referred to in Article 601 of the Criminal Code, the penalty of imprisonment is from 8 to 20 years, even if the offended person is a minor; in fact, the last paragraph of the aforementioned article does not provide for any increase in punishment where the victim is an under-eighteen-year-old, also adding that this penalty also applies outside the procedures referred to in the first paragraph. From the new Article 601 of the Criminal Code, it is clear that the Legislator wanted to comply with the provisions of paragraph 1, Article 2 of Directive 36/2011/EU, not only by expanding the concept of the crime of trafficking, but also by specifying the different ways in which it is carried out.
Furthermore, in order to further curb the phenomenon of human trafficking, Legislative Decree no. 21 of 1 March 2018 provided (with art. 2, paragraph 1, letter f)) for the introduction of two new paragraphs after the second in art. 601, which punish the master or officer of the ship carrying the subjects indicated by the law with a specific aggravating circumstance.

Article 602 of the Criminal Code Purchase and alienation of slaves
Purchase or alienation of persons in a state of slavery pursuant to Article 600 of the Criminal Code

Article 603-bis of the Criminal Code Illegal intermediation and labour exploitation
Law no. 199/2016, containing "Provisions on combating the phenomena of undeclared work, exploitation of labour in agriculture and wage realignment in the agricultural sector", which came into force on 4 November 2016, amended the crime of "Illegal intermediation and exploitation of labour" provided for by art. 603 bis of the Criminal Code and included in the list of crimes provided for by Legislative Decree 231/2001. Compared to the previous text, aimed at punishing the conduct of those who carry out "an organized activity of intermediation, recruiting labor or organizing their work activity characterized by exploitation, through violence, threat or intimidation, taking advantage of the state of need or necessity of workers", the new case is certainly expanded. The case in question, in fact, is currently unrelated to the requirement of carrying out "an organized intermediation activity", affecting not only those who "recruit labor for the purpose of allocating it to work for third parties in conditions of exploitation", but also those who "use, hire or employ labor, including through the intermediation activity referred to in number 1), subjecting workers to conditions of exploitation and taking advantage of their state of need". It must also be added that, compared to the previous

case, the use of violence, threat or intimidation are now aggravating circumstances and no longer constituent elements of the crime. Even the "exploitation indices" referred to in art. 603-bis of the Criminal Code, take on a broader meaning, being today some of them parameterized, no longer to systematic conduct of underpay and violation of the rules on hours, rest, leave and holidays, but to such conduct even if only "repeated". Of particular importance is also the index of exploitation relating to the "existence of violations of the rules on safety and hygiene in the workplace" which today, unlike before, is also relevant where it is not such as to expose the worker to danger to health, safety or personal safety.

Article 609-undecies of the Criminal Code Solicitation of minors
Anyone who, for the purpose of committing the offences referred to in Articles 600, 600-bis, 600-ter and 600-quarter, even if they relate to the pornographic material referred to in Article 600-quarter.1, 600-quinquies, 609-bis, 609-quarter, 609-quinquies and 609-octies, is liable for this crime, introduced by Law no. 172/2012 (ratification of the Lanzarote Convention for the Protection of Minors), lures a minor under the age of sixteen, unless the fact constitutes a more serious crime. In order to avoid interpretative doubts, the 2012 legislator wanted to expressly typify the conduct of solicitation, meaning any act aimed at stealing the trust of the minor through artifices, flattery or threats also carried out through the use of the internet or other networks or means of communication.

- **ART. 25-SEXIES MARKET ABUSE**

Art. 184 Legislative Decree 58/1998. Crime of Insider Dealing
Criminal conduct can be carried out by two types of subjects: persons in possession of inside information by virtue of their capacity as a member of the issuer's administrative, management or control bodies, their shareholding in the issuer's capital, or the exercise of a work, profession or function, including a public one, or an office; and persons in any case in possession of inside information due to the preparation or execution of criminal activities. The reference conduct can be carried out in several ways: purchase, sale, or completion of other transactions on financial instruments, or inducing others to carry out such actions; disclosure of inside information to others.

Art. 185 of Legislative Decree 58/1998. Offence of Market Manipulation
The crime is perfected with the dissemination of false news or with the performance of simulated transactions or other artifices suitable for causing a significant alteration in the price of financial instruments.

Art. 187bis of Legislative Decree 58/1998. Administrative offence of Insider dealing
Art. 187-bis TUF punishes with an administrative sanction both the conduct that can be carried out by primary insiders, already punished as a crime by art. 184 of the TUF, and those carried out by secondary insiders, and therefore those persons who have purchased, sold or carried out transactions on listed financial instruments on the basis of inside information that they have obtained from an "intraneo", where the corresponding criminal offence attributes relevance exclusively to the conduct carried out by primary insiders. The only difference is that the conduct carried out by secondary insiders is punished both by way of intent and if committed with negligence.

Art. 187ter Legislative Decree 58/1998. Administrative offence of Market manipulation
This provision extends the conduct relevant for the purposes of the applicability of administrative sanctions with respect to those criminally sanctioned by the corresponding criminal offence referred

to in Article 185 above, and punishes anyone who, through any means of information, disseminates false or misleading information, rumours or news that provides or "is likely to provide false or misleading information about financial instruments", Therefore, regardless of the effects and without therefore requiring, for the purposes of sanctionability, that character of concrete suitability of false news to alter prices provided for by art. 185.

Article 187-quinquies of the TUF: Other cases of market abuse

- **ART. 25-SEPTIES MANSLAUGHTER OR SERIOUS OR VERY SERIOUS INJURIES COMMITTED IN VIOLATION OF THE RULES ON THE PROTECTION OF HEALTH AND SAFETY AT WORK**

Article 589 of the Criminal Code Manslaughter committed in violation of accident prevention regulations and on the protection of hygiene and health at work
Art. 25-septies of Legislative Decree 231/2001 outlines two types of offence of the entity in relation to the crime of manslaughter referred to in art. 589 of the Criminal Code, sanctioned with different penalties within the limits of the law and proportionate to the seriousness of the act, each of which relates to the commission of two distinct criminal hypotheses: the first consists in the crime referred to in art. 589 of the Criminal Code committed in violation of art. 55, paragraph 2, of Legislative Decree no. 81/2008; the second concerns the same crime committed with violation of the rules on the protection of health and safety at work. For these types of offences, both manslaughter and serious and very serious injuries dealt with below, committed in violation of the rules on the protection of health and safety at work, the criterion of "advantage", referred to in art. 5 of Legislative Decree 231/2001, for the entity is represented by the savings of the expenses necessary for the implementation of the precautionary rules provided for by law for the prevention of accidents in the workplace.

Article 590 of the Criminal Code Serious or very serious culpable injuries committed with violation of accident prevention regulations and on the protection of hygiene and health at work
The article in question punishes those who, with violation of the rules for the prevention of accidents at work, cause serious injuries to others – illness that endangers life or in any case longer than 40 days – or very serious injuries – incurable illness, loss of a sense, limb, organ, deformation or scarring of the face.

- **ART. 25-OCTIES RECEIVING STOLEN GOODS, LAUNDERING AND USE OF MONEY, GOODS OR OTHER UTILITIES OF ILLEGAL ORIGIN, AS WELL AS SELF-LAUNDERING**

Legislative Decree No. 195 of 8 November 2021 transposed Directive (EU) 2018/1673 on combating money laundering by criminal law into our legal system. Various changes have thus been made to the cases lato sensu laundering (i.e. the crimes of receiving stolen goods, money laundering, use of money, goods or utilities of illegal origin and self-laundering provided for respectively in Articles 648, 648-bis, 648-ter and 648-ter.1 of the Criminal Code), extending the range of predicate crimes also to contraventions (provided that they are punished with a penalty of imprisonment exceeding a maximum of one year or a minimum of six months) and including culpable crimes as a prerequisite

also of the crimes of money laundering and self-laundering. The expansion of the scope of criminal relevance of the crimes of receiving stolen goods, money laundering, use of money, goods or utilities of illegal origin, and self-laundering corresponds to a parallel expansion of the area of relevance of the respective administrative offences dependent on the crime referred to in art. 25-octies of Decree 231/2001 and, consequently, of the perimeter of punitive risk that the entities are called upon to govern.

Article 648 of the Criminal Code Receiving
The crime punishes anyone who, in order to procure a profit for himself or others, buys, receives or conceals money or things deriving from a crime or interferes to have them purchased, received or concealed.

Article 648 bis of the Criminal Code Recycling
Money laundering is the activity of those who replace or transfer money, goods or other utilities deriving from a non-culpable crime, or in any case carry out other operations aimed at hindering the identification of their origin. The second paragraph of the article in question provides for the specific aggravating circumstance if the act is committed in the exercise of a professional activity, i.e. an activity carried out in a stable manner and for which economic compensation is provided.

Article 648 ter of the Criminal Code Use of illicit money, goods or utilities
It is a residual hypothesis compared to the previous ones and is substantiated in the use in economic or financial activities of money, goods or other benefits deriving from crime.

Article 648 ter.1 of the Criminal Code Self-laundering
Law no. 186 of 15 December 2014 led to the insertion of art. 648 ter.1 in the Criminal Code, immediately after the crimes of money laundering and use of money, goods or utilities of illegal origin. The provision provides for the punishability of those who have committed or contributed to committing a non-culpable crime and subsequently have used, replaced, transferred, in economic, financial, entrepreneurial or speculative activities, the proceeds (money, goods or other utilities) of the commission of the aforementioned crime in such a way as to concretely hinder the identification of their criminal origin. However, conduct for which such goods or other utilities are intended for mere use or personal enjoyment is not punishable. The occurrence of these conducts in the exercise of a banking, financial or any other professional activity is considered an aggravating circumstance. The penalty is instead reduced by up to half for those who have effectively worked to prevent the conduct from being brought to further consequences or to ensure evidence of the crime and the identification of assets, money and utilities deriving from the crime.

- **ART. 25-OCTIES 1 OFFENCES RELATING TO NON-CASH PAYMENT INSTRUMENTS AND FRAUDULENT TRANSFER OF VALUABLES**

On 29.11.2021, Legislative Decree no. 184 of 8 November 2021 was published in the Official Gazette on "Implementation of Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on the fight against fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA".
This amendment introduces into Legislative Decree 231/2001 art. 25-octies.1 by extending the administrative liability of entities to the following crimes:

Article 493-ter of the Criminal Code Misuse and falsification of non-cash payment instruments

This incriminating offence punishes the conduct of undue use, falsification and alteration not only of "credit or payment cards, or any other similar document that enables the withdrawal of cash or the purchase of goods or the provision of services", but also of "any other payment instrument other than cash". The object of the conduct, therefore, which until now was represented by "material" payment instruments, extends as a result of the amendments made to this article by Legislative Decree 184/2021 to all payment instruments other than cash, which may also include intangible instruments.

Article 493-quarter of the Criminal Code Possession and dissemination of equipment, devices or computer programs aimed at committing offences involving non-cash payment instruments
The crime provided for by art. 493-quarter was introduced into the Criminal Code by Legislative Decree 184/2021. This new offence punishes with imprisonment of up to two years and a fine of up to 1000 euros, unless the fact constitutes a more serious offence, anyone who produces, imports, exports, sells, transports, distributes, makes available or in any way procures for himself or for himself or other equipment, devices or computer programs which, due to technical-construction or design characteristics, are constructed primarily to commit offences involving non-cash payment instruments, or are specifically adapted for the same purpose. This is a common crime, punishable by way of specific intent, as the aforementioned conducts take on criminal relevance when they are carried out with the specific purpose of making use of the indicated instruments or allowing others to use them in the commission of crimes concerning payment instruments other than cash.

Article 512-bis of the Criminal Code Fraudulent transfer of valuables
With the insertion of this provision, the legislator intended to criminalize the fraudulent conduct of those who fictitiously transfer money or other assets to other persons in order to eliminate the application of confiscation (art. 240) and other means of asset prevention, or in order to facilitate the commission of the crimes of receiving stolen goods, money laundering and self-laundering. This is clearly a closing rule, accompanied moreover by an express subsidiarity clause ("unless the fact constitutes a more serious crime"), intended to cover the conduct of those who do not actually transfer the ownership of the assets or money, but do so fictitiously, thus continuing to have the material availability of the same and therefore continuing to enjoy them. Given that the fictitious holder is not punished by the rule, it can be inferred that it constitutes an improper multi-subjective case, given that the collaboration of a third party is required for the crime to be constituted, who, however, by legislative choice, is not punished. The jurisprudence has tried to fill the gap, providing for the punishability of the false holder pursuant to Article 110 of the Criminal Code, but not finding correspondence in the doctrine, given that the intention of the legislator was to specifically omit the provision. Of course, the false holder could still be punished under Article 648 bis, but with a much more severe penalty than that of the false settlor, with evident disparity in treatment for conduct placed on a unitary level. Decree Law No. 19 of 2 March 2024 amended this article, inserting an additional paragraph, in particular the conduct of those who fictitiously attribute ownership of companies, company shares or shares or corporate offices to others is sanctioned, if the entrepreneur or company participates in procedures for the award or execution of contracts or concessions, in order to circumvent the provisions on anti-mafia documentation.

Article 640-ter of the Criminal Code Computer fraud (in the case aggravated by the implementation of a transfer of money, monetary value or virtual currency)
The legislator with the aforementioned Legislative Decree 184/2021 intervenes on the crime of computer fraud referred to in art. 640-ter of the Criminal Code, introducing a new aggravating

circumstance in paragraph 2 in the event that the alteration of the computer system results in a transfer of money, monetary value or virtual currency.
The crime of computer fraud is already provided for as a prerequisite for the administrative offense referred to in art. 24, however, in the case of art. 24, the only case of computer fraud committed to the detriment of the State or other public body becomes relevant for the Entity. With Legislative Decree 184/2021, however, pursuant to art. 25-octies.1, the Entity may also be held liable for the commission of computer fraud to the detriment of private individuals, but on condition that the aggravating circumstance of an unlawful act that has produced a transfer of money, monetary value or virtual currency can be envisaged.

- **ART. 25-NOVIES OFFENCES RELATING TO COPYRIGHT INFRINGEMENT**

Article 171, first paragraph, letter a-bis) of Law no. 633 of 22 April 1941: Making available to the public, in a system of telematic networks, through connections of any kind, of a protected intellectual work, or part of it
The punished conduct consists in making protected intellectual works or part of them available to the public, by means of electronic transmission with any connection. This rule protects the financial interest of the author of the work, who could see his expectations of profit frustrated in the event of free circulation of his work on the net.

Article 171, third paragraph, of Law no. 633 of 22 April 1941: Offences referred to in the previous point committed on the works of others not intended for publication if their honour or reputation is offended
The punished conduct consists in making available to the public, by placing on the electronic network with any connection, the works of others not intended for advertising, or with usurpation of the authorship of the work, or deformation, mutilation or other modification of the work itself, provided that such conduct offends the honor and reputation of the author.

Article 171-bis, first paragraph, of Law no. 633 of 22 April 1941: Abusive duplication, for profit, of computer programs; import, distribution, sale or possession for commercial or entrepreneurial purposes or leasing of programs contained in media not marked by the SIAE; provision of means to remove or circumvent the protective devices of computer programs.

Article 171-bis, second paragraph, of Law no. 633 of 22 April 1941: Reproduction, transfer to another medium, distribution, communication, presentation or demonstration in public of the contents of a database; extraction or reuse of the database; distribution, sale or leasing of databases.
The law punishes two types of conduct: a) the abusive duplication, for profit, of computer programs, or the import, distribution, sale, possession for commercial or entrepreneurial purposes or the leasing of programs contained in media not marked by the SIAE; b) the reproduction, on non-SIAE-marked media, the transfer to another medium, the distribution, communication, presentation or demonstration in public of the contents of a database in violation of the provisions of Articles 64-quinquies and 64-sexies; or the execution, extraction or re-use of the database in violation of the provisions of Articles 102-bis and 102-ter, or the distribution, sale or leasing of a database.

Article 171-ter of Law no. 633 of 22 April 1941: Unlawful duplication, reproduction, transmission or dissemination in public by any process, in whole or in part, of intellectual works intended for the television or cinematographic circuit, the sale or rental of records, tapes or similar supports or

any other support containing phonograms or videograms of musical works, cinematographic or similar audiovisual or sequences of moving images; literary, dramatic, scientific or didactic, musical or dramatic musical or multimedia works, even if included in collective or composite works or databases; reproduction, duplication, transmission or unauthorized dissemination, sale or trade, transfer for any reason or abusive importation of more than fifty copies or copies of works protected by copyright and related rights; entry into a system of telematic networks, through connections of any kind, of an intellectual work protected by copyright, or part of it. The offence exists if the conduct described is carried out for non-personal use.

Art. 171-septies of Law no. 633 of 22 April 1941: Failure to communicate to the SIAE the identification data of the media not subject to the marking or false declaration
The law punishes: a) producers or importers of media not subject to the mark referred to in Article 181-bis, who do not communicate to the SIAE within thirty days from the date of placing on the market on the national territory or importing the data necessary for the unequivocal identification of the media themselves; b) anyone who falsely declares that the obligations referred to in Article 181-bis, paragraph 2 have been fulfilled.

Article 171-octies of Law no. 633 of 22 April 1941: Fraudulent production, sale, import, promotion, installation, modification, use for public and private use of equipment or parts of equipment suitable for the decoding of conditional access audiovisual transmissions made over the air, by satellite, by cable, in both analogue and digital form

- **ART. 25-DECIES INDUCEMENT NOT TO MAKE DECLARATIONS OR TO MAKE FALSE DECLARATIONS TO THE JUDICIAL AUTHORITY**

Article 377-bis of the Criminal Code Inducement not to make statements or to make false statements to the judicial authority
The article in question sanctions the conduct carried out by anyone who, with violence, threat, or offer of money or other benefits, induces the person called upon to make statements before the judicial authority that can be used in criminal proceedings not to make statements or to make false statements, when the latter has the right not to answer, unless the fact constitutes a more serious crime. The rationale of the rule lies in protecting the public interest in the proper conduct of judicial activity, avoiding interference aimed at disturbing the search for procedural truth.

- **ART. 25-UNDECIES ENVIRONMENTAL CRIMES**

- OFFENCES PROVIDED FOR IN THE CRIMINAL CODE:

Article 452-bis of the Criminal Code Environmental pollution (Article introduced as a predicate crime by Law no. 68/2015 "Eco-crimes Law")
The law provides for the punishability of anyone who unlawfully causes significant and measurable impairment (harmful conduct characterized by the production of at least potentially irreversible damage) or deterioration (recalls remediable conduct that in any case causes significant injuries):
- of water or air, or of large or significant portions of the soil or subsoil;
- of an ecosystem, of biodiversity, including agricultural, of flora and fauna.

The rule also provides for an aggravated configuration with common effectiveness, if "the pollution is produced in a protected natural area or subject to landscape, environmental, historical, artistic, architectural or archaeological constraints, or to the detriment of protected animal or plant species.

Article 452-quter of the Criminal Code Environmental disaster (Article introduced as a predicate crime by Law no. 68/2015 "Eco-crimes law")
Except for the cases provided for by art. 434 of the penal code (which sanctions the collapse of buildings or other malicious disasters) anyone who illegally causes an environmental disaster is criminally liable. The standard provides the following precise definitions of the concept of criminally relevant environmental disaster:
- irreversible alteration of the balance of an ecosystem;
- alteration of the balance of an ecosystem whose elimination is particularly costly and achievable only with exceptional measures;
- offence to public safety due to the relevance of the fact, the extent of the impairment or its harmful effects or the number of persons offended or exposed to danger.

Here too, there is an aggravating circumstance with common effectiveness in the event that the "disaster is produced in a protected natural area or subject to landscape, environmental, historical, artistic, architectural or archaeological constraints, or to the detriment of protected animal or plant species".

Article 452-quinquies of the Criminal Code Culpable crimes against the environment (Article introduced as a predicate crime by Law no. 68/2015 "Eco-crimes Law")
"If any of the acts referred to in articles 452-bis and 452-quarter is committed by negligence, the penalties provided for in the same articles are reduced from one third to two thirds. If the commission of the acts referred to in the previous paragraph results in the danger of environmental pollution or environmental disaster, the penalties are further reduced by one third."

Article 452-sexies of the Criminal Code Trafficking and abandonment of highly radioactive material *(Article introduced as a predicate offence by Law no. 68/2015 "Eco-crimes Law")*
Unless the fact constitutes a more serious crime, "anyone who illegally transfers, purchases, receives, transports, imports, exports, procures to others, holds, transfers, abandons or illegitimately disposes of highly radioactive material" is criminally liable. An increase in the penalty is envisaged if such conduct results in the danger of compromising or deteriorating water or air, or large or significant portions of the soil or subsoil or an ecosystem, biodiversity, including agriculture, flora or fauna. Furthermore, conduct from which a danger to the life or safety of people derives is considered aggravated.

Article 452-octies of the Criminal Code Aggravating circumstances (Article introduced as a predicate offence by Law no. 68/2015 "Eco-crimes Law")
The provision in question provides for an increase in penalties if:
- a criminal conspiracy pursuant to Article 416 of the Criminal Code is directed, exclusively or concurrently, for the purpose of committing any of the environmental crimes referred to above;
- a mafia-type association pursuant to Article 416-bis of the Criminal Code is aimed at committing any of the new environmental crimes or at the acquisition of the management or in any case control of economic activities, concessions, authorizations, contracts or public services in environmental matters;

- the association pursuant to Article 416 or 416-bis of the Criminal Code includes public officials or persons in charge of a public service who exercise functions or perform services in environmental matters.

Article 727-bis of the Criminal Code Killing, destruction, capture, removal, possession of specimens of protected wild animal or plant species.
Killing, capturing or keeping specimens belonging to a protected wild animal species (unless the quantities are negligible and there is a negligible impact on the conservation status of the species).

Article 733-bis of the Criminal Code Destruction or deterioration of habitats within a protected site
Destruction, removal or possession of specimens belonging to a protected wild plant species (unless the quantities are negligible and there is a negligible impact on the conservation status of the species).

- OFFENCES PROVIDED FOR BY LEGISLATIVE DECREE NO. 152 OF 3 APRIL 2006 - ENVIRONMENTAL REGULATIONS

WATER
Article 137 - Discharges of industrial waste water containing dangerous substances; discharges into the ground, subsoil and groundwater; discharge into sea water by ships or aircraft.
- *Art. 137 c. 2*: Discharge of industrial waste water containing the hazardous substances referred to in Tables 5 and 3/A of Annex 5 to Part III of Legislative Decree 152/2006, without authorization or with authorization suspended or revoked.
- *Article 137, paragraph 3*: Discharge of industrial waste water containing the hazardous substances referred to in Tables 5 and 3/A of Annex 5 to Part III of Legislative Decree 152/2006, without complying with the requirements of the authorisation or other requirements of the competent authority.
- *Article 137, paragraph 5, first sentence*: Discharge of industrial waste water with exceeding of the limit values set out in Table 3 or, in the case of discharge into the ground, in Table 4 of Annex 5 to Part III of Legislative Decree 152/2006, in relation to the substances indicated in Table 5 of Annex 5 to the same decree or the more restrictive limits set by the Regions or Autonomous Provinces or by the competent authority.
- *Art. 137, c.5, second sentence*: discharge of industrial waste water with exceeding of the limit values set for the substances contained in Table 3/A of Annex 5 to Part III of Legislative Decree no. 152/2006.
- *Article 137, paragraph 11*: Violation of the prohibition of discharge into the ground, subsoil and groundwater.
- *Article 137, paragraph 13*: Discharge into sea waters by ships or aircraft of substances or materials for which an absolute ban on spillage is imposed by virtue of the international conventions in force on the subject and ratified by Italy.

WASTE
Legislative Decree 152/06, art. 256 - Unauthorized waste management activities.
- *Art. 256, c.1, lett. a)*: non-hazardous waste management activities (collection, transport, disposal, trade, brokerage) in the absence of authorization, registration or communication.
- *Article 256, paragraph 1, letter b)*: hazardous waste management activities (collection, transport, disposal, trade, brokerage) in the absence of authorization, registration or communication.
- *Article 256 c.3*, first sentence: construction or management of a waste landfill without authorization.

- *Article 256, paragraph 3*, second sentence: construction or management of a landfill for waste, even if it is partly hazardous, in the absence of authorisation.
- *Article 256, paragraph 4*: failure to comply with the requirements contained or referred to in the authorisations or lack of the requirements and conditions required for registrations or communications.
- *Article 256, paragraph 5*: waste mixing activities in the absence of authorisation.
- *Article 256, paragraph 6*, first sentence: carrying out a temporary storage at the place of production of hazardous medical waste in violation of the provisions of Presidential Decree no. 254 of 15 July 2003.

SITE REMEDIATION
- Article 257, paragraph 1: Failure to remediate in the event of pollution of the soil, subsoil, surface water or groundwater, exceeding the risk threshold concentrations (CSR); failure to notify the competent authorities of the occurrence of an event potentially capable of contaminating a site.
- Article 257, paragraph 2: failure to remediate in the event of pollution of the soil, subsoil, surface water or groundwater caused by hazardous substances, exceeding the risk threshold concentrations (CSR).

BREACH OF REPORTING OBLIGATIONS, KEEPING OF MANDATORY REGISTERS AND FORMS
- Article 258, paragraph 4, second sentence: preparation of a certificate of analysis of waste with false indications on the nature, composition and chemical-physical characteristics of the waste or use of a false certificate during the transport of waste.

ILLEGAL WASTE TRAFFICKING
- *Article 259, paragraph 1:* "Any person who carries out a shipment of waste constituting illegal traffic pursuant to Article 26 of Regulation (EEC) No. 259 of 1 February 1993, or carries out a shipment of waste listed in Annex II of the aforementioned Regulation in violation of Article 1, paragraph 3, letters a), b), c) and d) 87, of the regulation itself is punished with a fine from one thousand five hundred and fifty euros to twenty-six thousand euros and with imprisonment for up to two years. The penalty is increased in the case of shipment of hazardous waste."
- *art. 452-quaterdecies c.p.* [introduced by Legislative Decree no. 21/2018]: Organized activities for the illegal trafficking of waste

ORGANISED ACTIVITIES FOR THE ILLEGAL TRAFFICKING OF WASTE
- *Article 260, paragraph 1, 2*: "Whoever, in order to obtain an unfair profit, with several operations and through the setting up of means and continuous organized activities, transfers, receives, transports, exports, imports, or otherwise illegally manages large quantities of waste is punished with imprisonment from one to six years. If it is highly radioactive waste, the penalty of imprisonment from three to eight years is applied";

COMPUTER SYSTEM FOR THE CONTROL OF WASTE TRACEABILITY
- *Art*. 260-bis c. 6 and 7 second and third sentences, and 8 first and second sentences: "The penalty referred to in Article 483 of the Criminal Code shall apply to the person who, in the preparation of a certificate of analysis of waste, used as part of the waste traceability control system, provides false information on the nature, composition and chemical-physical characteristics of the waste and to those who insert a false certificate in the data to be provided for traceability purposes of waste. (…)

The penalty referred to in art. 483 of the Criminal Code in the case of transport of hazardous waste. The latter penalty also applies to the person who, during transport, makes use of a certificate of analysis of waste containing false information on the nature, composition and chemical-physical characteristics of the waste transported. The transporter who accompanies the transport of waste with a paper copy of the SISTRI - AREA Fraudulently altered handling form is punished with the penalty provided for by the combined provisions of articles 477 and 482 of the Criminal Code. The penalty is increased by up to a third in the case of hazardous waste."
The criminal conduct concerned the fraudulent management of the Waste Traceability Control System introduced into our legal system in 2009 (so-called Sistri, which provides for a series of procedures aimed at ensuring the digital tracking of waste, from the moment of its production to the moment of its final disposal or recovery).
There are 3 alternative criminal conducts:
a) falsification of the certificate of analysis of the waste regarding the nature, composition, and chemical-physical characteristics of the waste transported; its inclusion in Sistri;
b) transport of waste with a certificate of analysis of waste containing false information on the nature, composition and chemical-physical characteristics of the transported waste;
c) waste transport with a paper copy of the fraudulently altered Sistri form.
It should be noted, however, that the sanctions referred to in Articles 260-bis and 260-ter of Legislative Decree 152 of 2006 (i.e. the sanctions relating to the SISTRI) are no longer applicable as of 1 January 2019. However, administrative liability remains for offences committed before that date, since the *principle of the tendential non-retroactivity of the rule (even if more favourable)* applies to the system of administrative sanctions.
With the Law converting the simplification decree - i.e. with Law no. 12 of 11 February 2019 - new measures have been adopted on the traceability of environmental data concerning the production and transport of waste.
the SISTRI (Waste Traceability Control System) has been officially abolished with effect from 1 January 2019, with the consequence that the related contributions are not due for any reason.
To replace the abolished SISTRI, the aforementioned law introduced a new electronic traceability system called "*National Electronic Register for the Traceability of Waste*" whose operating methods and procedures and terms useful for the registration of obliged or adhering parties on a voluntary basis will be established by a subsequent specific interministerial decree.
According to the new provisions, the subjects obliged to adhere to the new electronic traceability system are:
1. the bodies and companies that carry out waste treatment;
2. producers of hazardous waste;
3. entities and companies that collect or transport hazardous waste on a professional basis;
4. entities and companies operating as traders and intermediaries of hazardous waste;
5. the Consortia set up for the recovery and recycling of particular types of waste;
6. the subjects referred to in Article 189, paragraph 3, of the TUA, with reference to non-hazardous *waste*, namely:

- in addition to all the subjects mentioned above;
- producers of non-hazardous waste who carry out artisanal, industrial and water treatment activities with more than ten employees.

Pending the full operation of the new electronic register, the traceability of waste will continue to be guaranteed by operators by complying with the previous obligations, i.e. the keeping and use of traditional loading and unloading registers, as well as forms for the transport of waste.

PENALTIES IN THE FIELD OF AIR PROTECTION

Article 279, paragraph 5 – Emissions into the atmosphere: Emissions into the atmosphere in violation of the emission limit values, with simultaneous exceeding of the air quality limit values provided for by current legislation.

- OFFENCES PROVIDED FOR BY LAW NO. 150 OF 7 FEBRUARY 1992 - INTERNATIONAL TRADE IN ENDANGERED ANIMAL AND PLANT SPECIES

Art. 1, c.1:

- import, export or re-export of specimens belonging to the species listed in Annex A of Reg. (EC) No. 338/97 without the required certificate or licence or with an invalid certificate or licence;
- failure to comply with the requirements aimed at the safety of the specimens, specified in the license or certificate; use of the aforementioned specimens in a manner that does not comply with the requirements contained in the authorization or certification measures issued together with the license or certificate;
- transport of the aforementioned specimens without the prescribed licence or certificate;
- trade in plants (among those listed in Annex A of Reg. (EC) no. 338/97) artificially reproduced in contrast with the requirements established by art. 7, paragraph 1, letter b) of Reg. (EC) No. 338/97 and Reg. (EC) No. 939/97;
- holding, use for profit, buying, selling, displaying or holding for sale or for commercial purposes, offering to sell or transfer copies without the required documentation.

Art. 1, c.2

Recidivist behavior with respect to the conduct specifically indicated, in art. 1 c.1.

Art. 2, c.1.

- Import, export or re-export of specimens belonging to the species listed in Annexes B and C of Reg. (EC) No. 338/97 without the required certificate or licence or with an invalid certificate or licence;
- Failure to comply with the requirements aimed at the safety of the specimens referred to above and specified in the license or certificate;
- Use of the aforementioned specimens in a manner that does not comply with the requirements contained in the authorization or certification measures issued together with the license or certificate;
- Transport of the aforementioned specimens without the prescribed licence or certificate;
- trade in plants (among those listed in Annexes B and C of Reg. (EC) no. 338/97) artificially reproduced in contrast with the requirements established by art. 7, paragraph 1, letter b) of Reg. (EC) No. 338/97 and Reg. (EC) No. 939/97; - possession, use for profit, purchase, sale, exhibition or possession for sale or for commercial purposes, offer for sale or transfer of specimens without the required documentation, limited to the species listed in Annex B of Reg. (EC) no. 338/97.

Art. 2, c. 2.

Recidivist behavior with respect to the conduct specifically indicated, in art. 2 c.1.

Art. 6, c. 4.

Possession of live specimens of mammals and reptiles of wild species and of live specimens of mammals and reptiles from captive reproductions that constitute a danger to public health and safety.

Art. 3 bis, c.1.

- Falsification or alteration of certificates or licenses;
- Misrepresentation or communication of information in order to acquire a certificate or license;
- Use of a false, falsified or invalid certificate or license or that has been altered without authorization;
- omitted or false notification to the importer.

- OFFENCES PROVIDED FOR BY LAW NO. 549 OF 28 DECEMBER 1993 - MEASURES TO PROTECT STRATOSPHERIC OZONE AND THE ENVIRONMENT
Art. 3, c.6. Authorisation of plants that involve the use of the substances referred to in Table A annexed to Law 549/1993, without prejudice to the provisions of EC REG. no. 3093/94.

OFFENCES PROVIDED FOR BY LEGISLATIVE DECREE NO. 202 OF 6 NOVEMBER 2007 - IMPLEMENTATION OF DIRECTIVE 2005/35/EC ON POLLUTION FROM SHIPS
Article 8, paragraphs 1 and 2 - Intentional pollution of the seas.
Malicious dumping into the sea of the pollutants referred to in Annexes I and II to the Marpol 73/78 Convention; aggravating in the event of permanent damage or, in any case, of particular seriousness to the quality of the water, to animal or plant species or to parts of these.
Art. 9, c.1 and 2 - Culpable pollution of the seas.
Culpable spillage into the sea of the pollutants referred to in Annexes I and II to the Marpol 73/78 Convention; aggravating in the event of permanent damage or, in any case, of particular seriousness to the quality of the water, to animal or plant species or to parts of these.

- **ART. 25-DUODECIES EMPLOYMENT OF ILLEGALLY STAYING THIRD-COUNTRY NATIONALS**

Art. 22, comma 12-bis del D.lgs. 286/1998
Paragraph 12 of art. Article 22 of Legislative Decree 286/1998 establishes a penalty for the employer who employs foreign workers without a residence permit, or whose permit has expired and whose renewal, revocation or cancellation has not been requested within the terms of the law.
Art. 12-bis expressly referred to in art. 25-duodecies of Legislative Decree 231/2001, establishes that the penalties provided for in paragraph 12 are increased from one third to one-half:
a) if the number of workers employed is greater than three;
b) if the workers employed are minors of non-working age;
c) if the workers employed are subject to the other particularly exploitative working conditions referred to in the third paragraph of Article 603-bis of the Criminal Code.
The liability of the Entity can therefore be configured only when the crime in question is aggravated by the number of employees or by the minor age of the same or, finally, by the performance of the work in conditions of serious danger.

Article 12, paragraphs 3, 3-bis, 3-ter and 5 of Legislative Decree 286/1998 and subsequent amendments
Law 161/2017 amended art. 25-duodecies of Legislative Decree 231/2001 by inserting paragraphs 1-bis, 1-ter and 1-quarter which provide for the punishability of entities in whose interest or advantage the transport of foreigners in the territory of the State is promoted, directed, organized, financed or carried out or other acts are carried out aimed at illegally procuring their entry into the territory of the Italian State or of another State of which the person is not a citizen or not has a permanent residence title (art.12 paragraphs, 3, 3-bis and 3-ter of Legislative Decree 286/1998). The criminal liability of the entity, as well as that of the natural person, arises, however, only where one of the additional conditions of seriousness provided for by art. 12 paragraph 3 of Legislative Decree 286/1998: the fact concerns the illegal entry or stay in the territory of the State of five or more people; the person transported has been exposed to danger to his life or safety in order to procure his or her illegal entry or stay; the person transported has been subjected to inhuman or degrading treatment in order to

procure his or her illegal entry or stay; the act is committed by three or more people in competition with each other or using international transport services or forged or altered documents or otherwise illegally obtained; The perpetrators of the act have the availability of weapons or explosive materials.

- **ART. 25-TERDECIES RAZZISM AND XENOPHOBIA**

Article 3, paragraph 3 bis, of Law No. 654 of 13 October 1975 "Ratification and implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature in New York on 7 March 1966"

On 12 December 2017, Law no. 167 of 20 November 2017 came into force with "Provisions for the fulfilment of the obligations deriving from Italy's membership of the European Union - European Law 2017" which, with the aim of adapting our legal system to the EU one, introduced new predicate offences of the administrative liability of entities.

Art. 5 of the aforementioned European Law introduced in Legislative Decree 231/2001 art. 25-terdecier entitled "Racism and xenophobia" which provides for the punishability of the entity in relation to the commission of the crime referred to in art. 3 paragraph 3 bis, of Law 654/1975. The article in question punishes the participants of organizations, associations, movements or groups whose purposes include incitement to discrimination or violence on racial, ethnic, national or religious grounds, as well as propaganda or incitement and incitement, committed in such a way that there is a real danger of spread, based in whole or in part on the denial, serious minimization or apology - an incisive phrase added by the European Law 2017 - of the Holocaust or crimes of genocide, crimes against humanity and war crimes.

However, it should be noted that the recent Legislative Decree 21/2018, which came into force on 6 April 2018, provided – with art. 7, paragraph 1, letter c) – the repeal of art. 3 of Law no. 654 of 13 October 1975 as a provision replaced by art. 604-bis of the Criminal Code, and particularly by paragraph 3 which reproduces in full the repealed paragraph 3-bis, without however intervening on article 25-terdecies of Legislative Decree 231/2001, with a clear lack of coordination between the two rules in relation to the crime in question.

While bearing in mind the principle of legality referred to in art. 2 of Legislative Decree 231/2001, which would seem to argue in favour of a non-relevance of the new 604-bis of the Criminal Code for 231 purposes, the lack of jurisprudential precedents on the subject, from a prudential perspective, nevertheless leads to take into account this case as well.

In concrete terms, it is therefore recommended that:

- the Code of Ethics contains a specific provision for the recipients of the prohibition of conduct or acts in the exercise of business activities that can be configured as relevant cases for the purposes of the aforementioned 604-bis, paragraph 3.
- specific protocols are adopted for the correct management of human resources;
- for companies that use forms of external communication and advertising, special preventive control protocols are introduced aimed at avoiding messages that can be configured as violations of the aforementioned criminal law.

- **ART. 25-QUATERDECIES FRAUD IN SPORTS COMPETITIONS, ABUSIVE EXERCISE OF GAMING OR BETTING AND GAMES OF CHANCE EXERCISED BY MEANS OF PROHIBITED MACHINES**

Law no. 39 of 3 May 2019 (in the Official Gazette no. 113 of 16/05/2019) on "Ratification and execution of the Council of Europe Convention on the manipulation of sports competitions, made in Magglingen on 18 September 2014", provided (with art. 5, paragraph 1) for the introduction of the

article in question, expanding the range of predicate offences referred to in Legislative Decree 231/2001.
The legislative novelty creates a liability risk for all companies that make advertising investments in sports competitions or sports personalities, that manage the image rights of athletes or that promote their image.
Art. 1 of Law 401/1989, to which the aforementioned art. 25-quaterdecies refers, punishes the crime of fronds in sports competitions; art. 4, on the other hand, concerns the abusive exercise of gaming or betting activities.
The crime of sports fraud punishes anyone who offers or promises money or other benefits or advantages to any of the participants in a sports competition organized by the recognized federations, in order to achieve a result other than that resulting from the correct and fair conduct of the competition, or carries out other fraudulent acts aimed at the same purpose; punishes with the same penalties the participant in the competition who accepts the money or other utility or advantage, or accepts the promise thereof.
The actual alteration of the course of the sports competition is not necessary for the case to be said to be integrated. In line with the provisions for other crimes with necessary cooperation, such as corruption, the law provides for the application of the same penalties also for the participant in the competition who accepts the money or accepts the promise.
An aggravating circumstance with a special effect is also provided for if the result of the competition that is attempted to be altered is relevant for the purposes of carrying out prognostic competitions and regularly exercised bets.
Art. 4 includes numerous cases of both crimes and contraventions. It provides for punishability for:
- those who illegally carry out the organisation of lottery games or betting or prediction competitions that the law reserves to the State or other concessionaire;
- anyone who organizes bets or prediction competitions on sports activities managed by CONI, by the organizations dependent on it or by UNIRE;
- the abusive exercise of the organization of public bets on other competitions of people or animals and games of skill;
- those who sell on the national territory, without any authorization from the Customs and Monopolies Agency, tickets for lotteries or similar events of fate of foreign countries;
- those who participate in these operations through the collection of reservations of bets and the crediting of the related winnings and the promotion and advertising carried out by any means of dissemination;
- anyone who organizes, exercises and collects at a distance, without the prescribed license, any game established or regulated by the Customs and Monopolies Agency;
- anyone, even if the holder of the prescribed concession, organizes, exercises and collects remotely any game established or regulated by the Customs and Monopolies Agency with methods and techniques other than those provided for by law;
- anyone who, when it comes to competitions, games or bets, in any way advertises their exercise;
- anyone in Italy who advertises, in any way, games, bets and lotteries, accepted by anyone abroad;
- anyone who participates in competitions, games, bets managed in an abusive manner;
- whoever, without a concession, authorization or license pursuant to Article 88 of the Consolidated Law on Public Security, carries out in Italy any activity organized in order to accept or collect or in any case encourage the acceptance or in any way the collection, including by telephone or telematics, of bets of any kind accepted by anyone in Italy or abroad;
- those who collect or book lottery bets, prediction competitions or bets by telephone or electronically, without specific authorisation to use these means for the aforementioned collection or booking, from the Ministry of Economy and Finance – Customs and Monopolies Agency to use these means.

- **ART. 25-QUINQUIESDECIES REATI TRIBUTARI**

Decree-Law no. 124 of 26 October 2019 introduced the provision for the administrative liability of entities in the event of the commission of tax offences to the benefit of the same, however limiting the intervention to the crime of tax fraud referred to in art. 2 of Legislative Decree no. 74/2000. Law no. 157 of 19 December 2019 provided – with art. 1, paragraph 1 – the conversion, with amendments, of the aforementioned Decree extending the administrative liability of legal persons also to those who make use of other fraudulent means in the declaration (art. 3 of Legislative Decree no. 74/2000), issue invoices for non-existent transactions (art. 8), conceal or destroy accounting records in order to evade taxes (art. 10), simulate or carry out other fraudulent acts capable of making the procedure of the tax collector ineffective, even if only partially, compulsory collection from the Treasury (art. 11).
With the publication in the Official Gazette no. 177 of 15 July 2020 of Legislative Decree no. 75 of 14 July 2020 concerning the implementation of the so-called "Legislative Decree no. PIF Directive (EU Directive 2017/1371, on the fight against fraud to the Union's financial interests by means of criminal law), amendments have been made to both the Criminal Code and Legislative Decree No. 231 of 8 June 2001.
More specifically, art. 5, paragraph 1, letter c), of Legislative Decree no. 75 of 2020 adds to art. 25-quinquiesdecies, introduced by Law no. 157/2019, a new paragraph, 1-bis, which extends the list of tax crimes that can determine the administrative liability of the entity pursuant to Legislative Decree no. 231/2001, introducing the crimes of: unfaithful declaration (art. 4, Legislative Decree no. 74/2000); failure to declare (Article 5, Legislative Decree No. 74/2000); undue compensation (Article 10-quarter, Legislative Decree no. 74/2000). These offences are relevant for the purposes of Legislative Decree no. 231/2001 only if they are committed "even in part in the territory of another Member State, in order to evade value added tax for a total amount of not less than ten million euros".

Below is an examination of the articles of Legislative Decree 74/2000 referred to in Article 25-quinquiesdecies of Legislative Decree 231/2001.

Art. 2 paragraphs 1 and 2-bis of Legislative Decree 74/2000 Fraudulent declaration through the use of invoices or other documents for non-existent transactions
The article in question was reformed by art. 39, paragraph 1, letters a) and b) of Legislative Decree 124/2019. This provision punishes anyone who, in order to evade income or value added tax, using invoices or other documents for non-existent transactions, indicates fictitious liabilities in one of the declarations relating to those taxes. For the purposes of the offence being committed, no threshold of punishability is exceeded and therefore applies regardless of the amount of tax evaded.
The declaration, in addition to being unfaithful, is also fraudulent because it is supported by false documentation, suitable for hindering the verification activities or supporting the untruthful presentation of the data indicated in it. The material object of the crime consists of invoices and other documents equivalent to the invoice (note, fee, account and the like) or other documents – such as, for example, tax receipts, tax receipts, credit and debit notes, transport documents, fuel cards – to which tax legislation attributes evidentiary level. The non-existence of such documentation can be objective (if it refers to transactions, in whole or in part, that never actually took place) or subjective (if the documented transaction actually took place between parties other than those indicated in the invoice itself). It is a commissive crime that is carried out in two distinct moments: the use of invoices or other documents for non-existent transactions as instrumental and preparatory conduct with respect to the typical action of the crime which consists in the subsequent indication of the same in a declaration for income tax or VAT purposes.

The offence is completed with the submission of the declaration and, pursuant to art. 6 of Legislative Decree 74/2000, is not punishable by way of attempt. The subjective element is constituted by the specific intent, represented by the purpose of evading income or value added taxes that must be added to the desire to carry out the typical event (the submission of the declaration). According to a jurisprudential approach (see Cass. Sec. 3, no. 52411 of 19/6/2018), this subjective element is compatible with the possible intent that can be found in the acceptance of the risk that the action of submitting the declaration, also including invoices or other documents for non-existent transactions, may lead to the evasive event of the rule.
Art. 39, paragraph 1, letter b), of Legislative Decree 124/2019, converted into Law no. 157/2019, inserted art. 2-bis which provides for a lower penalty when the amount of the liabilities indicated is less than one hundred thousand euros. Once this threshold is exceeded, the offence is therefore considered to be of greater seriousness and for this reason it seems to be considered as a mitigating circumstance. However, the autonomous nature could be argued by the distinction in art. 25-quinquiesdecies of Legislative Decree 231/2001 of the two hypotheses as if they were different crimes, leading to different sanctions.
It should be noted that art. Article 39, paragraph 1, letter q), provides for the application of confiscation "in special cases" pursuant to Article 240-bis of the Criminal Code when the amount of fictitious liabilities is greater than two hundred thousand euros.

Art. 3 Legislative Decree 74/2000 Fraudulent declaration by other artifices
This is a residual case with respect to the crime of "fraudulent declaration through the use of invoices or other documents for non-existent transactions". The conduct constituting the crime in question, as amended by art. 3 of Legislative Decree 158/2015, has a "two-phase" structure, as the crime is perfected with the false declaration (first phase), supported by the commission of objectively or subjectively simulated transactions, or, alternatively, the use of false documentation or other fraudulent means (second phase). Fraudulent means, in this case, must be different from false invoices and can be considered as such, for example, the use of simulated contracts, the registration of assets or bank accounts to nominees, etc. If the prodromal deceptive activity is carried out by others, the acting subject must be aware of it at the time of submission of the declaration. According to a recent ruling of the Supreme Court (see Sec. 3 no. 19672/2019), in the event that a qualified professional issues a false compliance visa (pursuant to Article 35 of Legislative Decree 241/1997) or an unfaithful tax certification (pursuant to Article 35 of the aforementioned decree) for the purposes of sector studies, it constitutes a fraudulent means capable of hindering the assessment and misleading the tax administration so as to integrate the professional's contribution to the crime of fraudulent declaration by other artifices.
The crime is attributable to any person required to submit a tax return or for value added tax purposes. The specific intent represented by the purpose of evading taxes or obtaining an undue refund or the recognition of a non-existent tax credit is required. The crime is completed with the submission of the declaration and is not punishable by way of attempt.
Also for this crime, extended confiscation is provided for when the evaded tax is greater than one hundred thousand euros.

Art. 4 Legislative Decree 74/2000 Unfaithful declaration
This rule applies on a residual basis with respect to the case of fraudulent declaration through the use of invoices or other documents for non-existent transactions pursuant to Article 2 of Legislative Decree 74/2000 and to that of fraudulent declaration through other artifices pursuant to Article 3 of Legislative Decree 74/2000.

Participation with the case pursuant to Article 2 of Legislative Decree 74/2000 is excluded when the material conduct has as its object the same declaration, while it does not operate where the conduct is different (omission of assets; declaration of non-existent liabilities).
The rule punishes anyone who indicates in one of the annual returns relating to income or value added taxes assets for an amount lower than the actual amount or non-existent liabilities, when two thresholds of punishability are met together:
1) evaded tax exceeding, with reference to some of the individual taxes, € 100,000;
2) assets exempted from taxation for an amount greater than 10% of the total amount of the assets indicated in the return, or in any case greater than € 2,000,000.
The crime, which is committed at the time of submission of the income or value added tax return, is punished by way of specific intent, consisting in the purpose of evading income or value added taxes, which is added to the awareness and will to carry out the typical fact (declaration of fictitious assets or non-existent liabilities). If the tax debts, including penalties and interest, have been extinguished by full payment of the amounts due, following active repentance or the submission of the declaration, provided that these took place before the offender had formal knowledge of the accesses, inspections, verifications or the start of any administrative assessment or criminal proceedings; if the overall assessments considered differ by less than 10 % from the correct ones.
Law no. 157/2019 raised the edictal framework of the rule: the tax decree provided for the transition from imprisonment from one to three years to imprisonment from 2 to 5 years, while the conversion law set the framework from a minimum of 2 years to a maximum of 4 years and six months.

Art. 5 Legislative Decree 74/2000 Failure to declare
This rule punishes the taxpayer and the withholding agent who does not submit, being obliged to do so, one of the declarations relating to income or value added taxes, in the event of exceeding the threshold of punishability. The crime is punished by way of specific intent, consisting in the purpose of evading income or value added taxes, which is added to the awareness and will to carry out the typical fact (failure to submit the declaration). The crime is committed at the time of expiry of the 90-day delay period granted to the taxpayer to submit the return after the expiry of the ordinary term.
If the tax debts, including penalties and interest, have been extinguished by full payment of the amounts due, following active repentance or the submission of the declaration, provided that these occurred before the offender had formal knowledge of accesses, inspections, verifications or the start of any administrative assessment or criminal proceedings. Imprisonment from 2 to 5 years is envisaged.

Art. 8 Legislative Decree 74/2000 paragraphs 1 and 2-bis Issuance of invoices or other documents for non-existent transactions
Pursuant to the article in question, the active subject of the crime can be anyone who issues or issues invoices or other documents for non-existent transactions that can be used by third parties for tax evasion purposes. The crime exists even if the result of tax evasion is not achieved as it is sufficient that the same constitutes the purpose of the falsehood. The issuance of invoices for non-existent transactions is one of the so-called "non-declaratory" crimes. It represents the mirror case of the fraudulent declaration of through the use of invoices or other documents, referred to in art. 2 of Legislative Decree 74/2000, which punishes the author who receives and uses the document, in order to evade direct or value added tax; art. In fact, Article 8 punishes the conduct of those who, upstream, issue the invoice or document – for non-existent transactions – intended for another person in order to allow him to evade income or value added taxes. The moment of consummation of the crime coincides with the issuance or issuance of the invoice or non-existent document to the user, as it is not required that it reaches the recipient or that the latter uses it; if there are several episodes in a

single tax period, it is consumed at the time of issue of the last invoice or the last non-existent document. In general, those documents that certify the existence of a service and therefore the validity of a deduction or deduction can be considered "other documents for non-existent transactions": parcel, tax receipt, tax receipt, credit or debit note, customs bill, so-called self-invoice, fuel card.
Paragraph 2-bis, inserted by Legislative Decree 124/2019, provides for a mitigating circumstance that sets a lower penalty when the amount relating to non-existent transactions indicated in the invoices or documents is less, for the tax period considered, than one hundred thousand euros

Art. 10 Legislative Decree 74/2000 Concealment or destruction of accounting documents
The rule in question is designed to protect the correct exercise of the tax authorities' assessment activities. This case is applied on a residual basis, if there is no more serious crime. This is a common crime that can be committed by anyone to facilitate the evasion of third parties. The conduct consists in the concealment or destruction, in whole or in part, of the accounting records and documents whose retention is mandatory so as not to allow the determination of income or turnover. Accounting records include the journal, VAT registers for purchases, considerations, invoices issued, inventory book, depreciable asset register, etc.; among the documents whose retention for tax purposes is mandatory are issued invoices, purchase invoices, tax receipts, tax receipts, packing slips or delivery notes. The specific intent is recognizable in the purpose of evading taxes or allowing third parties to evade; since it is a crime of event and since this case is not referred to in art. 6 of Legislative Decree 74/2000, the attempt is punishable when, despite the concealment or destruction of the accounting documentation, the tax authorities still and analytically reconstruct the income or turnover on the basis of other elements.

Art. 10 quarter Legislative Decree 74/2000 Undue compensation
The incriminating offence punishes anyone who fails to pay the sums due using undue or non-existent credits as compensation, in the event of exceeding the punishability threshold of the annual amount exceeding € 50,000. The crime is punished by way of generic malice, consisting in the awareness and willingness not to pay the sums due, through the use of undue or non-existent credits in compensation. The crime is consummated at the time of the realization of the undue compensation. If, before the declaration of the opening of the first instance hearing, the tax debts, including administrative penalties and interest, have been extinguished by full payment of the amounts due, also as a result of the special conciliation procedures and adherence to the assessment provided for by the tax rules, as well as the active repentance. Imprisonment from 6 months to 2 years is provided for in the case of set-off with undue credits, and imprisonment from 1 year and 6 months to 6 years in the case of set-off with non-existent credits.
In terms of tax crimes, the use of a VAT credit deriving from an omitted declaration as compensation integrates the crime of undue compensation of non-existent credits. This was stated by the Supreme Court, which ruled on the case of a legal representative of a cooperative, convicted of failure to submit the declaration and undue compensation of non-existent VAT credits, pursuant to Articles 5 and 10 quarter of Legislative Decree 74/2000, for failing to pay taxes using a VAT credit arising from the previous year's return not submitted. In particular, with a very strict interpretation of the discipline, the Court affirmed that only VAT credits resulting from periodic declarations and reports can be used in offsetting (ex multis Cass. criminal section III, 21/06/2018, no. 43627).

Art. 11 Legislative Decree 74/2000 Fraudulent evasion of tax payments
This article punishes the conduct of those who simulate or carry out other fraudulent acts on their own assets or on those of others, capable of preventing the total or partial satisfaction of the tax credit

claimed by the Treasury. The protected legal asset consists in the proper functioning of the compulsory collection procedure in relation to the State's right to credit.
The conduct may consist in simulated alienation or other fraudulent acts on one's own or others' assets (material subtraction of availability), or it may consist in indicating assets or liabilities other than the real ones in the documentation submitted for the purposes of the tax settlement (falsification activities relating to the consistency of assets).
In the first case, consummation takes place when other fraudulent acts are simulated alienated or carried out on one's own or others' property; In the second case, referred to in the second paragraph, the consummation moment is the one in which the documentation for the purposes of the tax settlement procedure is submitted, which is accompanied by assets or liabilities other than the real ones.
With regard to the first hypothesis, an attempt could be made if the taxpayer tries to sell his property simulately but then for reasons external to him the transaction is not completed; in the second case, however, it appears not configurable as until the moment in which the documentation for the purposes of the tax settlement procedure is presented (moment in which the crime is committed) it would only be mere intentions.
Although the rule refers to "anyone", it is a crime precisely because those who are already qualified as tax debtors are potential active subjects of the crime.
The subjective element is specific intent as the purpose of the conduct is to render the compulsory collection procedure ineffective, for oneself or for others, in whole or in part, or to obtain payment of the sums due. The tax debtor, through the real or fictitious impoverishment of his assets, thus pursues the aim of prejudicing the tax claim.
The rule also identifies a threshold of punishability, below which the crime cannot be qualified: it is therefore necessary that the total amount of debts, understood in their total amount of capital, related administrative penalties and legal interest, is not less than fifty thousand euros.
Extended confiscation is provided for the case in question when the untrue amount indicated in the invoices is greater than one hundred thousand euros or when the amount of fictitious assets or liabilities is greater than the actual amount of more than two hundred thousand euros.

- **ART. 25 SEXIESDECIES CONTRABBANDO**

Art. 5, letter d), of the Legislative Decree of 14 July 2020 implementing the PIF Directive, introduces the new Article 25-sexiesdecies into Legislative Decree no. 231/2001, extending the criminal liability of entities to the cases of smuggling provided for by Presidential Decree no. 43 of 23 January 1973.
The penalties imposed are both of a pecuniary nature, modulated according to the value of the border fees due, and of a disqualifying nature, since the application of art. 9, paragraph 2, letters c), d) and e) which provide, respectively, for the prohibition of contracting with the public administration, the exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted and the prohibition of advertising goods or services.
The new provision refers to the "crimes" of the Consolidated Customs Act, therefore:
- to the crimes of Title VII Chapter I, meaning the facts provided for therein but only if they exceed 10 thousand euros of evaded border fees (nulla quaestio for those that provide for imprisonment):
- Article 282 (Smuggling in the movement of goods across land borders and customs areas)
- Article 283 (Smuggling in the movement of goods in border lakes)
- Article 284 (Smuggling in the maritime movement of goods)
- Article 285 (Smuggling in the movement of goods by air)
- Art. 286 (Smuggling in duty-free areas)
- Article 287 (Smuggling for undue use of goods imported with customs facilities)
- Article 288 (Smuggling into customs warehouses)

- Article 289 (Smuggling in cabotage and traffic)
- Article 290 (Smuggling in the export of goods eligible for the refund of duties).
- Article 291 (Smuggling in temporary import or export)
- Article 291-bis (Smuggling of foreign manufactured tobacco)
- Article 291-ter (Aggravating circumstances of the crime of smuggling foreign manufactured tobacco)
- Article 291-quarter (Criminal conspiracy to smuggle foreign manufactured tobacco)
- Article 292 (Other cases of smuggling)
- Art. 294 (Penalty for smuggling in the event of failure or incomplete verification of the object of the crime)
- to the contraventions of Title VII Chapter II, i.e. to the facts provided for therein but only if they exceed 10 thousand euros of evaded border fees (Articles 302 et seq.).

An important aspect also for the purposes of preventive compliance will be represented by the relationship with the customs broker, who carries out all customs formalities in international trade, in the name and on behalf of the owner of the goods (exercising his representation). By virtue of this provision, the relationship between the liability of the entity and its civil liability dependent on smuggling offences provided for in the Consolidated Customs Act (Article 329) will also need to be investigated: "When the offence of smuggling is committed on ships, aircraft, vehicles of any kind, in stations, trains, industrial and commercial establishments, in public establishments or in other places open to the public, the captain, the captain, the carrier, the station master, the train conductor, the body or the person on whom the service or establishment depends, the operator or the owner, are respectively required to pay a sum equal to the amount of the fine imposed, if the convicted person is a person dependent on them or subject to their authority, management or supervision and is insolvent. The aforementioned persons and entities are also jointly and severally liable with the convicted for the payment of the fees due".
Of particular attention will be paid to the issue of the consequences of the liability of the entity in relation to the extinction of smuggling offences punishable by a fine alone (Article 334): "For smuggling offences punishable by a fine only, the customs administration may allow the offender to pay, in addition to the tax due, a sum of not less than twice and not more than ten times the tax itself, to be determined by the administration itself. The payment of the aforementioned sum and the tax extinguishes the crime". Pursuant to Article 8 of Legislative Decree 231, the extinction of the crime does not exclude the liability of the entity, even if the payment in question is made by the same.

- **ART. 25-SEPTIESDECIES CRIMES AGAINST CULTURAL HERITAGE**

Art. 3 of Law no. 22/2022 introduces into Legislative Decree no. 231/2001 the new art. 25-septiesdecies "Crimes against cultural heritage" extending the administrative liability of entities to the following crimes:

Article 518 bis of the Criminal Code Theft of cultural property
This incriminating offence punishes anyone who takes possession of a movable cultural asset of others, taking it away from the person who holds it, in order to make a profit, for himself or for others, or takes possession of cultural property belonging to the State, as they are found underground or on the seabed.

Article 518 ter of the Criminal Code Misappropriation of cultural property
This rule punishes anyone who appropriates someone else's cultural property of which he has, for whatever reason, possession in order to procure an unfair profit for himself or others.

Article 518 quarter of the Criminal Code Receiving cultural property
The incriminating offence is liable for those who, outside the cases of complicity in the crime, in order to procure a profit for themselves or others, buy, receive or conceal cultural property deriving from any crime, or in any case interfere in having them purchased, received or concealed.

Article 518 octies of the Criminal Code Forgery of private deeds relating to cultural goods
The crime provided for by art. 518 octies of the Criminal Code punishes the conduct of a person who forms, in whole or in part, a false private deed or, in whole or in part, alters, destroys, suppresses or conceals a true private deed, in relation to movable cultural property, in order to make its provenance appear lawful. A lower penalty is provided for those who use this script without having participated in its formation or alteration.

Article 518 novies of the Criminal Code Violation of the alienation of cultural property
This rule punishes the following conducts:

- that of the person who, without the prescribed authorization, alienates or places cultural goods on the market;
- that of those who, being required to do so, do not submit within thirty days, the report of the deeds of transfer of ownership or possession of cultural property;
- that of the alienator of a cultural asset subject to pre-emption who delivers the thing pending the term of sixty days from the date of receipt of the transfer report.

Article 518 decies of the Criminal Code Illicit import of cultural goods
Art. Article 518 decies of the Criminal Code punishes anyone who, except in cases of complicity in the crimes provided for in articles 518-quarter, 518-quinquies, 518-sexies and 518-septies, imports cultural property deriving from a crime or found as a result of searches carried out without authorization, where provided for by the law of the State in which the discovery took place, or exported from another State in violation of the law on the protection of the cultural heritage of that State.

Article 518 undecies of the Criminal Code Illicit exit or export of cultural property
This incriminating offence punishes: i) the person who transfers cultural property, things of artistic, historical, archaeological, ethno-anthropological, bibliographic, documentary or archival interest or other things subject to specific protection provisions under the legislation on cultural heritage, without a certificate of free circulation or export license; ii) anyone who does not bring back into the national territory, at the end of the term, cultural property, things of artistic, historical, archaeological, ethno-anthropological, bibliographic, documentary or archival interest or other things subject to specific protection provisions pursuant to the legislation on cultural heritage, for which temporary exit or export has been authorised, as well as iii) anyone who makes false declarations in order to prove to the competent export office, pursuant to the law, the non-subjection of things of cultural interest to authorization to leave the national territory.

Article 518 duodecies of the Criminal Code Destruction, dispersion, deterioration, defacement, soiling and illicit use of cultural or landscape property
Art. 518 duodecies of the Criminal Code states the following "Anyone who destroys, disperses, deteriorates or renders wholly or partially useless, where applicable, or unusable his own or others' cultural or landscape assets shall be punished with imprisonment from two to five years and a fine from 2,500 to 15,000 euros.

Anyone who, except in the cases referred to in the first paragraph, defaces or defaces his own or others' cultural or landscape property, or uses cultural property that is incompatible with its historical or artistic character or detrimental to its conservation or integrity, shall be punished with imprisonment from six months to three years and a fine of between €1,500 and €10,000.
The conditional suspension of the sentence is subject to the restoration of the state of the places or the elimination of the harmful or dangerous consequences of the crime or to the provision of unpaid activity in favor of the community for a fixed time, in any case not exceeding the duration of the suspended sentence, according to the procedures indicated by the judge in the sentence of conviction".

Article 518 quaterdecies of the Criminal Code Counterfeiting of works of art
Art. 518 quaterdecies of the Criminal Code punishes such conduct:

1) that of those who, in order to make a profit, counterfeit, alter or reproduce a work of painting, sculpture or graphics or an object of antiquity or of historical or archaeological interest;
2) that of the person who, even without having participated in the counterfeiting, alteration or reproduction, puts on the market, holds for the purpose of trading, introduces into the territory of the State or in any case puts into circulation, as authentic, counterfeit, altered or reproduced specimens of works of painting, sculpture or graphics, of objects of antiquity or objects of historical or archaeological interest;
3) that of those who, knowing their falsity, authenticate works or objects indicated in numbers 1) and 2) counterfeit, altered or reproduced;
4) that of the person who, by means of other declarations, expert reports, publications, affixing of stamps or labels or by any other means, accredits or contributes to accrediting, knowing the falsity, as authentic works or objects indicated in numbers 1) and 2) counterfeit, altered or reproduced.

- **ART. 25-DUODEVICIES RECYCLING OF CULTURAL PROPERTY AND DEVASTATION AND LOOTING OF CULTURAL AND LANDSCAPE PROPERTY**

Art. 3 of Law no. 22/2022 also introduces in Legislative Decree no. 231/2001 the new art. 25-duodevicies "Laundering of cultural property and devastation and looting of cultural and landscape property" extending the administrative liability of entities to the following crimes:

Article 518 sexies of the Criminal Code Recycling of cultural property
Art. 518 sexies of the Criminal Code punishes anyone who, except in cases of complicity in the crime, replaces or transfers cultural property deriving from a non-culpable crime, or carries out other operations in relation to them, in such a way as to hinder the identification of their criminal origin.

Article 518 terdecies of the Criminal Code Devastation and looting of cultural and landscape assets
This offence punishes anyone who, except in the cases provided for in Article 285, commits acts of devastation or looting involving cultural or landscape property or cultural institutions and places.

TRANSNATIONAL CRIMES (LAW NO. 146 OF 16 MARCH 2006)
Law no. 146 of 16 March 2006 implemented the United Nations Convention and Additional Protocols against Transnational Organized Crime, adopted by the General Assembly on 15 November 2000 and 31 May 2001, also expanding the catalogue of offences relevant to the administrative liability of entities pursuant to Legislative Decree no. 231/2001.
The regulatory technique used by the legislator was different from that used in the introduction of the other cases; in fact, instead of supplementing the decree in the part relating to predicate crimes, it was

preferred to directly regulate the new cases and refer to Legislative Decree no. 231/2001 for the regulation of the general requirements for attributing liability to the entity.
To this end, the legislator has first of all offered a definition of transnational crime, as an offence punishable by a maximum prison sentence of not less than 4 years, if an organised criminal group is involved, as well as: a) it is committed in more than one State; b) i.e. it is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; c) or is committed in a State, but an organized criminal group engaged in criminal activities in more than one State is employed in it; d) or is committed in one State but has substantial effects in another. The predicate crimes are the following:
- the criminal conspiracy referred to in art. 416 of the Criminal Code and of a mafia type pursuant to art. 416-bis of the Criminal Code (see above);
- the association aimed at illicit trafficking of narcotic or psychotropic substances pursuant to art. 74, of Presidential Decree 309/90 (see above);
- the association aimed at smuggling foreign manufactured tobacco;
- inducement not to make statements or to make false statements to the judicial authority referred to in art. 377-bis of the Criminal Code (see above);
- personal aiding;
- smuggling of migrants referred to in art. 12, paragraphs 3, 3-bis, 3-ter and 5 of Legislative Decree no. 286 of 25 July 1998 Provisions against illegal immigration (see above).

Art. 291 quarter of Presidential Decree no. 43 of 23 January 1973 Criminal conspiracy to smuggle foreign manufactured tobacco
The crime is committed when the association referred to in art. 416 of the Criminal Code is aimed at the commission of several crimes among those provided for in art. 291 bis of Presidential Decree no. 43 of 23 January 1973. The event, in the crime of smuggling, is summed up in the exposure to danger of the protected legal asset – the right of the State to receive the tax – as a result of an activity carried out by the agent voluntarily with the conscious intention of evading the payment of the latter.

Article 378 of the Criminal Code Personal aiding and abetting
The crime of personal aiding and abetting is configured for those who, after a crime has been committed for which the law establishes the penalty of life imprisonment or imprisonment, and outside the cases of complicity in the same, "help someone to evade the investigations of the Authority or to evade the latter's searches". The object of criminal protection is the interest of the Administration of Justice in the regular conduct of the criminal process which is disturbed by facts that aim to mislead or hinder the activity aimed at the detection and repression of crimes.

1.3 The Organisational Model as a possible exemption condition

Article 6 of Legislative Decree 231/01 provides for a form of exemption from administrative liability, for crimes committed by persons in a top position, if the entity provides evidence:
- to have adopted and effectively implemented, before the commission of the crime, "Organization and management models" suitable for preventing crimes of the kind that occurred;
- to have entrusted a body of the entity with autonomous powers of initiative and control (Supervisory Body, hereinafter SB) with the task of supervising the operation and compliance with the models as well as taking care of their updating;
- that the crime was committed by persons who acted fraudulently circumventing the aforementioned organizational, management and control models.

Article 7 of the Decree itself provides for the exemption from administrative liability, for crimes committed by persons subject to the direction of others, if the unlawful conduct was made possible by the failure to comply with management or supervisory obligations or if before the commission of the crime the entity has adopted and effectively implemented an organizational model suitable for preventing crimes of the kind that occurred. The burden of proof, in this case, will lie with the prosecution.
The administrative liability of the Entity also exists when the offender has not been identified or is not imputable, or the crime has been extinguished, for a cause other than amnesty. In addition, the administrative liability of the Entity also affects, for Entities with their headquarters in Italy, crimes committed abroad by persons functionally linked to the Entity, provided that the State in which the crime was committed does not proceed for them.
Conversely, the Entity is not liable if the persons indicated have acted in its own exclusive interest or in the interest of third parties.
The Organisation, Management and Control Model, again pursuant to art. 6 of Legislative Decree 231/2001, must meet the following needs:
- identify in the context of which activities the commission of crimes may occur;
- provide for specific protocols regarding the formation and implementation of the decisions of the entity in relation to the crimes to be prevented;
- establish how financial resources are managed in order to prevent the commission of illegal conduct;
- provide for information obligations towards the Supervisory Body;
- provide for a disciplinary system suitable for sanctioning non-compliance with the measures indicated in the model.

Law 179/2017 "Provisions for the protection of those who report crimes or irregularities of which they have become aware in the context of a public or private employment relationship", which came into force on 29 December 2017, has integrated the eligibility requirements required by the Organisational Models. Art. 2 of the aforementioned law has led to the inclusion in art. 6 of Legislative Decree 231/2001 – after paragraph 2 – of paragraphs 2-bis, 2-ter and 2-quarter. However, Legislative Decree no. 24 of 10 March 2023 "Implementation of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law and laying down provisions concerning the protection of persons who report breaches of national regulatory provisions", has fully replaced paragraph 2-bis of art. 6 of Legislative Decree 231/2001 and repealed paragraphs 2-ter and 2 quarter of the same article. More specifically, the new paragraph 2-bis provides that the organisational models provide for internal reporting channels, the prohibition of retaliation and the disciplinary system. Among the main innovations there is first of all the expansion of the concept of "whistleblower", no longer limited to directors, managers and employees, but extended to all subjects connected in a broad sense to the organization in which the violation occurred, and who could fear retaliation in view of the situation of economic vulnerability in which they find themselves. In addition, in addition to what is already provided for by current national legislation, the reports may concern breaches of EU law that harm the public interest or that fall, among others, in the following areas: public procurement; financial services, products and markets and the prevention of money laundering and terrorist financing; product safety and compliance; transport safety; environmental protection; radiation protection and nuclear safety; food and feed safety and animal health and welfare; public health; consumer protection; protection of privacy and protection of personal data and security of network and information systems.
Consequently, the Company has adopted an internal reporting channel in compliance with the aforementioned legislation, and has entrusted the task of managing the related reports to the so-called "Whistleblowing Function". The procedure describing the procedures for proceeding with a report

and the protection measures applied to the whistleblower is published on the Company's website and is an integral part (Annex VII) of Model 231.

1.4 Penalties and attempted crimes

The sanctioning system provided for by Decree 231 is characterized by the application to the Entity of a financial penalty, commensurate with quotas. The Judge determines the number of shares in relation to the seriousness of the offence and assigns an economic value to each individual share.
In addition to the financial penalty, disqualification sanctions may be applied in the most serious cases such as: disqualification from carrying out the activity, suspension or revocation of authorisations, licences or concessions functional to the commission of the offence, prohibition from contracting with the Public Administration, exclusion from concessions, financing, contributions or subsidies and possible revocation of those already granted, prohibition from advertising goods or services.
The interdictory measures can also be applied, at the request of the Public Prosecutor, as a precautionary measure during the investigation phase.
The catalogue of sanctions is completed by the publication of the conviction that can be ordered when the extremes of the application of an administrative sanction are met, and the confiscation, even by equivalent, provided for as an automatic consequence of the ascertainment of the liability of the Entity.
In the event of the commission of the crimes indicated in Chapter I of Decree 231 in the form of an attempt, the financial penalties (in terms of amount) and disqualification sanctions (in terms of duration) are reduced from one third to one-half, while the imposition of sanctions is excluded in cases where the Entity voluntarily prevents the performance of the action or the realization of the event (Article 26 of Legislative Decree 231/2001).

II. CAVIRO SCA'S ORGANISATION, MANAGEMENT AND CONTROL MODEL

2.1 Governance Model

CAVIRO Soc. Coop. Agricola is an agricultural cooperative with the mission of enhancing the grapes of its winegrowers. Today Caviro, a company that belongs, through its members, to over 12,500 winegrowers in 7 regions who give their respective cooperative wineries about 11% of Italian grapes, is, in fact, one of the largest wineries in Italy. This means giving an outlet to the different varieties that each of the regions of the Italian territory produces, bringing them to world markets in every consumer segment. In order to be able to compete with competitors from all over the world and meet the demands of its customers in the various markets, it pursues the following objectives:
- an integrated supply chain from vineyards to bottling, thanks to which more than 80% of the wine placed on the market comes from its members. This allows costs to be contained and, associated with an innovative production and packaging system, gives rise to a range of products characterized by an excellent quality-price ratio;
- research and establishment of production and distribution alliances;
- product and process innovation that confirms the Group's industrial leadership.

The statutory bodies are:

- **Shareholders' Meeting;**
- **Board of Directors;**
- **Board of Auditors.**

The Members' Assembly is the sovereign body of the organization; it shall take place at least once a year within the time limits set out in Article 29. The ordinary shareholders' meeting performs the following functions:
a) approves the financial statements and allocates the profits;
b) resolves on the issue of shares intended for the subsidizing shareholders;
c) appoints and dismisses the Board of Directors;
d) appoint the Statutory Auditors, the Chairman of the Board of Statutory Auditors and, where required, the person appointed to audit the accounts, in accordance with the procedures provided for by law;
e) determines the amount of remuneration to be paid to the Directors, the Statutory Auditors and the person appointed to audit the accounts;
f) deliberates on the possible disbursement of the rebate;
g) approves any internal regulations;
h) resolves on the liability of the Directors and Statutory Auditors;
i) deliberates on all other matters reserved to its competence by law and by the Articles of Association.

The Extraordinary Shareholders' Meeting resolves on amendments to the Articles of Association, on the appointment, replacement and powers of liquidators, on the issue of participatory financial instruments and on any other matter expressly attributed by law to its competence.

The Board of Directors is entrusted to the Board of Directors, appointed by the Shareholders' Meeting. The Board of Directors elects the Chairman and the Vice-Chairman from among its members.
The directors are vested with the broadest powers for the management of the company, excluding only those reserved to the shareholders' meeting by law. The Board of Directors may delegate part of its powers, with the exception of the matters provided for in art. 2381 of the Civil Code, of the powers regarding the admission, withdrawal and exclusion of members and of decisions affecting mutual relations with members, to one or more of its members and/or to an Executive Committee or to the General Manager, determining the content, limits and possible methods of exercising the proxies.
Every 6 (six) months, the delegated bodies must report to the Board of Directors and the Board of Statutory Auditors on the general performance of operations and their foreseeable evolution, as well as on the most significant transactions, in terms of size or characteristics, carried out by the Consortium and its subsidiaries.

The Board of Statutory Auditors monitors compliance with the law and the Articles of Association, compliance with the principles of proper administration and in particular the adequacy of the organisational, administrative and accounting structure adopted by the company and its proper functioning, pursuant to Article 2403 of the Italian Civil Code; it is composed of 3 standing members elected by the Shareholders' Meeting plus 2 alternate auditors. The Chairman of the Board of Statutory Auditors is appointed by the Shareholders' Meeting. The Statutory Auditors remain in office for three financial years and expire on the date of the Shareholders' Meeting called to approve the financial statements for the third financial year of their office.

2.2 Adoption of the Model

CAVIRO, considering the extent of the activities carried out, has deemed it in accordance with its corporate policies to proceed with the adoption of an Organisation, Management and Control Model that meets the purposes and requirements of Legislative Decree no. 231/2001.
The Model is inspired by the "Guidelines for the construction of organisation, management and control models pursuant to Legislative Decree no. 231/2001" issued by Confindustria on 7 March 2002, updated to March 2014 and in June 2021, as well as those of Confcooperative of 21 December 2021.
To this end, although the adoption of the Model is provided for by law as optional and not mandatory, the Cooperative believes that the adoption and effective implementation of the Model itself not only allow it to benefit from the exemption provided for by Legislative Decree no. 231/2001, but improve its *Governance*, limiting the risk of committing crimes within the company itself.
This initiative was taken, among other things, in the belief that the adoption of the Model represents and will represent a valid tool for raising awareness for all employees of the Company and all other subjects, in various capacities with the same co-interested / involved (e.g. customers, shareholders, directors, suppliers, partners and collaborators) so that they follow, in the performance of their activities in and/or with CAVIRO, behaviour inspired by transparency, managerial correctness, trust and cooperation.

The Board of Directors, in its meeting of 19/09/2005, approved the adoption of Model 231 and its annexes, and appointed a Supervisory Body with the task of constantly supervising the application of the Model.

The Organization, Management and Control Model has been regularly updated, in accordance with regulatory changes that have occurred over time as well as following organizational changes, most recently by resolution of the Board of Directors on 28/10/2024.

2.3 Purpose and general characteristics of the Model

The Model has been prepared with the aim of systematizing in an organic and structured manner and implementing, as far as necessary, the internal control procedures of the Company's various corporate activities, in order to provide it with adequate safeguards for the prevention of the crimes referred to in the same Legislative Decree no. 231/2001.
The Model has been drawn up in accordance with the requirements of art. 6, c.2 and c.3, of Legislative Decree no. 231/2001; In particular, they were:

- the activities within which the predicate offences detected for the purposes of Legislative Decree no. 231/2001 may be committed have been identified and isolated;
- specific procedures are provided for the management of staff training and aimed at implementing the decisions of the entity in order to prevent predicate crimes;
- Specific protocols have been introduced for the management of the various corporate activities, and in particular financial ones, in order to limit the possibility of committing specific crimes.

In addition, through this system of internal procedures and regulations, also referred to in the Model and the Code of Ethics and Conduct, the Company will be able to raise awareness and disseminate, at all company levels, the rules of conduct and procedures established for their exact and regular compliance, determining, in all those who operate in the name and on behalf of the Company in the "areas at risk", the awareness that, in the event of violation of the provisions set out in the Model, an offence punishable by penalties is committed.

2.4 Structure of the Model

The CAVIRO Model 231 consists of a General Part and a Special Part.
The first part, of a general nature, reports the regulatory profiles of the Decree and a brief description of the parts that constitute it. The second part, the so-called Special Part, starting from the risk analysis pursuant to Legislative Decree no. 231/2001 of the company departments/functions/areas, describes the containment/elimination protocols of the identified risks.

The following documents are an integral part of the Model:

- Code of Ethics and Conduct;
- All. I Elenco figure apicali;
- Annex II Sanctioning system;
- Annex III Risk assessment;
- Annex IV Categories of offences;
- Annex V General Communication Procedure with the Supervisory Body;
- Annex VI Internal Regulations of the SB;
- Annex VII Whistleblowing Procedure for reporting offences and irregularities pursuant to Legislative Decree no. 24/2023;
- Procedures and other internal regulations introduced over time and aimed at maintaining full regulatory compliance and full application of the code of conduct.

The inclusion of more operational parts in the form of annexes to the Model is aimed at facilitating its dissemination and their possible revision over time. In any case, the updating of the attachments requires formal approval by the Board of Directors and the Supervisory Board, subject to approval of the contents by the management and the Company Management.

2.5 Amendments and additions to the Model

Since this Model is an act issued by the Board of Directors (in accordance with the provisions of Article 6, paragraph 1, letter a, of the Decree), its adoption, as well as subsequent amendments and additions, are subject to the competence of the Board of Directors of the Company, upon written indication by the SB, with the exception of the Regulations of the Supervisory Body; this regulation is in fact approved and amended by the SB itself, which has the right to independently define its operations and organization.

III. THE SUPERVISORY BODY AND ITS RULES OF PROCEDURE

Article 6 of Legislative Decree no. 231/2001 entrusts the task of supervising the functioning and compliance with the organisational models and of ensuring that they are updated to a body of the entity with autonomous powers of initiative and control (Article 6, lett. *b*, Legislative Decree no. 231/2001).
The existence of such a body is a necessary condition, together with the effective adoption and application of the Organisational Model, for the entity to enjoy exemption from liability resulting from the commission of the offences referred to in the Decree.
It should be noted that the body in question should not be understood as a new corporate body (like the Administrative Body or the Board of Statutory Auditors), but as an integral part of the company's internal control system.

The Supervisory Body, in order to carry out its activities, has adopted a specific Regulation, in accordance with the provisions of Legislative Decree 231/2001 which governs its actual functioning. This regulation, which defines the powers, functions, composition, requirements that the members must have, the criteria of ineligibility, forfeiture, waiver and revocation as well as the rules on information flows and management, constitutes Annex VI of this Model, to which reference is made.

The Supervisory Body, renewed by the Board of Directors with resolution of 29/04/2024, is a body with a collegial structure composed of three members:
- Dr. Afro Stecchezzini, President of the Supervisory Board;
- Pietro Cottignola, external member;
- Dr. Roberto Righetti, external member.

For further information, please refer to the SB Regulations, Annex VI to this Model.

IV. DISSEMINATION OF THE MODEL TO INTERESTED PARTIES

4.1 Training and information to interested parties

CAVIRO promotes, through information and training, knowledge of the Model, its internal regulations and protocols, as well as any updates thereto, to all employees and other stakeholders who are, therefore, required to know its content, and to observe them and contribute to their implementation.

For the purposes of implementing the Model, the General Management manages, in cooperation with the SB, the training of personnel, which is generally divided into the levels indicated below:
- Management staff and top management functions: training moment, distribution of the Model documentation; publication of the Model 231 and the Code of Ethics and Conduct on the company intranet; *Periodic update* emails.
- Other personnel: information moment; distribution of the documentation of the Model; publication of the Model and the Code of Ethics and Conduct on the company intranet; publication on the electronic portal for viewing the pay slips of the Code of Ethics and Conduct or, for personnel who receive the pay slip in paper form, the delivery of a copy of the same; posting on the bulletin board; e-mail or update communication.
- Directors: delivery and presentation of Model 231 and the Code of Ethics and Conduct.
- Collaborators/Agents: written or electronic communication relating to the adoption of the Organisational Model and the Code of Ethics and Conduct by CAVIRO (made available on the company website), insertion in the contracts of specific clauses acknowledging knowledge of Legislative Decree no. 231/2001, requiring the assumption of a commitment to refrain from conduct suitable for constituting the offences referred to in the same decree, and that govern the consequences in the event of violation of the provisions of the clause.
- Suppliers/Partners: written or electronic communication on the adoption of the Organisational Model, the Code of Ethics and Conduct (made available on the company website), in addition, specific clauses will be inserted in the contracts with which the suppliers/partners undertake to operate in strict compliance with the law and to comply with the Code of Ethics and Conduct in the management of relations with CAVIRO;
- Shareholders: will be informed of the adoption of the Code of Ethics and Conduct and the Model.
- Customers/Users: they will be able to view the Model and the Code of Ethics and Conduct through the company website, and specific notices will also be posted in the appropriate spaces at the offices.

V. DISCIPLINARY SYSTEMS

5.1 General principles

The effectiveness and effectiveness of the Organisational Model and the Code of Ethics and Conduct are closely linked to the preparation of an adequate sanctioning system. In this regard, both art. 6, paragraph 2, letter e) and art. 7, paragraph 4, letter b) of the Decree stipulate that the organization and management models must provide for "*a disciplinary system suitable for sanctioning non-compliance with the measures indicated in the Model"*. In addition, art. 6, paragraph 2bis, as amended by Legislative Decree 24/2023, states that the same Models "*provide, pursuant to the legislative decree implementing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019, the internal reporting channels, the prohibition of retaliation and the disciplinary system, adopted pursuant to paragraph 2, letter e)*".

The disciplinary system is entrusted with a dual function:

- sanction in disciplinary terms, *ex post*, violations of the Code of Ethics and conduct and the procedures provided for by the Organizational Model;
- stigmatize and therefore prevent the implementation of non-compliant conduct, through the threat of disciplinary sanctions.

The provision of a disciplinary sanction for a given conduct must meet the requirements of proportionality linked to the concrete seriousness of the act. It is clear that there must be, however, a response in terms of effectiveness. Even in the case of minor violations, a sanction with adequate deterrent effectiveness must still be provided.

The application of disciplinary sanctions is independent of the outcome of any criminal proceedings, as the rules of conduct imposed by the Model are assumed by CAVIRO in full autonomy and regardless of the type of offence that the violations of the Model may cause.

For the hypotheses of non-compliance with the provisions of the Model and the consequent disciplinary measures adopted by the Cooperative against employees, managers, directors, auditors, members as well as external collaborators, agents, consultants and partners, also pursuant to Legislative Decree 24/2023, please refer to Annex. The "Sanctioning System" of the Organization, Management and Control Model adopted by CAVIRO.

VI. PERIODIC CHECKS

This Model is subject to the following periodic checks:

- verification of the consistency between the concrete conduct of the recipients of the Model and the Model itself: this verification is carried out through the establishment of a system of periodic declarations by the recipients of the Model confirming that no actions have been carried out that are not in line with the Model and in particular that the indications and contents of this Model have been complied with and that the powers of delegation and signature limits;
- verification of existing procedures: the effective functioning of this Model will be periodically verified in the manner established by the SB. In addition, a review will be undertaken of all the reports received during the year, of the actions taken by the SB and other interested parties, of the events considered risky, of the awareness of the staff with respect to the hypotheses of crime provided for by the Decree, with sample interviews.

Following the above-mentioned checks, a report is drawn up to be submitted to the attention of the Company's Board of Directors (at the same time as the annual report prepared by the SB) highlighting possible shortcomings and suggesting any actions to be taken.