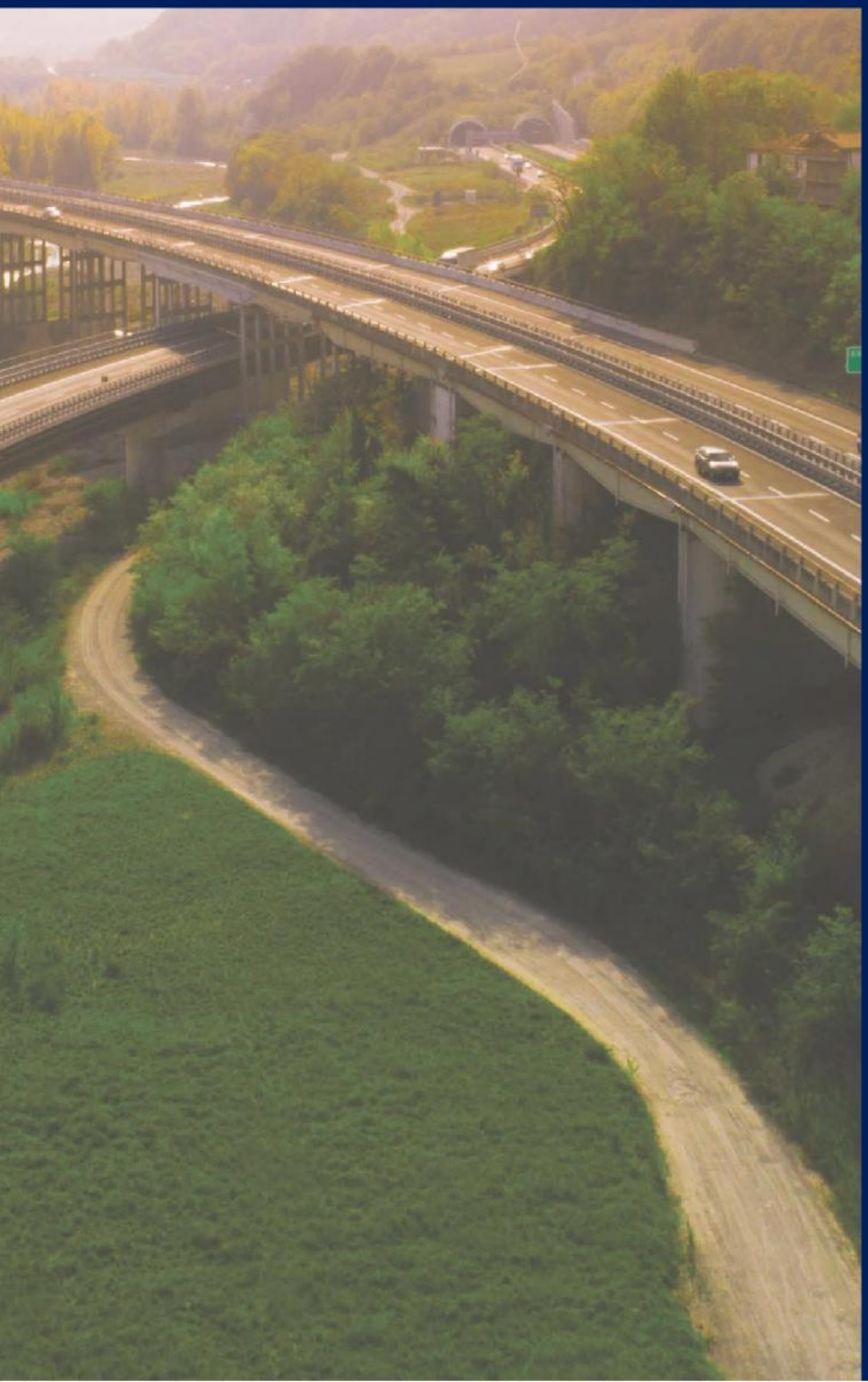
GENERAL PART



Approved by resolution of the Board of Directors on 08/02/2022

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1 DEFINITIONS

ASPI or Company	Autostrade per l'Italia S.p.A.
Atlantia	Atlantia S.p.A.
Atlantia Group	Atlantia's subsidiaries pursuant to art. 2359 paragraphs 1 and 2 of the Civil Code
P. A.	Public Administration, including its officials and those in charge of public service
Decree or Legislative Decree no. 231/2001	Legislative Decree no. 231 of 8 June 2001
Confindustria Guidelines	Guidelines for the construction of Models of Organisation, Management and Control pursuant to the Legislative Decree no. 231/2001 issued by Confindustria on 3 November 2003 and subsequent additions
Model	Model of Organisation, Management and Control pursuant to Legislative Decree no. 231/2001 and adopted by the Company in order to prevent committing the offences set forth in the aforementioned Decree
Code of Ethics	Atlantia Group's Code of Ethics adopted by ASPI on 11 July 2003 and subsequently updated, which sums up all of the values and rules of conduct to which the Company intends to make constant reference during the performance of its entrepreneurial activities
Anti-Corruption Guideline of the ASPI Group	The Anti-Corruption Guideline of the ASPI Group which integrates the rules of prevention and fight against corruption in force in the Group into an organic framework
Offences	Crimes provided for by the Legislative Decree no. 231/2001
Risk areas	Areas of activity considered potentially at risk in relation to the offences referred to in Legislative Decree no. 231/2001
Supervisory Board or SB	Internal body responsible for supervising the operation, effectiveness, compliance with the Model and updating thereof, pursuant to Article 6, paragraph 1, subparagraph b) of Legislative Decree no. 231/2001
Company Bodies	ASPI's Board of Directors and Board of Statutory Auditors
Senior Managers	As provided by Article 5, paragraph 1, subparagraph a) of the Decree, *persons that hold representative, administrative or management positions within the company or one of its organisational units with financial and operational autonomy or by persons that carry out, effectively also, the management and control thereof.* Within ASPI, given the current organisational structure, are the following Directors, Statutory Auditors, General Manager (if appointed), Assistant General Managers, Directors and Managers of the Highway Section
Subordinates	According to Article 5, paragraph 1, subparagraph b) of the Decree *persons under the direction or supervision of one of the persons referred to in subparagraph a)* (or Senior Managers) In ASPI, given the

current organisational structure, there are Managers and Employees

Board of Statutory Auditors	ASPI Board of Statutory Auditors
Risk and Control Committee	ASPI Risk and Control Committee
Third-party recipients	Those who have commercial and/or financial relationships of any kind with the Company
CCNL	Applicable National Collective Labour Agreements
General Protocols	The set of documents that define the general principles of conduct, such as: Code of Ethics, Group Code of Conduct for the prevention of discrimination and the protection of the dignity of the women and men of the Group, Anti-corruption Guideline of the ASPI Group, Group Procedure Conflict of Interest Management, Whistleblowing Management Procedure.
Protocols	Set of company rules, such as management procedures, operational standards, manuals, forms and communications to staff
Ethics Officer – **ASPI Group Whistleblowing Team**	The Team set up in ASPI with the responsibility of overseeing the reporting process, assessing their adequacy, suggesting any improvement measures on the process to the Board of Directors, and promoting the necessary information and training actions.
Coordinator *(of the Ethics Officer - ASPI Group Whistleblowing Team)*	Internal Audit Director, who governs the process of managing reports end-to-end, from their receipt to the closure of the investigation. You have the right to represent - in case of need - the Team at the meetings with the Administration, Management and Control Bodies.
Whistleblowing Management Procedure	The procedure governs the process of receiving and managing reports (so-called whistleblowing), the methods of managing the related investigation, in compliance with the privacy legislation or other legislation in force, applicable to the subject and object of the reports
231 Report	Report concerning facts that are believed to be: significant unlawful conduct pursuant to Legislative Decree no. 231/2001; violations of Model 231 The 231 report is considered as such (i) if the Reporting Party qualifies the Report as a 231 Report or refers to Legislative Decree no. 231/2001, or (ii) if the content of the Report concerns unlawful conduct that is relevant pursuant to Legislative Decree no. 231/2001 or violations of the 231 Model
Human Capital, Organization and HSE Department	ASPI Human Capital, Organization and HSE Department
Department of Legal Affairs	ASPI Department of Legal Affairs
Internal Audit Department	ASPI Internal Audit Department

2 RECITALS

Legislative Decree no. 231 of 8 June 2001 enforcing Article 11 of Law no. 300/2000 integrated the legal system with "*the administrative liability borne by the legal persons, companies and associations that have no legal personality*".
The Company - aware of the need to ensure fairness and transparency in the conduct of business and company activities, to protect the market position taken and its own image, the expectations of its shareholders and the performance of its employees – has deemed it appropriate to adopt a Model of Organisation, Management and Control (hereinafter, the "Model") intended to define a structured system of rules and controls to refer to while pursuing the company purpose in full compliance with the applicable laws.
Therefore, this document represents the Model of Organisation, Management and Control of the Company.

3 THE COMPANY

Autostrade per l'Italia S.p.A., a subsidiary of Atlantia S.p.A., conducts, in Italy and abroad, the construction and management business of: highways; transport infrastructure neighbouring the highway network; rest stops and intermodal infrastructure and its related adductions.
In carrying out this activity, the Company, therefore, by way of example and without limitation, ensures and manages:

a) the maintenance, extraordinary repairs, innovations, modernisations and completions;
b) the transit and rest stop rights, in addition to the rights related to the use of the network and highway infrastructure, in the form of subscriptions or other fees.

Moreover, the Company promotes, exercises and develops, also as related or, in any case, relevant to the construction and management of the highways, transport infrastructure, parking, intermodal and related adductions:

1) the study, advice, technical assistance and design activities;
2) activities intended for the direct acquisition, whatever the method, and the value-added commercialisation of patents, know-how, equipment, technology, information and online services;
3) activities of goods and services marketing;
4) activities intended for providing services, including information and editorial, to users' benefit;
5) activities intended for the economic use of highway appliances, including the telecommunications network.

4 LEGISLATIVE DECREE NO. 231/2001

4.1 THE ADMINISTRATIVE LIABILITY SYSTEM HELD BY THE LEGAL PERSONS

Legislative Decree no. 231 of 8 June 2001 (hereinafter, the "**Decree**") that introduces the "*Administrative liability of legal persons, companies and associations with no legal personality*" has aligned the Italian legislation on the liability of the legal persons to the following international conventions, to which Italy had long since adhered:

- the *Brussels Convention of 26 July 1995* on the protection of the financial interests of the European Communities;
- the *Brussels Convention of 26 May 1997* on the fight against corruption involving officials of the European Community or the Member States; and

- the *OECD Convention of 17 December 1997* on the fight against corruption of foreign public officials in the international and business transactions.

The Decree has introduced into the Italian system the administrative liability of companies and associations with or without legal personality (hereinafter, the "**Organisations**") for certain offences committed in their interest or to their benefit, by:

a) natural persons who hold representative, administrative or management positions of the Organisations herein, or of one of their organisational units with financial and operational autonomy, in addition to natural persons who effectively carry out the management and control of these Organisations (so-called "*senior managers*");
b) natural persons subject to the direction or supervision of one of the persons specified above (so-called "*subordinates*").

The administrative liability of the legal person is added to the (criminal) liability of the natural person who physically committed the offence and they both are to be ascertained in the course of proceedings before the criminal judge. In addition, the liability of the Organisation shall persist even if the natural person who committed the offence has not yet been identified or is not punishable.

In the event of attempt of one of the crimes indicated in the Decree, the financial penalties and interdiction sanctions shall be reduced by a third to up to half. On the other hand, sanctions in cases where the Organisation voluntarily prevents the criminal conduct or completion of the event shall not be imposed.

Pursuant to Article 23 of Decree no. 231/2001, the Organisation is also liable for anyone who, during the performance of the business of the Organisation and in the interest or to the advantage thereof, has violated the obligations or prohibitions relating to the interdiction sanctions applicable to the Organisation itself.

The Company's liability, to date, shall be assumed exclusively in the event of the following types of illegal conduct (so-called predicate offences) expressly referred to in the Decree:

i. Offences against the Public Administration (Embezzlement against the State, misappropriation of funds to the detriment of the State, fraud against the State or other public body or the European Community or fraud for the obtainment of public funds and computer fraud against the State or other public body; bribery, undue induction to give or promise other benefits and corruption), Articles 24 25, Legislative Decree no. 231/2001;
ii. Computer offences and unlawful data processing (Article 24-bis of Legislative Decree no. 231/2001);
iii. Organised offences (Article 24-ter of Legislative Decree no. 231/2001);
iv. Forgery of money, public credit cards, revenue stamps and identification instruments or signs of recognition (Article 25-bis of Legislative Decree no. 231/2001);
v. Offences against industry and commerce (Article 25-bis.1, Legislative Decree no. 231/2001);
vi. Corporate offences (Article 25-ter of Legislative Decree no. 231/2001);
vii. Offences of terrorism or subversion of the democratic order under the Criminal Code and special laws (Article 25-quater of Legislative Decree no. 231/2001);
viii. Practices of mutilation of female genitals (Article 25-quarter.1, Legislative Decree no. 231/2001);
ix. Offences against the person (Article 25-quinquies of Legislative Decree no. 231/2001);
x. Offences of market abuse (Art. 25-sexies Legislative Decree no. 231/2001);
xi. Offences of unintentional manslaughter and serious or most serious injuries, committed in violation of the rules on health and safety at work (Article 25-septies of Legislative

Decree no. 231/2001);

xii. Receiving, laundering and using of money, goods or benefits of illicit origin, as well as self-laundering (Article 25-octies of Legislative Decree no. 231/2001);

xiii. Offences relating to non-cash payment instruments (Article 25-octies.1 Legislative Decree n. 231/2001;

xiv. Offences involving breach of copyright (Article 25-novies, Legislative Decree no. 231/2001);

xv. Induction not to make statements or to make false statements to the judicial authorities (Article 25-decies of Legislative Decree no. 231/2001);

xvi. Transnational offences in matters of criminal association, money laundering, smuggling of migrants, obstruction of justice (Law no. 146 of 16 March 2006, Articles 3 and 10);

xvii. Environmental offences (Article 25-undicies, Legislative Decree no. 231/2001);

xviii. Employment of third-country nationals whose stay is illegal (Article 25-duodecies, Legislative Decree no. 231/2001);

xix. Racism and xenophobia (Article 25-terdecies of Legislative Decree No. 231/2001);

xx. Fraud in sports competitions, abusive gambling or betting and gambling carried out by means of prohibited devices (Article 25-quaterdecies of Legislative Decree no. 231/2001);

xxi. Tax offenses (Article 25-quinquiesdecies of Legislative Decree No. 231/2001);

xxii. Smuggling (Article 25-sexiesdecies of Legislative Decree No. 231/2001).

As a result of the analysis of the activities performed by the Company, it is believed that the illegal conducts listed under points i), ii), iii), iv), v), vi), vii), ix), x), xi), xii) xiii), xiv), xv), xvi), xvii), xviii), xxi) may concern Autostrade per l'Italia S.p.A. (hereinafter also referred to as the "Company" or "ASPI").

4.2 OFFENCES COMMITTED ABROAD

The Organisation shall be held liable also in relation to offences committed abroad, provided that the state where the offence was committed does not proceed against it.

Specifically, according to Article 4 of the Decree, the Organisation which is established in Italy may be considered liable in relation to offences committed abroad, according to the following assumptions:

a) the offence must be committed abroad by an individual functionally connected to the Organisation (Article 5 paragraph 1 of the Decree)
b) the Organisation must have its registered office in the territory of the Italian state
c) the Organisation may be proceeded against only in the cases and conditions provided for under Articles 7 (Offences committed abroad[1]), 8 (Political offence committed abroad[2]), 9 (Common offence of the citizen abroad) and 10 (Common offence of the foreigner abroad) of the Criminal Code.

[1] *Art. 1, co. 1, letter a) of the Law 9 January 2019, n. 3 added after the third paragraph of art. 9 of the Criminal Code the following: "In the cases provided for by the previous provisions, the request of the Minister of Justice or the request or complaint of the injured person are not necessary for the crimes provided for in articles 320, 321 and 346-bis".*

[2] *Art. 1, co. 1, letter b) of the Law 9 January 2019, n. 3 added after the second paragraph of Article 10 of the Criminal Code the following: "The request of the Minister of Justice or the request or complaint of the injured person are not necessary for the crimes provided for in articles 317, 318, 319, 319-bis, 319-ter, 319-quater, 320, 321, 322 and 322-bis ".*

4.3 THE SANCTIONS

The sanctions provided for the offences referred to in Article 9 of the Decree[3] are:

- financial sanctions;
- interdiction sanctions;
- forfeiture;
- publication of the judgement.

In particular, the interdiction sanctions, lasting no less than three months and not exceeding two years, regard the specific activity subject to the offence committed by the Organisation and consist of:

- the debarment from performance of the activity;
- ban on contracting with the Public Administration;
- the suspension or withdrawal of authorisations, licenses or concessions related to the committing of the offence;
- exclusion from benefits, loans, grants and subsidies and/or revocation of those already granted;
- ban on advertising goods or services.

The interdiction sanctions are applied in the cases exhaustively listed by the Decree, provided that at least one of the following conditions occurs:

- the Organisation has taken a substantial profit due to the offence and the offence was committed

i. by persons in senior positions, or

ii. by individuals under the direction and supervision of others when the offence has been determined or facilitated by serious organisational shortcomings;

- in the event of repeated offences.

The type and duration of the interdiction sanctions shall be established by the court taking into account the seriousness of the conduct, the degree of the Company's liability and of the activity carried out by the Organisation in order to eliminate or mitigate the consequences of the offence and prevent the commission of further offences. In lieu of applying the sanction, the court may order the continuation of the Organisation's activity by a judicial commission The interdiction sanctions may be applied to the Organisation as a precautionary measure when there are serious grounds for considering the existence of the Company's liability in the commission of the offence and there are reasonable and specific elements that suggest the real danger of the commission of offences similar to the alleged offence (Article 45). Should the conditions for applying an interdiction sanction that leads to the interruption of the organisation's activity exist, the court, instead of applying the sanction, may order the continuation of the organisation's activity by a commissioner for a period lasting equal to that of the interdiction measure, when at least one of the following conditions occur: the organisation carries out a public service or a service of public necessity whose interruption causes serious prejudice to the community; the interruption causes a significant impact on the employment.

Finally, by express provision of art. 17 of the Decree, disqualification sanctions are not applied where, prior to the opening declaration of the hearing, the entity has taken steps to:

- compensate for the damage, eliminating the harmful and dangerous consequences of the crime or has effectively taken steps to do so;

[3] *Art. 25, co. 5, of Legislative Decree no. 231/2001 reads as follows: "5. In cases of conviction for one of the crimes indicated in paragraphs 2 and 3, the disqualification sanctions provided for in article 9, paragraph 2, are applied for a duration of not less than four years and not more than seven years, if the crime has been committed by one of the subjects referred to in article 5, paragraph 1, letter a), and for a duration of not less than two years and not more than four, if the offense was committed by one of the subjects referred to in article 5, paragraph 1, letter b). " The same provision also provides in paragraph 5-bis the following: "If, before the first instance sentence, the entity has made effective efforts to prevent the criminal activity from being brought to further consequences, to ensure evidence of the crimes and for the " identification of those responsible or for the seizure of the sums or other benefits transferred and eliminated the organizational deficiencies that led to the crime through the adoption and implementation of organizational models suitable for preventing crimes of the type that occurred, the disqualifying sanctions have the duration established by article 13, paragraph 2. "*

- eliminate the organizational deficiencies that led to the event by adopting and implementing organizational models suitable for preventing crimes of the type that occurred;
- make available the profit obtained from the commission of the crime for the purposes of confiscation.

The failure to comply with the interdiction measures shall constitute a separate offence under the Decree and which is deemed a source of possible administrative liability (Article 23). Financial sanctions applicable to all offences pursuant to Article 10 of the Decree are determined according to a system based on "quotas" in a number not less than one hundred and not more than one thousand and of a variable amount of every single quota between a minimum of €258 and a maximum of €1,549. The judge determines the number of quotas by taking into account the seriousness of the crime, the degree of the Company's liability and the performance to cancel or mitigate the consequences of the offence and to prevent the commission of further offences. The amount of the quota shall be fixed on the basis of the economic and financial conditions of the Organisation in order to ensure the effectiveness of the sanction (Article 11 of the Decree).
In addition to the aforementioned sanctions, the Decree provides that the forfeiture of the price or profit of the offence will be always ordered, that may regard goods or other assets of equivalent value as well as the publication of the conviction in the presence of an interdiction sanction.

4.4 THE ADOPTION OF THE "MODEL OF ORGANISATION, MANAGEMENT AND CONTROL" AS A POSSIBLE EXEMPTION FROM THE ADMINISTRATIVE LIABILITY

Articles 6 and 7 of the Decree provide for specific types of exemption from the administrative liability of the Organisation for offences committed in its interest or to its advantage both by senior managers and employees.
Specifically, Article 6 of the Decree, in the event of offences committed by persons in senior positions - as holders of positions of representation, administration or management of the Organisation or of one of its organisational units with financial and operational autonomy, or holders of power, even if only effective, of the Organisation's management and control -provides for a specific form of exemption from administrative liability provided that the Organisation proves that:

a) the governing body has adopted and effectively implemented, prior to the commission of the offence, organisation and management models suitable for the prevention of crimes similar to the offence occurred;
b) the task of supervising the functioning and observance of the models and their updating has been entrusted to a body with independent powers of initiative and control;
c) the persons who have committed the offences have acted fraudulently by evading these models;
d) there was no omission of or insufficient supervision by the body mentioned in subparagraph b) above. In the event, in any case, of crimes committed by subordinates - individuals under the direction or supervision from others, Article 7 of the Decree provides that the Organisation shall be held liable if the commission of the offence was made possible by non-compliance with the management and supervisory obligations. This non-compliance shall however be excluded should the Organisation, prior to the commission of the offence, have adopted and effectively implemented a Model of Organisation, Management and Control suitable for the prevention of crimes similar to the offence committed.

In addition, the Decree establishes that the Model of Organisation, Management and Control shall comply with the following requirements:

- identify the activities during which the offences under the Decree may be committed;
- provide for specific protocols intended for planning the formation and implementation

of the Organisation's decisions in relation to the offences to be prevented;

- identify appropriate methods to manage financial resources suitable for preventing the commission of such offences;
- provide for obligations to inform to the body responsible for supervising the functioning and observance of the Model;
- introduce an internal disciplinary system suitable for sanctioning the non-observance of the measures stated in the Model.

Additional requirements aimed at ensuring the suitability of the Organization, Management and Control Model and the consequent exemption from liability for the Entity, were introduced by Law no. 179 bearing "Provisions for the protection of the authors of reports of crimes or irregularities of which they have become aware in the context of a public or private employment relationship", which amended art. 6 of the Decree, reformulated as follows for the parts of interest here:

a) one or more channels that allow the subjects indicated in article 5, paragraph 1, letters a) and b), to submit, in order to protect the integrity of the entity, detailed reports of unlawful conduct, relevant pursuant to this decree and based on precise and consistent factual elements, or on violations of the organization and management model of the entity, of which they have become aware due to the functions performed; these channels guarantee the confidentiality of the identity of the whistleblower in the management of the report;

b) at least one alternative reporting channel suitable for guaranteeing the confidentiality of the whistleblower's identity using IT methods;

c) the prohibition of retaliation or discriminatory acts, direct or indirect, against the whistleblower for reasons connected, directly or indirectly, to the report;

d) in the disciplinary system adopted pursuant to paragraph 2, letter e), sanctions against those who violate the protection measures of the whistleblower, as well as those who make reports with willful misconduct or gross negligence that prove to be unfounded.

The same Decree provides that organisational and management Models may be adopted, ensuring the requirements mentioned above on the basis of codes of conduct drawn up by trade associations.

5 ADOPTION OF THE MODEL

5.1 PURPOSES AND RECIPIENTS OF THE MODEL

The Model may be defined as a body of principles, rules, regulations, organisational plans and responsibilities, functional to the implementation and diligent management of a control and monitoring system of the activities at risk in relation to the offences covered by the Decree.
The Model has the following objectives:

- to strengthen the Corporate Governance system;
- to organize a structured and organic prevention and control system aimed at eliminating or reducing the risk of committing the offences set forth in Legislative Decree no. 231/2001, also in the form of attempt, linked to the company business, especially with regard to the elimination or reduction of any illegal conduct;
- to make all those who operate for and on behalf of ASPI in the "risk areas" aware of the fact that, in the event of violation of the provisions of the Model, punishment for a committed offence shall be imposed not only against the offender but also against the company by applying penalties and administrative sanctions;
- to inform all those who work in any capacity for, on behalf or in the interest of ASPI that

the violation of the provisions of the Model shall determine the application of appropriate sanctions;

- to reiterate that ASPI shall not tolerate unlawful conduct and shall oppose any corrupt practice, without disclosing in any way the objective pursued or the erroneous assumption to act in the interest or benefit of the Company, as such conducts are however contrary to the ethical principles which the Company intends to follow and, therefore, contrary to its interests;
- to ban the violations of the Model with the application of disciplinary and/or contractual penalties.

The following shall be considered the Recipients of this Model and, as such, shall be under the obligation of knowing and observing it in the scope of its specific competences:

- the members of the Board of Directors who are responsible for setting the objectives, deciding the activities, implementing the projects, proposing the investments and taking any decision or action concerning the performance of the Company;
- the members of the Board of Statutory Auditors, during the performance of the control and verification function of the formal and substantial fairness of the Company's business and the operation of the internal control system;
- General Manager (if appointed), Managers, Managers of Highway Sections and Executives;
- the employees and all employees with whom they have contractual relationships, for any reason, even temporary and/or only occasional.

The Recipients of the Model, who are required to comply with this General Part, the Code of Ethics, the Whistleblowing Procedure and the Anti-Corruption Guideline of the ASPI Group, also include all those who have commercial and / or financial relationships of any kind with the Company (i.e., outsourcers, consultants, service providers and contractors, business partners). Given the specific organisational structure adopted by the Company, the "Senior Managers" are the Directors, Statutory Auditors, General Manager (if appointed), the Assistant General Managers, Managers and Managers of the Highway Sections.

The "subordinates" are the Executives and Employees.

5.2 STRUCTURE OF THE MODEL

The ASPI Model consists of this "General Part" - which contains the cardinal principles of the same - and the Special Part.

The Special Part of the Model is characterized by a structure "by processes" which, in more detail, provides for a specific section to be dedicated to the individual Sensitive Activities mapped in relation to company processes.

The individual sections of the Special Section illustrate (for each sensitive activity):

- Relevant crime families;
- Exemplary procedures for committing the offense;
- (reference to) Transversal Control Standards[4];
- Peculiar control standards (General and Specific[5]);

[4] Control safeguards which, being characterized by the element of transversality, by their very nature are applicable without distinction to all business processes and sensitive activities mapped. These control standards are formulated in such a way as to be verifiable regardless of the association with specific sensitive processes and / or activities.

[5] Control safeguards which, unlike the Transversal ones, are specifically associated with the individual Sensitive Activities identified within the corporate processes. These are instructions aimed at regulating, within the applicable provisions of the Regulatory System, more detailed aspects characteristic of each Sensitive Activity. The specific control standards are divided in turn into:

- "General Control Standards": behavioral indications which, for each sensitive activity mapped, illustrate the "best practices" to be observed;
- "Specific Control Standards": organizational and / or operational controls, specifically associated with individual sensitive activities, implemented in order to mitigate the risk of commission of predicate offenses.

- Information flows to the Supervisory Body (if any).

5.3 UPDATES TO THE MODEL

Given the complexity of the Company's organisational structure, in order to promote the compliance of the various business activities with the provisions of Legislative Decree no. 231/2001 and, at the same time, to ensure an effective control of the risk of committing predicate offences, an updating process of the Model upon the occurrence of one or more of the following conditions has been provided for:

- new laws or case laws on the Organisations' liability for administrative offences determined by crimes;
- significant changes in the organisational structure or business activities of the Company;
- significant violations of the Model, the results of the risk assessment, controls on the effectiveness of the Model, industry best practices.

The Model is approved by the Board of Directors of ASPI. Any updates to the Annexes of the Model that do not substantially affect the general or special part of the Model, may be approved by the Chief Executive Officer, without prejudice to the subsequent disclosure to the Board of Directors.

5.3.1 UPDATING OF GENERAL PROTOCOLS

The "General Protocols" represent the set of documents that define the general principles of behaviour, that is:

Ethical code

ASPI has already adopted the Code of Ethics since 2003, which was subsequently updated. The responsibility for monitoring compliance with the Code has been entrusted to the Ethics Officer.

The Code of Ethics requires the members of the Boards of Directors, the members of the Boards of Statutory Auditors and of the other Control Bodies, the employees of the Group, the third-party collaborators (such as, for example, consultants, representatives, intermediaries, agents, etc.), as well as business partners and all those who have commercial relations with the Group, ethical-professional integrity, fairness of conduct and full compliance with laws and regulations in all the countries in which it operates and with the principles of honesty , reliability, impartiality, loyalty, transparency, correctness and good faith. A close interaction was created between the Model and the Code of Ethics, in order to form a corpus of internal rules with the aim of encouraging the culture of ethics and corporate transparency, also in line with the provisions of the Confindustria Guidelines.;

- ***Anti-Corruption Guideline of the ASPI Group and Management System for the prevention of corruption***

  ASPI has transposed the update- in December 2021 – of the Anti-corruption Policy of the Atlantia Group, by the issuance of the Anti-Corruption Guideline of the ASPI Group which integrates the Group's rules for preventing and combating corruption in an organic framework. On the point in question, the Company, although not the recipient of the obligations and fulfilments provided for by Law no. 190/2012 on "Provisions for the prevention and repression of corruption and illegality in the public administration", in order to actively contribute to the fight against corruption and to strengthen the culture of legality, has voluntarily implemented a Management System for the prevention of corruption, committing itself to its continuous improvement and identifying the management model to inspire its system in the international technical standard UNI ISO 37001: 2016.

The aforementioned Management System, which obtained certification to the international technical standard UNI ISO 37001: 2016 in April 2019 and which is described in the "Management System Manual for the prevention of corruption" adopted by ASPI, is represented by a set of activities designed and implemented with an integrated and synergistic approach, aimed at continually improving the performance and effectiveness of the containment of corruption risks.

This System operates in synergy with the other anti-corruption compliance tools already integrated by the company, such as this Organization, Management and Control Model pursuant to Legislative Decree no. 231/2001 and with additional risk analysis tools (i.e., Risk management);

- ***Group Procedure "Management of conflicts of interest"***

  The Group procedure, issued in December 2017 by Atlantia, aims to detail, with respect to the obligations already in force in the Atlantia Group (ref. Code of Ethics, art. preliminary investigation, the subjects and roles involved and their respective responsibilities;

  Report Management Procedure

  The procedure governs the process of receiving and managing reports (so-called whistleblowing), the methods of managing the related investigation, in compliance with the privacy legislation or other legislation in force, applicable to the subject and object of the report. With regard to this protocol, please refer to the provisions of par. 7.1 Reports relating to alleged violations of the Model (so-called 231 reports);

- ***Tax Compliance Model***

  During 2020, the Company adopted the Tax Compliance Model which defines the guidelines for the management of tax risk, through the Tax Control Framework[6], functional to adhering to the cooperative compliance regimes and in consistency and in application of the principles and the operating rules established by the Tax Strategy

5.3.2 UPDATES TO THE MODEL

The update process of the Model has been divided into the stages described below:

PHASE 1: MAPPING OF RISK ACTIVITIES

The business activities which may theoretically involve the committing of one of the predicate offences as well as those that may be instrumental to the commission of the predicate offences, thus enabling or facilitating their completion have been evaluated. The identification of the processes/activities at risk has been implemented by previously examining the corporate documentation (organisational charts, key processes, powers of attorney, organisational arrangements, etc.) and subsequently carrying out a series of interviews with key players in the field of processes/activities at risk.

Hence, potentially achievable crimes as part of the activities at risk have been identified and the possible perpetrators and some concrete examples of the commission procedure have been indicated for each offence.

The outcome of this work has been presented in a document containing the mapping of the business activities, with an indication of those at risk and of the persons (or corporate structures) that could complete them or perform instrumental conducts thereof.

[6] The Tax Control Framework "(" TCF ") is defined as a set of rules, procedures, organizational structures and safeguards, aimed at allowing the detection, measurement, management and control of tax risk, understood as the risk of operating in violation of tax laws or in contrast with the principles or purposes of the tax system (so-called abuse of law). / 2015, was positively assessed by the Revenue Agency, which ordered admission to the Company's regime.

PHASE 2: ANALYSIS OF THE CONTROL SYSTEMS

Once the potential risks were identified, the analysis of the system of existing controls in relation to the processes/activities at risk, in order to assess their suitability for the prevention of the crime risks was considered. This stage, therefore, focused on the verification of the existing internal control systems (formal protocols and/or practices adopted, verification, documentation and "traceability" of the operations and controls, separation and segregation of functions, etc.) through the analysis of the information and documentation provided by the company structures. As part of the risk assessment activities, the elements of the Internal Control and Risk Management System of ASPI[7] were analyzed and the responsible / reference structures for the management of the activities / areas at risk[8] were promptly identified. The internal control and risk management system is represented by the set of tools, rules, procedures[9] and corporate organizational structures aimed at allowing, through an adequate process of identification, measurement, management and monitoring of the main risks, to manage of the company that is sound, correct and consistent with the corporate objectives defined by the Board of Directors.

The internal control and risk management system of ASPI is based on the following general principles:

(a) operational powers: operational powers are assigned taking into account the nature, size and risks of the individual categories of transactions;

(b) organizational structures: the organizational structures are structured in such a way as to avoid functional overlapping and concentration in the hands of a single subject, of activities that present a high degree of criticality or risk (functional segregation);

(c) information flow: for each process, there is a system of parameters and the related periodic flow of information, aimed at measuring its efficiency and effectiveness, as well as the structure (s) responsible for its monitoring;

(d) periodic analysis: the knowledge and professional skills available in the organization are periodically analyzed in terms of consistency with the assigned objectives;

(e) operational processes: operational processes are defined by providing adequate

[7] On this point, see also the Annual Financial Report in the Paragraph "Internal Control and Risk Management System".)

[8] The management procedure "Company Regulatory System and Documentation Management" defines criteria, responsibilities and formalization procedures for company documentation, with consequent communication and dissemination of the same. In particular, the following are envisaged: Service Orders, documents aimed at defining or modifying the organizational macro-structure, communicating the appointment of the Heads of the first level organizational structures (employees of the President, Chief Executive Officer and General Manager), defining their mission as well as communicating organizational provisions of a general nature of considerable importance;
Service Instructions, documents aimed at defining or modifying the articulation and areas of responsibility of the second level organizational structures and appointing the related Managers.
Organizational communications, documents aimed at defining or modifying the organizational structure of the resource teams responsible for implementing cross-cutting initiatives / projects of interest to the Company and / or the Group.

[9] In line with the provisions of the "Company Regulatory System and Documentation Management" procedure, the following type of company documentation is envisaged:

- Guidelines, documents that formalized the governance rules and control principles;
- Group Guidelines, Guidelines formalized by the Company which may be valid for the Subsidiaries.
- Guidelines issued by Atlantia, Guidelines and Policies formalized by Atlantia with value for the Company;
- Management Procedures, Company documents that formalize business processes by defining methods, roles and responsibilities, information systems, controls to ensure the application of the guidelines;
- Procedures issued by Atlantia, procedures formalized by Atlantia with value for the Company;
- Group Management Procedures, management procedures formalized by the Company which may be valid for the Subsidiaries;
- TUF procedures, administrative and accounting procedures for the preparation of the financial statements and consolidated financial statements as well as any other communication of a financial nature (Consolidated Law on Finance - Legislative Decree 58/98 and subsequent amendments);
- Operating manuals, easy-to-consult documents containing a complete, exhaustive and systematic discussion of a specific topic;
- Operating Instructions, documents containing detailed indications for the performance of activities;
- Management Systems Manuals, documents that state the company policy and describe the management of the Systems, illustrating the respective fields of application, the documented reference procedures and the description of the interactions between the processes included in a specific field of application, in compliance with the requirements of the reference technical standards.

documentary support to allow them to be always verifiable in terms of consistency, consistency and responsibility (traceability);

(f) security mechanisms: security mechanisms ensure adequate protection of the assets and data of the company organization, in order to allow access to data limited to what is necessary to carry out the assigned activities;

(g) risk monitoring: the risks associated with the achievement of the objectives are identified by periodically providing for adequate monitoring and updating. Negative events, which may threaten the operational continuity of the organization, are the subject of a specific activity of evaluation and adjustment of the protections;

(h) continuous supervision: the Internal Control and Risk Management System is subject to continuous supervision for periodic assessments and for constant adaptation.

To verify the functioning and suitability of the internal control and risk management system, the Board of Directors of the Company approves, on an annual basis, the audit plan prepared by the Head of the Internal Audit Department, after consulting the Board of Statutory Auditors and assessment by the Control and Risks Committee.

The checks on the control system also concerned the activities carried out, in whole or in part, with the support of subsidiaries or external companies (outsourcing). These checks were conducted on the basis of the following criteria:

o the formalization of the services provided in specific service contracts;

o the provision of suitable controls on the activity actually carried out by the service companies on the basis of the contractually defined services;

o the existence of formalized procedures / company guidelines relating to the definition of service contracts and the implementation of control measures, also with reference to the criteria for determining the fees and the methods of authorizing payments;

o the identification of the person in charge of managing the contract (Sole Processor - RUP / Technical manager of the contract) the provision of the commitment of the Parties to comply with the rules and ethical principles established: i) in the Code of Ethics; ii) in the Organization, Management and Control Model; iii) in the Anti-Corruption Guideline of the ASPI Group.

The analysis of the integrated control system, in the process of updating the Model, concerned the existence of a suitable system for monitoring the processes for verifying the results and any non-conformities as well as the existence of a suitable management system for documentation, such as to allow the traceability of operations.

PHASE 3: GAP ANALYSIS

The detected design of the controls has been compared with the characteristics and objectives required by the Decree or suggested by the Confindustria Guidelines and by the best national and international practices. The overall assessment of the control system adequacy has been performed considering the acceptable risk level approved from time to time by the Board of Directors. In this perspective, the control system has been considered adequate if the hypothetical commission of the predicate offence, as provided for by the Decree, is allowed by the fraudulent avoidance of the Model. The comparison between the set of existing control systems and that considered optimal has enabled the Company to identify a number of areas of integration and/or improvement of the control system, for which the improvement actions to be undertaken have been defined.

5.4 COMMUNICATION OF THE MODEL

ASPI promotes awareness of the Model, the internal regulatory system and their pertinent updates among all Recipients (refer to paragraph 5.1), that have different levels of knowledge according to their position and role. Therefore, the Recipients are required to know the content, to observe it and contribute to its implementation.

The Model shall be formally communicated to Directors and Statutory Auditors at the time of appointment by delivering a complete copy, also in electronic format, by the Secretary of the Board of Directors.

The Model is made available to the employees on the company's intranet network. They shall systematically access it during the performance of their work. For those employees that have no access to the corporate intranet, the Model is made available by disseminating it at the workplace. Upon employment, the employees shall receive the Information on the Company regulations which mentions, among other things, the Model, , the Code of Ethics, the Anti-Corruption Guideline, the Whistleblowing Management Procedure and the regulations of interest to the Company whose knowledge is necessary for the proper conduct of their work.

The General Part of this Model and the Code of Ethics, the Anti-Corruption Guideline, the Whistleblowing Management Procedure are made available to third parties and to any other partner of the Company that is required to comply with the relevant provisions through publication on the Company's website[10].

6 SUPERVISORY BODY

6.1 IDENTIFICATION AND COMPOSITION OF THE SUPERVISORY BODY

For the purpose of implementing the Decree and in compliance with the provisions of the Confindustria Guidelines, the Board of Directors of ASPI has established a Body (The Supervisory Board) which has been assigned the task to supervise the functioning, effectiveness and compliance with the Model as well as to update it.

Considering the specific nature of its tasks, the Supervisory Board comprises multiple parties, with at least one external Component, which assumes the function of Coordinator. The other members of the Supervisory Board are chosen both among external parties and parties within the Company, which are not subject, during the performance of their duties, to the hierarchical power of any organ or corporate position.

6.2 APPOINTMENT

The members of the Supervisory Board shall be appointed by the Board of Directors, which shall identify the Coordinator as well. The appointment shall be communicated to each member of the Supervisory Board according to the resolutions' system of communication of the Board of Directors. Each member of the Board, in turn, shall formally accept the job.

The composition, duties, rights and responsibilities of the Supervisory Board as well as its purposes shall be communicated at all company levels through a Service Order.

[10] The Special Section, where expressly provided, can be made available to third parties / interlocutors required to comply with the relative provisions (eg by transfer via e-mail / attachment to the reference contract etc...).

6.3 REQUIREMENTS OF THE SUPERVISORY BODY

Based on the provisions of Articles 6 and 7 of the Decree and taking into due account the Confindustria Guidelines, the autonomy and independence, professionalism and continuity of action of the Supervisory Board shall be adequately guaranteed.

The autonomy and independence which the Supervisory Board shall necessarily have, are ensured by the presence of an authoritative external component with Coordinator functions free from operational duties and interests that may influence its autonomous judgement, and by the fact that the Supervisory Board operates in the absence of any hierarchical constraints within the Company's Corporate Governance by reporting to the Board of Directors, Statutory Auditors, as well as to the President and CEO. Moreover, the activities carried out by the SB shall not be influenced by any corporate body or structure of the Company, subject to the power and duty of the Board of Directors to oversee the adequacy of the intervention put in place by the SB, so as to ensure the effective adoption and implementation of the Model.

In identifying the members of the SB, the Board of Directors takes into account the selection criteria defined in the approved "Guidelines for Composition, Selection and Appointment of the Supervisory Bodies of the ASPI Group".

Continuity of action is also guaranteed by the fact that the Supervisory Body works permanently at the Company, usually meeting once a month to carry out the task assigned to it and that its members have an effective and thorough understanding of the business processes, thus being able to have immediate knowledge of any critical issues.

The appointment as a member of the Supervisory Body is conditional on the absence of causes of incompatibility with the appointment itself[11] and the possession of the requisites of integrity, the absence of which constitutes reasons for ineligibility and / or forfeiture as a member of the Supervisory Body.

6.4 TASKS AND POWERS OF THE SUPERVISORY BODY

Overall, the Supervisory Body of ASPI has the following tasks:

A. to monitor the adequacy of the Model to prevent the commission of the offences under the Decree;
B. to supervise the compliance with the provisions of the Model by the Recipients within the Company and to promote the same compliance by third parties (consultants, suppliers, etc.);
C. to maintain the Model up-to-date with the changes in the organisational structure, the reference regulations or following the monitoring activities that may identify significant violations of the set provisions.

Operationally the Supervisory Body has the tasks of:

- constantly survey the business activities and the related regulations in order to update the mapping of the activities at offence risk and propose the updating and integration of the Model and procedures thereof, where necessary;
- monitor the Model and procedures' validity over time as well as their effective implementation by promoting, after having previously consulted the company structures concerned, all necessary actions in order to ensure effectiveness thereof. This task shall include the drafting of proposed adjustments and the subsequent verification of the implementation and the proposed solutions' functionality;

[11] Any situation of conflict of interest referred to in the Code of Ethics, par. 3.9.

- regularly carry out targeted checks on specific operations or acts performed during the execution of the activities at risk;
- verify the existing powers of authorisation and signature, in order to ensure their consistency with the organisational and management responsibilities and propose updating and/or modifications thereof, if necessary;
- when implementing the Model, define and ensure the regular flow of information, according to a frequency adequate to the crime risk level of the individual areas, which enables the SB to be regularly updated by the relevant corporate structures on the activities at risk of crime, and to establish modes of communication in order to gain knowledge of alleged violations of the Model;
- implement, in accordance with the Model, a regular flow of information towards the relevant company bodies on the effectiveness of and compliance with the Model;
- share training programs sponsored by the Human Resources Department for dissemination of the awareness and understanding of the Model;
- examine the steps taken by the Company to facilitate awareness and understanding of the Model and the procedures thereof, by all those who work on behalf of the Company;
- verify the validity of the reports received about the allegedly crime-related conducts as under the Decree;
- ascertain the causes that led to the alleged violation of the Model and the party that committed such violation;
- investigate the violations of the Model reported or learned directly and communicate them to the competent structures for disciplinary purposes.

To perform its tasks, the SB has the powers set forth below:

– access any documents and/or company information necessary for carrying out the functions assigned to the SB under the Model. In this regard, any corporate structure, employee and/or member of the governing bodies shall provide all the information in its possession when requested by the Supervisory Body or upon occurrence of any events or circumstances relevant to the performance of activities within the SB's field of competence;

– access, without the need for prior approval, to all of the company's facilities in order to obtain any information or data deemed necessary for the performance of its duties;

– use external consultants with proven expertise when necessary for the performance of its activities;

– ensure that those responsible of the corporate structures promptly provide the information, data and/or reports requested;

– request, if necessary, the direct hearing of employees, directors and members of the Board of Statutory Auditors of the Company; −request information from external consultants, business partners and auditors.

For the purpose of a better and more effective fulfilment of the assigned tasks and functions, the SB may employ, during the conduct of its operational activities, the Group Internal Audit Division and other various corporate structures that may prove necessary for performing these activities on a case-by-case basis.

To ensure its independence, the Body shall report directly to the Board of Directors and, during the performance of its duties, shall act independently by employing sufficient financial resources meant to ensure complete operational independence.

To this end, the Board of Directors shall allocate the determined funds to the Body for the expenses incurred during the performance of its assignments.

During the execution of the operational activities delegated by the SB, the responsible structures

shall report only to the SB on their work, and, similarly, the SB shall report to the Board of Directors on the activities carried out, upon its request, by company structures and external consultants.

6.5 REPORTING TO THE COMPANY BODIES

The Supervisory Board shall report to the Board of Directors and the Board of Statutory Auditors on its activity every six months. In particular, the report shall include:

- the total activities carried out during the period, with particular reference to monitoring the adequacy and effective implementation of the Model;
- the problems that emerged in terms of conduct or events within the Company, which may constitute non-compliance with the Model's provisions;
- proposed correctional actions and improvements of the Model and their implementation status;
- any reports received during the year and the actions taken by the SB itself and by the other parties concerned;
- any other information deemed useful.

The Supervisory Board shall promptly report to the President and Chief Executive Officer on:

- any violation of the Model deemed as having sufficient grounds, learnt of independently or reported by the employees;
- relevant organisational or procedural shortcomings deemed to determine the real danger of crimes committed under the Decree;
- changes to regulations particularly relevant for the implementation and effectiveness of the Model;
- lack of cooperation from the company structures;
- any other information deemed useful for urgent decisions taken by the President and Chief Executive Officer.

6.6 OPERATING REGULATION OF THE SUPERVISORY BODY

By means of an appropriate regulation, the Supervisory Board shall govern and shall approve its internal operation (The Regulation of the Supervisory Body).

6.7 RELATIONS BETWEEN THE SB AND THE CONTROL AND RISKS COMMITTEE

In compliance with mutual autonomy, the Supervisory Body informs the Control and Risks Committee, at the request of the same, about compliance with the Organization, Management and Control Model.

6.8 RELATIONS BETWEEN SB, BOARD OF STATUTORY AUDITORS AND ANTI-CORRUPTION OFFICER

The SB exchanges with the Board of Statutory Auditors and, to the extent of its competence, with the Anti-Corruption[12] Manager, on an equal basis and in respect of reciprocal autonomy, information relating to the activities carried out, the problems that emerged following the checks carried out and of supervision carried out.

[12] See par. 4 of the Anti-Corruption Guideline of the ASPI Group, which provides, among other things, that "... the Anti-Corruption Manager ... (i) reports periodically on his activities to the Supervisory Body of the Company he belongs to and ensures the connection with the same Body for the 'effective fulfillment of their respective duties."

6.9 DURATION, REVOCATION, FORFEITURE AND RENUNCIATION OF THE SB

The Board of Directors shall establish the duration of the Supervisory Board's[13] members remaining in office. In any case, each member of the SB shall remain in office until the appointment of his/her successor or the establishment of the new Body.

The revocation of the Supervisory Board or of one of its members shall exclusively be carried out by the Board of Directors by prior consultation with the Board of Statutory Auditors. The Board of Directors may, at any time, revoke the members of the Supervisory Board for just cause. Revocation for just cause means: a) the interdiction or incapacitation, or a serious illness that renders the member of the Supervisory Body unfit to carry out his/her functions;

b) the assignment of the Supervisory Board's own functions and operational responsibilities that are incompatible with the freedom of initiative and control, independence and continuity of action to the member of the Supervisory Board; c) a serious breach of the Supervisory Board's duties, as defined in the Model; d) failure to abide by the obligation of confidentiality; e) the loss of good reputation.

Should the withdrawal of the mandate be exercised against all the members of the Supervisory Board, the Board of Directors, by prior consultation with the Board of Statutory Auditors, shall establish a new Body.

The hypotheses of revocation for just cause are distinguished from those of forfeiture which derive from the loss of the eligibility requirements and which operate automatically.

If there are serious reasons, the Board of Directors will proceed to arrange - after hearing the opinion of the Board of Statutory Auditors and, where not involved, of the other members of the SB - the suspension from the functions of one or all the members of the Supervisory Body, promptly providing the appointment of a new member or of the entire SB.

Finally, in the event of the waiver of one or all of the members of the Supervisory Body, to be formalized by means of a specific written communication, the Board of Directors shall immediately replace the member / s of the SB.

7 INFORMATION FLOWS TO THE SUPERVISORY BODY

The obligation of a structured information flow is one of the tools necessary to ensure an efficient supervisory activity by the SB on the adequacy and compliance with the Model.

Any useful information, even from third parties, regarding the implementation of the Model in terms of activities "at risk" together with the provisions under the Special Parts of the Model and company procedures shall be brought to the attention of the Supervisory Board.

In particular, the Recipients (refer to paragraph 5.1 above) shall report to the Supervisory Board any information concerning:

- the commission of crimes or the performance of acts suitable for their realization;
- the carrying out of administrative offenses;
- conduct not in line with the rules of conduct provided for by this Model and the related protocols;
- any changes in the organizational structure and procedures in force;
- any changes in the system of proxies and powers of attorney;
- operations of particular significance or which present risk profiles such as to induce to recognize the reasonable danger of committing crimes;

[13]The details are contained in the Guideline "Composition, Selection and Appointment of the Supervisory Bodies of the ASPI Group".

- provisions and / or news from judicial police bodies, or any other authority, from which it is clear that investigations are being carried out, including against unknown persons, for the crimes referred to in the Decree;
- requests for legal assistance sent by managers and / or employees in the event of judicial proceedings for the crimes envisaged by the Decree;
- reports prepared by the managers of the corporate structures as part of their control activities and from which facts, actions, events or omissions with critical profiles with respect to compliance with the provisions of the Decree may emerge;
- periodic reports by the Anti-Corruption Manager on the activities carried out;
- news relating to the effective implementation, at all company levels, of the Model with evidence of the disciplinary proceedings carried out and any sanctions imposed or the archiving measures of such proceedings with the related reasons;
- initiation of inspections by public bodies (judiciary, P.G., other Authorities, etc.) in the context of activities at risk.

7.1 REPORTS RELATED TO ALLEGED VIOLATIONS OF THE MODEL

Reports relating to alleged violations of the Model and to any commission or suspicion of commission of predicate offenses referred to in the Decree, including those sent by the Ethics Officer and concerning the Company, must be addressed to the Supervisory Body in compliance with what is regulated in the Whistleblowing Management procedure.

The Supervisory Body, to the extent of its competence, acts in such a way as to guarantee the whistleblower from any form of retaliation, discrimination or penalization, direct or indirect, for reasons connected, directly or indirectly, to the report, also ensuring the confidentiality of the identity of the same and, more generally and to the extent of its competence, compliance with the provisions of Law 30 November 2017, n. 179 bearing "Provisions for the protection of the authors of reports of crimes or irregularities of which they have become aware in the context of a public or private employment relationship" (so-called "Whistleblowing Law") and the Report Management Procedure. ASPI has adopted the Whistleblowing Management Procedure which it governs:

- the process of receiving, analyzing and processing the Reports (so-called Whistleblowing);
- the methods of managing the related investigation, in compliance with the privacy legislation or other legislation in force in the country where the reported fact occurred, applicable to the subject and object of the Report.

Regarding the first aspect

- the Coordinator of the Ethics Officer - ASPI Group Whistleblowing Team analyzes the reports received and if the report has precise, detailed and verifiable content, initiates the relevant investigation; otherwise, if the report has unsubstantiated and / or unverifiable content and the Reporting party is not reachable to provide the necessary additions, you will file the report.
- The Supervisory Body and / or the Anti-Corruption Manager, if they receive a report directly, through the relevant channels, promptly inform the Coordinator of the Ethics Officer - ASPI Group Whistleblowing Team, without prejudice to the independent assessment of the content of the Report, in compliance with the prerogatives of each Entity involved in the management of the Report and to safeguard the timeliness of the investigation activity.
- The Ethics Officer - ASPI Group Whistleblowing Team defines the necessary communication flows within the Company (s) concerned by the report and / or to the

Management and Control Bodies of the Company (s) concerned by the report. As part of these flows, the Ethics Officer - ASPI Group Whistleblowing Team informs, according to competence, the Supervisory Body and the Anti-Corruption Manager of the company / s concerned by the report.

To make a report, an IT platform has been implemented, accessible by all users (employees, third parties, etc.) on the website and by personnel with dedicated access to the company intranet, which has the following characteristics:

- management by a specialized, third party and independent entity with respect to ASPI;
- adoption of the "no-log" policy, that is, information on connection methods (for example, server, IP address, mac address) is not detected in any way, directly or indirectly, thus guaranteeing complete anonymity in access, even from computers connected to the company network;
- technical functionality that anonymizes the name of the same (if obviously the Reporting party wanted to indicate his personal details).

7.1.1 REPORTS RELATING TO ALLEGED VIOLATIONS OF THE MODEL MADE THROUGH OTHER DEDICATED COMMUNICATION CHANNELS

The Company, in order to facilitate the forwarding of reports to the Supervisory Body by subjects who become aware of violations of the Model, even potential, has activated additional dedicated communication channels and, more precisely: a specific e-mail box (odvaspi@autostrade.it), a fax to 06 4363 2878 and a voicemail to 06 4363 2079. Reports can also be sent to: Supervisory Board, Autostrade per l'Italia SpA, Via A. Bergamini, 50 - 00159 Rome.

In the case of reports received only by the Anti-Corruption Manager[14], the latter shall send the relevant communication to the Supervisory Body and, in compliance with the provisions of the Report Management Procedure, to the Ethics Officer.

The Supervisory Body / Ethics Officer, for the parts of their respective competence, inform the Anti-Corruption Manager of the activities carried out in this regard.

All the reporting channels and the relative methods of use, together with the protection obligations of the parties involved, are defined in the Report Management Procedure, to which reference is made.

7.1.2 ACTIVITIES OF THE SUPERVISORY BODY AFTER THE RECEIPT OF A REPORT RELATING TO ALLEGED VIOLATIONS OF THE MODEL

The Supervisory Body evaluates and verifies the reports received and, to this end, carries out, if necessary, preliminary activities, implementing any other additional activities permitted by its prerogatives.

The SB, if it deems it necessary and appropriate, can listen to the author of the report and / or the person responsible for the alleged violation and keeps in a special register the reports received and the reasons that led to not proceeding with a specific investigation.

In the event of a violation of the Model, the Supervisory Body activates the subject or company structure competent for the disciplinary procedure (see next par. 9.5).

7.1.3 PROTECTION OF THE REPORTING AGENT FROM RETORTION OR DISCRIMINATION

For reports relating to alleged violations of the Model, the Supervisory Body acts in such a way as to guarantee whistleblowers in good faith from any form of retaliation, discrimination or

[14] Pursuant to the provisions of par. 3.1.1.of the Whistleblowing Management Procedure, it is made active the e-mail box anticorruzione@autostrade.it

penalization, also ensuring the confidentiality of the whistleblower's identity, in the manner provided for in the Whistleblowing Management Procedure.
The confidentiality guarantees established by the Policy also protect the Reported.

8 TRAINING

8.1 STAFF TRAINING

The Human Resources Department, by prior consultation with the Supervisory Board, shall organise the staff training with regard to the legal provisions of the Decree and the contents of the Model. The Training shall follow a specific planning of the activities and shall periodically inform the Supervisory Body in this respect.
The participation in the training sessions, as well as the online course related to the implementation of the Model is mandatory. The Human Resources Department shall monitor such training ensuring that it is actually made. Traceability of participation in the training sessions on Decree no. 231/2001 shall be ensured by the registration of the participants' attendance in the appropriate form and, as regards the e-learning activities, by the certificate of attendance. Such documents shall be stored by the Human Resources Department.
Any update training sessions shall be held in case of significant changes to the Model and the Code of Ethics, subsequent to the entry into force or the integration of regulations relevant to the activities of the Company or in case the Supervisory Board does not consider sufficient, in terms of the complexity of the issue, the use of the Company's electronic means.

8.2 INFORMATION TO COLLABORATORS AND PARTNERS

ASPI promotes the awareness and observance of the Code of Ethics and the present General Section of the Model also among its commercial and financial partners, consultants, collaborators of any kind, customers and suppliers of the Company.
In order to formalise and confer legal force to the obligation of compliance with the principles of the Code of Ethics and the present General Section of the Model on the part of third parties that may have contractual relationships with the Company, a special relevant clause shall be included in the reference contract. This clause shall provide for specific contractual penalties (the right to terminate the contract with immediate effect), in case of breaches of the Code of Ethics or of this General Section.

9 DISCIPLINARY SYSTEM

Under Articles 6 and 7 of Legislative Decree no. 231/2001, for the effective implementation of the Model, a disciplinary system intended to sanction the breach of the measures specified therein shall be established, among other things.
Therefore, ASPI, in accordance with the applicable provisions and the national collective labour agreement, has adopted a disciplinary system aimed at punishing the violations of the principles and measures set out in the Model and in the company's protocols committed by the Recipients of the Model.
Pursuant to Article 5 of the Decree, the violations of the Model and company protocols committed by the "senior managers" and by the individuals under the direction or supervision

of other parties, or persons acting in the name of and/or on behalf of the Company shall be punished. This disciplinary system shall also apply to any employees and partners of the Company.

The start of the disciplinary procedures and the possible application of sanctions shall be independent of any pending of criminal proceedings for the same act, and shall not consider the outcome thereof.

9.1 RELEVANT CONDUCTS

For the purposes of this disciplinary system and in compliance with the provisions of the law and collective bargaining, the actions or behaviours, including omissions, carried out in violation of the Model constitute relevant conduct for the application of any sanction.

Furthermore, in accordance with the provisions of art. 6, paragraph 2-bis, lett. d), of Legislative Decree no. 231/2001 and to the Whistleblowing Procedure, the disciplinary system applies (if the conditions are met)):

- towards those who are responsible for any act of retaliation or discriminatory or in any case of illegitimate direct or indirect prejudice against the Reporting Party (or anyone who has collaborated in ascertaining the facts which are the subject of a Report) for related reasons, directly or indirectly, to the Report;
- towards the Reported, for the ascertained responsibilities;
- towards anyone who violates the confidentiality obligations referred to in the Whistleblowing Procedure;
- towards Employees, as required by law, who have made an unfounded Report with willful misconduct or gross negligence.

For the identification of the related sanctions, the objective and subjective profiles of the relevant conduct shall be considered. In particular, the objective elements listed in an increasing order of severity are:

1. Model violations that did not lead to an exposure to risk or led to a modest exposure to risk;
2. Model violations that led to a considerable or significant exposure to risk;
3. Model violations that integrated to a relevant criminal fact.

Furthermore, the relevant conducts are more or less serious depending on the different significance of the subjective elements indicated as follows and, in general, of the circumstances in which the offence was committed. In particular, in pursuance of the graduality and progressiveness principle intended to establish the penalty to be imposed, the following shall be considered:

- if there have been multiple violations related to the same conduct, the aggravation shall be applied with respect to the penalty prescribed for the most serious violation;
- any persistence of the offender/s' illegal conduct;
- the level of hierarchical and/or technical responsibility of the party which accounts for the alleged conduct;
- any sharing of responsibilities with other parties who jointly contributed to the omission.

9.2 SANCTIONS AGAINST THE MEMBERS OF THE BOARD OF DIRECTORS[15] AND MEMBERS OF THE BOARD OF STATUTORY AUDITORS

In case of confirmed breach under paragraph 9.1[16] by an Advisor or Member of the Board of

[15] Limited to the Advisors who do not feature an employment relationship.

[16] Without limitation to the provisions under the previous paragraph 9.1, the following types of conducts may be deemed a prerequisite for the application of the penalties indicated below:

Statutory Auditors, the following sanctions may be applied:

- formal written warning;
- pecuniary sanction of an amount equal to two up to five times the fees calculated on a monthly basis;
- dismissal.

Specifically:

- for the violation referred to in paragraph 1 of section 9.1, a written warning shall be imposed;
- for the violations mentioned in paragraph 2 of section 9.1, a pecuniary sanction shall be imposed;
- for the violations mentioned in paragraph 3 of section 9.1, the dismissal will be imposed.

9.3 SANCTIONS AGAINST THE EMPLOYEES (EXECUTIVES[17], MANAGERS, EMPLOYEES, WORKERS)

The non-compliance and/or violation of the rules imposed by the Model committed by employees of the Company shall be deemed a breach of the obligations under the labour relationship pursuant to Article 2104 of the Civil Code and disciplinary offence.

If an employee of the Company performs a conduct qualified according to the preceding paragraph, as a disciplinary offence, shall also be deemed a breach of his/her employment obligations to perform the tasks entrusted to them with the utmost diligence by following the instructions of the Company as required by the CCNL in force as well as by the provisions of the Disciplinary Code (displayed on company bulletin boards).

The sanctions shall be applied taking into account the significance of each offence considered and proportionate according to its severity as provided in the preceding paragraph 9.1.

Should a violation of the Model be ascertained and ascribable to the Employee[18], subject to the provisions of Article 7, Law no. 300/1970 and the CCNL, the following disciplinary measures may be applied:

1. conservative disciplinary measures:
   a. verbal warning;
   b. written warning;
   c. fine not exceeding four hours of overall daily wage under paragraph 1 of Article 22;
   d. suspension from work without pay for up to 10 days (for part-time staff of up to 50 hours).
2. definitive disciplinary measures:

- failure to comply with the principles and protocols contained in the Model;
- non-compliance and/or avoidance of the control system by removing, destroying or altering the documentation provided by the company's protocols, or by obstructing the parties responsible and the SB to control or access the required information and documentation;
- non-compliance with the provisions on authorised signatories and, in general, the proxy system, except in cases of necessity and urgency which shall be promptly communicated to the Board of Directors;
- non-compliance with the obligation to disclose any behaviour intended to the commission of a crime or administrative offence laid down in the Decree to the SB and/or the pertinent Party

[17] The sanction criteria and disciplinary procedures shall take into account the type of employment relationship which binds such parties to the Company.Under Article 1, paragraph 2 of CCNL "*the Parties under this definition are, for example, directors, co-directors, those parties possessing extensive executive powers in charge of important services or offices, proxies and parties entitled with powers of attorney that confer them representation and decision-making powers for the whole or a substantial part of the company on a continuous basis.*"

[18] By way of example and not limited thereto as regards the provisions of the preceding paragraph 9.1 and except as provided in the CCNL for the purpose of applying any disciplinary actions, some relevant conducts are listed below:
- non-compliance with internal procedures or adoption, during the performance of risk-related activities, of a behaviour not subject to the requirements of the Model, recognising in such behaviour a non-execution of the orders given by the Company both in writing and verbally (e.g., the Worker that does not comply with the established procedures, fails to communicate to the Supervisory Board the prescribed information, fails to carry out checks, etc.)
- adoption, during the performance of risk-related activities, of a behaviour in breach of the Model, or violation of the principles therein, recognising in these behaviours a failure to comply with the orders given by the Company (for example, the Worker who refuses to submit to health checks under Article 5 of Law no. 300 dated 20 May 1970; falsifies and/or modifies internal or external documents; fails to voluntarily apply the instructions issued by the Company in order to profit for himself or for the Company; persists in an illegal omissions determining the application of the conservative disciplinary measures).

a. dismissal with notice;
b. dismissal without notice.

Considering the provisions of paragraph 9.1, and without prejudice to the provisions of the CCNL and the Disciplinary Code:

1) for the violations mentioned in paragraphs 1 and 2 of section 9.1, the conservative disciplinary measures provided for in Article 36 of the CCNL may be applied;
2) for the violations mentioned in paragraph 3 of section 9.1, the conservative disciplinary measures provided for in Article 37 of the CCNL may be applied.

Furthermore, under Article 38 of CCNL, the Company, should the nature of the misconduct affect the fiduciary relationship, may proceed with the precautionary suspension of the employee until the appropriate investigations shall be carried out.

As regards the management staff, given the mainly fiduciary relationship and considering that the executives exert their functions in order to promote, coordinate and manage the accomplishment of the company objectives, the violations of the Model shall be assessed in relation to the collective bargaining, in line with the peculiarities of the relationship thereof.

9.4 SANCTIONS APPLICABLE TO THE "THIRD-PARTY RECIPIENTS"

This Disciplinary System serves to punish the violations of the Code of Ethics and the General Section of the Model committed by parties collectively referred to as "Third-party Recipients". The following parties fall within this category:

- the parties which maintain a contractual relationship with ASPI (e.g., consultants, professionals, etc.).
- the parties in charge of auditing and accounting checks;
- the collaborators of all kinds;
- the proxies and third parties acting in the name of and/or on behalf of the Company;
- the suppliers and partners.

Any violations committed by the parties listed above may determine penalties or the termination of the contract by reason of the alleged infringement and of the greater or lesser seriousness of the risk to which the Company has been exposed.

9.5 INVESTIGATION PROCEEDINGS

The procedure for imposing the sanctions provides for:

– the preliminary investigation;
– the stage of formal allegation of the party concerned;
– the stage for the determination and subsequent imposition of the sanction.

The investigation phase shall commence based on the verification and inspection activities carried out by the Supervisory Board, which, on the basis of its examination activities or analysis of the reports received, shall timely communicate and, subsequently, report in writing to the Holder of the disciplinary power as identified below, any violations detected and the offending party (or parties.

9.5.1 INVESTIGATION PROCEEDINGS AGAINST THE MEMBERS OF THE BOARD OF DIRECTORS

Should the breach of the Model be carried out by one or more parties who hold the office of Advisor, not related to the Company by an employment relationship[19], the Supervisory Body shall deliver to the Board of Directors and the Board of Statutory Auditors through their respective Presidents a report

[19] In the event that the non-compliance with the Model is attributable to a Director employed by the Company, the holder of disciplinary power is the Board of Directors and the investigation proceedings and any dispute shall be subject to the precautionary measures laid down in art. 7, Law 300/1970 and the applicable national collective bargaining agreement (CCNL).

containing:

- the description of the alleged conduct;
- an indication of the breached rules provided by the Model;
- the offender;
- any documents proving the non-compliance and/or other reference elements.

Following receipt of the report of the Supervisory Board, the Board of Directors shall summon the offending Advisor. The summoning shall:

- be made in writing;
- contain a description of the alleged conduct and infringed rules under the Model;
- inform the party concerned of the summoned date, with notice of the right to submit any written or oral remarks and/or conclusions

The meeting shall be carried out according to the established procedures for the meeting of the Board of Directors.

At the meeting of the Board of Directors, to which the Supervisory Board is also invited to attend, the party concerned shall be heard, any deductions formulated by the party concerned shall be gathered, and any further investigations deemed necessary shall be carried out.

The Board of Directors, with the abstention of the Director concerned, shall assess the validity of evidence obtained and, under Articles 2392 and subsequent of the Civil Code convenes the Meeting to adopt the appropriate resolutions.

The Board of Directors' decision, if the allegations have no grounds, or the resolution of the Meeting convened shall be communicated in writing by the Board of Directors both to the party concerned and the Supervisory Board.

Should the breach of the Model's rules be committed by the entire Board of Directors or a majority of the Directors, the Supervisory Board shall inform the Board of Statutory Auditors that shall convene without delay the Meeting to take the appropriate measures.

9.5.2 INVESTIGATION PROCEEDINGS AGAINST THE MEMBERS OF THE BOARD OF STATUTORY AUDITORS

In case of non-compliance with this Model by an Auditor, the Supervisory Body shall inform the entire Board of Statutory Auditors and the Company's Board of Directors through their respective Presidents by drafting a report containing:

- the description of the alleged conduct;
- an indication of the breached rules provided by the Model;
- the offender;
- any documents proving the non-compliance and/or other reference **elements.**

Following the receipt of the report of the Supervisory Board, the Board of Statutory Auditors, in joint meeting with the Board of Directors, shall summon the alleged offending Auditor. The summoning shall:

- be made in writing;
- contain a description of the alleged conduct and infringed rules under the Model;
- inform the party concerned of the summoned date, with notice of the right to submit any written or oral remarks **and/or conclusions.**

The meeting shall be carried out according to the established procedures for the meeting of the Board of Directors.

The Company's Board of Directors, having assessed the relevance of the report, shall convene the Meeting for the resolution of the case.

Should the breach of the Model's rules be committed by one or more Auditors or by the entire Board of Statutory Auditors, the Supervisory Board shall inform the Board of Directors that

shall convene without delay the Meeting to take the appropriate measures.

9.5.3 INSPECTION PROCEDURE FOR EMPLOYEES (MANAGERS, EMPLOYEES, WORKERS)

If an Employee finds a violation of the Model, the procedure for ascertaining the violation is carried out in compliance with the regulations in force as well as with the applicable collective agreement by the Holder of the disciplinary power.

In order to identify the Holder of the disciplinary power, on the basis of the powers in force, the following criteria apply:

- the Board of Directors for the Managers in first dependence of the Chief Executive Officer;
- Human Capital, Organization and HSE Director for employees and managers;
- the Branch Manager as far as his authority permits.

The Supervisory Body then transmits to the Holder of the disciplinary power a report containing:

- the description of the contested conduct;
- an indication of the provisions of the Model that appear to have been violated;
- the indication of the person responsible for the violation;
- any documents proving the violation and / or other evidence.

Following the acquisition of the report of the Supervisory Body, the Holder of the disciplinary power summons the interested party, by sending a specific written complaint containing:

- an indication of the contested conduct and the provisions of the Model subject to violation;
- the terms within which the interested party has the right to formulate any observations and / or deductions, both written and verbal.

In the event that the interested party intends to respond orally to the dispute, the Supervisory Body is also invited to participate in this meeting. The elements represented by the interested party are acquired here. At the conclusion of the activities indicated above, the Holder of the disciplinary power decides on the possible determination of the sanction, as well as on the concrete imposition of the same.

The provision for the imposition of any sanction is communicated in writing to the person concerned, by the competent corporate structure, in compliance with any terms provided for by the collective bargaining applicable in the specific case.

The Holder of the disciplinary power takes care, in the case, of the effective imposition of the sanction, in compliance with the laws and regulations, as well as the provisions of collective bargaining and company regulations, where applicable.

The provision for the imposition of the sanction by the Holder of the disciplinary power is sent to the Supervisory Body, also making use of the competent corporate structures.

9.5.4 INVESTIGATION PROCEEDINGS AGAINST THE "THIRD-PARTY RECIPIENTS"

In order to allow the implementation of the initiatives provided by the standard contractual clauses aimed at ensuring the compliance with the principles under the Code of Ethics and the present General Section of the Model by third parties featuring contractual relationships with the Company, the Supervisory Board shall send to the Manager in charge of contractual relationships a report containing:

- particulars of the offender;
- the description of the alleged conduct;
- the provisions of the Code of Ethics and the present General Section of the Model that were allegedly breached;
- any documents proving the non-compliance and/or other reference elements.

This report, once the contract has been approved by the Board of Directors, shall also be sent to the attention of the same and the Board of Statutory Auditors.

The Manager who carries out the contractual relationship, in agreement with the relevant body of the Legal Department, shall serve a written notice containing the details of the alleged conduct,

the provisions infringed, as well as an indication of the specific contractual clauses included in appointment letters, in contracts or partnership agreements intended to be enforced to the person concerned.

ANNEX 1

THE REGULATORY DESCRIPTION OF PREDICATE OFFENCES PURSUANT TO LEGISLATIVE DECREE 231/2001

OFFENCES COMMITTED IN THE RELATIONS WITH THE PUBLIC ADMINISTRATION (ARTICLES 24, 25 AND 25-DECIES OF THE DECREE)

Foreword

The Law no. 190 of 6 November 2012 (so-called "Anti-Corruption Law"), entitled "*Provisions for the prevention and repression of corruption and illegal activities in the public administration*", was published in the Official Journal no. 265 and entered into force on 28 November 2012.

This reform was characterised by the following elements:

- the redefinition of the offence of "bribery" (Article 317 of the Criminal Code), only provided for public officials, when they force someone to unduly give or promise money or other benefits;
- the introduction of the offence of "undue induction to give or promise benefits" (Article 319-quater of the Criminal Code), provided for the public official and the person in charge of a public service, if they induce someone to unduly give or promise money or other benefits;
- the amendment of the offence of "*corruption in official act*" (Article 318 of the Criminal Code), recurrent when the public official or the person in charge of a public service unduly receives the granting of a utility for the exercise of their functions or of their powers.

Law no. 69 of 27 May 2015 on "*Provisions on offences against the public administration, mafia-type associations and false accounting*", published in the Official Journal no.124 of 30 May 2015 and which entered into force on 14 June 2015, then amended the regulations provided for by Article 317 et seq. of the Criminal Code, by strengthening the penalties associated with the individual cases. Law no.3 of 9 January 2019, on "*Measures to combat offences against the public administration, as well as on time-barred offences and the transparency of political parties and movements*" introduced, among others, the following additional regulatory amendments:

- the tightening of penalties imposed against the offence of corruption for the exercise of the function (Article 318 of the criminal code);
- the amendment of the offence provided for and punished by Article 322-bis of the Criminal Code now titled "*Embezzlement, extortion, undue induction to give or promise benefits, bribery and to bribery of members of international courts or bodies of the European Communities or of international parliamentary assemblies or international organisations and officials of the European Communities and foreign states*";
- the introduction of influence peddling (Article 346-bis of the Criminal Code), subject to its reformulation, in the category of offences against the Public Administration relevant pursuant to Legislative Decree no. 231/2001;
- the modification of the duration and methods of application of the interdiction penalties for offences against the Public Administration (Articles 13 and 25 of the Decree) and precautionary measures (Article 51 of the Decree).

Lastly, on 15 July 2020, Legislative Decree no. 75 of 14 July 2020 on "*Implementation of*

Directive (EU) 2017/1371 on the fight against fraud affecting the financial interests of the Union through criminal law"[20], which entered into force on 30 July 2020.

The main changes introduced with the above Decree, concern:

- the tightening of the penalties provided for some offences against the Public Administration (articles 316, 316-ter, 319-quater, 322-bis, 640, co. 2, no. 1, criminal code) where the offence harms the financial interests of the EU;
- the inclusion in Article 24 of Legislative Decree no. 231/2001 of the offence of fraud in public supplies, provided for and punished by Article 356 of the criminal code;
- the inclusion in Article 25 of Legislative Decree no. 231/2001 of the offences provided for and punished by Article 314, co. 1 ("*Embezzlement*"), 316 ("*Embezzlement by taking advantage of somebody else's error*") and 323 ("*Abuse of office*") of the criminal code, when the offence harms the financial interests of the European Union.

Below is a description of the concepts of Public Official and Public Service Officer, useful to better understand the methods for committing the offences in question

Concept of Public Official and Public Service Officer (Articles 357, 358, 322-bis of the Criminal Code)

Public officials are defined as persons who, pursuant to Article 357 of the Criminal Code, have a public legislative, judicial or administrative role, which is regulated by public law and characterised by the

[20] For a better understanding of the purposes and principles underlying the so-called "PIF" Directive, some extracts of the most significant elements contained therein are reported below:
- "The protection of the financial interests of the Union requires a common definition of fraud within the scope of this Directive, which should include fraudulent conduct in terms of revenue, expenditure and property against the general budget of the Union European Union budget ('Union budget'), including financial transactions such as borrowing and lending. The notion of serious offences against the common system of value added tax ('VAT') established by Council Directive 2006/112 / EC (8) ("VAT common system") refers to the most serious forms of VAT fraud, in particular carousel fraud, default trader VAT fraud and VAT fraud committed within a criminal organisation, which entail serious threats to the common VAT system and for the Union budget. Offences against the common VAT system should be considered serious if they are connected to the territory of two or more Member States, if they derive from a fraudulent system and those offences are structurally committed in order to obtain undue benefits from the common VAT and the total damage caused by the offences is at least EUR 10, 000,000. The notion of overall damage refers to the estimated damage resulting from the entire fraudulent system, both for the financial interests of the Member States concerned and for the Union, excluding interests and penalties...." (In this regard, see Recital no. 4);
- "Corruption represents a particularly serious threat to the financial interests of the Union and in many cases may be linked to fraudulent conduct. Since all public officials are required to be impartial in their judgment, the payment of bribes to influence a government official's judgment or discretion and the collection of such bribes should fall under the definition of corruption, regardless the law or regulatory provisions applicable in the country or international organisation to which the official concerned belongs". (in this regard, see Recital No. 8);
- "Some types of conduct of a public official in charge of the management of funds or assets, whether in office or acting as a supervisor, which aim at the misappropriation of funds or assets, may harm the financial interests of the Union, for a purpose contrary to that provided for and by means of which said interests are damaged. It is therefore necessary to introduce a precise definition of the offences which include these types of conduct" (in this regard, see Recital no. 9);
- "As for the offences of passive corruption and misappropriation of funds, it is necessary to include a definition of public official that encompasses all those who hold a formal position in the Union, Member States or non-EU countries. Private entities are increasingly involved in the management of Union funds. In order to properly protect Union funds from corruption and misappropriation, the definition of 'public official' shall therefore include persons who, although not holding a formal position, are vested with public service functions, and perform them in the context of Union funds, such as the contractors involved in the management of those funds" (in this regard, see Recital No. 10);
- "In specific cases, the penalties provided for natural persons should entail a maximum penalty of at least four years of imprisonment. Such cases should include at least those in which significant damage or benefit has been generated, assuming considerable damage or benefit worth more than EUR 100,000. ... However, for offences against the common VAT system, the threshold at which the harm or advantage is to be considered as relevant is, in compliance with this Directive, EUR 10,000,000. The introduction of minimum levels of maximum prison sentences is necessary to ensure equivalent protection of the Union's financial interests across the Union. The penalties are intended to serve as a strong deterrent to potential offenders, with effects across the Union." (In this regard, see Recital no. 18);
- "... a)" Union financial interests" shall mean all income, expenses and assets that are covered or acquired or owed by virtue of: i) the Union budget; ii) the budgets of institutions, bodies and agencies of the Union established under the treaties or budgets directly or indirectly managed and controlled by them; ... As regards VAT own resources revenue, this Directive shall also apply to cases of serious offences against the common VAT system. For the purposes of this Directive, offences against the common VAT system shall be considered serious if the acts or intentional omissions as defined in Article 3 (2) (d) are connected to the territory of two or more than one Member State of the Union and cause a total damage of at least EUR 10,000,000. " (in this regard, see Article 2);
- however as regards the conducts damaging the financial interests of the Union, Article 3 refers to: "the use or submission of false, inaccurate or incomplete declarations or documents, resulting in the misappropriation or illicit retention of funds or assets from the Union budget or from the budgets managed by the Union, or on its behalf; failure to communicate information by breaching a specific obligation, which generates the same effect; the diversion of such funds or assets for purposes different from those for which they were originally granted; ... to the use or submission of false, inaccurate or incomplete declarations or documents relating to VAT, resulting in a decrease in the resources of the Union budget; failure to communicate information relating to VAT by breaching a specific obligation, which generates the same effect; the submission of VAT returns to fraudulently conceal non-payment or the unlawful establishment of VAT refund rights. ";
- Articles 4 and 5 refer, respectively, to the cases of active and passive corruption that harm or may harm the financial interests of the Union and of "misappropriation of public funds" and that is "the action of the public official, directly or indirectly in charge of managing of funds or assets, aimed at allocating or disbursing funds or appropriating assets or using them for a purpose different from that provided for them, which damages the financial interests of the Union", as well as the punishment of the offences provided for by the Directive also by way of instigation, aiding, participation and attempt.

power of authorising or certifying deliberative processes.

Persons who, for whatever reason, provide a public service are defined as persons in charge of a public service, i.e., an activity regulated like the public function, albeit characterised by the lack of its typical powers.

The role of "Public Official" and "Public Service Officer" is also held by members of international Courts, by members of European Community bodies or by international parliamentary assemblies, by international organisations, by officials of the European Community, of Foreign States and by those who, within other States, have roles corresponding to those of public officials and persons in charge of public service.

Below are some examples

1. persons performing legislative or administrative public function, such as, for example:
- parliamentarians and members of the Government;
- regional and provincial councillors;
- European parliamentarians and members of the Council of Europe;
- Persons performing ancillary functions (in charge of keeping parliamentary acts and documents, of the drafting of shorthand, staff shops, technical reports etc.);

2. persons performing a public judicial function, such as, for example:
- magistrates (ordinary judiciary of courts, Courts of Appeal, Supreme Court of Cassation, High Court of Public Waters, Regional Administrative Court, Council of State, Constitutional Court, military courts, jury courts of Assize Courts, justices of the peace, honorary deputy magistrates and aggregates, members of ritual arbitration boards and parliamentary commissions of inquiry, magistrates of the European Court of Justice, as well as of the various international courts, etc.);
- persons performing related functions (officers and agents of the judicial police, financial police and carabinieri, chancellors, secretaries, bailees, judicial officers, witnesses, conciliation boards, bankruptcy trustees, operators in charge of issuing certificates at the court registries, experts and consultants of the Public Prosecutor, liquidators in bankruptcy proceedings, liquidators of the arrangement with creditors, extraordinary commissioners of the extraordinary administration of large firms in crisis, etc.);

3. persons performing a public administrative function, such as, for example:
- officials employed by the Public Administration, international and foreign bodies and regional bodies (e.g. officials and employees of the State, the European Union, supranational bodies, foreign states and territorial bodies, including Regions, Provinces, Municipalities and mountain communities; persons performing ancillary functions in relation to the institutional purposes of the State, such as members of the municipal technical office, members of the building commission, head of the administrative department of the amnesty office, municipal agents, persons in charge of public land, municipal correspondents in the employment office, employees of state companies and municipal companies; persons in charge of collecting taxes, health staff employed in public facilities, ministry and superintendencies staff, etc.);
- employees of other public, national and international bodies (for example officials and employees of the Chamber of Commerce, the Bank of Italy, the Supervisory Authorities, public welfare institutions, ISTAT, the UN, FAO, etc.);
- private individuals performing public functions or public services (for example notaries, private entities operating under a concession scheme or whose activity is regulated by public law provisions or persons carrying out activities of public interest or entities fully or partially

controlled by the State, etc.).

Activities which, although regulated by public law or by authoritative acts, consist in the performance of simple ordinary tasks or merely material work, i.e., performed through applicative or executive activities that involve no autonomy or discretion, shall not be considered as public service.

The roles of the public official and the person in charge of a public service shall not be identified on the basis of the criterion of belonging or dependence on a public body, but with reference to the nature of the activity they actually carry out, i.e., public role and public service, respectively. Therefore, even a person not belonging to the Public Administration may hold the status of a public official or a person in charge of a public service, when exercising one of the activities defined as such by Article 357 and 358 of the criminal code

1. **Aggravated fraud against the State or other public body (Article 640, paragraph 2 No. 1, of the Criminal Code)**

   The offence occurs when, by resorting to tricks or deceptions thus misleading another individual, an unfair profit is obtained to the detriment of the State or other public body or the European Union. By way of example, this offence may occur when, in the context of contractual relationships with the Public Administration, tricks or deceptions are carried out in order to achieve undue advantages or benefits.

   Sanctions applicable to the Entity

   - financial penalty: up to 500 shares; however, if the Entity has obtained a significant profit or a particularly serious damage has been caused, the financial sanction from 200 to 600 shares shall apply;
   - interdiction sanctions: prohibition on contracting with the Public Administration, except to obtain the performance of a public service; exclusion from concessions, loans, contributions or subsidies and possible revocation of those already granted; ban on advertising goods or services.

2. **Aggravated fraud to obtain public funds (Article 640-bis of the Criminal Code)**

   The offence occurs if the fraudulent conduct described above relates to public funding, regardless of their name, provided by the State, by other public bodies or by the European Union.

   As for the material object of the offence, the contributions and subsidies shall be periodic or one-off pecuniary payments, fixed or calculated based on variable parameters, bound to the *an* or *quantum* or pure discretional; the loans are contractual acts characterised by the obligation to allocate the amounts or to return them or by further and different charges; subsidised loans are disbursements of amounts of money with the obligation of repayment for the same amount, but with lower interest than those charged on the market. (In any case, the rules take into consideration all the disbursements of money characterised by an advantage compared to the conditions applied by the market).

   Sanctions applicable to the Entity

   - financial penalty: up to 500 shares; however, if the Entity has obtained a significant profit or a particularly serious damage has been caused, the financial sanction from 200 to 600 shares shall apply;
   - interdiction sanctions: prohibition on contracting with the Public Administration, except to obtain the performance of a public service; exclusion from concessions, loans, contributions or subsidies and possible revocation of those already granted; ban on advertising goods or

services.

3. **Embezzlement against the State (Article 316-bis of the Criminal Code)**
   The offence occurs when a person, once obtained a loan or a contribution or a subsidy from the State, another public body or the European Union, for the fulfilment of a specific public purpose, fully or partially allocates the funds granted for purposes different from those originally provided.
   Sanctions applicable to the Entity
   - financial penalty: up to 500 shares; however, if the Entity has obtained a significant profit or a particularly serious damage has been caused, the financial sanction from 200 to 600 shares shall apply;
   - interdiction sanctions: prohibition on contracting with the Public Administration, except to obtain the performance of a public service; exclusion from concessions, loans, contributions or subsidies and possible revocation of those already granted; ban on advertising goods or services.

4. **Undue receipt of payments to the detriment of the State or the European Union (Article 316-ter of the Criminal Code)**
   The offence occurs when - through the use or submission of false declarations or documents or through the omission of due information - contributions, loans, soft loans or other payments of the same type are unduly obtained, granted or disbursed by the State, by other public bodies or by the European Union. [21]
   In this case, unlike the provision of the previous point (Article 316-bis of the Criminal Code), the allocation of the public loans disbursed has not importance, since the offence is committed when they are unduly obtained. This offence, given its a subsidiary nature, only occurs where the conduct does not integrate the conditions for the occurrence of the more serious offence of fraud for obtaining public funds (Article 640-bis of the Criminal Code).
   Sanctions applicable to the Entity:
   - financial penalty: up to 500 shares; however, if the Entity has obtained a significant profit or a particularly serious damage has been caused, the financial sanction from 200 to 600 shares shall apply;
   - interdiction sanctions: prohibition on contracting with the Public Administration, except to obtain the performance of a public service; exclusion from concessions, loans, contributions or subsidies and possible revocation of those already granted; ban on advertising goods or services.

5. **Computer fraud against the State or other public entity (Article 640-ter, of the Criminal Code)**
   This offence occurs when, by altering the functioning of a computer or IT system or by manipulating the data, information and programs contained therein, an unfair profit is obtained, for oneself or for others, thus causing damage to the State or to another public entity[22].
   The objective element of this offence, which falls within the typical scheme of frauds, for the purposes of Legislative Decree no. 231/01 is characterised by the unlawful alteration of the

[21] Imprisonment from six months to four years shall apply when the offence harms the financial interests of the European Union and the damage or profit exceeds EUR 100,000.
[22] As a result of the changes introduced by D. Lgs. 8 November 2021 n. 184, the second paragraph of art. 640-ter c.p. provides the following: "*The penalty shall be one to five years' imprisonment and a fine of EUR 309 to EUR 1,549 if one of the circumstances referred to in the second paragraph of Article 640 occurs, or if the event results in a transfer of money, of monetary value or of virtual currency or is committed with abuse of the quality of operator of the system.*"

functioning of an IT system committed by damaging the State or other public entity.

The fraudulent activity of the agent affects not the person, but the computer system operated by such person, through its manipulation.

Sanctions applicable to the Entity

- financial penalty: up to 500 shares; however, if the Entity has obtained a significant profit or a particularly serious damage has been caused, the financial sanction from 200 to 600 shares shall apply;
- interdiction sanctions: prohibition on contracting with the Public Administration, except to obtain the performance of a public service; exclusion from concessions, loans, contributions or subsidies and possible revocation of those already granted; ban on advertising goods or services.

6. The offence of fraud in public supplies (Article 356 of the Criminal Code)

This criminal offence[23] punishes the person committing fraud in the execution of supply contracts or in the fulfilment of other contractual obligations indicated in Article 355 c.c. (which refers to the obligations deriving from a supply contract concluded with the State, with another Public Entity, or with a company providing public services).

Supply contract shall not mean a specific type of contract, but, in general, any contractual instrument intended to supply goods and services to the Public Administration. The offence of fraud in public supplies occurs not only in the case of fraudulent execution of a supply contract (Article 1559 of the Civil Code), but also of a procurement contract (Article 1655 of the Civil Code).

Therefore, as also established by a consolidated approach of the jurisprudence of legitimacy, Article 356 c.c. punishes all fraud damaging the Public Administration, whatever the contractual schemes under which suppliers are required to provide particular services (most recently, Criminal Court, section VI, 27 May 2019).

Therefore, for the offence be committed, the simple breach of the contract is not sufficient, as the criminal law provision requires a *quid pluris* which shall be identified in the contractual bad faith, i.e., in the presence of a malicious act (Criminal Court, section VI, judgment no. 5317 of 11 February 2011).

In this particular regard, specific deceptions or the defects of the item supplied are hidden are not necessary. Conversely, the wilful non-execution of the public contract for the supply of things or services is sufficient. As a result, upon occurrence of the aforementioned elements characterising the fraud, the perpetration of both offences may occur (Cass., VI, 18 September 2014, no. 38346). Indeed, the expression "*the person commits fraud*" is not necessarily ascribable to devious or malicious behaviour, as it refers to any breach of contract, regardless of the perpetrator's intention to obtain an undue profit or the potential financial damage against the client.

Article 356 of the criminal code therefore sanctions the contractual conduct that, in relations with the administration, beaches the principle of good faith in the execution of the contract, enshrined in Article 1375 civ. cod.: "*Fraud is an objective fact damaging the public interest regardless of the addition of fraudulent intention and, in a relationship with the Public Administration, the psychological conditions of the contracting natural persons is irrelevant, yet the presentation of the asset in relation to what has been agreed or ordered by law or*

[23] All the predicate offences pursuant to Article 24 of the Decree, today entitled "*Undue receipt of funds, fraud against the State, a public entity or the European Union or for the achievement of public funds, IT fraud against the State or a public body and public procurement fraud*" shall therefore occur not only if committed to the detriment of the State or other public entity, but also if committed to the detriment of the EU.

administrative act. Therefore, the persons who operate on behalf of the Public Administration might have been aware of the defect of the thing and fraud cannot be excluded" (in this regard, see Criminal Court, section III, judgement no. 58448 of 28 December 2018).

From the psychological point of view, the generic intentional damage is required for the offence to occur. The concept of intentional damage consists of the awareness and willingness to deliver things different from those agreed or affected by defects or flaws[24].

Finally, even those who, while not operating as primary interlocutor of the Public Administration concerned, supply products, manpower and anything else directly used by the public administration, may be summoned for fraudulent non-execution of public supply contracts provided for in the contract, provided that such person is aware that the thing supplied is used directly in the execution of the public work and that it is an essential element for its execution (see Criminal Cassation, section VI, judgement no. 50334 of 13 December 2013).

Sanctions applicable to the Entity

- financial penalty: up to 500 shares; however, if the Entity has obtained a significant profit or a particularly serious damage has been caused, the financial sanction from 200 to 600 shares shall apply;
- interdiction sanctions: prohibition on contracting with the Public Administration, except to obtain the performance of a public service; exclusion from concessions, loans, contributions or subsidies and possible revocation of those already granted; ban on advertising goods or services.

7. Offence of embezzlement (Article 314 of the Criminal Code)

This criminal offence, included in Article 25 of Decree 231, now entitled "*Embezzlement, extortion, undue induction to give or promise benefits, corruption and abuse of office*", punishes the P.O. or the I.P.S. (it is therefore included in the category of the so-called "offence committed under colour of authority"), which, having the possession or the availability of money or other movable property belonging to others, takes possession of them.

As shown in the letter of the provision, the prerequisite for the objective element of this offence is the possession or availability of someone else's money or other movable property.

The law does not consider "possession" in the same way as “civil possession”, but as a power over the property, directly linked to the functional powers and duties of the office held, thus adopting a broader concept.

The combination of possession and "availability" also clarifies that the possibility of having the thing regardless of the material detention is in itself suitable for leading, from the point of view of the objective element, to the occurrence of this offence, whenever the perpetrator may, by means of an act under their competence or connected to practices and customs established in their role, interfere in the handling or in the availability of money and achieve the purpose of appropriation (see, *ex multis*, Criminal Court, section II, judgment no. 3327 of 8 January 2010).

Another assumption of the case is that the availability of the thing or money by the P.O. or the I.P.S. underlies the office or service covered.

It is therefore necessary for the availability of the thing to be justified and be legally admissible in the public function exercised and for the public official to handle it "because of" their office and for this

[24] Here are some cases: supply for a school canteen of a food by origin and preparation that is different and poorer than that provided for in the tender specifications; delivery of materials for orthopaedic use of brands different from the one agreed upon to various hospital bodies (the fraud was to be found in having failed to replace the object of the supply without notifying public buyers); assertion of responsibility of the owner of a contractor for upgrading work on the electricity system of a public building performed without complying with accident prevention regulations and with the content of the contract. Upon completion of the work, the contractor had issued a declaration certifying their compliance with the aforementioned legislation and contractual provisions; during the execution of the work, the use of materials with different characteristics and poorer than those included by the tender specifications was found.

power to be provided for by their roles.

On the other hand, as regards the psychological element, embezzlement is punished as generic intentional damage consisting in the will to take possession of a movable property and to enjoy it for private purposes, despite the awareness that it is intended for professional purposes.

Indeed, such awareness represents the intentional aspect of the subjective element, which consists in the will on the part of the P.O./I.P.S. to behave as the owner of the asset.

On the other hand, the requirement for property to be intended for public purposes, has replaced that of whether or not the property belongs to the PA, which characterised the previous provision: this rule brought together in a single case the old offences of embezzlement and misappropriation of public funds to the detriment of private individuals.

It is therefore a multi-victim offence: the illicit conduct does not only damage the regular and good performance of the PA, but also and above all the financial interests of the PA and of private individuals, resulting in a conduct that is fully incompatible with the purpose for which it is owned and which results in a total exclusion of the asset from the assets of the entitled person. Embezzlement is therefore characterised as an offence of mere conduct: the punishment focuses on the concept of appropriation, understood as behaving *uti dominus* to obtain the money or movable property owned.

With the reform of Law no. 86 of 1990, the further conduct of diversion, i.e., the allocation of the asset for purposes different from those underlying the reason for the possession, was cancelled, in order to avoid clashing and misleading interpretations.

However, even as a result of various legal misinterpretations, the equation between diversion (i.e., different allocation from the original one) and appropriation seems consolidated.

Indeed, the fact of improperly allocating an asset to a different use essentially means exercising typically ownership powers over it: "*in the offence of embezzlement the concept of "appropriation" also includes the conduct of "diversion" as giving the thing a destination different from that allowed by the power of possession means exercising typically ownership powers over it and, therefore, taking possession of it*" (in this regard, see Criminal Court, Section VI, judgement no. 25258 of 4 June 2014, where the Court qualified as embezzlement the conduct of a public service officer who, instead of investing the resources he had available for the institutional public purposes, had used them to purchase hedge fund shares)[25].

Turning to the examination of the relevance pursuant to Legislative Decree 231/01 of this offence, it is necessary to promptly examine the possible incompatibility between its perpetration and the requirements of the interest or advantage of the entity/company to which the agent belongs.

On this specific aspect, the Explanatory Report attached to Legislative Decree no. 75/2020 clarified that: *"... the assumption to which the Directive seems to mainly refer considers the person whose work is under the responsibility of the entity (manager or employee) taking part, as a "external" competitor, in the material appropriation by a "public official", as defined by Article 4 (4) of the same directive. By way of example, this can be the case where the general manager of a company convinces an EU official to obtain EU funds and invest them in his company, or the case of the so-called "diversion for appropriation purposes", recognised by law in the case of use of public funds for purposes completely unrelated to the public administration and with irreversible outflow of money, in this case partially destined to the p.o.,*

[25] The Court also specified that: "in this perspective, also considering the nature of the legal interest protected by the criminal law provision dictated by Article 314 c.c.., the appropriation can be considered as occurred not only when the public agent takes possession of the asset, but also when, by abusing the use of money or the thing they hold by reason of their office or of their service, deprive the public administration of the possibility of using that money or that movable property for the pursuit of public purposes: this happens where, as in this case, the public agent, instead of using the money available to them to achieve the intended public interest purposes, they allocate it to fulfil a private need, which is to favour a financial promoter who benefits from the related commissions, or when they allocate that money, by breaching the law and the by-laws, to purchase high-risk investment funds, and thus diverting the originally intended possession qualifying the appropriation, by exercising an uti domini power on those amounts ".

through the payment of non-existent credits to a colluding company, and partially destined to this company or its Director. These are cases in relation to which the occurrence of the assumption ("interest" and/or "benefit") required for assuming administrative liability of the entity provided for by Legislative Decree no. 231 appears crystal clear".

Finally, the "231" liability shall be triggered pursuant to Article 314, par. 1 of the Criminal Code, as required by Article 5 of Legislative Decree no. 75/2020, only "*when the fact harms the financial interests of the European Union*".

Sanctions applicable to the Entity

Financial penalty: up to 200 shares.

8. Embezzlement by taking advantage of somebody else's error (Article 316 c.c.)

Unlike the previous case, for the law being examined[26], the exercise of the functions or service does not represent the reason for the possession or in any case for the availability of the asset, but only a chronological moment within which the typical conduct takes place, which consists in receiving, or accepting what is given or made available by mistake, or in retaining it without returning it.

More specifically, taking advantage of somebody else's error means taking advantage of a pre-existing false representation of the third party such as to put the agent in the condition of being able to commit the offence.

The error that generates the appropriation may derive from any cause but cannot be intentionally/non-intentionally generated by the acting agent.

The error of the "passive" person shall therefore occur prior to the conduct of the public official, it shall be spontaneous and therefore not generated as a result of another action. Otherwise, it would be classified as a case of extortion.

Therefore, the essential precondition of the offence is that the third party is mistakenly convinced that they have to deliver money or other benefits into the hands of the Public Official or Public Service Officer, who accepts or retains them by taking advantage of the error.

From the psychological point of view, the generic intentional damage represents a requirement for the occurrence of the offence: the awareness of somebody else's error and the willingness to receive or retain the asset.

Finally, the "231" liability shall be triggered pursuant to Article 316 of the Criminal Code, as required by Article 5 of Legislative Decree no. 75/2020, only "*when the offence harms the financial interests of the European Union*".

Sanctions applicable to the Entity

financial penalty: up to 200 shares.

9. Extortion (Article 317 of the Criminal Code)

The offence occurs when a Public Official or a Person in Charge of a Public Service, abusing of their role or powers, force someone to give or unduly promise, to them or to others, money or other benefits.

The role of the Person in Charge of a Public Service has been reintroduced in the criminal law case referred to in Article 317 c.c.p. following the entry into force of Law no. 69/2015, mentioned above.

This reintroduction, according to the report illustrating the original bill, is justified as it would be

[26] Article 316 of the criminal code provides as follows: "1. The public official or the person in charge of a public service, who, in the exercise of their roles or service, by taking advantage of somebody else's error, unduly receive or hold, for themselves or for a third party, money or other benefits, shall be punished with imprisonment from six months to three years. 2. The punishment is ordered by imprisonment from six months to four years when the offence harms the financial interests of the European Union and the damage or profit exceeds EUR 100,000".

incongruous to punish only the public official when even a public service concessionaire can engage in the same behaviour "*with equally devastating effects on the ethics of relations*".

The Public Official or the Person in charge of a Public Service shall determine the state of subjection of the will of the injured person through the abuse of their role (regardless of their specific skills but exploiting their higher role) or of their powers (conduct that represent expressions of their functional powers for purposes other than that of which it was vested). Passive persons of this offence (injured parties) shall be the Public Administration and the extorted private individual.

Sanctions applicable to the Entity

- financial penalty: from 300 to 800 shares;
- interdiction sanctions: interdiction from performing the activity; suspension or revocation of authorisations, licenses or concessions useful for the perpetration of the offence; prohibition on contracting with the Public Administration, except to obtain the performance of a public service; exclusion from concessions, loans, contributions or subsidies and possible revocation of those already granted; ban on advertising goods or services (for not less than 4 years and not more than 7 years, if the offence was perpetrated by one of the parties referred to in Article 5, paragraph 1, subpara. a); for no less than 2 years and no more than 4, if the offence was perpetrated by one of the parties referred to in Article 5, paragraph 1, subpara. b. If, prior to the judgment of first instance, the entity has taken effective steps to prevent the criminal activity from leading to further consequences, to ensure evidence of the offences and to identify those responsible or for the seizure of amounts or other transferred benefits and has fixed the organisational deficiencies that led to the offence through the adoption and implementation of organisational models suitable for preventing offences of the same type, the interdiction sanctions shall then be effective for a duration established by Article 13, paragraph 2).

10. Corruption for the exercise of the function (Article 318 of the Criminal Code)

The offence occurs when a Public Official, for the exercise of their functions or powers, unduly receives, for themselves or a third party, money or other benefits or accept their promise.

This offence may be perpetrated by the Public Official as well as by the Person in Charge of a Public Service pursuant to Article 320 c.c.

Compared to extortion, corruption is characterised by the unlawful agreement reached between the qualified person and the private person acting as peers.

In the case of the Company, the offence of corruption shall be considered under a double perspective:

- *active corruption* when a manager or employee of the Company bribes a public official or a person in charge of a public service to obtain some benefit or advantage in favour of the Company;
- *passive corruption* when a manager or employee of the Company, as a Public Official or Person in charge of a Public Service (i.e., in expropriation procedures), receives money or the promise of money or other benefits to perform acts clashing with the duties of their office. In the latter case, for the "administrative" liability of the Company to exist, there shall be an interest or advantage for it, as well as an interest of the manager or employee who has accepted the corruption.

Lastly, Law no. 3/2019 has tightened the sanctioning scheme of this criminal law case, providing for a legal framework from 3 to 8 years.

Sanctions applicable to the Entity

Financial penalty: up to 200 shares.

11. Corruption for an act contrary to official duties (Article 319 of the Criminal Code)

The offence occurs when a Public Official or a Person in charge of a Public Service receives, for themselves or a third party, money or other benefits or accept the promise, to omit or delay or for having omitted or delayed an act of their office or to perform or have performed an act contrary to official duties.

In this particular type of offence, the private briber secures an act of the Public Official or Public Service Officer that clashes with the duties of their office by promising or giving undue benefit. To establish whether or not an act is contrary to official duties, it is necessary to consider not only the act itself in order to verify its legitimacy or illegality, but also its compliance with all the official duties or service that may be considered. As a result, an act may not in itself be illegitimate and nevertheless be contrary to official duties. The characteristics of an act contrary to official duties are both those clashing with legal regulations or service instructions, and those acts that in any case violate the duties of loyalty, neutrality and honesty connected to the exercise of a public function.

Sanctions applicable to the Entity

- financial penalty: from 200 to 600 shares;
- interdiction sanctions: interdiction from exercising the activity; suspension or revocation of authorisations, licenses or concessions useful to perpetrate the offence; prohibition on contracting with the Public Administration, except to obtain the performance of a public service; exclusion from concessions, loans, contributions or subsidies and possible revocation of those already granted; ban on advertising goods or services (for not less than 4 years and no more than 7 years, if the offence was committed by one of the parties referred to in Article 5, paragraph 1, subpara. a); for no less than 2 years and no more than 4, if the offence was committed by one of the parties referred to in Article 5, paragraph 1, subpara. b. If, prior to the judgment of first instance, the entity has taken effective steps to prevent the criminal activity from leading to further consequences, to ensure evidence of the offences and to identify those responsible or for the seizure of amounts or other transferred benefits and has fixed the organisational deficiencies that led to the offence through the adoption and implementation of organisational models suitable for preventing offences of the same type, the interdiction sanctions shall then be effective for a duration established by Article 13, paragraph 2).

For aggravating circumstances, pursuant to Article 319-bis of the Criminal Code, please refer to the next item of this document.

12. Aggravating circumstances (Article 319-bis of the Criminal Code)

"*The penalty shall be increased if the offence referred to in Article 319 affects the granting of public employment or salaries or pensions or the conclusion of contracts where the administration to which the public official belongs is involved interested*".

In such cases, or when the Entity has achieved a significant profit from the fact, the following sanctions will be applicable:

- financial penalty: from 300 to 800 shares;
- interdiction sanctions: interdiction from exercising the activity; suspension or revocation of authorisations, licenses or concessions useful to perpetrate the offence; prohibition on contracting with the Public Administration, except to obtain the performance of a public

service; exclusion from concessions, loans, contributions or subsidies and possible revocation of those already granted; ban on advertising goods or services (for not less than 4 years and no more than 7 years, if the offence was committed by one of the parties referred to in Article 5, paragraph 1, subpara. a); for no less than 2 years and no more than 4, if the offence was committed by one of the parties referred to in Article 5, paragraph 1, subpara. b. If, prior to the judgment of first instance, the entity has taken effective steps to prevent the criminal activity from leading to further consequences, to ensure evidence of the offences and to identify those responsible or for the seizure of amounts or other transferred benefits and has fixed the organisational deficiencies that led to the offence through the adoption and implementation of organisational models suitable for preventing offences of the same type, the interdiction sanctions shall then be effective for a duration established by Article 13, paragraph 2).

12. Corruption in legal actions (Article319-ter of the Criminal Code)

The offence occurs when someone offers or promises money or other benefits to a Public Official or Person in charge of a Public Service in order to favour or harm a party in a civil, criminal or administrative trial. Therefore, a company that, being a party in a judicial proceeding, bribes a Public Official (not only a magistrate, but also a chancellor or other official, or a witness), even through a third party (for example, its own lawyer) in order to reach a positive conclusion of the proceeding, may be held liable for the offence.

Article 319-ter constitutes an independent offence not related to the corruption cases provided for by Article 318 and 319 of the criminal code. The purpose of the rule is to ensure neutrality in the judicial activity.

For the offence be perpetrated, it is not necessary that the indicted actions are directly attributable to the exercise of a judicial function, as the sphere of operation of the criminal law rule not only includes the properly judicial activities, but also those expressing the exercise judicial activity and also attributable to parties different from the judge or the public prosecutor.

Sanctions applicable to the Entity

- paragraph 1, financial penalty: from 200 to 600 shares;
- paragraph, interdiction sanctions: interdiction from exercising the activity; suspension or revocation of authorisations, licenses or concessions useful for the perpetration of the offence; prohibition on contracting with the Public Administration, except to obtain the performance of a public service; exclusion from concessions, loans, contributions or subsidies and possible revocation of those already granted; ban on advertising goods or services;
- paragraph 2, financial penalty: from 300 to 800 shares;
- paragraph 2, interdiction sanctions: interdiction from exercising the activity; suspension or revocation of authorisations, licenses or concessions useful to perpetrate the offence; prohibition on contracting with the Public Administration, except to obtain the performance of a public service; exclusion from concessions, loans, contributions or subsidies and possible revocation of those already granted; ban on advertising goods or services (for not less than 4 years and no more than 7 years, if the offence was committed by one of the parties referred to in Article 5, paragraph 1, subpara. a); for no less than 2 years and no more than 4, if the offence was committed by one of the parties referred to in Article 5, paragraph 1, subpara. b. If, prior

to the judgment of first instance, the entity has taken effective steps to prevent the criminal activity from leading to further consequences, to ensure evidence of the offences and to identify those responsible or for the seizure of amounts or other transferred benefits and has fixed the organisational deficiencies that led to the offence through the adoption and implementation of organisational models suitable for preventing offences of the same type, the interdiction sanctions shall then be effective for a duration established by Article 13, paragraph 2).

14. Undue induction to give or promise benefits (Article 319-quater of the Criminal Code)

This offence, introduced by Article 1, par. 75, subpara. i), Law no. 190/2012, occurs when a Public Official or a Public Service Officer, by abusing of their role of powers, induce someone to unduly give or promise, for themselves or for a third party, money or other benefits.

The offence occurs both when the Public Official or the Public Service Officer, upon payment of an amount of money, performs an action contrary to their duties (for example by favouring the illegitimate award of a tender)[27].

This case differs from extortion, which is characterised by the threat as the induction is aimed at achieving an undue benefit. This distinction justifies the punishment of the person induced.

On the other hand, the distinctive criterion between undue induction and corruption lies in the different value that the abuse of power and/or role assumes in the two cases, given that only in the undue induction it is used as an unfailing instrument to effectively obtain the undue performance.

Sanctions applicable to the Entity

- financial penalty: from 300 to 800 shares;
- interdiction sanctions: interdiction from exercising the activity; suspension or revocation of authorisations, licenses or concessions useful to perpetrate the offence; prohibition on contracting with the Public Administration, except to obtain the performance of a public service; exclusion from concessions, loans, contributions or subsidies and possible revocation of those already granted; ban on advertising goods or services (for not less than 4 years and no more than 7 years, if the offence was committed by one of the parties referred to in Article 5, paragraph 1, subpara. a); for no less than 2 years and no more than 4, if the offence was committed by one of the parties referred to in Article 5, paragraph 1, subpara. b. If, prior to the judgment of first instance, the entity has taken effective steps to prevent the criminal activity from leading to further consequences, to ensure evidence of the offences and to identify those responsible or for the seizure of amounts or other transferred benefits and has fixed the organisational deficiencies that led to the offence through the adoption and implementation of organisational models suitable for preventing offences of the same type, the interdiction sanctions shall then be effective for a duration established by Article 13, paragraph 2).

15. Corruption of a person in charge of a public service (Article 320 of the Criminal Code)

The provisions of Articles 318 and 319 shall also apply to the person in charge of a public service.

In any case, the penalties shall be reduced by no more than one third.

16. Penalties for the corruptor (Article 321 of the Criminal Code)

The penalties established in paragraph 1 of article 318, in article 319, in article 319-bis, in article

[27] Four years' imprisonment shall apply when the offence harms the financial interests of the European Union and the damage or profit exceeds EUR 100,000.

319-ter and in article 320 in relation to the aforementioned cases of articles 318 and 319, shall also apply to those who give or promise money or other benefits to the public official or person in charge of a public service.

17. Incitement to corruption (Article 322 of the Criminal Code)

The penalty provided for this offence shall apply to anyone who offers or promises undue money or other benefits to a Public Official or to a Person in Charge of a Public Service, to induce them to perform an act contrary to or in compliance with official duties, if the promise or the offer is not accepted. Likewise, the conduct of a public agent who incites a promise or offer from a private individual to induce them to perform an act contrary to official duties shall be sanctioned.

This offence is therefore to be considered as a mere conduct-based offence. The objective element of the offence is represented by inciting conduct, for which, on the one hand, the perpetrator generates in others such pressure as to induce them to perform a certain action and, on the other, the victim shall not accept the offer or promise proposed.

Sanctions applicable to the Entity

- paragraphs 1 and 3, financial penalty: up to shares;
- paragraphs 2 and 4, financial penalty: from 200 to 600 shares;
- paragraphs 2 and 4, interdiction sanctions: interdiction from exercising the activity; suspension or revocation of authorisations, licenses or concessions useful to perpetrate the offence; prohibition on contracting with the Public Administration, except to obtain the performance of a public service; exclusion from concessions, loans, contributions or subsidies and possible revocation of those already granted; ban on advertising goods or services (for not less than 4 years and no more than 7 years, if the offence was committed by one of the parties referred to in Article 5, paragraph 1, subpara. a); for no less than 2 years and no more than 4, if the offence was committed by one of the parties referred to in Article 5, paragraph 1, subpara. b. If, prior to the judgment of first instance, the entity has taken effective steps to prevent the criminal activity from leading to further consequences, to ensure evidence of the offences and to identify those responsible or for the seizure of amounts or other transferred benefits and has fixed the organisational deficiencies that led to the offence through the adoption and implementation of organisational models suitable for preventing offences of the same type, the interdiction sanctions shall then be effective for a duration established by Article 13, paragraph 2).

18. Embezzlement, extortion, undue induction to give or promise benefits, corruption and to corruption of members of international courts or bodies of the European Communities or of international parliamentary assemblies or international organisations and officials of the European Communities and foreign states (Article 322-bis of the Criminal Code)

The provisions set forth for the offences of extortion, corruption for the exercise of the role, corruption for an act contrary to official duties, corruption in judicial actions, undue induction to give or promise benefits and to corruption, shall apply to the Entity even when these offences concern the following parties:

- the members of the Commission of the European Communities, the European Parliament, the Court of Justice and the Court of Auditors of the European Communities;
- officials and agents hired under contract under the statute of officials of the European Communities or the scheme applicable to agents of the European Communities;
- persons seconded by the Member States or by any public or private body in the European

Communities, who perform roles such as officials or agents of the European Communities;

- members and employees of entities established on the basis of the Treaties establishing the European Communities;
- persons who, within other EU member states, perform roles or activities such as public officials and persons in charge of a public service;
- the judges, the prosecutor, the deputy prosecutors, the officials and agents of the International Criminal Court, the persons seconded by the States members of the Treaty establishing the International Criminal Court who perform roles such as officials or agents of the Court, members and employees of entities established on the basis of the Treaty establishing the International Criminal Court;
- persons who perform roles or activities such as Public Officials and Persons in charge of a Public Service in the context of international public organisations;
- members of international parliamentary assemblies or of an international or supranational organisation and judges and officials of international courts[28];
- people who perform roles or activities such as Public Officials and Persons in charge of a Public Service within non-EU member states, when the offence harms the financial interests of the Union.[29]

The rules on undue induction to give or promise benefits (Article 319-quater, paragraph 2, of the Criminal Code) and active corruption (Articles 321 and 322, paragraphs 1 and 2) shall apply even if the money or other benefit is given, offered or promised:

- to the parties above;
- to persons who perform roles or activities such as Public Officials and Persons in charge of a Public Service in the context of other foreign states or international public organisations.

<u>Sanctions applicable to the Entity</u>

- financial penalty: from 200 to 600 shares; if the Entity has gained a significant profit, a penalty between 300 and 800 shares shall apply;
- interdiction sanctions: interdiction from exercising the activity; suspension or revocation of authorisations, licenses or concessions useful to perpetrate the offence; prohibition on contracting with the Public Administration, except to obtain the performance of a public service; exclusion from concessions, loans, contributions or subsidies and possible revocation of those already granted; ban on advertising goods or services (for not less than 4 years and no more than 7 years, if the offence was committed by one of the parties referred to in Article 5, paragraph 1, subpara. a); for no less than 2 years and no more than 4, if the offence was committed by one of the parties referred to in Article 5, paragraph 1, subpara. b. If, prior to the judgment of first instance, the entity has taken effective steps to prevent the criminal activity from leading to further consequences, to ensure evidence of the offences and to identify those responsible or for the seizure of amounts or other transferred benefits and has fixed the organisational deficiencies that led to the offence through the adoption and implementation of organisational models suitable for preventing offences of the same type, the interdiction sanctions shall then be effective for a duration established by Article 13, paragraph 2).

[28] The persons indicated in the first paragraph of Article 322-bis of the Criminal Code correspond to public officials, if they perform corresponding roles, and to persons in charge of a public service in other cases.
[29] No. 5-quater) added to the first paragraph of Article 322-bis of the Criminal Code from Article 1 of Legislative Decree no. 75/2020.

19. The offence of abuse of office (Article 323 of the Criminal Code)

This criminal law case punishes "*unless the fact represents a more serious offence, the public official or the person in charge of a public service who, in carrying out their duties or service, by breaching specific rules of conduct provided for by law or by acts having full force of standard law and from which no margin of discretion shall be granted*[30]*, or by failing to refrain from favouring one's own interest or of the interest of a close relative or in the other cases provided, intentionally generates, for themselves or for others, an undue financial benefit or an unfair damage to others.*"

Abuse of office[31], like the previous criminal law cases analysed, is also an offence committed under colour of authority, as it can only be perpetrated by a public official or by a public service officer.

This clause limits the criminal relevance of the conduct and implies that the active person shall perpetrate the abuse in their aforementioned capacity. As a result, the offence referred to in Article 323 c.c. for all those behaviours put in place outside the actual exercise of official duties which, even where perpetrated by breaching the duty of correctness, are put in place as a private individual without, therefore, resorting to the functional activity performed, thus not assuming criminal relevance (see Criminal Court, judgement no. 6489/2008).

As for the legal asset protected by this law, according to the consolidated jurisprudence of the Supreme Court, "*the offence of abuse of office aimed at generating unfair damage to is a multi-victim offence, as it may damage, in addition to the public interest to the good performance and transparency of the PA, the right of the private individual by the illegitimate and unfair behaviour of the public official. As a consequence, the injured private individual qualifies as victim of the offence and is entitled to appeal before the public prosecutor*" (see Criminal Court, judgement no. 7642/2008).

The 1997 legislative amendment also turned the abuse of office from a conduct-based offence into an offence of result: the offence occurs only when the agent generates an undue financial benefit for themselves or others or causes undue damage to others.

The requirement of the so-called double "injustice" of the damage or advantage shall not constitute the reflection of the unlawful conduct, yet it shall be evaluated on the basis of the objective law that regulates the matter and according to an evaluation related to the factual situation at the time of the conduct (Court of Cassation, Judgment No. 36125/2014; Criminal Court, Judgment No. 1733/2013; Criminal Court, Judgment No. 27936/2008).

On the other hand, as regards the subjective element of the offence, following the amendments introduced by law no. 234/1997, the abuse is to be "*intentionally*" committed by the agent in order to pursue an undue advantage or damage.

Therefore, the intentionality required by the criminal law case narrows the scope of the subjective element of the offence pursuant to Article 323 of the Criminal Code, making only the conducts carried out with a clear degree of participation of the agent criminally punishable. The agent, in order to integrate the negative value of the case, is required to act so as to generate an undue financial profit or undue damage (Criminal Cassation, judgment no. 4979/2010).

In short, it is not sufficient for "*the perpetrator to act intentionally, i.e., that the event is very likely to happen, nor for the perpetrator to act with possible fraud, thus accepting the risk of its occurrence. The only condition is that the event of damage or advantage is intentional and fulfilled as an immediate and direct objective of the conduct, and not simply fulfilled as a secondary consequence*".

The offence is to be excluded when the primary objective pursued by the agent is the public interest

[30] Recently amended by Article 23 of the law decree no. 76/2020, converted with amendments by Law no. 120 of 11 September 2020, which replaced the previous phrase "by breaching laws or regulations".
[31] The perpetrator may also be held responsible for civil, tax and disciplinary purposes

(Criminal Cassation, judgement no.708/2003) even in the awareness of "*generating an undue advantage to a single private individual. However, this can only apply if the offence is committed by the person in charge of supervising the public interest and if the means chosen is the only one capable of achieving this interest*". (Criminal Court, judgement no. 21165/2009)
Still as regards the proof of the subjective element, the Court has also ruled that "*not only the act or behaviour of the public official individually assessed shall be relevant, but also any other element that, apparently extrinsic to the act or behaviour, allows in any case, a more significant verification and, therefore, also the attitudes prior to, contextual and subsequent to the activity that generates the abuse*" (Criminal Court, judgement no. 11204/1997).
Finally, particularly relevant is Article 23 of the law decree no. 76/2020 (so-called "*Decreto Semplificazioni*"), converted with amendments by Law no.120 of 11 September 2020, which affected the objective core of the legal case in question, by changing the criminal protection, with the following two interventions:

1) exclusion of the relevance of the breach of rules contained in regulations: the abuse can in fact be supplemented only by the breach of "*specific rules of conduct expressly provided for by law or by actions having the force of standard law*", i.e., from primary sources;
2) only rules of conduct "*from which no margins of discretion shall be granted*", are relevant.

The effort to limit the indictment to the breach of specific and clears rules of conduct is aimed at increasing the selective capacity of the case in question and at ensuring greater predictability of the consequences of the offences in administrative activity.
This means excluding that the breach of a specific and clear rule of conduct, characterised by margins of discretion, could generate a criminal offence.
The reform is justified by the existence of court orientations, which, under certain conditions, consider the abuse of office as occurring in the event of excess power (misuse), which occurs when the power is exercised for a purpose different from that for which it is granted (see, *ex multis*, Criminal Court, section VI, judgement no. 19519 of 13 April 2018; Criminal Court, section VI, judgement no. 32237 of 13 March 2014).
In this regard, the United Divisions of the Cassation have also ruled on the matter, stating that "*there is a requirement of breach of the law not only when the conduct of the public official is carried out by breaching the rules governing the exercise of power, but also when such conduct is only aimed at fulfilling an interest clashing with that for which the power is granted (in this case the misuse of power), which integrates the breach of the law since the power is not exercised according to the regulatory scheme legitimising it attribution*" (see Criminal Court of Cassation, Un. Division, 29 September 2011, no. 155).
Behind the figure of excess power, however, lurks the risk of the trade union invasion and criminal control in administrative activity.
The reference to the need for the provision and/or the violated rule is not among those providing margin of discretion to the public official, seems to clarify the purpose of the amendment: the public administrator can never be prosecuted under Article 323 c.c. whenever they are found to operate in regulatory contexts which - while setting the objectives of public interest to be pursued in the specific case - leave them free to choose the actual modalities for their fulfilment.
The reform of this criminal offence, by better specifying the criminally relevant conduct, aims at reducing as much as possible the possibility (not uncommon) that the risk of being subjected to the invasive and penetrating intervention of the criminal judge may curb the initiative of the public administrator.

Finally, the "231" liability shall be triggered pursuant to Article 323 of the Criminal Code, as required by Article 5 of Legislative Decree no. 75/2020, only "*when the offence harms the financial interests of the European Union*".

Sanctions applicable to the Entity

financial penalty: up to 200 shares.

20. Influence peddling (Article 346-bis of the Criminal Code)

The Law no.3 of 9 January 2019 (published in the Official Journal no. 13 of 16 January 2019) introduced the offence of influence peddling provided for and punished by Article 346-bis[32] of the Criminal Code and at the same time repealed the offence of fraudulent representations (Article 346 of the Criminal Code).[33]

The law provides for the offence of those who, except for cases of participation in corruption offences for the exercise of the role (Article 318 of the criminal code), corruption for an act contrary to official duties (Article 319 of the criminal code) , corruption in judicial documents (Article 319 of the criminal code) and in the corruption offences referred to in Article 322-bis of the Criminal Code, "*by exploiting or pretending existing or alleged relationships with a public official or with a person in charge of a public service or one of the other parties referred to in article 322-bis, they unduly order to give or promise to others, money or other benefits, as the price of one's illicit mediation towards a public official or a person in charge of a public service or one of the other parties referred to in Article 322-bis, or to remunerate them in relation to the exercise of their roles or powers.*"

The purpose of the indictment is to target the phenomena of illicit intermediation between the private and public officials, aimed at the corruption of the latter.

The rule, also considering the subsidiarity clause provided for at the opening of the first paragraph, therefore aims to counter conducts preliminary to (subsequent) corruption agreements that will involve the holder of public functions, whose determinations are meant to be illicitly influenced and shall not apply accordingly if the Public Official or the Person in charge of a Public Service accepts the promise or the provision of money or other benefits by the intermediary Indeed, in this case there would be a competition of the private individual, intermediary and Public Officer or Person in charge of a Public Service in a committed offence of corruption.

The current law extends the scope of the indictment to the offer or giving to the intermediary of "*money or other benefits*", with the inclusion of any other non-pecuniary utility.

The intermediary's conduct is also to be carried out "*by exploiting or pretending existing or alleged relationships with a public official or with a public service officer or one of the other parties referred to in Article 322-bis*".

Therefore, the reform incorporates the conduct that in the period prior to the entry into force of Law no. 3/2019, integrated the details of the fraudulent representation[34].

On this aspect, according to the consolidated orientation of the Supreme Court, the offence of fraudulent representation differs from influence peddling as it assumes that there is no representation or relationship with the Public Official/Person in charge of a Public Service, and not even influence, while the influence peddling assumes a real situation in which the relationship exists, as well as some capacity to influence or otherwise guide the conduct of the public official (see Criminal Court, Section VI, judgement no. 53332 of 2017).

The second paragraph of Article 346-bis of the Criminal Code also provides that the penalty

[32] The offence of influence peddling was included in the criminal code by Law no. 190/2012.

[33] The repealed case was incorporated in the new formulation of the offence of influence peddling.

[34] The regulatory continuity between the repealed case of fraudolent representation and the offence of influence peddling, the Supreme Court also ruled by judgement no. 17980 of 14 March 2019, which stated that: "In relation to the conduct of those who, thanks to an actual or merely asserted influence with a public official or a person in charge of a public service, obtain money and/or other benefits as price of its own mediation, there is full regulatory continuity between the case referred to in Article 346 of the Criminal Code, formally repealed by Article 1, paragraph 1, subpara. s), law no. 3/2019, and the case referred to in Article 346-bis of the Criminal Code, as amended by Article 1, paragraph 1, subpar. t), of the same law. "

established by the first paragraph shall apply to those who unduly give or promise money or other benefits and, therefore, to the private individual who resorts to the illicit intermediation.

The third and fourth paragraphs then include two special aggravating circumstances with common effect respectively for the particular case in which the intermediary is a Public Official or a Person in charge of Public Service or one of the parties referred to in Article 322-bis of the Criminal Code, as well as for that in which the offence is committed "*in relation to the exercise of judicial activities or to remunerate the public official or the person in charge of a public service or one of the other parties referred to in article 322-bis in relation to the performance of an act clashing with official duties or to the omission or delay of an act of their office*", and therefore takes the form of a preliminary activity in relation to the offences of corruption in judicial acts pursuant to art . 319-ter of the Criminal Code and corruption for an act contrary to official duties pursuant to Article 319 of the criminal code

Finally, the last paragraph provides for a mitigating circumstance with common effect for particularly irrelevant events.

As for the psychological element, this offence represents a generic intentional offence, therefore it is sufficient to accept the risk of its occurrence (so-called potential intentional damage).

The intentionality of the conduct shall also extend to the element of special illegality referred to in the word "*unduly*" and the phrase "*illicit mediation*": the agent shall therefore be aware that the interference is illegal and that it aims to a distortion of administrative activity.

Sanctions applicable to the Entity

- financial penalty: up to 200 shares;
- interdiction sanctions: interdiction from exercising the activity; suspension or revocation of authorisations, licenses or concessions useful to perpetrate the offence; prohibition on contracting with the Public Administration, except to obtain the performance of a public service; exclusion from concessions, loans, contributions or subsidies and possible revocation of those already granted; ban on advertising goods or services (for not less than 4 years and no more than 7 years, if the offence was committed by one of the parties referred to in Article 5, paragraph 1, subpara. a); for no less than 2 years and no more than 4, if the offence was committed by one of the parties referred to in Article 5, paragraph 1, subpara. b. If, prior to the judgment of first instance, the entity has taken effective steps to prevent the criminal activity from leading to further consequences, to ensure evidence of the offences and to identify those responsible or for the seizure of amounts or other transferred benefits and has fixed the organisational deficiencies that led to the offence through the adoption and implementation of organisational models suitable for preventing offences of the same type, the interdiction sanctions shall then be effective for a duration established by Article 13, paragraph 2).

21. Induction not to make statements or to make false statements to the judicial authorities (Article 377-bis of the Criminal Code - predicate offence referred to in Article 25-decies of Legislative Decree no. 231/2001)

This criminal law case aims to avoid the possible exploitation of the right not to answer granted to the suspects and defendants, as well as to the so-called suspects/defendants in related proceedings, their close relatives and the witness (in the case of so-called self-incrimination), in compliance with the principle of "*nemo tenetur se detegere*", also in order to protect the proper conduct of the proceedings against all undue interference.

This is a subsidiary rule, which shall only apply if the fact actually committed does not constitute a more serious offence.

The offence is characterised by the provision of a generic wilful misconduct, consisting in the awareness and the will to induce, following violence or threat of the person having the right not to respond or offer or promise of money or other benefits to the latter, not to make statements or to make use of this right or to make false statements to the judicial authority (Judge or Public Prosecutor)

The authors of the conduct are, therefore, the witnesses, the suspects and the defendant (also in related proceedings or in a related offence), to whom the right not to answer is granted by the law.

As for the typical methods of behaviour, the relevant induction for the purpose of committing the offence is achieved through the action with which a person exerts an influence on the psyche of another individual, causing them to behave in a certain way, expressed through the means strictly indicated by the law, or threats, violence or the promise of money or other benefits.

For the elements of the case to exist, the following conditions are to be met:

- the induced person has not made statements or made them false in the same proceeding;
- the person induced, as described by the law, not to make statements or to make them untrue, had the right not to answer.

Sanctions applicable to the Entity

- financial penalty: up to 200 shares.

22. Non-compliance with interdiction sanctions (Article 23 of the Decree)

The offence shall punish anyone who, in carrying out the activity of the Entity to which a sanction or interdicting precautionary measure has been applied, breaches the obligations or prohibitions inherent in such sanctions or measures. For the purposes of this rule, all those activities carried out by the Entity that may still present interference in relation to the execution of an interdiction sanction or a precautionary interdiction measure shall be considered.

Sanctions applicable to the Entity

- financial penalty: from 200 to 600 shares;
- interdiction sanctions: if the Entity has gained a significant profit, interdiction shall apply, even different from those previously imposed.

OFFENCES AGAINST INDIVIDUAL FREEDOM (ARTICLES 25-QUINQUIES AND 25-DUODECIES OF THE DECREE)

Illicit brokering and exploitation of labour (Article 25-quinquies, Legislative Decree No. 231/2001[35])

Article 6 of the Law no.199 of 29 October 2016, containing "*Provisions on combating the phenomena of undeclared work, the exploitation of labour in agriculture and wage adjustment in the agricultural sector*" and published in the Official Journal. no. 257 of 3 November 2016, amended Article 603-bis of the Criminal Code, entitled "*Illicit brokering and exploitation of labour*", which was also included in Article 25-quinquies, par. 1, subpara. a), of Legislative Decree no. 231/2001.

The amendment is aimed at increasing the protection of workers and more generally of the market.

[35] Offence added by Law no. 199/2016 (OJ General Series No. 257 of 3 November 2016, provision which entered into force on 4 November 2016).

As specified in the report to the text of the law, "*the exploitation of workers always benefits the profit of companies, which are often set up as corporations or associations*".
The new description of the case (punishable by imprisonment from one to six years and a penalty from EUR 500 to EUR 1,000 for each worker recruited):

- redefined the unlawful conduct of the corporal, or of those who recruit workers for third parties in conditions of exploitation, taking advantage of the state of need (the reference to the "*state of necessity*" is deleted);
- compared to the previous case, it introduces a basic case that is independent of violent, threatening or intimidating behaviour (the reference to the performance of an organised intermediation activity or the reference to the organisation of work characterised by exploitation is deleted).

The offence of illicit brokering and exploitation of work is therefore now applicable to all employers.
In the new definition, compared to the one introduced for the first time in the Italian system by the decree law no. 138 of 13 August 2011, converted into Law no.148 of 14 September 2011, the possibility of sanctioning the employer is also clearly specified, and it is the same as the one imposed on the "corporal", who uses/hires/employs labour "*by subjecting workers to conditions of exploitation and taking advantage of their state of need*", even without illegal recruiting through third parties.
The amendment just described shall be carefully examined especially in the light of the so-called exploitation indices and at which occurrence (alternative indices) the exploitation of the worker is potentially existing.
This includes not only the recurrent payment of wages in a way that is clearly different from the provisions of the collective bargaining signed by the comparatively more representative social partners, or in any case disproportionate to the quantity/quality of the work performed, but also breaches that are not necessarily serious and systematic.
These include, for example, the failure to comply with the rules regarding working hours/rest/ parental leave/holidays or those regarding safety in the workplace, now understood in their generality and no longer only those dangerous for health, safety or personal safety.
Exploitation recalls habitual conduct and occurs when the person is prevented from freely determining their existential choices.
The Court of Cassation (Section V, judgement no. 14591 of 4 April 2014) clarified that the offence of illegal hiring "*is aimed at sanctioning those behaviours not merely leading to the breach of the rules set by Legislative Decree 276/2003, without however reaching the levels of extreme exploitation, referred to in the case described by Article 600 c.c.p. [slavery]*".
In essence, the concept of exploitation can be traced back to any behaviour, even if carried out without violence or threat, which inhibits or limits the victim's freedom of self-determination without it being necessary to achieve that state of total and continuous subjection that characterizes the offence of slavery.
Same rule applies to the state of need, which is not identified with the need to work to live, but entails - according to the interpretation of the Court of Cassation (*ex multis*, section II, judgement no. 18778 of 25 March 2014) – "*a state of necessity that tends to be irreversible, which, while not absolutely annihilating any freedom of choice, involves an unpleasant condition, such as to strongly jeopardise the person's contractual freedom"*.
For the completion of the offence of illicit brokering and exploitation of labour, generic intent is

required. Its object includes all the elements of the case, it being therefore necessary that the agent, in addition to wishing the conduct described in Article 603-bis of the Criminal Code and its particular methods, triggers the state of need of the exploited worker.

Sanctions applicable to the Entity

- financial penalty: from 400 to 1000 shares;
- interdiction sanctions: interdiction from exercising the activity; suspension or revocation of authorisations, licenses or concessions functional to the perpetration of the offence; prohibition on contracting with the Public Administration, except to obtain the performance of a public service; exclusion from concessions, loans, contributions or subsidies and possible revocation of those already granted; ban on advertising goods or services.

Employment of irregular citizens from non-EU countries (Article 25-duodecies, Legislative Decree No. 231/2001, added by Legislative Decree No. 109/2012)

This criminal law case shall apply upon occurrence of one of the aggravating circumstances provided for by paragraph 12-bis of Article 22 of Legislative Decree 286/1998 (the so-called Consolidated Law on Immigration), which states that: "*The penalties for the case provided for in paragraph 12* (Editor's note: i.e. the case of the "employer who employs foreign workers without the residence permit provided for in this article, or whose permit has expired and which has not been requested to be renewed, revoked or cancelled within the legal terms") *shall be increased by one third to half:*

a) if there are more than three workers employed;
b) if the workers employed are minors of non-working age;
c) if the employed workers are subjected to other particularly exploitative working conditions referred to in the third paragraph of article 603-bis of the criminal code."

Law no. 161 of 17 October 2017 (so-called "Anti-Mafia Code") has finally incorporated in Article 25-duodecies of the Decree the following two new criminal law cases referred to in Legislative Decree no. 286/1998:

- Article 12, par. 3, 3-bis and 3-ter, i.e., the conduct of those who "*promote, manage, organise, finance or carry out the transport of foreigners in the territory of the State or perform other acts aimed at illegally obtaining their access in the territory of the State, or of another State of which the person is not a citizen or has no permanent residence permit*", including the related aggravating circumstances;
- Article 12, par. 5, i.e., the conduct of those who "*in order to obtain an unfair profit from the illegal status of the foreigner or in the context of the activities punished under this article, favour their presence in the territory of the State*".

Sanctions applicable to the Entity

As regards the perpetration of the offence referred to in article 22, paragraph 12-bis, of legislative decree no. 286, a financial penalty from 100 to 200 shares shall be imposed against the Entity, within the limit of EUR 150,000.

As regards the perpetration of the offence referred to in Article 12, co. 3, 3-bis and 3-ter of Legislative Decree no. 286/1998, a financial penalty from 400 to 1,000 shares shall be imposed against the Entity.

As regards the perpetration of the offence referred to in Article 12, co. 5 Legislative Decree no. 286/1998, a financial penalty from 100 to 200 shares shall be imposed against the Entity.

In cases of conviction for the offences referred to in the last two points above, the interdiction

sanctions provided for by Article 9, co. 2, of the Decree shall apply for no less than one year.

CORPORATE OFFENCES, CORRUPTION AND INCITEMENT TO CORRUPTION BETWEEN PRIVATE PERSONS (ARTICLE 25-TER OF THE DECREE)

1. False statements, prospectuses and reports

False corporate communications (Article 2621 of the Civil Code)
Minor events (Article 2621-bis of the Civil Code)
False corporate communications of listed companies (Article 2622 of the Civil Code)

The Law no. 69 of 27 May 2015, which entered into force on 14 June 2015, introduced a new regulation of the offence of false accounting, turning it from an administrative offence into a criminal offence, and providing, in addition to the increase in the maximum legal penalty for individuals to 8 years of imprisonment , the elimination of the quantitative thresholds (5% of the economic result; 1% of the assets; 10% of the estimates) previously provided as a barrier to its actual perpetration/integration.
The new structure of the offences of false corporate communications, basically consists of two different criminal law cases (Articles 2621 and 2622 of the Civil Code) which are both characterised by their nature of offences of mere danger and by the automatic prosecution.
Both cases described in articles 2621 and 2622 of the Civil Code are carried out with the inclusion in financial statements, reports and other communications addressed to shareholders or the public, of material facts that do not correspond to the truth or in the omission of material facts whose communication is required by the law on the economic, asset or financial institution of the company or group to which such communication belongs.
The legal asset protected by the aforementioned provisions is to be identified in the complete and correct corporate information.
The active parties, in both offences, are the directors, general managers, managers responsible for drafting the corporate accounting documents, statutory auditors and liquidators and, therefore, these are offences committed under colour of authority.
However, in order to recognise the related criminal responsibility, it is not sufficient to identify the perpetrator of the offence on the sole basis of the formal characteristic. It will be necessary to carry out an investigation, case by case, also on a functional level, i.e., on the level of actual carrying out of those typical activities of directors, general managers, auditors, liquidators and managers in charge by persons not formally vested with these roles.
As a matter of fact, the provision referred to in Article 2639 of the Civil Code generates real extension of the relevant subjective qualifications, including in the group of perpetrators of the offence of false corporate communications both those who perform the same functions covered by the persons specifically identified in the criminal action (even if otherwise qualified in the office) , and the so-called actual person in charge, i.e. the person who, lacking formal investiture, continuously exercises the typical powers inherent to the qualification or function referred to in the case.
In addition:

- the concept of "corporate communication" includes all communications required by law

addressed to shareholders or the public. This legal reserve excludes the criminal relevance of any atypical and non-institutionalised communication, even if addressed to the shareholders and the public. By way of example, standard communications like press releases and press conferences, as well as the same declarations to the shareholders gathered in the meeting and even the communications required by CONSOB by virtue of regulatory powers. Corporate communications may instead include the written declaration of the manager in charge that shall accompany the documents and communications of the companies disclosed to the market and relating to the company's accounting information, including interim reports, aimed at certifying their compliance with the documentary results, books and records accounting pursuant to Article 154-bis of the Consolidated Law on Finance (in relation to Law no. 262/2005 regarding the S.p.A.). The draft financial statements, reports and documents to be published pursuant to Article 2501-ter-2504-novies of the Civil Code in the event of a merger or spin-off, or in the case of interim dividends, pursuant to Article 2433-bis of the Civil Code They are included in the concept of corporate communications;

- the scope of application of both rules is defined by the requirements of materiality and relevance of the falsified circumstance as well as the awareness and concreteness of the danger for the protected legal asset;
- the false or partial disclosure shall be concretely capable of misleading the recipients of the falsified communication;
- the conduct shall be aimed at obtaining an unfair profit for oneself or for others (*animus lucrandi*) and the intention of causing unfair financial damage to shareholders or the public is not required;
- the falsification of corporate information shall be aware;
- the responsibility also extends to the cases in which the information relates to assets owned or managed by the company on behalf of third parties;
- Law no. 69/2015 also provides for a penalty reduction from one third to two thirds of the conviction and this measure is provided for the active repentance or for those who work effectively to avoid further consequences of the offence, ensure evidence, identify the perpetrator or for those who collaborate for the seizure of the amounts illegally transferred.

On the other hand, the scope of application of the criminal law cases referred to in Articles 2621, 2621-bis and 2622 of the Civil Code is different.

While Article 2621 of the Civil Code only concerns unlisted companies, Article 2622 of the Civil Code shall only apply to conducts involving companies issuing financial instruments traded on regulated markets (in Italy or in other Member States of the European Union), controlling the latter parties, issuers of financial instruments traded on multilateral trading facilities (Italian or belonging to other Member States of the European Union), who have applied for admission to trading on regulated markets (Italian or belonging to other Member States of the European Union) and which promote or manage public savings.

A further difference between the two above provisions concerns the lack of the phrase “provided for by the law” with reference to corporate communications addressed to shareholders or the public, as per Article 2622 of the Civil Code, which therefore seem to include a wider range of communications relevant for legal purposes and not only those communications "provided for by the law".

Furthermore, for the sole case referred to in Article 2621 of the Civil Code and, therefore, for

unlisted companies, pursuant to Article 2621-bis of the Civil Code a weaker penalty framework for "minor" facts has been provided for, by taking into account the nature and size of the company and the methods or effects of the conduct and which can be prosecuted upon complaint by the company itself or its shareholders or other recipients of the social communications.

Sanctions applicable to the Entity

- for the offence of false corporate communications, provided for by Article 2621 of the Civil Code, the financial penalty ranges from 200 to 400 shares;
- for the offence of false corporate communications, provided for by Article 2621-bis of the Civil Code, the financial penalty ranges from 100 to 200 shares;
- for the offence of false corporate communications of listed companies, provided for by Article 2622 of the Civil Code, the financial penalty ranges from 400 to 600 shares.

False reporting in prospectuses Article 173-bis of the Consolidated Law on Finance)

This offence occurs through the introduction, in the prospectuses required for the public offer of financial products, for the purpose of urging investment or admission to listing on regulated markets or in the documents to be published on the occasion of public offers for purchase or exchange, of false information or the concealment of data or information capable of misleading the recipients of the prospectus, with the intention of deceiving them and in order to obtain an undue profit for themselves or for others.

Please note that:

- the prospectus shall be drawn up according to the general provisions established by CONSOB;
- there shall be intentional manipulation and the intention to deceive the recipients of the prospectus;
- the conduct shall be capable of misleading the recipients of the prospectus;
- the conduct shall be aimed at obtaining an undue profit for oneself or for others.

Therefore, in providing a further case in relation to those regulated by articles 2621 and 2622, the Legislator implicitly recognised the traceability of the prospectuses in question to the social communications channel.

Article 34 of Law no. 262 of 2005 (so-called law on savings) introduced the new offence of false reporting in prospectus, by simultaneously repealing Article 2623 of the Civil Code, which was incorporated with a new wording in Article 173-bis of the Consolidated Law on Finance. Since Article 25 ter, subparagraphs c) and d) still refer to Article 2623 of the Civil Code as a requirement for the administrative offence, the repeal of the provision of the civil code, which was not followed by the contextual integration of the article of the Decree with reference to the new case of Article 173-bis of the Consolidated Law on Finance, should then trigger the non-application of Legislative Decree no. 231/2001 to the new offence of false reporting in prospectus.

However, from a prudential perspective, this case was also taken into account in the mapping of areas at risk pursuant to Legislative Decree no. 231/2001.

The typical nature of the documents in question also helps to delimit the number of active perpetrators of the offence, even if it is as a common offence, identifying them in those responsible for the drafting and transmission of the prospectus (such as, for example, the directors of the company that intends to urge the conclusion of an investment).

As for the objective element of the offence, today it can be integrated in both administrative and criminal cases by both an active conduct (introduction of false information) and by passive conduct (concealment of data or information), characterised the ability to mislead the recipients of the

prospectus.

Sanctions applicable to the Entity

- for the offence of false reporting in prospectus, provided for by the repealed Article 2623, first paragraph, of the civil code, the financial penalty ranges from 100 to 130 shares;
- for the offence of false reporting in prospectus, provided for by the repealed Article 2623, second paragraph, of the civil code, the financial penalty ranges from 200 to 330 shares.

False reporting in the reports or communications of the persons in charge of the statutory audit (Article 27, Legislative Decree 39/2010)

The offence occurs through false reporting or the concealment of information in reports or other communications, perpetrated by the auditors, concerning the economic or financial situation of the company, in order to obtain for themselves or for other persons an undue profit with the awareness of the false reporting and with the intention of deceiving the recipient of the communication. The sanction is stronger if the conduct caused financial damage to the recipients of the communications, or if the statutory audit concerns a public interest entity.

Article 37 of Legislative Decree 39/2010 introduced the new offence of "False reporting in the reports or communications of the persons in charge of the statutory audit", by simultaneously repealing article 2624 of the Civil Code.

Since Article 25 ter, paragraph 1, subparagraphs f) and g) of Decree 231/2001, still refer to Article 2624 of the Civil Code as a requirement for the administrative offence, the repeal of the provision of the civil code, which was not followed by the simultaneous integration of the article of the Decree with reference to the new case of Article 27 of Legislative Decree 39/2010, should lead to the non-applicability of Legislative Decree 231 of 2001 to the new offence of "False reporting in the reports or communications of the persons in charge of drafting the statutory audit".

In this regard, the Criminal Sections of the Court of Cassation by ruling no. 34476 of 23 June 2011, regarding the applicability of Article 37 of Legislative Decree no. 39/2010, ruled that the principle of legality prevents the interpretation of the express reference contained in Article 25-ter of Legislative Decree no. 231/2001, with the repealed Article 2624 of the Civil Code as a "mobile" reference to another regulatory provision, regardless of any consideration relating to the relationship of continuity between the various criminal law cases.

However, from a prudential perspective, this case was also taken into account in the mapping of areas at risk pursuant to Legislative Decree no. 231/2001.

In light of a systematic interpretation of this legal principle stated by the Court, the previous issue concerning the reference to corporate criminal cases of false reporting in prospectus referred to in Article 2623 of the Civil Code, contained in Article 25-ter: inapplicability of the administrative liability of entities to such offences.

Active perpetrators of the offence in question shall be the persons in charge of the statutory audit, while the members of the company's administrative bodies and its employees may be involved exclusively as parties involved in the offence.

Indeed, it is conceivable a possible cooperation, pursuant to Article 110 of the Criminal Code, of the directors, statutory auditors, or other parties of the audited company, who have triggered or incited the unlawful conduct of the person in charge of the statutory audit.

Sanctions applicable to the Entity:

- for the offence of false reporting in in reports or communications from auditing companies,

provided for by the repealed Article 2624, paragraph 1, of the civil code, the financial penalty from 100 to 130 shares;

- for the offence of false reporting in reports or communications from auditing companies, provided for by the repealed Article 2623, paragraph 2, of the civil code, the financial penalty from 200 to 400 shares.

Failure to communicate the conflict of interest (Article 2629-bis of the Civil Code)

This offence occurs when a member of the Board of Directors of a company, with securities listed on regulated markets in Italy or in another EU member State or widely distributed among the public (pursuant to Article 116 of the Consolidated Law on Finance) by breaching the rules on the conflict of interests of directors provided for by Article 2391, par. 1 of the Civil Code, causes damage to the company or to third parties.

Specifically, Article 2391 of the Civil Code requires the members of the Board of Directors to communicate (to the other members of the Board and to the Statutory Auditors) any interest that they, on their own behalf or on behalf of third parties, have in a specific company transaction, specifying the nature, terms and origin and the scope. The Chief Executive Officers shall also refrain from carrying out the transaction, by informing the Board of Directors of the occurrence. The Sole Director shall notify the occurrence at the earliest meeting.

Considering that in most cases of transactions carried out by directors in conflict of interest, the company is the injured party, as also described in the rule, it is necessary to establish when the failure to communicate the conflict of interest is committed in the interest or to the benefit of the organisation. This shall apply not only in relation to the conduct adopted by the individual company, but also from a group perspective, where some potentially disadvantageous transactions, although concluded in to obtain advantages for the group and, therefore, although evaluated in the interest of the company as a whole, may instead generate disadvantages for third parties not belonging to the group.

Based on the foregoing, the most important case is where the unlawful conduct of the director has caused damage not to the company they belong to, but to third parties who have come into contact and have had legal relations with the same company. The offence of failure to communicate a conflict of interest represents an offence of damage, as it requires the actual damage to the legal asset protected by the criminal law.

Sanctions applicable to the Entity

- for the offence of failure to communicate the conflict of interest provided for by article 2629-bis of the civil code, the financial penalty ranges from 200 to 500 shares.

2. Criminal protection of the share capital

Undue return of contributions (Article 2626 of the Civil Code)

This offence occurs, except in cases of legitimate reduction of the share capital, in the event of return, even simulated, of the contributions to the shareholders or their release from the obligation to carry them out is.

Only Directors may be held accountable for this offence (and the persons who manage and control the company).

Please note that:

- only contributions in cash, credits and assets in kind that are suitable for constituting the share capital shall be relevant for the punishment of this offence; the punishment applies when the capital is affected;
- release or return may occur in different forms, including indirect ones, such as, for example, offsetting by a fictitious credit to the company;
- for the offence to occur, it is not necessary that all shareholders be released from the obligation. Indeed, it is sufficient that a single shareholder or several shareholders are those shareholders who have carried out an incitement or determination activity against the Directors are also punishable by way of cooperation in the offence.

This specific case sanctions conduct capable of damaging company, resulting in a form of aggression against the share capital, for the benefit of the shareholders.

Theoretically, it seems indeed difficult for this offence to be committed by the directors in the interest or to the advantage of the company, thus implying a liability of the entity. The problem in relation to intra-group relations is more delicate, as it is possible that a company, in urgent need of financial resources, unduly obtains the contributions made to the detriment of another company in the group. In this circumstance, given the position assumed by the courts which disregards the autonomy of the corporate group understood as a unitary concept, it is quite possible that, if all the conditions are met, the entity may be held accountable for the offence of undue return of contributions committed by its Directors.

Sanctions applicable to the Entity

- for the offence of undue return of contributions provided for by article 2626 of the civilcode, the financial penalty from 100 to 180 shares shall apply.

Illegal distribution of profits and reserves (Article 2627 of the Civil Code)

This offence occurs through the distribution of profits (or advances on profits) not actually achieved or to be allocated by law to reserves, or the distribution of reserves (even if not generated with profits), which cannot be distributed by law.

Directors may be held accountable for this offence (and the persons who manage and control the company) along with parties cooperating in the offence may also be held accountable, pursuant to Article 110 of the Criminal Code.

This rule punishes the embezzlement of a part of the share capital from its original allocation, i.e., the achievement of the corporate profit and guarantee of creditors.

In this regard, please note that:

- the return of profits or the replenishment of reserves before the deadline set for the approval of the financial statements shall cancel the offence, but this special cause of cancellation of the offence shall only benefit the material perpetrator of the offence and shall not eliminate the liability of the Entity;
- to punish this offence, it is crucial to consider the profit for the year and the overall profit deriving from the balance sheet, equal to the profit for the year minus the losses not yet covered plus the retained earnings and the reserves set aside in previous years (so-called net operating profit);
- for the purposes of punishment, only distributions of profits destined to become legal reserves shall be relevant, and not those drawn from optional or hidden reserves. Therefore, the distribution of profits actually achieved but to be allocated as reserves under the by-laws shall not entail the occurrence of illegal distribution of reserves.

Sanctions applicable to the Entity

- for the offence of illegal distribution of profits and reserves provided for by article 2627 of the civil code, the financial penalty ranges from 100 to 130 shares.

Unlawful transactions on shares or company shares or shares belonging to the parent company (Article 2628 of the Civil Code)

The offence punishes the Directors (and the persons managing and controlling the company) who, except for the cases permitted by law, purchase or subscribe shares issued by the company (or by the parent company), causing a damage to the integrity of the share capital or reserves that cannot be distributed by law.

In this regard, the reconstitution of the share capital or reserves before the deadline set for the approval of the financial statements for the year in relation to which the conduct was carried out, shall cancel the offence.

The rule therefore aims to protect the integrity and effectiveness of the share capital and reserves that cannot be distributed by law, in relation to phenomena of watering down that could affect the interest of creditors: in particular, the conduct of Directors who purchase or subscribe shares of their own company or of the parent company (see Article 2359 of the Civil Code), except for the cases permitted by law (see, in particular, Articles 2357, 2359-bis, paragraph 1, 2360, 2474 and 2529 of the Civil Code), thus causing damage to the corporate assets, shall be punished.

Only Directors may be held accountable for the offence: the selling shareholder or the Director of the parent company will be liable for the offence by way of competition only if they have determined or instigated the Directors to commit the offence.

This offence is punishable by way of general intentional damage, consisting in the will to purchase or subscribe the shares or stakes, accompanied by the awareness of the irregularity of the transaction, as well as by the will - or at least by the acceptance of the risk - to generate an event detrimental to the share capital.

Sanctions applicable to the Entity

- for the offence of unlawful transactions on own shares or stakes or of the parent company provided for by Article 2628 of the civil code, the financial penalty ranges from 100 to 180 shares.

Transactions to the detriment of creditors (Article 2629 of the Civil Code)

The law punishes Directors (and persons who manage and control the company) who carry out, by breaching the provisions of the law for the protection of creditors, reduction of share capital or mergers or demergers, in such a way as to cause damage to creditors.

The occurrence in the same case of three events altering the social contract is justified by the similarity of the procedure on which the legal protection is based: in all cases a resolution of the extraordinary meeting shall be considered. This resolution amends the by-laws and its execution may compromise the rights of creditors, who are therefore granted the right to appeal.

The offence is punishable upon complaint by a party and the compensation for damage to creditors before the judgment shall cancel the offence.

Sanctions applicable to the Entity

- for the offence of transactions carried out to the detriment of creditors provided for by Article 2629 of the civil code, the financial penalty from 150 to 330 share shall apply.

Fictitious capital formation (Article 2632 of the Civil Code)

This offence occurs through the following conduct: a) fictitious formation or increase of the share capital by attributing shares or stakes for an amount lower than their nominal value; b) mutual subscription of shares or stakes; c) significant overestimation of the contributions of assets in kind, credits, or the company's assets in the event of transformation.

As for the first of the aforementioned methods for carrying out the typical conduct, the rationale of the law is to avoid that the shares or stakes are issued for a nominal value lower than that declared: in this case, the share capital would be increased to an extent corresponding to the difference between attribution value and nominal value. The second method of conduct of the law in question, which refers to the exercise of the company management, concerns the mutual underwriting of shares or stakes, which is sanctioned as capable of generating a deceiving increase in wealth thus damaging to protected interests. This conduct does not require the two transactions, to be simultaneous and connected, since an agreement aimed at the exchange of shares or stakes is sufficient. Even the third offending conduct, carried out through a significant overestimation of the contributions of assets in kind or credits or the company's assets in the event of transformation, triggers the illusion of an increase in wealth to the detriment of shareholders and third parties. Directors and the granting shareholders may be held accountable for this offence.

The offence is punished as a generic intentional misconduct, thus requiring awareness and willingness to form or fictitiously increase the share capital, through the conduct described in the law.

Sanctions applicable to the Entity:

- for the offence of fictitious capital formation provided for by Article 2632 of the civil code, the financial penalty ranges from 100 to 180 shares.

Undue distribution of company assets by liquidators (Article 2633 of the Civil Code)

This offence is perpetrated through the distribution of corporate assets between the shareholders before the payment of the corporate creditors or the setting aside of the amounts necessary to fulfil them, which causes damage to the creditors.

The law protects the right of pre-emption of the corporate creditors in relation to the shareholders on the company's assets.

Therefore damage to creditors before judgment shall cancel the offence.

Active subjects of the offence are exclusively the liquidators, but as a result of Article 2639 of the Civil Code also those who, even without a formal investiture, actually carry out the activity in question (for example, shareholders who, in the absence of the appointment of liquidators, operate as such) are also liable for the offence in question. The beneficiary shareholder, on the other hand, not being indicated among the active subjects, will be able to answer for the offence in question only if his conduct has not ended in the passive acceptance of the asset (for example, in the case of incitement to commit the offence).

As a prerequisite of the typical case, the liquidation phase is required to have been opened, before carrying out the conduct subject to sanction.

For the subjective element to exist, the generic intentional misconduct shall be relevant, ie the simple will to distribute to shareholders with the awareness of the amount of the credits. For the offence to occur, the perpetrator is not required to be in the position of wishing to damage the rights of the creditors.

Sanctions applicable to the Entity:

- for the offence of undue distribution of company assets by liquidators provided for by Article 2633 of the civil code, the financial penalty ranges from 150 to 330 shares.

3. Criminal protection of the regular functioning of the company

Offence of impeding control (Article 2625 of the Civil Code)

The offence is committed by hindering or preventing the performance of control activities through the concealment of documents or other specific tricks.

The offence, exclusively ascribable to the Directors (and to the persons who manage and control the company), may involve the liability of the Entity only in the event that the conduct has caused damage.

Please note that:

- the modus operandi of specific tricks entails fraudulent behaviour and, therefore, conduct shall be capable of misleading the persons in charge of control activities;
- in addition to hindering, the obstacle alone shall also be relevant;
- for the purposes of this regulation, the activities carried out by the members of the Board of Directors, as well as by the employees who collaborate with it, who may have influence on the initiatives and control activities pertaining to the shareholders, to the other bodies or auditing companies, shall be considered.

More precisely, these are the activities affecting:

- The shareholders' control initiatives provided for by the civil code and other regulatory acts, such as, for example, Article 2422 of the Civil Code, which provides for the right of shareholders to inspect the company accounting books;
- the control activities of the Board of Statutory Auditors, provided for by the civil code and other regulatory provisions, such as for example Articles 2403 and 2403-bis which provide for the power of the members of the Board of Statutory Auditors to carry out inspections and checks and to request information from the directors on the progress of company operations or specific business.

The offence was partially decriminalised for those cases in which the conduct carried out by the Directors did not result in any damage for the shareholders. As a result, the possibility of generating an administrative liability of the Entity shall only exist in relation to the offence, which can be prosecuted upon complaint by the injured person, provided for by Article 2625, paragraph 2. Finally, for the offence to exist, a generic intentional misconduct is required, which shall obviously also include the awareness and intention, at least by way of possible fraud, of damage to the shareholders.

<u>Sanctions applicable to the Entity:</u>

- for the offence of impeding control provided for by Article 2625 paragraph 2 of the civil code, the financial penalty ranges from 100 to 180 shares.

Unlawful influence on the Shareholders' Meeting (Article 2636 of the Civil Code)

The typical conduct provides that the majority in the shareholders' meeting shall be determined by simulated acts or by fraud in order to obtain, for oneself or for others, an unfair profit.

The law aims to avoid detrimental effects on the formation of the shareholders' meeting majority, through fraudulent conduct.

The offence may be committed by anyone, therefore not only by the directors, although only the shareholders (with different roles) could become further perpetrators of the offence.
This case aims to protect the regular formation of shareholders' majorities resulting from the free consent of the shareholders and carried out in compliance with the law and the by-laws.
For the subjective element to exist, the specific intentional damage is required, i.e., the purpose of pursuing an unfair profit for oneself or for others.
The Entity can only be held liable when the conduct provided for in this article is carried out in the interest of the Entity. This makes it difficult to assess this offence as it is usually perpetrated to favour the interests of the party and not of the "Entity".
Sanctions applicable to the Entity

- for the offence of unlawful influence on the shareholders' meeting provided for by article 2636 of the civil code, the financial penalty ranges from 150 to 330 shares.

4. Criminal protection against fraud

Stock manipulation (Article 2637 of the Civil Code)
This offence occurs through the dissemination of false information or the carrying out of simulated transactions or other tricks capable of altering the price of unlisted financial instruments or affecting the trust that the public places in the capital stability of banks or banking groups. In particular, the information is to be considered false when, by distorting the reality, the perpetrator misleads the operators by creating the conditions for an anomalous trend of the prices while for other tricks it shall be understood as "any behaviour that, through deception, may alter the normal price-setting".
Please note that:

- disclosure shall not exist when the information has not been disseminated or made public, but is only sent to a few people;
- simulated operations shall include both the operations that the parties did not intend to carry out, and different-looking operations compared to those actually intended;
- for the offence to occur, it is sufficient that the information or the trick are capable of altering the price of unlisted financial instruments.

A dangerous situation is sufficient for the offence to exist, regardless of the occurrence of an artificial price variation.
The offence in question for listed companies or for those such as ASPI which issue listed financial instruments, shall be related to the criminal law case of market manipulation, discussed later in this General Part (see Market abuse offences).
Sanctions applicable to the Entity

- for the offence of manipulation provided for by Article 2637 of the civil code, the financial penalty from 200 to 500 shares.

5. Criminal protection of supervisory functions

Hindering the exercise of public supervisory authorities (Article 2638 of the Civil Code)
The offence occurs through two separate methods, both aimed at hindering the supervisory activity of the Public Authorities in charge:

- the incorporation in the communications to the supervisory authorities of untrue facts, even if subject to assessments, on the economic, equity or financial situation; or through the

fraudulent full or partial concealment of information that should have been communicated, in order to hinder the exercise of the supervisory functions of the Authority. In both cases, for the offence to exist, the specific intentional damage is required (and, therefore, the primary awareness and willingness to hinder the supervisory activity), accompanied by the awareness of the false nature of the communications transmitted or the omissions made. Liability also exists in the event that the information relates to assets owned or managed by the company on behalf of third parties. In the second case, i.e., concealment, the material object of the offence shall not be the communications required by law, but in due communications. Therefore, those provided for by sources other than the law, such as for example, regulations shall also be relevant;

- mere hindering of the exercise of supervisory functions, consciously implemented, in any way.

  In relation to the par. 2 of Article 2638 of the Civil Code, generic intentional misconduct is required, which. The adverb "consciously" describes the nature of direct intentional damage, thus excluding the non-intentional one.

  Directors may be held accountable for this offence, along with the general director, the person in charge of drafting the corporate accounting documents, the auditors and the liquidators who are required to comply with obligations with the Public Supervisory Authorities.

Sanctions applicable to the Entity

- for the offence of hindering the exercise of the functions of public supervisory authorities provided for by Article 2638 of the civil code, the financial penalty ranges from 200 to 400 shares.

6. Corruption and incitement t to corruption among private individuals

6.1 Foreword: the rulemaking process

Law 190/2012[36] introduced new measures into the Italian legal system aimed at strengthening the effectiveness of the prevention and repression of corruption, in compliance with the obligations deriving from the international conventions adopted by Italy.

Article. 1, paragraph 76, of the aforementioned Law amended Article 2635 of the Civil Code, introducing the offence of corruption among private individuals.

From the point of view of the administrative responsibility of the Entities, Law no. 190/2012 added subpara. s-bis) to Article 25 ter, paragraph 1, of Legislative Decree no. 231/2001, referring to the new offence of corruption among individuals only in the cases referred to in the third paragraph of Article 2635 of the Civil Code, or with exclusive reference to the case of active corruption: in other words, the liability of legal persons shall occur only towards the Company of the corrupter (or the person who, in order to obtain a benefit or advantage for their own Company , bribes, by giving or promising money or other benefits, a top management or an employee of another Company to make them perform or omit acts by breaching the obligations inherent in their office or the obligations of loyalty, thus damaging their Company).

However, the Italian legislator, in rewording Article 2635 of the Civil Code has not fully implemented the contents of the Strasbourg Criminal Convention on Corruption of 1999 and of the Framework Decision 2003/568/JHA. The related intervention was deemed insufficient by the

[36] Entered into force on 28 November 2012 (Official Journal No. 265 of 13 November 2012).

competent European authorities and over time the need for further and more incisive legislative intervention became increasingly evident.

As a result, the legislator (in implementation of the authorisation provided for by article 19 of Law no. 170 of 2016) with Legislative Decree no. 38, integrated the previous measures adopted for the prevention and repression of corruption among private individuals in order to make the national legislation compliant with the Community provisions. By this regulatory intervention, steps were taken to:

- modify the offence of corruption among private individuals pursuant to Article 2635 of the Civil Code;
- introduce the new offence of incitement to corruption among private individuals pursuant to article 2635 bis of the Civil Code, by also introducing it as a predicate offence within article 25 ter of Legislative Decree 231/2001;
- introduce ancillary penalties pursuant to article 2635 ter;
- strengthen the set of penalties for the entity, pursuant to Legislative Decree no. 231/2001, in the case of conviction for the offence of corruption among private individuals referred to in paragraph 3 of Article 2635 of the Civil Code and for the offence of incitement to corruption among private individuals pursuant to Article 2635 bis of the Civil Code

Legislative Decree no. 38/2017 also profoundly affected the structure of the case of corruption among private individuals referred to in Article 2635 of the Civil Code:

- by increasing the number of active perpetrators (introducing in addition to directors, general directors, managers in charge of drafting corporate accounting documents, auditors, liquidators and those who are subject to management and supervision, including those within the entity who have different managerial roles from those carried out by them);
- by clarifying that these persons may belong to companies or private entities (extending the scope of the criminal law case to any private law structure, including, for example, foundations or non-profit entities);
- by extending the range of criminally relevant conduct (also including the "request for money or other benefits");
- by sanctioning, among the conducts carried out by the briber, in addition to the promise and granting, also the "offer" of money or other benefits. Such conduct shall be relevant even if committed through a "third party";
- by specifying that "money or other benefits" shall be "undue";
- by providing that the amount of confiscation for equivalent value cannot be less than the value of the "given", "promised" or "offered" benefits;
- by anticipating the threshold of punishment to a time prior to the commission of the offence breaching the obligations inherent to the office or the obligations of loyalty;
- by no longer providing, for the purposes of punishable offence, that the corruptive conduct causes or is capable of causing “harm” to the Company to which the corrupt person belongs.

The latter amendment marks a significant change in the approach to punishment: the conduct is punished in itself, regardless of the actual prejudicial consequences, of a asset/non asset-based derived from the Company or private entity to which the corrupt person belongs.

6.2 The description of the offences currently referred to in Article 25-ter of the Decree

6.2.1 The offence of corruption among private individuals pursuant to Article 2635 of the Civil Code, paragraph 3

The law punishes whoever, even through a third party, offers, promises, or gives money or other undue benefits to certain categories of persons operating in companies or private entities (directors, general directors, managers in charge of drafting corporate accounting documents, auditors, liquidators, those who exercise managerial functions other than those of the aforementioned persons, or those who are subject to the management or supervision of one of the above persons), so that they perform or omit acts, by breaching the obligations inherent in their office or of the obligations of loyalty.

Therefore, like the previous regulation, the administrative liability of the Entity exists only in the case of "active corruption" (Article 25-ter, paragraph 1, subpara. s-bis), continues to refer exclusively to paragraph 3 of article 2635 of the Civil Code).

Lastly, the Law no.3 of 9 January 2019 repealed paragraph 5 of Article 2635 of the Civil Code, thus making the offence in question open to prosecution.

6.2.2 The new offence of "Incitement to corruption" pursuant to Article 2635-bis of the Civil Code

The list of corporate offences under the “231” is integrated with the new case referred to in the first paragraph of article 2635-bis of the Civil Code, or the incitement to corruption between private individuals.

Pursuant to the aforementioned rule, the conduct of those who offer or promise money or other benefits to senior managers of companies or private entities (directors, general directors, managers in charge of drafting corporate accounting documents, auditors and liquidators), as well as to those who carry out their work with the exercise of managerial functions, for the fulfilment or omission of an act by breaching the obligations inherent to their office or the obligations of loyalty, when the offer or promise is not accepted.

Lastly, Law no 3 of 9 January 2019 repealed paragraph 3 of Article 2635-bis of the Civil Code, thus making the offence in question open to prosecution.

6.3 Sanctions applicable to the Entity

6.3.1 Financial penalties:

- for the offence of corruption among private individuals provided for by Article 2635, paragraph 3, of the civil code, the financial penalty from 400 to 600 shares shall apply;
- for the offence of incitement to corruption among private individuals provided for by Article 2635 bis, paragraph 1, of the civil code, the financial penalty from 200 to 400 shares shall apply.

6.3.2 Interdiction sanctions:

For both types of offences mentioned above, the interdiction sanctions referred to in Article 9 of Legislative Decree no. 231/2001 in compliance with the application criteria provided for by Article 13 of Legislative Decree no. 231/2001 (i.e., for no less than three months and no more than two years) shall apply.

OFFENCES WITH THE PURPOSE OF TERRORISM OR SUBVERSION OF THE DEMOCRATIC ORDER PROVIDED FOR BY THE CRIMINAL CODE AND SPECIAL LAWS (ARTICLE 25-QUATER LEGISLATIVE DECREE NO. 231/2001)

Article 25-quater of the Decree, introduced by Article 3 of Law no.7 of 14 January 2003 which ratified and implemented in Italy the International Convention for the Suppression of the Financing of Terrorism, signed in New York on 9 December 1999, establishes the punishment of the entity, where the conditions exist, in the event that offences are committed in the interest or to the advantage of the entity itself, with the purpose of terrorism or subversion of the democratic order, provided for by the criminal code, by special laws or by breaching the New York International Convention for the Suppression of the Financing of Terrorism. Compared to the other provisions of the Decree, Article 25-quater does not provide for a closed and mandatory list of offences and refers to a generic category of offences.
Below are the main cases implicitly referred to by Article 25-quater:

Offences for the purpose of terrorism or subversion of the democratic order provided for by the criminal code Subversive associations (Article 270 of the criminal code)
This alleged offence, punished by imprisonment from five to ten years, is committed by anyone in the territory of the State who promotes, establishes, organises or leads associations aimed at violently establishing the dictatorship of one social class over the others, or to violently suppress a social class or, in any case, to violently subvert the economic or social systems established in the State or, finally, having as their purpose the violent suppression of every political and legal system of society. Anyone who participates in the aforementioned associations shall be punished with imprisonment from one to three years.
Association for the purpose of terrorism, including international or subversion of the democratic order (Article 270-bis of the Criminal Code)
This offence is committed by anyone who promotes, establishes, organises, directs or finances associations that aim to commit acts of violence with the aim of terrorism or subversion of the democratic order. For the purposes of criminal law, the purpose of terrorism also occurs when the acts of violence are directed against a foreign state, an institution or an international body. The offence in question is punished with imprisonment from seven to fifteen years.
Assistance to associates (Article 270-ter of the Criminal Code)
This offence is committed by anyone who, except for the cases of participation in the offence or aiding and abetting, gives shelter or provides food, hospitality, means of transport, communication tools to any of the persons participating in the associations indicated in the previous articles 270 and 270-bis of the Criminal Code. This offence is punished with up to four years of imprisonment. However, whoever commits the act in favour of a close relative is not punishable.
Recruitment for terrorist purposes, including international terrorism (Article 270-quater of the Criminal Code)
This offence is committed by anyone, except for the cases referred to in Article 270-bis, recruit one or more people to commit acts of violence, with the purpose of terrorism, even if directed against a foreign state, an institution, or an international body. The offence in question is punished with imprisonment from seven to fifteen years.

Organisation of transfer for terrorist purposes (Article 270-quater 1. of the Criminal Code)
"Except for the cases referred to in articles 270 bis and 270 quater, anyone who organises, finances or promotes travels to foreign territory aimed at carrying out terrorist conduct referred to in article 270 sexies, is punished with imprisonment from five to eight years".

Training in terrorist activities, including international terrorism (Article 270-quinquies of the Criminal Code)
This offence is committed by anyone, except for the cases referred to in Article 270-bis, train or provide instructions on the preparation or use of explosive materials, firearms or other weapons, harmful or dangerous chemical or bacteriological substances, as well as any other technique and method for carrying out acts of violence, with the purpose of terrorism, even if directed against a foreign state, an institution or an international body. This offence is punished with imprisonment from five to ten years. The same penalty shall apply to the trained person.

Financing of conducts for terrorist purposes (Article 270-quinquies 1. of the Criminal Code)
"Whoever, except for the cases referred to in articles 270-bis and 270-quater.1, collects, distributes or provides goods or money, in any way made, intended to be fully or partially used for the purposes of terrorism referred to in article 270-sexies is punished with imprisonment from seven to fifteen years, regardless of the actual use of funds for the commission of the aforementioned conducts. Anyone who deposits or keeps the goods or money indicated in the first paragraph is punished with imprisonment from five to ten years".

Theft of assets or money subject to seizure (Article 270-quinquies 2. of the Criminal Code)
"Anyone who steals, destroys, disperses, suppresses or damages goods or money, subjected to seizure to prevent the financing of conduct with the purpose of terrorism referred to in Article 270 sexies, is punished with imprisonment from two to six years and with a fine from EUR 3,000 to EUR 15,000". **Conduct for terrorism purposes (Article 270-sexies of the Criminal Code)**
Conducts that, due to their nature or context, could cause serious damage to a country or an international organisation and are carried out for the purpose of intimidating the population or coercing the public authorities or an international organisation and that are carried out in order to intimidate the population or force public authorities to carry out or refrain from carrying out any act or to destabilise or destroy the fundamental public, constitutional, economic and social structures of a country or an international organization, as well as other conduct defined as terrorist or committed for the purpose of terrorism by conventions or other rules of international law binding for Italy, shall be considered as actions carried out for terrorism purposes.

Attack for terrorist or subversion purposes (Article 280 of the Criminal Code)
This offence is committed by anyone who, for the purpose of terrorism or subversion of the democratic order, threatens the life or safety of a person. The offence is punished, in the first case, with imprisonment of at least twenty years and, in the second case, with imprisonment of at least six years. The offence is aggravated in the event that the act prejudicial to the safety of a person results in a very serious injury (punished with imprisonment for at least eighteen years), serious (punished with imprisonment for at least twelve years) or the death of the person (punished with life imprisonment) or in the event that the act is carried out against persons who exercise judicial or penitentiary functions or public safety functions or because of their functions (in the latter case, the penalties are increased by a third).

Act of terrorism with deadly or explosive devices (Article 280-bis of the Criminal Code)
This offence is committed by anyone who, for the purposes of terrorism, carries out any act aimed at damaging the movable or immovable property of others, through the use of explosive or in any case deadly devices. This offence is punished with imprisonment from two to five years. If the offence is committed against the seat of the Presidency of the Republic, of the Legislative Assemblies, of the Constitutional Court, of government bodies or in any case of bodies provided for by the Constitution

or by constitutional laws, the penalty is increased by up to half. If the event results in danger to public safety or serious damage to the national economy, imprisonment between five and ten years shall apply.

Act of nuclear terrorism (Article 280-ter of the Criminal Code)

"Imprisonment for at least fifteen years shall apply against anyone who, for the purposes of terrorism referred to in Article 270 sexies:

1) supplies radioactive material for themselves or others;
2) manufactures a nuclear device or otherwise acquires it.

Imprisonment for at least twenty years shall be imposed on those, for the purposes of terrorism referred to in Article 270 sexies:

1) uses radioactive material or a nuclear device;
2) uses or damages a nuclear plant in such a way as to release or risk to release radioactive material.

The penalties referred to in the first and second paragraphs shall also apply when the conduct described therein concerns chemical or bacteriological materials ".

Kidnapping for the purpose of terrorism or subversion (Article 289-bis of the Criminal Code)

This offence is committed by anyone who kidnaps a person for the purposes of terrorism or subversion of the democratic order. This offence is punished with imprisonment from twenty-five to thirty years. The offence is aggravated by the death, intentional or accidental, of the kidnapped person (and is punished with a thirty-year imprisonment or life imprisonment). Finally, the perpetrator who, by acting independently from the others, does everything in their power to ensure that the passive person of the offence is set free, is punished with imprisonment from two to eight years. If the victim dies, as a result of the kidnapping, after the release, the penalty is imprisonment from eight to eighteen years.

Incitement to commit one of the offences against the State (Article 302 of the Criminal Code)

This offence is committed by anyone who instigates someone to commit one of the non-intentional offences provided for in the title of the criminal code dedicated to offences against the State, for which the law imposes life imprisonment or imprisonment. Where instigation is rejected or, if accepted, the offence is not committed, it shall constitute mitigating circumstances. The offence is punished, if the instigation is rejected, or if the instigation is accepted but the offence is not committed, with imprisonment from one to eight years.

Political conspiracy by agreement and political conspiracy by association (articles 304 and 305 of the Criminal Code)

This offence is committed by anyone who agrees or associates in order to commit one of the offences referred to in the previous point (Article 302 of the Criminal Code). Those who participate in the agreement are punished, if the offence is not committed, with imprisonment from one to six years.

Armed group, training and participation; assistance to members of conspiracy or armed group (articles 306 and 307 of the Criminal Code)

This offence is committed by anyone who promotes, constitutes or organises an armed group in order to commit one of the offences indicated in Article 302 of the Criminal Code, or by anyone, except in cases of participation in the offence or aiding and abetting, providing shelter, food, hospitality, means of transport or communication tools to any of the persons participating in the association or gang, pursuant to Article 305 and 306 of the criminal code. The penalties provided for the cases in question are punished with up to fifteen years of imprisonment.

Offences for the purpose of terrorism or subversion of the democratic order provided for by special criminal laws

Along with the cases expressly regulated by the criminal code, the offences provided for on the subject by specific special laws shall be considered. The terrorist offences provided for by the special laws consist of all that part of Italian legislation, enacted in the 1970s and 1980s, aimed at combating terrorism. Among the above provisions, it is worth mentioning Article 1 of the Law no. 15 of 6 February

1980, which provides, as an aggravating circumstance applicable to any offence, the fact that the offence itself was "committed for the purpose of terrorism or subversion of the democratic order". As a result, any offence provided for by the criminal code or by special laws, even other than those expressly aimed at punishing terrorism, can become, provided it is committed for these purposes, one of those likely to represent, pursuant to Article 25-quater, prerequisite for the assertion of the entity's responsibility. Other provisions specifically aimed at the prevention of offences committed with the purpose of terrorism are contained in Law no. 342, concerning the repression of offences against the safety of air navigation, and in the Law no. 422 of 28 December 1989, concerning the repression of offences directed against the safety of maritime navigation and offences perpetrated against the safety of fixed installations on the intercontinental platform.

Offences committed with the purpose of terrorism provided for by Article 2 of the New York Convention of 9 December 1999

The reference to this provision tends to avoid possible gaps in the general and generic legislation and is therefore aimed at strengthening and completing the scope of reference also by referring to international acts.

Pursuant to the aforementioned article, anyone who, by any means, directly or indirectly, illegally and intentionally, provides or raises funds with the intent to use them or in the awareness that they are intended to be fully or partially used to carry out any other action aimed at causing death or serious physical injury to a civilian, or to any other person who does not take an active part in situations of armed conflict, when the purpose of such act is to intimidate a population, or to force a government or an international organisation to do or refrain from doing something, shall be held accountable for this offence. For an act to involve one of the aforementioned cases, it is not necessary that the funds are actually used to carry out the above activities. Anyone who attempts to commit the above-mentioned offences is still committing an offence. The offence also occurs when someone: takes part as an accomplice in the commission of an offence referred to above; organise or guide other people for the purpose of committing an offence referred to above; contributes to the commission of one or more of the above offences with a group of persons acting with a common purpose. This contribution shall be intentional and shall be made in order to facilitate the criminal activity or purpose of the group, where such activity or purpose implies the commission of the offence; alternatively, it shall be provided with full awareness that the group's intent is to commit an offence.

In order to be able to state whether or not the risk of committing this type of offence is real, it is necessary to examine the subjective profile required by the law for the offence to occur. From the subjective standpoint, terrorist offences shall be considered as intentional offences. Therefore, for the intentional offence to occur it is necessary, from the point of view of the psychological representation of the agent, that such is agent aware of the illegal event and wants to carry it out through a conduct ascribable to them. Therefore, for the offences in question to occur, the agent shall be aware of the terrorist nature of the activity and have the intention of favouring it. Moreover, the criminal offence occurs if the perpetrator acts by way of possible intentional damage. In such a case, the agent should predict and accept the risk of the occurrence of the event, even though they do not want it to happen. The prediction of the risk of the occurrence of the event and the voluntary determination to adopt the criminal conduct shall in any case be assumed by considering objective elements.

CRIMES AND OFFENCES OF INSIDER TRADING AND MARKET MANIPULATION (ARTICLE 25-SEXIES OF THE DECREE)

Introduction

Article 25-sexies was introduced into the body of the Decree by Article 9 of Law no. 62 of 18 April

2005 (Community Law for 2004), which transposed Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (so-called market abuse).

In particular, the 2004 Community Law extended the catalogue of offences giving rise to the administrative liability of the Entity referred to in the Decree and provided that, in relation to the commission of such offences, a fine ranging from a minimum of four hundred to a maximum of one thousand shares (i.e., approximately EUR 1.5 million) may be imposed on the Entity.

When the Entity is liable for a number of offences committed with a single action or omission or committed in the performance of the same activity, the financial penalty provided for the most serious offence is applied, increased by up to three times (and, therefore, up to approximately EUR 4.5 million).

As from 3 July 2016, the provisions contained in Regulation no. 596/2014 of the European Parliament and of the Council of 16 April 2014 containing rules on market abuse (better known as the "Market Abuse Regulation" or "MAR Regulation"), which repeals Directive 2003/6/EC on market abuse, will apply directly throughout the European Union, including Italy. 596/2014 of the European Parliament and of the Council of 16/4/2014 containing the discipline on market abuse (better known as the "Market Abuse Regulation" or "MAR Regulation"), which repeals Directive 2003/6/EC on insider dealing and market manipulation and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72, with the aim of updating and completing the EU regulatory framework to protect the integrity, transparency and efficiency of the financial market.

As of the same date, the level 2 legislation, issued by the European Commission on the basis of the delegations contained in the MAR, in the form of delegated or implementing regulations, which contain technical provisions on how to comply with the foreseen obligations, are also directly applicable.[37]

Under the terminology of 'market abuse', EU law provides for the following unlawful conduct in the financial markets, namely:

- Insider trading (Articles 8 and 14), which includes attempting to engage in insider trading, recommending or inducing others to engage in insider trading;
- Unlawful disclosure of inside information (Articles 10 and 14);
- Market manipulation (Articles 12 and 15).

The main changes concerning "inside information and related disclosure" introduced by the MAR Regulation and related Regulations concern:

1) the codification of the principle according to which even intermediate steps in a process which may lead to a *price-sensitive* event may constitute inside information and therefore be subject to market *disclosure;*

2) the procedure to '*delay*' the disclosure of inside information;

3) the introduction of a new discipline for 'market soundings;

4) amending the rules on the establishment and maintenance of insider lists.

Later, Legislative Decree No. 107 of 10 August 2018 on "*Rules for the adaptation of national legislation to the provisions of Regulation (EU) No. 596/2014 on market abuse and repealing Directive 2003/6/EC and Directives 2003/124/EU, 2003/125/EC and 2004/72/EC*." adapted the domestic legislation to the aforementioned European legislation and consequently amended the regulations provided for by Legislative Decree No. 58/1998 (better known as the "Consolidated Law on Finance" or "TUF"). This

[37] The Market Abuse Regulation (MAR) No 596/2014/EU and the Criminal Sanctions Market Abuse Directive (CSMAD) 2014/57/EU constitute the so-called "MAD II", which aims to strengthen and homogenise market abuse regulation within the Union to improve confidence in European financial markets.

Legislative Decree also partially transposed the provisions of Directive 2014/57/EU (better known as the "MAD2 Directive") on criminal sanctions for market abuse.Finally, art. 26 of L. no. 238 of 23 December 2021, containing "Provisions for the fulfilment of the obligations deriving from Italy's membership in the European Union - European Law 2019-2020" introduced further amendments to the discipline provided by art. 182-185 and 187 of the TUF, described below in more detail.

1. Abuse or illicit communication of inside information. Recommendation or induction of others to commission of insider dealing (Articles 184 and 187-bis of the Consolidated Law on Finance)

A sentence of imprisonment ranging from two to twelve years and a fine ranging from EUR 20 000 to EUR 3 million shall be imposed on any person who, being in possession of inside information by virtue of his membership of the administrative, management or supervisory bodies of an issuing company, or of a shareholder, or by virtue of his private or public employment, profession, function or office (so-called primary insiders):

a) buys, sells or carries out other transactions, directly or indirectly, on its own behalf or on behalf of third parties, on financial instruments (admitted to trading or for which a request for admission to trading on an Italian or other EU regulated market has been submitted), using inside information acquired in the manner described above;
b) discloses such information to others, other than in the normal course of the exercise of one's employment, profession, function or office, or in connection with a market sounding carried out pursuant to Article 11 of EU Regulation No. 596/2014 (regardless of whether the third party recipients actually use the disclosed information to carry out transactions);
c) recommends or induces others, based on the knowledge gained from inside information in his possession, to carry out any of the operations indicated in subparagraph (a).

The offence also punishes persons who, coming into possession of inside information as a result of preparing or carrying out criminal activities, perform any of the actions referred to above: so-called *criminal insider* (this is the case, for example, of the 'hacker' who, following unauthorised access to a company's computer system, manages to gain possession of *price-sensitive* confidential information and uses it for speculation).

Outside of the cases of concurrence in the crimes referred to in the previous two paragraphs, is punished with imprisonment from one year and six months to ten years and with the fine from Euro twenty thousand to Euro two million and five hundred thousand anyone, being in possession of inside information for reasons other than those indicated in paragraphs 1 and 2 and knowing the privileged nature of such information, commits any of the facts referred to in paragraph 1.

In the cases referred to in the preceding subparagraphs, the penalty of the fine may be increased up to three times, or up to a maximum of ten times, the product or the profit achieved by the offence when, due to the significant offending nature of the fact, for the personal qualities of the offender or for the size of the product and the profit achieved by the crime, it seems inadequate even if applied to the maximum.[38]

The penalties set out above are doubled pursuant to Article 39(1) of Law no. 262/2005, within the limits set for each type of penalty by Book I, Title II, Chapter II of the Criminal Code.

As regards the notion of financial instruments, Article 180 of the Consolidated Law on Finance (TUF), under the heading "Definitions", specifies that such instruments are those provided for in Article 1(2)

[38] Art. 184 TUF just analyzed, as amended by article 26 of L. no. 238 of 23 December 2021 containing "*Provisions for the fulfilment of the obligations deriving from Italy's membership in the European Union - European Law 2019-2020*" finally provides in the fifth paragraph as follows: "*The provisions of this Article shall also apply where the facts referred to in paragraphs 1, 2 and 3 relate to conduct or transactions, including tenders, relating to auctions on an authorised auction platform, as a regulated market for emission allowances or other related auctioned products, even where the auctioned products are not financial instruments, in accordance with Commission Regulation (EU) No 1031/2010 of 12 November 2010.* "

of the TUF: "*admitted to trading or for which a request for admission to trading on an Italian regulated market or another European Union country has been submitted, (...) admitted to trading or for which a request for admission to trading on an Italian multilateral trading facility or another European Union country has been submitted, (...)", as well as those "traded on a regulated market or another European Union country, (...)".)*", as well as those "*traded on an Italian or other European Union country's organised trading facility, (...) not covered by the previous numbers, whose price or value depends on, or has an effect on, the price or value of a financial instrument mentioned therein, including, but not limited to, credit default swaps and contracts for difference.*"[39] The definition of inside information, on the other hand, pursuant to Article 7 of the MAR Regulation, is "information of a precise nature which has not been made public relating, directly or indirectly, to one or more issuers or one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the prices of financial instruments linked to them".

Article 7(4) of the MAR itself specifies the notion of price sensitive information, defining it as "*information that a reasonable investor would be likely to use as one of the elements on which to base his investment decisions*".

Furthermore, according to the same Article 7(2) of the MAR Regulation, information shall be deemed to be precise if: "(*a) it relates to a set of circumstances which exists or may reasonably be expected to come into existence or to an event which has occurred or may reasonably be expected to occur; (b) and if that information is sufficiently specific to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or of the related derivative financial instrument [...]*".

The MAR Regulation also specifies that intermediate steps in a prolonged process, as a result of which inside information may arise, may also be considered inside information (e.g. information on the state of contractual negotiations; provisionally agreed contractual terms; the possibility of placing financial instruments), it being understood that they shall also meet the other requirements laid down in Article 7 of the MAR Regulation for *price-sensitive* information (non-public information which could have a significant effect on the prices of instruments).

Paragraph 1 of art. 7 of the MAR Regulation also specifies, in point d), that "*in the case of persons charged with the execution of orders concerning financial instruments, inside information shall also mean information conveyed by a client and related to the client's pending orders in financial instruments, which is of a precise nature and which relates, directly or indirectly, to one or more issuers or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, on the price of related spot commodity contracts or on the price of related derivative financial instruments*".

The definition and the characteristics of "Inside Information" provided for by Article 7 of the MAR Regulation therefore present, as an important new element with respect to the previous discipline, the extension of the notion of inside information also to the intermediate phases of a prolonged process, which refer to circumstances or facts whose realisation develops progressively over time[40].

In terms of the subjective element, while the crime is punishable only by way of intent, thus requiring the awareness and intention to unduly exploit the privileged information in one's possession, the administrative offence is also punishable by way of fault, negligence therefore being sufficient, consisting in the careless use or mere communication to third parties of the privileged information. As already anticipated, insider trading is also punished as an administrative offence by Article 187-bis of

[39] The list of all the financial instruments envisaged by Article 1(2) of the Consolidated Law on Finance is set out in Section C of Annex I of Legislative Decree no. 58/98.

[40] For a more comprehensive examination of the provisions on insider dealing, Chapters 2 and 3 (Articles 7-21) of Regulation (EU) No 596/2014 can be analysed

the Consolidated Law on Finance with a fine ranging from twenty thousand euros to five million euros. This sanction is provided for anyone who violates the prohibition of insider trading and unlawful disclosure of inside information set forth in Article 14 of Regulation (EU) No. 596/2014.[41]

Penalties applicable to the Entity:

- Financial penalty: from four hundred to one thousand shares. If the product or profit obtained
  by the body is of significant size, the sanction is increased up to ten times such product or profit. [42]

2. Market manipulation (Articles 185 and 187-ter TUF)

Market abuse carried out by altering the dynamics relating to the correct formation of the price of financial instruments is now punished, both as a crime, under Articles 2637 of the Civil Code (Stock manipulation) and 185 of the Consolidated Law on Finance (Market manipulation), and as an administrative offence, under Article 187-ter of the Consolidated Law on Finance.

The stock manipulation was discussed in the section on corporate offences.

This part deals with the offence and the administrative offence provided for in the TUF.

The offence and administrative offence of market manipulation differs from stock manipulation in that it involves financial instruments listed or for which an application has been made for admission to trading on regulated markets.

Whoever spreads false news or carries out simulated transactions or other devices concretely capable of causing a significant alteration in the price of financial instruments, shall be punished with imprisonment from one to six years and with a fine ranging from twenty thousand to five million euro.

On the other hand, a person shall not be punishable if he or she has committed the act by means of orders to trade or transactions carried out for legitimate reasons and in accordance with accepted market practices, within the meaning of Article 13 of Regulation (EU) No 596/2014.

The judge may increase the fine up to three times or up to the greater amount of ten times the product or the profit obtained from the offence when, due to the seriousness of the offence, the personal qualities of the offender or the size of the product or the profit obtained from the offence, it appears inadequate even if the maximum is applied.

The conduct of the offences of market manipulation thus consists:

- in the dissemination of false news (so-called stock manipulation); more specifically, the news is to be considered false "when, by creating a false representation of reality, it is such as to mislead traders by causing an irregular rise or fall in prices";
- in carrying out simulated transactions or other artifices capable of causing a significant alteration in the price of financial instruments, as defined in Article 180 of the Consolidated Law on Finance (so-called information on stock manipulation); other artifices must be understood as "any conduct which, by means of deception, is capable of altering the normal course of prices". A situation of danger is sufficient for the existence of the offence, irrespective

[41] Ancillary administrative sanctions are also provided for in Article 187-quater.

[42] Given the dual track (both criminal and administrative) provided by our system, in addition to the provisions of the judge in terms of quantification of the sanction, Consob, in a parallel proceeding, may impose further administrative ì sanctions on the entity, such as the one provided for by Article 187-quinquies ("Liability of the entity") T.U.F. , novated by Legislative Decree no. 107/2018. , novated by Legislative Decree No. 107/2018: from 20,000 euros to 15,000,000 euros, or up to 15% of the turnover, when such amount is higher than 15,000,000 euros, in the event that a violation of the prohibition set out in Article 14 of Regulation (EU) No. 596/2014 is committed in its interest or to its advantage. On the point in question, Article 187-terdecies of the TUF, in order to avoid a duplication of sanctions for the same fact, provides as follows: "When, for the same fact, a financial administrative sanction pursuant to Article 187-septies or a criminal sanction or an administrative sanction dependent on a crime has been imposed on the offender, the author of the violation or the entity: a) the judicial authority or CONSOB shall take into account, when imposing the sanctions within their competence, the punitive measures already imposed; b) the collection of the financial penalty, of the financial sanction dependent on a crime or of the administrative financial sanction shall be limited to the part exceeding that collected by the administrative authority or by the judicial authority respectively. ”

of the occurrence of an artificial change in prices.

It is also punished under Article 187-ter of the TUF with a fine ranging from twenty thousand euros to five million euros whoever violates the prohibition on market manipulation set out in Article 15 of Regulation (EU) No 596/2014, which reads as follows: *"It shall not be permitted to engage in market manipulation or attempt to engage in market manipulation."*[43]

On the other hand, a person who proves that he acted for legitimate reasons and in accordance with accepted market practices in the market concerned may not be subject to an administrative sanction under this Article (Article 187-ter (4) of the Consolidated Law on Finance).

The penalties set out above are doubled pursuant to Article 39 (1) of Law no. 262/2005, within the limits set for each type of penalty by Book I, Title II, Chapter II of the Criminal Code.

The MAR Regulation also provides for:

- a basic definition of activities constituting market manipulation (Art. 12(1));
- an illustrative list of conducts that are considered to be market manipulation (Art. 12(2));
- a non-exhaustive list of indicators of market manipulation (Annex I of the MAR Regulation).

Penalties applicable to the Entity:

- Monetary sanction: from four hundred to one thousand shares. If the product or profit obtained by the body is significant, the sanction is increased up to ten times such product or profit.[44]

CRIMES COMMITTED IN VIOLATION OF THE PROTECTION OF HEALTH AND SAFETY AT WORK (ARTICLE 25-SEPTIES OF THE DECREE)

Manslaughter (Article 589 of the Criminal Code)

For the purposes of the Decree, the conduct of anyone who culpably causes the death of a person as a result of a breach of the rules for the prevention of accidents at work is relevant.

Personal injury through negligence (Article 590 of the Criminal Code)

The relevant case for the purposes of the Decree is that provided for in the third paragraph of Article 590 of the Criminal Code, which punishes anyone who causes others, through negligence, serious or very serious personal injury as a result of breach of the rules for the prevention of accidents at work.

As regards the definition of criminally relevant injury, particular consideration is given to injuries capable of causing any disease consisting of an anatomical or functional alteration of the body. This definition also includes harmful changes in functional activity.

Serious injuries are defined as those which have endangered the life of a person or have caused illness or incapacity to attend to one's occupations for more than 40 days, or the permanent debility of sensory

[43] Ancillary administrative sanctions are also provided for in Article 187-quater.

[44] Given the dual track (both criminal and administrative) provided by our system, in addition to the provisions of the judge in terms of quantification of the financial sanction, Consob in a parallel proceeding may impose further administrative financial sanctions on the entity, such as the one provided for by Article 187-quinquies ("Liability of the entity") T.U.F. , novated by Legislative Decree no. 107/2018. , novated by Legislative Decree No. 107/2018: from 20,000 euros to 15,000,000 euros, or up to 15% of the turnover, when such amount is higher than 15,000,000 euros, in the event that a violation of the prohibition set out in Article 15 of Regulation (EU) No. 596/2014 is committed in its interest or to its advantage. On the point in question, Article 187-terdecies of the TUF, in order to avoid a duplication of sanctions for the same fact, provides as follows: "When, for the same fact, a financial administrative sanction pursuant to Article 187-septies or a criminal sanction or an administrative sanction dependent on a crime has been imposed on the offender, the author of the violation or the entity: a) the judicial authority or CONSOB shall take into account, when imposing the sanctions within their competence, the punitive measures already imposed; b) the collection of the financial penalty, of the financial sanction dependent on a crime or of the administrative financial sanction shall be limited to the part exceeding that collected by the

perception or of an organ; very severe injuries shall include loss of sensory perception, the loss of a limb or mutilation making the limb unusable, or the loss of use of an internal organ or the ability to procreate, or permanent loss or grave impediments to speech, or permanent deformation or disfigurement of the face, or a disease which is certainly or probably incurable.

The active subject of the offences may be anyone who has to observe or cause to be observed the rules of prevention and protection and, therefore, the employer, managers, supervisors, persons to whom functions relating to health and safety in the workplace are delegated and also the workers themselves.

For both offences, the liability of the persons in charge of the adoption and implementation of preventive measures in the company exists in the hypothesis that a causal relationship exists between the failure to adopt or comply with the prescription and the harmful event. Consequently, the causal relationship and therefore the fault of the persons in charge is lacking in the event that the accident occurs due to the negligent conduct of the worker which is, however, completely atypical and unforeseeable and has the characteristics of abnormality, inoperability and exorbitance with respect to the work process and directives received.

In order for the company to incur administrative liability under the Decree, the offence must have been committed in its interest or to its advantage. In the offences under consideration, the requirements of the interest and advantage of the company could be found in cases where the violation of the accident prevention rules is connected to a saving of the costs necessary to ensure compliance with those rules, or is the consequence of the pursuit (albeit unintentional) of greater speed in work processes or less difficulty in the management of work to the detriment of its safety.

Penalties applicable to the Entity

For the offence referred to in Article 589 of the Criminal Code, committed in breach of Article 55 ("*Sanctions for the employer and the manager*"), paragraph 2, of the legislative decree implementing the delegated power referred to in Law No. 123 of 3 August 2007:

- financial penalty: in the amount of 1000 shares;
- disqualification sanctions (for a period of no less than three months and no more than one year): disqualification from exercising the activity; suspension or revocation of authorisations, licences or concessions functional to the commission of the offence; prohibition to contract with the Public Administration, except in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

For the offence referred to in Article 589(2) of the Criminal Code:

- financial penalty: not less than 250 shares and not more than 500 shares;
- disqualification sanctions (for a period of no less than three months and no more than one year): disqualification from exercising the activity; suspension or revocation of authorisations, licences or concessions functional to the commission of the offence; prohibition to contract with the Public Administration, except in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

For the offence referred to in Article 590(3) of the Criminal Code:

- financial penalty: not exceeding 250 shares;
- disqualification sanctions (for a period not exceeding six months): disqualification from exercising the activity; suspension or revocation of authorisations, licences or concessions

functional to the commission of the offence; prohibition to contract with the Public Administration, except in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

THE HANDLING, LAUNDERING OR USE OF MONEY, GOODS OR BENEFITS FROM AN UNLAWFUL SOURCE, AND SELF-LAUNDERING (ARTICLE 25-OCTIES OF THE DECREE)

Introduction

Legislative Decree no. 231 of 2007, in implementing Directive 2005/60/EC of the European Parliament and of the Council of Europe on the prevention of the use of the financial system for the purpose of money laundering, has carried out a comprehensive overhaul of the anti-money laundering legislation in our legal system.

By introducing in Legislative Decree no. 231/01 Article 25-octies, which provides for the liability of Entities for the offences of money laundering, receiving stolen goods and using money, goods or benefits of unlawful origin, the Legislator repealed paragraphs 5 and 6 of Article 10 of Law no. 146 of 2006 on combating transnational organised crime.

This provision provided that Entities were liable and punished under the Decree for the same offences only if they met the specific conditions laid down in Article 3 of the same Law with regard to the definition of transnational crime.

Consequently, pursuant to Article 25-octies, the Entity is punishable for the offences of receiving stolen goods, money laundering and use of unlawful money committed in its interest or to its advantage, even if committed in a domestic context.

Subsequently, Law No. 186 of 15 December 2014 on "*Provisions on the emersion and return of capital held abroad as well as for the strengthening of the fight against tax evasion. Provisions on self-laundering*" and which came into force on 1 January 2015, introduced the offence of self-laundering (Article 648-ter.1 of the Criminal Code) into the Italian criminal system, also providing for its inclusion in the list of offences governed by Legislative Decree no. 231/01.

Finally, Legislative Decree n. 195/2021, which entered into force on 14 December 2021, has extended the scope of the crimes referred to artt. 648, 648-bis, 648-ter and 648-ter.1 Penal Code, which are also extended to fines (provided that they are punished with certain published limits) and now, for all, to wrongful crimes and introduced new circumstantial hypotheses and the modification of certain circumstances already in existence, in addition to the extension of the rules on Italian jurisdiction to certain acts committed abroad, with a substantial "restructuring" and internal redistribution of the articulated regulations.

Receiving, laundering and using money, goods or benefits of unlawful origin

The common purpose of the rules laid down in Articles 648, 648-bis and 648-ter of the Criminal Code is to prevent and repress the introduction into the lawful economic circuit of money, goods or benefits

resulting from the commission of fines (punishable by certain published limits) and offences, in order to:

- avoid the 'contamination' of the market with capital acquired by illicit means and thus 'net' of the costs that operators acting lawfully have to face;
- facilitate the identification of those who "handle" such assets so as to make it possible to ascertain the offences committed;
- discourage criminal behaviour motivated by profit.

In light of this premise, it is understandable why the offences in question are considered by criminal doctrine and jurisprudence as multi-offensive, in that they are potentially harmful not only to the assets of the person directly injured by the predicate offence, who obviously sees his chances of recovering the stolen goods diminished, but also of the administration of Justice, due to the dispersion of assets of unlawful provenance capable of creating an obstacle to the work of the Authority aimed at ascertaining the predicate offences, as well as, in more general terms, of the economic order by reason of the obvious damage it causes to the principle of free competition and respect for economic rules.

The main offence referred to in Article 25-octies is that of **money laundering,** provided for in Article 648-bis of the Criminal Code, which punishes the conduct of a person who, except in cases of complicity in the offence, replaces or transfers money, goods or other benefits resulting from any crime or fine[45], or carries out other transactions in connection with them, so as to hinder the identification of their criminal origin.

Article 25-octies also covers the offence of **receiving stolen goods,** which punishes anyone who, except in cases of complicity in the offence, in order to procure a profit for himself or others, acquires, receives or conceals money or goods resulting from any offence or fine[46], or in any event interferes in having them acquired, received or concealed.

Also relevant for the purposes of the Decree is the offence of **using money, goods or benefits of unlawful origin** which, as a residual measure compared to the offences mentioned above, punishes anyone who, except in cases of complicity in the offence and in the cases provided for in Articles 648 and 648-bis of the Criminal Code, uses money, goods or other benefits resulting from an offence or fine in economic or financial activities.

As regards the material object, the common prerequisite for the three cases is the previous commission of a crime or a fine that has generated an unlawful economic result, meaning everything connected with the criminal act, i.e., the profit, the price, the product of the crime.

With specific regard to the offence of money laundering, the legislator mentions, as the material object of the offence, money, goods and other benefits.

In addition to means of payment, it therefore includes immovable property, businesses, securities, precious metals, credit rights, etc., i.e., anything which, like money, can be of economic use or can be the subject of rights.

The offence also exists when the goods originate from a chain of intermediaries and therefore not directly from the predicate offence, provided, as will be explained below, that the active subject is aware of the criminal origin of the goods and may also concern the equivalent, i.e., the proceeds, for

[45] *"The penalty is imprisonment from two to six years and the fine from Euro 2,500 to Euro 12,500 when the fact concerns money or things from fines punished with the arrest in excess of a maximum of one year or at least six months."*

[46] *"The penalty is imprisonment from one to four years and fine from 300 to 6,000 euros when the fact concerns money or things from fines punished with the arrest in excess of a year or at least six months.*
The penalty shall be increased if the offence is committed in the exercise of a professional activity.
If the fact is particularly tenuous, the penalty of imprisonment of up to six years and the fine of up to 1,000 euro in the case of money or things from crime and the penalty of imprisonment of up to three years and the fine of up to 800 euro in the case of money or things from fines."

instance, of the sale of the goods subject to the predicate offence, or the goods purchased with the money deriving from the commission thereof.
For example, all offences liable to generate unlawful proceeds of money may be predicate offences: in particular, those of robbery, kidnapping, extortion, trafficking in weapons or drugs, bribery, tax offences, usury, financial offences, corporate offences, EU fraud, fraud, embezzlement, not excluding, as mentioned above, the possibility of receiving stolen goods.
It is not required, however, that the existence of the predicate offence has been judicially ascertained or that the perpetrator of the offence has been identified, since the offences in question may also occur where the perpetrators of the predicate offence are unknown.
Pursuant to Article 648(3) of the Criminal Code - referred to in Articles 648-bis (4) and 648-ter (4) of the Criminal Code - the offence also exists when the perpetrator of the predicate offence or fine cannot be charged (e.g., because he is a minor) or is not punishable (e.g., because a tax amnesty has been granted in respect of a tax offence) or when a condition of prosecution relating to such offence or fine is lacking (e.g. a complaint in respect of embezzlement). The causes of extinction of the predicate offence (such as, for example, prescription) occurring after the commission of the offences or fines in question do not apply. The difference between the three cases is first of all apparent with reference to the objective element. The offence of receiving stolen goods requires the conduct of purchasing, receiving or concealing: the first hypothesis exists with reference to any negotiation activity, whether for valuable consideration or free of charge, which transfers the goods to the purchaser; the second includes any act involving the transfer of the availability, even if only temporarily, of the goods; finally, the third implies the fraudulent concealment of the goods, even if only temporarily, after having them at one's disposal.
Pursuant to Article 648 of the Criminal Code, the conduct of a person who interferes in the purchase, receipt or concealment of goods, i.e., the intermediation aimed at transferring the goods, without it being necessary for the latter to actually take place, is also a criminal offence.
The offence of money laundering consists in replacing or transferring goods of unlawful origin or, in any event, in carrying out any operation in relation to such goods in such a way as to hinder the identification of the origin of the goods: by virtue of this last reference, it is therefore a free form offence, which ends up penalising any activity consisting in hindering or making more difficult the search for the perpetrator of the predicate offence or fine. The jurisprudence also admits, despite the doubts expressed by the doctrine, the configurability of money laundering by omission, given the broad closing formula used by the legislator to describe the criminally relevant conduct ("other transactions").
Article 2 of Legislative Decree no. 231 of 2007 provides a detailed list of the types of conduct that can be classified as money laundering, mentioning, in particular, "*the conversion or transfer of assets ... the concealment or disguise of the true nature, source, location, disposition, movement, ownership of assets or rights over them ... the purchase, holding or use of assets*".
In addition, the Financial Action Task Force (FATF) has found that the money laundering process can be divided into three phases: placement, layering and integration.
The first stage involves the introduction of dirty money, usually in fractional form, into legal financial circuits through traditional (banks and insurance companies) and non-traditional financial institutions (bureaux de change, vendors, precious metals, commodity brokers, casinos), or other means (e.g., smuggling).
The second phase is usually carried out by means of successive transfers, the purpose of which is to lose the documentary trail of the dirty money, for example by using false credit documents or currency exchanges in foreign countries.

The last stage, finally, aims at attributing an apparent legitimacy to the assets of criminal origin, re-introducing them into the legal financial circuit, through the issuance of invoices for non-existent operations, for instance.

Finally, Article 648-ter of the Criminal Code concerns the use in economic or financial activities of money, goods or other benefits of unlawful origin. The meaning to be attributed to the term "use" is indeed uncertain, as it can be understood either in a restrictive sense, i.e., as an investment with a view to obtaining a benefit, or in broader terms, i.e., as any form of use of unlawful capital in economic and financial activities, regardless of the agent's purpose.

Turning to the subjective element of the three cases, the following should be noted.

The offence of receiving stolen goods consists in the voluntary nature of the act of purchasing, receiving, concealing or brokering the transfer of the goods, in the awareness of the criminal origin of the goods, without requiring precise knowledge of the circumstances of time, manner and place relating to the predicate offence. Such awareness may be inferred from objective circumstances relating to the transaction, such as, in particular, the quality and characteristics of the goods sold and of the relevant price, the condition or identity of the offeror. In the offence of receiving stolen goods (as well as in that of money laundering), there is a presumption of intent in the event of conscious acceptance of the risk of the unlawful origin of the item purchased or received.

For the purposes of the subjective element of the offence of receiving stolen goods, specific intent is required, which consists in the aim of procuring a profit for oneself or others, i.e., any utility or advantage, even of a non-economic nature. The specific intent is not required for the offence of money laundering, for which it is sufficient to have the general intent of the awareness of the criminal origin of the goods and the performance of the typical or atypical conduct incriminated. Finally, similar considerations apply to the offence referred to in Article 648-ter of the Criminal Code, whose intent is characterised by the consciousness and intention to allocate to an economically useful use the unlawful funds whose illegal origin is known - also in this case in generic terms.

According to case law, the structural differences between the two offences must be sought not only in the subjective element (purpose of profit as the specific intent in the case of receiving stolen goods, and general intent in the case of money laundering), but also in the material element and in particular in the ability to hinder the identification of the origin of the goods, which is the characteristic element of the conduct of the offence provided for in Article 648-bis of the Criminal Code. 648-bis of the Criminal Code: in other words, when the purchase or receipt is accompanied by the performance of operations or activities aimed at hindering the identification of the criminal origin of the money, goods and utilities, the offence of receiving stolen goods cannot be committed, but the more serious offence under Article 648-bis of the Criminal Code can be committed.

On the other hand, as regards the difference between money laundering and the use of goods of unlawful origin - which also requires the specific suitability of the conduct to cause the traces of the unlawful origin to be lost - it has been pointed out that the offence referred to in Article 648-ter of the Criminal Code is characterised by the fact that such purpose shall be achieved through the specific method of using the resources of economic or financial activities: the rule is therefore in a special relationship with Article 648-bis of the Criminal Code. It has been pointed out that the offence referred to in Article 648-ter of the Criminal Code is characterised by the fact that such purpose shall be achieved through the specific method of using the resources in economic or financial activities: the provision is therefore in a special relationship with Article 648-bis of the Criminal Code and the latter is, in turn, in a special relationship with Article 648 of the Criminal Code.

<u>Penalties applicable to the Entity</u>

- financial sanction: from 200 to 800 shares. If the money, goods or other benefits originate from a crime for which a maximum term of imprisonment of more than five years has been established, a financial sanction of 400 to 1,000 shares shall apply.
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

The offence of self-laundering

The offence of self-laundering was included by Law No. 186 of 15 December 2014 as a predicate offence in Article 25-octies, headed "*Receiving, laundering and using money, goods or benefits of unlawful origin, as well as self-laundering*", of Legislative Decree 231/01.

Finally, as already mentioned in the preamble, the crime in question has been modified by Legislative Decree no. 195/2021:

"The punishment of imprisonment from two to eight years and a fine ranging from EUR 5,000 to EUR 25,000 shall apply to anyone who, having committed or contributed to the commission of a non-culpable offence, uses, substitutes, transfers, in economic, financial, entrepreneurial or speculative activities, the money, goods or other utilities deriving from the commission of such offence, in such a way as to concretely hinder the identification of their criminal origin.

The penalty is one to four years imprisonment and the fine from Euro 2,500 to Euro 12,500 when the fact concerns money or things from fines punished with the arrest in excess of one year or at least six months.

The penalty is reduced if the money, property or other utility comes from a crime for which the penalty of imprisonment is established less than five years.

In any case, the penalties provided for in the first paragraph shall apply if the money, goods or other utilities originate from a crime committed under the conditions or for the purposes set out in Article 416 bis.1.

Apart from the cases referred to in the preceding paragraphs, conduct whereby the money, goods or other benefits are intended merely for personal use or enjoyment shall not be punishable.

The penalty is increased when the acts are committed in the exercise of a banking or financial activity or other professional activity.

The penalty shall be reduced by up to one half for those who have effectively taken steps to prevent the conduct from having further consequences or to ensure the evidence of the offence and the identification of assets, money and other utilities deriving from the offence.

The last subparagraph of Article 648 shall apply".

As already pointed out above, criminal activity carried out by a person other than the perpetrator or participant in the predicate offence is relevant to the offence of money laundering *under* Article 648-bis of the Criminal Code.

On the other hand, anyone who directly conceals the proceeds of a crime or fine that he himself has committed or conspired to commit will be punishable under the new Article 648-ter.1 of the Criminal Code (so-called self-laundering).

The typical conduct of the offence takes place according to three different factual models: substitution, transfer and use in economic or financial activities.

The determination of punishable conduct is confined to those behaviours which, although not necessarily artificial in themselves (i.e., incorporating extremes which can be referred to the archetype of artifice

and deception), express a deceptive content, i.e. capable of making it objectively difficult to identify the criminal origin of the goods.
Therefore, the offence under consideration will be committed if the following three circumstances exist simultaneously:

1) a provision consisting of money, goods or other benefits is created or helped to be created - through a first offence, the predicate offence;
2) the aforementioned funds are used, through further and independent conduct, in entrepreneurial, economic and financial activities;
3) there is a real obstacle to the identification of the criminal origin of such funds.

Finally, with regard to the subjective element, the offence of self-laundering is punishable as a crime of general intent, which consists in the consciousness and will to carry out the substitution, transfer or other operations concerning money, goods or other utilities, together with the awareness of the suitability of the conduct to create an obstacle to the identification of such origin.
Penalties applicable to the Entity

- Financial sanction: from 200 to 800 shares. If the money, goods or other benefits originate from a crime for which a maximum term of imprisonment of more than five years has been established, a financial sanction of 400 to 1,000 shares shall apply.
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

OFFENCES RELATING TO NON-CASH PAYMENT INSTRUMENTS (ARTICLE 25-OCTIES.1 OF THE DECREE)

Legislative Decree 8 November 2021 n. 184, entered into force on 14 December 2021, was published in the Official Journal of 29 November 2021, in order to implement EU Directive 2019/713 on the fight against fraud and counterfeiting of non-cash means of payment.
This Directive aims to step up the fight against fraud and counterfeiting of non-cash means of payment, both because they constitute means of financing organized crime and its criminal activities and because they limit the development of the digital single market by undermining consumer confidence and making citizens more reluctant to carry out purchases online.
Fraud and counterfeiting of non-cash means of payment have taken on a significant cross-border dimension, accentuated by their increasingly digital nature, hence the need for Member States to ensure a coherent approach and to facilitate the exchange of information and cooperation between competent authorities.
In this context, which also implies the adoption of common provisions, the art. 1 of the Legislative Decree adopts the following definitions: «non-cash payment instrument» (a device, object or protected intangible or material record, or a combination thereof, other than legal tender, which, alone or in combination with a procedure or set of procedures, allows the holder or user to transfer money or monetary value, also through digital means of exchange); «protected device, object or record» (an object or record protected against imitations or fraudulent use, for example by design, code or signature); «digital means of exchange» (any electronic money defined in article 1, paragraph 2, letter

h-ter, of Legislative Decree n. 385/1993, and the virtual currency); «virtual currency» (a digital value representation which is not issued or guaranteed by a central bank or a public body, which is not necessarily linked to a legally established currency and does not have the legal status of currency or money, but is accepted by natural or legal persons as a means of exchange, and which can be transferred, stored and exchanged electronically).

Member States are required to provide for effective criminal law measures against criminal conduct involving fraud and counterfeiting of non-cash payment instruments.

The Decree intervenes on the penal code by supplementing the provisions of articles 493-ter c.p.[47] and 640-ter c.p. and introducing a new specific case incriminating for the possession and dissemination of equipment, computer devices or programs designed to commit crimes involving non-cash instruments.

The Legislative Decree amends the section and the first paragraph of art. 493-ter c.p. which already regulates the undue use and falsification of credit cards and payment to extend the scope of criminalization of illicit conduct to all non-cash payment instruments.

Another provision on which the legislator limits himself to affect to a minimum, since the Italian criminal law already complies with the provisions of the directive also with regard to the sanction response, is art. 640-ter c.p.[48], which, as is well known, punishes by way of computer fraud with the penalty of six months to three years and with the fine from Euro 51 to Euro 1,032 anyone, altering in any way the operation of an IT or telematic system or intervening without right in any way on data, information or programs contained in or relevant to an IT or telematic system, gives to himself or to others an unjust profit with others damage.

The Decree intervenes in particular on the special aggravating factor with special effect referred to in the second paragraph (the penalty is one to five years imprisonment and a fine of EUR 309 to EUR 1,549 if one of the circumstances provided for in the second paragraph of Article 640, or if the fact is committed with abuse of the quality of operator of the system, occurs), providing that the aggravation of the penalty for the crime of computer fraud (with consequent procedural procedure) the circumstance that the offending conduct produces a transfer of money, monetary value or virtual currency.

An additive intervention concerns the new art. 493-quater[49] - inserted in the penal code after art. 493-ter - which punishes with imprisonment up to two years and with a fine of up to 1000 euros, unless the fact amounts to more serious crime, whoever produces, imports, exports, sells, transports, distributes, makes available or in any way procures for itself or for other computer equipment, devices or programs which, by technical-constructive or design characteristics, are constructed primarily to commit offences involving non-cash payment instruments, or are specifically adapted to the same purpose.

This is a common offence, as per the incipit of the offending law ("anyone"), punished by specific intent, in so far as the conduct referred to above is of criminal relevance where it is carried out with the specific purpose of making use of the instruments referred to or of allowing others to use them in

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[47] *"a) in Article 493-ter: 1) the heading is replaced by the following: «Undue use and falsification of non-cash payment instruments»; 2) in the first subparagraph, after the word «services,» the following are inserted: «or any other payment instrument other than cash»; 3) in the first subparagraph, second sentence, the words «credit or payment cards or any other similar document enabling the withdrawal of cash or the purchase of goods or the provision of services» are replaced by the following: «the instruments or documents referred to in the first period» and the words «those maps» are replaced by the following: «those instruments»;"*

[48] *"c) in Article 640-ter, second paragraph, after the words «if the fact» are added the following: «it produces a transfer of money, of monetary value or of virtual currency or»."*

[49] *"b) the following is inserted after Article 493-ter: '493-quater (Possession and dissemination of computer equipment, devices or programs intended to commit offences involving non-cash payment instruments). - Unless the act constitutes a more serious offence, any person who, in order to make use of it or to allow others to use it in the commission of offences concerning non-cash payment instruments, produces, imports, exports, sells, transports, distributes, makes available or in any way procures for itself or for other computer equipment, devices or software which, by virtue of its technical-constructive or design characteristics, are primarily designed to commit such offences, or are specifically adapted to the same purpose, shall be punishable by imprisonment of up to two years and a fine of up to 1000 euro. In the event of a conviction or the application of a sentence at the request of the parties pursuant to Article 444 of the Criminal Procedure Code for the offence referred to in the first subparagraph, confiscation of the aforementioned equipment, devices or computer programs shall always be ordered, as well as the confiscation of the profit or the product of the crime or, where it is not possible, the confiscation of assets, sums of money and other utilities of which the offender has the availability for a value corresponding to that profit or product.» ;"*

the course of committing offences concerning non-cash payment instruments.
The provision is completed with the provision, in the second paragraph, of the compulsory confiscation, in case of conviction or plea bargaining, of the equipment, the computer equipment or software used to commit offences involving payment instruments other than cash, as well as the confiscation of the profit or product of the offence or, where this is not possible, the confiscation of property equivalent, sums of money and other utilities of which the offender has the availability for a value corresponding to the profit or product.
Finally, the Decree adjusts the provisions of the Legislative Decree of 8 June 2001 n. 231, as per art. Articles 10 and 11 of the above mentioned Community Directive, which require Member States to take the necessary measures to ensure that legal persons: may be held liable for the offences of fraud and falsification of means of payment other than cash committed for their benefit by any person acting individually or as a member of a body of the legal person and occupying a position which is predominant within the legal person or is subject to authority, control and surveillance of the Commission; they may be subject to effective, proportionate and dissuasive penalties if held liable.
For this purpose, art. 25-octies.1 referred "*Offences relating to non-cash payment instruments*" identifies the financial penalties that apply to companies in relation to the commission of the offences provided for in the Criminal Code in matter of non-cash payment instruments: a) for the crime referred to in Article 493-ter, the financial penalty of 300 to 800 shares; b) for the crime referred to in Article 493-quater and for the crime referred to in Article 640-ter, in the event aggravated by the carrying out of a transfer of money, of monetary value or of virtual currency, the financial penalty up to 500 units.
The second paragraph of the novel further provides that, unless the fact complements other administrative offense sanctioned more seriously, in relation to the commission of any other crime against the public faith, against property or otherwise offending property provided for in the Penal Code, which has as its object payment instruments other than cash, the following financial penalties shall apply to the entity: a) if the crime is punished with the penalty of imprisonment of less than ten years, a financial penalty of up to 500 shares; b) if the offence is punished with a penalty of not less than 10 years of imprisonment, a financial penalty of 300 to 800 shares. In addition, in the cases of conviction for one of the crimes referred to in paragraphs 1 and 2, the interdictive sanctions provided for in article 9, paragraph 2 shall apply to the company.

COMPUTER CRIMES AND ILLICIT DATA PROCESSING (ARTICLE 24-BIS OF THE DECREE)

Law no. 48 of 18 March 2008 ratified and implemented the Budapest Convention of 23 November 2001, promoted by the Council of Europe on the subject of computer crime and concerning, in particular, offences committed by making use of a computer system in any way or to its detriment, or which in any way require the gathering of evidence in computer form. Article 1 of the same Convention defines a computer system as "*any equipment or group of interconnected or related equipment, one or more of which, pursuant to a program, performs automatic processing of data*".
Article 24-bis of the Decree provides for the liability of entities with regard to three distinct categories:

a) offences involving **abusive access to or damage to a computer system (Article 24-bis (1))**;
b) offences arising from the **possession or dissemination of codes or programmes or equipment designed to cause computer damage (Article 24-bis (2))**;

c) offences relating to **forgery of a computer document and fraud by the person providing certification services by means of a digital signature (Article 24-bis (3))**.

The first paragraph of Article 24-bis provides for the liability of Entities in relation to seven separate offences which have as a common factor the intrusion into or damage to a computer system, i.e., which result in the interruption of the operation of a computer system or damage to software, in the form of a programme or data.

More specifically, computer damage occurs when, taking into account both hardware and software components, even separately, there is a modification such as to prevent, even temporarily, their operation.

The crimes of:

- **unauthorised access to a computer or telecommunications system (Article 615-ter of the Criminal Code)**, which occurs when a person unlawfully enters a computer or telecommunications system protected by security measures or remains in such system against the express or tacit will of the person entitled to exclude him. The offence also occurs as a result of mere access to the protected computer system, without there being any actual damage to the data.

  Penalties applicable to the Entity:

  financial sanction from one hundred to five hundred shares and, in case of conviction, the disqualification sanctions provided for in Article 9, paragraph 2, letters a), b) and e).

- **unlawful interception, obstruction or interruption of computer or telematic communications (Article 617-quater of the Criminal Code)**, which occurs where a person fraudulently intercepts communications relating to a computer or telematics system or between several systems or obstructs or interrupts such communications. The offence is aggravated, inter alia, where the conduct causes damage to a computer or telecommunications system used by the State or another public body or by a company providing public services or services of public utility.

  Penalties applicable to the Entity:

  financial sanction from one hundred to five hundred shares and, in case of conviction, the disqualification sanctions provided for in Article 9, paragraph 2, letters a), b) and e).

- **installation of equipment designed to intercept, impede or interrupt computer or network communications (Article 617-quinquies of the Criminal Code)**, which exists in the case of a person who - outside the cases allowed by law - installs equipment designed to intercept, impede or interrupt communications relating to a computer or telematics system or between several systems. The offence therefore occurs with the mere installation of the equipment, irrespective of whether it is actually used to commit offences.

  Penalties applicable to the Entity:

  financial sanction from one hundred to five hundred shares and, in case of conviction, the disqualification sanctions provided for in Article 9, paragraph 2, letters a), b) and e).

- **damage to computer information**, **data and programmes (Article 635-bis of the Criminal Code)** and **damage to computer information, data and programmes used by the State or by another public body or in any case of public utility (Article 635-ter of the Criminal Code); damage to computer or telematics systems (Article 635-quater of the Criminal Code) and damage to computer or telematics systems of public utility (Article 635-quinquies of the Criminal Code).** The offences under consideration are characterised by the common element of the conduct of destruction, deterioration, deletion, alteration or

suppression and differ in relation to the material object (information, data, computer programs, computer or telematics systems), whether or not having public relevance in that they are used by the State or by another public body or in any case of public utility.

Penalties applicable to the Entity:

financial sanction from one hundred to five hundred shares and, in case of conviction, the disqualification sanctions provided for in Article 9, paragraph 2, letters a), b) and e).

The offences covered by Article 24-bis, second paragraph, may be regarded as ancillary to those previously examined and concern the possession or dissemination of access codes or the possession or dissemination of programmes (viruses or spyware) or devices intended to damage or interrupt a computer system. In particular, the following offences are relevant:

- **unlawful possession and dissemination of access codes to computer or telematics systems (Article 615-quater of the Criminal Code)**, which punishes anyone who, in order to secure profit for himself or others or to cause damage to others, unlawfully obtains, reproduces, disseminates, communicates or delivers codes, passwords or other means of access to a computer or telematics system protected by security measures or in any case provides indications or instructions suitable for such purpose. Therefore, the conduct preparatory to or functional to abusive access is punished, since it consists in procuring for oneself or others the availability of means of access necessary to overcome the security safeguards of computer systems.

  Penalties applicable to the Entity:

  financial sanction up to three hundred shares and, in case of conviction, the disqualification sanctions provided for in Article 9, paragraph 2, letters b) and e).

- **dissemination of computer equipment, devices or programmes intended to damage or interrupt a computer or telecommunications system (Article 615-quinquies of the Criminal Code)**, which punishes anyone who procures, produces, reproduces, imports, disseminates, communicates, delivers or in any case makes available to others computer equipment, devices or programmes, with a view to unlawfully damaging a computer or telecommunications system, the information, data or programmes contained therein or pertaining thereto, or to favouring the total or partial interruption or alteration of its operation.

  Penalties applicable to the Entity:

  financial sanction up to three hundred shares and, in case of conviction, the disqualification sanctions provided for in Article 9, paragraph 2, letters b) and e).

The third paragraph of Article 24-bis also penalises the use of electronic means aimed at undermining the reliability of the means used to ensure certainty in relations between citizens: the electronic document and the digital signature, the rules on which are now fully set out in the Digital Administration Code (Legislative Decree no. 82 of 2005 as amended). Namely:

- **Article 491-bis[50] of the Criminal Code** extends the rules laid down by the Criminal Code on the subject of document forgery also to public electronic documents having evidentiary effect. By virtue of this extension, therefore, the falsification of a computer document may give rise, inter alia, to the offences of material and ideological falsification of public deeds, certificates, administrative authorisations, authenticated copies of public deeds, attestations of the content of deeds (Articles 476-479 of the Criminal Code), material forgery of a private individual (Article 482 of the Criminal Code), ideological forgery of a private

[50] Article amended by Legislative Decrees Nos. 7 and 8/2016 (also known as the "decriminalisation package") which decriminalised and converted into a civil offence Article 485 of the Criminal Code (forgery of private contracts), in turn referred to by the predicate offence provided for and punished by Article 491-bis of the Criminal Code. (forgery in a private contract), in turn referred to by the predicate offence provided for and punished by Article 491-bis of the Criminal Code.

individual in a public document (Article 483 of the Criminal Code), forgery of registers and notifications (Article 484 of the Criminal Code), use of a false document (Article 489 of the Criminal Code).

Penalties applicable to the Entity:

without prejudice to the provisions of Article 24 of the present Decree for cases of computer fraud to the detriment of the State or of another public body, and of the offences referred to in Article 1(11) of Decree-Law No. 105 of 21 September 2019, financial sanctions of up to four hundred shares and, in case of conviction, disqualification sanctions provided for in Article 9(2)(c), (d) and (e).

- **computer fraud by the person providing electronic signature certification services (Article 640-quinquies of the Criminal Code)**, which punishes the person who, by providing electronic signature certification services, violates the obligations laid down by law for the issuance of a qualified certificate, in order to procure an unfair profit for himself or others or to cause damage to others. This offence is therefore a so-called proper offence, in that it can only be committed by qualified certifiers, or rather, by persons providing qualified electronic signature certification services, and is therefore not relevant for the Company.

  Penalties applicable to the Entity:

  without prejudice to the provisions of Article 24 of the present Decree for cases of computer fraud to the detriment of the State or of another public body, and of the offences referred to in Article 1(11) of Decree-Law No. 105 of 21 September 2019, financial sanctions of up to four hundred shares and, in case of conviction, disqualification sanctions provided for in Article 9(2)(c), (d) and (e).

  In relation to ASPI's activities, the offence under consideration is not conceivable for the Company.

Most recently, the third paragraph of Article 24-bis of the Decree was amended with the approval of Law No. 133 of 18 November 2019, which converted Decree-Law No. 105 of 2019 containing "*urgent provisions on the perimeter of national cyber security and the regulation of special powers in sectors of strategic importance*".

The legislation in question provides for the definition of a perimeter of national cyber security aimed at "*ensuring a high level of security of networks, information systems and computer services of public administrations, public and private bodies and operators located in the national territory, on which depends the exercise of an essential function of the State, or the provision of a service essential to the maintenance of civil, social or economic activities fundamental to the interests of the State and from whose malfunctioning, interruption, even partial, or improper use, may result in a prejudice to national security*" (Art. 1, paragraph 1).

More specifically, the crimes referred to in Article 1(11) of the aforementioned Decree-Law No. 105 of 21 September 2019 have been introduced into the catalogue of predicate offences.

This Article provides that it is a criminal offence to provide untrue information, data or facts relevant to the preparation or updating of lists of the networks, information systems and IT services used (Article 1(2)(b)), or for the purposes of prior communications to the National Assessment and Certification Centre or CVCN (Article 1(6)(a)), or for the performance of specific inspection and supervisory activities (Article 1(6)(c)), or the failure to communicate such data, information or factual elements within the prescribed deadlines.

All this with the aim of hindering or conditioning - according to the criminal scheme of specific intent

- the performance of the procedures, described in the same Article 1 cited, for which the obligation of truthfulness is imposed.

Therefore, this is a criminal case 'in white' that refers to the extra-criminal legislation to be issued, both for the identification of the active subject of the 'proper crime' (although the legislator used the pronoun 'anyone'), concerning only those who operate within the 'perimeter of national cybersecurity', and for the precise modalities of the procedures and, therefore, of the illegal conduct.

Lastly, the Decree of the President of the Council of Ministers No. 131 of 30 July 2020 was published in the Official Gazette No. 261 of 21 October 2020 containing "*Regulations on the matter of the national cybersecurity perimeter, pursuant to Article 1, paragraph 2, of Decree-Law No. 105 of 21 September 2019, converted, with amendments, by Law No. 133 of 18 November 2019*". More specifically, the Regulations deal with: defining the characteristics of entities that perform an essential function for the State; identifying the sectors of activity in which entities to be included in the cyber security perimeter operate; defining the methods and procedural criteria for identifying public administrations, entities and public and private operators included in the national cyber security perimeter; and defining the criteria for preparing and updating lists of networks, information systems and information services.

The punishment for the natural person acting as agent is imprisonment from one to three years, while the financial penalty of up to 400 shares and the disqualification sanctions provided for in Article 9(2)(c), (d) and (e) apply to the body.

CRIMES COMMITTED IN BREACH OF ENVIRONMENTAL RULES (ARTICLE 25-UNDECIES OF THE DECREE)

Introduction

Law No. 68 of 22 May 2015, published in the Official Gazette No. 122 of 28 May 2015 and entered into force on 29 May 2015, entitled "*Provisions on crimes against the environment*", introduced new cases of environmental crimes into the legal system in the form of a crime.

The amendment is linked to the requirements of European Union Directive 2008/99/EC of 19 November 2008 on the protection of the environment through criminal law, the Preamble of which (Article 5) states that "*activities damaging the environment, which generally cause or are likely to cause significant deterioration in the quality of the air, including the stratosphere, soil, water, fauna and flora, including the conservation of species, require criminal penalties of a more dissuasive nature*".

In particular, the aforementioned Law introduced into the Criminal Code Title VI-bis, dedicated to offences against the environment, providing for new offences and amended (see Article 8, Law no. 68/2015) Article 25-undecies of Legislative Decree no. 231/2001, in order to incorporate new cases among the predicate offences, namely:

- Article 452-bis, Criminal Code, "*Environmental pollution*";
- Article 452-quater, Criminal Code, "*Environmental Disaster*";
- Article 452-quinquies, Criminal Code, "*Culpable crimes against the environment* ;
- Article 452-sexies, Criminal Code, "*Trafficking in and abandonment of highly radioactive material"*;
- Article 452-octies, Criminal Code, "*Aggravating circumstances*" and it amended certain predicate offences already provided for in Article 25-undecies of Legislative Decree

231/01:

- Article 257, Legislative Decree 152/2006, "*Site remediation*";
- Article 260, Legislative Decree 152/2006, "*Activities organised for the illegal trafficking of waste*".

Most recently, Decree Law No. 135 of 14 December 2018, containing "*Urgent provisions on support and simplification for businesses and public administration*" and converted with amendments by Law No. 12 of 11 February 2019, repealed the electronic waste traceability control system (SISTRI) as of 1 January 2019.

Environmental pollution (Article 452-bis of the Criminal Code)

The crime punishes anyone who, in breach of legislative, regulatory or administrative provisions specifically designed to protect the environment and whose failure to comply with them constitutes an administrative or criminal offence in itself, causes significant damage or deterioration to:

- water or air or large or significant portions of soil or subsoil;
- of an ecosystem, biodiversity, including agricultural biodiversity, flora or fauna.

The offence is aggravated if the pollution is produced in a protected natural area or one subject to landscape, environmental, historical, artistic, architectural or archaeological constraints, or if it damages protected animal or plant species.

Penalties applicable to the Entity:

- financial sanctions ranging from two hundred and fifty to six hundred shares and, in case of conviction, disqualification sanctions for a period not exceeding one year.

Environmental disaster (Article 452-quater of the Criminal Code)

The crime is committed if:

- the balance of an ecosystem is irreversibly altered;
- the balance of an ecosystem is disturbed in a reversible but particularly costly way that can only be achieved by exceptional measures;
- public safety is offended by reason of the significance of the act in terms of the extent of the impairment or its harmful effects or the number of persons injured or exposed to danger.

Penalties applicable to the Entity:

- financial sanctions ranging from four hundred to eight hundred shares and, in case of conviction, disqualification sanctions for a period not exceeding one year.

Culpable offences against the environment (Article 452-quinquies of the Criminal Code)

The offence in question occurs where the offences referred to in Articles 452-bis and 452-quater of the Criminal Code are punishable by reason of negligence.

Penalties applicable to the Entity:

- financial sanction of two hundred to five hundred shares**.**

Trafficking in and abandonment of highly radioactive material (Article 452-sexies of the Criminal Code)

The offence is committed when anyone unlawfully disposes of, acquires, receives, transports, imports, exports, procures for others, holds, transfers, abandons or disposes of highly radioactive material.

Penalties applicable to the Entity:

- financial sanction ranging from two hundred and fifty to six hundred shares.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Aggravating circumstances relating to associative offences (Article 452-octies of the Criminal Code)

The aggravating circumstance occurs when:

- a criminal association *pursuant to* Article 416 of the Criminal Code is directed, exclusively or concurrently, towards committing one of the above-mentioned environmental offences (Articles 452-bis, 452-quater, 452-quinquies, 452-sexies of the Criminal Code);
- a mafia-type association *under* Article 416-bis of the Criminal Code is aimed at committing one of the environmental offences referred to above (Articles 452-bis, 452-quater, 452-quinquies, 452-sexies of the Criminal Code) or at acquiring the management or control of economic activities, concessions, authorisations, contracts or public services in the environmental field;
- public officials or persons in charge of a public service who perform functions or carry out services in the environmental field are part of the association pursuant to Article 416 or 416-bis of the Criminal Code.

Penalties applicable to the Entity:

- financial sanctions between three hundred and one thousand shares.

Killing, destroying, capturing, taking or keeping specimens of protected wild animal or plant species (Article 727-bis of the Criminal Code)

The offence occurs when anyone, except where the act constitutes a more serious offence, kills, captures or holds specimens belonging to a protected wild animal species, except where the action concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species.

Similarly, the offence is committed if any person destroys, takes or keeps specimens belonging to a protected wild plant species outside the permitted cases. Protected wild animal or plant species are those listed in Annex IV to Directive 92/43/EC and Annex I to Directive 2009/147/EC.

Penalties applicable to the Entity:

- financial sanction of up to two hundred and fifty shares.

Destruction or deterioration of a habitat within a protected site (Article 733-bis of the Criminal Code)

The offence is committed if anyone, outside the permitted cases, destroys a *habitat* within a protected site or in any case deteriorates it, thereby compromising its state of conservation.

A *habitat* within a protected site is any *habitat* of species for which a site is designated as a special protection area under Article 4(1) or (2) of Directive 2009/147/EC or any natural *habitat* or *habitat* of species for which a site is designated as a special area of conservation under Article 4(4) of Directive 92/43/EC.

Penalties applicable to the Entity:

- financial sanction ranging from one hundred and fifty to two hundred and fifty shares.

Crimes relating to the discharge of industrial wastewater (Article 137 of Legislative Decree no. 152/2006 as amended)

The crime is committed if:

- new discharges of industrial wastewater containing dangerous substances included in the families and groups of substances listed in Tables 5 and 3/A of Annex 5 are opened or carried out without authorisation, or such discharges are continued or maintained after the authorisation has been suspended or revoked (Article 137(2)).
- the discharge of industrial wastewater containing dangerous substances included in the families and groups of substances indicated in Tables 5 and 3/A of Annex 5 to Part Three is carried out without complying with the requirements of the authorisation or other requirements of the competent authority pursuant to Articles 107(1) and 108(4) (Article 137(3)).
- when discharging industrial waste water, the limit values set out in table 3 or, in the case of discharges on land, in table 4 of Annex 5 to Part Three are exceeded in relation to the substances indicated in table 5 of Annex 5 to Part Three, or the more restrictive limits set by the regions or autonomous provinces or by the competent authority pursuant to Article 107, paragraph 1, or if the limit values set out for the substances contained in table 3/A are exceeded (Article 137, paragraph 5).
- the prohibitions on discharges laid down in Articles 103 and 104 of the Decree on the soil or in the surface layers, in the subsoil and in groundwater are not observed (Article 137(11)).
- the discharge into the sea by ships and aircraft of substances or materials for which a total ban on spillage is imposed, pursuant to the provisions contained in the relevant international conventions in force and ratified by Italy (Article 137(13)).

Penalties applicable to the Entity:

- for breach of paragraphs 3, 5, first sentence, and 13, a financial sanction ranging from one hundred and fifty to two hundred and fifty shares;
- for breach of paragraphs 2, 5, second sentence, and 11, a financial sanction ranging from two hundred to three hundred shares.

Crimes relating to unauthorised waste management (Article 256 of Legislative Decree no. 152/2006)

The crime is committed if:

- the collection, transport, recovery, disposal, trading and intermediation of waste (hazardous and non-dangerous) are carried out without the prescribed authorisation, registration or communication (Article 256, paragraph 1, letters a), b) or in the event of non-compliance with the requirements contained or referred to in the authorisations, as well as in the event of lack of the requirements and conditions required for registrations or communications (Article 256, paragraph 4);
- an unauthorised waste disposal site is set up or operated (Article 256(3)) or in the event of failure to comply with the requirements contained in or referred to in authorisations, as well as in the event of lack of the requirements and conditions required for registrations or communications (Article 256(4)). The unlawful conduct of creating and managing an unauthorised landfill exists where the conduct of accumulating a significant quantity of waste in an area is repeated over time and results in the degradation of the area itself;
- unauthorised mixing of waste, e.g., waste with different hazardous characteristics or hazardous waste with non-hazardous waste (Article 256(5));
- the rules on the temporary storage of hazardous medical waste pursuant to Presidential Decree 254/2003 (Article 256, paragraph 6, first sentence) are infringed.

Penalties applicable to the Entity:

- for breach of paragraphs 1(a) and 6, first sentence, a financial sanction of up to two hundred and fifty shares;

- for the breach of paragraphs 1(b), 3, first sentence, and 5, the financial sanction from 150 to 250 shares;
- for the breach of paragraph 3, second sentence, a financial sanction ranging from two hundred to three hundred shares.

The aforesaid sanctions shall be reduced by half in the case of commission of the offence provided for in Article 256, paragraph 4.

Crimes relating to the rehabilitation of polluted sites (Article 257, paragraphs 1 and 2 of Legislative Decree no. 152/2006 as amended)

The crime is committed if:

- pollution of the soil, subsoil, surface water or groundwater is caused by exceeding the risk threshold concentrations, by failing to carry out remediation in accordance with the project approved by the competent authority under the procedure referred to in Articles 242 et seq. of Legislative Decree 152/2006 and subsequent amendments and additions.
- the communication referred to in Article 242 of Legislative Decree 152/2006 and subsequent amendments and additions is not made.

Penalties applicable to the Entity:

- for the breach of paragraph 1, a financial sanction of up to two hundred and fifty shares;
- for the breach of paragraph 2, a financial sanction varying from one hundred and fifty to two hundred and fifty shares.

Breach of the obligations to communicate, to keep compulsory registers and forms (Article 258, paragraph 4, sentence 2, Legislative Decree no. 152/2006)

The offence is committed if a waste analysis certificate is prepared which provides false information on the nature, composition and chemical and physical characteristics of the waste and if a false certificate is used during transport.

Penalties applicable to the Entity:

- financial sanction ranging from one hundred and fifty to two hundred and fifty shares.

Illegal trafficking in waste (Article 259(1) of Legislative Decree 152/2006)

The offence is committed when a cross-border shipment of waste constitutes illegal trafficking in violation of applicable EC Regulations.

Penalties applicable to the Entity:

- financial sanction ranging from one hundred and fifty to two hundred and fifty shares.

Organised activities for the illegal trafficking of waste (Article 260 of Legislative Decree no. 152/2006)[51]

The offence is committed if:

- in order to obtain an unjust profit, by means of several operations and through the setting up of means and continuous organised activities, sells, receives, transports, exports, imports, or in any case illegally manages large quantities of waste (Article 260(1) of Legislative Decree 152/2006);
- the preceding conduct concerns high-level radioactive waste (Article 260(2) of Legislative Decree 152/2006).

Lastly, Legislative Decree No. 21/2018, introducing provisions for the implementation of the

[51] Recall to be understood as referring to Article 452-quaterdecies of the Criminal Code pursuant to Article 7 of Legislative Decree No. 21 of 1 March 2018.

principle of code reservation in criminal matters, repealed Article 260 of Legislative Decree No. 152/2006.
Following the amendment, the repealed offence does not lose its criminal relevance but is regulated within the Criminal Code in Article 452-quaterdecies.
Penalties applicable to the Entity

- financial sanction from three hundred to five hundred shares, in the case provided for by paragraph 1 and from four hundred to eight hundred shares in the case provided for by paragraph 2;
- definitive disqualification from the exercise of the activity in the event that the entity or one of its organisational units is permanently used for the sole or prevailing purpose of enabling or facilitating the commission of the offences referred to above.

Crimes relating to emissions into the atmosphere (Article 279 of Legislative Decree no. 152/2006)
The offence occurs when, in the operation of a plant, the emission limit values or the requirements laid down in the authorisation, in Annexes I, II, III or V to Part Five of Legislative Decree 152/2006, in the plans and programmes or in the regulations referred to in Article 271 of the Decree or in the requirements otherwise imposed by the competent authority are violated, exceeding the air quality limit values laid down by the legislation in force.
Penalties applicable to the Entity:

- financial sanction of up to two hundred and fifty shares.

Crimes relating to the protection of endangered animal and plant species (Law No. 150/1992)
The crime is committed if:

- anyone, in breach of the provisions of Regulation (EC) No 338/97 for specimens belonging to species listed in Annex A of the Regulation:
  a) imports, exports or re-exports specimens, under any customs procedure, without the required certificate or permit, or with an invalid certificate or permit;
  b) fails to observe the requirements for the safety of specimens specified in a permit or certificate issued in accordance with Regulation (EC) No 338/97 and Regulation (EC) No 939/97;
  c) uses such specimens in a way that does not comply with the requirements of the authorisation or certification measures;
  d) transports or transits, also on behalf of third parties, of specimens without the prescribed permit or certificate issued in accordance with Regulation (EC) No. 338/97 and Regulation (EC) No. 939/97;
  e) trades in artificially propagated plants contrary to the requirements laid down on the basis of Article 7(1)(b) of Regulation (EC) No 338/97 and Regulation (EC) No 939/97;
  f) holds, uses for profit, buys, sells, displays or holds for sale or for commercial purposes, offers for sale or otherwise disposes of specimens without the required documentation; - (Article 1(2)): with reference to the aforementioned offences, in the event of recidivism, the penalty is imprisonment from 1 to 3 years and a fine ranging from thirty thousand to three hundred thousand euro. If the above-mentioned offence is committed in the context of business activities, the conviction is followed by the suspension of the licence from a minimum of six months to a maximum of two years;

- anyone, in breach of the provisions of Regulation 338/97, for specimens belonging to species listed in Annexes B and C of the Regulation:
  a) imports, exports or re-exports specimens, under any customs procedure, without the required certificate or permit;
  b) fails to observe the requirements for the safety of specimens specified in a permit or certificate issued in accordance with Regulation (EC) No 338/97 and Regulation (EC) No 939/97;
  c) uses such specimens in a way that does not comply with the requirements of the permits or certificates issued together with the import permit or subsequently certified;
  d) transporting or passing through, even on behalf of third parties, specimens without the prescribed permit or certificate;
  e) trades in artificially propagated plants contrary to the requirements laid down on the basis of Article 7(1)(b) of Regulation (EC) No 338/97 and Regulation (EC) No 939/97;
  f) holds, uses for profit, buys, sells, displays or holds for sale or for commercial purposes, offers for sale or otherwise disposes of specimens without the required documentation; - (Article 2(2)): with reference to the aforementioned offences, in the event of recidivism, the penalty is imprisonment from 6 months to 18 months and a fine ranging from EUR 20,000 to EUR 200,000. If the abovementioned offence is committed in the context of business activities, the conviction is followed by the suspension of the licence from a minimum of six months to a maximum of eighteen months;
- *anyone* who fails to comply with the provisions of Article 6(1) ("*without prejudice to the provisions of Law No. 157 of 11 February 1992, it is forbidden for anyone to keep live specimens of mammals and reptiles of wild species and live specimens of mammals and reptiles from captive breeding that constitute a danger to public health and safety (Article 6(4) of Law No 150/92*)");
- anyone who introduces specimens into the Community or exports or re-exports them from the Community with a forged, falsified or invalid certificate or permit, or one which has been altered without the authorisation of the issuing body (Article 16(1) of Regulation EC 338/97, point a);
- anyone who makes a false statement or knowingly provides false information in order to obtain a licence or certificate (Article 16(1), Regulation EC 338/97, point c);
- anyone who uses a forged, falsified or invalid permit or certificate, or one that has been altered without authorisation, as a means of obtaining a Community permit or certificate or for any other purpose relevant to this regulation (Art. 16(1), Regulation EC 338/97 letter d);
- anyone who omits or falsifies import notifications (Article 16(1) of Regulation (EC) No. 338/97 (e));
- anyone who falsifies or alters any permit or certificate issued in accordance with the Regulation (Art. 16(1), Regulation EC 338/97 lett. l).

<u>Penalties applicable to the Entity:</u>

- for breach of Articles 1(1), 2(1) and (2) and 6(4), a financial sanction of up to two hundred and fifty shares;
- for the breach of Article 1(2), a financial sanction ranging from one hundred and fifty to two hundred and fifty shares;
- for the criminal offences referred to in Article 3-bis (1) of Law No 150 of 1992 (Article 16(1) of Regulation No 338/97), respectively:

1) a financial sanction of up to two hundred and fifty shares, in the case of commission of offences for which the maximum penalty is one year's imprisonment;
2) a financial sanction ranging from one hundred and fifty to two hundred and fifty shares, in the event of commission of offences for which a penalty not exceeding a maximum of two years' imprisonment is provided for;
3) a financial sanction ranging from two hundred to three hundred shares, in the event of commission of offences for which a penalty not exceeding a maximum of three years' imprisonment is provided for;
4) a financial sanction ranging from three hundred to five hundred shares, in case of commission of offences for which the maximum penalty is more than three years' imprisonment.

In relation to ASPI's activities, the offence is not conceivable for the Company.

Crimes relating to the protection of stratospheric ozone and the environment (Law No. 549 of 28 December 1993)

The crime is committed when the provisions on production, consumption, import, export, possession and marketing of harmful substances in the applicable (EC) regulations are infringed.

Penalties applicable to the Entity:

- for the offence of breach of the provisions on the cessation and reduction of the use of ozone-depleting substances provided for by Article 3, paragraph 6 of Law 549/1993, the financial sanction from 150 to 250 shares.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Ship-source pollution (Articles 8 and 9 of Legislative Decree no. 202/2007)

The crime occurs in the case of:

- maliciously pouring polluting substances into the sea or causing them to be spilled (Article 8(1)).
- negligent pouring of polluting substances into the sea or causing such discharge (Article 9(1)). - maliciously pouring polluting substances into the sea or causing spillage of the same that has caused permanent damage or in any case particularly serious damage to the quality of the water, to animal or vegetable species or to parts of these (Article 8(2)).
- culpable pouring of polluting substances into the sea or the causing of spills which have caused permanent damage, or in any case particularly serious damage, to the quality of the water, to animal or vegetable species or to parts of them (Article 9(2)).

Penalties applicable to the Entity:

- for the crimes of negligent or intentional spillage of polluting substances in the sea, provided for by articles 9, paragraph 1 and 8, paragraph 1 of the Legislative Decree 202/2007, the financial sanction up to two hundred and fifty shares, for the crime of wilful pouring of polluting substances in the sea that have caused serious or permanent damage to the quality of the water, to animal or vegetable species or to parts of them, envisaged by art. 8, paragraph 2 of the Legislative Decree. If the Entity or one of its organisational units are permanently used for the sole or prevailing purpose of allowing or facilitating the commission of the offence referred to in Art. 8, paragraph 2 of Legislative Decree no. 202/2007, the sanction of definitive

disqualification from the exercise of the activity pursuant to Art. 16, paragraph 3 of Legislative Decree 231/2001 shall apply.

In relation to ASPI's activities, the offence is not conceivable for the Company.

TRANSNATIONAL CRIMES REFERRED TO IN LAW NO. 146 OF 16 MARCH 2006

Law No. 146 of 16 March 2006 ratified and implemented the United Nations Convention and Protocols against Transnational Organized Crime, adopted by the General Assembly on 15 November 2000 and 31 May 2001 (hereinafter referred to as the *Convention*).
The Convention aims to promote cooperation in order to prevent and tackle transnational organised crime more effectively and therefore requires each State Party to adopt the necessary measures, in accordance with its legal principles, to determine the liability of entities and companies for the offences referred to therein.
More specifically, Article 10 of the law in question provides for the extension of the Decree's rules to certain offences, where the conditions set out in Article 3 are met, i.e., where the offence can be considered transnational.
Pursuant *to* Article 3 of Law No 146/06, a transnational crime is considered to be "*punishable by imprisonment of not less than a maximum of four years when an organised criminal group is involved, as well as:*

a) is committed in more than one State;
b) is committed in one State, but a substantial part of its preparation, planning, direction or control takes place in another State;
c) is committed in one State, but involves an organised criminal group engaged in criminal activities in more than one State;
d) is committed in one State but has substantial effects in another State".

An "organised criminal group", within the meaning of the Convention, is defined as "*a structured group, existing over a period of time, of three or more persons acting in concert for the purpose of committing one or more serious crimes or offences established by the Convention, in order to obtain, directly or indirectly, a financial or other material benefit*".
With reference to the crimes giving rise to the administrative liability of the body, Article 10 of Law no. 146/06 includes the following cases:

Criminal association (Article 416 of the Criminal Code)
The offence in question punishes those who promote, constitute or organise an association with a view to committing several offences. Even the mere fact of participating in the association constitutes an offence. The criminal relevance of the conduct described by the provision appears to be conditioned by the actual establishment of the criminal association. In fact, even before referring to the individual conducts of promotion, establishment, management, organisation or mere participation, the provision makes their criminality conditional on the moment in which "three or more persons" have actually associated to commit several crimes. The crime of criminal association is therefore characterised by the autonomy of the offence with respect to any crimes subsequently committed in implementation of the *pactum sceleris*. These crimes, if any, are concurrent with the crime of criminal association and,

if not committed, leave the crime provided for in Article 416 of the Criminal Code in place. The penalty is increased if the number of associates is ten or more. If the criminal association is aimed at committing any of the offences referred to in Articles 600 (enslavement), 601 (trafficking in persons), 601-bis (trafficking in organs taken from a living person) and 602 (purchase and sale of slaves) of the Criminal Code, Article 12(3-bis) of Legislative Decree no. 286/1998 (offences concerning violations of the provisions on illegal immigration and rules on the status of foreigners), as well as Articles 22(3) and (4) and 22-bis(1) (sanctions relating to trafficking in organs for transplantation; *reference to Article 601-bis of the Criminal Code pursuant to Article 7 of Legislative Decree no. 21/2018*), imprisonment from five to fifteen years in the cases provided for in the first paragraph and from four to nine years in the cases provided for in the second paragraph shall apply. If the criminal association is aimed at committing any of the offences referred to in Articles 600-bis (child prostitution), 600-ter (child pornography), 600-quater (possession of pornographic material), 600-quater-1 (virtual pornography), 600-quinquies (tourist initiatives aimed at exploiting child prostitution), 609-bis (sexual assault), when the act is committed to the detriment of a minor under the age of eighteen, 609-quater (sexual acts with a minor), 609-quinquies (corruption of a minor), 609-octies (group sexual assault), when the act is committed to the detriment of a minor under the age of eighteen, 609-undecies (grooming) of the Criminal Code, imprisonment from four to eight years in the cases provided for in the first paragraph and from two to six years in the cases provided for in the second paragraph is applied.

Penalties applicable to the Entity:

- financial sanction: from 400 to 1000 shares;
- disqualification sanctions (for a period of no less than one year): disqualification from exercising the activity; suspension or revocation of authorisations, licences or concessions functional to the commission of the offence; prohibition from contracting with the public administration, except in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and revocation of those already granted; prohibition from advertising goods or services.

Mafia-type associations, including foreign ones (Article 416-bis of the Criminal Code)

Whoever is part of a mafia-type association formed by three or more persons is punished with imprisonment from ten to fifteen years. The article punishes with imprisonment from twelve to eighteen years those who promote or constitute or organise the association. An association is considered to be of a mafia type when its members make use of the intimidating power of the association and of the condition of subjugation and of the code of silence deriving therefrom, in order to commit offences, to directly or indirectly acquire the management or control of economic activities, concessions, authorisations, contracts and public services or to obtain unjust profits or advantages for themselves or for others, or in order to prevent or hinder the free exercise of the vote or to procure votes for themselves or for others on the occasion of elections. If the association is armed, the penalty is imprisonment from twelve to twenty years in the cases provided for in the first paragraph and from fifteen to twenty-six years in the cases provided for in the second paragraph. The association is considered armed when the participants have the availability, for the achievement of the association's purpose, of weapons or explosive materials, even if concealed or kept in a storage place.

Penalties applicable to the Entity:

- financial sanction: from 400 to 1000 shares;
- disqualification sanctions (for a period of no less than one year): disqualification from exercising the activity; suspension or revocation of authorisations, licences or concessions

functional to the commission of the offence; prohibition from contracting with the public administration, except in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and revocation of those already granted; prohibition from advertising goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Criminal association for the purpose of smuggling foreign processed tobacco (Article 291-quater of Presidential Decree No. 43/73)

Criminal association for the purpose of smuggling foreign processed tobacco occurs when three or more persons associate in order to commit several offences among those provided for in Article 291-bis of the Criminal Code (which punishes whoever introduces, sells, transports, purchases or holds in the territory of the State a quantity of smuggled foreign processed tobacco exceeding ten conventional kilograms). Those who promote, constitute, direct, organise or finance the association are punished, for this alone, with imprisonment from three to eight years.

Penalties applicable to the Entity:

- financial sanction: from 400 to 1000 shares;
- disqualification sanctions (for a period of no less than one year): disqualification from exercising the activity; suspension or revocation of authorisations, licences or concessions functional to the commission of the offence; prohibition from contracting with the public administration, except in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and revocation of those already granted; prohibition from advertising goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Association for the purpose of illegal trafficking in narcotic and psychotropic substances (Article 74 of Presidential Decree 309/90)

The purpose of association is the illegal trafficking of narcotic or psychotropic substances when three or more persons associate with a view to committing several offences among those provided for in Article 73 of Presidential Decree no. 309/90 (production, trafficking and illegal possession of narcotic or psychotropic substances). Whoever promotes, sets up, directs, organises or finances the association is liable to imprisonment for no less than twenty years.

Penalties applicable to the Entity:

- financial sanction: from 400 to 1000 shares;
- disqualification sanctions (for a period of no less than one year): disqualification from exercising the activity; suspension or revocation of authorisations, licences or concessions functional to the commission of the offence; prohibition from contracting with the public administration, except in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and revocation of those already granted; prohibition from advertising goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Provisions against illegal immigration (Art. 12, paras. 3, 3-bis, 3-ter, 5 Legislative. Decree 286/98)

Article 12 of the Consolidated Act, as per Legislative Decree no. 286/98, first of all provides for the offence of aiding and abetting clandestine immigration, which consists of anyone who "*in violation of the provisions of this Consolidated Act ... carries out acts intended to procure the entry of a foreigner into the territory of the State*". The second case, contained in Article 12 and known as aiding and abetting clandestine emigration, consists in the fact of anyone who "*performs (...) acts aimed at procuring illegal entry into another State of which the person is not a citizen or does not have the right of permanent residence*". The legislator provides for a higher penalty when the facts of aiding and abetting illegal immigration or aiding and abetting illegal emigration are carried out 'in *order to ensure profit, even indirectly*'.

Paragraph 3-bis of Article 12 provides for an increase in the penalties referred to in the first and third paragraphs if:

- *"the act concerns the illegal entry or stay in the territory of the State of five or more persons;*
- *in order to procure unlawful entry or stay, the person was exposed to danger to his life or safety;*
- *the person was 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 persons acting in concert with each other or by using international transport services or documents that are forged or altered or in any case unlawfully obtained;*
- *the perpetrators have the availability of weapons or explosive materials".*

Paragraph 3-ter of Article 12 provides that the penalties are also increased "*if the acts referred to in the third paragraph are committed with a view to recruiting persons to be used for prostitution or in any case for sexual exploitation, or concern the entry of minors to be used in unlawful activities in order to favour their exploitation*".

The fifth paragraph of art. 12 provides for a further hypothesis of criminal offence, known as aiding and abetting illegal stay, consisting of the fact of those who "*in order to obtain an unfair profit from the illegal condition of the foreigner or in the context of the activities punished under this article, aid and abet the permanence of the latter in the territory of the State in violation of the rules of this Consolidated Act*".

Penalties applicable to the Entity:

- financial sanction: from 200 to 1000 shares;
- disqualification sanctions (for a period not exceeding 2 years): 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, except in order to obtain the provision of a public service; exclusion from subsidies, financing, contributions or grants and revocation of those already granted; prohibition from advertising goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Inducement not to make statements or to make false statements to the judicial authorities (Article 377-bis of the Criminal Code)

For a description of the offence, see the section on offences against the Public Administration.

Penalties applicable to the Entity:

- financial sanction: up to 500 shares.

Aiding and abetting (Article 378 of the Criminal Code)

Article 378 of the Criminal Code punishes the conduct of anyone who, after committing a crime for which the law establishes life imprisonment or imprisonment, and outside cases of complicity in the same, helps someone to evade the investigations of the authorities or to evade the latter's searches. The provisions of this article shall also apply when the person aided is not imputable or is found not to have committed the crime. It is necessary, in order for the offence to be committed, that the aiding conduct of the abettor is at least potentially damaging to the investigations of the authorities.

Penalties applicable to the Entity:

- financial sanction: up to 500 shares.

For the offences envisaged and punished by Articles 377-bis and 378 of the Criminal Code, please refer to the provisions in the section on crimes against the Public Administration.

ORGANISED CRIME OFFENCES (ART. 24-TER OF THE DECREE)

Law no. 94 of 15 July 2009 ("*Provisions on public security*") extended, by introducing Article 24-ter into Legislative Decree 231/2001, the administrative liability of entities to offences arising from organised crime committed in the territory of the State, even if they do not meet the transnationality requirement.

The article includes the following offences:

Criminal association (Article 416 of the Criminal Code)

For a description of the crime in question, see the previous paragraph.

Penalties applicable to the Entity:

- Financial sanction: for the first five paragraphs of Article 416 of the Criminal Code, from 300 to 800 shares; for the sixth paragraph of Article 416 of the Criminal Code, from 400 to 1000 shares;
- disqualification sanctions (for a period of no less than one year): disqualification from exercising the activity; suspension or revocation of authorisations, licences or concessions functional to the commission of the offence; prohibition from contracting with the public administration, except in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and revocation of those already granted; prohibition from advertising goods or services.

Mafia-type associations, including foreign ones (Article 416-bis of the Criminal Code)

For a description of the crime in question, see the previous paragraph.

Penalties applicable to the Entity:

- financial sanction: from 400 to 1000 shares;
- disqualification sanctions (for a period of no less than one year): disqualification from exercising the activity; suspension or revocation of authorisations, licences or concessions functional to the commission of the offence; prohibition from contracting with the public administration, except in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and revocation of those already granted;

prohibition from advertising goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Political-mafia electoral exchange (Article 416-ter of the Criminal Code)[52]

The first paragraph of the criminal law under review punishes anyone who accepts, directly or through intermediaries, the promise to procure votes from persons belonging to the associations referred to in Article 416-bis or through the modalities set out in the third paragraph of Article 416-bis in exchange for the disbursement or promise of disbursement of money or any other benefit or in exchange for the willingness to satisfy the interests or needs of the mafia association. The same punishment applies to anyone who promises, directly or through intermediaries, to procure votes in the cases referred to in the first paragraph. If the person who has accepted the promise of votes, as a result of the agreement referred to in the first paragraph, has been elected in the relevant election, the penalty provided for in the first paragraph of Article 416-bis shall apply, increased by half.

Penalties applicable to the Entity:

- financial sanction: from 400 to 1000 shares;
- disqualification sanctions (for a period of no less than one year): disqualification from exercising the activity; suspension or revocation of authorisations, licences or concessions functional to the commission of the offence; prohibition from contracting with the public administration, except in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and revocation of those already granted; prohibition from advertising goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Kidnapping for the purpose of robbery or extortion (Article 630 of the Criminal Code)

The provision punishes anyone who kidnaps a person in order to obtain, for himself or for others, an unfair profit as the price of release. If the kidnapping results in the death of the kidnapped person as an unintended consequence of the offender, the offender shall be punished by imprisonment of thirty years. If the offender causes the death of the kidnapped person, the penalty shall be life imprisonment. The penalties provided for in Article 605 shall be applied to the perpetrator who, disassociating himself/herself from the others, endeavours to ensure that the victim regains his/her freedom, without this being the consequence of the price of the liberation. If, however, the kidnapped person dies as a result of the kidnapping after being released, the penalty shall be imprisonment for a term of between six and fifteen years. In the case of an accomplice who, by dissociating himself/herself from the others, acts, outside the case provided for in the previous paragraph, to prevent the criminal activity from having further consequences, or concretely helps the police or judicial authorities in gathering decisive evidence for the identification or capture of the accomplices, life imprisonment shall be replaced by imprisonment of from twelve to twenty years and the other penalties shall be reduced by one third to two thirds.

Penalties applicable to the Entity:

- financial sanction: from 400 to 1000 shares;
- disqualification sanctions (for a period of no less than one year): disqualification from exercising the activity; suspension or revocation of authorisations, licences or concessions

[52] The incriminating provision under review was amended by Law No. 43 of 21 May 2019.

functional to the commission of the offence; prohibition from contracting with the public administration, except in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and revocation of those already granted; prohibition from advertising goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Association for the purpose of illegal trafficking in narcotic and psychotropic substances (Article 74 of Presidential Decree No 309/90)

For a description of the offence in question, see the previous paragraph.

Penalties applicable to the Entity:

- financial sanction: from 400 to 1000 shares;
- disqualification sanctions (for a period of no less than one year): disqualification from exercising the activity; suspension or revocation of authorisations, licences or concessions functional to the commission of the offence; prohibition from contracting with the public administration, except in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and revocation of those already granted; prohibition from advertising goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Illegal manufacture, introduction into the State, sale, transfer, possession and carrying in a public place or a place open to the public of military weapons or warlike weapons or parts thereof, explosives, illegal weapons as well as more common firearms (Article 407(2)(a)(5) of the Code of Criminal Procedure)

Article 24-ter of the Decree also mentions as predicate offences the offences of illegal manufacture, introduction into the State, sale, transfer, possession and carrying in a public place or a place open to the public of military weapons or warlike weapons or parts thereof, explosives, clandestine weapons, as well as more common firing weapons, excluding those provided for in Article 2(3) of Law no. 110 of 18 April 1975.

Penalties applicable to the Entity:

- financial sanction: from 300 to 800 shares;
- disqualification sanctions (for a period of no less than one year): disqualification from exercising the activity; suspension or revocation of authorisations, licences or concessions functional to the commission of the offence; prohibition from contracting with the public administration, except in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and revocation of those already granted; prohibition from advertising goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

As regards the aforementioned hypotheses of transnational offences and organised crime offences, it is considered that the activity carried out by the Company does not present, in relation to the aforementioned types of offence, risk profiles such as to make it reasonably well founded that they may be committed in the interest or to the advantage of the Company, with the exception of **Article 416 of the Criminal Code ("Criminal association",** both national and transnational) **and the offences provided for and punished by Articles 377-bis ("Inducement not to make statements or**

to make false statements to the judicial authority") and 378 of the Criminal Code ("Aiding and abetting"), for which reference should be made to the provisions already set out in the section on offences against the Public Administration and offences against individual freedom.

CRIMES OF COUNTERFEITING MONEY, PUBLIC CREDIT CARDS, REVENUE STAMPS AND IDENTIFICATION INSTRUMENTS OR SIGNS (ARTICLE 25-BIS, LEGISLATIVE DECREE 231/2001)

Article 6 of Law Decree no. 350 of 25 September 2001, converted into law, with amendments, by Law no. 409 of 23 November 2001, included in Article 25-bis of Legislative Decree 231/2001 the offences described below.

Counterfeiting of money, spending and introduction into the State of counterfeit money (Article 453 of the Criminal Code)

The provision punishes the counterfeiting, i.e., the alteration of (national or foreign) currency, the introduction into the State of altered or counterfeit currency, the purchase of counterfeit or altered currency for the purpose of putting them into circulation, the unlawful manufacture of quantities of currency exceeding the requirements[53].

Penalties applicable to the Entity

- financial sanction: from 300 to 800 shares;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Alteration of currency (Article 454 of the Criminal Code)

The provision punishes any person who alters currency by diminishing their value in any way, or who, in respect of the currency thus altered, commits one of the acts referred to in the preceding Article.

Penalties applicable to the Entity

- financial sanction: up to 500 shares;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

[53] Legislative Decree No. 125/2016 amended Article 453 of the Criminal Code by adding after the first paragraph the following: "The same punishment shall apply to anyone who, legally authorised to produce, unduly manufactures, abusing the instruments or materials at his disposal, quantities of currency in excess of the prescriptions. The punishment is reduced by one third when the conduct referred to in the first and second paragraphs relates to currency which is not yet legal tender and the initial term of the same is determined".

Spending and introduction into the State of counterfeit money (Article 455 of the Criminal Code)

The provision punishes anyone who, other than in the cases provided for in the preceding Articles, introduces into the territory of the State, acquires or holds counterfeit or altered currency for the purpose of spending it or putting it into circulation in any way.

Penalties applicable to the Entity

- financial sanction: the financial sanctions provided for in Articles 453 and 454 of the Criminal Code, reduced by one third to one half;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Spending of counterfeit money received in good faith (Article 457 of the Criminal Code)

The provision punishes those who spend or otherwise put into circulation counterfeit or altered coins received in good faith.

Penalties applicable to the Entity

- financial sanction: up to 200 shares.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Forgery of official stamps, introduction into the State, purchase, possession or putting into circulation of forged official stamps (Article 459 of the Criminal Code)

The provision punishes the conduct set out in Articles 453, 455 and 457 of the Criminal Code also in relation to the counterfeiting or alteration of revenue stamps and the introduction into the territory of the State, purchase, possession and circulation of counterfeit revenue stamps.

Penalties applicable to the Entity:

- financial sanction: the financial sanctions provided for in Articles 453, 455, 457 and 464(2) of the Criminal Code, reduced by one third;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Forgery of watermarked paper used for the manufacture of public credit cards or official stamps (Article 460 of the Criminal Code)

The provision punishes the forgery of watermarked paper used in the manufacture of public credit cards or stamps, as well as the purchase, possession and sale of such forged paper.

Penalties applicable to the Entity

- financial penalty: up to 500 shares;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing,

contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Manufacture or possession of watermarks or instruments intended for the forgery of money, official stamps or watermarked paper (Article 461 of the Criminal Code[54])

The provision punishes the manufacture, purchase, possession or disposal of watermarks, computer tools, or tools intended solely for the forgery or altering of currency, official stamps or watermarked paper, as well as holograms or other components of currency intended to protect against forgery or alteration.

Penalties applicable to the Entity

- financial sanction: up to 500 shares;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Use of forged or altered revenue stamps (Article 464 of the Criminal Code)

The provision punishes the use of forged or altered stamps, even if received in good faith.

Penalties applicable to the Entity

- financial sanction: up to 200 shares.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Law no. 99/2009, laying *down* "*Provisions for the development and internationalisation of enterprises, as well as on energy*" amended the heading of Article 25-bis of the Decree by adding a reference to forgery of instruments or signs of recognition, and inserting in it the offences referred to in Articles 473 and 474 of the Criminal Code, as set out below.

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

The provision punishes the forgery or alteration of trademarks or distinctive signs, national or foreign, of industrial products, or the use of such forged or altered trademarks or signs.

The provision also punishes the forgery or alteration of industrial patents, designs or models, whether national or foreign, or the use of such forged or altered patents, designs or models.

The offences provided for in the first and second paragraphs shall be punishable provided that the provisions of domestic laws, Community regulations and international conventions on the protection of intellectual or industrial property have been complied with.

The offence referred to in Article 473 of the Criminal Code is a crime of concrete danger, since the objective element of the offence does not require actual damage to public faith, but requires the specific offensive capacity of the conduct, i.e., the actual risk of confusion for the generality of

[54] Legislative Decree No. 125/2016 amended Article 461 of the Criminal Code, first paragraph to the following effect: "1) after the word: "programmes", the following shall be inserted: "and data"; 2) the word: "exclusively" shall be deleted".

consumers. The registration of the trademark/patent, according to internal rules, Community and international regulations, is an essential element for the integration of the offence.
Penalties applicable to the Entity

- financial sanction: up to 500 shares;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

Introduction into the State and trade of products with false signs (Article 474 of the Criminal Code)

The provision punishes, apart from cases of complicity in the offences provided for in Article 473, the introduction into the territory of the State, with a view to making a profit, of industrial products with counterfeit or altered trademarks or other distinctive signs, whether national or foreign.
The provision also punishes, apart from cases of complicity in counterfeiting, the alteration, introduction into the territory of the State, holding for sale, putting on sale or otherwise putting into circulation, with a view to making a profit, of products referred to in the first paragraph.
The offences provided for in the first and second paragraphs shall be punishable provided that the provisions of domestic laws, Community regulations and international conventions on the protection of intellectual or industrial property have been complied with.
The case referred to in Article 474 of the Criminal Code is subsidiary to that of Article 473 of the Criminal Code, i.e., only those who are not complicit in the counterfeiting may be liable for the introduction into the State or the placing on the market. In order to be punishable, there must be a specific intent represented by the profit, and a generic intent relating to awareness of the counterfeiting of another person's trademark.
Penalties applicable to the Entity

- financial sanction: up to 500 shares;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

These offences are designed to protect public faith understood as the public's reliance on trademarks and distinctive signs identifying intellectual or industrial products and guaranteeing their circulation. As regards the aforementioned offences, it is deemed that the activities carried out by the Company do not present, in relation to the aforementioned types of offences, risk profiles such as to make it reasonably well founded that they may be committed in the interest or to the advantage of the Company, with the exception of **Article 473 of the Criminal Code** ("**Counterfeiting, alteration or use of trademarks or distinctive signs or of patents, models and designs**"), the only offence which may, albeit abstractly, concern the Company's operations.

CRIMES AGAINST INDUSTRY AND TRADE (ARTICLE 25-BIS.1 OF LEGISLATIVE DECREE NO. 231/2001)

Article 15 of Law No. 99 of 23 July 2009 amended Article 25-bis and inserted the following Article 25-bis.1 into Legislative Decree 231/2001, which extends the liability of legal persons for offences to the crimes provided for in the articles described below.

Disturbing the freedom of industry and trade (Article 513 of the Criminal Code)
The provision punishes those who, unless the act constitutes a more serious offence, use violence against property or fraudulent means to prevent or disrupt the operation of a business or trade. The offence alternatively provides for the use of violence against things or fraudulent means to prevent or disrupt the exercise of an industry or trade. The conduct shall be aimed at preventing or disrupting an industry or trade; therefore, the offence is committed in advance, since it is not necessary for its completion that the prevention or disruption be actually achieved, provided that the conduct is abstractly suitable for achieving the result.
Penalties applicable to the Entity

- financial sanction: up to 500 shares.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Unlawful competition with threats and violence (Article 513-bis of the Criminal Code)
The provision punishes anyone who, in the exercise of a commercial, industrial or production activity, carries out acts of competition with violence or threats. The legal asset protected by the provision consists in the proper functioning of the entire economic system, in order to prevent the very prerequisites of fair competition from being jeopardised by violent or intimidating conduct.
Penalties applicable to the Entity

- financial sanction: up to 800 shares;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Fraud against national industry (Article 514 of the Criminal Code)
The provision punishes anyone who sells or otherwise puts into circulation, on domestic or foreign markets, industrial products with counterfeit or altered names, trademarks or distinctive signs, which cause damage to national industry. This offence is aimed at protecting the economic order and, more particularly, national production. The harm to the national industry may take the form of any form of injury, whether in the form of loss of profit or of consequential damage (i.e., loss of business in Italy or abroad, loss of business, tarnishing of the good name of the industry in relation to the product in question or to fair trading).
Penalties applicable to the Entity

- financial sanction: up to 800 shares;

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

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Fraud in the exercise of trade (Article 515 of the Criminal Code)
The provision punishes anyone who, in the exercise of a commercial activity or in a shop open to the public, delivers to the purchaser a a chattel for another, or chattel of origin, source, quality or quantity other than that stated or agreed, unless such conduct constitutes a more serious offence.
The offence, therefore, concerns the so-called delivery of *aliud pro alio*, i.e., one thing for another. The protected good is the fair trade.
The offence in question is completed with the delivery of the chattelm delivery being understood to mean not only the *traditio of* the property but also the mere handing over of the document representing it (consignment note, pledge policy) when civil law or commercial usage equates the handing over of the document with *traditio*.
Penalties applicable to the Entity

- financial sanction: up to 500 shares.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Sale of non-genuine foodstuffs as genuine (Article 516 of the Criminal Code)
The interest protected by this rule is again good faith in trade. The term "genuineness" means, on the one hand, the conformity of the product with the legal requirements of the sectoral regulations and, on the other hand, the integrity and non-alteration of the substantial characteristics of the goods.
Awareness of the non-genuine nature of the substance and the intention to present it as genuine is required for the offence to be committed.
Penalties applicable to the Entity

- financial sanction: up to 500 shares.

In relation to ASPI's activities, the offence in question is not abstractly conceivable for the Company.

Sale of products with misleading signs (Article 517 of the Criminal Code)
The provision punishes the conduct of offering for sale or otherwise circulating intellectual works or industrial products with names, trademarks or distinctive signs, whether domestic or foreign, that are likely to mislead the buyer as to the origin, source or quality of the work or product.
This provision differs from the previous cases under Articles 473 and 474 of the Criminal Code, in that it punishes conduct relating to trademarks/distinctive signs which, although not imitating other registered trademarks/distinctive signs, are nevertheless likely to mislead consumers. Therefore, the protected interest is not the protection of trademarks but the protection of consumers.
In order for the offence in question to be committed, the imitated product must be misleading, i.e., the product must be capable of misleading the consumer of average diligence, and it is not important that the consumer should suffer concrete damage (case of concrete danger).
Penalties applicable to the Entity

- financial sanction: up to 500 shares.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Manufacture and trade of goods made by usurping industrial property rights (Article 517-ter of the Criminal Code)

The provision punishes the person who, being aware of the existence of an industrial property right, manufactures or industrially uses objects or other goods made by usurping an industrial property right or in violation thereof. The offence may be committed when the cases referred to in Articles 473 and 474 of the Criminal Code are excluded. The legal asset protected by the provision relates to the right to exploit industrial property rights, i.e., trademarks and other distinctive signs, geographical indications, appellations of origin, designs and models, inventions, utility models, topographies of semi-conductor products, confidential business information. "Usurpation" occurs when the agent does not own any right to the thing and manufactures/markets the good anyway; on the other hand, there is "infringement of title" when the rules on the existence, scope and exercise of industrial property rights set out in Chapter II of the Industrial Property Code (Legislative Decree no. 30 of 10 February 2005) are not complied with.

Penalties applicable to the Entity

- financial sanction: up to 500 shares.

Counterfeiting of geographical indications or designations of origin of agri-food products (Article 517-quater of the Criminal Code)

The provision punishes the counterfeiting or alteration of geographical indications or designations of origin of agri-food products; the introduction into the territory of the State, the holding for sale, the offering for sale directly to consumers and the putting into circulation, for profit, of products with counterfeit indications or designations. The offences in question are punishable provided that the rules of internal laws, Community regulations and international conventions on the protection of geographical indications and designations of origin of agri-food products have been complied with.

Penalties applicable to the Entity

- financial sanction: up to 500 shares.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

As regards the aforementioned offences, it is deemed that the activities carried out by the Company do not present, in relation to the aforementioned types of offences, risk profiles such as to make it reasonably well founded that they may be committed in the interest or to the advantage of the Company, with the exception of **Article 517-ter of the Criminal Code** ("**Manufacture and trade of goods made by usurping industrial property rights**"), the only type of offence which may, albeit abstractly, concern the Company's operations.

COPYRIGHT INFRINGEMENT OFFENCES (ARTICLE 25-NOVIES OF LEGISLATIVE DECREE 231/2001)

Law no. 99 of 23 July 2009, setting out "*Provisions for the development and internationalisation of*

enterprises and in the field of energy", known as the "Development-Energy Law", in force since 15 August 2009, made a further addition to the legislative *corpus of* Legislative Decree 231/2001, introducing art. 25-novies, which extends the Entity's administrative liability to the offences covered by Law 633/41 on the "*protection of copyright and other rights related to its exercise*", with specific reference to the provisions of the following articles: Article 171, paragraph 1, letter a-bis) and paragraph 3, Law 633/1941); Article 171-bis Law 633/1941; Article 171-ter Law 633/1941; Article 171-septies Law 633/1941; Article 171-octies Law 633/1941.

Article 171(1) (a-bis) and (3) (L. No. 633/1941)

The provision punishes the conduct of providing to the public, by entering a system of telematics networks and through connections of any kind, a protected intellectual work or part of it. This provision protects the patrimonial interest of the author of the work, who may see his expectations of profit frustrated in the event of free circulation of his work on the network.

Penalties applicable to the Entity

- financial sanction: up to 500 shares;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

Article 171-bis (Law No. 633/1941)

The provision punishes whoever unlawfully duplicates, for the purpose of ensuring a profit, computer programs or for the same purpose imports, distributes, sells, holds for commercial or entrepreneurial purposes or leases programs contained on media not marked by the Italian Society of Authors and Publishers (SIAE); or who, in order to gain profit, on supports not marked by the Italian Society of Authors and Publishers (SIAE) reproduces, transfers to another support, distributes, communicates, presents or shows in public the content of a database in violation of the provisions of Articles 64-quinquies and 64-sexies, or extracts or reuses the database in violation of the provisions of Articles 102-bis and 102-ter, or distributes, sells or rents a database.

This provision is intended to protect software and databases under criminal law. The term 'software' means computer programs, in any form whatsoever, provided that they are original and the result of the author's intellectual creation, while 'databases' means collections of works, data or other independent elements, systematically or methodically arranged and individually accessible by electronic means or otherwise.

Penalties applicable to the Entity

- financial sanction: up to 800 shares;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

Article 171-ter (Law No. 633/1941)

This provision is aimed at protecting a large number of original works, including those intended for the radio, television and film circuit, as well as musical, literary, scientific or educational works. The conditions of criminality concern the non-personal use of the original work and the specific intent to

make a profit.

Penalties applicable to the Entity

- financial sanction: up to 800 shares;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Article 171-septies (Law No. 633/1941)

The provision punishes producers or importers of media not subject to the marking referred to in article 181-bis, who do not communicate to the SIAE within thirty days from the date of placing on the market in the national territory or importing the data necessary for the unambiguous identification of the media; or anyone who falsely declares that the obligations referred to in article 181-bis, paragraph 2, of this law have been fulfilled.

The provision in question is designed to protect the control functions of the SIAE, with a view to protecting copyright in advance. It is therefore an obstruction offence which is committed by the mere breach of the obligation to notify.

Penalties applicable to the Entity

- financial sanction: up to 800 shares;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Article 171-octies (Law No. 633/1941)

The provision punishes whoever, for fraudulent purposes, produces, offers for sale, imports, promotes, installs, modifies, uses for public and private use equipment or parts of equipment for decoding audio-visual transmissions with conditional access broadcast over the air, via satellite, via cable, in both analogue and digital form. Conditional access means all audio-visual signals transmitted by Italian or foreign broadcasters in such a way as to make them visible exclusively to closed groups of users selected by the party issuing the signal, irrespective of the imposition of a fee for the use of such service.

Penalties applicable to the Entity

- financial sanction: up to 800 shares;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

In relation to ASPI's activities, the offence in question is not conceivable for the Company.

Among the offences covered by art. 25-novies on copyright infringement, **art. 171, para. 1, letter a-**

bis) and para. 3, 171-bis, para. 1 of Law 633/1941 are applicable to ASPI.
These offences are offences that can be abstractly envisaged for the Company, given the possible effective savings in terms of costs for the purchase of licences for the use of software that it could obtain in the event of the hypothetical commission of the offence.

TAX CRIMES (ARTICLE 25-QUINQUIESDECIES OF THE DECREE)

Law no. 157 of 19 December 2019, converting with amendments Decree-Law no. 124/2019 containing "*Urgent provisions on tax matters and for unavoidable needs*", published in the Official Gazette no. 301 of 24 December 2019, provides for, among the various "*amendments to the criminal regulations and administrative liability of entities*", the introduction into the catalogue of predicate offences of Legislative Decree no. 231/2001, of the following incriminating cases:

- *"fraudulent declaration by means of invoices or other documents for non-existent transactions*' (Article 2(1) and (2-bis) of Legislative Decree 74/2000);
- "*fraudulent declaration by means of other devices*" (Article 3 of Legislative Decree No 74/2000);
- *"issue of invoices or other documents for non-existent transactions*' (Article 8(1) and (2-bis) of Legislative Decree 74/2000);
- "*concealment or destruction of accounting documents*" (Article 10 of Legislative Decree No 74/2000);
- "*fraudulent evasion of tax payments*' (Article 11 of Legislative Decree 74/2000).

More specifically, the aforementioned law includes in Decree 231 Article 25-quinquiesdecies entitled "*Tax offences*".
Lastly, on 15 July 2020, Legislative Decree No. 75 of 14 July 2020 on "*Implementation of Directive (EU) 2017/1371 on the fight against fraud affecting the financial interests of the Union by means of criminal law was* published in the Official Journal (No. 177)", which entered into force on 30 July 2020.
The main changes introduced with the above-mentioned Decree, as far as it is relevant here, concern:
- the amendment of Article 6 of Legislative Decree no. 74/2000, which in the new version also punishes as an attempt the tax offences referred to in Articles 2 ("*Fraudulent declaration by means of invoices or other documents for non-existent transactions")*, 3 ("*Fraudulent declaration by means of other devices*") and 4 ("*Untrue declaration*"), if carried out also in the territory of another EU Member State, in order to evade value added tax for a total value of at least ten million euro;
- the inclusion in Article 25-quinquiesdecies of Legislative Decree no. 231/2001 of the offences provided for and punished by Articles 4 ("*Untrue declaration")*, 5 ("*Omitted declaration*") and 10-quater ("*Undue compensation*") of Legislative Decree no. 74/2000, if committed within the framework of cross-border fraudulent systems and with the aim of evading value added tax for a total amount of not less than ten million euro.

It should be noted, in general, that the violation of the obligation to truthfully disclose the income situation and the taxable amounts is the basis, in particular, of three types of crime provided for by Legislative Decree no. 74/2000, which constitute the infrastructure of the repressive system: fraudulent declaration through the use of invoices or other documents for non-existent transactions (Article 2) or through other devices (Article 3), hypotheses relating to declarations that are not only false, but also characterised by a particular coefficient of "insidiousness"; false declaration (Article 4)

and, finally, failure to declare (Art. 5).
These offences are flanked by three "collateral" offences, of equally significant damaging potential, aimed at targeting the issuance of invoices or other documents for non-existent transactions in order to allow third parties to evade (Article 8), the concealment or destruction of accounting documents so as not to allow the reconstruction of income or turnover (Article 10) and, finally, the evasion of forced tax collection through the performance of fraudulent acts on one's own or other people's property (Article 11).
With a view to limiting the use of criminal sanctions, the above-mentioned offences remain subject - with the exception of fraudulent misrepresentation through the use of invoices or other documents for non-existent transactions, the issuance of such documents and the concealment or destruction of accounting records - to thresholds of criminality designed to limit punitive intervention to offences of significant economic importance.

Fraudulent declaration through the use of invoices or other documents for non-existent transactions

The offence in question is provided for and punished by Article 2, Legislative Decree no. 74/2000.[55]
The purpose of this provision is to punish anyone who, in order to evade income tax or value added tax, uses invoices or other documents for non-existent transactions to enter fictitious taxable items in one of the declarations relating to those taxes.
The case in question was introduced by the criminal-tax reform of year 2000 and implements a real turning point with respect to the previous legislation, assuming, as a strategic objective, that of limiting criminal repression only to facts directly related, both objectively and subjectively, to the violation of tax interests, with a correlated renunciation of the criminalisation of merely "formal" and "preparatory" violations.
As for the other offences covered by Legislative Decree no. 74/2000, the legal asset protected by the case under review coincides with the interest of the Revenue Agency in the collection of taxes, unlike the provisions of the previous law of 1982, which mainly protected the interest of the Revenue in the proper conduct of the tax assessment action.
The active subject of the offence can only be a person who is a taxpayer for the purposes of direct taxes and VAT, or is a director, liquidator or representative of a company, body or natural person or a tax substitute, in the cases provided for by law (Article 1(1)(c) of Legislative Decree No. 74/2000).
Article 2 of Legislative Decree no. 74/2000 also constitutes an offence of danger or of mere conduct, the legislature having intended to strengthen the protection of the protected legal asset by bringing it forward to the time when the typical conduct is committed (Criminal Court of Cassation, SS.U., 19 January 2011, judgment no. 1235).
With specific regard to the subjective element, the offence is punishable by specific intent as it is characterised by the aim of evading income or value added tax.
The offence therefore occurs both when the declaration is used to reduce the tax paid at the same time (or to set it at zero) and when the declaration is used to justify a credit to the tax authorities.
The untrue declaration shall be supported by full knowledge of the non-existence of the passive transactions taken into account to determine the final result set out therein, as well as by the intention to use it as an instrument to represent the false result declared as corresponding to impeccable accounts.

[55] "(1) Any person who, in order to evade taxes on income or on value added, by means of invoices or other documents for non -existent transactions, indicates in one of the declarations47 relating to such taxes fictitious passive elements shall be punished by imprisonment from four to eight years. 2. The fact shall be deemed to have been committed by availing oneself of invoices or other documents for non-existent transactions when such invoices or documents are recorded in the compulsory accounting records, or are held for the purpose of providing evidence to the tax authorities. 2-bis If the amount of the fictitious liabilities is lower than one hundred thousand euro, the imprisonment from one year and six months to six years shall apply".

Moreover, the offence in question is an instantaneous offence and takes place at the time the tax return is submitted (Criminal Court of Cassation, Section II, 2 November 2010, no. 42111).

Indeed, the preparation and registration of documents certifying non-existent transactions are merely preparatory conducts and are not punishable, not even by way of attempt, by express provision of the legislator: "*the offences provided for in Articles 2, 3 and 4 are not punishable by way of attempt*" (Article 6 of Legislative Decree no. 74/2000).[56]

On this point, it should be noted that under the new version of Article 6 of Legislative Decree no. 74/2000, the tax offences set out in Articles 2 ("*Fraudulent declaration by means of invoices or other documents for non-existent transactions*"), 3 ("*Fraudulent declaration by means of other devices*") and 4 ("*Unlawful declaration*") are also punishable as attempts, if carried out even in the territory of another EU Member State, in order to evade value added tax for a total value of at least ten million euro.[57]

On the other hand, as regards the definition of invoice or document issued for non-existent transactions, the same is provided by letter a) of Article 1 of Legislative Decree no. 74/2000, according to which "invoices or other documents *for non-existent transactions are invoices or other documents of similar probative value under tax law, issued in respect of transactions not actually carried out in whole or in part or which indicate the consideration or value added tax in excess of the actual amount, or which refer the transaction to persons other than the actual ones"*

With regard to the relationship of subsidiarity between Article 2 and Article 3 of Legislative Decree no. 74/2000, the Supreme Court has clarified that the distinctive element between the two offences is to be found in the evidentiary effectiveness of the invoices or other documents for non-existent transactions used for the fraudulent declaration in the presence of which the offence under Article 2 is committed instead of that under Article 3 (Court of Cassation, Section III, 19 December 2011 no. 46785 and 23 March 2007 no. 12284).

It is also considered, also on the basis of the considerations set out in Report No. III/05/2015 of 28 October 2015 of the Office of the Supreme Court, that the criterion for the attractiveness of the fraudulent transaction to the scope of one or other offence lies in the type of fictitious documentation used.

The very literal wording of Article 3 - the opening words of which state "*Except in the cases provided for in Article 2*" - argues, in fact, in favour of a logical path which implies first of all the verification of the possible relevance of the transaction identified to the case typified by Article 2, on the basis of the existence or otherwise of "*invoices or other documents having similar probative value*" and then, if not, to that of Article 3.

In the light of the above regulatory definition, it therefore emerges that:

- In addition to invoices, other tax-relevant documents (receipts, notes, accounts, bills, contracts, transport documents, debit and credit notes) may also constitute an offence;
- the falsity of[58] these documents is relevant both objectively and subjectively.

[56] On this point, with judgment no. 21025 filed on 21 May 2015, the Supreme Court ruled that the mere performance of preparatory and prodromal acts with respect to the submission of the tax return (such as the preparation of accounting records and the recording of false invoices), even if functional to the commission of the offence itself, cannot be equated with typical conduct. On the contrary, the general approach of the criminal tax legislation, as referred to above, requires to exclude that such conduct, considered per se, can have criminal relevance. With respect to this offence (of mere conduct, instantaneous and damaging in nature), it is nevertheless possible for those who, although extraneous and not holding an office in the company to which the declaration refers, have in any way instigated or determined the person required to submit the declaration to carry out the typical action, to take part in it. Therefore, a person who simply holds the invoices relating to fictitious transactions issued by others or records them in the accounts without transferring the results to the declaration cannot be held criminally liable even on the grounds of attempt.

49 For a comment on the above conditions, please refer to the section devoted to the examination of the offence of false declaration

[57] For a comment on the above conditions, please refer to the section devoted to the examination of the offence of false declaration

[58] The offence of "tax fraud" provided for in Article 2 of Legislative Decree no. 74/2000 occurs whenever the taxpayer, in order to make a fraudulent declaration, makes use of invoices or other documents certifying transactions not actually carried out, regardless of whether the falsity is ideological or material. (cf. in this sense, Criminal Court of Cassation, judgment no. 6360 of 11 February 2019).

An invoice is objectively false when it documents transactions that were not actually carried out in whole or in part.

More specifically, an objectively non-existent transaction occurs in two cases:

- when the invoices document a transaction that was never fully carried out (so-called absolute or total objective non-existence);
- when the invoices document a transaction that was only partly carried out, i.e., in terms of quantities different and lower than those represented on paper (relative or partial objective non-existence).

In the aforementioned cases, the transaction, although totally or partially non-existent in material terms, allows the user to obtain an undue tax advantage (both for direct taxation and VAT purposes), through the indication in the relevant declarations of fictitious taxable items, which will ensure him to minimise his income.

A subjectively non-existent invoice[59], on the other hand, occurs when the documented transactions are between persons other than those formally identified as parties to the transaction.

This is because even the false indication of the issuer and/or the recipient of the invoice invalidates the truthfulness of the documentary evidence of the transaction, allowing the user to deduct costs actually incurred or to deduct VAT on transactions that were never carried out and, however, not documented or not officially documentable for various reasons.

This circumstance occurs more frequently in the case of VAT fraud, in which there are entities that operate only on a 'paper' level, as they have no economic function. [60]

The second paragraph of Article 2 also delimits the contours of the offending conduct, with the obvious aim of avoiding doubts as to its interpretation, especially in view of the fact that there is no obligation to attach to the declaration the documentation justifying the fictitious elements, specifying that the offence is deemed to have been committed by using invoices or other documents for non-existent transactions, when such invoices or documents are recorded in the mandatory accounting records or held for the purpose of providing evidence to the tax authorities.[61]

Finally, it is necessary to analyse a further distinctive element of the offence provided for and punished by Article 2 of Legislative Decree no. 74/2000, namely the applicability of the same regardless of a tax evasion threshold and therefore whatever the amount of tax evaded.

The Constitutional Court recently ruled on this issue in Judgment No. 95 of 2019.

In particular, the judge a pointed out that Article 2 does not lay down any threshold of criminality, unlike the offence of fraudulent declaration by means of other artificial means (Article 3 of Legislative Decree No 74 of 2000) which, on the other hand, lays down two separate thresholds: one referring to the amount of tax evaded, the other to the total amount of the assets removed from taxation, or of the fictitious credits and deductions from tax.

The Court declared that the question of constitutionality was unfounded on the basis of the following arguments: firstly, it stated that the definition of criminal offences and the determination of penalties were entrusted to the discretion of the legislature, whose choices could be censured in the context of

[59] Subjective non-existence includes the case of "interposition", whether "fictitious" or "real". The former occurs when the transaction has in fact taken place, but between persons other than those declared, and all the parties to it intend that the effects of the transaction should be produced with respect to a person other than the one who appears in the deed. Fictitious interposition therefore exists when the parties have actually entered into a transaction, but the latter has been the subject of what, in civil law terms, is known as fictitious transaction (which occurs when an agreement has been made between the parties which differs in fact from the one resulting ex contractu, so as to conceal the actual contracting party). Real interposition, on the other hand, occurs when the effects of the sale are actually produced in the hands of the purchaser and, therefore, there is no fictitious agreement. Therefore, in order for the tax effects to be criminally relevant, it is necessary for a third person to enter into a subsequent transfer transaction in favour of another person. In the case of real interposition, therefore, the interposed person is the person liable for the tax obligation, which arises from the 'underlying fact' which in turn originates from the completion of the legal transaction with the third party; on the other hand, in fictitious interposition, the interposed person is the person liable for the tax obligation.

[60] See in this sense the "*Operational Manual on countering tax evasion and fraud*" no. 1/2018, Volume I, p. 10, of the GdF.

[61] See in this sense the "*Operational Manual on countering tax evasion and fraud*" no. 1/2018, Volume I, p. 152, of the GdF.

the review of constitutionality only if they were manifestly unreasonable or arbitrary.

Therefore, in relation to the specific case, the Court noted that Article 2 intends to "isolate", among the fraudulent means that can be used to support a false declaration, a specific artifice considered, on the basis of experience, particularly insidious for the interests of the Revenue Agency: This is precisely false invoicing aimed at proving transactions that have not been carried out in whole or in part - either at all, or by the persons to whom they are referred - or with 'inflated' consideration or VAT, with a view to the undue deduction of costs or tax by the taxpayer.

The legislature's intention to rigorously combat the phenomenon is manifested, in the Court's view, in the failure to lay down punishment thresholds for the offence.

This also applies to direct taxes, however, as the invoice (or equivalent document) plays an important role, being the typical instrument through which the taxpayer certifies his right to deduct items of expenditure from his tax base or to make deductions from the tax, in accordance with the provisions of tax legislation or to take advantage of any tax credits.

The Constitutional Court therefore did not consider arbitrary the legislative choice to reserve to this case a distinct and stricter treatment than that provided for in relation to the generality of the other devices covered by Article 3 of Legislative Decree No 74 of 2000.

Penalties applicable to the Entity

- Financial sanction: up to 500 shares for para. 1 and up to 400 shares for para. 2-bis; however, if the Entity has obtained a significant profit, the financial sanction is increased by one third;
- disqualifying sanctions: a ban on contracting with the public administration, except in order to obtain the performance of a public service; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; a ban on advertising goods or services.

Fraudulent declaration by other means

The offence in question is provided for and punished by Article 3 of Legislative Decree no. 74/2000[62]. It is a residual offence with respect to the offence referred to in Article 2[63], which the 2015 reform intended to extend by eliminating the previous requirement of "*false representation in Statutory*

[62] "(1) Apart from the cases provided for in Article 2, a term of imprisonment ranging from three to eight years shall be imposed on any person who, in order to evade taxes on income or value added, by carrying out objectively or subjectively simulated transactions or by using false documents or other fraudulent means likely to obstruct the assessment and mislead the tax authorities, indicates in one of the declarations relating to such taxes assets of an amount lower than the actual amount or fictitious liabilities or fictitious credits and deductions, when, in conjunction with the other persons, the tax authorities have been informed of the existence of such fraudulent means:
(a) the tax evaded exceeds, with reference to any one of the individual taxes, thirty thousand euros;
b) the total amount of the assets removed from taxation, also through the indication of fictitious passive elements, is higher than five per cent of the total amount of the assets indicated in the declaration, or in any case, is higher than one million five hundred thousand Euros, or if the total amount of the fictitious credits and deductions from taxation is higher than five per cent of the amount of the tax itself or in any case, is higher than thirty thousand Euros.
2. The offence shall be regarded as having been committed with the aid of false documents when such documents are recorded in compulsory accounting records or are held for the purposes of providing evidence to the tax authorities.
3. For the purposes of applying paragraph 1, mere failure to comply with the obligations concerning invoicing and the entry of assets in the accounting records or the mere inclusion in invoices or entries of assets which are lower than they actually are shall not constitute fraudulent means".

[63] However, the concurrence between the provisions of Articles 2, 3 and 4 of Legislative Decree no. 74/2000 cannot be ruled out in the event that separate fraudulent conduct exists, which can be simultaneously attributed to one and the other provisions of the legislation, and which is included in the submission of the same declaration (for example, the indication of fictitious passive elements documented by invoices for non-existent transactions and further elements, assets or liabilities, with recourse to the use of other fraudulent means; the use of false invoices and the simultaneous under-invoicing of revenues, such as to meet the thresholds of criminality set out in Article 4, etc.). On this specific point, the Supreme Court considered proper the conclusion of the judges of merit on the existence of both art. 2 and art. 3, on the basis of the use in the tax declarations of the company administered by the defendant of self-produced or self-created invoices relating to partially non-existent transactions, as well as of "*multiple fraudulent conduct by the defendant (consisting, as can be seen from the charges, in the indication in the journal and in the VAT register of sales of revenues and VAT debits lower than the real ones, by replacing the sales documents originally issued with others showing lower amounts; in the inclusion of fictitious costs in the journal; in the incorrect or omitted registration of multiple sales and purchase invoices, so as to reduce revenues and increase costs; in the allocation of depreciation not resulting from the accounting records), in addition to the mere use of invoices for non-existent transactions, aimed, in a deceptive way, to conceal revenues or fictitiously increase costs, with the consequent correct affirmation of the configurability of the crime of fraudulent declaration by means of other artifices, having been amply described fraudulent behaviour further than the use of invoices relating to transactions in whole or in part non-existent*" (Cass. pen, Sec. III, judgment 18 July 2017, no. 35156).

Accounts"[64] with a now two-phase structure[65]:

- the performance of transactions that are "*objectively or subjectively simulated*"[66]or the use of false documents or other fraudulent means capable of hindering the assessment and misleading the tax authorities (which are to be regarded as alternative requirements, since the occurrence of only one of them is sufficient for the purposes of configuring the offence);
- submission of an incorrect declaration for income tax or VAT purposes because it is vitiated by assets or liabilities that do not correspond to reality or by fictitious credits and deductions. In order for the "fraudulent means" to be carried out, there must therefore be a *quid pluris* which, in addition to the false representation provided in the declaration, makes it possible to attribute to the objective element a value of insidiousness, deriving from the use of devices capable of allowing tax evasion and preventing its assessment (see in this sense Criminal Court of Cassation, Section III, judgment of 16 January 2013 no. 2292).[67]

On the other hand, with regard to the notion of fraudulent means, Article 1(g-ter) identifies them as "*active as well as omitting artificial conduct carried out in breach of a specific legal obligation, resulting in a false representation of reality*".

The interpreter is therefore provided with a broad and general definition, without typifying the concrete conduct that may be relevant under Article 3, which does not make it easy to identify artificial omitting conduct carried out in breach of specific legal obligations.

Over time, with reference to the previous wording of Article 3 of Legislative Decree no. 74/2000, case-law has identified a wide range of "fraudulent means", considered to exist in the following cases:

- use of forged or altered documents, other than invoices or other documents for non-existent transactions which are subject to both ideological and material falsity, for which the provision set out in Article 2 applies, such as, for example: the charging of expenses relating to non-existent investments supported by the preparation of ideologically false contracts (Criminal Court of Cassation, Section III, 18 April 2002, no. 14616);
- fictitious contracts (i.e., notarial deeds certifying real estate sales) indicating a sale price much lower than the real one (Criminal Court of Cassation, Section III, 5 November 1996, no. 9414);
- double accounting, which is not in itself sufficient to constitute a criminal offence, can be recognised so, however, where the taxpayer makes use of an articulated and complex system to systematically black out both revenues and costs, with the creation of specific access codes and procedures capable of presenting fraudulently altered data to third parties during possible inspections (Criminal Court of Cassation, Section III, 10 April 2002, no. 13641);
- discovery of the "off-the-books" accounts in a place other than the one indicated by the taxpayer for the safekeeping of the account (Criminal Court of Cassation, Section III, 12 October 2005, no. 1402);
- fictitious registration of financial relations to which assets intended not to be accounted for

[64] The offence has been transformed from a crime of its own (taxpayers obliged to keep accounting records) to a crime attributable to any person required to file a tax or VAT return.

[65] In the previous formulation, the offence was characterised by the following three-phase structure:
– preparation of a false representation of Statutory Accounts;
– use of fraudulent means capable of hindering their detection;
– understatement of assets or fictitious liabilities.

[66] Letter g-bis, introduced by Legislative Decree No. 158/2015, clarifies that the term "*objectively or subjectively simulated transactions"* refers to apparent transactions, other than those covered by the rules on abuse of right, entered into with the intention of not being carried out in whole or in part, or those referring to fictitiously interposed persons.

[67] On this point, moreover, it is worth recalling the principles developed by the jurisprudence of legitimacy on the basis of which the suitability of the conduct to hinder the assessment must be assessed *ex ante*, regardless of the contingent difficulties encountered by the inspectors in reconstructing the tax base (Criminal Court, Section III, judgment No. 20785 of 18 April 2002).

were credited (Criminal Court of Cassation, Section VI, 25 March 2009, no. 13098);

– Systematic issuance of credit instruments without indication of the beneficiary in order to conceal payments (Criminal Court of Cassation, Section III, 12 October 2005, no. 36977).

The third paragraph of Article 3 specifies that mere violations of the obligations to invoice and record the proceeds in the accounting records or the mere indication in the invoices or in the entries of assets which are lower than they actually are do not constitute fraudulent means.

In fact, the principle has been codified whereby conduct that is merely omitting does not have criminal relevance, but rather conduct whose fraudulence must take the form of manifestations that are objectively distinct from the less complex accounting infidelities (failure to certify the consideration - under-invoicing) aimed at attributing credibility to the declaration and, therefore, characterised by its suitability to deceive the inspection bodies. As regards the concept of false documents, paragraph 2 of the provision under review establishes that the offence is deemed to have been committed by using such documents when they are recorded in the Statutory Accounts or held for the purposes of providing evidence to the tax authorities.[68]

Article 3 applies to both ideological and material falsity in the case of documents, other than those referred to in Article 2, of direct or indirect tax relevance, other than accounting records.

In addition, unlike the offence referred to in Article 2, the offence in question can be committed if a double threshold is exceeded[69]:

– 30,000 euros of tax evaded, with regard to any of the individual taxes (income - VAT). For the purposes of the configurability of the criminally relevant fact, it is sufficient that the amount is exceeded with reference to a single tax sector;
– the amount of assets that have been withheld from taxation (including by means of fictitious liabilities) exceeding five per cent of the total assets declared or, in any event, exceeding €1,500,000, or the amount of fictitious credits and withholdings exceeding five per cent of the tax (to be reduced) or, in any event, exceeding €30,000.

Finally, by virtue of the express exclusion made by Article 6 of Legislative Decree no. 74/2000, the offence is not punishable as an attempt.[70]

On this point, it is necessary to reiterate that the new version of Article 6 of Legislative Decree no. 74/2000 punishes the tax offence referred to in Article 3 also as an attempt, if carried out also in the territory of another EU Member State, in order to evade value added tax for a total value of not less than EUR 10 million.[71]

<u>Penalties applicable to the Entity:</u>

- financial sanction: up to 500 shares; however, if the Entity has obtained a significant profit, the financial sanction is increased by a third;
- disqualifying sanctions: a ban on contracting with the public administration, except in order to obtain the performance of a public service; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; a ban on advertising goods or services.

[68] See in this sense the "*Operational Manual on countering tax evasion and fraud*" no. 1/2018, Volume I, p. 164, of the GdF.
[69] More generally, the punishment thresholds laid down for tax offences by Legislative Decree no. 74/2000 are elements of the offence and not objective conditions of criminality. It follows that such thresholds shall be "invested" with intent, so that if the defendant is not aware that he has exceeded them, he cannot be convicted. (see in this sense, Criminal Court of Cassation, Section III, judgment of 18 October 2013, no. 42868).
[70] Law no. 157/2019 has also amended paragraph 2 of Article 13 of Legislative Decree no. 74/2000 entitled "*Cause of non-criminality. Payment of the tax debt", in* order to add - among the offences that are extinguished by full payment of the tax debt, provided that the repentance or presentation took place before the offender had formal knowledge of accesses, inspections, audits or of the start of any administrative assessment activity or criminal proceedings - the offences provided for and punished by Articles 2 and 3 of the aforementioned decree.
[71] For a comment on the above conditions, please refer to the section devoted to the examination of the offence of false declaration.

False declaration

Article 4 of Legislative Decree no. 74/2000[72]punishes the mere "false declaration" with no fraud characteristics. This is a criminal hypothesis conceived by the legislator as residual compared to the case of fraudulent declaration, which is focused on the mere highlighting of untrue information (display of assets to an extent lower than actual or non-existent liabilities).

More specifically, an untrue declaration is committed when the taxpayer has indicated revenue in an amount lower than the actual revenue or non-existent costs, without the taxpayer having made use of the tools provided for in Articles 2 and 3 of Legislative Decree no. 74/2000.

Because of the more limited criminal value, a less afflictive punishment and higher punishment thresholds are provided for: the evaded tax shall be higher, with reference to single taxes, than EUR 100,000; the total amount of the assets removed from taxation, including through the indication of non-existent passive elements, shall be higher than ten per cent of the total assets indicated in the declaration or, in any case, EUR 2,000,000.

The material object of the offence is the annual declarations relating to income tax or value added tax. In short, it is a case of commission of an ideological falsification of a declaration.

Article 4 of Legislative Decree no. 158/2015 has also inserted two new paragraphs (1-bis and 1-ter) amending the previous criminal law rules on false declarations.

Paragraph 1-bis provides that, for the sole purpose of the criminal offence under review, no account is to be taken of incorrect classification, of the valuation of objectively existing assets or liabilities, in respect of which the criteria actually applied have in any event been disclosed in the financial statements or in other documentation relevant for tax purposes, of the breach of the criteria for determining the accrual period, of the non-inherence, of the non-deductibility of real passive elements.

Moreover, it is no longer required, as was the case under the repealed Article 7, for the purposes of exemption from punishment, that the error be made on the basis of constant methods: it follows that the exemption operates even where the error concerns a single tax period.

Paragraph 1-ter provides that, apart from the cases referred to in the preceding paragraph, no punishable act shall be committed in respect of assessments which, taken as a whole, differ by less than ten per cent from the correct ones.

In any event, there is an exclusion of criminality in respect of valuation operations carried out by adopting criteria made known to the tax authorities, whether by means of financial statements or other documents having tax implications.

The circumstances that may give rise to the indication of assets for an amount lower than the actual amount of interest for the purposes of the configurability of the case of false declaration are essentially to be attributed to the under-invoicing of revenues or fees, as expressly stated in Article 3, paragraph 3 of Legislative Decree No. 74/2000.

As already mentioned above, the misrepresentation may concern both "assets", which are declared at a lower level than they actually are, and "liabilities", which must be non-existent.

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[72] [64] Article 4 of Legislative Decree no. 74/2000 provides as follows: "*Apart from the cases provided for in Articles 2 and 3, anyone who, in order to evade taxes on income or value added, indicates in one of the annual declarations relating to those taxes assets for an amount lower than the actual amount or non-existent passive elements, when, jointly:*

a) the tax evaded exceeds, with reference to any one of the individual taxes, one hundred thousand euros;

b) the total amount of the assets removed from taxation, including through the indication of non-existent passive elements, is higher than ten per cent of the total amount of the assets indicated in the declaration, or, in any case, is higher than two million euros.

1-bis. For the purposes of applying the provision of paragraph 1, no account shall be taken of incorrect classification, of the valuation of objectively existing assets or liabilities, in respect of which the criteria actually applied have in any event been disclosed in the financial statements or in other documents relevant for tax purposes, of the breach of the criteria for determining the relevant period, of the non-inherence, of the non-deductibility of real passive elements.

1-ter. Apart from the cases referred to in paragraph 1-bis, assessments which, taken as a whole, differ by less than 10 per cent from the correct ones shall not give rise to punishable acts. The amounts included in this percentage shall not be taken into account when verifying whether the criminality thresholds provided for in paragraph 1, letters a) and b) are exceeded".

The criminal offence in question therefore recalls a conception of passive elements oriented towards an effective and naturalistic interpretation of the same, following the replacement of the term "fictitious" with that of "non-existent".
Therefore, for the purposes of the offence of false declaration, 'non-existent' corresponds to 'not corresponding to reality' and no longer to 'incorrectly determined' on the basis of the tax rules.
The criminal interest in this offence therefore lies solely in cases of material non-existence of negative components.
In view of the foregoing, no cost actually incurred, even if non-deductible, can be used to determine the tax evaded as defined by Legislative Decree 74/2000.
Classical examples can be found in entertainment expenses, advertising, purchase of goods contested as not inherent by the tax authorities.
Similarly, any question concerning purchase values assessed by the tax authorities as being higher than the normal value, as referred to in Article 9(3) of Presidential Decree no. 917/1986 (for example, in the event of disputes on the basis of the "uneconomic nature" of the transactions), is irrelevant for the purposes of the criminal-tax case. Similarly, any question concerning purchase values valued by the tax authorities at an amount higher than the normal value, as understood under Article 9, paragraph 3, of Presidential Decree no. 917/1986 (for example, in the event of litigations based on the "uneconomic nature" of the transactions), is irrelevant for the purposes of the criminal-tax offence of unlawful declaration, since the costs relate to prices actually charged and paid, even though they are not deductible because they have not been correctly estimated for tax purposes.[73]
Therefore, residual hypotheses, such as, for example, the indication in the declaration of completely non-existent passive elements, which are in no way supported by passive invoices or other documents of similar probative value (or which bear lower amounts than those reported in the declaration), remain eligible for the criminal offence in question.
The offence in question, like Articles 2 and 3, is not punishable as an attempt within the meaning of Article 6(1) of Legislative Decree 74/2000.
The latter provision was recently amended by Article 2 of Legislative Decree no. 75/2020, already referred to above, which added the following paragraph 1-bis: "*Unless the act constitutes the offence set out in Article 8, the provision set out in paragraph 1 shall not apply when the acts aimed at committing the offences set out in Articles 2, 3 and 4 are also carried out in the territory of another European Union Member State, in order to evade value added tax for a total value of not less than ten million euro".*
This new provision therefore operates under four conditions:

a) the evasion shall relate to a qualified amount;
b) shall relate to the evasion of value added tax only;
c) the facts shall be transnational, involving several EU states;
d) the contested act shall not constitute the offence provided for in Article 8 of Legislative Decree no. 74/2000.

The condition set out in point d) suggests that the legislature intended to exclude that the person issuing a false invoice, an offence punishable by Article 8, could also be liable for attempting the offence of using the same invoice. 9(a) remains in force, according to which the issuer of invoices or other documents for non-existent transactions and anyone who contributes to the same is not punishable as an accomplice to the offence of fraudulent declaration by means of the use of such invoices. However, according to the case law, the rules derogating from the concurrence of persons in the offence provided

[73] See in this sense the "*Operational Manual on countering tax evasion and fraud*" no. 1/2018, Volume I, pages 167-168, of the GdF.

for in Article 9 do not apply where the person issuing the invoices for non-existent transactions coincides with the user of such invoices (Criminal Court of Cassation, sect. III, judgment no. 5434/2017: this principle was affirmed in relation to the Manager of a company which issued and used the same invoices for non-existent transactions); it is to be considered that this approach will also apply when the offence referred to in Article 2 is not committed but only attempted. As regards the circumstance that the acts shall be committed within several EU Member States, the legislator requires that the conduct must be materially carried out in several EU Member States, so that the fraud, artifice or, in general, evasion has the effect of evading VAT to the detriment of any Member State.
Finally, Article 5 of Legislative Decree no. 75/2020 provides for the inclusion of the offence of making an untrue declaration, if committed "*as part of cross-border fraudulent schemes and for the purpose of evading value added tax for a total amount of not less than ten million euro*", in Article 25-quinquiesdecies of Legislative Decree no. 231/2001, for which a financial sanction of up to 300 shares and the disqualification sanctions referred to therein apply.
With regard to the concept of "*cross-border fraudulent schemes*", the PIF Directive covers three types of illegal conduct, already referred to in paragraph 1 above, which are summarised here:

- the use or presentation of false, incorrect or incomplete VAT declarations or documents, resulting in a reduction in Union budget resources;
- failure to provide VAT information in breach of a specific obligation to which the same effect is attributable;
- submission of accurate VAT returns in order to fraudulently conceal non-payment or the unlawful establishment of VAT refund claims.

Further characteristics of the conduct shall be that it causes a total loss of at least EUR 10 million in evaded VAT and that it is committed in at least one other EU Member State.
Penalties applicable to the Entity

- financial sanction: up to 300 shares; however, if the Entity has obtained a significant profit, the financial sanction is increased by a third;
- disqualifying sanctions: a ban on contracting with the public administration, except in order to obtain the performance of a public service; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; a ban on advertising goods or services.

Failure to submit the declaration
Article 5 of Legislative Decree no. 74/2000 punishes "*with imprisonment from two to five years anyone who, in order to evade taxes on income or on value added, does not submit, being obliged to do so, one of the declarations relating to such taxes, when the tax evaded is higher, with reference to any of the individual taxes, than fifty thousand euro*".[74]
The offence in question is instantaneous, and is committed 90 days after the expiry of the deadline for submitting the declaration and concerns annual declarations relating to income tax, VAT and withholding taxes.
According to established case law, the extension period of ninety days granted to the taxpayer to submit

[74] Pursuant to paragraph 1-bis, the same punishment applies to any person who, being obliged to do so, does not submit the withholding tax declaration, when the amount of the unpaid withholding tax exceeds EUR 50,000. For criminal purposes, as specified in paragraph 2, a declaration submitted within ninety days from the expiry of the deadline or not signed or not drawn up on a form conforming to the prescribed model shall not be considered as omitted.

the tax return after the expiry of the ordinary deadline does not constitute a ground of non-criminality, but constitutes an additional time limit for complying with the obligation to declare. (see Criminal Cass, section III, judgment no. 8340 of 2 March 2020, which reiterated the following principles of law on the subject of the crime of omitted declaration: "*the delay of ninety days, granted to the taxpayer - pursuant to art. 5, paragraph 2, legislative decree no. 74 of 10 March 2000 (and, previously, to art. 7 of Presidential Decree no. 322 of 1998) - to submit the tax return after the expiry of the ordinary term. No. 74 of 10 March 2000 - to submit the tax return after the expiry of the ordinary deadline does not constitute a cause of non-criminality, but constitutes an additional time limit for fulfilling the obligation to make a tax return, and for identifying the consummation moment of the offence of failure to make a tax return provided for in the first paragraph of the aforementioned art. 5*"; "*since it is a specific omission offence of an instantaneous nature, the offence referred to in Article 5(1) of Legislative Decree no. 74 of 2000 is committed upon expiry of the ninety-day period starting from the final date established, for tax purposes, for the submission of the annual tax return; since the agent may fulfil the obligation after expiry of the deadline established for tax purposes, but before the further ninety-day period, it is therefore necessary to provide evidence that, upon expiry of the latter period, the agent has failed to submit the return*".

In judgment no. 37532/2019, the Court of Cassation ruled that the specific intent to evade cannot be inferred from the mere material failure to comply with the obligation to make a declaration or from the *culpa in vigilando of* the external professional appointed for that purpose.

The objective and subjective aspects of the offence must be distinguished.

Otherwise, one would end up transforming the reprimand for the anti-deliberate attitude of the offence referred to in Article 5 of Legislative Decree no. 74/2000 from intentional to negligent.

In concrete terms, it is necessary to ascertain that the taxpayer has consciously preordained the omitted declaration to the evasion of tax for amounts exceeding the threshold of criminal relevance, without undue automatism.

Moreover, entrusting a professional with the task of preparing and submitting a tax return does not remove the taxpayer's criminal liability for the offence of failure to make a return, given the personal and nature of this obligation.

The following is a brief description of the more complex cases in which the offence in question may occur, once the punishment threshold provided for therein is exceeded[75]:

- cases characterised by international taxation profiles: these are those cases in which the subjective and territorial link between the production and taxation of income is fraudulently broken. This is the case of corporate tax inversion, i.e., the fictitious localisation or simulated transfer of tax residence to foreign countries with lower taxation by legal entities, with the aim of evading the tax obligations provided for by national legislation and benefiting from a more favourable tax regime. The mirror image of tax inversion is the configurability in the territory of the State of a concealed material or personal permanent establishment of a non-resident enterprise;
- non-declaration of proceeds from unlawful sources: this refers to proceeds deriving from facts, acts or activities qualifying as a civil, criminal or administrative crime, if not already subject to seizure or criminal confiscation, which are considered to be included in the income categories set out in Article 6 of the TUIR;
- "total evaders" not included in the two categories indicated above: these are those who, for the purposes of direct taxes and VAT, apart from the cases already examined, omit, for various

[75] See in this sense the "*Operational Manual on combating tax evasion and fraud*" No. 1/2018, Volume I, pages 170-173, of the GdF.

reasons, with reference to at least one tax and at least one year, the submission of the relevant declaration.

Finally, Article 5 of Legislative Decree no. 75/2020 provides for the inclusion of the offence of failure to make a declaration, if committed "*as part of cross-border fraudulent schemes and for the purpose of evading value added tax for a total amount of not less than ten million euro*", in Article 25-quinquiesdecies of Legislative Decree no. 231/2001, for which a fine of up to 400 shares and the disqualification sanctions referred to therein shall apply.

For an examination of these conditions, see the preceding paragraph.

Penalties applicable to the Entity:

- financial sanction: up to 400 shares; however, if the Entity has obtained a significant profit, the financial sanction is increased by a third;
- disqualifying sanctions: a ban on contracting with the public administration, except in order to obtain the performance of a public service; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; a ban on advertising goods or services.

Issuance of invoices or other documents for non-existent transactions

The offence in question is provided for and punished by Article 8, Legislative Decree no. 74/2000.[76]

The legislation requires the issuance of invoices or other documents for non-existent transactions in order for the offence to be committed, the mere preparation of false documentation not followed by delivery to the potential beneficiary not being sufficient.

The issuance of even one false invoice is sufficient for the offence to be committed, as there is no threshold for punishment.

The offence referred to in Article 8 is an offence of abstract danger, which is committed by the mere issuance of false invoices; this is the case regardless of whether the invoices are actually used by the issuer and, therefore, regardless of whether such issuance results in actual tax evasion.[77]

In this respect, the Supreme Court has also specified that in the case of multiple issues during the same tax period, the moment of consummation of the offence coincides with the issue of the last invoice.[78]

Finally, as regards the psychological element, the specific intent to facilitate the tax evasion of others is required[79]: the agent must therefore be aware of issuing false invoices aimed at the tax evasion of third parties, regardless of the fact that the false invoices issued are actually used.

In this regard, the Court of Cassation has repeatedly stated that tax evasion is not a constituent element of the offence, but an element of the specific intent required by law for the agent to be punishable.[80]

The Article 8 in question is also not included among those for which Article 6 of Legislative Decree no. 74/2000 excludes the possibility of attempt: consequently, if the person responsible carries out suitable acts aimed unambiguously at issuing invoices or other documents for non-existent

[76] *1. Whoever issues invoices or other documents for non-existent transactions in order to allow third parties to evade income tax or value added tax shall be punished with imprisonment from four to eight years.*
2. For the purposes of applying the provision laid down in paragraph 1, the issuing of several invoices or documents for non -existent transactions during the same tax period shall be regarded as a single offence.
2-bis. If the untrue amount indicated in the invoices or documents, per tax period, is lower than one hundred thousand euro, imprisonment from one year and six months to six years shall apply.
In order to avoid unequal treatment between the issuer and the user of invoices for non-existent transactions - who, even if he uses more than one such document, remains subject to a single penalty, since the submission of the declaration is still required - it is expressly provided, in paragraph 2 of the article under review, that the issuance or issue of several invoices or documents relating to non-existent transactions during the same tax period constitutes a single offence.

[77] See Criminal Court of Cassation, judgment no. 6842 of 19 December 2014 and Criminal Court of Cassation, judgment no. 3918 of 28 January 2015.

[78] See Criminal cassation, judgment no. 37074 of 26 September 2012; Criminal cassation, judgment no. 37930 of 19 July 2012; Criminal cassation, judgment no. 3918 of 28 January 2015.

[79] See Criminal Cassation, judgment no. 19116 of 9 May 2014; Criminal Cassation, judgment no. 50847 of 3 December 2014.

[80] See, *ex multis*, Criminal Court of Cassation, judgment no. 44665 of 15 October 2013.

transactions, they may be punishable under Article 56 of the Criminal Code.[81]

Lastly, it seems appropriate to outline a summary of the most insidious fraudulent contexts in which the conduct referred to in Articles 2 and 8 of Legislative Decree no. 74/2000, which often also include the cases referred to in Articles 5 and 10 of the aforementioned decree, is carried out.

In a type of fraud system based on the issue and use of invoices for subjectively non-existent transactions, limited to the national territory, tax documents are issued by fictitious companies (also known as 'shell companies' or 'missing traders'), created for the sole purpose of enabling other economic operators to evade taxes, through the accounting justification of supplies of goods or services carried out by other companies, truly operational, which are hidden from the tax authorities.

Recurring features of the so-called "paper mills companies" are:

- formal representation by "front men", who generally lack managerial experience and, in most cases, have no assets or a criminal or police record;
- a time-limited operation;
- exponential growth in turnover;
- the absence of an actual or unsuitable place of business in relation to the nature of the transactions carried out at the declared address, or the inactivity or lack of organisational structures and corporate means;
- failure to comply with accounting, reporting and payment obligations.

In the mechanism described above, the tax debt remains with the "paper mill", which does not submit a tax declaration and does not fulfil its payment obligations, while the real supplier operates "off the books", not issuing any tax documents, and the purchaser of the goods or the client of the service, by entering in his accounts the invoices for insistent transactions issued by the "paper mill", to justify the purchases made, he obtains considerable advantages both from a fiscal point of view - being able to deduct the cost and deduct the VAT indicated on the invoice - and from a commercial point of view, being able to buy (from the real supplier) and resell (often to persons not involved in the fraud) at prices lower than market prices, with distorting effects on competition.

Other economic actors are often included in the mechanism (so-called 'filter' or 'buffer' companies) with the function of hindering possible investigations and the identification of those responsible.

On the other hand, tax frauds carried out within the European Union, which illicitly exploit the intra-Community VAT rules of non-taxability of supplies made to taxable persons in other Member States and the application of the principle of taxation in the country of destination, can be summarised as follows:

- a national person makes non-taxable supplies of goods to a "paper mill" established in another Member State, without the goods ever leaving the national territory (or, by means of false documentation, alters the evidence of the physical movement of the goods in another Member State), because they are actually destined for other national persons, who purchase them at competitive prices;
- the foreign "paper mill" sells the same goods on a securitised basis to a further Italian "shell company", which resells the goods to the real domestic purchasers without fulfilling its tax obligations.

The national "paper mill" assumes the tax liability arising at the time of the domestic supply, but fails to pay the VAT to the Revenue Agency and soon ceases trading, while the transferee has the advantage of deducting the tax on the purchase and at the same time getting back from the "paper mill" the VAT

[81] Moreover, there are no particular doubts as to the possibility of concurring between the offence in question and the offence of failure to file a tax return, pursuant to Article 5 of Legislative Decree no. 74/2000 (see Criminal Court, Section III, judgment no. 35858 of 4 October 2011). This is because, under tax law, the VAT shown on issued invoices, even if fictitious, is always due and, as such, shall be declared.

paid on the invoice.

It is therefore considered that Article 8 may be applicable to the first national supplier, who makes a non-taxable VAT supply, since the third party to whom he allows the evasion to take place can be identified as the ultimate (national) beneficiary of the carousel fraud.

According to the same interpretative criterion, also the other interposed subjects (missing traders and national buffers) are liable, in their turn, under Articles 2 and 8 of Legislative Decree no. 74/2000 and, if the elements are present, it may be possible to hypothesise also the associative crime under Article 416 of the Criminal Code, aggravated by the transnationality referred to in Law no. 146 of 16 March 2006.[82]

Penalties applicable to the Entity

- Financial sanction: up to 500 shares for para. 1 and up to 400 shares for para. 2-bis; however, if the Entity has obtained a significant profit, the financil sanction is increased by one third;
- disqualifying sanctions: a ban on contracting with the public administration, except in order to obtain the performance of a public service; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; a ban on advertising goods or services.

Concealment or destruction of accounting documents

The offence in question is provided for and punished by Article 10 of Legislative Decree no. 74/2000[83] and punishes conduct consisting in the concealment or destruction of accounting records or documents whose retention is mandatory, where this makes it impossible to reconstruct income and turnover.[84]

In fact, an orderly bookkeeping (in compliance with the provisions of Article 2214 of the Civil Code) allows us to understand first of all the progress of the business activity and also has the instrumental function of protecting creditors, including the Revenue Agency.

This offence is therefore aimed at safeguarding the tax administration's assessment function, by bringing forward the threshold of criminal relevance to conduct that is preparatory to tax evasion and that constitutes potential damage to the State's tax claim.

This is a common offence since, from the wording of the provision, it is clear that the legislator intended to highlight that the offence cannot be referred solely to the person required to keep the records, since it can also be committed in order to allow third parties to evade it.

More specifically, concealment consists in materially hiding the records; refusal to hand over the records, where this does not result, as is often the case, in their not being found, is only an administrative sanction.

Nor is the retention of the records in a place other than the one indicated to the Administration (Article 35 of Presidential Decree No. 633/72), unless the records are taken to places which preclude their discovery, essentially leading to their concealment.

Destruction, on the other hand, consists in the physical elimination of all or part of the records, i.e., rendering them illegible and therefore unsuitable for use by means of abrasion, erasure or otherwise.

[82] See in this sense the "*Operational Manual on countering tax evasion and fraud*" no. 1/2018, Volume I, pp. 156-157, of the GdF.

[83] "*1. Unless the act constitutes a more serious offence, a sentence of imprisonment ranging from three to seven years shall be imposed on any person who, for the purpose of evading income tax or value added tax, or of enabling third parties to evade such taxes, conceals or destroys, in whole or in part, accounting records or documents whose retention is mandatory, so as to make it impossible to reconstruct income or turnover."*

[84] The mere failure to keep accounting records does not constitute a criminal tax offence, but only an administrative offence under Article 9 of Legislative Decree No. 471/1997. Unlike the omission, the pre-existing keeping of accounting records is necessary for the offence under Article 10 of Legislative Decree 74/2000 to be committed. In this case, in fact, the concealment or destruction of pre-existing accounting records, or of the documents whose preservation is obligatory, are punishable when they make it impossible to reconstruct income and turnover. On this point, according to the Supreme Court's opinion, a mere omitting behaviour, i.e., the omission to keep accounting records, which objectively makes the reconstruction of the accounting situation more difficult, but not impossible, is not sufficient, but a "*quid pluris*" is required, consisting in the concealment or destruction of accounting documents whose creation and keeping is mandatory by law (Criminal Court of Cassation, Section III, judgment no. 19106 of 02/03/2016).

The material object of the offence consists of the accounting records and documents which shall be kept in accordance with tax or civil law (Article 2214 of the Civil Code), which distinguishes between books which are absolutely compulsory (journal, inventory book, originals of telegram letters and invoices received as well as copies of telegram letters of invoices sent) and records which are relatively compulsory, such as those required by the size of the business.[85]

The offence is committed when the destruction or concealment makes it impossible to reconstruct income or turnover.

It is therefore necessary that the conduct described be followed by the impossibility of reconstructing the income or turnover. These consequences are considered to be an event of the offence.

Destruction gives rise to an instantaneous offence whereas concealment gives rise to a permanent offence, and therefore the limitation period in the latter case will start to run from the moment when the permanence ceases, which is deemed to be the result of the tax assessment.[86]

The impossibility of reconstructing the income, precisely because it is provided for "in *whole or in part*", is to be understood in terms of impossibility even if only relative, i.e., when the reconstruction of the income or turnover is considerably difficult or in any case requires particular diligence, e.g. cross-checks are necessary.[87]

If, on the other hand, after the acts of destruction or concealment had been committed, it was the taxpayer himself who made the documentation available in the course of the assessment, so as to enable the reconstruction of income or the movement of business, this would determine the harmlessness of the act and in any event the lack of a constituent element of the offence, and in any event of the subjective element.

On the last point in question, this is an offence with specific intent, because it is characterised by the purpose to which the agent's will must tend, the purpose of evading or allowing evasion by third parties.

Since this is an event-driven offence and since the exclusion laid down in Article 6 of Legislative Decree no. 74/2000 does not apply, attempted offences are in theory punishable, for example where the perpetrator is caught in the act of carrying out suitable acts aimed unambiguously at concealing or destroying, even in part, accounting records or documents necessary for the reconstruction of income or turnover.

<u>Penalties applicable to the Entity</u>

- financial sanction: up to 400 shares; however, if the Entity has obtained a significant profit, the financial sanction is increased by a third;
- disqualifying sanctions: a ban on contracting with the public administration, except in order

[85] Where the taxpayer has opted to keep accounting records and documents electronically, if the digital preservation process is not carried out in accordance with the relevant provisions, the documents cannot be validly relied upon by the tax authorities. If the relevant conditions are met, the offence may also be charged in relation to accounting records kept in digital form.

[86] The Supreme Court has clarified that, unlike destruction, which is an instantaneous offence whose consummation coincides with the suppression of the documentation, concealment - which consists in the temporary or definitive unavailability of the documentation to the investigating bodies - constitutes a permanent offence which is consummated at the time the investigation is carried out, i.e., up to the time when the officers have an interest in examining such documentation. (see in this sense, Criminal Court of Cassation, Section III, sentences no. 14461/2017 and no. 13716/2006). For the offence to be deemed committed, therefore, no relevance is to be attributed to the time when the tax return was filed for the tax year to which the documentation not found during the tax audit was relevant. The fact that the destroyed or concealed documentation relates to a single tax year or to several years is a factor that does not affect the objectivity of the offence, so that it is irrelevant whether the concealed or destroyed documentation relates to a single tax year or to several tax years, given that the offence is completed when the conduct described by the legislature as prohibited is carried out.

[87] In this regard, the jurisprudence of legitimacy (see, *ex multis*, Criminal Court of Cassation, Section III, sentence no. 39711 of 12 October 2009 and Criminal Court of Cassation, Criminal Court of Cassation, Section III, judgment no. 5791 of 6 February 2008) has clarified that the impossibility of such reconstruction should not be understood in absolute but in "relative" terms - it should be read, therefore, more properly as a "reconstructive difficulty" - since the offence in question may exist where the tax authorities succeed in redetermining the tax liability through the use of their investigative powers (e.g. financial investigations, sending questionnaires, etc.). The offence in question is also concurrent with the offences relating to declarations referred to in Chapter I of Title II, as well as with the offence of issuing invoices for non-existent transactions, since the purpose of achieving impunity with respect to the other offences, there being no special relationship, since the destruction of the accounts or of the invoices, for example, may well be linked to the purpose of tax evasion pursued with the issuance of false invoices, and even in the event of issuance of false invoices, does not remove the obligation to keep them or to make the VAT payment.

to obtain the performance of a public service; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; a ban on advertising goods or services.

Undue clearing (Article 10-quater of Legislative Decree no. 74/2000)

The offence in question punishes in its first paragraph "*with imprisonment from six months to two years anyone who fails to pay the sums due, using as clearing, pursuant to Article 17 of Legislative Decree no. 241 of 9 July 1997, undue credits for an annual amount exceeding fifty thousand Euros*" and in the second paragraph "*with imprisonment from one year and six months to six years whoever does not pay the amounts due, using as clearing, pursuant to Article 17 of Legislative Decree no. 241 of 9 July 1997, non-existent credits*[88] *for an annual amount exceeding fifty thousand euros* ''

Clearing is a way of discharging a tax obligation by using claims against the tax authorities.

Two types of clearing can be distinguished: "vertical" and "horizontal".

Vertical clearing, which is provided for by individual tax laws, consists in carrying forward a credit to a subsequent period in order to reduce, by deduction, a debt which has arisen or will arise in the same period. This clearing concerns credits and debits relating to the same type of tax and may be carried out without limit.

Horizontal clearing, governed by Article 17 of Legislative Decree no. 241/97, operates in relation to credits and debts relating to various taxes, contributions, penalties and all other payments that can be made using the F24 form. On the basis of the Decree of the Minister of Finance of 31 March 2000, it has been extended also to the amounts, including penalties, due pursuant to Legislative Decree no. 218/97.[89]

The crime referred to in Article 10-quater of Legislative Decree no. 74/2000 is committed at the time of submission of the F24 form for the year concerned and not at the time of the subsequent tax return.

It is not sufficient, therefore, for the crime to have been committed, that there has been a failure to make a payment, since this must be formally justified by the clearing of sums due to the tax authorities against tax credits which in reality are not due or do not exist.

In this context, it is precisely the necessary clearing conduct that is the distinguishing element between the offence in question and a simple failure to pay.

Based on this assumption, the Supreme Court, in judgment no. 44737 of 5 November 2019, emphasised that undue clearing shall be shown by the F24 form through which it was carried out.

In the case examined, the integration of the alleged offence was inferred from the entries in the journal, the VAT declarations and the tax payments made, but there was no acknowledgement of the necessary realisation of the allegedly undue compensations in the F24 forms, which, in this case, were

[88] In order to outline the claims for which undue compensation may be applied, reference should be made to the report of the Supreme Court's Office (no. III/05/2015 of 28 October 2015), which explained that: "non-existent credits" are those that "appear to be such from the outset" (because, for example, it does not materially exist) or "do not exist from a subjective point of view" (i.e. because they are due to a person other than the person using them in undue clearing) or, finally, "subject to a condition precedent"; "undue credits" are those used in excess of the regulatory limit or in compensation in breach of the prohibition of clearing for unpaid duties.

[89] With regard to the distinction in question, the Supreme Court ruled in judgment no. 8705 of 28 February 2019 that: "*The offence of undue clearing of undue or non-existent credits under Article 10-quater of Legislative Decree No. 74 of 2000 can be committed both in the case of vertical compensation (i.e. concerning credits and debts relating to the same tax) and in the case of horizontal compensation (i.e. concerning tax credits and debts of a different nature).Article 17 of Legislative Decree no. 241 of 9 July 1997, referred to in the criminal case, extended the cases of clearing already provided for by tax legislation, extending the right of clearing also to credits and debts of a different nature as well as to sums due to social security institutions*". In this regard, the Court of Cassation provided further clarification: "*As clarified by legal theory, the applicability of the criminal sanction provided for by the provision in question is not conditioned by the vertical or horizontal nature of the clearing, but rather by the circumstance, considered decisive, that it is set off in the single form, i.e. in the so-called F24 form, which is submitted on the occasion of the single declaration for the purposes of income tax, VAT and IRAP and this because it is with this form that the "sums due" are paid pursuant to the aforementioned Legislative Decree no. 241 of 1997.This is because it is with that form that the 'sums due' are paid pursuant to Article 17 of Legislative Decree No 241 of 1997, referred to in Article 10-quater, with the result that the fact that the credit is non-existent or not due renders irrelevant the allocation made by the taxpayer in the declaration in order to make the undue clearing, since the provision refers generically to the use of 'non-due or non-existent credit' as set-off, without any specification as to the homogeneity or lack of homogeneity of the set-off. The offence, as the above-mentioned doctrine also observes, is given by the omitted payment of the sums due, committed by means of false compensation, and not by the nature of the compensation used to evade the payment of what is due*".

not even acquired.
In the absence of such a finding, it shall be concluded that there is no proof that clearing was carried out as a necessary precondition for the omitted payment.
Ultimately, the offence in question is committed when, in the same tax period, a further amount of undue or non-existent credit is set off which, added to the amounts cleared, exceeds €50,000 and is committed when the F24 form is sent or submitted to the credit institution to which an irrevocable authorisation has been given.
Finally, Article 5 of Legislative Decree no. 75/2020 provides for the inclusion of the offence of undue compensation, if committed "as *part of fraudulent cross-border schemes and for the purpose of evading value added tax for a total amount of not less than ten million euro*", in Article 25-quinquiesdecies of Legislative Decree no. 231/2001, for which a financial sanction of up to 400 shares and the disqualification sanctions referred to therein apply.
For an examination of these conditions, see the preceding paragraph.
Penalties applicable to the Entity

- financial sanction: up to 400 shares; however, if the Entity has obtained a significant profit, the financial sanction is increased by a third;
- disqualifying sanctions: a ban on contracting with the public administration, except in order to obtain the performance of a public service; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; a ban on advertising goods or services.

Fraudulent evasion of taxes

The offence in question is provided for and punished by Article 11 of Legislative Decree no. 74/2000[90] and forms part of the group of rules aimed at combating arrears in the payment of taxes levied through registration on the tax rolls, sanctioning, in paragraph 1, the material conduct of the taxpayer who alienates or carries out fraudulent acts on his own property and on the property of others, in order to wholly or partially make the relevant tax collection ineffective in order to protect themselves from the tax claim.
The offence in question requires two conditions to be fulfilled:

- the performance of acts with the aim of evading the payment of income tax or VAT, the related
  interest and administrative penalties;
- exceeding the punishment threshold of EUR 50,000, calculated on the amount of tax due, plus interest and administrative penalties imposed.

In spite of the expression "*anyone*" with which the provision indicates the person who may be liable for the offence, the offence in question may only be committed by the taxpayer (active subject) who is already qualified as a tax debtor for the purposes of income tax or value added tax, against whom the Revenue Agency may make a tax claim for an amount exceeding EUR 50,000.
The offence is committed when the taxpayer, aware that he has not paid the taxes due, engages in conduct aimed at removing his own or other people's assets from the scope of a subsequent

[90] "*Anyone who, in order to avoid payment of income or value added taxes or of interest or administrative sanctions relating to such taxes for a total amount exceeding fifty thousand euro, falsely sells or carries out other fraudulent acts on his own or on other persons' assets in order to make ineffective, in whole or in part, the compulsory collection procedure shall be punished by imprisonment from six months to four years. If the amount of taxes, sanctions and interests is higher than two hundred thousand euro, imprisonment from one year to six years shall apply.*
2. Anyone who, in order to obtain for himself or for others a partial payment of taxes and relevant accessories, indicates in the documents presented for the tax settlement procedure assets for an amount lower than the actual one or fictitious liabilities for a total amount higher than fifty thousand euro shall be punished by imprisonment from six months to four years. If the amount referred to in the previous sentence is higher than two hundred thousand euro, imprisonment from one year to six years shall apply."

enforcement action.

Compared to its legislative predecessor[91], in view of the identity of both the subjective element, consisting of the purpose of evasion and constituting the specific intent, and the material conduct, represented by the fraudulent activity, the case under Article 11, on the one hand, does not require, as a precondition of the offence, the prior carrying out of accesses, inspections or audits, or the prior notification to the perpetrator of the criminal conduct; on the other hand, it requires, for the purposes of the configuration of the crime, the mere suitability of the conduct to make the collection procedure and the actual occurrence of this event ineffective (even only partially). (Criminal Court of Cassation, Section III, judgment no. 13233 of 1 April 2016).

In fact, the legal object of the offence does not relate to the right of credit claimed by the tax authorities but to the general guarantee provided by the assets of the obligor, as a result of which the offence can be committed even if, after the fraudulent acts have been carried out, payment of the tax and related accessories is made (Criminal Court of Cassation, Section III, judgment no. 36290 of 18 May 2011).

Unlike the previous legislation, therefore, on the one hand the assumption of conduct is lacking, and on the other the material event envisaged is transformed from "damage" into "danger", manifesting the clear interest of the State not only in the effective collection of taxes, but also in the preservation of the patrimonial guarantees that protect the tax credit (Criminal Court of Cassation, Section III, judgment no. 14720 of 9 April 2008).

It is therefore a crime of (concrete) danger, in respect of which the relevant criminal conduct may consist of any act which is likely to jeopardise the enforcement procedure and the suitability of which is to be verified on a case-by-case basis, in light of a judgment of harmful potential to be made *ex ante*.

Consequently, the legal asset protected by the rule should be identified in the general asset guarantee offered to the tax authorities by the assets of the obligor, taking into account that the obligor, pursuant to Article 2740 of the Civil Code, is liable for the performance of its obligations with all its present and future assets.

The constitutional "strength" (in particular, from the point of view of the principle of offensiveness) of the configurability of the offence in terms of danger is guaranteed by the need for the conduct aimed at stealing the goods to be characterised by the simulated nature of the alienation of the goods or by the fraudulent nature of the acts carried out on one's own or on others' goods.

In other words, only an act of disposition of the assets characterised by such procedures, which are strictly typified by the rule, can be capable of undermining the legitimate expectations of the Revenue Agency since, otherwise, any possible conduct of disposition of the assets would be sanctioned, in contrast with the constitutionally guaranteed right to property.

It is quite clear that conduct characterised by simulative[92] or fraudulent methods is not necessarily, *ipso iure*, capable of "*making the compulsory collection procedure wholly or partly ineffective*": the fact that the legislator has expressly added such a requirement as a constituent element of the offence, even in the presence of deceptive conduct of the type mentioned, makes it clear that suitability is not a concept equivalent to the carrying out of a simulated sale or a fraudulent act, since the assessment of the existence of the requirement cannot disregard an evaluation of the entire assets of the taxpayer to be compared with the claims of the Revenue Agency, which may well be equally guaranteed even

[91] The rule in question replaces the provision of Article 97, paragraph six, of Presidential Decree no. 602/73 (so-called tax fraud), as amended by Article 15 of Law no. 413/91, with appreciable elements of discontinuity

[92] This is the first conduct expressly provided for by the rule and may occur in the following forms: absolute simulation, when the parties pursue the sole aim of pretending to put in place a contract but do not want the act apparently put in place to produce effects; relative simulation, when the parties aim at effects other than those produced by the act apparently put in place; fictitious interposition of person, when the real recipient of the effects is a person other than the one who appears in the simulated act; partial simulation, when it concerns only one or more contractual elements; total simulation, when it concerns all the contractual elements.

in the presence of the carrying out of similar acts.
This consideration becomes even more important when one considers the following number of case law, given merely as an example, in which the possibility of fraudulent evasion of taxes has been suggested:

- establishment of a *trust, whereby* the defendant had transferred to himself, as *trustee,* the entire assets of the company of which he was liquidator (Criminal Court of Cassation, section III, judgment no. 15449/2015);
- multiple transfers of real estate in rapid succession (Criminal Cassation, section III, judgment no. 19524/2013);
- establishment of an asset fund (Criminal Court of Cassation, section III, judgment no. 23986/2011);
- transactions involving the sale of companies and company demergers, aimed at transferring property to the new legal entities (Criminal Court of Cassation, section III, judgment no. 19595/2011);
- transformation of the limited liability company into a general partnership, the shares of which cannot be expropriated until the dissolution of the company or of the relationship limited to the debtor member (Criminal Court, section III, judgment no. 20678/2012);
- simulated transfer of commercial goodwill (Criminal Court of Cassation, Section III, judgment no. 37389 of 12 September 2013);
- company reorganisation operations (Criminal Court of Cassation, Section III, judgment no. 45730 of 22 November 2012);
- sale of goods by entering into an apparent *sale and leaseback* contract (Criminal Court of Cassation, Section III, judgment no. 14720 of 9 April 2008).

The common feature of the hypotheses outlined above is the appearance that the simulated act is intended to create: the effects produced are not those actually intended by the contracting parties.
A sham transfer is therefore any legal transaction involving a fictitious transfer of ownership, whether for valuable or free consideration, or any transfer characterised by a prearranged divergence between the declared and the actual intention.
The offence is also characterised by a specific intent, which occurs when the simulated sale or other fraudulent acts, capable of rendering the compulsory collection procedure ineffective, are aimed at evading '*the payment of income or value added taxes or of interest or administrative penalties relating to such taxes*'.
On this point, the Supreme Court has ruled out the possibility that the psychological element could be present with reference to the simulated sale of an asset whose consideration was used to settle a tax debt, except in the event that the consideration paid was lower than the actual value of the asset sold (see Criminal Court, section III, judgment no. 27143 of 22/04/2015).
The formula used by the legislator for the definition of the second conduct envisaged by the provision ("*performs other fraudulent acts*") includes, on the other hand, any act, legal or material, which, although formally lawful, is characterised by a component of artifice or deception, aimed at rendering the compulsory collection ineffective.
As regards the concept of fraudulent act, case law restricts its meaning to the performance of any act of asset disposal, not simulated, in which the taxpayer's artificial stratagem can be identified (Criminal Court of Cassation, Section III, judgment no. 40561 of 16 October 2012).
It is clear that all formally lawful conduct that is artificial and deceptive will be covered by the legislation.

It is for this reason that the majority of case law requires a careful examination of the evidence gathered in order to assess whether it is likely to prejudice the collection of the tax.[93]

Indeed, the vagueness and breadth of that regulatory formulation often raise the question of assessing, in practice, whether the transactions entered into by the taxpayer, even in their concatenation, can or cannot be included within the conduct outlined by the legislature.

According to case law, the criminally relevant conduct may consist of "*any*" fraudulent act or fact intentionally aimed at reducing the taxpayer's patrimonial capacity. Such *deminutio* patrimonial shall be such, both from a quantitative and qualitative point of view, as to frustrate in whole or in part, or in any event make more difficult, any executive procedure (see Criminal Court of Cassation, section III, judgment no. 39079/2013; Criminal Court of Cassation, section III, judgment no. 29243/2017). In this respect, a number of criteria have been identified as symptom of the ability of the transaction to jeopardise the procedure for the compulsory collection of the tax debt, which are set out here by way of example only:

- the lack of economic justification underlying the transaction;
- the failure to collect the consideration for the sale, as, for example, in the case of "dispossession" of the assets of companies with tax debts, implemented through the sale of a company and the transfer of real estate, against no consideration or increase in assets (Criminal Court of Cassation, section III, judgment no. 19595 of 18 May 2011);
- the moment at which the fraudulent act is carried out on the assets, such as, for example, concomitance with inspection activities.

Finally, the second paragraph of Article 11 punishes the forgery of the documents submitted for the purposes of the tax settlement procedure, i.e., when they indicate assets for an amount lower than the actual amount or fictitious liabilities.

The classification of this offence as a danger offence is also based on the fact that no damage to the Revenue Agency is required, but only that the final stage of the tax levy is jeopardised.

This is still a proper offence, which can only be committed by the taxpayer (active party) already qualified as a tax debtor for income or value added tax purposes, who submits the tax settlement proposal by providing false information.

The offence is based on the initiation of a tax settlement procedure, which provides that a taxpayer in financial difficulty may, as part of a debt restructuring plan, propose the partial or deferred payment of taxes and related charges, as well as of contributions administered by bodies managing compulsory forms of social security and assistance and related charges, limited to the unsecured portion of the debt, even if not recorded on the tax roll.

The offence in question envisages a punishment threshold of EUR 50,000, which can be qualified as a constituent element of the offence, and which must be met with regard to both the active elements and the passive elements indicated in a false manner.

The offence is instantaneous, occurring with the submission of false documentation.

[93] Precisely with reference to the proof of the fraudulent nature of the transactions, it shall be observed that the claim to recognise such characteristic in the mere suitability of the acts to jeopardise the recovery of the credit by the Revenue Agency would in fact determine the impossibility for the taxpayer to freely dispose of his assets, once there has been an audit or assessment by the tax authorities. Faced with a possible limitation of the private individual's right to freely decide on the destination of his assets, a right which cannot be compromised merely because of the suitability of the material conduct to prejudice the collection procedure (even if not in progress or not yet undertaken), the clarification made by the Court of Cassation in judgment no. 273 of 2 July 2018 appears timely. In fact, the Supreme Court acknowledges that "*the logical sequence of the acts carried out by the accused establishes a destination of the negotiating behaviour to the progressive emptying of his assets, in view of the now imminent executive actions of the Revenue Agency*". Nevertheless, it is acknowledged that the mere suitability of the acts is not sufficient on its own to recognise the deceptive or artificial nature of the acts, as has been claimed by a legal opinion which has mostly been developed in the context of precautionary measures (Criminal Court of Cassation, judgment no. 40561/2012; Criminal Court of Cassation, judgment no. 23986/2011; Criminal Court of Cassation, judgment no. 38925/2009), which sought to obliterate the prerogative of fraudulence in order to resolve the dimension of the conduct in terms of suitability. In the absence of a proper examination of all the elements, the rule of reasonable doubt could only impose the annulment of the judgment, under penalty of loss of certainty about the boundaries of lawfulness of one's conduct and, given the "*sedes materiae*", a compromise of the relationship between taxpayer and tax authorities.

Penalties applicable to the Entity

- financial sanction: up to 400 shares; however, if the Entity has obtained a significant profit, the financial sanction is increased by a third;
- disqualifying sanctions: a ban on contracting with the public administration, except in order to obtain the performance of a public service; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; a ban on advertising goods or services.

THE OFFENCES PROVIDED FOR IN PRESIDENTIAL DECREE NO. 43 OF 23 JANUARY 1973 (ARTICLE 25-SEXIESDECIES)

On 15 July 2020, Legislative Decree No. 75 of 14 July 2020 on "*Implementation of Directive (EU) 2017/1371 on the fight against fraud affecting the financial interests of the Union by means of criminal law was* published in the Official Journal (No. 177)", which entered into force on 30 July 2020.

The main innovation introduced with the issuance of the aforementioned Decree, as far as it is more relevant here, concerns the inclusion of Article 25-sexiesdecies of Legislative Decree no. 231/2001 entitled "*Smuggling*", which covers the smuggling offences referred to in Presidential Decree no. 43 of 1973.

More specifically, Article 3 of Legislative Decree no. 75/2020 makes amendments to the Presidential Decree in question, in order to ensure that offences detrimental to the financial interests of the EU, where the damage or benefits are considerable, are punished with a maximum sentence of not less than four years' imprisonment.

Indeed, following the establishment of a customs union common to all Member States, customs duties are an EU own resource and as such contribute to the financing of the single euro budget.

The legislator has therefore intervened by adding a special aggravating circumstance to smuggling offences where the amount of border duties due exceeds one hundred thousand euros, in accordance with the limits set by Article 7 of the PIF Directive.

Consequently, since smuggling offences had to be identified as offences directly affecting the financial interests of the EU, it became necessary to criminalise conduct that had recently been decriminalised.

Article 4 of Legislative Decree no. 75/2020 therefore introduced an exception to the general scope of the decriminalisation ordered by Legislative Decree no. 8/2016 with regard to offences punished exclusively with a financial penalty.

In line with Article 7(4) of the PIF Directive, the new criminalisation of conduct has been limited to cases of offences in respect of which the border duties owed exceed the threshold of EUR 10,000.

More specifically, 'customs duties' are all those duties that customs are required by law to collect in connection with customs operations.

Among customs duties, the following constitute 'border duties' (Art. 34): import and export duties; levies and other charges on import or export provided for by Community regulations and their implementing rules; in respect of imported goods, monopoly duties, border surcharges and any other tax or surcharge on consumption in favour of the State.

For goods subject to border duties, the precondition for the tax liability is, in the case of foreign goods, that they are intended for consumption within the customs territory and, in the case of domestic and nationalised goods, that they are intended for consumption outside that territory (Article 36).

Finally, Article 5 of Legislative Decree no. 75/2020 provides that, for the offences included in Presidential Decree no. 43/1973, both the financial sanction (up to 200 shares and, when the border fees due exceed € 100,000, up to 400 shares) and the disqualification sanctions set out in Article 9(2)(c), (d) and (e) shall apply to the entity.

The new provision refers to the 'offences' of the Consolidated Customs Act, therefore: the offences referred to in Title VII Chapter I, meaning the acts referred to therein but only if they exceed EUR 10,000 in evaded border duties:

- 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);
- Article 286 (Smuggling in non-customs areas);
- Article 287 (Smuggling by improper use of goods imported with customs facilities);
- Article 288 (Smuggling in customs warehouses);
- Article 289 (Smuggling in cabotage and traffic);
- Article 290 (Smuggling in the export of goods eligible for duty drawback);
- Article 291 (Smuggling in temporary importation or exportation);
- Article 291-bis (Smuggling of foreign manufactured tobacco);
- Article 291-ter (Aggravating circumstances of the offence of smuggling foreign manufactured tobacco);
- Article 291-quater (Criminal association for the purpose of smuggling foreign tobacco products);
- Article 292 (Other cases of smuggling);
- Article 294 (Penalty for smuggling where the object of the offence has not been established or has been incompletely established);

offences under Title VII Chapter II, i.e., the acts referred to therein, but only if they exceed €10,000 in evaded border duties (Articles 302 et seq.).

ANNEX 2

HISTORY OF REVISIONS MADE TO THE MODEL

The Model, initially adopted on 11 July 2003, has been subject to numerous updates over the years, depending on the evolution of the regulatory framework, as specified below:

- with reference to the additions made to the Decree by Law no. 62/05 (the "2004 Community Law") and Law no. 262/05 (the "Savings Law"), ASPI updated the Model in 2007 to take account of the risks associated with the commission of the offences of market manipulation and abuse of privileged information and failure to disclose conflicts of interest;
- subsequently, in the 2010 update, the extensions of the Entities' liability were analysed in relation to the offences of homicide and culpable lesions in violation of the regulations on the protection of health and safety at work, to the offences of receiving stolen goods, money laundering and use of money, goods or benefits of unlawful origin, computer crimes and unlawful processing of data, organised crime offences, offences against industry and trade, offences relating to violation of copyright and, finally, the offence of inducing people not to make statements or to make false statements to the judicial authorities;
- In 2013, the further expansion of the list of predicate offences was analysed, in relation to environmental offences, the employment of illegally staying third-country nationals, undue inducement to give or promise benefits, and bribery among private individuals;
- in 2016, the Model was updated to reflect the regulatory additions made to the catalogue of predicate offences with reference to the following cases: self-laundering, pursuant to Law no. 186/2014; eco-offences, pursuant to Law no. 68/2015 and provisions on offences against the public administration, mafia-type association and false accounting, pursuant to Law no. 69/2015;
- in 2017, the amendments and/or additions to the administrative liability of entities were analysed in relation to: computer crimes by Legislative Decrees nos. 7 and 8/2016[94]; the new EU provisions aimed at standardising the rules on market abuse within the European Union impacting on art. 25-sexies of the Decree[95]; to the predicate offences referred to in Article 25-bis of Legislative Decree no. 231/2001, entitled " *Counterfeiting money, public credit cards, revenue stamps and instruments or signs of recognition*" by Legislative Decree no. 125/2016[96]; to the offence of "*Unlawful intermediation and exploitation of labour*" provided for in Article 603-bis of the Criminal Code, as amended by Law no. 199/2016; the offence of bribery among private individuals referred to in Article 2635 of the Civil Code

[94] The so-called "decriminalisation package", which, among other measures, repealed Article 485 of the Criminal Code, "*forgery in a private contract*", and at the same time transformed it into a civil offence. Article referred to in turn by the predicate offence under Article 491-bis of the Criminal Code (Article 24-bis of Legislative Decree no. 231/2001), which has therefore been amended to read as follows: '*If any of the offences provided for in this chapter concern a public electronic document with evidential value, the provisions of the same chapter concerning public documents shall apply...*'.

[95] For a specific examination of the changes made, see Special Part C - Market abuse of the Model.

[96] Legislative Decree No. 125/2016 amended Articles 453 and 461 of the Criminal Code referred to in Article 25-bis of Legislative Decree No. 231/2001 to the following effect: i) "*in Article 453, the following paragraphs are added after the first paragraph: "The same penalty shall apply to anyone who, legally authorised to produce, unduly manufactures, abusing the instruments or materials at his disposal, quantities of coins in excess of the prescriptions. The punishment is reduced by one third when the conduct referred to in the first and second paragraphs relates to coins which are not yet legal tender and the initial term of the same is determined; ii) in Article 461, first paragraph: 1) after the word: "programmes" the following is inserted: "and data"; 2) the word: "exclusively" is deleted*".

and the inclusion of the new case of "incitement to bribery" referred to in Article 2635-bis of the Civil Code by means of a specific provision of Legislative Decree no. 38/2017;

- In 2020, the following new legislation was analysed:
  - Law no. 157 of 19 December 2019 converting, with amendments, Decree Law no. 124/2019 containing "*Urgent provisions on tax matters and for unavoidable requirements*", which introduced tax offences into the Decree, with Article 25-quinquiesdecies;
  - Law No. 133 of 18 November 2019, which converted Decree-Law No. 105 of 2019 containing "*urgent provisions on the national cyber security perimeter and the regulation of special powers in sectors of strategic importance*". The legislation under review provides for the definition of a national cyber security perimeter aimed at "*ensuring a high level of security of the networks, information systems and IT services of public administrations, public and private entities and operators with a base in the national territory, on which the exercise of an essential function of the State depends, or the provision of a service essential for the maintenance of civil, social or economic activities that are fundamental to the interests of the State and from whose malfunctioning, interruption, even partial, or improper use, harm to national security may result*" (Art. 1, paragraph 1);
  - Law No. 43 of 21 May 2019, which amended Article 416-ter of the Criminal Code concerning political-mafia exchange voting;
  - Law No. 39 of 3 May 2019, which introduced Article 25-quaterdecies of the Decree entitled "*Fraud in sports competitions, abusive exercise of gaming or betting and games of chance exercised by means of prohibited devices*";
  - Law no. 3 of 9 January 2019 on "*Measures for combating offences against the public administration, as well as on the subject of the statute of limitations of the offence and on the subject of transparency of political parties and movements*", which, for the part of interest herein, had as its object the tightening of the sanctioning treatment relating to offences against the Public Administration, the introduction of trafficking in unlawful influence (art. 346-bis of the Criminal Code) in art. 25 of the Decree, the amendment of the duration and methods of application of prohibitory sanctions for offences against the Public Administration (art. 13 and 25 of the Decree) and of precautionary measures (art. 51 of the Decree), the reform of the conditions of procedural eligibility for offences of corruption between private individuals and instigation of corruption between private individuals; the reform of the conditions of procedural eligibility for offences of corruption between private individuals and instigation of corruption between private individuals; the reform of the conditions of procedural eligibility for offences of corruption between private individuals and instigation of corruption between private individuals. (Art. 13 and 25 of the Decree) and of precautionary measures (Art. 51 of the Decree), the reform of the conditions for the prosecution of offences of corruption among private individuals and incitement to corruption among private individuals;
  - Decree-Law No. 135 of 14 December 2018, containing "*Urgent provisions*

on support and simplification for businesses and public administration" and converted with amendments by Law No. 12 of 11 February 2019, which repealed the electronic waste traceability control system (SISTRI) as of 1 January 2019;

- Legislative Decree no. 21/2018, which introduced provisions for the implementation of the principle of code reservation in criminal matters and repealed Article 260 of Legislative Decree no. 152/2006 ("*Activities organised for the illegal trafficking or waste*"). Following the amendment, the repealed offence does not lose criminal relevance but is regulated within the Criminal Code under Article 452-quaterdecies;
- Legislative Decree No. 107 of 10 August 2018, which reformed the rules on market abuse, adapting the domestic legislation, specifically Legislative Decree No. 58/1998, the so-called T.U.F., to Regulation (EU) No. 596/2014;
- Law No. 179 of 30 November 2017 on "*Provisions for the protection of the authors of reports of crimes or irregularities of which they have become aware in the context of a public or private employment relationship*", which amended Article 6 of Legislative Decree No. 231/2001, as highlighted above;
- Law of 20 November 2017, entitled "*Provisions for the fulfilment of obligations arising from Italy's membership of the European Union - European Law 2017*", which introduced Article 25-terdecies of the Decree headed "*Racism and xenophobia*";
- Law No. 161 of 17 October 2017, which inserted into Article 25-duodecies of the Decree, two additional paragraphs relating to the employment of third-country nationals whose stay is irregular.

- in 2021, the legislative changes introduced by Legislative Decree No. 75 of 14 July 2020 on "*Implementation of Directive (EU) 2017/1371 on the fight against fraud affecting the financial interests of the Union by means of criminal law.* ", which entered into force on 30 July 2020.

More specifically, the main changes introduced with the issuance of the aforementioned Decree, as far as it is more relevant here, concerned:

- the tightening of the sanctions regime provided for certain offences against the Public Administration (Articles 316, 316-ter, 319-quater, 322-bis, 640, paragraph 2, no. 1, of the Criminal Code) if the act offends the financial interests of the EU[97];
- the amendment of Article 6 of Legislative Decree no. 74/2000, which in the new version also punishes as an attempt the tax offences referred to in Articles 2 ("*Fraudulent declaration by means of invoices or other documents for non-existent transactions")*, 3 ("*Fraudulent declaration by means of other devices*") and 4 ("*Untrue declaration*"), if carried out also in the territory of another EU Member State, in order to evade value added tax for a total value of at least ten million euro;
- the inclusion in Article 24 of Legislative Decree no. 231/2001 of the offence of fraud in public supplies, provided for and punished by Article

[97] Article 1 of the Decree extends the aforementioned criminal offences to the commission of acts affecting the financial interests of the EU, with damage or profit exceeding EUR 100.000.00, increasing the maximum legal penalties, extending the punishability of the offence provided for and punished by Article 322-bis of the Criminal Code also to Public Authorities or Public Security Agencies which do not belong to EU Member States and finally adding the mention of the EU in Article 640, para. 2, no. 1), of the Criminal Code.

356 of the Criminal Code and of the offence provided for and punished by Article 2 of Law no. 898 of 23 December 1986 concerning aids, premiums, indemnities, refunds, contributions or other disbursements charged in whole or in part to the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development;

- the inclusion in Article 25 of Legislative Decree no. 231/2001 of the offences envisaged and punished by Articles 314(1) ("*Embezzlement")*, 316 ("Embezzlement *by profiting from the error of others*") and 323 ("*Abuse of office*") of the Criminal Code, when the act offends the financial interests of the European Union;

  the inclusion in Article 25-quinquiesdecies of Legislative Decree no. 231/2001 of the offences provided for and punished by Articles 4 ("*Untrue declaration")*, 5("*Omitted declaration*") and 10-quater ("*Undue compensation*") of Legislative Decree no. 74/2000, if committed within the framework of cross-border fraudulent systems and with the aim of evading value added tax for a total amount of not less than ten million euro;
- the insertion of Article 25-sexiesdecies of Legislative Decree no. 231/2001 entitled "Smuggling", which covers the Smuggling offences referred to in Presidential Decree no. 43 of 1973.

- the following regulatory changes were analysed in 2022:
  - L. no. 238 of 23 December 2021 containing "*Provisions for the fulfillment of the obligations deriving from Italy's membership in the European Union - European Law 2019-2020*", entered into force on 1 February 2022, which introduced changes to computer crimes and Market Abuse;
  - Legislative Decree no. 184 of 8 November 2021, entered into force on 14 December 2021, which implements the EU Directive 2019/713 on the fight against fraud and counterfeiting of non-cash means of payment, introducing art. 25-octies.1 of the Decree;
  - Legislative Decree no. 195/2021, entered into force on 14 December 2021, which widened the scope of the crimes referred to in Article 648, 648-bis, 648-ter and 648-ter.1 of Criminal Code, as described in art. 25-octies of catalogue "231".