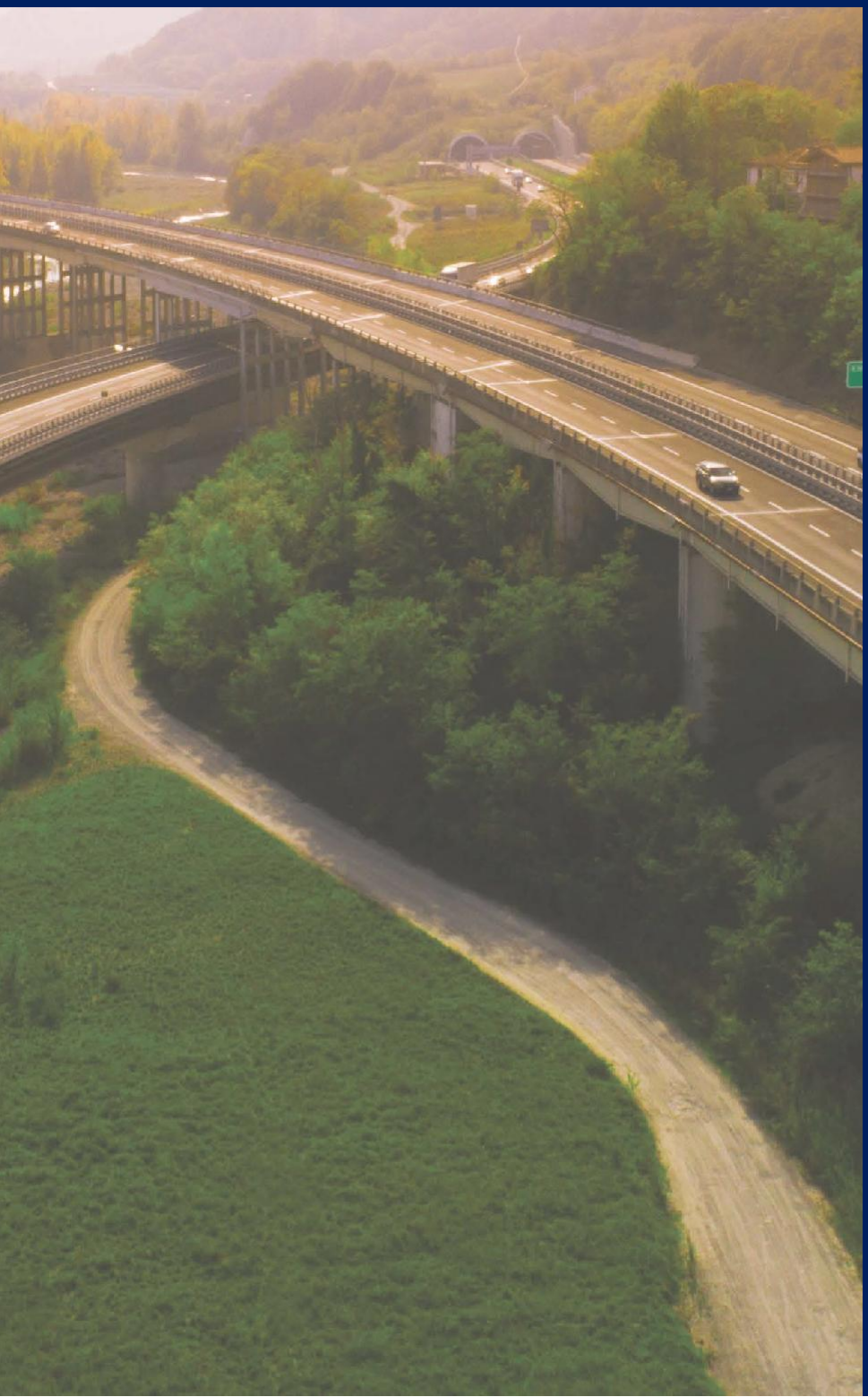
Organisation, Management and Control Model of Autostrade per l'Italia S.p.A.

GENERAL PART



Approved by resolution of the Board of Directors on March 20th, 2026

Index

1 DEFINITIONS

ASPI or Company	Autostrade per l'Italia S.p.A.
Group	Companies directly or indirectly controlled by ASPI
P.A.	Public Administration, including its officials and persons entrusted with public services
Decree or Legislative Decree No. 231/2001	Legislative Decree No. 231 of 8 June 2001, as amended
Confindustria Guidelines	Guidelines for the construction of organisation, management and control models pursuant to Legislative Decree No. 231/2001 issued by Confindustria on 3 November 2003 and subsequent additions
Model or Model 231	Organisation, Management and Control Model required by Legislative Decree No. 231/2001 and adopted by the Company in order to prevent the commission of the offences referred to in the aforementioned decree
Code of Ethics	The ASPI Group's Code of Ethics in force and approved by the Board of Directors, which summarises the set of values and rules of conduct to which the Company intends to refer constantly in the exercise of its business activities
ASPI Group Anti-Bribery Guideline	The Group Anti-Bribery Guideline, which integrates the rules for preventing and combating corruption in force within the Group into a comprehensive framework
Offences	Offences under Legislative Decree No. 231/2001
Sensitive Activities	Activities considered potentially at risk in relation to the offences referred to in Legislative Decree No. 231/2001
Supervisory Body or SB	Body responsible for supervising the functioning, effectiveness and compliance with the Model and for updating it, as referred to in Article 6, paragraph 1, letter b) of Legislative Decree No. 231/2001
Corporate Bodies	Board of Directors and Board of Statutory Auditors of ASPI
Board of Directors or BoD	Board of Directors of ASPI
Apical Subjects	Pursuant to Article 5, paragraph 1, letter a) of the Decree, *persons who hold representative, administrative or management positions within the entity or one of its organisational units with financial and functional autonomy, as well as persons who exercise, even de facto, the management and control of the same.*

Subordinates	Pursuant to Article 5, paragraph 1, letter b) of the Decree, *persons subject to the management or supervision of one of the persons referred to in letter a)* (i.e. Senior Management)
Board of Statutory Auditors	Board of Statutory Auditors of ASPI
Control, Risk, Audit and Related Parties Committee or CCRAPC	ASPI Control, Risk, Audit and Related Parties Committee
Third-party recipients	Those who have commercial and/or financial relationships of any kind with the Company
CCNL	Applicable national collective labour agreements for the sector
General protocols	The set of documents that define the general principles of conduct, including, among others: ASPI Group Code of Ethics, ASPI Group Anti-Bribery Guideline, ASPI Group Management of Reports Guideline, ASPI Group Antitrust Compliance and Consumer Protection Guideline
Company regulatory system	The set of company rules, such as Guidelines, Management Procedures, Operating Instructions, Manuals, forms, Service Orders, Service Instructions, Organisational Communications and staff announcements
ASPI Ethics Office or Ethics Office	Body established within ASPI with responsibility for overseeing the process of managing reports relating to the Company, assessing their adequacy, suggesting any improvements to the process to the Board of Directors, and promoting the necessary information and training activities, in accordance with the ASPI Group Management of Reports Guideline
ASPI Group Management of Reports Guideline	Document formalising the governance, process and control principles for the management of reports for the companies of the Autostrade per l'Italia Group with the aim of ensuring compliance with Legislative Decree 24/2023.
Report	Communication made through the channels made available by the Group companies relating to violations that have occurred or are likely to occur within the ASPI Group, or within a third party that has or has had a relationship of any kind with the Group itself, and concerning facts that are believed to be: unlawful conduct or irregularities; violations of regulations; actions likely to cause financial damage or damage to the company's image; violations of the ASPI Group Code of Ethics; violations of the ASPI Group Anti-Bribery Guideline; violations of the ASPI Group Antitrust and Consumer Protection Compliance Guideline; violations of the Organisation, Management and Control Model; violations of company procedures and regulations.

Whistleblowing Platform	IT tool adopted by ASPI for the transmission and management of reports, which can be accessed via the Company institutional website, in the specific section of each reporting channel, and which guarantees, including through the use of encryption tools, the confidentiality of the identity of the reporting person, the person involved and any person mentioned in the report, as well as the content of the report and related documentation.

2 FOREWORD

Legislative Decree No. 231 of 8 June 2001, implementing Article 11 of Law No. 300/2000, introduced into the legal system the *'regulation of the administrative liability of legal persons, companies and associations, including those without legal personality*'.
The Company - aware of the need to ensure fairness and transparency in the conduct of its business and corporate activities, in order to protect its market position and image, the expectations of its shareholders and the work of its employees - has deemed it appropriate to adopt an Organisation, Management and Control Model (hereinafter also referred to as the "Model" or "Model 231"), which defines a structured system of rules and controls to be followed in order to pursue the corporate purpose in full compliance with with current legal provisions.
This document therefore describes the Company Organisation, Management and Control Model.

3 THE COMPANY

Autostrade per l'Italia S.p.A. carries out the construction and management on the national territory of highways, transport infrastructure adjacent to the highway network, rest and intermodal infrastructure as well as related adduction.
In carrying out these activities, the Company, by way of example and without limitation, oversees and manages:

a) the construction of major works relating to the highway network;
b) maintenance, extraordinary repairs, innovations, modernisations and completions;
c) rights of way and parking rights and those connected in any way to the use of the highway network and infrastructure, in the form of season tickets or other fees.

The Company also promotes, exercises and develops, insofar as they are connected or relevant to the construction and management of highways, transport, parking and intermodal infrastructure and related connections:

- research, consultancy, technical assistance and design activities;
- activities aimed at the acquisition, by any means, and marketing of patents, know-how, plants, technologies, IT, telematic and value-added services;
- marketing of goods and services;
- provision of services, including information and publishing services, for the benefit of users;
- activities aimed at the economic use of highway facilities, including the telecommunications network.

4 LEGISLATIVE DECREE NO. 231/2001

4.1 THE ADMINISTRATIVE LIABILITY REGIME APPLICABLE TO LEGAL ENTITIES

Legislative Decree No. 231 of 8 June 2001 (hereinafter the "Decree"), which introduces the "*Regulation of the administrative liability of legal persons, companies and associations, including those without legal personality*", adapted Italian legislation on the liability of legal persons to the following international conventions, to which Italy had long been a party:

- the *Brussels Convention of 26 July 1995* on the protection of the European Communities financial interests;

- the *Brussels Convention of 26 May 1997* on the fight against corruption involving officials of the European Community or officials of Member States;
- the *OECD Convention of 17 December 1997* on combating bribery of foreign public officials in international business transactions.

The Decree introduced into Italian law a system of administrative liability for companies and associations, including those without legal personality (hereinafter referred to as "Entities"), for certain offences committed in their interest or for their benefit by:

a) natural persons who hold positions of representation, administration or management of the Entities themselves or of one of their organisational units with financial and functional autonomy, as well as natural persons who exercise, even de facto, the management and control of the Entities themselves (so-called *"apical subject"*);
b) natural persons subject to the management or supervision of one of the above-mentioned persons (so-called "*subordinates*").

The administrative liability of the legal entity is in addition to the (criminal) liability of the natural person who actually committed the offence, and both are subject to investigation in criminal proceedings.

In this regard, the legal representative who is under investigation/charged with the predicate offence cannot, due to the incompatibility of their position, appoint a defence counsel for the entity, due to the general and absolute prohibition of representation laid down in Article 39 of Legislative Decree No. 231/2001.[1]

Moreover, the entity's liability remains even if the natural person who committed the offence has not been identified or is not punishable.

In the event of an attempt to commit one of the offences indicated in the Decree, the financial sanctions and disqualification sanctions are reduced by one third to one half, while the imposition of sanctions is excluded in cases where the entity voluntarily prevents the action or event from taking place (Article 26 of Legislative Decree No. 231/2001).

Pursuant to Article 23 of Legislative Decree No. 231/2001, the entity is also liable in cases where anyone, in the course of the entity activities and in the interest or for the benefit of the entity, has violated the obligations or prohibitions relating to disqualification sanctions applicable to the entity itself.

To date, the entity is liable only in the event of the commission of the following types of unlawful conduct (so-called predicate offences) expressly referred to in the Decree:

i. offences against the Public Administration (unauthorised receipt of payments, fraud against the State, a public body or the European Union or for the purpose of obtaining public funds, computer fraud against the State or a public body and fraud in public procurement; embezzlement, misappropriation of money or movable property, extortion ( ), undue inducement to give or promise benefits, bribery) ( ) (Articles 24 and 25 of Legislative Decree No. 231/2001);
ii. computer offences and unlawful data processing (Art. 24-bis of Legislative Decree no. 231/2001);

[1] Paragraph 1 of Article 39 of the Decree provides that: "*The entity shall participate in criminal proceedings through its legal representative, unless the latter is charged with the offence on which the administrative offence depends*." On this point, reference is made to the ruling of the Criminal Cassation Court, Section III, judgment no. 38890 of 9 October 2024, which confirms what was already stated by the same section in judgment no. 32110 of 22 March 2023: *"In this case, the Joint Divisions ruled that, with regard to the criminal liability of entities, the legal representative who, as in this case, is under investigation or charged with the predicate offence cannot, due to the incompatibility of his position, appoint a defence counsel for the entity because of the general and absolute prohibition of representation laid down in Legislative Decree No. 231 of 8 June 2001, Article 39, with the consequence that the organisational model of the entity must provide for precautionary rules for possible situations of conflict of interest of the legal representative under investigation for the predicate offence, valid for providing the entity with a defence counsel, appointed by a specifically delegated person, to protect its interests*." The aforementioned principle was recently reaffirmed by the Court of Cassation in its ruling no. 8855 of 3 March 2025.

iii. organised crime offences (Article 24-ter of Legislative Decree No. 231/2001);
iv. counterfeiting of currency, public credit cards, revenue stamps and identification instruments or marks (Art. 25-bis Legislative Decree No. 231/2001);
v. offences against industry and commerce (Art. 25-bis.1 Legislative Decree No. 231/2001);
vi. corporate offences (Art. 25-ter of Legislative Decree No. 231/2001);
vii. offences for the purpose of terrorism or subversion of the democratic order (Art. 25-quater of Legislative Decree No. 231/2001);
viii. practices of female genital mutilation (Art. 25-quater.1 Legislative Decree No. 231/2001);
ix. offences against the individual (Art. 25-quinquies Legislative Decree No. 231/2001);
x. market abuse (Art. 25-sexies Legislative Decree No. 231/2001);
xi. manslaughter or serious or very serious injury, committed in violation of the regulations on health and safety at work (Art. 25-septies of Legislative Decree No. 231/2001);
xii. receiving, laundering and use of money, goods or benefits of illegal origin, as well as self-laundering (Art. 25-octies of Legislative Decree No. 231/2001);
xiii. offences relating to non-cash payment instruments and fraudulent transfer of assets (Art. 25-octies.1 Legislative Decree No. 231/2001);
xiv. offences relating to the violation of European Union restrictive measures (Art. 25-octies.2 Legislative Decree No. 231/2001);
xv. offences relating to copyright infringement (Art. 25-novies Legislative Decree No. 231/2001);
xvi. inducement not to make statements or to make false statements to the judicial authorities (Art. 25-decies of Legislative Decree No. 231/2001);
xvii. transnational crimes relating to criminal associations, money laundering, migrant smuggling, obstruction of justice (Law No. 146 of 16 March 2006, Articles 3 and 10);
xviii. environmental offences (Art. 25-undecies of Legislative Decree No. 231/2001);
xix. employment of third-country nationals whose stay is irregular (Article 25-duodecies of Legislative Decree No. 231/2001);
xx. racism and xenophobia (Article 25-terdecies of Legislative Decree No. 231/2001);
xxi. fraud in sports competitions, illegal gambling or betting and gambling using prohibited devices (Art. 25-quaterdecies of Legislative Decree No. 231/2001);
xxii. tax offences (Art. 25-quinquiesdecies of Legislative Decree No. 231/2001);
xxiii. smuggling (Art. 25-sexiesdecies of Legislative Decree No. 231/2001);
xxiv. offences against cultural heritage (Art. 25-septiesdecies of Legislative Decree No. 231/2001);
xxv. laundering of cultural assets and devastation and looting of cultural and landscape assets (Art. 25-duodevicies Legislative Decree No. 231/2001);
xxvi. offences against animals (Art. 25-undevicies of Legislative Decree no. 231/2001).

4.2 OFFENCES COMMITTED ABROAD

The entity is also liable for offences committed abroad, provided that the State where the offence was committed does not prosecute them.
In particular, according to the provisions of Article 4 of the Decree, an entity based in Italy may be held liable for offences committed abroad under the following conditions:

a) the offence must be committed abroad by a person organically and functionally linked to the entity (Article 5, paragraph 1, of the Decree);

b) the entity must have its main office in Italian territory;
c) the entity may be held liable only in the cases and under the conditions provided for in Articles 7 (offences committed abroad), 8 (political offences committed abroad), 9 (common offences committed by citizens abroad)[2] and 10 (common offences committed by foreigners abroad)[3] of the Criminal Code.

Finally, in cases where the law provides for the offender to be punished at the request of the Minister of Justice, proceedings against the entity shall only be brought if the request is also made against the latter.

4.3 SANCTIONS

The sanctions for the offences referred to in Article 9 of the Decree are:

- financial sanctions;
- disqualification sanctions;
- confiscation;
- publication of the judgment.

In particular, disqualification sanctions, without prejudice to the provisions of Article 25, paragraph 5[4] and 25-octies.2, paragraph 3[5] of the Decree, have a duration of not less than three months and not more than two years, are applied to the specific activity to which the offence of the entity refers and consist of:

- prohibition from carrying out the activity;
- a ban on contracting with the public administration, except for the purpose of obtaining public services;
- the suspension or revocation of authorisations, licences or concessions functional to the commission of the offence;
- exclusion from benefits, financing, contributions and subsidies, and/or the revocation of any already granted;
- a ban on advertising goods or services.

Disqualification sanctions are applied in the cases strictly indicated in the Decree, only if at least one of the following conditions is met:

- the entity has derived significant profit from the offence and the offence was committed by apical subject or by persons subject to the management and supervision of others when the commission of the offence was determined or facilitated by serious organisational deficiencies;

---

[2] Article 1, paragraph 1, letter a) of Law No. 3 of 9 January 2019 added the following after the third paragraph of Article 9 of the Criminal Code: *"In the cases provided for in the previous provisions, the request of the Minister of Justice or the application or complaint of the injured party is not necessary for the offences provided for in Articles 320, 321 and 346-bis*."

[3] Article 1, paragraph 1, letter b) of Law No. 3 of 9 January 2019 added the following after the second paragraph of Article 10 of the Criminal Code: "*The request of the Minister of Justice or the petition or complaint of the injured party is not necessary for the offences referred to in Articles 317, 318, 319, 319-bis, 319-ter, 319-quater, 320, 321, 322 and 322-bis*".

[4] Article 25, paragraph 5, of Legislative Decree No. 231/2001 states the following: *"5. In cases of conviction for one of the offences referred to in paragraphs 2 and 3, the disqualification sanctions provided for in Article 9, paragraph 2, shall apply for a period of not less than four years and not more than seven years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter a), and for a period of not less than two years and not more than four years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter b)*." The same provision also stipulates the following in paragraph 5-bis: "*If, prior to the first instance judgment, the entity has taken effective measures to prevent the criminal activity from having further consequences, to secure evidence of the offences and to identify those responsible or to seize the sums or other benefits transferred, and has eliminated the organisational deficiencies that led to the offence by adopting and implementing organisational models suitable for preventing offences of the type that occurred, the disqualification sanctions shall have the duration established in Article 13, paragraph 2.*"

[5] Paragraph 3 of Article 25-octies.2, introduced by Article 6 of Legislative Decree No. 211/2025 entitled "Implementation of Directive 2024/1226/EU of the European Parliament and of the Council of 24 April 2024 defining the offences and sanctions for the violation of Union restrictive measures and amending Directive (EU) 2018/1673", reads as follows: *"In cases of conviction for one of the offences referred to in paragraph 1, letters a) and b), the disqualification sanctions provided for in Article 9, paragraph 2 shall apply to the entity for a period of not less than two years and not more than six years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter a), and for a period of not less than one year and not more than three years if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter b)*".

- in the event of repeated offences.

The type and duration of disqualification sanctions are determined by the judge, taking into account the seriousness of the offence, the degree of responsibility of the Entity and the actions taken by the Entity to eliminate or mitigate the consequences of the offence and to prevent further offences from being committed. Instead of applying the sanction, the judge may order the Entity activities to be continued by a judicial commissioner.

Disqualification sanctions may be applied to the Entity as a precautionary measure when there are serious indications to believe that the Entity is responsible for the commission of the offence and there are well-founded and specific elements to believe that there is a real danger that offences of the same nature as the one being prosecuted will be committed (Article 45 of the Decree). If the conditions for the application of a disqualification sanction that determines the interruption of the Entity activities are met, the judge, instead of applying the sanction, may order the continuation of the Entity activities by a commissioner for a period equal to the duration of the disqualification measure, when at least one of the following conditions is met: the Entity provides a public service or a service of public necessity, the interruption of which could cause serious harm to the community; the interruption of the activity could have significant repercussions on employment (Articles 15 and 45, paragraph 3, of the Decree).

Finally, as expressly provided for in Article 17 of the Decree, disqualification sanctions shall not be applied where, prior to the opening of the trial, the entity has:

- fully compensated for the damage, eliminating the harmful and dangerous consequences of the offence, or has effectively taken steps to do so;
- eliminated the organisational deficiencies that led to the event by adopting and implementing organisational models suitable for preventing offences of the type that occurred;
- make the profits obtained from the commission of the offence available for confiscation.

Failure to comply with disqualification sanctions constitutes an autonomous offence under the Decree as a source of possible administrative liability for the entity (Article 23).

The financial sanctions applicable to all offences, *pursuant to* Article 10 of the Decree, are determined, except in the cases provided for in paragraph 3-bis[6] , according to a system based on "quotas", in a number not less than one hundred and not more than one thousand and with a variable amount per single quota between a minimum of €258 and a maximum of €1,549. The judge determines the number of quotas taking into account the seriousness of the offence, the degree of responsibility of the entity and the activities carried out to eliminate or mitigate the consequences of the offence and to prevent further offences from being committed. The amount of the quota is set on the basis of the economic and financial conditions of the entity, in order to ensure the effectiveness of the sanction (Article 11 of the Decree).

In addition to the above sanctions, the Decree provides for the confiscation of the price or profit of the offence, which may also include assets or other benefits of equivalent value, as well as the publication of the conviction in the event of a disqualification sanction.

[6] Paragraph 3-bis of Article 10 of Legislative Decree No. 231/2001, introduced by Article 6, paragraph 1, letter a), No. 2) of Legislative Decree No. 211/2025, states the following: *"In the cases provided for by law, the financial sanction is determined in relation to the specific percentage, indicated for each offence, of the total turnover of the entity for the financial year preceding that in which the offence was committed or, if lower, for the financial year preceding the application of the financial sanction. When it is not possible to ascertain the total global turnover of the entity, the financial sanction shall be applied in the amount determined in relation to each offence*."

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

Articles 6 and 7 of the Decree provide for specific forms of exemption from administrative liability for the entity for offences committed in its interest or to its advantage by both apical subjects and subordinates.

In particular, Article 6, paragraph 1, of the Decree, in the case of offences committed by apical subjects - as holders of representative, administrative or management functions of the entity or of one of its organisational units with financial and functional autonomy, or holders of the power, even if only de facto, to manage and control the entity - provides for a specific form of exemption from administrative liability if the entity demonstrates that:

a) the management body has adopted and effectively implemented, prior to the commission of the offence, organisation and management models suitable for preventing offences of the type that occurred;
b) the task of supervising the functioning and observance of the models and ensuring their updating has been entrusted to a body with autonomous powers of initiative and control;
c) the persons who committed the offences acted by fraudulently circumventing the aforementioned models;
d) there has been no omission or insufficient supervision by the body referred to in point (b) above.

In the case of offences committed by subordinates - persons subject to the direction or supervision of others - Article 7 of the Decree provides that the entity is liable if the commission of the offence was made possible by failure to comply with management and supervision obligations. Such failure to comply is in any case excluded if, prior to the commission of the offence, the entity adopted and effectively implemented an Organisation, Management and Control Model suitable for preventing offences of the type that occurred.

Paragraph 2 of Article 6 of the Decree also provides that the Organisation, Management and Control Model must meet the following requirements:

- identify the activities in which the offences provided for in the Decree may be committed;
- provide for specific protocols aimed at planning the formation and implementation of the entity decisions in relation to the offences to be prevented;
- identify methods of managing financial resources suitable for preventing the commission of such offences;
- provide for reporting obligations to the body responsible for supervising the functioning and compliance with the Model;
- introducing an internal disciplinary system suitable for sanctioning non-compliance with the measures indicated in the Model.

Further requirements aimed at ensuring the suitability of the Organisation, Management and Control Model and the consequent exemption from liability for the entity were introduced by Legislative Decree No. 24 of 10 March 2023 concerning "*Implementation of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law and laying down provisions on the protection of persons who report breaches of national law*".

More specifically, paragraphs 2-ter and 2-quater of Article 6 of Legislative Decree No. 231/2001 have been repealed and, at the same time, paragraph 2-bis has been replaced with the following: "*The models referred to in paragraph 1, letter a), provide, pursuant to the legislative decree implementing Directive (EU) 1937/2019 of the European Parliament and of the Council of 23 October 2019, for internal reporting channels ( ), the prohibition of retaliation and the disciplinary system, adopted pursuant to paragraph 2, letter e)*."

In this regard, ASPI has set up, as described in paragraph 8 below, an internal system for receiving and handling reports that applies to Autostrade per l'Italia S.p.A. and the companies of the ASPI Group. This system ensures absolute confidentiality at every stage of the process, protecting the identity of the person making the report, the persons involved and any persons mentioned, as well as the content of the report and related documentation.
Finally, Legislative Decree No. 231/2001 provides that the Organisation, Management and Control Models may be adopted, ensuring the above requirements, on the basis of codes of conduct drawn up by representative trade associations.

5 ADOPTION OF THE MODEL

5.1 PURPOSE AND RECIPIENTS OF THE MODEL

The Model can be defined as a comprehensive set of principles, rules, provisions, organisational structures and responsibilities, designed to implement and diligently manage a system for controlling and monitoring activities at risk with regard to the offences covered by the Decree.
The Model has the following purposes:

- to strengthen the Corporate Governance system;
- to establish a structured and organic system of prevention and control aimed at eliminating or reducing the risk of committing the offences referred to in Legislative Decree no. 231/2001, including attempted offences, connected with the company activities, with particular regard to the elimination or reduction of any unlawful conduct;
- to make all those who carry out "sensitive activities" in the name and on behalf of ASPI aware that, in the event of a violation of the provisions of the Model, they may incur an offence punishable not only against the perpetrator but also against the company, with criminal and administrative sanctions;
- informing all those who work in any capacity in the name, on behalf or in any case in the interest of ASPI that violation of the provisions contained in the Model will result in the application of appropriate sanctions;
- to reiterate that ASPI does not tolerate unlawful conduct and combats all corrupt practices, regardless of the intended purpose or the mistaken belief that such conduct is in the interests or to the advantage of the Company, as such conduct is in any case contrary to the ethical principles to which the Company intends to adhere and, therefore, contrary to its interests;
- censuring violations of the Model with the imposition of disciplinary and/or contractual sanctions.

The following are considered Recipients of this Model and, as such, are required to be familiar with and comply with it within the scope of their specific responsibilities:

- the members of the Board of Directors, who are responsible for setting objectives, deciding on activities, implementing projects, proposing investments and taking any decision or action relating to the performance of the Company;
- the members of the Board of Statutory Auditors, in the performance of their function of controlling and verifying the formal and substantive correctness of the Company activities and the functioning of the internal control system;
- the General Manager, the Directors, the Branch Managers and the Executives;
- employees and all those with whom working relationships are maintained, for any reason, including temporary and/or occasional relationships.

The Recipients of the Model, who are required to comply with this General Part[7] , the Code of Ethics, the ASPI Group Anti-Bribery Guideline, the Integrated Group Management Systems Policy, the ASPI Group Management of Reports Guideline and the ASPI Group Antitrust and Consumer Protection Compliance Guideline, also include all those who have commercial and/or financial relationships of any kind with the Company (i.e. outsourcers, consultants, suppliers and service contractors, business partners).

5.2 STRUCTURE OF THE MODEL

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

The Special Part of the Model is characterised by a "process-based" structure which, more specifically, provides for a specific section dedicated to the individual Sensitive Activities mapped in relation to business processes.

The individual sections of the Special Part illustrate (for each Sensitive Activity):

- Relevant categories of offences;
- Examples of how the offence is committed;
- (reference to) Transversal control standards[8] ;
- Specific control standards (General and Specific)[9] ;
- Information flows to the Supervisory Body (if any).

5.3 MODEL UPDATE

Given the complexity of the Company organisational structure, in order to promote compliance of the various company activities with the provisions of Legislative Decree no. 231/2001 and, at the same time, to ensure effective control of the risk of commission of predicate offences, a procedure is provided for updating the Model annually or, in any case, when one or more of the following conditions occur:

- legislative innovations (see Annex 2 to this General Section) or case law innovations concerning the liability of entities for administrative offences resulting from crimes;
- significant changes in the organisational structure or areas of activity of the Company;
- significant violations of the Model;
- results of risk assessments, results of internal audit activities, checks on the effectiveness of the Model;
- the issuance of best practices in the sector;
- requests from the Supervisory Body;
- reports to the Ethics Office confirming a violation of the Model or indicating the need to update it.

---

[7] The Special Part, where expressly provided for, may be made available to third parties/interlocutors who are required to comply with the relevant provisions (e.g. by transfer via e-mail/attachment to the relevant contract, etc.).

[8] Control measures which, being characterised by their cross-cutting nature, are by their very nature applicable without distinction to all company processes and mapped sensitive activities. These control standards are formulated in such a way that they can be verified independently of their association with specific processes and/or Sensitive Activities.

[9] Control measures which, unlike transversal measures, are specifically associated with individual business processes and identified Sensitive Activities. These are instructions aimed at regulating, within the applicable provisions of the Regulatory System, more detailed aspects characteristic of each process/Sensitive Activity. Specific control standards are divided into:

- "**General Control Standards**": behavioural guidelines which, for each mapped Process, illustrate the "best practices" to be observed;
- "**Specific Control Standards**": organisational and/or operational control measures specifically associated with each Sensitive Activities, implemented with the aim of mitigating the risk of predicate offences being committed.

The Model is approved by the ASPI Board of Directors. Any updates to the Model that do not substantially affect the General or Special Part of the Model may be approved separately by the Chairman and the Chief Executive Officer, subject to subsequent notification to the Board of Directors.

5.3.1 UPDATING OF THE GENERAL PROTOCOLS

The "General Protocols" represent the set of documents that define the general principles of conduct, namely:

- ***Code of Ethics***

  ASPI adopted its Code of Ethics in 2003 and has subsequently updated it. Responsibility for monitoring compliance with the Code has been entrusted to ASPI Ethics Office.
  The Code of Ethics requires members of the Boards of Directors, members of the Boards of Statutory Auditors and other Control Bodies, Group employees, Collaborators (such as consultants, representatives, intermediaries, agents, etc.), as well as business partners and all those who have commercial relations with the Group, to demonstrate ethical and professional integrity, correct behaviour and full compliance with the laws and regulations of all countries in which it operates and with the principles of honesty, reliability, impartiality, loyalty, transparency, fairness and good faith.
  Close interaction between the Model and the Code of Ethics has been established in order to form a system of internal rules with the aim of promoting a culture of ethics and corporate transparency, also in line with the provisions of the Confindustria Guidelines.

- ***ASPI Group Anti-Bribery Guideline***

  ASPI has issued the Group Anti-Bribery Guideline, which integrates the rules for preventing and combating corruption in force within the Group into a comprehensive framework. On this point, although the Company is not subject to the obligations and requirements of Law No. 190/2012 and subsequent amendments and additions, containing "*Provisions for the prevention and repression of corruption and illegality in public* administration", in order to actively contribute to the fight against corruption and the strengthening of a culture of legality, has voluntarily implemented an Anti-Bribery Management System, committing itself to its continuous improvement and identifying the international technical standard UNI ISO 37001:2016 as the management model on which to base its System. The aforementioned Management System, which obtained certification to the international technical standard UNI ISO 37001:2016 in April 2019 and was last renewed in March 2025, is described in the "*Integrated Management System Manual*" adopted by ASPI, consists of a set of activities designed and implemented with an integrated and synergistic approach, aimed at the continuous improvement of performance and the effectiveness of measures to contain corruption risks.
  This System operates in synergy with other anti-bribery compliance tools already integrated by the company, such as this Organisation, Management and Control Model *pursuant to* Legislative Decree no. 231/2001 and with additional risk analysis tools (i.e. *Risk management*).

- ***ASPI Group Antitrust and Consumer Protection Compliance Guideline***

  It onstitutes the foundation of the broader ASPI Group "Antitrust and Consumer Protection Compliance Programme", in line with the characteristics of the Group and the markets in

which it operates, as well as in accordance with the "Antitrust Compliance Guideline" issued by the Italian Competition and Market Authority and taking into account national and international best practices. This Programme provides a single framework comprising principles, rules, organisational and procedural measures aimed at strengthening the Internal Control and Risk Management System and ensuring the following objectives: ensuring compliance with competition and consumer protection regulations; promoting awareness and disseminating knowledge about the importance of the rules in question, in order to prevent possible conduct contrary to antitrust regulations and the Consumer Code; strengthening a working and supervisory environment that reduces the risk of anti-competitive behaviour and/or unfair commercial practices; implementing monitoring tools to identify any violations, together with the resulting corrective actions.

- ***ASPI Group Management of Reports Guideline***
  The Guideline formalise the governance, process and control principles for the management of reports by Autostrade per l'Italia Group companies with the aim of ensuring compliance with Legislative Decree No. 24 of 10/03/2023. It applies to all Group personnel, members of corporate bodies, consultants/freelancers, employees/external collaborators and, more generally, anyone who becomes aware of violations (behaviour, acts or omissions), even if only potential, of national or European Union regulations or the company's regulatory system.
  With regard to this protocol, please refer to the provisions of paragraph 8 Reports of alleged violations of the Model (so-called 231 reports).

5.3.2 MODEL UPDATE PROCESS

ASPI guarantees the constant implementation and updating of the Model, according to the methodology indicated by the Confindustria Guidelines and the relevant best practices. The Model update process has been divided into the following phases:

Fase 1. MAPPING OF SENSITIVE ACTIVITIES

The Company activities were assessed in terms of those in which one of the predicate offences could theoretically be committed, as well as those that could be instrumental in the commission of such offences, making it possible or facilitating the completion of the predicate offence.
The identification of processes/Sensitive Activities was carried out through the prior examination of company documentation (organisation charts, main processes, powers of attorney, organisational provisions, etc.) and the subsequent conduct of a series of interviews with key individuals involved in the processes/ Sensitive Activities.
The offences that could potentially be committed within the scope of the Sensitive Activities were then identified and, for each of them, the possible perpetrators and some concrete examples of how they could be committed were indicated.
The result of this work was presented in a document containing a map of Sensitive Activities, indicating the individuals (or company structures) who could carry them out or engage in activities that are instrumental to them, and the related methods of committing the offences associated with them.

Fase 2. ANALYSIS OF CONTROL MEASURES

Once the potential risks had been identified, the existing control system for the processes/ Sensitive Activities was analysed in order to assess its adequacy in preventing the risk of offences.

At this stage, the current internal control measures in place (formal protocols and/or practices adopted, verifiability and traceability of operations and controls, separation or segregation of functions, etc.) were verified by analysing the information and documentation provided by the company structures.

As part of the *risk assessment* activities, the elements of ASPI Internal Control and Risk Management System[10] were analysed and the departments responsible/of reference for the management of activities/areas at risk[11] were identified. The Internal Control and Risk Management System consists of a set of tools, rules, company regulations[12] and organisational structures designed to enable the sound and proper management of the company, in line with the objectives defined by the Board of Directors, through an adequate process of identification, measurement, management and monitoring of the main risks. ASPI Internal Control and Risk Management System is based on the following general principles:

- *compliance with laws and consistency with the general framework*: compliance with applicable regulations and consistency with the general framework (e.g. Model 231, regulatory system, system of powers and delegations, national and international best practices);
- *risk culture*: promoting the dissemination of a risk management culture aimed at ensuring the adoption of a *risk-based* approach in the process of setting objectives and in management decision-making, and during the performance of activities by company personnel in support of the Group strategic decisions;
- *process-based approach to risk*: aimed at identifying, assessing, managing and monitoring risks in order to ensure that ASPI activities, organisation and business processes are covered by analysis;

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

[11] The management procedure "Company Regulatory System and Documentation Management" defines the criteria, responsibilities and methods for formalising company documentation, with the consequent communication and dissemination of the same. In particular, the following are provided for:

- Service Orders, documents aimed at defining or modifying the macro-organisational structure, communicating the appointment of the heads of first-level organisational structures (employees of the Chairman, Chief Executive Officer and General Manager), defining their mission and communicating general organisational provisions of considerable importance;
- Service Instructions, documents aimed at defining or modifying the structure and areas of responsibility of second-level organisational structures and appointing the relevant Managers;
- Organisational Communications, documents aimed at defining or modifying the organisational structure of the teams responsible for implementing cross-functional initiatives/projects of interest to the Company and/or the Group.

[12] In line with the provisions of the "Company Regulatory System and Document Management" procedure, the following types of company documentation are required:

- Guidelines, documents that formalise corporate governance rules and control principles;
- Group Guidelines, Guidelines formalised by the Company that may be relevant to Subsidiaries (with "Comply or Explain" applicability);
- Management Procedures, Company documents that formalise corporate processes by defining methods, roles and responsibilities, information systems and controls to ensure the application of the guidelines;
- Group Management Procedures, management procedures formalised by the Company that may be relevant to Subsidiaries (with "Comply or Explain" applicability) regardless of the existence or otherwise of service contracts;
- TUF procedures, administrative and accounting procedures for the preparation of the financial statements and consolidated financial statements, as well as any other financial communications (Consolidated Law on Finance – Legislative Decree 58/98 and subsequent amendments and additions);
- Operating manuals, easy-to-consult documents containing a complete, comprehensive and systematic treatment of a specific topic;
- Operating Instructions, documents containing detailed instructions for carrying out activities or operational guidelines for coordination between different production units.
- Certified Management System Manuals, documents that set out company policy and describe the management of the Systems, illustrating their 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 accordance with the requirements of the relevant technical standards.

- *autonomy*: the autonomy and independence of subsidiaries is guaranteed in relation to the establishment and maintenance of an adequate and functioning Internal Control and Risk Management System, in compliance with the management and coordination guidelines defined by ASPI;
- *traceability of information flows*: the various company figures involved must ensure, each for their own area of responsibility, the traceability of activities and documents relating to the process, ensuring the identification and reconstruction of the sources, information elements and controls carried out that support the activities;
- *monitoring and continuous improvement:* the efficiency and effectiveness of the Internal Control and Risk Management System are continuously monitored in order to identify opportunities for improvement and strengthening, including as a result of changes in the business, processes, organisation and, consequently, corporate risks.

Furthermore, it is inspired by the following principles set out in the CoSO Framework:

- *control environment*: a constant commitment to integrity and ethical values that emanates from senior management and is disseminated to all levels of the organisation, as well as the empowerment of all individuals to apply controls and comply with company rules;
- *control activities*: development and implementation of control activities on processes and supporting technological systems aimed at mitigating risks within defined levels of acceptability; implementation of control activities within the Company regulatory framework;
- *use of technology*: promotion of the use of technology and information tools to provide timely access to information for control and monitoring activities, as well as consistent databases;
- *communication and reporting flows*: definition and maintenance of specific flows between the various levels of control and the competent management and control bodies, appropriately coordinated in terms of content and timing. These flows must be considered as fundamental operational mechanisms for the functioning of the Internal Control and Risk Management System.

As defined in the document "ASPI Group Internal Control and Risk Management System (ICSRM) Guideline" (to which reference should be made for detailed information), the Internal Control and Risk Management System is implemented by a number of corporate bodies and structures, whose components are coordinated and interdependent with each other and characterised by complementarity in the objectives pursued, the characteristics of the system and the rules of operation.

The aforementioned Guideline describe, among other things, the governance of the Internal Control and Risk Management System and identify the individuals/company functions responsible for Level I, II and III controls.

With regard to Level III controls, for the purposes of verifying the functioning and suitability of the Internal Control and Risk Management System, ASPI Internal Audit department prepares, at least once a year, ASPI risk-based audit plan, which is submitted for approval to the Board of Directors, subject to the favourable opinion of the Control, Risks, Audit and Related Parties Committee and after consulting the Board of Statutory Auditors and the Chief Executive Officer.

Audits of the control system may also cover activities carried out, in whole or in part, with the support of subsidiaries or external companies (outsourcing). These audits are conducted on the basis of the following criteria:

- the formalisation of the services provided in specific service contracts;
- the existence of formalised procedures/company guidelines relating to the definition of service contracts and the implementation of control measures, including with reference to the criteria for determining fees and the methods for authorising payments;
- the provision of appropriate controls on the activities actually performed by service companies on the basis of contractually defined services;
- the identification of the person responsible for managing the contract (Sole Manager of the procedure/project, based on the transitional regime provided for by the new procurement code - RUP/Technical Manager of the contract);
- the commitment of the Parties to comply with the rules and ethical principles established: i) in the Code of Ethics; ii) in the Organisation, Management and Control Model; iii) in the ASPI Group Anti-Bribery Guidelines; iv) in the Integrated Group Management Systems Policy; v) in the ASPI Group Antitrust and Consumer Protection Compliance Guideline.

With regard to the updating of the Model, the analysis of the control system, conducted by the relevant company departments, concerned the existence of a suitable: i) system of delegations and powers of attorney consistent with the organisation; ii) regulatory system governing company processes and activities; iii) organisation of activities in accordance with the principle of segregation of duties; iv) a document management system that allows for the traceability of operations; v) a process monitoring system for verifying results and any non-conformities.

Fase 3. GAP ANALYSIS

The design of the controls identified was then compared with the characteristics and objectives required by the Decree or suggested by the Confindustria Guidelines and national and international best practices. The comparison between the existing set of controls and the one considered optimal allowed the Company to identify a series of areas for integration and/or improvement of the control system, for which improvement actions to be undertaken were defined.

Fase 4. APPROVAL OF THE MODEL

The draft Model updated by the relevant Company structure is analysed by the Supervisory Body in order to verify its suitability with respect to the educational and preventive function assigned to it by Legislative Decree 231/2001. The results of the analysis of the control measures and gap analysis are also presented to the Supervisory Body.

The updated draft Model is submitted to the Control, Risk, Audit and Related Parties Committee and, subsequently, to the Board of Directors for approval.

5.4 COMMUNICATION OF THE MODEL

ASPI promotes awareness of the Model, the internal regulatory system and their related updates among all Recipients (see previous paragraph on Communication), with a degree of detail that varies according to position and role. Recipients are therefore required to be familiar with its content, to comply with it and to contribute to its implementation.

The Model is formally communicated to Directors and Statutory Auditors at the time of their appointment by means of a full copy, including in electronic format, provided by the Secretariat of the Board of Directors.

For employees, the Model is made available on the Company intranet, which they must systematically access in the ordinary course of their work. For employees who do not have access to the company intranet, the Model is made available through widespread distribution in the workplace, including through digital tools (e.g. QR codes). Upon hiring, employees are also given *the Company Rules and Regulations Information Sheet*, which mentions, among other things, the Code of Ethics, the ASPI Group Anti-Bribery Guideline, the Model, the ASPI Group Management of Reports Guideline, the ASPI Group Antitrust and Consumer Protection Compliance Guideline, and the Group "Conflict of Interest Management" Management Procedure, as well as the regulatory provisions of interest to the Company, knowledge of which is necessary for the proper performance of work activities.

The General Part of this Model, the Code of Ethics, the ASPI Group Anti-Bribery Guideline, the ASPI Group Management of Reports Guideline, the Group Integrated Management Systems Policy and the ASPI Group Antitrust and Consumer Protection Compliance Guideline are made available to third parties and any other parties involved with the Company who are required to comply with the relevant provisions by publication on the Company website[13] .

6 SUPERVISORY BODY

6.1 IDENTIFICATION AND COMPOSITION OF THE SUPERVISORY BODY

In implementation of the Decree and in compliance with the provisions of the Confindustria Guidelines, the ASPI Board of Directors has appointed a body (Supervisory Body, or "SB") entrusted with the task of supervising the functioning, effectiveness and compliance with the Model, as well as ensuring its updating.

In view of the specific nature of its tasks, the Supervisory Body is a collegial body, with all members being external and one member acting as Chairman. The specific criteria for identifying and composing the SB are set out in the "Guideline for the Composition, Selection and Appointment of Supervisory Bodies of ASPI Group Companies" adopted by the Company.

6.2 APPOINTMENT

The members of the Supervisory Body are appointed by the Board of Directors, which also appoints the Chair. The appointment is communicated to each member of the Supervisory Body in accordance with the system for communicating the resolutions of the Board of Directors. Each member of the Body, in turn, must formally accept the appointment by signing the "letter of acceptance of office". Each member must at the same time formally declare that there are no impediments to their independence, autonomy and integrity.

[13] The Special Part, where expressly provided for, may be made available to third parties/interlocutors who are required to comply with the relevant provisions (e.g. by transfer via e-mail/attachment to the relevant contract, etc.).

The composition, tasks, prerogatives and responsibilities of the Supervisory Body, as well as the purposes for which it was established, are communicated to all levels of the company by means of a Service Order.

6.3 REQUIREMENTS OF THE SUPERVISORY BODY

On the basis of the provisions of Articles 6 and 7 of the Decree, the autonomy and independence, professionalism, integrity and continuity of action of the Supervisory Body must be adequately guaranteed.

The autonomy and independence that the Supervisory Body must necessarily possess are ensured by the presence of authoritative external members, who have no operational duties or interests that could influence their independence of judgement, and by the fact that the Supervisory Body operates without hierarchical constraints within the context of corporate governance, reporting to the Board of Directors and to the Board of Statutory Auditors, as well as to the Chairman and the Chief Executive Officer. Furthermore, the activities carried out by the SB cannot be scrutinised by any other body or corporate structure, without prejudice to the power and duty of the Board of Directors to monitor the adequacy of the SB actions in order to ensure the effective adoption and implementation of the Model.

Continuity of action is also guaranteed by the fact that the SB operates permanently within the Company, normally meeting once a month to carry out the tasks assigned to it, and that its members have an effective and in-depth understanding of the Company processes, thus enabling them to be immediately aware of any critical issues. Appointment as a member of the Supervisory Body is conditional upon the absence of any causes of incompatibility with the appointment itself[14] and upon possession of the requirements of integrity, the absence of which constitutes grounds for ineligibility and/or for removal from the Supervisory Body. The continued fulfilment of these requirements is verified periodically from the moment of appointment and throughout the term of office by the Company competent control structures.

For further details on the causes of ineligibility, please refer to the document "Guideline for the Composition, Selection and Appointment of Supervisory Bodies of ASPI Group Companies".

6.4 FUNCTIONS AND POWERS OF THE SUPERVISORY BODY

The ASPI Supervisory Body is generally responsible for:

a) monitoring the adequacy of the Model in preventing the commission of the offences referred to in the Decree;
b) monitoring compliance with the provisions of the Model by internal Recipients within the Company and promoting such compliance also by third parties (consultants, suppliers, etc.);
c) updating the Model in relation to changes in the organisational structure, the regulatory framework or following supervisory activities that reveal significant violations of the requirements.

On a more operational level, the ASPI SB is responsible for:

- encouraging the Company to constantly review its business activities and the relevant regulations in order to update the mapping of activities at risk of offence and propose updates and additions to the Model and the Company regulatory system, where necessary.

[14] Any conflict of interest referred to in the Code of Ethics is included in the causes of incompatibility.

The process of updating the Model is carried out with the support of the relevant Company departments;

- monitoring the ongoing validity of the Model and the Company regulatory system and their effective implementation, promoting, also after consultation with the relevant Company departments, all necessary actions to ensure their effectiveness. This task includes formulating proposals for adjustments and subsequently verifying the implementation and functionality of the proposed solutions;
- carrying out periodic targeted checks on specific operations or acts carried out within the scope of activities at risk;
- verifying existing authorisation and signing powers in order to ascertain their consistency with the defined organisational and management responsibilities and proposing their updating and/or modification, where necessary;
- examining periodic or event-driven information flows that allow the SB to be periodically updated by the relevant company structures on activities assessed as being at risk of offence, as well as establishing communication methods in order to acquire knowledge of alleged violations of the Model;
- implement, in accordance with the Model, periodic information flows to the competent corporate bodies regarding the effectiveness and compliance with the Model;
- share the training programmes promoted by ASPI Training department to spread knowledge and understanding of the Model and verify, through the aforementioned department, the effective fulfilment of training obligations by the Recipients;
- verify the initiatives adopted by the Company to facilitate knowledge and understanding of the Model and related procedures by all those who work on its behalf;
- verify the validity of reports received regarding conduct allegedly constituting offences under the Decree;
- ascertain the causes that led to the alleged violation of the Model and who committed it;
- verify violations of the Model that have been reported or learned of directly and proceed with communications to the competent company structures for the aspects under their jurisdiction, including those relating to the initiation of disciplinary proceedings.

In order to carry out its duties, the SB is granted the following powers:

- access any company document and/or information relevant to the performance of its duties under the Model. In this regard, all Company departments, employees and/or members of corporate bodies are required to provide the information in their possession in response to requests from the Supervisory Body or when events or circumstances relevant to the performance of its duties occur;
- access, without the need for prior consent, all Company structures in order to obtain any information or data deemed necessary for the performance of its duties;
- to use external consultants of proven professionalism where necessary for the performance of its duties;
- ensure that the heads of the Company facilities promptly provide the information, data and/or news requested of them;
- request, where necessary, direct hearings with employees, directors and members of the Company's Board of Statutory Auditors;
- request information from external consultants, business partners and auditors.

In order to better and more effectively fulfil its duties and functions, the SB makes use of ASPI Internal Audit department, which it may request to carry out audits and checks on specific issues, as well as the various company departments that may be useful from time to time.

To guarantee its independence, the Body reports directly to the Board of Directors and, in carrying out its duties, acts with complete autonomy, having adequate financial resources at its disposal to ensure total operational independence.
To this end, the Board of Directors provides the Body with all the financial resources it indicates for the performance of its duties.
In carrying out the operational activities delegated by the SB, the structures in charge report on their work only to the SB and, likewise, the SB reports to the Board of Directors on the activities carried out, on its behalf, by company structures and external consultants.

6.5 REPORTING TO THE CORPORATE BODIES

The Supervisory Body reports on its activities to the Board of Directors and the Board of Statutory Auditors every six months. In particular, the report shall cover:

- the overall activities carried out during the period, with particular reference to monitoring the adequacy and effective implementation of the Model;
- critical issues that have emerged in terms of conduct or events within the Company that may involve violations of the provisions of the Model;
- the proposed corrective and improvement measures for the Model and their implementation status;
- any reports received during the year by ASPI Ethics Office and handled in accordance with their scope, including any corrective and/or improvement actions identified by the Supervisory Board itself, ASPI Ethics Office and other interested parties;
- any other information deemed useful.

The Control, Risk, Audit and Related Parties Committee issues its preliminary opinion to the Board of Directors on the half-yearly report of the Company Supervisory Body on its activities.
The Supervisory Body shall promptly report to the Chairman and Chief Executive Officer on:

- any confirmed violation of the Model, which it has become aware of independently or through reports;
- any organisational or procedural shortcomings identified that could give rise to a real risk of offences being committed that are relevant for the purposes of the Decree;
- regulatory changes that are particularly relevant to the implementation and effectiveness of the Model;
- lack of cooperation on the part of company departments;
- any other information deemed useful for the purposes of urgent decisions by the Chairman and Chief Executive Officer.

6.6 REGULATIONS GOVERNING THE FUNCTIONING OF THE SUPERVISORY BODY

The Supervisory Body regulates and approves its own internal functioning through specific regulations (Supervisory Body Regulations).

6.7 RELATIONS BETWEEN THE SB AND THE CONTROL, RISK, AUDIT AND RELATED PARTIES COMMITTEE

In accordance with their mutual autonomy, the Supervisory Body informs the Control, Risk, Audit and Related Parties Committee, at the latter's request, regarding compliance with the Organisation, Management and Control Model.

6.8 Relations between the SB, the Board of Statutory Auditors and the Anti-Bribery Officer

The SB exchanges information with the Board of Statutory Auditors and, to the extent of its competence, with the Anti-Bribery Officer, on an equal footing and with respect for mutual autonomy, regarding the activities carried out, the issues that have emerged as a result of the checks carried out and the supervisory activities performed.

6.9 Relations between the SB and the Supervisory Bodies of Group Companies

The SB exchanges information with the Supervisory Bodies of Group Companies, on an equal footing and with mutual respect for their autonomy, regarding the activities carried out, issues that have arisen as a result of the checks carried out and the supervisory activities performed.

6.10 Relations between the SB and ASPI Ethics Office

In cases where a report is received concerning violations or attempted circumvention of Model 231, or violations of the Code of Ethics that could be potentially significant pursuant to Legislative Decree no. 231/2001, ASPI Ethics Office shall inform the Company Supervisory Body of such report, in compliance with the confidentiality guarantees imposed by Legislative Decree No. 24/2023, so that, in accordance with the prerogatives and independence of each body, the Supervisory Body can carry out its own assessments and actions. In addition, the SB exchanges information with ASPI Ethics Office on issues that could be potentially significant under the Decree, in full compliance with the confidentiality guarantees and protections provided for in the ASPI Group Management of Reports Guideline.

6.11 Term, revocation, forfeiture and resignation of the SB

The Supervisory Body term of office shall be three years, with the possibility of a single renewal. In any case, each member of the SB shall remain in office until the appointment of his or her successor or the establishment of the new Body.

In order to guarantee the requirements of integrity and independence, the external members of the Body must issue a specific declaration at the time of appointment, under sanction of revocation or forfeiture. In the context of the same declaration, the members of the Supervisory Body undertake to promptly communicate any failure to meet the requirements of independence and integrity, as well as, more generally, any circumstance that may arise that makes them incompatible with the performance of their duties.

The revocation of the Supervisory Body or one of its members is the exclusive responsibility of the Board of Directors, after consulting the Board of Statutory Auditors. The Board of Directors may revoke the members of the Supervisory Body for just cause at any time. Just cause for revocation shall be understood to mean: a) disqualification or incapacitation, or a serious illness that renders the member of the Supervisory Body unfit to perform his or her duties; b) the assignment to the member of the Supervisory Body of operational functions and responsibilities that are incompatible with the requirements of autonomy of initiative and control, independence and continuity of action, which are specific to the Supervisory Body, such as, by way of example, the acceptance of professional assignments, including through other Group companies, which may give rise to even a potential conflict of interest; c) serious breach of the duties of the Supervisory Body, as defined in the Model and in the regulations set out in the Decree; d) failure to comply with the obligation of confidentiality; e) failure to meet the requirements of integrity.

If the mandate is revoked for all members of the Supervisory Body, the Board of Directors, after consulting with the Board of Statutory Auditors, shall establish a new Body.
Cases of revocation for just cause are distinct from those of forfeiture, which result from the loss of eligibility requirements and operate automatically.
Where there are serious reasons, the Board of Directors shall, after consulting the Board of Statutory Auditors and, where not involved, the other members of the Supervisory Body, suspend one or all members of the Supervisory Body from their duties and promptly appoint a new member or the entire Supervisory Body.
Finally, in the event of the resignation of one or all members of the Supervisory Body, to be formalised by means of a specific written communication, the Board of Directors shall replace the member(s) of the SB without delay.

7 INFORMATION FLOWS TO THE SUPERVISORY BODY

The obligation to provide structured information flows is one of the tools necessary to ensure that the Supervisory Body can efficiently monitor the adequacy of and compliance with the Model.
In addition to the provisions of the Special Part of the Model and Company procedures, the Supervisory Body must be made aware of any information that is useful and relevant to the implementation of the Model in sensitive activities.
In particular, the Recipients of the Model must inform the Supervisory Body of:

- any changes in the organisational structure;
- updates to the Company procedural framework and changes in the regulatory environment affecting ASPI MOGC;
- periodic reports on the progress of the Company Regulatory Plan, highlighting the procedures issued/updated during the period;
- any changes to the system of delegations and powers of attorney;
- operations of particular importance or presenting risk profiles such as to suggest a reasonable danger of offences being committed;
- measures and/or information from judicial police bodies, or from any other authority, indicating that investigations are being carried out, including against unknown persons, for the offences referred to in the Decree;
- requests for legal assistance submitted by managers and/or employees in the event of legal proceedings being initiated for offences covered by the Decree;
- reports prepared by the heads of company departments as part of their control activities, which may reveal facts, actions, events or omissions that are critical in terms of compliance with the provisions of the Decree;
- periodic reports by the Anti-Bribery Officer on the activities carried out;
- information relating to the effective implementation of the Model at all company levels, highlighting any disciplinary proceedings carried out and any sanctions imposed or measures to dismiss such proceedings, with the relevant reasons;
- initiation of inspections by public bodies (judiciary, public prosecutor's office, other authorities, etc.) in the context of activities at risk;
- half-yearly report by the Ethics Office concerning reports handled during the reference period, with details of their status, any closure and related corrective actions defined;
- periodic summary report on training provided/to be provided on 231, Anti-Bribery, Code of Ethics and Whistleblowing;

- any administrative sanctions imposed on the Company, with evidence of any appeals against the measures;
- participation in tenders for the award of new concessions or similar services.

8 REPORTS RELATING TO ALLEGED VIOLATIONS OF THE MODEL

Reports relating to alleged violations of the Model and any commission or suspicion of commission of violations of the Company regulatory system, as well as any other violation or irregular conduct in the conduct of company business, including those that could be potentially significant pursuant to Legislative Decree no. 231/2001, must be addressed to the ASPI Ethics Office in accordance with the provisions of the ASPI Group Management of Reports Guideline.
In cases where a report is received concerning violations or attempted circumvention of Model 231, or violations of the Code of Ethics that could be potentially significant pursuant to Legislative Decree no. 231/2001, the Ethics Office shall inform the Company Supervisory Body of such report, in compliance with the confidentiality guarantees imposed by Legislative Decree No. 24/2023, so that, in accordance with the prerogatives and independence of each body, the Supervisory Body can carry out its own assessments and actions.
In the event of a potentially relevant report pursuant to Legislative Decree no. 231/01 involving other Group companies in addition to ASPI, the Ethics Office and the Report Management Body of each other Group company must inform the Supervisory Body of the company concerned of such report so that, in compliance with the prerogatives and independence of each body, the SB can carry out its own assessments and actions.
The ASPI Supervisory Body, within the scope of its competence, acts in such a way as to ensure, in turn, compliance with the provisions of Legislative Decree no. 24/2023 and the ASPI Group Management of Reports Guideline.
For the transmission and management of reports by individuals who become aware of violations of the Model, including potential violations, the Company guarantees the availability of internal channels accessible through a dedicated IT platform (Whistleblowing Platform) that ensures the segregation, data security and protection, as well as the confidentiality of the content of the report and related documentation, through an advanced information encryption system in line with the provisions of the relevant legislation. This platform allows reports to be made both in writing and via voicemail[15] and access is granted to all whistleblowers (employees and non-employees) from the websites and corporate intranets of the ASPI Group Companies. In addition, ASPI Ethics Office is available to meet with the whistleblower to collect the report and record the information provided, if requested via the Whistleblowing Platform. In this case, the minutes of the meeting must be signed by the whistleblower and duly filed.
In order to raise awareness of the report management process, the relevant channels and the protections provided, both among its own staff and all relevant stakeholders, the Company: (i) organises special training sessions for all employees, (ii) makes specific information on the channels, procedures and requirements for making whistleblowing reports available to all interested parties outside the Company.

8.1 ACTIVITIES OF THE SUPERVISORY BODY FOLLOWING RECEIPT OF A REPORT OF ALLEGED VIOLATIONS OF THE MODEL

[15] The method of recording the report involves distortion of the tone and counterfeiting of the voice and guarantees the anonymity of the reporter.

If a report has been shared by ASPI Ethics Office with the Supervisory Body, the latter examines the reports received and the results of the preliminary investigation, which are transmitted before the final closure of the investigation, in order to take charge of any further investigation requirements.
In addition, the Supervisory Body may carry out preliminary investigations independently, undertaking any other activities permitted by its prerogatives, such as assigning professional tasks and external consultancy, requesting further information from identified company subjects with jurisdiction.
In the event of a violation of the Model, the Supervisory Body shall activate the person or Company structure responsible for disciplinary proceedings (see paragraph 10.5 below).

8.2 PROTECTION OF THE WHISTLEBLOWER FROM RETALIATION OR DISCRIMINATION

In order to protect and safeguard the whistleblower, the persons reported and any other persons involved in the report, the Supervisory Body ensures that discretion and confidentiality are guaranteed at every stage of the report management process and prohibits any form of retaliation[16], even indirect, ensuring - where requested - the adoption of support measures[17] through ASPI Ethics Office.
Confidentiality guarantees and protective measures are regulated in detail in the ASPI Group Management of Reports Guideline.

9 TRAINING

9.1 STAFF TRAINING

ASPI promotes awareness of the Model and related updates among all employees, who are therefore required to be familiar with it and implement it. ASPI Training department is responsible for organising and planning staff training on the regulatory provisions of the Decree and the contents of the Model, including procedures relating to reporting channels and whistleblowing protections, providing the Supervisory Body with periodic reports.
Participation in training sessions, as well as in the online course, is mandatory due to the adoption of the Model, and ASPI Training Department monitors that the training course is actually taken, issuing appropriate reminders where necessary. Traceability of participation in training sessions on Decree No. 231/2001 is ensured by recording attendance in the appropriate form and, with regard to e-learning activities, by the certificate of completion. These documents are kept by ASPI Training Department and sent periodically to the Supervisory Body for appropriate assessment and monitoring.
Any refresher training sessions are carried out in the event of significant changes to the Model, the Code of Ethics and general protocols, depending on the entry into force or integration of regulatory provisions of significant interest to the Company's activities, or in the event that the Supervisory Body does not consider the use of the Company's electronic information systems to be sufficient, given the complexity of the subject matter.

[16] For a non-exhaustive example of cases of retaliation, please refer to the provisions of Article 17 of the Decree, which also regulates the burden of proof in judicial and extrajudicial proceedings.
[17] With regard to support measures, please also refer to the provisions of Article 18 of Legislative Decree No. 24/2023 and the List of Third Sector Entities that have entered into agreements with A.NA.C. published on the institutional website of the aforementioned Authority.

9.2 INFORMATION FOR COLLABORATORS AND PARTNERS

ASPI promotes awareness and compliance with the Code of Ethics and this General Part of the Model, including clear information on the channels, procedures and requirements for making whistleblowing reports through a dedicated section on its institutional website, including among commercial and financial partners, consultants, collaborators in various capacities, customers and suppliers of the Company.

In order to formalise and enforce the obligation to comply with the principles of the Code of Ethics and this General Part of the Model by third parties who have contractual relationships with the Company, a specific clause to this effect shall be included in the relevant contract. This clause provides for specific contractual sanctions (the right to terminate the contract by operation of law and with immediate effect, without prejudice to the right to compensation for damages suffered, depending on the seriousness of the violation and ASPI greater or lesser exposure to risk) in the event of a breach of the Code of Ethics, this General Part, the ASPI Group Anti-Bribery Guideline, the Group Integrated Management Systems Policy and the ASPI Group Antitrust and Consumer Protection Compliance Guideline.

10 DISCIPLINARY SYSTEM

Pursuant to Articles 6 and 7 of Legislative Decree No. 231/2001, for the effective implementation of the Model, a disciplinary system must be put in place to sanction non-compliance with the measures set out therein.

ASPI, therefore, in compliance with current legal provisions and national collective bargaining regulations, has adopted a disciplinary system aimed at sanctioning violations of the principles and measures set out in the Model and in company protocols by the Recipients of the Model.

On the basis of the provisions of Article 5 of the Decree, violations of the Model and company protocols committed by both apical subjects and persons subject to the management or supervision of others or operating in the name and/or on behalf of the Company are punishable. In addition, any collaborators and partners of the Company are also subject to this Disciplinary System.

The initiation of disciplinary proceedings and the possible application of sanctions are independent of whether or not criminal proceedings are pending for the same offence and do not take into account the outcome of such proceedings.

10.1 RELEVANT CONDUCT

For the purposes of this Disciplinary System and in compliance with the provisions of the law and collective bargaining agreements, actions or conduct, including omissions, that violate the Model constitute relevant conduct for the application of any sanctions.

Furthermore, in accordance with the provisions of Article 6, paragraph 2-bis, of Legislative Decree No. 231/2001 and the ASPI Group Management of Reports Guideline, disciplinary sanctions are adopted in accordance with the provisions of the relevant National Collective Labour Agreement:

- against those who are responsible for any act of retaliation or discrimination or any other form of direct or indirect unlawful prejudice against the Whistleblower (or anyone who has collaborated in the investigation of the facts reported) for reasons directly or indirectly related to the report;
- against the reported person, if the investigations conducted reveal unlawful conduct;

- against anyone who violates the confidentiality obligations referred to in the ASPI Group Management of Reports Guideline;
- against Employees, as provided for by law, who have made an unfounded report with intent or gross negligence.[18]

Disciplinary measures will be imposed promptly and immediately, through measures that are appropriate and proportionate to the extent and seriousness of the unlawful conduct ascertained, and may, in the most serious cases, lead to the termination of employment in accordance with company regulations, the relevant collective labour agreement or other applicable national regulations.

With regard to third parties (e.g. partners, suppliers, consultants, agents), the remedies and legal actions shall apply, in addition to the contractual clauses regarding compliance with the Code of Ethics, the ASPI Group Anti-Bribery Guideline, the ASPI Group Integrated Management Systems Policy, the ASPI Group Antitrust and Consumer Protection Compliance Guideline and this Model.

In determining the related sanction, the objective and subjective aspects of the relevant conduct are taken into account. In particular, the objective elements, ranked in ascending order of severity, are:

1. violations of the Model that did not result in exposure to risk or resulted in modest exposure to risk;
2. violations of the Model that resulted in appreciable or significant exposure to risk;
3. violations of the Model that constituted a criminal offence.

The relevant conduct also assumes greater or lesser severity depending on the different value of the subjective elements indicated below and, in general, the circumstances in which the act was committed. In particular, in accordance with the principle of graduality and proportionality in determining the sanction to be imposed, the following are taken into account:

- the possible commission of multiple violations within the same conduct, in which case the sanction will be increased with respect to the sanction provided for the most serious violation;
- any recidivism on the part of the perpetrator(s);
- the level of hierarchical and/or technical responsibility of the person to whom the alleged conduct refers;
- any shared responsibility with other persons who contributed to the violation.

10.2 SANCTIONS AGAINST MEMBERS OF THE BOARD OF DIRECTORS[19] AND MEMBERS OF THE BOARD OF STATUTORY AUDITORS

If a violation of point 10.1[20] by a Director or a Member of the Board of Statutory Auditors is ascertained, the following sanctions may be applied:

---

[18] For more details, please refer to the provisions of Article 16, paragraph 3, of Legislative Decree No. 24/2023: *'when it is established, including by a first instance judgment, the criminal liability of the reporting person for the offences of defamation or slander or, in any case, for the same offences committed with the report to the judicial or accounting authority, or their civil liability, for the same reason, in cases of wilful misconduct or gross negligence, the protections referred to in this chapter are not guaranteed and the reporting or complaining person is subject to disciplinary action*."

[19] Limited to directors who do not have an employment relationship.

[20] By way of example and without limitation to the provisions of the previous paragraph10.1 , the following conduct may constitute grounds for the application of the sanctions indicated below:

- failure to comply with the principles and protocols contained in the Model;
- violation and/or circumvention of the control system, carried out by removing, destroying or altering the documentation required by company protocols or by preventing the persons in charge and the Supervisory Body from controlling or accessing the requested information and documentation;
- violation of the provisions relating to signing powers and, in general, to the system of delegated powers, except in cases of necessity and urgency, which must be promptly reported to the Board of Directors;

- formal written warning;
- a financial sanction equal to two to five times the monthly remuneration;
- dismissal from office.

In particular:

- for the violation referred to in point 1 of section 10.1, a written warning will be issued;
- for violations referred to in section 10.1, number 2, a financial sanction will be imposed;
- for violations referred to in section 10.1, number 3, removal from office will be imposed.

10.3 SANCTIONS AGAINST EMPLOYEES (EXECUTIVES[21], MIDDLE MANAGERS, OFFICE WORKERS, LABOURERS)

Failure to comply with and/or violation of the rules imposed by the Model by Company employees constitutes a breach of the obligations arising from the employment relationship *pursuant* to Article 2104 of the Italian Civil Code and a disciplinary offence.

The adoption by a Company employee of conduct that can be classified, on the basis of the above, as a disciplinary offence also constitutes a breach of the obligation to perform the tasks entrusted to him/her with the utmost diligence, complying with the Company directives, as provided for by the current National Collective Labour Agreements, as well as by the provisions of the Disciplinary Code (posted on the company notice boards).

Sanctions are applied on the basis of the significance of the individual cases considered and are proportionate to their severity, in accordance with the provisions of paragraph 10.1 above.

If a violation of the Model attributable to the employee is ascertained[22], taking into account the provisions of Article 7 of Law No. 300/1970 and the National Collective Labour Agreements, the following disciplinary measures may be applied:

1. conservative disciplinary measures:
   a. verbal reprimand;
   b. written reprimand;
   c. fine not exceeding four hours of the total daily remuneration referred to in point 1 of Article 22;
   d. suspension from service and pay for up to 10 days (for part-time staff, up to 50 hours).
2. final disciplinary measures:
   a. dismissal with notice;
   b. dismissal without notice.

In accordance with the provisions of paragraph 10.1 and without prejudice to the provisions of the National Collective Labour Agreement and the Disciplinary Code:

- violation of the obligation to inform the Supervisory Body and/or any higher authority about conduct aimed at committing a crime or administrative offence included among those provided for in the Decree.

[21] The criteria for sanctions and disciplinary proceedings take into account the type of employment relationship between these individuals and the Company.
Pursuant to Article 1, paragraph 2, of the National Collective Labour Agreement: "*This definition includes, for example, directors, co-directors, those who are placed in positions of broad managerial authority at the head of important departments or offices, agents and attorneys to whom the power of attorney confers on an ongoing basis powers of representation and decision-making for all or a significant part of the company*."

[22] By way of example only and without limiting the scope of paragraph 10.1 above, and without prejudice to the provisions of the National Collective Labour Agreement for the purposes of applying any disciplinary measures, the following are some examples of relevant conduct:

- violation of internal procedures or adoption, in the performance of risky activities, of conduct that does not comply with the provisions of the Model itself, such conduct being considered a failure to carry out orders given by the Company in both written and verbal form (e.g., an employee who does not comply with the prescribed procedures, fails to communicate the required information to the Supervisory Body, fails to carry out checks, etc.);
- adopting, in the performance of risky activities, behaviour that does not comply with the provisions of the Model or violating the principles thereof, such behaviour being considered a failure to comply with the orders given by the Company (for example, a worker who: refuses to undergo the health checks referred to in Article 5 of Law No. 300 of 20 May 1970; falsifies and/or alters internal or external documents; deliberately fails to apply the provisions issued by the Company in order to gain an advantage for themselves or for the Company itself; is a repeat offender in any of the offences that have given rise to the application of disciplinary measures).

1) for the violations referred to in numbers 1 and 2 of section 10.1, the conservative disciplinary measures provided for in Article 36 of the applicable National Collective Labour Agreement may be imposed;
2) for violations referred to in number 3 of section10.1 , disciplinary measures leading to termination may be imposed, as provided for in Article 37 of the aforementioned National Collective Labour Agreement.

Furthermore, pursuant to Article 38 of the CCNL, if the nature of the breach affects the relationship of trust, the Company may proceed with the precautionary suspension of the employee pending the completion of the appropriate investigations.
With regard to management personnel, given the eminently fiduciary nature of their role and considering that managers perform their duties in order to promote, coordinate and manage the achievement of the Company objectives, violations of the Model will be assessed in relation to collective bargaining, in line with the specific nature of the relationship itself.

10.4 SANCTIONS APPLICABLE TO "THIRD PARTY RECIPIENTS"

This Disciplinary System serves to sanction violations of the Code of Ethics and the General Part of the Model committed by individuals collectively referred to as "Third Party Recipients". This category includes:

- those who have a contractual relationship with ASPI (e.g. consultants, professionals, etc.);
- those responsible for auditing and accounting control;
- collaborators in any capacity;
- attorneys and those acting in the name and/or on behalf of the Company;
- suppliers and partners.

Any violation committed by the above-mentioned persons may result in the termination of the contractual relationship, depending on the alleged violation and the greater or lesser severity of the risk to which the Company is exposed.

10.5 INVESTIGATION PROCEDURE

With regard to the investigation activities arising from the checks and inspections carried out by the Supervisory Body, the latter shall promptly inform and subsequently report in writing to the Disciplinary Authority, as identified below, on any violation detected and the person (or persons) to whom it refers.

10.5.1 PRELIMINARY INVESTIGATION PROCEDURE AGAINST MEMBERS OF THE BOARD OF DIRECTORS

If it finds a violation of the Model by one or more persons holding the position of Director, not bound to the Company by an employment relationship[23] , the Supervisory Body shall send the Board of Directors and the Board of Statutory Auditors, through their respective Chairmen, a report containing:

- a description of the conduct in question;
- an indication of the provisions of the Model that have been violated;
- the person responsible for the violation;

[23] In the event that the violation of the Model is attributable to a Director linked to the Company by an employment relationship, the Disciplinary Authority is the Board of Directors and the investigation and possible dispute procedure is subject to the precautions set out in Article 7 of Law No. 300/1970 and the applicable National Collective Labour Agreement.

- any documents proving the violation and/or other supporting evidence.

Upon receipt of the Supervisory Body report, the Board of Directors shall summon the Director accused of the violation.

The summons must:

- be made in writing;
- contain details of the conduct in question and the provisions of the Model that have been breached;
- inform the person concerned of the date of the meeting, with notice of the right to make any comments and/or deductions, both written and oral.

The summons must be made in accordance with the established procedures for convening the Board of Directors.

When the Board of Directors is convened, to which the Supervisory Body is also invited to participate, the hearing of the person concerned, the acquisition of any deductions made by them and the completion of any further investigations deemed appropriate are arranged.

The Board of Directors, with the abstention of the Director concerned, assesses the validity of the evidence acquired and, in accordance with Articles 2392 et seq. of the Italian Civil Code, convenes the Shareholders' Meeting to take the necessary decisions.

The decision of the Board of Directors, in the event of unfoundedness, or that of the Shareholders' Meeting convened, shall be communicated in writing by the Board of Directors to the person concerned and to the Supervisory Body.

If it finds that the entire Board of Directors or the majority of the Directors have violated the Model, the Supervisory Body shall inform the Board of Statutory Auditors so that it may convene the Shareholders' Meeting without delay to take the appropriate measures.

10.5.2 PRELIMINARY INVESTIGATION PROCEDURE AGAINST MEMBERS OF THE BOARD OF STATUTORY AUDITORS

In the event of a violation of this Model by a Statutory Auditor, the Supervisory Body shall inform the entire Board of Statutory Auditors and the Board of Directors of the Company through their respective Chairmen by means of a report containing:

- a description of the conduct in question;
- an indication of the provisions of the Model that have been violated;
- the person responsible for the violation;
- any documents proving the violation and/or other supporting evidence.

Following receipt of the Supervisory Body report, the Board of Statutory Auditors, in a joint meeting with the Board of Directors, shall summon the Statutory Auditor concerned who is alleged to have committed the violation.

The summons must:

- be made in writing;
- contain details of the conduct in question and the provisions of the Model that have been violated;
- inform the person concerned of the date of the meeting, with notice of the right to make any comments and/or deductions, both written and verbal.

The summons must be made in accordance with the established procedures for convening the Board of Directors.

The Company Board of Directors, having assessed the relevance of the report, shall convene the Shareholders' Meeting to take the necessary decisions.

If it finds that the Model has been breached by several Statutory Auditors or the entire Board of Statutory Auditors, the Supervisory Body shall inform the Board of Directors so that it may convene the Shareholders' Meeting without delay to take the appropriate measures.

10.5.3 INVESTIGATION PROCEDURE AGAINST EMPLOYEES (EXECUTIVES, MIDDLE MANAGERS, OFFICE WORKERS, LABOURERS)

If a violation of the Model by an Employee is found, the procedure for ascertaining the violation shall be carried out in compliance with the regulations in force and the applicable collective agreement by the person with disciplinary authority.
In order to identify the Disciplinary Authority, based on the powers in force, the following criteria shall apply:

- the Board of Directors for directors reporting directly to the Chief Executive Officer[24] ;
- the Chief Corporate Officer or the Director of Human Capital and Organization of ASPI[25] for employees and managers;
- the Area Directors for matters within their competence[26] .

The Supervisory Body then sends the Disciplinary Authority a report containing:

- a description of the conduct in question;
- an indication of the provisions of the Model that have been violated;
- the name of the person responsible for the violation;
- any documents proving the violation and/or other supporting evidence.

Following receipt of the Supervisory Body's report, the Disciplinary Authority shall summon the person concerned by sending a written notice containing:

- an indication of the conduct in question and the provisions of the Model that have been violated;
- the deadline by which the person concerned has the right to make any comments and/or deductions, either in writing or verbally.

If the person concerned intends to respond orally to the notice of violation, the Supervisory Body is also invited to attend the meeting. At this meeting, the evidence presented by the person concerned is taken into account.
At the conclusion of the above activities, the Disciplinary Authority shall decide on the possible determination of the sanction, as well as on the actual imposition thereof.
The decision to impose any sanction shall be communicated in writing to the person concerned by the competent company department, in accordance with any terms provided for in the collective bargaining agreement applicable in the specific case.
The Disciplinary Authority shall, where appropriate, ensure that the sanction is effectively imposed, in compliance with the law and regulations, as well as the provisions of collective bargaining agreements and company regulations, where applicable.
The Supervisory Body shall be sent, for information purposes, the measure imposing the sanction by the Disciplinary Authority, also making use of the competent company departments.

10.5.4 PRELIMINARY INVESTIGATION PROCEDURE AGAINST "THIRD PARTY RECIPIENTS"

[24] This includes the Director of Human Capital and Organization at ASPI.
[25] By virtue of the delegation received from the Chief Executive Officer.
[26] In particular, the Area Director may, among other things, take disciplinary measures against non-executive employees.

In order to enable the implementation of the measures provided for in the contractual clauses aimed at ensuring compliance with the principles of the Code of Ethics, the Anti-Bribery Guideline, the Group Integrated Management Systems Policy, the ASPI Group Antitrust and Consumer Protection Compliance Guideline and this General Part of the Model by third parties who have contractual relationships with the Company, the Supervisory Body shall send the Manager responsible for managing the contractual relationship a report containing:

- the details of the person responsible for the violation;
- a description of the conduct in question;
- an indication of the provisions of the Code of Ethics, the Anti-Bribery Guideline, the Group Integrated Management Systems Policy, the ASPI Group Antitrust and Consumer Protection Compliance Guidelines and this General Part of the Model that have been violated;
- any documents proving the violation and/or other supporting evidence.

If the contract has been approved by the Board of Directors, this report must also be sent to the attention of the Board of Directors and the Board of Statutory Auditors.

The Manager responsible for managing the contractual relationship, in agreement with ASPI Legal Affairs and Compliance department, shall send the interested party a written communication indicating the conduct in question, the provisions that have been violated, and the specific contractual clauses included in the letters of appointment, contracts or partnership agreements that are intended to apply.

ANNEX 1

THE REGULATORY DESCRIPTION OF THE PREDICATE OFFENCES PURSUANT TO LEGISLATIVE DECREE NO. 231/2001

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

Introduction

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

This reform was characterised by the following elements:

- the redefinition of the offence of 'extortion' (Article 317 of the Criminal Code), applicable only to public officials, when they compel someone to give or promise money or other benefits unduly;
- the introduction of the offence of *'undue inducement to give or promise* benefits' (Article 319-quater of the Criminal Code), applicable to public officials and public service employees, when they induce someone to give or promise money or other benefits unduly;
- the amendment of the offence of '*corruption for an* official act' (Article 318 of the Criminal Code), which occurs when a public official or public service employee unduly receives a benefit for the exercise of their functions or powers.

Subsequently, Law No. 69 of 27 May 2015, containing "*Provisions on offences against the public administration, mafia-type associations and false accounting*", published in the Official Gazette of 30 May 2015, No. 124, and entered into force on 14 June 2015, amended the provisions of Articles 317 et seq. of the Criminal Code, substantially tightening the sanctions associated with the individual offences.

Law No. 3 of 9 January 2019, containing "*Measures to combat offences against the public administration, as well as on the statute of limitations for offences and on the transparency of political parties and movements*," then introduced, among others, the following additional regulatory changes:

- the tightening of sanctions for the offence of corruption in the exercise of public office (Article 318 of the Criminal Code);
- the amendment of the offence provided for and punished by Article 322-bis of the Italian Criminal Code entitled *'Embezzlement, extortion, undue inducement to give or promise benefits, corruption and incitement to corruption of members of international courts or bodies of the European Communities or international parliamentary assemblies or international organisations and officials of the European Communities and foreign* states';
- the introduction of trafficking in illicit influences (Article *346-bis* of the Italian Criminal Code), subject to reformulation, into the list of offences against the public administration relevant under Legislative Decree No. 231/2001;
- the amendment of the duration and methods of application of disqualification sanctions for offences against the public administration (Articles 13 and 25 of the Decree) and precautionary measures (Article 51 of the Decree).

Subsequently, on 15 July 2020, Legislative Decree No. 75 of 14 July 2020 was published in the Official Gazette (No. 177) concerning *the 'Implementation of Directive (EU) 2017/1371 on the fight*

against fraud affecting the financial interests of the Union by means of criminal law'.[27] , which entered into force on 30 July 2020.

The main changes introduced by the enactment of the aforementioned Decree, insofar as they are relevant here, concern:

- the tightening of the sanction regime for certain offences against the Public Administration (Articles 316, 316-ter, 319-quater, 322-bis, 640, paragraph 2, no. 1, of the Italian Criminal Code) if the offence harms the financial interests of the EU[28] ;
- the inclusion in Article 24 of Legislative Decree No. 231/2001 of the offence of fraud in public procurement, provided for and punished by Article 356 of the Italian Criminal Code;
- the inclusion in Article 25 of Legislative Decree No. 231/2001 of the offences provided for and punished by Articles 314, paragraph 1 ("Embezzlement"), 316 ("*Embezzlement by taking advantage of another person's mistake*") and 323 ("*Abuse of office*") of the Italian Criminal Code, when the offence harms the financial interests of the European Union.

Decree-Law No. 13/2022 was then published in Official Gazette No. 47 of 25 February 2022, containing *'Urgent measures to combat fraud and ensure safety in the workplace in the construction*

---

[27] For a better understanding of the purposes and principles underlying the so-called 'PIF' Directive, below are some excerpts from the most significant points contained therein:

- *"The protection of the financial interests of the Union requires a common definition of fraud falling within the scope of this Directive, which should cover fraudulent conduct on the revenue, expenditure and assets side to the detriment of the general budget of the European Union ("Union budget"), including financial operations such as borrowing and lending. The concept of serious offences against the common system of value added tax ('VAT') established by Council Directive 2006/112/EC (8) ('the common VAT system') refers to the most serious forms of VAT fraud, in particular carousel fraud, missing trader fraud and VAT fraud committed within the framework of a criminal organisation, which pose serious threats to the common VAT system and, consequently, to the Union budget. Offences against the common VAT system should be considered serious where they involve the territory of two or more Member States, result from a fraudulent scheme whereby such offences are committed in a structured manner with the aim of obtaining undue advantages from the common VAT system, and the total damage caused by the offences is at least EUR 10,000,000. The concept of total damage refers to the estimated damage resulting from the entire fraudulent scheme, both to the financial interests of the Member States concerned and to the Union, excluding interest and sanctions. ...*' (see, in this regard, Recital 4);
- *'Corruption is a particularly serious threat to the financial interests of the Union and may in many cases be linked to fraudulent conduct. Since all public officials have a duty to exercise their judgement or discretion impartially, the giving of bribes to influence the judgement or discretion of a public official and the receiving of such bribes should fall within the definition of corruption, regardless of the law or regulatory provisions applicable in the country or international organisation to which the official concerned belongs*." (see, in this regard, Recital 8);
- *"Certain types of conduct by a public official in charge of managing funds or assets, whether in an executive or supervisory role, which are aimed at misappropriating funds or assets for a purpose contrary to that intended and by means of which those interests are harmed, may harm the financial interests of the Union. It is therefore necessary to introduce a precise definition of the offences covering such types of conduct*." (see, in this regard, Recital 9);
- *"With regard to the offences of passive corruption and misappropriation, it is necessary to include a definition of public official that covers all those who hold a formal position in the Union, in the Member States or in third countries. Private individuals are increasingly involved in the management of Union funds. In order to adequately protect Union funds from corruption and misappropriation, the definition of 'public official' should therefore include persons who, although not holding a formal position, are nevertheless entrusted with public service functions and exercise them in a similar manner in relation to Union funds, such as contractors involved in the management of those funds*." (see, in this regard, Recital 10);
- *'sanctions for natural persons should, in certain cases, include a maximum sanction of at least four years' imprisonment. Such cases should include at least those where considerable damage or advantage has been caused or obtained, with damage or advantage being considered considerable where it exceeds EUR 100,000. ... However, for offences against the common VAT system, the threshold at which damage or advantage should be presumed to be significant is, in accordance with this Directive, EUR 10,000,000. The introduction of minimum levels for maximum prison sentences is necessary to ensure equivalent protection of the Union's financial interests throughout the Union. The sanctions are intended to serve as a strong deterrent to potential offenders, with effects throughout the Union*. (See, in this regard, Recital 18).
- *'(a) "financial interests of the Union" means all revenue, expenditure and assets covered by or acquired or due under: (i) the budget of the Union; (ii) the budgets of Union institutions, bodies, offices and agencies established by the Treaties or budgets directly or indirectly managed and controlled by them; With regard to revenue from own resources accruing from VAT, this Directive shall apply only 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 where the intentional acts or omissions as defined in Article 3(2)(d) are connected with the territory of two or more Member States of the Union and involve a total damage of at least EUR 10,000,000*. (see, in this regard, Article 2);
- with regard to conduct affecting the financial interests of the Union, Article 3 refers to: *'the use or presentation of false, incorrect or incomplete statements or documents, resulting in the misappropriation or unlawful retention of funds or goods from the Union budget or budgets managed by or on behalf of the Union; failure to communicate information in breach of a specific obligation, with the same effect; or the diversion of such funds or goods for purposes other than those for which they were initially granted; ... the use or presentation of false, inaccurate or incomplete statements or documents relating to VAT, resulting in a reduction in the resources of the Union budget; failure to communicate information relating to VAT in breach of a specific obligation, with the same effect; or the presentation of accurate VAT returns in order to fraudulently conceal the non-payment or unlawful establishment of VAT refund entitlements*.";
- Finally, Articles 4 and 5 refer, respectively, to cases of active and passive corruption which harm or may harm the financial interests of the Union and to 'misappropriation', i.e. *'the action of a public official, directly or indirectly responsible for the management of funds or assets, aimed at committing or disbursing funds or appropriating assets or using them for a purpose other than that for which they are intended, which damages the financial interests* of the Union', as well as the punishability of the offences provided for in the Directive, including incitement, aiding and abetting, complicity and attempt.

[28] Article 1 of the Decree supplements the above-mentioned criminal offences with the commission of acts that harm the financial interests of the EU, with damage or profit exceeding €100,000.00, increasing the maximum sanctions and extending the punishability of the offence provided for and punished by Article 322-bis of the Criminal Code to public entities or public institutions that do not belong to EU Member States and, finally, adding a reference to the EU in Article 640, paragraph 2, no. 1) of the Italian Criminal Code.

sector, as well as in relation to electricity produced by renewable energy sources' (the so-called 'fraud decree').
Of particular criminal law significance is Article 2 (*'sanctions for fraud in relation to public* funds'), which, for the purposes of this article, introduces amendments to the heading and/or text of Articles 316-bis (now entitled *'Misappropriation of public* funds'), 316-ter (now entitled *'Unlawful receipt of public* funds') and 640-bis of the Criminal Code.
Subsequently, Legislative Decree No. 156 of 4 October 2022, entitled " *Corrective and supplementary provisions to Legislative Decree* No. *75 of 14 July 2020, No. 75, implementing Directive (EU) 2017/1371 on the fight against fraud affecting the financial interests of the Union through criminal law*," amended the heading of Article 322-bis of the Criminal Code, supplementing it with the offence of abuse of office.
Legislative Decree No. 150 of 10 October 2022, containing '*Implementation of Law No. 134 of 27 September 2021, delegating powers to the Government for the efficiency of criminal proceedings, as well as on restorative justice and provisions for the swift conclusion of* legal proceedings', then introduced amendments to Article 640 of the Italian Criminal Code[29] and Article 640-ter of the Italian Criminal Code[30] .
Law No. 137 of 9 October 2023, entitled *'Conversion into law, with amendments, of Decree-Law No. 105 of 10 August 2023 No. 105, containing urgent provisions on criminal proceedings, civil proceedings, combating forest fires, recovery from drug addiction, health and culture, as well as on judicial and public administration personnel*." also amended Article 24 of the Decree, introducing the offences of disruption of public auctions (Article 353 of the Criminal Code) and the contractor selection process (Article *353-bis* of the Criminal Code).
Subsequently, Law No. 112 of 8 August 2024, which converted, with amendments, Decree-Law No. 92 of 4 July 2024, containing "*urgent measures in the field of prisons, civil and criminal justice and Ministry of Justice personnel*", introduced the new offence against the public administration of misappropriation of money or movable property (Article 314-bis of the Italian Criminal Code), which in turn was included in the list of predicate offences provided for in Article 25 of Legislative Decree 231/2001; the offence in question was also included in the list of offences to which Article 322-bis, paragraph 1, of the Italian Criminal Code applies.
Finally, Law No. 114 of 9 August 2024, entitled *'Amendments to the Criminal Code, the Code of Criminal Procedure, the Judicial System and the Military* Code', repealed the offence of abuse of office referred to in Article 323 of the Criminal Code, introducing further amendments aimed at coordinating other provisions of the Criminal Code with the aforementioned repeal, and reformed the offence of trafficking in illicit influences referred to in Article 346-bis of the Criminal Code in order to restrict its scope of application.
In order to better understand how the offences in question are committed, a description of the concepts of Public Official and Public Service Officer is provided below.

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

Public officials are defined as those who, pursuant to Article 357 of the Italian Criminal Code, exercise a public legislative, judicial or administrative function, the latter being governed by public law and characterised by the exercise of deliberative, authorising or certifying acts.
On the other hand, pursuant to Article 358 of the Italian Criminal Code, persons entrusted with a public service are defined as those who, for whatever reason, provide a public service, meaning an

[29] Article 2, paragraph 1, letter o) of Legislative Decree No. 150/2022 amended the third paragraph of Article 640 of the Criminal Code, which now reads: "*The offence is punishable upon complaint by the injured party, unless any of the circumstances provided for in the previous paragraph apply*."
[30] Article 2, paragraph 1, letter p) of Legislative Decree No. 150/2022 amended the fourth paragraph of Article 640-ter of the Italian Criminal Code, which now reads: "*The offence is punishable upon complaint by the offended person, unless one of the circumstances referred to in the second and third paragraphs or the circumstance provided for in Article 61, first paragraph, number 5, applies, limited to having taken advantage of personal circumstances, including with reference to age*."

activity governed by the same forms as public functions, but characterised by the lack of the powers typical of the latter.
The status of 'public official' and 'public service employee' is also held by members of international courts, members of European Community bodies or international parliamentary assemblies or international organisations, officials of the European Communities, of foreign states and those who, in other states, perform functions corresponding to those of public officials and public service employees (for further details on this point, please refer to the provisions of Article 322-bis of the Italian Criminal Code below).
Some examples are given below:

1. persons who perform a public legislative or administrative function, such as, for example:
   - parliamentarians and members of the Government;
   - regional and provincial councillors;
   - Members of the European Parliament and members of the Council of Europe;
   - persons performing ancillary functions (those responsible for the preservation of parliamentary records and documents, the drafting of stenographic reports, bursars, technicians, etc.);
2. persons performing a public judicial function, such as:
   - magistrates (ordinary courts, Courts of Appeal, Supreme Court of Cassation, Superior Water Court, Regional Administrative Court, Council of State, Constitutional Court, military courts, lay judges of the Assize Courts, justices of the peace, honorary and associate deputy magistrates, members of arbitration tribunals and parliamentary committees of inquiry, magistrates of the European Court of Justice, as well as various international courts, etc.);
   - persons performing related functions (officers and agents of the judicial police, finance police and carabinieri, clerks, secretaries, court bailiffs, bailiffs, witnesses, conciliation officers, bankruptcy trustees, operators responsible for issuing certificates at court registries, experts and consultants to the Public Prosecutor, liquidators in bankruptcy proceedings, liquidators of composition agreements, extraordinary commissioners of the extraordinary administration of large companies in crisis, etc.);
3. persons performing a public administrative function, such as, for example:
   - civil servants employed by the public administration, international and foreign organisations and local authorities (e.g. civil servants and employees of the State, the European Union, supranational organisations, foreign States and local authorities, including Regions, Provinces, Municipalities and Mountain Communities); persons who perform 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 office of the amnesty office, municipal messengers, persons responsible for matters concerning the occupation of public land, municipal correspondents assigned to the employment office, employees of State-owned companies and municipal companies; persons responsible for tax collection, healthcare personnel in public facilities, personnel of ministries, superintendencies, etc.);
   - employees of other public, national and international bodies (e.g. officials and employees of the Chamber of Commerce, the Bank of Italy, supervisory authorities, public social security institutions, ISTAT, the UN, FAO, etc.);
   - private individuals performing public functions or public services (e.g. notaries, private entities operating under concession or whose activities are regulated by public law or which in any case carry out activities of public interest or are controlled in whole or in part by the State, etc.).

Activities that, although governed by public law or authoritative acts, consist of the performance of simple tasks or the provision of purely material work, i.e. activities of a predominantly applicative or executive nature that do not involve any autonomy or discretion, are not considered public services.
The roles of Public Official and Public Service Officer are identified not on the basis of membership of or dependence on a public body, but with reference to the nature and scope of the activities they

actually carry out, i.e., public function and public service, respectively. Even a person outside the public administration may therefore qualify as a public official or public service employee when performing one of the activities defined as such in Articles 357 and 358 of the Criminal Code.

1. **Aggravated fraud against the State or other public body or the European Union (Article 640, paragraph 2, no. 1, of the Italian Criminal Code)**
   This offence occurs when, by resorting to deception or trickery and thereby misleading someone, an unfair profit is obtained to the detriment of the State or other public body or the European Union.
   This offence may occur when, for example, in the context of contractual relations with the public administration, deception or trickery is used to obtain advantages or benefits to which the person is not entitled.
   Sanctions applicable to the Entity
   - financial sanctions: up to 500 units; however, if the Entity has obtained a significant profit or particularly serious damage has been caused, a financial sanction of between 200 and 600 units shall be applied;
   - disqualification sanctions: prohibition from contracting with the Public Administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

2. **Aggravated fraud for the purpose of obtaining public funds (Article 640-bis of the Italian Criminal Code)**
   The offence is committed when the fraudulent conduct described above concerns contributions, grants, loans, subsidised loans or other payments of the same type, however named, granted or paid by the State, other public bodies or the European Union.[31]
   With regard to the material object of the offence, it should be noted that contributions and subsidies are monetary payments that may be periodic or *one-off*, fixed or determined on the basis of variable parameters, restricted in nature to *the amount* or purely discretionary; loans are contractual acts characterised by the obligation to allocate the sums or repay them or by additional and different charges; subsidised loans are payments of sums of money with an obligation to repay the same amount, but with interest at a lower rate than that charged on the market. (In any case, the rules take into account all payments of money characterised by an advantage over market conditions).
   Sanctions applicable to the Entity
   - financial sanctions: up to 500 units; however, if the Entity has made a significant profit or caused particularly serious damage, a financial sanction of between 200 and 600 units shall apply;
   - disqualification sanctions: prohibition from contracting with the public administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

3. **Misappropriation of public funds (Article 316-bis of the Criminal Code)[32]**
   The offence is committed by anyone who, having obtained a loan, a subsidised mortgage or other similar funding, however named, from the State, another public body or the European Union, for the achievement of one or more public purposes, allocates all or part of the funds received for purposes other than those for which they were obtained.
   sanctions applicable to the body

[31] Article 2, paragraph 1, letter d) of Decree-Law No. 13/2022 added the term 'subsidies' as the subject of the criminal conduct.
[32] Article 2, paragraph 1, letter b) of Decree-Law No. 13/2022 amended the heading and broadened the scope of the criminal conduct.

- financial sanctions: up to 500 units; however, if the entity has made a significant profit or caused particularly serious damage, a financial sanction of between 200 and 600 units shall be applied;
- disqualification sanctions: prohibition from contracting with the Public Administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

4. Misappropriation of public funds (Article 316-ter of the Criminal Code)[33]

The offence occurs in cases where, through the use or presentation of false declarations or documents or through the omission of required information, contributions, loans, subsidised loans, grants or other payments of the same type granted or disbursed by the State, other public bodies or the European Union are obtained without entitlement.[34]

In this case, contrary to what was seen in the previous point (Article 316-bis of the Criminal Code), the destination of the public funds disbursed is irrelevant, since the offence is committed at the moment of their undue obtaining. It should be noted that this offence, being of a subsidiary nature, only occurs if the conduct does not constitute the more serious offence of fraud for the purpose of obtaining public funds (Article 640-bis of the Italian Criminal Code).

Sanctions applicable to the Entity

- financial sanctions: up to 500 units; however, if the Entity has made a significant profit or particularly serious damage has been caused, a financial sanction of between 200 and 600 units shall be applied;
- disqualification sanctions: prohibition from contracting with the Public Administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

5. Computer fraud against the State or other public body (Article 640-ter of the Italian Criminal Code)

This offence occurs when, by altering in any way the functioning of a computer or telecommunications system or by unlawfully intervening in any way on/manipulating the data, information and programmes contained therein, an unfair profit is obtained for oneself or others, causing damage to the State or other public body.[35]

The objective element of this offence, which falls within the typical scheme of fraud, for the purposes of Legislative Decree No. 231/01, is characterised by the unlawful alteration of the functioning of a computer system committed to the detriment of the State or other public body.

The fraudulent activity of the agent does not affect the person, but rather the computer system belonging to that person, through its manipulation.

Sanctions applicable to the Entity

- financial sanctions: up to 500 units; however, if the entity has made a significant profit or particularly serious damage has been caused, a financial sanction of between 200 and 600 units shall be applied;
- disqualification sanctions: prohibition from contracting with the Public Administration, except to obtain public services; exclusion from benefits, financing, contributions or

[33] Article 2, paragraph 1, letter c) of Decree-Law No. 13/2022 amended the heading and broadened the scope of the criminal conduct.

[34] The sanction is imprisonment for a term of between six months and four years when the offence harms the financial interests of the European Union and the damage or profit exceeds €100,000.

[35] Following the amendments introduced by Legislative Decree No. 184 of 8 November 2021, the second paragraph of Article 640-ter of the Criminal Code provides as follows: "*The sanction is imprisonment for between one and five years and a fine of between €309 and €1,549 if one of the circumstances provided for in paragraph 2(1) of Article 640 applies, i.e. if the offence involves a transfer of money, monetary value or virtual currency or is committed by abusing the status of system operator*."

subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

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

This criminal offence[36] punishes anyone who commits fraud in the execution of supply contracts or in the fulfilment of other contractual obligations indicated in Article 355 of the Italian Criminal Code (which refers to obligations arising from a supply contract concluded with the State, another public body, or a company providing public services or services of public necessity).

A supply contract does not refer to a specific type of contract but, in general, any contractual instrument intended to provide goods or services to the public administration: consequently, the offence of fraud in public procurement is recognisable not only in the fraudulent execution of a supply contract (Article 1559 of the Italian Civil Code), but also in a procurement contract (Article 1655 of the Italian Civil Code).

Therefore, as also established by a consolidated orientation of the case law of legitimacy, Article 356 of the Italian Civil Code punishes all frauds to the detriment of the Public Administration, whatever the contractual arrangements under which suppliers are required to provide particular services (most recently, Criminal Cassation, Section VI, 27 May 2019).

For the offence to be established, therefore, mere breach of contract is not sufficient, as the criminal provision requires a *quid pluris*, which is to be identified in contractual bad faith, i.e. the presence of a malicious expedient (Criminal Cassation, Section VI, judgment no. 5317 of 11 February 2011).

In this regard, however, specific deception is not necessary, nor is it necessary for the defects of the goods supplied to be hidden, but it is sufficient that there be malicious intent in the execution of the public contract for the supply of goods or services, with the consequence that, where the above elements characterising fraud are also present, the two offences may be considered concurrent (Cass., VI, 18 September 2014, no. 38346).

In fact, the expression *'commits* fraud' does not necessarily refer to devious or artful behaviour, because it refers to any breach of contract, regardless of the perpetrator's intention to obtain undue profit or the financial damage that may be suffered by the contracting entity.

Article 356 of the Criminal Code therefore punishes contractual conduct which, in relations with the administration, violates the principle of good faith in the performance of the contract, as established by Article 1375 of the Civil Code: *'Fraud is an objective fact that damages the public interest regardless of the addition of fraudulent devices and, in a relationship with the public administration, it is not the psychological conditions of the natural persons contracting that matter, but the manner in which the asset is presented in relation to what has been objectively agreed or provided for by law or administrative act, so that fraud is not excluded by the knowledge or knowability of the defect of the thing by those who acted on behalf of the public administration*." (see, in this regard, Criminal Cassation, Section III, judgment no. 58448 of 28 December 2018).

From a psychological point of view, the offence requires generic intent, consisting of the awareness and willingness to deliver goods other than those agreed upon or affected by faults or defects[37] .

Finally, it should be noted that even those who, although not acting as immediate interlocutors of the public administration concerned, supply products, labour and anything else directly used by

[36] All predicate offences *under* Article 24 of the Decree, now entitled "*Misappropriation of funds, fraud against the State, a public body or the European Union or for the purpose of obtaining public funds, computer fraud against the State or a public body and fraud in public* procurement" will therefore be relevant not only if committed against the State or other public body, but also if committed against the EU.

[37] Below are some case law examples: supplying a school canteen with food that is different in origin and preparation and of lower quality than that specified in the tender specifications; delivering orthopaedic materials of brands other than those agreed upon to various hospital clients (the fraud was deemed to have been committed by concealing the replacement of the object of the supply without notifying the public clients); affirmation of the liability of the owner of a contracting company for works to upgrade the electrical system of a public building carried out in breach of accident prevention regulations and the content of the contract. Upon completion of the work, the contractor had issued a declaration certifying its compliance with the aforementioned regulations and the contractual provisions; during the execution of the work, it emerged that it had been carried out with materials having characteristics different from and inferior to those prescribed in the contract specifications.

the contractor for the execution of the public works or services covered by the contract, may be held liable for complicity in the fraudulent non-performance of public supply contracts, provided that they are ly aware that the item supplied is used directly in the execution of the public work and is essential to its completion (see Criminal Court of Cassation, Section VI, judgment no. 50334 of 13 December 2013).

Sanctions applicable to the Entity

- financial sanctions: up to 500 units; however, if the Entity has made a significant profit or particularly serious damage has been caused, a financial sanction of between 200 and 600 units shall be applied;
- disqualification sanctions: prohibition from contracting with the Public Administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

7. The offence of embezzlement (Article 314 of the Criminal Code)

This criminal offence, included in Article 25 of Decree 231, now entitled *'Embezzlement, misappropriation of money or movable property, extortion, undue inducement to give or promise benefits,* corruption', punishes the P.U. or I.P.S. in the first paragraph. (therefore falling within the category of so-called 'specific offences'), who, by virtue of their office or service, have possession or availability of money or other movable property belonging to others, and who appropriate it.

As can be seen from the wording of the provision, the objective element of the offence in question is the possession or availability of money or other movable property belonging to others.

With regard to 'possession', legal theory and case law agree that it should not be considered in the same way as civil possession, but rather as de facto power over the property, directly linked to the functional powers and duties of the position held, thus adopting a broader concept.

The addition of 'availability' to possession clarifies that the possibility of disposing of the item regardless of physical possession is in itself sufficient to constitute, from an objective point of view, the offence in question, whenever the perpetrator is able, through an act within their competence or connected to established practices and customs in the office, to interfere in the handling or availability of money and to obtain what is then appropriated (see, *among others*, Criminal Cassation, Section II, judgment no. 3327 of 8 January 2010).

Another prerequisite for this offence is that the availability of the item or money to the public official or public employee must be due to the office or service held.

It is therefore necessary that the availability of the item be justified and legally admissible in the public function exercised and that the public official be able to dispose of it 'because of' his position and that this power be expressly provided for in his functions.

As regards the psychological element, embezzlement is punished as a generic offence consisting of the intention to appropriate movable property and enjoy it for private gain, with the knowledge that it is available for official reasons.

It is on this cognitive basis that the volitional aspect of the subjective element is grafted, which consists precisely in the willingness on the part of the public official/public servant to behave as *the owner* of the property.

The requirement that the property be owned by another party has replaced the requirement that the property belong to the public administration, which characterised the previous provision: the provision in question has, in fact, combined the old offences of embezzlement and misappropriation to the detriment of private individuals into a single offence.

It is therefore a multi-offensive offence, in the sense that it is not only the regular and proper functioning of the public administration that is harmed by the conduct, but also and above all the financial interests of the latter and of private individuals, resulting in conduct that is completely incompatible with the title under which the property is held and which leads to the total exclusion of the property from the assets of the rightful owner.

Embezzlement is therefore characterised as a crime of mere conduct: appropriation, understood as behaving *uti dominus* with regard to the money or movable property possessed, is punished.
With the reform of Law No. 86 of 1990, the additional conduct of misappropriation, i.e. the use of the asset for purposes other than those underlying the reason for its possession, was removed in order to avoid interpretative distortions in practice.
However, even after several conflicting court rulings, it now seems clear that misappropriation (i.e., using the thing for a purpose other than that intended) and appropriation are treated as equivalent.
Indeed, the fact of improperly using an item for a different purpose essentially means exercising powers typically associated with ownership: *'in the crime of embezzlement, the concept of 'appropriation' also includes the conduct of 'misappropriation', since giving the item a use other than that permitted by the title of possession means exercising powers typically associated with ownership and, therefore,* taking possession of it' (see, in this regard, Criminal Cassation, Section VI, judgment no. 25258 of 4 June 2014, in which the Court classified as embezzlement the conduct of a public servant who, instead of investing the resources at his disposal for the institutionally intended public purposes, had used them to purchase shares in speculative funds).[38]
Moving on to examine the relevance of the offence in question under Legislative Decree no. 231/2001, it is necessary to immediately examine any incompatibility between its commission and the requirements of the interest or advantage of the entity/company to which the perpetrator belongs.
On this specific point, the Explanatory Report attached to Legislative Decree No. 75/2020 clarified the following: *"... in reality, the scenario to which the Directive seems to refer primarily is one in which the person for whose actions the entity is liable (a senior manager or employee) participates, as an 'outside' competitor, in the misappropriation materially carried out by a 'public official', as defined in Article 4(4) of the Directive itself. To illustrate, one can think of a case in which the general manager of a company convinces an EU official to appropriate EU funds and invest them in his company, or even cases of so-called 'appropriative misappropriation', recognised in case law as the use of public funds for purposes completely unrelated to the public administration and with the irreversible loss of money, in this case partly intended for the public administration, through the payment of non-existent credits to a colluding company, partly to the latter or its director. These are clearly cases in which there can be no doubt about the existence of the prerequisite ('interest' and/or 'advantage') required for the entity to be held administratively liable under Legislative Decree No. 231.*
Finally, it should also be reiterated that '231' liability arises pursuant to Article 314(1) of the Italian Criminal Code, as provided for in Article 5 of Legislative Decree No. 75/2020, only *'when the act harms the financial interests of the European Union*'.
Sanctions applicable to the Entity

financial sanctions: up to 200 units.

8. The offence of embezzlement by profiting from the error of others (Article 316 of the Italian Criminal Code)

Unlike the previous criminal offence, for the provision under consideration here[39] , the exercise of functions or service does not constitute the reason for the possession or availability of the asset, but only a chronological moment within which the typical conduct must take place, which consists in

[38] In its reasoning, the Court also specified that: *'in this context, also considering the nature of the legal interest protected by the criminal provision laid down in Article 314 of the Criminal Code, it can be said that appropriation is recognisable not only when the public official makes the thing 'his own', but also when, by abusing the use of money or property in his possession or at his disposal by virtue of his office or service, deprives the public administration of the possibility of using that money or movable property for the pursuit of public purposes: this occurs where, as in the present case, the public official, instead of using the money at his disposal to achieve the intended public interest objectives, allocates it to satisfy an exclusively private need, such as favouring a financial promoter who benefits from the related commissions, commits that money, in violation of legal and statutory provisions, to purchase high-risk investment funds, thus implementing the reversal of possession that qualifies the appropriation, with the exercise of power uti domini over those sums*.

[39] Article 316 of the Italian Criminal Code now provides as follows: *'1. A public official or public service employee who, in the exercise of their functions or service, takes advantage of another person's error and receives or retains money or other benefits for themselves or a third party shall be punished with imprisonment for a term of between six months and three years. 2. The sanction shall be imprisonment for a term of between six months and four years when the offence is committed against the financial interests of the European Union and the damage or profit exceeds €100,000.*"

receiving or accepting what is mistakenly given or made available, or in retaining it, i.e. not returning it.
More specifically, taking advantage of someone else's mistake means taking advantage of a pre-existing false representation by a third party that puts the perpetrator in a position to commit the offence.
The error that gives rise to the appropriation may arise from any cause, but it cannot be produced voluntarily, i.e. with intent, by the perpetrator.
The error of the passive subject must therefore pre-exist the conduct of the public official, be spontaneous and therefore not determined, otherwise it would fall under the category of extortion.
Therefore, an essential prerequisite for the offence is that the third party is mistakenly convinced that they must hand over money or other benefits to the public official or public service employee, who accepts or retains them by exploiting the error.
From a psychological point of view, generic intent is required for the offence to exist, i.e. awareness of the other person's error and the willingness to receive or retain the item.
Finally, it should also be reiterated that '231' liability arises pursuant to Article 316 of the Italian Criminal Code, as provided for in Article 5 of Legislative Decree No. 75/2020, only *'when the act harms the financial interests of the European Union*'.
Sanctions applicable to the Entity

financial sanctions: up to 200 units.

9. The offence of misappropriation of money or movable property (Article 314-bis of the Italian Criminal Code)

Law No. 112 of 8 August 2024, which converted, with amendments, Decree-Law No. 92 of 4 July 2024, containing *'urgent measures in the field of prisons, civil and criminal justice and Ministry of Justice* personnel', introduced the new offence against the public administration of misappropriation of money or movable property (Article 314-bis of the Italian Criminal Code), which in turn was included in the list of predicate offences provided for in Article 25 of Legislative Decree 231/2001; the offence in question was also included in the list of offences to which Article 322-bis, paragraph 1, of the Italian Criminal Code applies.
The new criminal offence, "*given the extraordinary necessity and urgency of defining, also in relation to EU obligations, the offence of misappropriation of assets by a public* official", even following the repeal of the offence of abuse of office, punishes in the first paragraph with imprisonment from 6 months to 3 years any public official or public service employee who - outside the cases of embezzlement provided for in Article 314 of the Criminal Code - having, by reason of his office or service, the possession or availability of money or other movable property belonging to others, allocates them for a use other than that provided for by specific provisions of law or by acts having the force of law from which no margin of discretion remains, and intentionally procures for himself or others an unjust financial advantage or for others an unjust damage.
By virtue of an amendment introduced during the Senate's examination of the bill, a prison sentence of between six months and four years is applicable when the offence harms the financial interests of the European Union and the unfair advantage or damage exceeds €100,000.
For the new offence to be committed, the following are therefore necessary:

- misappropriation, i.e. the use of money or movable property belonging to others by a public official or public service employee for a purpose other than that provided for by specific legislative provisions, which leave no room for discretion;
- unfair financial advantage in favour of the agent or unfair damage to third parties;
- the financial advantage or damage must be obtained intentionally (subjective element of the offence).

With regard to the conduct of misappropriation, it should be noted, also in order to further understand the reasons for the reform in question, that from 1930 to 1990, embezzlement (Article 314 of the Criminal Code) punished *'public officials or persons in charge of a public service who, by virtue of*

their office or service, are in possession of money or other movable property belonging to the public administration and appropriate it or misappropriate it for their own benefit or that of others'.
When it was introduced, therefore, embezzlement covered both appropriation and misappropriation, the latter meaning the use of money or goods for purposes other than those that legitimise their possession.
The 1990 reform rewrites the offence, limiting it to acts of appropriation; however, this does not entail an *abolitio criminis*, because since then, doctrine and case law have traced the true and proper embezzlement by misappropriation back to the offence of abuse of office (and embezzlement by theft/appropriation back to embezzlement under Article 314 of the Criminal Code).
In fact, according to the established case law of the Court of Cassation, the provision of Article 314 of the Criminal Code has remained applicable *'in cases where money or other assets are diverted from their public purpose and used to satisfy the private interests of the agent',* however, the different criminal offence referred to in Article 323 of the Italian Criminal Code - now repealed - applies *'when there is a diversion for personal gain that [...] takes the form of misuse of the asset that does not result in its loss and consequent financial damage to the entity to which it belongs [...] or where the use of public money is in violation of accounting rules and serves to achieve, in addition to undue private interests, also objectively existing public interests [...]*' (see, in this regard, Criminal Cassation, Section VI, judgment no. 36496 of 30/09/2020).
This explains the need and urgency to intervene with a decree-law to try to restore (at least) embezzlement by misappropriation.[40]
With regard to the terms 'damage' and 'financial advantage', case law clarifies that damage includes both financial and non-financial aspects, such as any unjust attack on the personal sphere, including subjective rights and legitimate interests. Financial advantage, on the other hand, derives from unlawful conduct by a public official and may also be of a moral nature if it can be assessed in economic terms.
Paragraph 2-bis amends Article 323-bis, paragraph 1, of the Criminal Code, including the offence of misappropriation of money or movable property among those for which the mitigating circumstance of the particular insignificance of the offence applies.
Finally, paragraph 2-ter amends Article 25, paragraph 1, second sentence, of Legislative Decree No. 231/2001, including the offence of misappropriation of money or movable property where the offence harms the financial interests of the European Union.
Sanctions applicable to the Entity

financial sanctions: up to 200 units.

10. Extortion (Article 317 of the Italian Criminal Code)

The offence occurs when a public official or a person in charge of a public service, abusing his or her position or powers, forces someone to give or promise unduly, to himself or herself or to others, money or other benefits.
The figure of the public service employee has been reinserted into the criminal offence referred to in Article 317 of the Italian Criminal Code following the entry into force of Law No. 69/2015, mentioned above.

[40] See, most recently, in accordance with this view, Criminal Court of Cassation, Section VI, 4 February 2025 (hearing of 23 October 2024), no. 4025. Conduct involving misappropriation, *'originally attributable to the offence of abuse of office, given the continuity in the criminal relevance of the act (in view of the homogeneity of the structural elements of the offence), will therefore continue to be punishable under Article 314-bis of the Criminal Code. and, pursuant to Article 2, paragraph 4, of the Criminal Code, the lex mitior consisting of the new statutory framework will apply*'. The legislator, *'with regard to conduct involving misappropriation punishable under the previous legislation as abuse (misappropriation) of office, has, however, intended to implement a partial abrogatio sine abolitione, making conduct that did not involve a violation of specific provisions of law or provisions that leave room for discretion on the part of the public official no longer punishable*'. A further reduction in the scope of criminal relevance of conduct involving misappropriation previously attributable to the offence of abuse of office - the ruling concludes - *'is achieved in relation to the prerequisite of conduct: the possession or availability of the res, required by Article 314-bis of the Criminal Code, based on the model of embezzlement, is, in fact, a more stringent and therefore more selective prerequisite than that previously provided for in Article 323 of the Criminal Code, which used the phrase 'in the performance of duties or service'. Furthermore, there will be abolitio criminis for misappropriation involving immovable property, which under the previous legislation was punishable under Article 323 of the Criminal Code, but is no longer covered by Article 314-bis of the Criminal Code*."

According to the explanatory report accompanying the original bill, this reintroduction is justified on the grounds that it would be incongruous to punish only public officials when public service concessionaires can engage in the same behaviour 'with equally devastating effects on the ethics of relationships'.
The public official or public service provider determines the state of subjugation of the will of the offended person through the abuse of their position (regardless of their specific competences but by exploiting their position of prominence) or their powers (conduct that represents manifestations of their functional powers for purposes other than those for which they were invested).
The victims of this offence (offended persons) are, at the same time, the public administration and the private individual who has been extorted.
sanctions applicable to the entity

- financial sanctions: from 300 to 800 units;
- disqualification sanctions: 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 to obtain the provision of a public service; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition on advertising goods or services (for a period of not less than 4 years and not more than 7 years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter a); for a period of not less than 2 years and not more than 4 years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter b. If, prior to the first instance judgment, the entity has taken effective measures to prevent the criminal activity from having further consequences, to secure evidence of the offences and identify those responsible or to seize the sums or other benefits transferred, and has eliminated the organisational deficiencies that led to the offence by adopting and implementing organisational models suitable for preventing offences of the type that occurred, the disqualification sanctions shall have the duration established by Article 13, paragraph 2).

11. Corruption in the exercise of public office (Article 318 of the Criminal Code)

The offence occurs when a public official, in the exercise of his or her functions or powers, unduly receives, for himself or herself or for a third party, money or other benefits or accepts the promise thereof.
The offence in question may be committed not only by a public official but also by a public service employee within the meaning of Article 320 of the Criminal Code.
Compared to extortion, corruption is characterised by an unlawful agreement between the qualified person and the private individual acting on an equal footing.
In the case of the Company, the offence of corruption must be considered from two perspectives:

- *active corruption* when a senior or subordinate member of the Company bribes a public official or public service employee in order to obtain some benefit or advantage for the Company itself;
- *passive corruption* when a senior or subordinate member of the Company, in their capacity as a public official or public service employee (i.e. in expropriation procedures), receives money or the promise of money or other benefits to perform acts contrary to the duties of their office. In the latter case, in order for the Company to be held 'administratively' liable, there must be an interest or advantage for the Company, as well as for the senior or subordinate employee who accepted the bribe.

Finally, Law No. 3/2019 has tightened the sanctions for the offence in question, providing for a sentence of between 3 and 8 years.
Sanctions applicable to the Entity
financial sanctions: up to 200 units.

12. Bribery for an act contrary to official duties (Article 319 of the Italian Criminal Code)

The offence occurs when a public official or public service employee receives, for themselves or for a third party, money or other benefits, or accepts the promise thereof, in order 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 their official duties.

In this particular type of offence, the private corruptor secures, through the promise or undue giving of money, an act by the public official or public service employee that is contrary to their official duties.

In order to establish whether an act is contrary to official duties, it is necessary to consider not only the act itself in order to verify its legitimacy or illegitimacy, but also its compliance with all official or service duties that may be taken into consideration, with the result that an act may not be illegitimate in itself and yet be contrary to official duties. Acts that are contrary to official duties include those that conflict with legal provisions or service instructions, as well as those that violate the duties of loyalty, impartiality and honesty associated with the exercise of a public function.

Sanctions applicable to the Entity

- financial sanctions: from 200 to 600 units;
- disqualification sanctions: 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 to obtain the provision of a public service; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition on advertising goods or services (for a period of not less than 4 years and not more than 7 years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter a); for a period of not less than 2 years and not more than 4 years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter b. If, prior to the first instance judgment, the entity has taken effective measures to prevent the criminal activity from having further consequences, to secure evidence of the offences and identify those responsible or to seize the sums or other benefits transferred, and has eliminated the organisational deficiencies that led to the offence by adopting and implementing organisational models suitable for preventing offences of the type that occurred, the disqualification sanctions shall have the duration established by Article 13, paragraph 2).

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

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

"*The sanction shall be increased if the offence referred to in Article 319 concerns the granting of public employment, salaries or pensions, or the conclusion of contracts involving the administration to which the public official belongs*, *as well as the payment or reimbursement of taxes*."

In such cases, or when the entity has made a significant profit from the offence, the following sanctions shall apply:

- financial sanctions: from 300 to 800 units;
- disqualification sanctions: 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 to obtain the provision of a public service; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition on advertising goods or services (for a period of not less than 4 years and not more than 7 years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter a); for a period of not less than 2 years and not more than 4 years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter b. If, prior to the first instance judgment, the entity has taken effective measures to prevent the criminal activity from

having further consequences, to secure evidence of the offences and identify those responsible or to seize the sums or other benefits transferred, and has eliminated the organisational deficiencies that led to the offence by adopting and implementing organisational models suitable for preventing offences of the type that occurred, the disqualification sanctions shall have the duration established by Article 13, paragraph 2).

14. Corruption in judicial proceedings (Article 319-ter of the Criminal Code)

The offence occurs when someone offers or promises money or other benefits to a public official or a public service employee in order to favour or harm a party or a person involved in a civil, criminal or administrative proceeding. A company that, being a party to legal proceedings, bribes a public official (not only a magistrate, but also a clerk or other official, or a witness), including through an intermediary (e.g., its own defence counsel), in order to obtain a favourable outcome of the proceedings, may therefore be held liable for the offence.

Article 319-ter constitutes a separate offence from the cases of corruption provided for in Articles 318 and 319 of the Criminal Code. The purpose of the provision is to ensure that judicial activities are carried out impartially.

For the offence to be established, it is not necessary for the incriminated acts to be directly attributable to the exercise of a judicial function, as the scope of the incriminating provision covers not only strictly judicial activities, but also those that are more broadly expressive of the exercise of judicial activity and attributable to persons other than judges or public prosecutors.

Sanctions applicable to the Entity

- paragraph 1, financial sanctions: from 200 to 600 units;
- paragraph 1, disqualification sanctions: 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services;
- paragraph 2, financial sanctions: from 300 to 800 units;
- paragraph 2, disqualification sanctions: 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 for obtaining public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition on advertising goods or services (for a period of not less than 4 years and not more than 7 years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter a); for a period of not less than 2 years and not more than 4 years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter b. If, prior to the first instance judgment, the entity has taken effective measures to prevent the criminal activity from having further consequences, to secure evidence of the offences and identify those responsible or to seize the sums or other benefits transferred, and has eliminated the organisational deficiencies that led to the offence by adopting and implementing organisational models suitable for preventing offences of the type that occurred, the disqualification sanctions shall have the duration established by Article 13, paragraph 2).

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

The offence, introduced by Article 1, paragraph 75, letter i) of Law No. 190/2012, occurs when a public official or public service employee, abusing their position or powers, induces someone to give or promise unduly, for themselves or for a third party, money or other benefits.

The offence occurs both when the public official or public service employee, in return for payment, performs an act that is their duty (e.g. speeding up a procedure that falls within their remit) and

when they perform an act contrary to their duties (e.g. procuring or facilitating the unlawful award of a contract).[41]
This offence differs from extortion, which is characterised by the threat or prospect of unjust harm, in that the inducement is aimed at obtaining an undue advantage. This distinction justifies the punishability of the person induced.
The distinguishing criterion between undue inducement and corruption, on the other hand, lies in the different significance of the abuse of power and/or position in the two cases, given that only in undue inducement does it play the role of an indispensable tool for obtaining, with causal efficiency, the undue service.
Sanctions applicable to the Entity

- financial sanctions: from 300 to 800 units;
- disqualification sanctions: 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition on advertising goods or services (for a period of not less than 4 years and not more than 7 years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter a); for a period of not less than 2 years and not more than 4 years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter b. If, prior to the first instance judgment, the entity has taken effective measures to prevent the criminal activity from having further consequences, to secure evidence of the offences and identify those responsible or to seize the sums or other benefits transferred, and has eliminated the organisational deficiencies that led to the offence by adopting and implementing organisational models suitable for preventing offences of the type that occurred, the disqualification sanctions shall have the duration established by Article 13, paragraph 2).

16. Bribery of a person in charge of a public service (Article 320 of the Criminal Code)
The provisions of Articles 318 and 319 also apply to persons in charge of a public service.
In any case, the sanctions shall be reduced by no more than one third.

17. sanctions for the corruptor (, Article 321 of the Criminal Code)
The sanctions established in paragraph 1 of Article 318, Article 319, Article 319-bis, Article 319-ter and Article 320 in relation to the aforementioned cases in Articles 318 and 319, shall also apply to anyone who gives or promises money or other benefits to a public official or a person in charge of a public service.

18. Instigation to corruption (Article 322 of the Criminal Code)
The sanctions for this offence applies to anyone who offers or promises money or other benefits not due to a public official or a public service employee in order to induce them to perform an act contrary to or in accordance with their official duties, if the promise or offer is not accepted. Similarly, the conduct of a public official who solicits a promise or offer from a private individual to induce them to perform an act contrary to their official duties is also punishable.
The offence in question is therefore a mere conduct offence. The objective element of the offence consists of incitement, whereby, on the one hand, the perpetrator must exert pressure on others to induce them to perform a specific action and, on the other hand, the person subjected to the solicitation must not accept the offer or promise made.
Sanctions applicable to the Entity

[41] In the cases provided for in the first paragraph, anyone who gives or promises money or other benefits shall be punished with imprisonment for up to three years or with imprisonment for up to four years when the offence harms the financial interests of the European Union and the damage or profit exceeds €100,000.

- paragraphs 1 and 3, financial sanctions: up to 200 units;
- paragraphs 2 and 4, financial sanctions: from 200 to 600 units;
- paragraphs 2 and 4, disqualification sanctions: 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 to obtain the provision of a public service; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition on advertising goods or services (for a period of not less than 4 years and not more than 7 years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter a); for a period of not less than 2 years and not more than 4 years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter b. If, prior to the first instance judgment, the entity has taken effective measures to prevent the criminal activity from having further consequences, to secure evidence of the offences and identify those responsible or to seize the sums or other benefits transferred, and has eliminated the organisational deficiencies that led to the offence by adopting and implementing organisational models suitable for preventing offences of the type that occurred, the disqualification sanctions shall have the duration established by Article 13, paragraph 2).

19. **Embezzlement, misappropriation of money or movable property, extortion, undue inducement to give or promise benefits, corruption and incitement to corruption of members of international courts or bodies of the European Communities or international parliamentary assemblies or international organisations and officials of the European Communities and foreign states (Article 322-bis of the Criminal Code - amended by Law No. 114/2024)**

The provisions laid down for the offences of embezzlement, misappropriation of money or movable property, embezzlement by taking advantage of another person's mistake, extortion, corruption in the exercise of official duties, corruption for an act contrary to official duties, corruption in judicial acts, undue inducement to give or promise benefits and incitement to corruption, shall apply to the Entity even when such offences concern the following persons:

- 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 employed under contract in accordance with the Staff Regulations of Officials of the European Communities or the Conditions of Employment of Other Servants of the European Communities;
- persons seconded by Member States or any public or private body to the European Communities who perform duties corresponding to those of officials or agents of the European Communities;
- members and staff of bodies set up on the basis of the Treaties establishing the European Communities;
- persons who, in other Member States of the European Union, perform duties or activities corresponding to those of public officials and persons in charge of a public service;
- judges, the prosecutor, deputy prosecutors, officials and agents of the International Criminal Court, persons seconded by States Parties to the Treaty establishing the International Criminal Court who perform functions corresponding to those of officials or agents of the Court, members and staff of bodies established on the basis of the Treaty establishing the International Criminal Court;
- persons performing functions or activities corresponding to those of public officials and persons in charge of public services within international public organisations;
- members of international parliamentary assemblies or of an international or supranational organisation and judges and officials of international courts;

- persons who perform functions or activities corresponding to those of public officials and persons in charge of public services within States not belonging to the European Union, when the act is detrimental to the financial interests of the Union.

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

- to the persons indicated above;
- to persons who perform functions or activities corresponding to those of public officials and persons in charge of a public service in other foreign states or international public organisations.

Sanctions applicable to the Entity

- financial sanction: from 200 to 600 units; if the Entity has made a significant profit, a financial sanction of 300 to 800 units shall apply;
- disqualification sanctions: 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services (for a period of not less than 4 years and not more than 7 years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter a); for a period of not less than 2 years and not more than 4 years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter b. If, prior to the first instance judgment, the entity has taken effective measures to prevent the criminal activity from having further consequences, to secure evidence of the offences and identify those responsible or to seize the sums or other benefits transferred, and has eliminated the organisational deficiencies that led to the offence by adopting and implementing organisational models suitable for preventing offences of the type that occurred, the disqualification sanctions shall have the duration established by Article 13, paragraph 2).

20. Trafficking in illicit influences (Article 346-bis of the Criminal Code - amended by Law No. 114/2024)

Law No. 3 of 9 January 2019 (published in the Official Gazette No. 13 of 16 January 2019) introduced into the catalogue of predicate offences 231 the offence of trafficking in illicit influences provided for and punished by Article 346-bis of the Italian Criminal Code[42] and at the same time repealed the offence of boasting of credit (Article 346 of the Italian Criminal Code).

Finally, Article 1(e) of Law No. 114/2024 reformed the offence in question, which now provides as follows: "*Anyone who, except in cases of complicity in the offences referred to in Articles 318, 319 and 319-ter and in the offences of corruption referred to in Article 322-bis, intentionally uses existing relations with a public official or a person in charge of a public service or one of the other persons referred to in Article 322-bis to unduly obtain or promise, to themselves or to others, money or other economic benefits, to remunerate a public official or a public service employee or one of the other persons referred to in Article 322-bis, in relation to the exercise of their functions, or to carry out another illegal mediation, ...*".

The purpose of the offence is to target illegal intermediation between private individuals and public officials, aimed at corrupting the latter.

The provision, given the subsidiarity clause provided for *at the beginning* of the first paragraph, therefore aims to target conduct that is a precursor to (subsequent) corrupt agreements involving public officials, whose decisions one would like to influence unlawfully, and therefore does not apply in cases where the public official or public service employee accepts the promise or giving

[42] The offence of trafficking in illicit influences was included in the Criminal Code by Law No. 190/2012.

of money or other economic benefit from the intermediary, in which case there is a conspiracy between the private individual, the intermediary and the public official or public service employee to commit a crime of corruption.
More specifically, the mediator's relations with the public official must be effectively used (not merely boasted about) and must exist (not merely asserted).[43]
In this regard, it should be noted that during the examination in the Senate, the concept of exploitation, already present in the current text, was replaced by that of utilisation. It should be noted that this removes the two amendments introduced by Law No. 3 of 2019 (the so-called 'spazzacorrotti' or 'corruption buster') to the text in order to absorb the offence of boasting of credit within the offence of illicit influence peddling. Such conduct of so-called 'boasting' or 'bragging' - as specified in the explanatory report - will remain punishable where the constituent elements of the general offence of fraud are present (see, in this regard, Criminal Cassation, judgment No. 5221/2020). The use of relationships must therefore be intentional for the purpose of carrying out the conduct described below, which constitutes the offence. The nature of the intent, in the form of intentional intent, necessary to constitute the offence is therefore clarified.
The benefit given or promised to the intermediary, as an alternative to money, must be economic (this is also specified in the third and fourth paragraphs); the amendment in question therefore reaffirms the necessarily economic nature of the advantage given or promised to the intermediary.
The description of the typical conduct is amended to provide that the improperly obtaining or promising, for oneself or for others, money or other economic benefit is aimed at:

- the remuneration of a public official or a public service employee or one of the other persons referred to in Article 322-bis, in relation to the exercise of their functions;
- the performance of another unlawful mediation.

The minimum sanction has been increased from 1 year to 1 year and 6 months. The explanatory report specifies that the increase in the minimum sanction is a consequence of the reduction in the scope of application of the offence, which is now limited to particularly serious conduct.
In addition, a new second paragraph has been introduced in Article 346-bis of the Criminal Code, which provides an explicit definition of *'other unlawful mediation*', referred to in the first paragraph.
Illegal mediation is therefore defined as mediation to induce a public official or a person in charge of a public service or one of the other persons referred to in Article 322-bis to perform an act contrary to their official duties, constituting an offence from which an undue advantage may derive.
Therefore, in light of this specification, one of the two alternative purposes of the typical conduct previously provided for has been reformulated.
In fact, it is envisaged that, in the event that the money or economic benefit given or promised to the mediator is not intended as remuneration for the public official, public service employee or other persons referred to in Article 322-bis, the unlawful mediation agreement between the client and the mediator must be aimed at performing an act contrary to official duties, constituting a criminal offence, capable of producing an undue advantage for the client. This clarification would appear to be consistent with the most recent case law of the Court of Cassation, which has held, in relation to so-called 'onerous mediation', that it *'is unlawful because of the "external" projection of the relationship between the contracting parties, the ultimate objective of the influence bought and sold, in the sense that mediation is unlawful if it is aimed at committing a criminal offence - a crime - capable of producing advantages for the* client' (Criminal Cassation, Section VI, Judgment No. 1182 of 13 January 2022). The new fourth paragraph of Article 346-bis of the Criminal Code extends the aggravating circumstance provided for therein to include cases where the person who unduly obtains or promises, for themselves or others, money or other economic benefits also holds

[43] See, in this regard, Criminal Cassation, Section I, 28 August 2025 (hearing of 30 May 2025), No. 29934.

one of the qualifications referred to in Article 322-bis and not only the qualification of public official or public service employee.

In addition, the article in question introduces further amendments to the Criminal Code aimed at:

- extend the mitigating circumstances referred to in Article 323-bis of the Criminal Code to the offence of trafficking in illicit influences. For this reason, the fifth paragraph of the article in question, which provided for a specific mitigating circumstance for particularly minor offences, has been removed;
- extend to the offence of illicit influence peddling the grounds for non-punishment referred to in Article 323-ter of the Criminal Code.

The same sanction applies to anyone who unduly gives or promises money or other economic benefits.

The sanction is also increased if the acts are committed in connection with the exercise of judicial activities or to remunerate a public official or a person in charge of a public service or one of the other persons referred to in Article 322-bis in connection with the performance of an act contrary to official duties or the omission or delay of an act of their office.

Sanctions applicable to the Entity

financial sanction: up to 200 units.

21. Disturbance of public auctions (Article 353 of the Italian Criminal Code)

Law No. 137 of 9 October 2023, entitled *'Conversion into law, with amendments, of Decree-Law No. 105 of 10 August 2023, No. 105, containing urgent provisions on criminal proceedings, civil proceedings, combating forest fires, recovery from drug addiction, health and culture, as well as on judicial and public administration personnel*." amended Article 24 of the Decree, introducing, among other things, the offence of disruption of public auctions (Article 353 of the Criminal Code).

The article in question reads as follows: "*1. Anyone who, through violence or threats, or through gifts, promises, collusion or other fraudulent means, prevents or disrupts public auctions or private tenders on behalf of public administrations, or drives away bidders, shall be punished with imprisonment for a term of between six months and five years and a fine of between €103 and €1,032. 2. If the offender is a person appointed by law or authority to conduct the aforementioned auctions or tenders, the imprisonment shall be from one to five years and the fine from €516 to €2,065. 3. The sanctions established in this article shall also apply in the case of private tenders on behalf of private individuals, conducted by a public official or a legally authorised person; however, they shall be reduced by half.*

The current systematic classification of the offence is among crimes against the public administration; however, according to the majority of legal doctrine and case law, the legal interest protected by the law must be identified not only in the regular conduct of tenders, specifically in the interest that the tender, a prelude to the conclusion of a contract binding on the public administration, is conducted in a transparent and regular manner, but also in compliance with freedom of competition. in fact, criminal protection acts as a closure of a complex and articulated system, such as that of public tenders, regulated by the Public Contracts Code, which hinges precisely on the application of free competition, non-disparity, *favor participationis*, equality and transparency.

The criminal conduct is therefore that which aims to prevent participants in a 'tender', understood in the broadest sense of the term, or those who aspire to participate, from competing according to the rules governing the free market, thus favouring the interests of the public administration. This reconstruction in terms of a multi-offensive offence makes it possible to enhance, on the one hand, the interest of the public party in entering into a truly advantageous contract and, on the other, the private party who has a legitimate interest in competing fairly. From this perspective, the interest protected becomes not only compliance with the procedure and freedom to participate in the tender, but also the competitive conduct *of the* entire selection *process*.

The active subject of the offence of disruption of public auctions can be anyone, whether they are an outsider, an interested party or even a counterparty to the 'tender'.

The second paragraph of Article 353 of the Criminal Code introduces, however, in relation to the perpetrator of the offence, a special aggravating circumstance, where the perpetrator is identified as *'a person appointed by law or by the authority to conduct auctions or tenders*'. With regard to the concept of 'person in charge', it has been specified that it *'must be determined with reference not only to the final stage – i.e. the conclusion of the tender – but also to the entire procedure involved in the public auction: the conduct of the public auction, in fact, gives rise to a complex administrative procedure, in the course of which the function of the person in charge is integrated and operates through the specific tasks to which he or she is called, so that the status of person appointed by law or authority to conduct public auctions or private tenders cannot be limited to those who preside over and direct the tender, but includes all those who perform essential functions throughout the entire procedure.*" (see Criminal Cassation, Section VI, 13.1.2005, no. 4185; Criminal Cassation, Section VI, 28.11.2003, no. 10886).

The conduct referred to in the provision must necessarily be carried out in relation to one or more specific 'tenders', taking the form, according to the exhaustive list (binding offence), of violence, threats, gifts or promises, collusion or other fraudulent means.

It can be observed that the conduct centred on 'violence' can be configured in any behaviour without which the recipient would not have decided to do (omit or tolerate) what he did (omitted or tolerated). It therefore also includes violence against property or third parties linked to the passive subject by ties of kinship or solidarity. According to this interpretation, the constitutive requirement of violence would translate into a form of coercion or compulsion that is detrimental to the capacity for self-determination, capable of transcending the common meaning of violence understood as the use of physical force.

As regards 'threat', according to the traditional definition, it consists in the representation of a future and unjust harm whose realisation depends on the acting subject.

'*Gifts or promises of* gifts', on the other hand, are assimilated to the concept of utility typical of corrupt conduct and can be identified as *something* capable of directing the recipient's behaviour in a different direction from the one he would have taken; the 'gift' must be objectively proportionate or appropriate to its persuasive function. The 'promise', in any case, cannot be abstract or generic, but must, on the contrary, meet the requirements of typicality, precision and concreteness, in the sense that the act of promising cannot be reduced to a simple negotiated agreement, but must interfere with the choices of others, preventing the correct 'competition' procedure.

'Collusion' is understood to mean *'any agreement between two or more persons to achieve an unlawful end through the irregular conduct of the auction or tender'; 'any clandestine agreement aimed at influencing the normal conduct of bids ... any clandestine agreement between two or more persons to achieve an unlawful end by betraying trust or circumventing the legitimate activities of third parties', 'any clandestine relationship between private individuals in any way involved in the tender or between them and those in charge of the tender, aimed at influencing the outcome of* the tender' (Criminal Cassation, Section VI, judgment no. 40304/2014).

More specifically, according to the ruling of the Criminal Court of Cassation, Section VI, judgment no. 4113 of 16 May 2019, fraudulent agreements between the person in charge of the tender and one of the competitors are relevant, whereby the former provides the latter with 'suggestions' and 'advice' for the purpose of determining the content of the bid to be submitted: this is, therefore, an undue contribution, offered by those who should guarantee the fairness and equal conditions of the competitors, to the advantage of only one of them, and, therefore, to the detriment of the others, in a manner likely to influence the normal conduct of the tenders (in the case in question, the private individual had received information from the public official who had drawn up the technical specifications for the tender, was the contact person for the site visits by the interested competitors and was part of the office responsible for appointing two of the three members of the awarding committee).

A further example of such conduct is the communication of the provisional scores awarded to competitors in a tender procedure by members of the committee to an outside party, because this put

that party in a position to decide how to award the scores and to interfere with the work of the committee members. (Criminal Cassation, Section V, judgment no. 30726 of 9 September 2020).
Finally, considering that 'collusion' is defined as a clandestine agreement between economic operators aimed at influencing the normal course of tenders, the Court of Cassation, with regard to coordinated tenders, has clarified on several occasions that the formal or substantive link between companies participating in a tender for the award of a public contract is not in itself sufficient to constitute the offence provided for in Article 353 of the Italian Criminal Code, as proof is required that, behind the establishment of apparently separate companies, there is a single decision-making centre for coordinated bids or that the companies, using their connection, have submitted bids that are agreed upon in their specific and actual content (Criminal Cassation, Section VI, 13 June 2018, no. 3264; Criminal Cassation, Section VI, 17 September 2019, no. 42371).
Another type of conduct that constitutes the objective element of the offence referred to in Article 353 of the Criminal Code is that defined as *'other fraudulent means*', i.e. *'any artifice, deception or falsehood that is concretely suitable for achieving the offence, which takes the form not only of immediate and actual damage, but also of mediated and potential damage*'. (Criminal Cassation, Section VI, 8 May 1998, No. 8443).
The broad concept of *'fraudulent* means', which is undoubtedly lacking in terms of specificity, has led to the belief that the offence referred to in Article 353 of the Criminal Code, in this particular form, is covered in a variety of cases. By way of example, the following conduct has been considered to constitute disruption by fraudulent means: the unjustifiably restrictive interpretation of specific clauses; the exclusion of a bidder on the basis of rigid formalism in checking the requirements of the applications, or, again, the initiative of the person in charge to proceed with the declaration of in r inadmissibility of a bid on the basis of mere non-compliance with the formal requirements of the application, such as, for example, the date of birth of the competitor; the preparation of tender application forms which, completed in all their constituent parts and signed in blank, were completed with the indication of the percentage discount for only one of the participants (Criminal Cassation No. 8443/1998, cited); the creation of a document that is admissible as evidence *under the law* but contains a *false* statement intended to mislead the public administration (Criminal Cassation, Section VI, 9 November 2017, No. 57251; Criminal Cassation, Section V, 11 November 2003, No. 561); the submission of a bid that is completely anomalous and economically unjustified, made in the knowledge that it will play a decisive role in determining the minimum so-called average bid, which will identify the successful bidder (Criminal Cassation, Section V, 29.4.1999, no. 9062); procedural anomalies, such as the use of front men or the provision of incorrect information to participants (Criminal Cassation, Section VI, 11/07/2014, no. 42770); the slightest conscious alteration of the calculation of averages for identifying the successful bidder, provided that it is such as to affect the regularity of the competition in accordance with the principle of offensiveness. (Criminal Court of Cassation, Section V, 20/09/2019, no. 3223); fraudulent conduct by the agent, following the award, during the period of time necessary for checks and verifications prior to the conclusion of the contract, considering that only with this act does the process of selecting the contractor come to an end. (Criminal Cassation, Section II, 04/05/2018, no. 34746).
The naturalistic event of the offence of disruption of public auctions may consist not only in the impediment of the tender, but also in its disruption, a circumstance that may occur when the fraudulent or collusive conduct has even only influenced the regular procedure of the tender itself, causing a 'diversion', an abnormal development compared to its ordinary course, it being irrelevant whether there is an actual alteration of its results. (Criminal Cassation, Section II, 23 June 2016, no. 43408; see, in accordance with this, Criminal Cassation, Section VI, 11 March 2013, no. 12821: the commission of the offence of disruption of public auctions does not coincide with the final moment of the award of the contract, given that the disruption of the tender occurs solely due to the submission

of bids. It follows that the reference to the moment of the final award of the contract ends up representing a mere *post factum* irrelevant for the purposes of establishing the offence)[44] .
The offence in question, therefore, is established not only in the case of actual damage, but also in the case of indirect and potential damage: in other words, it is not necessary for the intended result (the award of the tender) to be actually achieved, as it is sufficient for the collusive agreements to influence the regular course of the tender.
This alone, in fact, constitutes a violation of the legal rights protected by the criminal law.
As for the further alternative event of exclusion, this latter hypothesis *'is achieved by deterring bidders from the tender or preventing them from participating, since those who do not meet the requirements to participate in the tender may also qualify as bidders; those who simply have the possibility of submitting a bid if they meet the requirements; those who have the possibility and intention to participate; those who are about to participate; those who have actually participated.*" (Criminal Cassation, Section VI, Order No. 41379/2023).
With regard to the moment of consummation, it has also been pointed out that the disruption may occur not only at the precise moment when the tender takes place, but also in the complex process leading up to the tender, in which the competitors themselves are involved, or outside the tender itself (Criminal Court of Cassation, Section VI, 5 April 2012, no. 18161).
In the practical application of the criminal offence, where explicit reference was and is made solely to public auctions and private tenders, the question naturally arose as to whether the scope of criminal liability should be strictly limited to the procedures with the above characteristics or whether a more flexible and broader interpretation of the concept of 'tender' should be adopted.
In older case law, the scope of application of Article 353 of the Criminal Code was considered to refer to cases of 'competitive tendering' (similar to private tendering) and to so-called 'consultation tenders', consisting of 'informal' or 'consultation' administrative procedures, in which the public administration makes the award of works, supplies or services dependent on the outcome of contacts with individuals or representatives of legal entities who propose their own conditions. Although this type of case appears to fall outside the concepts of 'private negotiation' and 'private tender', it has nevertheless been considered to fall within the scope of Article 353 of the Criminal Code, since *'when the public administration, although not required to do so, proceeds with informal consultation between competing private companies, thus deciding to place a limit on its own activity that is not provided for by law, it must then comply with that limit in any case, with the consequence that, for criminal purposes, the disruption of a tender informally arranged in this way is on the same level as that which takes place in compliance with the law, since the legal interest protected by the criminal law (with regard to the rules of free competition, both in the interest of the participants, who have come to rely on the regularity of the procedure, and in the interest of the administration) is in any case infringed"* (Criminal Cassation, Section VI, 3.11.1997, No. 11483).
Similarly, and for the same reasons, it has been held that the offence referred to in Article 353 of the Criminal Code may also occur in any case of 'unofficial competition' connected with a private negotiation, when, by choice of the administration or by regulatory discipline, the tender is proceduralised, with its execution being subject to predetermined rules to which private individuals must submit and to which the administration must comply (Criminal Cassation, Section VI, 28.4.1999, No. 9387).
Ultimately, the concept of public auctions or private tenders accepted by the most established doctrine and case law attaches importance to the substantive rather than the formal aspect of the presence of a 'competition' characterised by the setting of predetermined criteria for identifying the winner.
This interpretation has been confirmed by more recent case law:

- the offence of disruption of public auctions does not apply to competitive procedures for the recruitment of university professors, as the evaluation of 'bids' in competitions referred to in

[44] In this regard, it should be noted that the conduct constituting the offence may also take place in the interval between the provisional and final award, given that the former is merely procedural in nature and it is only with the final award that the contractor selection process comes to an end (Criminal Cassation, Section VI, judgment no. 57251/2017).

Article 353 of the Criminal Code concerns the content, appropriateness, the quantitative and qualitative relevance of the activity that the bidder undertakes to perform, whereas in competitions for the recruitment of university professors it relates only to the candidate's previous activity (Criminal Cassation Section VI, 24/05/2023, no. 32319);

- the offence referred to in Article 353 of the Italian Criminal Code is certainly applicable to any tender procedure, even informal or atypical ones, whenever the public administration proceeds to identify the contractor on a comparative basis, provided that the informal notice or call for tenders, or in any case the equivalent document, indicates in advance the criteria for selection and submission of bids, enabling potential participants to assess the rules governing the comparison and the criteria on the basis of which to formulate their own bids. However, the rule still only applies to procedures for the award of public contracts or the sale of public assets, which are now governed by the Public Contracts Code (Criminal Cassation Section VI, 10/05/2023, no. 26225);
- the offence of disruption of public auctions does not require the presence of public auctions or private tenders, as even an informal and atypical tender procedure is sufficient, provided that there is real and free competition between the participants, so that it cannot be configured when the administration retains full freedom to choose according to criteria of convenience and opportunity typical of private contracts. (Criminal Cassation, Section VI, 09/02/2022, no. 20930).

The subjective element of the offence of disruption of public auctions is generic intent, consisting of the awareness and willingness to prevent, disrupt the tender or remove bidders, in the manner described by the law. The use of violence or threats, the offering of gifts or the promise thereof, collusion or other forms of anomaly falling within the definition of fraudulent means must therefore be the subject of intent, reflecting on the concrete result of preventing or disrupting the tender or driving away bidders. Therefore, in order to establish the psychological element of the offence, it is necessary that the perpetrator was aware of and intended the naturalistic event resulting from their conduct.

22. Disruption of the freedom of the contractor selection process (Article 353-bis of the Italian Criminal Code)

The limitation of the provision entitled 'Disruption of the freedom of auctions' lies in its intrinsic restriction to the moment when the 'tender' or 'private auction' is already underway.

Aware of this seemingly insurmountable limitation and of the fact that developments in the world of public procurement have created new forms of risky behaviour, almost sentinel events, the legislator deemed it appropriate to take specific action to anticipate criminal protection prior to the publication of a tender notice, including conduct that may occur during the entire, not insignificant, phase between the moment the public administration identifies its needs and the moment the tender notice is published.

Therefore, the regulatory gap has been filled with the introduction of Article 353-bis of the Italian Criminal Code, which reads as follows: *'Unless the act constitutes a more serious offence, anyone who, through violence or threats, or through gifts, promises, collusion or other fraudulent means, disrupts the administrative procedure aimed at establishing the content of the tender notice or other equivalent act in order to influence the public administration's choice of contractor shall be punished with imprisonment for a term of between six months and five years and a fine of between €103 and €1,032.*"

In order to be relevant for the purposes of the offence, the disruptive conduct referred to in Article 353-bis of the Italian Criminal Code must therefore be part of an administrative procedure involving any selection procedure (the publication of a tender notice or an act having the same function); so that conduct not aimed at distorting the content of the call for tenders (or an equivalent act) but aimed at preventing the tender through the direct unlawful award of the works is outside the scope of the provision.

It follows that: *'in the case of direct award, the offence provided for in Article 353-bis of the Criminal Code: (a) is configurable when the private negotiation, beyond the nomen juris, provides, within the administrative procedure for selecting the contractor, for a 'tender', albeit informal, i.e. a competitive evaluation segment; b) does not apply in cases of contracts concluded by the public administration through private negotiations in which the procedure is not subject to any competitive scheme; c) does not apply when the decision to proceed with direct award is itself the result of disruptive conduct aimed at avoiding the tender*'. (Criminal Cassation, Section VI, judgment no. 5536/2022)

Finally, this is a dangerous offence, protecting the public administration's interest in being able to contract with the best bidder. For this offence to be committed, the fairness of the procedure for preparing the tender notice or other equivalent document must be seriously compromised, but it is not necessary for the content of these documents to be actually modified in such a way as to influence the choice of contractor. Hence the anticipation of protection with respect to the moment of the actual formal announcement of the tender[45], in order to prevent the preparation and approval of tenders that are personalised and tailored to the characteristics of certain operators.

All further assessments already set out with regard to Article 353 of the Italian Criminal Code are referred to here, given the commonality of the constituent elements of the two offences.

Finally, the most significant case law rulings on the application of Article 353-bis of the Italian Criminal Code are listed below:

Criminal Cassation Section VI, 05/04/2018, no. 29267

The offence of 'interference with the freedom of the contractor selection process' may be committed in cases where pressure is exerted on the contracting authority to invite a friendly company to submit a bid. This is true even if no tender is subsequently launched. The Court specifies that the provision is aimed at targeting conduct which, by unlawfully affecting free economic competition, jeopardises the public administration's interest in being able to contract with the best bidder. For the offence to be committed, it is not necessary for the choice of contractor to have been influenced, but it is sufficient for the fairness of the tender procedure to have been seriously jeopardised.

Criminal Cassation Section VI, 13/07/2021, no. 44700

With regard to the disruption of the freedom of the contractor selection process, the notice with which, in the 'pre-commercial procurement' contractual procedure, the search for and selection of the contractor begins, as well as the technical annex describing the content of the future contract, constitute 'acts equivalent' to the tender notice. (Case in which the technical annex was prepared by the company that was awarded the contract and modelled on its skills and management choices).

Criminal Cassation Section VI, 07/02/2019, no. 14148

For the offence referred to in Article 353-bis of the Italian Criminal Code to be applicable, an administrative procedure aimed at approving the tender notice or selecting the contractor must be effectively pending, failing which the correctness of the public administration's activities is protected by other provisions of the Criminal Code. In this sense, the offence *in question* does not exist in the case of the mere preparation of draft resolutions, prior to the start of the proceedings, whose content is completely neutral with respect to the future call for tenders, regardless of the main purpose of the conduct. (Case in which the Review Court considered that the mere preparation of draft resolutions by the Municipal Council and Executive Committee was not sufficient to affect the conduct of the tender and influence its outcome, even though the intention existed).

sanctions applicable to the entity

[45] On this point, it is worth noting a recent ruling by the Supreme Court (Criminal Cassation, Section VI, judgment no. 7260/2022), which recognised that the offence of disruption of public auctions can also be committed in cases where the incriminated conduct took place before the publication of the tender notice, but in the immediate run-up to it. According to the judges, in particular, the offence referred to in Article 353 of the Criminal Code may also be committed when, even though the tender notice has not yet been published, the tender is already 'specific and determined'. The panel of judges stated that *'the conduct alternatively indicated by the criminal provision, through which the tender may be prevented or disrupted, does not necessarily have to be perpetrated at the precise moment when the tender takes place, as it may occur at any time during the procedure leading up to the tender or even outside it, and therefore the disruption may also occur in the procedure preceding the tender through conduct aimed at influencing or altering the* result'.. This conclusion would also be reached in view of the introduction of the offence of disruption of the contractor selection process (Article 353-bis of the Italian Criminal Code), through which the legislator would have limited itself to making punishable as consummated offences disruptions which, if a tender had not yet been announced, would previously have constituted only an attempt to disrupt the freedom of auctions, without, however, making the formal announcement of the tender an objective prerequisite for the offence referred to in Article 353 of the Italian Criminal Code.

In relation to the commission of the offences referred to in Articles 353 and 353-bis of the Criminal Code, the following shall apply to the entity:

- a financial sanction of up to 500 units or from 200 to 600 units in the event of significant profit or particularly serious damage;
- disqualification sanctions: prohibition from contracting with the public administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

23. Inducement not to make statements or to make false statements to the judicial authorities (Article 377-bis of the Italian Criminal Code – predicate offence referred to in Article 25-decies of Legislative Decree No. 231/2001)

The criminal provision in question aims to prevent the possible exploitation of the right to remain silent granted to suspects and defendants, as well as to so-called suspects/defendants in related proceedings, close relatives and witnesses (in the case of so-called self-incrimination), in accordance with the principle of *"nemo tenetur se detegere*", also in order to protect the proper conduct of proceedings against all undue interference.

This is a subsidiary rule, which applies only if the act actually committed does not constitute a more serious offence.

The offence is characterised by the provision of generic intent, consisting of the awareness and willingness to induce, through violence or threats against the person entitled not to answer, or by offering or promising money or other benefits to the latter, not to make statements, i.e. to exercise that right or to make false statements to the judicial authority (judge or public prosecutor).

The targets of the conduct are therefore witnesses, suspects and defendants (including in related proceedings or in a related offence), who are recognised by law as having the right to remain silent.

As regards the typical methods of carrying out the conduct, the inducement relevant to the commission of the offence is achieved through the action by which a person exerts influence on the mind of another individual, causing them to behave in a certain way, carried out through the means strictly indicated by the law, namely threats, violence or promises of money or other benefits.

Furthermore, for the constituent elements of the offence to be fulfilled, it is required that:

- the person induced did not make any statements or made false statements in the same proceedings;
- the person induced, in the manner specified by the law, not to make statements or to make untruthful statements, had the right not to answer.

Sanctions applicable to the Entity

a financial sanction of up to 500 units.

24. Failure to comply with disqualification sanctions (Article 23 of the Decree)

The offence punishes anyone who, in the course of the activities of the Entity to which a sanction or precautionary disqualification measure has been applied, violates the obligations or prohibitions inherent in such sanctions or measures. For the purposes of this provision, all activities carried out by the Entity that may in any way interfere with the execution of a disqualification sanction or precautionary disqualification measure are taken into consideration.

Sanctions applicable to the Entity

- financial sanction: from 200 to 600 units;
- disqualification sanctions: if the Entity has made a significant profit, disqualification sanctions shall be applied, even if different from those previously imposed.
-

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

Illegal intermediation and exploitation of labour (Article 25-quinquies, Legislative Decree No. 231/2001[46])

Article 6 of Law No. 199 of 29 October 2016, containing "*Provisions on combating undeclared work, labour exploitation in agriculture and wage realignment in the agricultural sector*" and published in Official Gazette No. 257 of 3 November 2016, amended Article *603-bis* of the Italian Criminal Code, entitled *'Illegal intermediation and labour* exploitation', which was also included in Article *25-quinquies*, paragraph 1, letter a) of Legislative Decree No. 231/2001.

The amendment aims to extend the protection of workers and, more generally, of the market. As specified in the report accompanying the text of the law, *'the exploitation of workers always benefits companies, which are often set up as corporations or associations*'.

The new wording of the offence (punishable by imprisonment for one to six years and a fine of €500 to €1,000 for each worker recruited):

- rewrites the unlawful conduct of the gangmaster, i.e. those who recruit labour to employ it for third parties in exploitative conditions, taking advantage of the state of need (the reference to the 'state of necessity' has been removed);
- compared to the previous provision, introduces a basic provision that does not require violent, threatening or intimidating behaviour (there is no longer any reference to the ' ' carrying out an organised intermediation activity or to the organisation of work characterised by exploitation).[47]

The offence of illegal intermediation and labour exploitation is therefore now applicable to all employers.

In the new wording, compared to that introduced for the first time into our legal system by Decree Law No. 138 of 13 August 2011, converted into Law No. 149 of 14 September 2011, No. 148, clearly specifies that employers who use/hire/employ labour *'subjecting workers to conditions of exploitation and taking advantage of their state of* need' are also punishable, in the same way as 'caporali', even without illegal recruitment through third parties.

The new provisions described above must be examined carefully, especially in light of the so-called exploitation indicators, which are alternative indicators that, when present, potentially constitute exploitation of the worker.

These include not only the repeated payment of wages that are clearly different from those provided for in the collective bargaining agreement signed by the most representative social partners, or in any case disproportionate to the quantity/quality of the work performed, but also violations that are not necessarily serious and systematic.

These include, for example, failure to comply with rules on working hours/rest periods/leave/holidays or workplace safety, which are now understood in general terms and no longer only those that are dangerous to health, safety or personal safety.

Exploitation refers to habitual conduct and occurs when a person is prevented from freely determining their own life choices.

The Court of Cassation (Section V, judgment no. 14591 of 4 April 2014) has clarified that the offence of illegal hiring *'is intended to punish conduct that does not merely violate the rules laid*

[46] The following criminal offences complete the list of offences contained in Article 25-quinquies of the Decree: Reduction or maintenance in slavery or servitude (Article 600 of the Criminal Code) Child prostitution (Article 600-bis of the Criminal Code) Child pornography (Article 600-ter of the Italian Criminal Code) Possession of or access to pornographic material (Article 600-quater); Virtual pornography (Article 600-quater.1 of the Italian Criminal Code); Tourist initiatives aimed at the exploitation of child prostitution (Article 600-quinquies of the Italian Criminal Code); Trafficking in persons (Article 601 of the Criminal Code); Purchase and sale of slaves (Article 602 of the Criminal Code); Solicitation of minors (Article 609-undecies of the Criminal Code). Please refer to paragraphs 1 and 2 of Article 25-quinquies of the Decree for the relevant financial sanctions and disqualifications.

[47] Finally, paragraph 4 of Article 603-bis of the Criminal Code states the following: "The following *constitute specific aggravating circumstances and entail an increase in the sanction from one third to one half: 1) the fact that the number of workers recruited exceeds three; 2) the fact that one or more of the persons recruited are minors below working age; 3) having committed the offence by exposing the exploited workers to situations of serious danger, having regard to the characteristics of the work to be performed and the working conditions*."

down in Legislative Decree No. 276/2003, without, however, reaching the heights of extreme exploitation, as referred to in the case described in Article 600 of the Criminal Code [enslavement]'.
In essence, the concept of exploitation refers to any behaviour, even if carried out without violence or threats, that inhibits or limits the victim's freedom of self-determination without necessarily creating the state of total and continuous subjugation that characterises the crime of enslavement.
The same applies to the state of need, which is not identified with the need to work in order to live, but presupposes – according to the interpretation of the Court of Cassation (*ex multis*, section II, judgment no. 18778 of 25 March 2014) – *'a state of need that is essentially irreversible, which, while not completely destroying any freedom of choice, involves an urgent compulsion that seriously compromises the contractual* freedom' of the person.
For the offence of illegal intermediation and labour exploitation to be committed, generic intent is required, the object of which includes all the elements of the offence, it being necessary for the agent, in addition to intending to commit the conduct typified in Article *603-bis* of the Criminal Code and its particular modal connotations, to be aware of the state of need in which the exploited worker finds himself.
Sanctions applicable to the Entity

- financial sanction: from 400 to 1000 units;
- disqualification sanctions: 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

Employment of third-country nationals whose stay is irregular (Article 25-duodecies, Legislative Decree No. 231/2001, added by Legislative Decree No. 109/2012 and updated by Decree Law No. 145/2024, converted, with amendments, by Law No. 187 of 9 December 2024)
The criminal provision in question applies in cases where one of the aggravating circumstances provided for in paragraph 12-bis of Article 22 of Legislative Decree No. 286/1998 (the Consolidated Law on Immigration) occurs, which states: *'The sanctions for the offence referred to in paragraph 12* (*Editor's note*: i.e. the offence of *'an employer who employs foreign workers without the residence permit required by this article, or whose permit has expired and for which renewal, revocation or cancellation has not been requested in accordance with the* law') *are increased by one third to one half:*

a) if the number of workers employed exceeds three;
b) if the workers employed are minors below working age;
c) if the workers employed are subject to the other working conditions referred to in the third paragraph of Article 603-bis of the Criminal Code.[48]

Law No. 161 of 17 October 2017 (the so-called "Anti-Mafia Code") also added the following two new criminal offences referred to in Legislative Decree No. 286/1998 to Article 25-duodecies of the Decree:

- Article 12, paragraphs 3, 3-bis and 3-ter, namely the conduct of anyone who "*promotes, directs, organises, finances or carries out the transport of foreigners into the territory of the State or performs other acts aimed at illegally procuring their entry into the territory of the State, or of another State of which the person is not a citizen or does not have permanent residence*", including the related aggravating circumstances;

[48] Article 5 of Decree Law No. 145/2024, converted, with amendments, by Law No. 187 of 9 December 2024, No. 187, deleted the phrase "*of particular* exploitation" contained in paragraph 12-bis, letter c) of Article 22 and introduced the new residence permit referred to in Article 18-ter of the same Consolidated Law on Immigration.

- Article 12, paragraph 5, namely the conduct of anyone who, *'in order to obtain an unfair profit from the illegal status of the foreign national or in the context of activities punishable under this article, facilitates their stay in the territory of the State*'.

Sanctions applicable to the Entity

In relation to the commission of the offence referred to in Article 22, paragraph 12-bis, of Legislative Decree No. 286 of 25 July 1998, a financial sanction of between 100 and 200 units, up to a limit of €150,000, shall be imposed on the Entity.

In relation to the commission of the offence referred to in Article 12, paragraphs 3, 3-bis and 3-ter of Legislative Decree No. 286/1998, a financial sanction of between 400 and 1,000 units shall be imposed on the Entity.

In relation to the commission of the offence referred to in Article 12, paragraph 5 of Legislative Decree No. 286/1998, a fine of between 100 and 200 units shall be imposed on the Entity.

In cases of conviction for the offences referred to in the last two points above, the disqualification sanctions provided for in Article 9, paragraph 2, of the Decree shall also apply for a period of not less than one year.

CORPORATE OFFENCES, CORRUPTION AND INSTIGATION TO CORRUPTION BETWEEN PRIVATE INDIVIDUALS (ARTICLE 25-TER OF THE DECREE)[49]

1. False communications, prospectuses and reports

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

Law No. 69 of 27 May 2015, which came into force on 14 June 2015, introduced new regulations on the offence of false accounting, transforming it from a misdemeanour to a crime, and, in the case of public officials, providing for an increase in the maximum sentence for individuals to 8 years' imprisonment, the elimination of the quantitative thresholds (5% of economic results; 1% of assets; 10% of estimates) previously provided for as a barrier to its actual commission/integration.

The new structure of offences of false corporate communications essentially consists of two different types of offences (Articles 2621 and 2622 of the Italian Civil Code), both of which are characterised by their nature as offences of mere danger and by their prosecutability ex officio.

Both offences, as defined in Articles 2621 and 2622 of the Italian Civil Code, are committed by presenting material facts that are untrue in financial statements, reports and other communications addressed to shareholders or the public, or by omitting material facts whose disclosure is required by law regarding the economic, equity or financial situation of the company or the group to which it belongs.

The legal interest protected by the above provisions is complete and accurate corporate information.

The perpetrators of both offences are directors, general managers, managers responsible for preparing company accounting documents, auditors and liquidators, and therefore these are 'specific' offences.

However, for the purposes of recognising the relevant criminal liability, it is not sufficient to identify the perpetrator of the offence on the basis of formal investiture alone, but it will be necessary to carry out a case-by-case assessment, including at a functional level, i.e. in terms of the actual performance of those activities typical of directors, general managers, auditors, liquidators and managers responsible for the work of persons not formally invested with these roles.

In fact, the provision of Article 2639 of the Italian Civil Code effectively extends the subjective qualifications of interest here, including among the active subjects of the offence of false corporate

[49] Pursuant to Article 39, paragraph 5, of Law No. 262/2005, the financial sanctions provided for in Article 25-ter of the Decree are doubled.

communications both those who perform the same functions as the subjects specifically identified by the criminal provision (even if differently qualified in their position), and the so-called de facto manager, i.e. the person who, in the absence of formal appointment, continuously and significantly exercises the powers typical of the qualification or function referred to in the case in question.
It should also be noted that:

- the concept of 'corporate communication' includes all communications required by law to be made to shareholders or the public. This legal reservation excludes the criminal relevance of any atypical and non-institutionalised communication, even if addressed to shareholders and the public, for example, commonplace statements such as press releases and press conferences, as well as impromptu statements to shareholders at meetings and even communications required by CONSOB under its regulatory powers. Corporate communications may, on the other hand, include the written statement by the manager responsible, which must accompany the company's documents and communications disclosed to the market and relating to the company's accounting information, including interim information, in order to certify their correspondence with the documentary results, books and accounting records pursuant to Article 154-bis of the Consolidated Law on Finance (in relation to Law No. 262/2005 concerning joint-stock companies). The concept of corporate communications includes draft financial statements, reports and documents to be published pursuant to Articles 2501-ter-2504-novies of the Italian Civil Code in the event of a merger or demerger, or in the event of interim dividends, pursuant to Article 2433-bis of the Italian Civil Code.
- the scope of application of both rules is limited by the requirements of materiality and relevance of the falsified facts, as well as awareness and the concrete nature of the danger to the protected legal interest;
- the false or partial representation must be concretely capable of misleading the recipients of the falsified communication;
- the conduct must be aimed at obtaining an unfair profit for oneself or others (animus lucrandi) and there is no requirement for the intention to cause unfair financial damage to shareholders or the public;
- the falsification of company information must be deliberate;
- liability also extends to cases where the information concerns assets owned or managed by the company on behalf of third parties;
- Law No. 69/2015 also provides for a reduction in the sanction of between one third and two thirds of the sanction, and this measure is provided for those who actively seek to avoid further consequences of the crime, secure evidence, identify the guilty parties or, again, for those who cooperate in the seizure of the sums transferred unlawfully.

However, the scope of application of the criminal offences referred to in Articles 2621, 2621-bis and 2622 of the Italian Civil Code is different.
While Article 2621 of the Italian Civil Code applies exclusively to unlisted companies, Article 2622 of the Italian Civil Code applies only to conduct involving companies issuing financial instruments traded on regulated markets (in Italy or other Member States of the European Union) controlling these latter entities, issuers of financial instruments traded on *multilateral trading facilities* (Italian or other European Union Member States), which have applied for admission to trading on regulated markets (Italian or other European Union Member States) and which appeal to public savings or in any case manage them.
A further difference between the two provisions referred to above concerns the absence of the phrase *'required by* law' with reference to corporate communications addressed to shareholders or the public, as referred to in Article 2622 of the Italian Civil Code, which therefore appear to cover a wider range of communications relevant for the purposes of the provision and not only those communications 'required by law'.
Furthermore, for the sole case referred to in Article 2621 of the Italian Civil Code and, therefore, for unlisted companies, Article 2621-bis of the Italian Civil Code provides for a more lenient

sanction framework for "minor" offences, taking into account the nature and size of the company and the manner or effects of the conduct, which are prosecutable upon complaint by the company itself or its shareholders or other recipients of corporate communications.

Sanctions applicable to the Entity

- for the offence of false corporate communications, provided for in Article 2621 of the Italian Civil Code, the financial sanction ranges from two hundred to four hundred units;
- for the offence of false corporate communications, provided for in Article 2621-bis of the Italian Civil Code, the financial sanction ranges from one hundred to two hundred units;
- for the offence of false corporate communications by listed companies, provided for in Article 2622 of the Italian Civil Code, the financial sanction ranges from four hundred to six hundred units.

False prospectus (Article 173-bis of the Consolidated Law on Finance)

This offence is committed by presenting, in the prospectuses required for the public offering of financial products, for the purpose of soliciting investment or admission to listing on regulated markets, or in documents to be published in connection with public purchase or exchange offers, false information or the concealment of data or information likely to mislead the recipients of the prospectus, with the intention of deceiving them and in order to obtain an unfair profit for oneself or others.

It should be noted that:

- the prospectus must be drawn up in accordance with the general provisions laid down by CONSOB;
- there must be intent with regard to the falsehood and the intention to deceive the recipients of the prospectus;
- the conduct must be such as to mislead the recipients of the prospectus;
- the conduct must be aimed at obtaining an unfair profit for oneself or others.

In providing for an additional offence to those governed by Articles 2621 and 2622, the legislator has implicitly recognised that the prospectuses in question fall within the scope of corporate communications.

Article 34 of Law No. 262 of 2005 (the so-called savings law) introduced the new offence of false prospectus, simultaneously repealing Article 2623 of the Italian Civil Code, which was included with a new wording in Article 173-bis of the Consolidated Law on Finance (T.U.F.) by the so-called ' ' (the so-called 'consolidated law on finance'). Since Article 25-ter, letters c) and d) still expressly refer to Article 2623 of the Italian Civil Code as a prerequisite for administrative offences, 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 173-bis of the Consolidated Law on Finance, should result in the non-applicability of Legislative Decree No. 231/2001 to the new offence of false prospectus.

However, from a prudential point of view, this offence has also been taken into account in the mapping of risk areas pursuant to Legislative Decree No. 231/2001.

The typical nature of the documents in question also helps to delimit the group of persons who may commit the offence, even though it is a common offence, identifying them as those responsible for drafting and transmitting the prospectus (such as, for example, the directors of the company intending to solicit investment).

As regards the objective element of the offence, it should be noted that it can now be integrated in both cases - criminal and contraventional - both by commission (presentation of false information) and by omission (concealment of data or information), characterised by the ability to mislead the recipients of the prospectus.

Sanctions applicable to the Entity:

- for the offence of false prospectus, provided for by the repealed Article 2623, first paragraph, of the Civil Code, the financial sanction ranges from one hundred to one hundred and thirty units;

- for the offence of false prospectus, provided for by the repealed Article 2623, second paragraph, of the Civil Code, the financial sanction ranges from two hundred to three hundred and thirty units.

False statements in reports or communications by statutory auditors (Article 27 of Legislative Decree No. 39/2010)

The offence is committed through false statements or the concealment of information in reports or other communications by those responsible for auditing, concerning the economic, equity or financial situation of the company, in order to obtain an unfair profit for themselves or others, with the knowledge that the information is false and with the intention of deceiving the recipient of the communication. The sanction is more severe if the conduct has caused financial damage to the recipients of the communications, or if the statutory audit concerns a public interest entity.

Article 37 of Legislative Decree No. 39/2010 introduced the new offence of 'Falsehood in reports or communications by statutory auditors', simultaneously repealing Article 2624 of the Italian Civil Code.

Since Article 25 ter, paragraph 1, letters f) and g) of Decree 231/2001 still expressly refers to Article 2624 of the Italian Civil Code as a prerequisite for administrative offences, 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 No. 39/2010, should result in the non-applicability of Legislative Decree No. 231/2001 to the new offence of "Falsehood in reports or communications by those responsible for statutory auditing".

In this regard, the Joint Criminal Divisions of the Court of Cassation, in judgment no. 34476 of 23 June 2011, concerning 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, to the repealed Article 2624 of the Italian Civil Code as a 'mobile' reference to another regulatory provision, regardless of any consideration relating to the continuity between the criminal offences in diachronic succession.

However, from a prudential point of view, this offence was also taken into account in the mapping of risk areas pursuant to Legislative Decree No. 231/2001.

In light of a systematic interpretation of this principle of law affirmed by the Court, the issue previously addressed of the reference to corporate criminal offences of false statements in prospectuses referred to in Article 2623 of the Italian Civil Code, contained in Article 25-ter, can also be considered resolved, in the sense that the administrative liability of entities does not apply to such offences.

The active subjects of the offence in question are those responsible for statutory auditing, while the members of the company's administrative bodies and its employees may be involved exclusively as accomplices to the offence.

In fact, it is conceivable that directors, auditors or other persons of the audited company who have determined or instigated the unlawful conduct of the person responsible for the statutory audit may be considered accomplices, pursuant to Article 110 of the Italian Criminal Code.

<u>sanctions applicable to the entity:</u>

- for the offence of falsehood in the reports or communications of auditing firms, provided for by the repealed Article 2624, first paragraph, of the Civil Code, a financial sanction of between one hundred and one hundred and thirty units;
- for the offence of falsehood in the reports or communications of auditing firms, provided for by the repealed Article 2623, second paragraph, of the Civil Code, a fine of between two hundred and four hundred units.

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

The offence in question occurs when a member of the board of directors of a company, with securities listed on regulated Italian or markets of another European Union country or widely distributed among the public (pursuant to Article 116 of the Consolidated Law on Finance), in

violation of the rules on conflicts of interest of directors provided for in Article 2391, paragraph 1, of the Italian Civil Code, causes damage to the company or to third parties.
In particular, Article 2391 of the Italian Civil Code requires members of the Board of Directors to disclose (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 transaction of the company, specifying its nature, terms, origin and scope. The Managing Directors must also refrain from carrying out the transaction, referring it to the Board of Directors. The Sole Director must report this at the first available shareholders' meeting.
Considering that in most cases of transactions carried out by Directors in conflict of interest, the company is the injured party, as highlighted by the regulation itself, it is necessary to establish when the failure to disclose the conflict of interest is committed in the interest or to the advantage of the Entity. This applies not only in relation to the conduct of the individual company, but also from a group perspective, where certain potentially disadvantageous transactions, although concluded with a view to compensatory advantages for the group and therefore assessed in the interest of the entire corporate structure, may instead present disadvantages for third parties outside the group.
On the basis of these considerations, the most significant case is that in which the Director's omission has caused damage not to the company to which he or she belongs, but to third parties who have come into contact and have had legal relations of any kind with the company. The offence of failure to disclose a conflict of interest is in fact an offence of damage, as it requires, for the purposes of its consummation, the actual injury of the legal asset protected by the criminal law.
Sanctions applicable to the Entity:
for the offence of failure to disclose a conflict of interest under Article 2629-bis of the Civil Code, the financial sanction ranges from two hundred to five hundred units.

2. Criminal protection of share capital

Undue return of contributions (Article 2626 of the Civil Code)
This offence occurs when, except in cases of legitimate reduction of share capital, contributions are returned, even if only simulated, to shareholders or when shareholders are released from the obligation to make them.
Only directors (and persons who exercise, even de facto, the management and control of the company) can be active participants in the offence.
It should be noted that:

- only contributions in cash, credits and assets in kind that are suitable for constituting share capital are relevant for the punishability of the offence in question; punishability begins when the capital is affected;
- the payment or repayment may take various forms, including indirect forms, such as compensation with a fictitious credit towards the company;
- in order to constitute the offence, it is not necessary for all shareholders to be released from their obligation, but it is sufficient for a single shareholder or several shareholders to be released;
- shareholders who have instigated or influenced the directors are also punishable as accomplices to the offence.

The offence punishes conduct likely to cause damage to the company, resulting in a form of attack on the share capital for the benefit of the shareholders.
From an abstract point of view, it seems difficult for the offence in question to be committed by directors in the interest or to the advantage of the company, thus implying the liability of the entity.
The problem is more delicate in relation to intra-group relations, as it is possible that a company, having an urgent need for financial resources, may unduly obtain the return of contributions made

to the detriment of another company in the group. In this case, considering the position taken by prevailing case law, which does not recognise the autonomy of the corporate group as a unitary concept, it is quite possible that, if all the conditions are met, the entity may be liable for the offence of undue repayment of contributions committed by its directors.
sanctions applicable to the entity:
for the offence of undue return of contributions under Article 2626 of the Civil Code, a financial sanction of between one hundred and one hundred and eighty units.

Illegal distribution of profits and reserves (Article 2627 of the Civil Code)
This offence is committed through the distribution of profits (or advances on profits) that have not actually been earned or are required by law to be allocated to reserves, or the distribution of reserves (even if not constituted with profits) that cannot be distributed by law.
The perpetrators of the offence are the directors (and persons who exercise, even de facto, management and control), with whom any accomplices in the offence may also be liable, pursuant to Article 110 of the Criminal Code.
In essence, the provision in question punishes the unjustified removal of part of the share capital from what is, by law, its natural destination, i.e. its function as a means of achieving corporate profits and guaranteeing creditors.
In this regard, it should be noted that:

- the restitution of profits or the reconstitution of reserves before the deadline for the approval of the financial statements extinguishes the offence, but this special cause for the extinction of the offence only benefits the perpetrator of the offence and does not remove the liability of the entity;
- for the purposes of punishability, both the operating profit and the total profit deriving from the balance sheet, equal to the operating profit minus losses not yet covered plus the profit carried forward and reserves set aside in previous financial years (so-called balance sheet profit), are relevant;
- for the purposes of punishability, only the distribution of profits intended to constitute legal reserves is relevant, and not those drawn from optional or hidden reserves. Therefore, the distribution of profits actually earned but allocated to reserves in accordance with the articles of association does not constitute illegal distribution of reserves.

Sanctions applicable to the Entity:
for the offence of illegal distribution of profits and reserves under Article 2627 of the Civil Code, the financial sanction ranges from one hundred to one hundred and thirty units.

Illegal transactions involving shares or quotas of the company or its parent company (Article 2628 of the Civil Code)
This offence punishes directors (and persons who exercise, even de facto, management and control) who, except in cases permitted by law, purchase or subscribe to shares or quotas issued by the company (or the parent company), causing damage to the integrity of the share capital or reserves that cannot be distributed by law.
In this regard, it should be noted that the reconstitution of the share capital or reserves before the deadline for the approval of the financial statements for the financial year in which the conduct took place extinguishes the offence.
The provision therefore aims to protect the integrity and effectiveness of the share capital and reserves that cannot be distributed by law, with respect to phenomena of dilution of the same that could prejudice the interests of creditors: in particular, the conduct of directors who purchase or subscribe shares or quotas of their own company or of the parent company (see Article 2359 of the Italian Civil Code) outside the cases permitted by law (see, in particular, Articles 2357, 2359-bis, paragraph 1, 2360, 2474 and 2529 of the Italian Civil Code), thereby causing damage to the company's assets.

Only directors can be active participants in the offence: the selling shareholder or the director of the parent company may be liable for the offence as accomplices only if they have determined or instigated the directors to commit the offence.
The offence in question is punishable as a case of general intent, consisting of the desire to purchase or subscribe to shares or quotas, accompanied by awareness of the irregularity of the transaction, as well as the desire – or at least the acceptance of the risk – to cause damage to the company's capital.
Sanctions applicable to the Entity:
for the offence of unlawful transactions involving own shares or quotas or those of the parent company, as provided for in Article 2628 of the Civil Code, the financial sanction ranges from one hundred to one hundred and eighty quotas.

Transactions to the detriment of creditors (Article 2629 of the Italian Civil Code)
The law punishes directors (and persons who exercise, even de facto, the management and control of the company) who, in violation of the provisions of the law protecting creditors, carry out transactions to reduce the share capital or mergers or demergers in such a way as to cause damage to creditors.
The combination of three events modifying the articles of association in the same case is justified by the similarity of the procedure on which the legal protection is based: in all cases, a resolution of the extraordinary shareholders' meeting is considered, which determines a modification of the articles of association and whose execution could compromise the rights of creditors, who are therefore granted a right of opposition.
It should be noted that the offence is punishable upon complaint by the party concerned and that compensation for damage to creditors prior to the trial extinguishes the offence.
Sanctions applicable to the Entity:
for the offence of transactions to the detriment of creditors under Article 2629 of the Civil Code, a financial sanction of between one hundred and fifty and three hundred and thirty units.

Fictitious formation of capital (Article 2632 of the Civil Code)
This offence is committed through the following conduct: a) fictitious formation or increase of share capital by allocating shares or quotas for less than their nominal value; b) mutual subscription of shares or quotas; c) significant overvaluation of contributions in kind, receivables, or the company's assets in the event of transformation.
With regard to the first of the above methods of committing the offence, the *rationale* behind the provision is to prevent shares or quotas from being issued at a nominal value lower than that declared: in such cases, the share capital would be inflated by an amount corresponding to the difference between the allocation value and the nominal value. The second type of conduct covered by the provision in question, which refers to the management phase of the company, concerns the mutual subscription of shares or quotas, which is sanctioned as it is likely to create an illusory multiplication of wealth with consequent damage to protected interests. It should be noted that the conduct in question does not presuppose the simultaneity and connection of the two transactions, as an agreement aimed at the exchange of shares or quotas is sufficient. The third incriminated conduct, carried out through a significant overvaluation of contributions in kind or credits or of the company's assets in the event of transformation, also creates the illusion of an increase in wealth to the detriment of shareholders and third parties.
The active subjects of the offence are the directors and contributing shareholders.
The offence is punished as a case of general intent, therefore the awareness and willingness to fictitiously form or increase the share capital through the conduct described in the provision is required.
sanctions applicable to the entity:
for the offence of fictitious formation of capital under Article 2632 of the Civil Code, the financial sanction ranges from one hundred to one hundred and eighty shares.

Improper distribution of company assets by liquidators (Article 2633 of the Civil Code)
This offence is committed by distributing company assets among shareholders before paying company creditors or setting aside the sums necessary to satisfy them, thereby causing damage to creditors.
The rule protects the right of company creditors to have priority over shareholders with regard to the company's assets.
It should be noted that compensation for damage to creditors before the trial extinguishes the offence.
The active subjects of the offence are exclusively the liquidators, but pursuant to Article 2639 of the Italian Civil Code, those who, although not formally appointed, actually carry out the activity in question (e.g. shareholders who, in the absence of appointed liquidators, act as such) are also liable for the offence in question. The beneficiary shareholder, on the other hand, not being listed among the active subjects, may be liable for the offence in question only if their conduct is not limited to the passive acceptance of the asset (for example, in the case of incitement to commit the offence).
Furthermore, the opening of the liquidation phase is required as a prerequisite for the offence to be committed, which is a necessary requirement for the sanctioned conduct to take place.
For the subjective element to exist, generic intent is relevant, i.e. the simple desire to distribute to shareholders with knowledge of the amount of the claims, without it being necessary for the person to also wish to harm the creditors' interests.
Sanctions applicable to the Entity:
for the offence of undue distribution of company assets by liquidators under Article 2633 of the Civil Code, the financial sanction ranges from one hundred and fifty to three hundred and thirty shares.

3. Criminal protection of the proper functioning of the company

Obstruction of control (Article 2625 of the Civil Code)
The offence is committed by obstructing or impeding the performance of control activities through the concealment of documents or other appropriate devices.
The offence, which is attributable exclusively to the directors (and to persons who exercise, even de facto, the management and control of the company), may entail the liability of the entity only if the conduct has caused damage.
It should be noted that:

- the *modus operandi* of the appropriate devices presupposes fraudulent behaviour and, therefore, in other words, the conduct must be such as to mislead the persons who are required to carry out the control activities;
- in addition to obstruction, mere hindrance is also relevant;
- for the purposes of this provision, consideration is given to the activities carried out by members of the Board of Directors, as well as by employees who collaborate with them, which may influence the initiatives and control activities incumbent upon shareholders, other corporate bodies or auditing firms.

More specifically, these are activities that affect:

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

The offence has been partially decriminalised, limited to cases where the conduct of the directors has not caused any damage to the shareholders. Consequently, the possibility of establishing administrative liability on the part of the entity exists only in relation to the offence, which is prosecutable upon complaint by the injured party, provided for in Article 2625, paragraph 2. Finally, for the offence to exist, generic intent is required, which must obviously also include the representation and volition, at least by way of possible intent, of damage to the shareholders.
Sanctions applicable to the Entity:
for the offence of impeded control provided for in Article 2625, paragraph 2, of the Civil Code, the financial sanction ranges from one hundred to one hundred and eighty shares.

Unlawful influence on the Shareholders' Meeting (Article 2636 of the Civil Code)
The typical conduct involves determining the majority in the shareholders' meeting through simulated acts or fraud, with the aim of obtaining an unfair profit for oneself or others.
The provision aims to prevent fraudulent conduct from unlawfully influencing the formation of a majority in the shareholders' meeting.
The offence can be committed by anyone, not just directors, even though in essence it can be assumed that only shareholders (obviously those of relative importance) can be additional perpetrators of the offence.
The object of protection in this case is the regular formation of majorities at shareholders' meetings, resulting from the free consent of the shareholders and carried out in compliance with the law and the articles of association.
For the subjective element to exist, specific intent is required, consisting of the aim of pursuing an unfair profit for oneself or others.
It should be noted that the liability of the Entity can only be established when the conduct referred to in the article in question is carried out in the interest of the Entity. This makes it difficult to envisage the offence in question, which is normally committed to favour the interests of a party and not those of the 'Entity'.
Sanctions applicable to the Entity:
for the offence of unlawful influence on the shareholders' meeting provided for in Article 2636 of the Civil Code, a financial sanction of between one hundred and fifty and three hundred and thirty shares.

4. Criminal protection against fraud

Market manipulation (Article 2637 of the Italian Civil Code)
The offence is committed through the dissemination of false information or the performance of simulated transactions or other artifices likely to cause a significant alteration in the price of unlisted financial instruments or to affect the public's confidence in the financial stability of banks or banking groups. In particular, news is to be considered false when, by creating a distorted representation of reality, it is such as to mislead operators, creating the conditions for an abnormal trend in prices, while other artifices are to be understood as 'any behaviour which, through deception, is likely to alter the normal course of prices'.
Finally, Article 26, paragraph 2, of Law No. 132/2025 on *'Provisions and powers delegated to the Government in the field of artificial* intelligence' introduced the aggravating circumstance *'if the offence is committed through the use of artificial intelligence systems*'.
It should be noted that:

- disclosure is not considered to have taken place when the information has not been disseminated or made public, but is directed only at a few people;
- simulated transactions include both transactions that the parties did not intend to carry out in any way and transactions that appear to be different from those actually intended;
- for the offence to be configurable, it is sufficient that the information or device be capable of producing the effect of significantly altering the price of unlisted financial instruments.

For the offence to exist, a situation of danger is sufficient, regardless of whether an artificial price change occurs.
For listed companies, or those that issue listed financial instruments, the offence in question must be related to the criminal offence of market manipulation, discussed later in this General Section (see Market Abuse Offences).
Sanctions applicable to the Entity:
for the offence of market manipulation under Article 2637 of the Civil Code, a financial sanction of between two hundred and five hundred units.

5. Criminal protection of supervisory functions

Obstruction of the exercise of public supervisory authorities (Article 2638 of the Civil Code)
The offence is committed in two distinct ways, both aimed at obstructing the supervisory activities of the relevant public authorities:

- the disclosure in communications to the supervisory authorities of facts that are not true, even if they are the subject of assessments of the economic, equity or financial situation; or the concealment, by fraudulent means, of all or part of the information that should have been disclosed, in order to obstruct the exercise of the supervisory functions of the Authority. In both cases, for the offence to exist, specific intent is required (and, therefore, the specific awareness and willingness to obstruct the supervisory activity), accompanied by awareness of the falsity of the communications transmitted or the omissions made. Liability also exists in cases where the information concerns assets owned or managed by the company on behalf of third parties. In the second case, represented by concealment, the material object of the offence is not identified in the communications required by law, but in those that are due, and therefore communications required by sources other than the law, such as regulations, may also be relevant;
- the simple obstruction of the exercise of supervisory functions, carried out knowingly, in any way.
  In relation to paragraph 2 of Article 2638 of the Italian Civil Code, generic intent is required, which, as can be inferred from the adverb 'knowingly', is specifically direct intent, thus excluding any possible intent.[50]

The active subjects of the offence are the directors, the general manager, the manager responsible for preparing the company's financial reports, the auditors and the liquidators who are subject to obligations towards the Public Supervisory Authorities.
Sanctions applicable to the Entity:
for the offence of obstructing the functions of the Public Supervisory Authorities provided for in Article 2638 of the Civil Code, the financial sanction ranges from two hundred to four hundred units.

6. Corruption and incitement to corruption between private individuals

6.1 Introduction: the regulatory process
Law No. 190/2012[51] introduced new measures into our legal system aimed at strengthening the effectiveness and efficiency of the prevention and repression of corruption, in compliance with the obligations arising from the international conventions to which Italy has acceded.

[50] Article 26 of Legislative Decree No. 224 of 6 December 2023, entitled *'Adaptation of national legislation to the provisions of Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU)* 2017/1132' replaced paragraph 3-bis of Article 2638 of the Italian Civil Code with the following: "*For the purposes of criminal law, the resolution authorities and functions referred to in the decree transposing Directive 2014/59/EU and Regulation (EU) 2021/23 and the related implementing rules shall be treated as equivalent to the supervisory authorities and functions."* In the Italian case, Legislative Decree No. 224/2023 establishes that the Bank of Italy is the sole resolution authority for CCPs with registered offices in Italy.
[51] It entered into force on 28 November 2012 (Official Gazette No. 265 of 13 November 2012).

In particular, Article 1, paragraph 76, of the aforementioned Law amended Article 2635 of the Italian Civil Code, introducing the offence of corruption between private individuals.
With regard to the administrative liability of entities, Law No. 190/2012 added to Article 25-ter, paragraph 1, of Legislative Decree No. 231/2001, letter s-bis), referring to the new offence of corruption between private individuals only in the cases referred to in the third paragraph of Article 2635 of the Italian Civil Code, i.e. with exclusive reference to cases of active corruption: in other words, the liability of legal persons can only be established in relation to the company of the corruptor (i.e. the person who, in order to obtain a benefit or advantage for their company, bribes, by giving or promising money or other benefits, a senior manager or employee of another company to perform or omit acts in violation of the obligations inherent in their office or their obligations of loyalty, with simultaneous damage to their own company).
However, in reformulating Article 2635 of the Italian Civil Code, the Italian legislator did not fully incorporate the contents of the 1999 Strasbourg Criminal Convention on Corruption and Framework Decision 2003/568/JHA. The relevant intervention was deemed unsatisfactory by the competent European authorities[52] and, over time, the need for further and more incisive legislative intervention became increasingly apparent.
As a result, the legislator (in implementation of the delegation provided for in Article 19 of Law No. 170 of 2016) supplemented the previous measures adopted for the prevention and repression of corruption among private individuals with Legislative Decree No. 38 of 15 March 2017, in order to bring national legislation into line with EU requirements. In summary, this legislative intervention provided for:

- amend the offence of corruption between private individuals pursuant to Article 2635 of the Italian Civil Code;
- introduce the new offence of incitement to corruption between private individuals pursuant to Article 2635 bis of the Italian Civil Code, also including it as a predicate offence in Article 25 ter of Legislative Decree No. 231/2001;
- introduce additional sanctions pursuant to Article 2635-ter of the Italian Civil Code;
- to tighten the sanctions regime applicable to the Entity, pursuant to Legislative Decree No. 231/2001, in the event of conviction for the offence of corruption between private individuals referred to in the third paragraph of Article 2635 of the Italian Civil Code and for the offence of incitement to corruption between private individuals referred to in Article 2635 bis of the Italian Civil Code.

Legislative Decree No. 38/2017 also had a profound impact on the structure of the offence of corruption between private individuals referred to in Article 2635 of the Italian Civil Code:

- by expanding the list of active subjects (introducing, in addition to directors, general managers, managers responsible for preparing corporate accounting documents, auditors, liquidators and those subject to management and supervision, also those within the entity who exercise managerial functions other than those performed by the aforementioned);
- clarifying that these persons may belong to private companies or entities (extending the scope of application of the criminal offence to any private law entity, including, for example, foundations or non-profit organisations);
- expanding the range of criminally relevant conduct (including 'soliciting money or other benefits');
- by punishing, among the conduct carried out by the corruptor, in addition to the promise and giving, also the 'offer' of money or other benefits. Such conduct is also relevant if committed through an 'intermediary';
- specifying that 'money or other benefits' must be 'undue';

[52] The European Commission itself has repeatedly threatened to initiate infringement proceedings against Italy on the grounds that the new legislation adopted "*does not address all the shortcomings related to the scope of the offence of corruption in the private sector and the* sanction *regime*" ("Report from the Commission to the Council and the European Parliament, EU Anti-Corruption Report", Brussels, 3 February 2014, Annex on Italy).

- it is provided that the measure of confiscation for equivalent value cannot be less than the value of the benefits 'given', 'promised' or 'offered';
- anticipating the threshold of punishability to a moment prior to the commission of the act in violation of the obligations inherent in the office or the obligations of loyalty;
- no longer requiring, for the purposes of criminal liability, that the corrupt conduct causes or is likely to cause 'harm' to the company to which the corrupt person belongs.

This last amendment marks a significant change in the punitive paradigm: the conduct is punished in itself, regardless of the actual prejudicial consequences, whether financial or non-financial, to the company or private entity to which the corrupt person belongs.

6.2 Description of the offences referred to in Article 25-ter of the Decree

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

The provision punishes anyone who, even through an intermediary, offers, promises or gives money or other undue benefits to certain categories of persons working in companies or private entities (directors, general managers, managers responsible for preparing company 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 aforementioned persons), in order for them to perform or omit acts in violation of the obligations inherent in their office or their obligations of loyalty.

Therefore, as with the previous legislation, the administrative liability of the Entity arises only in cases of 'active corruption' (Article 25-ter, paragraph 1, letter s-bis), which continues to refer exclusively to the third paragraph of Article 2635 of the Italian Civil Code).

Finally, Law No. 3 of 9 January 2019 repealed paragraph 5 of Article 2635 of the Italian Civil Code, thus making the offence in question prosecutable ex officio.

6.2.2 The new offence of 'incitement to corruption' under Article 2635-bis of the Italian Civil Code

The list of corporate offences under Article 231 has been supplemented with the new offence referred to in the first paragraph of Article 2635-bis of the Italian Civil Code, namely incitement to corruption between private individuals.

Pursuant to the aforementioned provision, the conduct of those who offer or promise money or other benefits to senior figures in companies or private entities (directors, general managers, managers responsible for preparing company accounting documents, auditors and liquidators) as well as those who carry out their work in a managerial capacity, for the performance or omission of an act in violation of the obligations inherent in their office or their obligations of loyalty, when the offer or promise is not accepted.

Finally, Law No. 3 of 9 January 2019 repealed paragraph 3 of Article 2635-bis of the Italian Civil Code, thereby making the offence in question prosecutable ex officio.

6.3 Sanctions applicable to the Entity:

6.3.1 Financial sanctions:

- for the offence of corruption between private individuals provided for in Article 2635, paragraph 3, of the Italian Civil Code, a financial sanction of 400 to 600 units shall be applied;
- for the offence of incitement to corruption between private individuals provided for in Article 2635-bis, first paragraph, of the Italian Civil Code, a financial sanction of between 200 and 400 units shall be applied.

6.3.2 Disqualification sanctions:

For both of the above offences, the disqualification sanctions referred to in Article 9 of Legislative Decree No. 231/2001 shall apply in accordance with the criteria for their application set out in Article 13 of Legislative Decree No. 231/2001 (i.e. for a period of not less than three months and not more than two years).

7. False or omitted declarations for the issue of the preliminary certificate

Legislative Decree No. 19 of 2 March 2023 was published in Official Gazette No. 56 of 7 March 2023, containing *'Implementation of Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions*'.

More specifically, and for the purposes of this article, Article 29 of the Decree, to which reference should be made, regulates the issue of the preliminary certificate, which represents the stage at which the notary verifies that the formalities required by law for the merger have been duly completed.

The certificate is issued at the request of the Italian company participating in the merger.

The documents to be attached to the request for the preliminary certificate are listed, and the checks carried out by the notary on the basis of the documentation, information and declarations at his disposal are described.

The article contains the so-called 'anti-abuse clause', i.e. a general provision that requires the notary to verify that the merger has not been carried out for manifestly abusive or fraudulent purposes resulting in the violation or circumvention of a mandatory provision of EU law or Italian law and that it is not aimed at committing offences under Italian law.

The issuance of the certificate and the judicial remedies against the notary's decisions are regulated, appeals to the court in the event of refusal to issue the certificate or failure to issue it within the time limits laid down by law, the publication of the certificate, providing for its entry in the register of companies by the directors, and the publication of the notary's refusal to issue the preliminary certificate or the operative part of the decision rejecting the appeal brought before the court.

sanctions for infringements of the provisions transposing the Directive are provided for in Articles 52, 54 and 55, which implement the specific principle of delegation contained in Article 3(1)(r) of Law No 127 of 2022 (European Delegation Law 2021), according to which the legislation implementing the directive must provide *for 'the application of criminal and administrative sanctions that are effective, dissuasive and proportionate to the seriousness of the infringements of the provisions themselves, within the limits, for criminal sanctions, of a minimum prison sentence of six months and a maximum of five years, without prejudice to the rules in force for criminal offences already provided for*'.

In particular, Article 52 concerns the sanctions to be imposed on notaries who, in the context of the verification and control operations assigned to them by Articles 5, 13, 33 and 47 of the decree in question, act in violation of the prohibition on receiving or authenticating deeds expressly prohibited by law or manifestly contrary to public morality or public order established by Article 28, first paragraph, no. 1), of the Notarial Law.

Articles 54 and 55, on the other hand, provide for criminal sanctions, as indicated by the title of Chapter VI in which they are contained. Article 54 introduces the offence of false or omitted declarations for the issue of the preliminary certificate. This offence is punishable by imprisonment for a term of between six months and three years (paragraph 1) and, in the event of a sentence of not less than eight months' imprisonment, by the additional sanction of temporary disqualification from office in legal persons and undertakings referred to in Article 32-bis of the Criminal Code (paragraph 2), aims to punish the behaviour of anyone who creates wholly or partly false documents, alters genuine documents, makes false statements or omits relevant information in order to demonstrate that the conditions required by Article 29 for the issue of the preliminary certificate are met.

As a result of the introduction of the offence referred to in Article 54, Article 55 adds the same offence to the list of corporate offences provided for in Article 25-ter, paragraph 1, of Legislative

Decree No. 231 of 2001, establishing a financial sanction for the company of between 150 and 300 units.[53]

OFFENCES FOR THE PURPOSE OF TERRORISM OR SUBVERSION OF THE DEMOCRATIC ORDER (ARTICLE 25-QUATER OF 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, provides for the punishability of the Entity, where the conditions are met, if crimes are committed in the interest or for the benefit of the entity itself, with the aim of terrorism or subversion of the democratic order, as provided for by the Criminal Code, special laws or in violation of the International Convention for the Suppression of the Financing of Terrorism of New York. Compared to the other provisions of the Decree, Article 25-quater is characterised by the fact that it does not provide for a closed and exhaustive list of offences, but refers to a generic category of cases.

The main cases implicitly referred to in Article 25-quater are briefly described below:

Offences for the purpose of terrorism or subversion of the democratic order provided for in the Criminal Code Subversive associations (Article 270 of the Criminal Code)

This offence, which carries a prison sentence of between five and ten years, applies to anyone within the territory of the State who promotes, establishes, organises or directs associations aimed at violently establishing the dictatorship of one social class over others, or at violently suppressing a social class or, in any case, at violently subverting the economic or social order established in the State or, finally, whose purpose is the violent suppression of all political and legal systems of society. Anyone who participates in the aforementioned associations is punishable by imprisonment for a term of between one and three years.

Association with the aim of terrorism, including international terrorism, or subversion of the democratic order (Article 270-bis of the Criminal Code)

This offence applies to anyone who promotes, establishes, organises, directs or finances associations that propose to carry out acts of violence for the purpose of terrorism or subversion of the democratic order. For the purposes of criminal law, the purpose of terrorism also applies when acts of violence are directed against a foreign state, an institution or an international organisation. This offence is punishable by imprisonment for a term of between seven and fifteen years.

Assistance to associates (Article 270-ter of the Criminal Code)

This offence applies to anyone who, except in cases of complicity in the offence or aiding and abetting, gives shelter or provides food, hospitality, means of transport or means of communication to any of the persons participating in the associations referred to in Articles 270 and 270-bis of the Criminal Code. The offence in question is punishable by imprisonment for up to four years. However, those who commit the offence in favour of a close relative are not punishable.

Recruitment for the purposes of terrorism, including international terrorism (Article 270-quater of the Criminal Code)

This offence is committed by anyone who, except in the cases referred to in Article 270-bis, recruits one or more persons to carry out acts of violence for terrorist purposes, even if directed against a

[53] Article 56, '*Transitional and final* provisions', states the following: *'Unless otherwise provided, the provisions of this decree shall take effect on 3 July 2023 and shall apply to cross-border and international transactions in which none of the participating companies has published the draft on that date.*'

foreign state, institution or international organisati . This offence is punishable by imprisonment for a term of between seven and fifteen years.

Organisation of transfers for terrorist purposes (Article 270-quater 1 of the Italian Criminal Code)

"Except for the cases referred to in Articles 270 bis and 270 quater, anyone who organises, finances or promotes travel abroad for the purpose of carrying out acts of terrorism referred to in Article 270 sexies shall be punished with imprisonment for a term of between five and eight years."

Training for activities for terrorist purposes, including international terrorism (Article 270-quinquies of the Italian Criminal Code)

This offence applies to anyone, except in the cases referred to in Article 270-bis, who trains or otherwise provides 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 or method for carrying out acts of violence for terrorist purposes, even if directed against a foreign state, an institution or an international organisation. The offence in question is punishable by imprisonment for a term of between five and ten years. The same sanction applies to the person trained.

Financing of conduct for terrorist purposes (Article 270-quinquies.1 of the Criminal Code)

"Anyone, except in the cases referred to in Articles 270-bis and 270-quater.1, collects, disburses or makes available goods or money, however obtained, intended to be used in whole or in part for the commission of acts for terrorist purposes referred to in Article 270-sexies shall be punished with imprisonment for a term of between seven and fifteen years, regardless of whether the funds are actually used for the commission of the aforementioned acts. Anyone who deposits or keeps the goods or money referred to in the first paragraph shall be punished with imprisonment for a term of between five and ten years.

Misappropriation of assets or money subject to seizure (Article 270-quinquies.2 of the Criminal Code)

"Anyone who removes, destroys, disperses, suppresses or damages property or money subject to seizure to prevent the financing of terrorist activities referred to in Article 270-sexies shall be punished with imprisonment for a term of between two and six years and a fine of between €3,000 and €15,000."

Possession of material for terrorist purposes (Article 270-quinquies.3 of the Italian Criminal Code)[54]

"Anyone who, except in the cases referred to in Articles 270-bis and 270-quinquies, knowingly procures or possesses material containing instructions on the preparation or use of lethal weapons referred to in Article 1, first paragraph, of the Law of 18 April 1975, No. 110, firearms or other weapons or harmful or dangerous chemical or bacteriological substances, as well as any other technique or method for carrying out acts of violence or sabotage of essential public services, for the purpose of terrorism, even if directed against a foreign state, an institution or an international organisation, shall be punished with imprisonment for a term of between two and six years."

Conduct for the purpose of terrorism (Article 270-sexies of the Criminal Code)

Conduct that, due to its nature or context, could cause serious damage to a country or an international organisation and is carried out with the aim of intimidating the population or forcing public authorities or an international organisation to perform or refrain from performing any act or to destabilise or

[54] Article 1, paragraph 1, letter a) of Decree-Law No. 48 of 11 April 2025 on "*Urgent provisions on public safety, the protection of personnel on duty, as well as victims of usury and the prison system*", converted by Law No. 80 of 9 June 2025, introduced the offence in question with the consequent extension of the 231 catalogue, in implementation of the general referral clause referred to in Article 25-quater of the Decree, to all offences for the purposes of terrorism or subversion of the democratic order, provided for both by the Criminal Code and by special laws.

destroy the fundamental public, constitutional, economic and social structures of a country or an international organisation, as well as other conduct defined as terrorist or committed for terrorist purposes by conventions or other rules of international law binding on Italy, shall be considered as carried out for terrorist purposes. economic and social structures of a country or international organisation, as well as other conduct defined as terrorist or committed for terrorist purposes by conventions or other rules of international law binding on Italy.

Attack for terrorist or subversive purposes (Article 280 of the Criminal Code)

This offence is committed by anyone who, for the purposes of terrorism or subversion of the democratic order, attempts to kill or injure a person . The offence is punishable, in the first case, by imprisonment for not less than twenty years and, in the second case, by imprisonment for not less than six years. The offence is aggravated if the attack on a person's safety results in very serious injury (punishable by imprisonment for not less than eighteen years), serious injury (punishable by imprisonment for not less than twelve years) or the death of the person (punishable by life imprisonment) or if the act is directed against persons exercising judicial or prison functions or public security functions in the exercise of or because of their functions (in the latter case, the sanctions are increased by one third).

Acts of terrorism with deadly or explosive devices (Article 280-bis of the Criminal Code)

This offence is committed by anyone who, for terrorist purposes, carries out any act intended to damage movable or immovable property belonging to others, through the use of explosive or otherwise lethal devices. This offence is punishable by imprisonment for a term of between two and five years. If the act is directed against the seat of the Presidency of the Republic, the legislative assemblies, the Constitutional Court, government bodies or any other bodies provided for by the Constitution or constitutional laws, the sanction is increased by up to half. If the act results in danger to public safety or serious damage to the national economy, imprisonment for five to ten years applies.

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

"Anyone who, for the purposes of terrorism referred to in Article 270-sexies:

1) procures radioactive material for themselves or others;

2) creates a nuclear device or otherwise comes into possession of one.

Anyone who, 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 facility in such a way as to release or with the real danger of releasing radioactive material.

The sanctions referred to in the first and second paragraphs shall also apply when the conduct described therein involves chemical or bacteriological materials or agents.

Kidnapping for the purposes 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 punishable by imprisonment for a term of between twenty-five and thirty years. The offence is aggravated by the death, whether intentional or unintentional, of the kidnapped person (and is punishable by imprisonment for a term of thirty years or life imprisonment). Finally, any accomplice who, dissociating themselves from the others, acts to ensure that the victim of the offence regains their freedom, is punishable by imprisonment for a term of between two and eight years. If the victim dies as a result of the kidnapping after their release, the sanction is imprisonment for a term of between eight and eighteen years.

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

This offence is committed by anyone who incites another person to commit one of the intentional offences provided for in the section of the Criminal Code dedicated to offences against the State, for which the law establishes life imprisonment or imprisonment. Mitigating circumstances are cases in

which the incitement is not accepted or, if accepted, the offence is not committed. The offence is punishable, if the incitement is not accepted, or if the incitement is accepted but the crime is not committed, with imprisonment for a term of between one and eight years. The sanction is increased if the offence is committed using computer or telecommunications equipment.

Political conspiracy through agreement and political conspiracy through association (Articles 304 and 305 of the Criminal Code)

This offence applies to anyone who conspires or associates with others for the purpose of committing one of the offences referred to in the previous point (Article 302 of the Criminal Code). Those who participate in the conspiracy are punished, if the crime is not committed, with imprisonment for a term of between one and six years.

Those who promote, establish or organise the association shall be punished, for that alone, with imprisonment for a term of between five and twelve years.

Armed gang, formation and participation; assistance to participants in conspiracy or armed gang (Articles 306 and 307 of the Criminal Code)

This offence applies to anyone who promotes, establishes or organises an armed gang for the purpose of committing one of the offences referred to in Article 302 of the Criminal Code, or to anyone who, outside the cases of complicity in the offence or aiding and abetting, provides shelter, food, hospitality, means of transport or communication to any of the persons participating in the association or gang, pursuant to Articles 305 and 306 of the Criminal Code. The sanctions for the offences in question are punishable by imprisonment for up to fifteen years.

Manufacture or possession of explosive materials (Article 435 of the Criminal Code)[55]

This offence is committed by anyone who, with the aim of endangering public safety, manufactures, purchases or possesses dynamite or other explosive, asphyxiating, blinding, toxic or flammable materials, or substances used in their composition or manufacture, or, outside the cases of complicity in the aforementioned offence, by anyone who, by any means, including electronic means, distributes, disseminates, spreads or advertises material containing instructions on the preparation or use of the materials or substances indicated in the same paragraph, or on any other technique or method for committing any of the non-culpable offences referred to in this title punishable by imprisonment of not less than five years.

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

In addition to the offences expressly regulated by the Criminal Code, offences provided for in specific special laws are also taken into consideration. Terrorism offences, provided for by special laws , consist of all Italian legislation enacted in the 1970s and 1980s aimed at combating terrorism. Among the above provisions, it is worth mentioning Article 1 of Law No. 15 of 6 February 1980, which provides that the fact that the offence was 'committed for the purposes of terrorism or subversion of the democratic order' is an aggravating circumstance applicable to any offence. It follows that any offence under the Criminal Code or special laws, even those not expressly aimed at punishing terrorism, may, if committed for such purposes, become one of those likely to constitute, under Article 25-quater, grounds for establishing the liability of the entity. Other provisions specifically aimed at preventing offences committed for terrorist purposes are contained in Law No. 342 of 10 May 1976 No. 342, concerning the suppression of offences against the safety of air navigation, and in Law No. 422 of 28 December 1989, concerning the suppression of offences against the safety of maritime navigation and offences against the safety of fixed installations on the intercontinental platform.

Terrorist offences under Article 2 of the New York Convention of 9 December 1999

[55] Article 1 of Decree-Law No. 48 of 11 April 2025 on *'Urgent provisions on public security, the protection of personnel on duty, victims of usury and the prison* system', converted by Law No. 80 of 9 June 2025, added a new offence to Article 435 of the Criminal Code.

The reference to this provision clearly aims to avoid possible gaps in the legislation, which is already general and generic, and is therefore intended to strengthen and complete the scope of reference, including by referring to international instruments.
Under the aforementioned article, anyone who, by any means, directly or indirectly, unlawfully and intentionally, provides or collects funds with the intention of using them or knowing that they are intended to be used, in whole or in part, for the purpose of committing any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities, when the purpose of such act is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing something. For an act to constitute one of the above offences, it is not necessary for the funds to be actually used to carry out the above. Anyone who attempts to commit the offences described above also commits an offence. Anyone who: participates as an accomplice in the commission of one of the above offences; organises or directs other persons to commit one of the above offences; contributes to the commission of one or more of the above offences with a group of persons acting with a common purpose also commits an offence. Such contribution must be intentional and: must be made for the purpose of facilitating the criminal activity or purpose of the group, where such activity or purpose involves the commission of the offence; or must be made with the full knowledge that the group's intent is to commit an offence.
In order to determine whether or not there is a risk of such offences being committed, it is necessary to examine the subjective profile required by the law for the offence to be established. From a subjective point of view, terrorist offences are considered intentional offences. Therefore, for the intentional offence to be committed, it is necessary, from the point of view of the psychological representation of the agent, that the agent is aware of the unlawful event and wishes to carry it out through conduct attributable to him. Therefore, in order for the offences in question to be committed, it is necessary that the agent is aware of the terrorist nature of the activity and has the intent to promote it. Moreover, the criminal offence would also be established if the subject acts with eventual intent. In this case, the agent must foresee and accept the risk of the event occurring, even if they do not directly want it to happen. The foresight of the risk of the event occurring and the voluntary determination to adopt criminal conduct must, however, be inferred from unambiguous and objective elements.
Sanctions applicable to the Entity

- financial sanction: if the offence is punishable by imprisonment of less than ten years, from two hundred to seven hundred units; if the offence is punishable by imprisonment of not less than ten years or life imprisonment, from four hundred to one thousand units;
- disqualification sanctions (for a period of not less than one year): 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

MARKET ABUSE (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 expanded the list of predicate offences for the administrative liability of the Entity referred to in the Decree and provided, in relation to the commission of such offences by the Entity, for the applicability to the Entity itself of a financial sanction ranging from a minimum of four hundred to a maximum of one thousand units (i.e., approximately one and a half million euros).
When the Entity is liable in relation to a number of offences committed by a single act or omission or committed in the course of the same activity, the financial sanction provided for the most serious offence is applied, increased up to three times (and, therefore, up to approximately 4.5 million euros).
However, as of 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 insider dealing and market manipulation and Directives 2003/124/EC, 2003/125/EC and 2004/72, with the aim of updating and completing the EU regulatory framework for the protection of the integrity, transparency and efficiency of the financial market.
From the same date, Level 2 legislative acts issued by the European Commission on the basis of the delegated powers contained in the MAR, in the form of delegated or implementing regulations, which contain technical provisions on how to comply with the obligations laid down, are also directly applicable.[56]
The EU legislation defines 'market abuse' as the following unlawful conduct in the financial markets:

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

The main changes in the area of 'inside information and related disclosure' introduced by the MAR and related Regulations concern:

1) the codification of the principle that even the intermediate steps of a process that may lead to the occurrence of a 'price-sensitive' event may in themselves constitute inside information and therefore be subject to disclosure to the market;
2) the proceduralisation of the decision to 'delay' the disclosure of inside information;
3) the introduction of new rules on 'market soundings';
4) the amendment of the rules on the establishment and maintenance of registers of persons with access to inside information.

Subsequently, Legislative Decree No. 107 of 10 August 2018 containing "*Provisions adapting 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 legal system to the aforementioned European legislation and consequently amended the provisions of Legislative Decree No. 58/1998 (better known as the 'Consolidated Law on Finance' or 'TUF'). This Legislative Decree also partially transposed the provisions of Directive 2014/57/EU (better known as the "MAD2 Directive") on criminal sanctions for market abuse.
Article 26 of Law No. 238 of 23 December 2021 ( ) containing "*Provisions for the fulfilment of obligations arising from Italy's membership of the European Union – European Law* 2019-2020" then introduced further amendments to the provisions of Articles 182-185 and 187 of the TUF, described in more detail below.
Finally, on 14 November 2024, the two directives and the regulation that make up the so-called "Listing Act" were published in the Official Journal of the European Union. This is a regulatory package aimed at making EU capital markets more attractive to businesses and facilitating access to capital for SMEs.
In particular, the Listing Act consists of:

[56] Regulation No. 596/2014/EU on market abuse (Market Abuse Regulation - MAR) and Directive 2014/57/EU on sanctions for market abuse (Criminal sanctions Market Abuse Directive - CSMAD) constitute the so-called "MAD II", which aims to strengthen and harmonise market abuse regulations within the Union in order to improve confidence in European financial markets.

- Regulation (EU) 2024/2809 of the European Parliament and of the Council of 23 October 2024 amending the Prospectus Regulation (Regulation (EU) 2017/1129), the Market Abuse Regulation (MAR – Regulation (EU) No 596/2014), and the Markets in Financial Instruments Regulation (MiFIR – Regulation (EU) No 600/2014);
- Directive (EU) 2024/2811 of the European Parliament and of the Council of 23 October 2024 amending the Markets in Financial Instruments Directive (MiFID II – Directive 2014/65/EU) and repealing the Market Abuse Directive (Directive 2001/34/EC);
- Directive (EU) 2024/2810 of the European Parliament and of the Council of 23 October 2024 on structures with multiple voting shares in companies seeking admission to trading of their shares on a multilateral trading facility.

With regard to the national transposition of the Listing Act, Regulation (EU) 2024/2809 and Directive (EU) 2024/2811 must be transposed by 5 June 2026, while Directive (EU) 2024/2810 must be transposed by 5 December 2026.

1. **Abuse or unlawful disclosure of inside information. Recommendation or inducement of others to commit insider trading (Articles 184 and 187-bis of the Consolidated Law on Finance)**

Anyone who, being in possession of inside information by virtue of their position as a member of the administrative, management or supervisory bodies of an issuing company, or as a shareholder, or by virtue of their work, profession, function or office in the private or public sector (so-called primary insiders):

a) buys, sells or carries out other transactions, directly or indirectly, on their own behalf or on behalf of third parties, on financial instruments (admitted or for which an application for admission to trading on a regulated market in Italy or another European Union country has been submitted), using the inside information acquired in the manner described above;
b) discloses such information to others outside the normal course of their employment, profession, duties or office, or outside a market survey conducted in accordance with 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, on the basis of knowledge derived from the inside information in their possession, to carry out any of the transactions referred to in point (a).

The offence also punishes persons who, having come into possession of inside information as a result of the preparation or commission of criminal activities, carry out any of the above actions, known as *criminal insiders* (this is the case, for example, of a 'computer hacker' who, following unauthorised access to a company's computer system, manages to obtain confidential *price-sensitive* information and uses it for speculative purposes).

Except in cases of complicity in the offences referred to in the previous two paragraphs, anyone who, 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 acts referred to in paragraph 1 shall be punished with imprisonment for a term of between one year and six months and ten years and a fine of between €20,000 and €2,500,000.

In the cases referred to in the preceding paragraphs, the fine may be increased up to three times or up to ten times the amount of the proceeds or profits obtained from the offence when, due to the significant offensive nature of the offence, the personal qualities of the offender or the amount of the proceeds and profits obtained from the offence, it appears inadequate even if applied to the maximum.[57]

[57] Article 184 of the Consolidated Law on Finance, as amended by Article 26 of Law No. 238 of 23 December 2021 on *'Provisions for the fulfilment of obligations arising from Italy's membership of the European Union - European Law* 2019-2020', provides in its fifth paragraph as follows: *'The provisions of this article shall also apply when the events referred to in paragraphs 1, 2 and 3 concern conduct or transactions, including offers, relating to auctions on an authorised auction platform, such as a regulated market for emission allowances or other related auctioned products, even when the auctioned products are not financial instruments within the meaning of Commission Regulation (EU) No. 1031/2010 of 12 November 2010."*

The sanctions identified above in the provisions in question are doubled pursuant to Article 39, paragraph 1, of Law No. 262/2005, within the limits set for each type of sanction by Book I, Title II, Chapter II of the Criminal Code.

As regards the concept of financial instruments, Article 180 of the Consolidated Law on Finance (TUF), entitled 'Definitions', specifies that these are those referred to in Article 1(2) of the TUF: *'admitted to trading or for which a request for admission to trading has been submitted on a regulated market in Italy or another European Union country, (...) admitted to trading or for which a request for admission to trading has been submitted on a multilateral trading facility in Italy or another European Union country, (...)*', as well as those "*traded on an organised trading system in Italy or another European Union country, (...) not covered by the previous numbers, whose price or value depends on the price or value of a financial instrument mentioned therein, or has an effect on that price or value, including, but not limited to, credit default swaps and contracts for difference*."[58]

The definition of inside information, on the other hand, pursuant to Article 7 of the MAR, is "information *of a precise nature, which has not been made public, concerning, directly or indirectly, one or more issuers or one or more financial instruments, which, if made public, could significantly affect the prices of those financial instruments or the prices of financial instruments linked to them*".

The same Article 7(4) of the MAR clarifies the concept of price-sensitive information, defining it as *"information that a reasonable investor would be likely to use as one of the factors on which to base his investment decisions*".

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

The MAR Regulation also specifies that the intermediate stages of a prolonged process, at the end of which inside information may arise, may also be considered inside information (e.g. information relating to the status of contractual negotiations; provisionally agreed contractual terms; the possibility of placing financial instruments), provided that they also meet the other requirements set out in Article 7 of the MAR for *price-sensitive* information (information that is not public and that could have a significant effect on the prices of instruments).

Paragraph 1 of Article 7 of the MAR Regulation also specifies, in letter d), that *'in the case of persons charged with the execution of orders relating to financial instruments, inside information shall also include information transmitted by a client and related to pending orders in the client's financial instruments, which is precise and relates, directly or indirectly, one or more issuers or one or more financial instruments and which, if disclosed to the public, could 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 characteristics of 'Inside Information' provided for in Article 7 of the MAR Regulation therefore present, as an important new element compared to the previous legislation, the extension of the concept of inside information to the intermediate stages of a prolonged process, referring to circumstances or facts that develop progressively over time[59] .

In terms of the subjective element, while the offence is punishable only on the basis of intent, requiring awareness and the will to exploit the inside information in one's possession, the administrative offence is also punishable on the basis of negligence, whereby careless use or mere communication of the inside information to third parties is sufficient.

As already mentioned, insider trading is also punishable as an administrative offence under Article 187-bis of the Consolidated Law on Finance with a fine ranging from €20,000 to €5 million. This

[58] The list of all financial instruments referred to in Article 1(2) of the TUF is set out in Section C of Annex I to Legislative Decree No 58/98.
[59] For a more comprehensive review of the provisions on insider dealing, see Chapters 2 and 3 (Articles 7-21) of Regulation (EU) No. 596/2014.

sanction applies to anyone who violates the prohibition on insider trading and unlawful disclosure of inside information referred to in Article 14 of Regulation (EU) No. 596/2014.[60]
Sanctions applicable to the Entity:
financial sanction: from four hundred to one thousand units. If the product or profit achieved by the entity is significant, the sanction is increased up to ten times that product or profit.[61]

2. Market manipulation (Articles 185 and 187-ter of the Consolidated Law on Finance)

Market abuse achieved by altering the dynamics relating to the correct formation of the price of financial instruments is now punished, both as a criminal offence, under Articles 2637 of the Italian Civil Code (market 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.
Market manipulation has been discussed in the section on corporate offences.
This section addresses issues relating to the offence and administrative offence provided for by the TUF.
The offence and administrative offence of market manipulation differ from market manipulation in that they involve financial instruments that are listed or for which an application for admission to trading on regulated markets has been submitted.
Anyone who spreads false information or carries out simulated transactions or other artifices specifically designed to cause a significant alteration in the price of financial instruments shall be punished with imprisonment for a term of between one and six years and a fine of between €20,000 and €5 million.
Finally, Article 26, paragraph 4, of Law No. 132/2025 on *'Provisions and delegated powers to the Government in the field of artificial* intelligence' introduced the aggravating circumstance *'if the offence is committed through the use of artificial intelligence systems*'.
However, those who have committed the offence through purchase orders or transactions carried out for legitimate reasons and in accordance with accepted market practices, pursuant to Article 13 of Regulation (EU) No. 596/2014, are not punishable.
The judge may increase the fine up to three times or up to ten times the amount of the proceeds or profits obtained from the offence when, due to the seriousness of the offence, the personal qualities of the offender or the amount of the proceeds or profits obtained from the offence, it appears inadequate even if applied to the maximum.
The conduct constituting market manipulation offences therefore consists of:

- the dissemination of false information (so-called 'informational market manipulation'); more specifically, information is to be considered false 'when, by creating a false representation of reality, it is such as to mislead operators, causing an irregular rise or fall in prices';
- the performance of 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 'trading manipulation'); other artifices are understood to mean 'any behaviour which, through deception, is capable of altering the normal course of prices'. For the offence to exist, a situation of danger is sufficient, regardless of whether an artificial price change occurs.

[60] The application of additional administrative sanctions provided for in Article 187-quater is also envisaged.
[61] Given the dual track (both criminal and administrative) provided for by our legal system, in addition to the judge's decision on the amount of the financial sanction, Consob may, in parallel proceedings, impose additional administrative financial sanctions on the entity, such as that provided for in Article 187-quinquies (*'Liability of* the entity') T.U.F., amended by Legislative Decree No. 107/2018: from €20,000 to €15,000,000, or up to 15% of turnover, where that amount exceeds €15,000,000, if a violation of the prohibition referred to in Article 14 of Regulation (EU) No 596/2014 is committed in its interest or to its advantage. On this point, Article 187-terdecies of the Consolidated Law on Finance, in order to avoid duplication of sanctions for the same offence, provides as follows: '*Where, for the same offence, an administrative fine has been imposed on the offender, the perpetrator of the violation or the entity pursuant to Article 187-septies or a criminal sanction or an administrative sanction dependent on the offence: 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 sanction, the financial sanction dependent on the offence or the administrative financial sanction shall be limited to the part exceeding that collected by the administrative or judicial authority, respectively.*"

Furthermore, pursuant to Article 187-ter of the TUF, anyone who violates the prohibition on market manipulation referred to in Article 15 of Regulation (EU) No 596/2014 ( ) shall be punished with an administrative fine of between €20,000 and €5 million. The article states the following: "*No person shall engage in market manipulation or attempt to engage in market manipulation*."[62]
However, no administrative sanction may be imposed under this article on anyone who can prove that they acted for legitimate reasons and in accordance with accepted market practices in the market concerned (Article 187-ter, paragraph 4, TUF).
The sanctions identified above in the regulations in question are doubled pursuant to Article 39, paragraph 1, of Law No. 262/2005, within the limits set for each type of sanction by Book I, Title II, Chapter II of the Criminal Code.
The MAR Regulation also provides for:

- a basic definition of activities that constitute market manipulation (Article 12, paragraph 1);
- an illustrative list of conduct that is considered market manipulation (Article 12(2));
- a non-exhaustive list of indicators of market manipulation (Annex I to the MAR).

Sanctions applicable to the Entity:
financial sanction: from four hundred to one thousand units. If the product or profit achieved by the entity is significant, the sanction is increased up to ten times that product or profit.[63]

OFFENCES COMMITTED IN VIOLATION OF THE REGULATIONS ON 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 causes the death of a person through negligence as a result of violating the regulations for the prevention of accidents at work is relevant.

Negligent personal injury (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 serious or very serious personal injury to others through negligence as a result of violating the rules for the prevention of accidents at work.
With regard to the definition of criminally relevant injury, particular consideration is given to those injuries capable of causing any illness consisting of an anatomical or functional alteration of the body. This definition also includes harmful changes in mental functioning.
Serious injuries are defined as those that have endangered the life of persons or caused an illness or incapacity to attend to one's occupations that has lasted for more than 40 days, or the permanent weakening of a sense or organ; very serious injuries are those involving the loss of a sense, or the loss of a limb, or mutilation rendering the limb unusable, or the loss of the use of an organ or the ability to procreate, or permanent and serious speech impairment, or permanent deformation or disfigurement of the face, or a disease that is certainly or probably incurable.

[62] The application of additional administrative sanctions provided for in Article 187-quater is also envisaged.
[63] Given the dual track (both criminal and administrative) provided for by our legal system, in addition to the judge's decision on the amount of the financial sanction, Consob may, in parallel proceedings, impose further administrative financial sanctions on the entity, such as that provided for in Article 187-quinquies ('*Liability of* the entity') T.U.F., amended by Legislative Decree No. 107/2018: from €20,000 to €15,000,000, or up to 15% of turnover, where that amount exceeds €15,000,000, if a violation of the prohibition referred to in Article 15 of Regulation (EU) No 596/2014 is committed in its interest or to its advantage. On this point, Article 187-terdecies of the Consolidated Law on Finance, in order to avoid duplication of sanctions for the same offence, provides as follows: *"Where, for the same offence, an administrative fine has been imposed on the offender, the perpetrator of the violation or the entity pursuant to Article 187-septies or a criminal sanction or an administrative sanction dependent on a criminal offence: 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 sanction, the financial sanction dependent on the offence or the administrative financial sanction shall be limited to the part exceeding that collected, respectively, by the administrative or judicial authority*."

The active subject of the offences may be anyone who must observe or enforce the prevention and protection rules and, therefore, the employer, managers, supervisors, persons to whom functions relating to health and safety in the workplace are delegated, and even the workers themselves.
For both offences, the responsibility of those in charge of adopting and implementing preventive measures in the company exists in cases where there is a causal link between the failure to adopt or comply with the requirement and the harmful event. Consequently, the causal link and therefore the fault of the persons in charge does not exist if the accident occurs due to the negligent conduct of the worker, which is, however, completely atypical and unpredictable and is abnormal, unexpected and excessive in relation to the work process and the instructions received.
For the company to be held administratively liable 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 company's interest and advantage could be recognised in cases where the violation of accident prevention regulations is linked to a saving in the costs necessary to ensure compliance with those regulations, or is the result of the pursuit (albeit involuntary) of greater speed in work processes or less difficulty in managing the work at the expense of safety.
Sanctions applicable to the Entity
For the offence referred to in Article 589 of the Italian Criminal Code, committed in violation of Article 55 (*'sanctions for employers and* managers'), paragraph 2, of the legislative decree implementing the delegation referred to in Law No. 123 of 3 August 2007:

- financial sanction: equal to 1,000 units;
- disqualification sanctions (for a period of not less than three months and not 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 from contracting with the Public Administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

For the offence referred to in Article 589, paragraph 2, of the Criminal Code:

- financial sanction: not less than 250 units and not more than 500 units;
- disqualification sanctions (for a period of not less than three months and not 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 on contracting with the public administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition on advertising goods or services.

For the offence referred to in Article 590, paragraph 3, of the Criminal Code:

- financial sanction: not exceeding 250 units;
- 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 from contracting with the Public Administration, except to obtain the provision of a public service; exclusion from benefits, loans, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

RECEIVING, LAUNDERING AND USE OF MONEY, GOODS OR BENEFITS OF ILLEGAL ORIGIN, AS WELL AS SELF-LAUNDERING (ART. 25-OCTIES OF DECREE)

Introduction

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

By introducing Article 25-octies into Legislative Decree No. 231/2001, which provides for the liability of entities for the offences of money laundering, receiving stolen goods and using money, goods or benefits of illegal origin, repealed paragraphs 5 and 6 of Article 10 of Law No. 146 of 2006 on combating transnational organised crime.

This provision imposed liability and sanctions on entities under the Decree for the same offences only if the specific conditions set out in Article 3 of the same Law with regard to the definition of transnational crime were met.

Consequently, pursuant to Article 25-octies, the entity is punishable for the offences of receiving stolen goods, money laundering and use of illicit capital committed in its interest or to its advantage, even if committed within the national territory.

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

Finally, Legislative Decree No. 195/2021, which came into force on 14 December 2021, broadened the scope of the offences referred to in Articles 648, *648-bis*, *648-ter* and *648-ter.*1 of the Italian Criminal Code, which are also extended to contraventions (provided they are punished with certain statutory limits) and now, for all of them, to negligent offences, as well as introducing new circumstantial hypotheses and modifying certain existing circumstances, in addition to extending the rules on Italian jurisdiction to certain acts committed abroad, with a substantial 'restructuring' and internal redistribution of the regulatory articles.

The offences of receiving stolen goods, money laundering and the use of money, goods or benefits of illegal origin

The common purpose of the provisions of Articles 648, 648-bis and 648-ter of the Criminal Code is to prevent and suppress the introduction into the legal economic circuit of money, goods or benefits derived from the commission of offences (provided they are punishable within certain statutory limits) and crimes, in order to:

- to avoid the 'contamination' of the market with capital acquired by unlawful means and therefore 'net' of the costs that operators acting lawfully have to bear;
- facilitate the identification of those who 'handle' such assets in order to make it possible to ascertain the offences committed;
- to 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 to be multi-offensive, as they are potentially harmful not only to the assets of the person directly affected by the predicate offence, who obviously sees their chances of recovering the stolen property diminish, but also to the administration of justice, due to the dispersion of assets of illegal origin, which creates an obstacle to the work of the authorities aimed at ascertaining the predicate offences, as well as, in more general terms, the economic order, due to the obvious damage it causes to the principle of free competition and compliance with economic rules.

The main offence referred to in Article 25-octies is **money laundering** under Article 648-bis of the Criminal Code, which punishes the conduct of anyone who, except in cases of complicity in the offence, replaces or transfers money, property or other benefits deriving from any crime or offence[64] , or carries out other operations in relation to them, in such a way 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, purchases, receives or conceals money or goods originating from any crime or offence[65] , or in any way interferes in their purchase, receipt or concealment, for the purpose of obtaining a profit for themselves or others.

Also relevant for the purposes of the Decree is the offence **of using money, goods or benefits of illegal origin** which, as a residual offence with respect to the offences mentioned above, punishes anyone who, outside the cases of complicity in the offence and the cases provided for in Articles 648 and 648-bis of the Criminal Code, uses money, goods or other benefits derived from a crime or offence in economic or financial activities[66] .

As regards the material object, a common prerequisite for the three types of offences, it is the prior commission of a crime or offence that has generated an illegal economic result, which is to be understood as everything related to the criminal act, i.e. the profit, price or proceeds of the crime.

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

Therefore, in addition to means of payment, this concept also includes real estate, companies, securities, precious metals, credit rights, etc., i.e. anything that, like money, can have economic value or, in any case, can be the subject of rights.

The offence also exists when the items come from a chain of intermediaries and therefore not directly from the predicate offence, provided, as will be explained, that the perpetrator is aware of the criminal origin of the property and may also include the equivalent, i.e. the proceeds, for example, from the sale of the property that is the subject of the predicate offence, or the property purchased with the money obtained from the commission of the offence.

By way of example, all crimes capable of generating illicit proceeds may constitute the predicate offences in question: in particular, robbery, kidnapping, extortion, trafficking in arms or drugs, corruption, tax offences, usury, financial offences, corporate offences, EU fraud, fraud, embezzlement, not excluding the possibility of receiving goods that are themselves the proceeds of crime.

However, there is no requirement for a judicial determination of the existence of the predicate offence, nor for the identification of the perpetrator, as the offences in question may also be committed even if the perpetrators of the predicate offence are unknown.

Pursuant to Article 648, paragraph 3, of the Italian Criminal Code - referred to in Articles 648-bis, paragraph 4, and 648-ter, paragraph 4, of the Italian Criminal Code - the offence also exists when the perpetrator of the predicate offence is not liable (e.g., because they are a minor) or is not punishable (e.g., because a tax amnesty has been granted for a tax offence) or when there is no condition for prosecution in relation to that offence (e.g., a complaint for alleged embezzlement). Any causes for the extinction of the predicate offence (such as, for example, the statute of limitations) that occurred after the commission of the offences in question are also irrelevant.

The difference between the three cases is outlined, first of all, with reference to the objective element.

---

[64] *"The sanction shall be imprisonment for two to six years and a fine of €2,500 to €12,500 when the offence concerns money or goods deriving from a misdemeanour punishable by imprisonment for a maximum of one year or a minimum of six months."*

[65] *"The sanction is imprisonment for one to four years and a fine of €300 to €6,000 when the offence concerns money or goods originating from a misdemeanour punishable by imprisonment for a maximum of one year or a minimum of six months.*
The sanction is increased if the offence is committed in the course of professional activity.
If the offence is of a particularly minor nature, the sanction shall be imprisonment for up to six years and a fine of up to €1,000 in the case of money or goods derived from a crime, and imprisonment for up to three years and a fine of up to €800 in the case of money or goods derived from a misdemeanour."

[66] *"The sanction shall be imprisonment for two to six years and a fine of €2,500 to €12,500 when the offence concerns money or goods originating from a misdemeanour punishable by imprisonment for a maximum of one year or a minimum of six months."*

The offence of receiving stolen goods requires the commission of acts of purchase, receipt or concealment: the first case applies to any transaction, whether for consideration or free of charge, which transfers the property to the purchaser; the second includes any act involving the transfer of the availability, even if only temporary, of the property; the third, finally, involves the deliberate concealment of the item, even if temporary, after having had it in one's possession. Pursuant to Article 648 of the Italian Criminal Code, the conduct of anyone who interferes in the purchase, receipt or concealment of the goods, i.e. intermediation aimed at the transfer of the goods, is also criminally relevant, without it being necessary for the latter to actually take place.
The offence of money laundering consists in the replacement or transfer of goods of illegal origin or, in any case, in carrying out any operation in relation to them in such a way as to hinder the identification of the origin of the goods: it is therefore, by virtue of this last reference, a free-form offence, which ends up punishing any activity that hinders or makes it more difficult to find the perpetrator of the predicate offence. Despite the doubts expressed by legal scholars, case law recognises that money laundering can also be committed by omission, given the broad closing formula used by the legislator to describe criminally relevant conduct ('other operations').
Article 2 of Legislative Decree No. 231 of 2007 provides a detailed list of conduct that may be classified as money laundering, mentioning, in particular, *'the conversion or transfer of assets ... the concealment or dissimulation of the real nature, origin, location, disposition, movement, ownership of assets or rights over them ... the purchase, possession or use of assets*".
Furthermore, the FATF (Financial Action Task Force), following the results of studies conducted, has found that the money laundering process can be divided into three distinct phases: placement, layering and integration.
The first stage involves the introduction of dirty money, usually in small amounts, into the legal financial system through traditional financial institutions (banks and insurance companies) and non-traditional institutions (currency exchange offices, precious metal dealers, commodity brokers, casinos) or other means (e.g. smuggling).
The second stage is usually carried out through successive transfers, aimed at covering the documentary trail of the dirty money, for example through the use of false credit documents or currency exchanges in foreign countries.
Finally, the last phase aims to give the assets of criminal origin an appearance of legitimacy by reintroducing them into the legal financial circuit, for example through the issuance of invoices relating to non-existent transactions.
Finally, Article 648-ter of the Italian Criminal Code concerns the use of money, goods or other benefits of illegal origin in economic or financial activities. The meaning of the term 'use' is uncertain, as it can be understood both in a restrictive sense, i.e. as an investment with a view to obtaining a benefit, and in a broader sense, i.e. as any form of use of illicit capital in economic and financial activities, regardless of the agent's purpose.
Turning to the subjective element of the three offences, the following should be noted.
The intent of receiving stolen goods consists in the voluntary act of purchasing, receiving, concealing or brokering the sale of the goods, in the knowledge of their criminal origin, without requiring precise knowledge of the circumstances of time, manner and place relating to the predicate offence. This knowledge can be inferred from objective circumstances relating to the transaction, such as, in particular, the quality and characteristics of the goods sold and their price, the condition or identity of the offerer ( ). In the offence of receiving stolen goods (as in that of money laundering), intent can be inferred in the event of conscious acceptance of the risk of the illegal origin of the goods purchased or received.
For the subjective element of receiving stolen goods to exist, specific intent is required, consisting of the aim of obtaining a profit for oneself or others, i.e. any benefit or advantage, even of a non-economic nature. Specific intent is not required for the offence of money laundering, for which generic intent, i.e. awareness of the criminal origin of the goods and the commission of typical or atypical criminal conduct, is sufficient. Similar considerations apply to the offence referred to in Article 648-ter of the Criminal Code, where intent is characterised by the awareness and willingness

to use illicit capital for economically useful purposes, the illicit origin of which is known, again in general terms.
From the above, it is clear that it is difficult to identify the differences between the cases in question and, in particular, between those of receiving stolen goods and money laundering: according to case law, the structural differences between the two offences must be sought not only in the subjective element (profit motive as specific intent in receiving stolen goods, and generic intent for money laundering), in the material element and, in particular, in the ability to hinder the identification of the origin of the goods, which is a characteristic element of the conduct of the offence provided for in Article 648-bis of the Criminal Code: in other words, when the purchase or receipt is accompanied by operations or activities designed to hinder the identification of the criminal origin of the money, goods and benefits, the offence of receiving stolen goods does not apply, but rather the more serious offence under Article 648-bis of the Italian Criminal Code.
As regards the difference between money laundering and the use of goods of illegal origin – which also requires specific conduct designed to conceal the illegal origin – it has been pointed out that the offence referred to in Article 648-ter of the Italian Criminal Code is characterised by the fact that this purpose must be achieved through the specific use of the resources in economic or financial activities: the provision is therefore specific to Article 648-bis of the Italian Criminal Code, which in turn is specific to Article 648 of the Italian Criminal Code.
Sanctions applicable to the Entity

- financial sanction: from 200 to 800 units. If the money, goods or other benefits come from a crime for which the maximum prison sentence is more than 5 years, a financial sanction of 400 to 1000 units is applied.
- disqualification sanctions: prohibition from contracting with the Public Administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising 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, entitled *'Receiving, laundering and use of money, goods or benefits of illicit origin, as well as* self-laundering', of Legislative Decree No. 231/01.
Finally, as already mentioned in the introduction, the offence in question was amended by Legislative Decree No. 195/2021, as described in more detail below:
"A prison sentence of between two and eight years and a fine of between €5,000 and €25,000 shall be imposed on anyone who, having committed or contributed to the commission of a crime, uses, replaces or transfers, in economic, financial, business or speculative activities, in order to effectively hinder the identification of their criminal origin.
The sanction is imprisonment for one to four years and a fine of between €2,500 and €12,500 when the offence concerns money or goods derived from a misdemeanour punishable by imprisonment for a maximum of one year or a minimum of six months.
The sanction is reduced if the money, goods or other benefits derive from a crime for which the sanction is imprisonment for a maximum of less than five years.
However, the sanctions provided for in the first paragraph shall apply if the money, goods or other benefits derive from a crime committed under the conditions or for the purposes referred to in Article 416-bis.1
Except for the cases referred to in the preceding paragraphs, conduct whereby the money, goods or other benefits are intended for mere personal use or enjoyment is not punishable.
The sanction shall be increased when the acts are committed in the course of banking or financial activities or other professional activities.
The sanction shall be reduced by up to half for those who have effectively endeavoured to prevent the conduct from having further consequences or to secure evidence of the offence and the identification of the property, money and other benefits derived from the offence.

The last paragraph of Article 648 applies.
As already highlighted above, criminal liability for the offence of money laundering *under* Article 648-bis of the Criminal Code applies to criminal activity carried out by a person other than the perpetrator or accomplice of the underlying offence.
On the other hand, under the new Article 648-ter.1 of the Criminal Code, anyone who directly conceals the proceeds of a crime that they themselves have committed or contributed to committing (so-called self-laundering) will be punishable.
The typical conduct of the offence takes three different factual forms: substitution, transfer and use in economic or financial activities.
The determination of punishable conduct is limited to those behaviours which, although not necessarily artificial in themselves (i.e., supplementary to the archetype of deception and fraud), express a deceptive content, i.e., capable of making it objectively difficult to identify the criminal origin of the asset.
Therefore, the offence in question will be committed if the following three circumstances exist simultaneously:

1) a fund consisting of money, goods or other benefits is created or contributed to through an initial offence, the predicate offence;
2) the aforementioned funds are used, through further and independent conduct, in business, economic and financial activities;
3) a concrete obstacle is created to the identification of the criminal origin of the aforementioned funds.

Finally, with regard to the subjective element, the offence of self-laundering is punishable as a generic offence, which consists of the awareness and willingness to carry out the substitution, transfer or other operations involving money, goods or other benefits, together with the awareness that such conduct is likely to create an obstacle to identifying the origin of such funds.
Sanctions applicable to the Entity

- financial sanction: from 200 to 800 units. If the money, goods or other benefits originate from a crime for which the maximum prison sentence is more than 5 years, a financial sanction of 400 to 1000 units shall apply.
- disqualification sanctions: prohibition from contracting with the Public Administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

OFFENCES RELATING TO NON-CASH PAYMENT INSTRUMENTS AND FRAUDULENT TRANSFER OF ASSETS (ART. 25-OCTIES.1 OF THE DECREE)

Legislative Decree No. 184 of 8 November 2021 was published in the Official Gazette on 29 November 2021 and entered into force on 14 December 2021, implementing EU Directive 2019/713 on combating fraud and counterfeiting of non-cash means of payment.
This directive, which replaces Council Framework Decision 2001/413/JHA, aims to step up the fight against fraud and counterfeiting of non-cash means of payment, both in because they are a means of financing organised crime and related criminal activities and because they limit the development of the digital single market by undermining consumer confidence and making citizens more reluctant to make online purchases.
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 consistent approach and to facilitate the exchange of information and cooperation between competent authorities.

With this in mind, which also involves the adoption of common provisions, Article 1 of the Legislative Decree adopts definitions that replicate the EU provisions on the terms *'non-cash payment* instrument' (a device, object or protected record, whether tangible or intangible, or a combination thereof, other than legal tender, which, alone or in conjunction with a procedure or set of procedures, enables the holder or user to transfer money or monetary value, including through digital means of exchange), *'device, object or* protected record' (a device, object or record protected against imitation or fraudulent use, for example by means of a design, code or signature), *'digital means of* exchange' (any electronic money as defined in Article 1, paragraph 2, letter h-ter, of Legislative Decree No 385 of 1 September 1993, and virtual currency), *'virtual* currency' (a representation of digital value that is not issued or guaranteed by a central bank or public entity, 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 can be transferred, stored and exchanged electronically).

Also in accordance with the requirements of the Directive to Member States [67], in order to establish effective criminal law measures against criminal conduct involving fraud and counterfeiting of non-cash means of payment, Article 2 of the decree amends the Criminal Code by supplementing the provisions of Articles 493-ter, 493-quater and 640-ter of the Criminal Code and introducing a new specific offence for the possession and distribution of equipment, devices or computer programs intended for the commission of offences relating to non-cash instruments.

More specifically, the legislative decree amends the heading and the first paragraph of Article 493-ter of the Criminal Code, which already regulates the misuse and falsification of credit and payment cards, to extend the scope of criminalisation of unlawful conduct to all non-cash payment instruments.

Another provision on which the legislator limits itself to making surgical changes, given that Italian criminal law already complies with the provisions of the directive, including with regard to sanctions, is Article 640-ter of the Criminal Code,[68] , which, as is well known, punishes computer fraud with a sentence of six months to three years and a fine of €51 to €1,032 for anyone who, by altering in any way the functioning of a computer or telecommunications system or by unlawfully interfering in any way with data, information or programmes contained in or relating to a computer or telecommunications system, obtains an unjust profit for themselves or others to the detriment of others.

The Decree in question specifically addresses the special aggravating circumstance referred to in the second paragraph (the sanction is imprisonment for between one and five years and a fine of between €309 and €1,549 if one of the circumstances provided for in paragraph 2(1) of Article 640 applies, i.e. if the offence is committed by abusing the status of system operator), providing as a condition for the aggravation of the sanction for the crime of computer fraud (with consequent automatic prosecution) the circumstance that the incriminated conduct results in a transfer of money, monetary value or virtual currency.

An additional provision concerns the new Article 493 - quater[69] - inserted into the Criminal Code after Article 493-ter - which punishes with imprisonment of up to two years and a fine of up to €1,000,

---

[67] *"(a) in Article 493-ter: 1) the heading is replaced by the following: 'Misuse and falsification of non-cash payment instruments'; 2) in the first paragraph, first sentence, after the word 'services,' the following words are inserted: 'or any other non-cash payment instrument'; 3) in the second sentence of the first paragraph, the words 'credit or payment cards or any other similar document enabling the withdrawal of cash or the purchase of goods or services' are replaced by the following: 'the instruments or documents referred to in the first sentence' and the words 'such cards' are replaced by the following: 'such instruments';"*

[68] *"c) in Article 640-ter, second paragraph, after the words "if the act" the following words are added: "results in a transfer of money, monetary value or virtual currency or"."*

[69] *"b) after Article 493-ter, the following is inserted: "493-quater (Possession and dissemination of equipment, devices or computer programs intended for the commission of offences relating to non-cash payment instruments). - Unless the act constitutes a more serious offence, anyone who, for the purpose of using or allowing others to use them in the commission of offences involving non-cash payment instruments, produces, imports, exports, sells, transports, distributes, makes available or in any way procures for themselves or others equipment, devices or computer programs which, due to their technical and construction characteristics or design, are manufactured primarily for the purpose of committing such offences, or are specifically adapted for the same purpose, shall be punished with imprisonment for up to two years and a fine of up to €1,000. In the event of conviction or application of the sanction at the request of the parties pursuant to Article 444 of the Code of Criminal Procedure for the offence referred to in the first paragraph, the confiscation of the aforementioned equipment, devices or computer programs shall always be ordered, as well as the confiscation of the profit or proceeds of the offence or, where this is not possible, the confiscation of assets, sums of money and other benefits available to the offender for a value corresponding to such profit or proceeds.";*

unless the offence constitutes a more serious crime, anyone who produces, imports, exports, sells, transports, distributes, makes available or in any way procures for themselves or others equipment, devices or computer programs which, due to their technical and construction characteristics or design, are manufactured primarily to commit offences involving non-cash payment instruments, or are specifically adapted for the same purpose.
This is a common offence, as stated in *the opening words* of the criminal provision ('anyone'), punishable as a specific intent offence, since the above conduct is criminally relevant when carried out with the specific aim of using the instruments indicated or allowing others to use them in the commission of offences involving non-cash payment instruments.
The provision is completed by the provision, in the second paragraph, for mandatory confiscation, in the event of conviction or plea bargain, of the equipment, devices or computer programs used to commit offences involving non-cash payment instruments, as well as the confiscation of the proceeds or product of the offence or, where this is not possible, the confiscation of equivalent assets, sums of money and other benefits available to the offender for a value corresponding to the proceeds or product.
Article 3 of the decree in question adapts the provisions of Legislative Decree No. 231 of 8 June 2001, as per Articles 10 and 11 of the aforementioned EU Directive, which require Member States to adopt the necessary measures to ensure that legal persons: may be held liable for offences of fraud and counterfeiting of non-cash means of payment committed for their benefit by any person acting individually or as a member of a body of the legal person and who occupies a prominent position within the legal person or is subject to the authority, control and supervision of the legal person; may be subject, if found liable, to effective, proportionate and dissuasive sanctions.
To this end, Article *25-octies.1,* entitled *'Offences relating to non-cash means of* payment', is introduced into Decree 231, which identifies the financial sanctions applicable to the entity in relation to the commission of offences under the Criminal Code relating to non-cash means of payment: a) for the offence referred to in Article 493-ter, a financial sanction of between 300 and 800 units; b) for the offence referred to in Article 493-quater and for the offence referred to in Article 640-ter, in the aggravated case of a transfer of money, monetary value or virtual currency, a financial sanction of up to 500 units.
The second paragraph of the amendment further provides that, unless the act constitutes another administrative offence punishable by a more severe sanction, in relation to the commission of any other offence against public trust, against property or which in any case offends the property provided for by the Criminal Code, involving payment instruments other than cash, the following financial sanctions shall apply to the entity: a) if the offence is punishable by imprisonment of less than ten years, a financial sanction of up to 500 units; b) if the offence is punishable by imprisonment of not less than ten years, a financial sanction of between 300 and 800 units. Furthermore, in cases of conviction for one of the offences referred to in paragraphs 1 and 2, the disqualification sanctions provided for in Article 9, paragraph 2, shall apply to the entity.

Fraudulent transfer of assets (Article 512-bis of the Criminal Code)

Law No. 137 of 9 October 2023, entitled *'Conversion into law, with amendments, of Decree-Law No. 105 of 10 August 2023 No. 105, containing urgent provisions on criminal proceedings, civil proceedings, combating forest fires, recovery from drug addiction, health and culture, as well as on judicial and public administration personnel*," amended Article 25-octies.1 (now entitled "*Offences relating to non-cash payment instruments and fraudulent transfer of* assets") of Legislative Decree 231/2001, introducing the offence of fraudulent transfer of assets (Article 512-bis of the Criminal Code).
The article in question, which is part of the offences against the public economy, reads as follows: *"Unless the act constitutes a more serious offence, anyone who fictitiously attributes to others the ownership or availability of money, goods or other benefits in order to circumvent the provisions of the law on asset prevention or smuggling measures, or to facilitate the commission of one of the*

offences referred to in Articles 648, 648-bis and 648-ter, shall be punished with imprisonment for a term of between two and six years."

The provision (formerly Article 12-quinquies of Decree Law No. 306/1992, converted by Law No. 356 of 7 August 1992 and then incorporated into the Criminal Code without amendment by Legislative Decree No. 21/2018 containing '*Provisions implementing the principle of delegation of the code reserve in criminal* matters') was introduced for the first time immediately after the terrorist attacks of 1992 and was in fact created with the main purpose of combating mafia crime, whose ultimate goal was the uncontrolled accumulation of illicit assets and capital.

However, this provision is still perfectly suited today as a tool for combating common crime, allowing for the seizure of illegally accumulated assets that could otherwise escape or difficult to seize, if they were to be transferred to third parties in a fictitious manner, especially through the use of negotiating means that have recently become established in commercial exchanges, which are increasingly influenced by European contractual instruments that were initially foreign to the Italian civil law tradition.[70]

Article 512-bis of the Italian Criminal Code bases the offence on a purely apparent transaction between the person who carries out the fictitious registration and the person who knowingly accepts the role, or, in most cases, a trusted person who may be either the creator or a simple front man.

In judgment no. 34192 of 3 August 2023, the First Criminal Section of the Court of Cassation, referring to previous similar cases, examined the conditions for the offence in question to be considered applicable.

The phrase *'falsely attributes to others the availability or ownership of money, goods or other* benefits' is to be understood, according to established case law, in an extremely broad sense, referring not only to traditionally understood forms of negotiation, but to any type of act or 'mechanism' (i.e. trust or asset fund[71]) capable of creating an apparent relationship of ownership between a specific person and the asset, with respect to which the power of the person making the attribution, on behalf of or in the interest of whom it is made, remains intact.

The consequence of classifying the offence in question as an abstract offence of instantaneous commission with permanent effects is that, for it to be committed, it is sufficient for the agent to carry out any legal transaction in order to circumvent the provisions of the law on asset prevention measures, regardless of whether the intended purpose is subsequently achieved; the assessment of the danger of circumvention of the measure must be carried out *ex ante* and on a partial basis, i.e. in the light of the circumstances which, at the time of the conduct, were known or knowable by an average person in that particular space-time situation (Criminal Cassation, Section II, 9 March 2016, no. 12871).

A tool widely used by the perpetrators of the offence *in question* is the transfer of shares or quotas in order to apparently distance themselves from the company and thus avoid possible interventions by the company itself: when the former shareholder who has disposed of the shares or quotas continues to determine the company's policy, this would constitute a fictitious transfer of assets. In this regard, the Supreme Court ruling in the well-known 'Aemilia' case affirmed the principle that: *'The offence of fraudulent transfer of assets referred to in Article 512 bis of the Italian Criminal Code is committed by anyone who, in order to circumvent the provisions of the law on asset prevention measures, acquires the status of a hidden shareholder in an existing company, participating in the management*

[70] This provision is currently also used in ways that often have no connection with either the serious crime referred to in Article 416-bis of the Criminal Code or with non-serious crime, as it does not require the existence of a genuine criminal association. suffice it to consider its usefulness in relation to financial and tax offences, when these are committed through asset transfers aimed at evading asset prevention measures (or smuggling) or facilitating the offences referred to in Articles 648, 648-bis and 648-ter.

[71] These are entirely lawful schemes, but they achieve their specific segregative effect only if, in the specific case, they are not set up for fraudulent purposes or to circumvent or violate mandatory rules. In practice, there must always be 'availability of assets' on the part of the perpetrator of the offence, which commonly includes the existence of an actual relationship with them, as characterised by the exercise of powers corresponding to the right of ownership. Only in this way can the fictitious nature of the asset transfer, which is the cornerstone of criminal law, be defined.

and profits deriving from the business activity'. (Criminal Cassation, Section II, Judgment No. 39774/2022)[72]

The Court of Cassation has also clarified that, for the purposes of establishing the offence, there is no need for an investigation aimed at ascertaining the illegal origin of the resources used in the establishment and start-up of the company fictitiously registered in the name of third parties, given that the offence *in question* must be considered to have been committed even in the presence of conduct involving assets not derived from crime, in accordance with the *rationale* behind the criminalisation, which pursues the sole objective of preventing individuals who are potentially subject to preventive measures from taking steps to conceal their availability of assets or other benefits, regardless of their origin (Criminal Cassation, Section II, 16 April 2019, no. 28300).

As regards the subjective element, however, the offence in question requires, as anticipated, the specific intent to evade the provisions on asset prevention measures, even regardless of the concrete possibility of adopting asset prevention measures at the outcome of the relevant proceedings, since it is also integrated if the perpetrator fears that such measures may be established (Criminal Cassation, Section V, 7 December 2021, no. 1886; Criminal Cassation, Section II, 28 March 2017, no. 22954; Criminal Cassation, Section V, 28 February 2014, no. 13083).

Given the broad scope of the provision, the '*ratio* puniendi' of the rule must be detached from civil law formalities and focus precisely on the fictitious nature of the transaction, which is the element that characterises the offence. This means that the attribution of ownership or availability takes place in an essentially 'fraudulent' manner, as precisely qualified in the heading (Criminal Cassation, Section V, judgment no. 10271/2014). In this sense, there is a necessary link between the objective parameter: fictitious-fraudulent transfer (which leaves the relationship between the asset and the person who owned it unchanged) and the aim pursued by the agent, which is to hinder the ascertainment of the real availability of assets in order to evade the provisions on asset prevention measures or on smuggling, or to facilitate the commission of the offences referred to in Articles 648, 648-bis and 648-ter of the Italian Criminal Code. The creation of a situation of apparent ownership of the asset is therefore not significant in relation to the criminal law, and in order for such conduct to be considered punishable, it must be directed/linked to the purpose of evasion or facilitation connected with the repression of acts relating to the circulation of economic resources of illegal origin.

These purposes, which represent the subjective aspect of the case, qualify and select the negative value of the conduct, completing its typicality.

With regard to the applicability of complicity under Article 110 of the Criminal Code in the offence in question, the Court of Cassation ruled as follows: *'The offence of fraudulent transfer of assets is an instantaneous offence with permanent effects, which is committed at the moment when the fictitious registration is made, so that, in order to establish the involvement of a third party, it is necessary to prove that the latter made a material or moral contribution at the very moment of the fraudulent attribution, whereas any assistance provided to perpetuate the unlawful situation resulting from the criminal conduct is irrelevant (a case in which the appellant, as a bank employee, allegedly allowed the hidden partners of a company to operate on the bank's accounts, and was subjected to a personal precautionary measure for complicity in the offence of fraudulent transfer of* assets" (Criminal Cassation, Section II, judgment no. 16520/2021).

The second purpose provided for in Article 512 bis of the Criminal Code, namely facilitating the commission of the offences of receiving stolen goods, money laundering or reuse, must also be examined in relation to the simulated conduct. The hyphenated phrase that is formed requires rigorous verification on an objective level of the significant elements capable of simplifying/facilitating the commission of the aforementioned offences.

[72] In accordance with Criminal Cassation, Section II, December 2018, No. 2080: the offence in question can be configured in cases where, in order to evade the application of asset prevention measures, shares in an already operational commercial or service company are purchased, leaving the formal ownership unchanged in the hands of third parties, who thus acquire the role of intermediaries.

Despite the silence of the law, an essential requirement for the offence referred to in Article 512-bis of the Italian Criminal Code, second part, is the existence of a previous offence from which the money, goods or other benefits that will be the subject of the simulated transaction originate. It is therefore necessary that the predicate offence be prior to and therefore independent of the commission of the offence of fraudulent transfer, constituting a necessary and unavoidable antecedent for the purpose of verifying the suitability of the conduct to consummate the criminal acts that are the specific purpose.

However, for the purposes of establishing the offence of fictitious registration, it is not necessary to identify the predicate offence with precision or to have it judicially ascertained, as it is sufficient that it be abstractly configurable (Criminal Cassation, Section II, Judgment No. 13448/2015).

Finally, Decree Law No. 19 of 2 March 2024, containing '*Further urgent provisions for the implementation of the National Recovery and Resilience Plan (PNRR)*' and converted with amendments by Law No. 56 of 29 April 2024, inserted the second paragraph into Article 512-bis of the Criminal Code, stating the following: *'The same sanction referred to in the first paragraph shall apply to anyone who, in order to circumvent the provisions on anti-mafia documentation, fictitiously attributes to others the ownership of companies, company shares or corporate offices, if the entrepreneur or company participates in procedures for the award or execution of contracts or concessions*.'

The need for this regulatory intervention stems from the awareness that the significant public investments linked to the PNRR represent a considerable opportunity for profit for organised crime, whose aims of interfering in the implementation of the planned interventions can be considered almost certain. This risk stems both from previous judicial experience and from a number of objective risk factors, including: the nature and type of projects financed, which largely concern sectors traditionally attractive to mafia interests, such as civil and infrastructure construction (roads and motorways, railways, ports, airports, rapid mass transport in metropolitan cities) and renewable energy; the geographical distribution of interventions, with a concentration of 40% (over €60 billion) in the regions of southern Italy, where the mafia presence is highest; the simplification of administrative procedures, considered necessary to speed up the implementation of projects financed by the programme.

In this context, combating organised crime infiltration becomes crucial, particularly in the infrastructure sector, where public procedures for the award of contracts for works, supplies and services need to be activated. To this end, the system of administrative anti-mafia prevention plays a central role, regulated by the Code of Anti-Mafia Laws and Prevention Measures (Legislative Decree No 159/2011), which underwent significant changes with the entry into force of Law No. 233/2021, which converted Decree-Law No. 152/2021, containing urgent measures for the implementation of the PNRR and for the prevention of mafia infiltration (the so-called 'Recovery Decree'). With this intervention, the legislator intended to mitigate the rigidity of disqualification information, allowing the competent authorities to combat organised crime interference in the public procurement sector, while at the same time ensuring the operational continuity of businesses and the execution of works and services.

The reform introduced is based on two main pillars: the enhancement of participatory institutions, in line with the principle of due process recognised at international level, and the introduction of a new administrative prevention measure, as an alternative to the immediate disqualification of the economic operator, to be applied in cases where mafia influence is only occasional (so-called 'collaborative prevention', Article 94-bis of the Anti-Mafia Code). However, these changes could theoretically reduce the effectiveness of the anti-mafia prevention system contained in Book II of the Code (Legislative Decree No. 159/2011) and, in particular, of the instruments provided for in Articles 84 and 91. In fact, the adoption of the adversarial procedure – albeit optional – in the context of the issuance of an anti-mafia interdictive measure (Article 97, paragraph 7) or collaborative prevention in cases of occasional mafia infiltration (Article 94-bis) requires notification of the initiation of proceedings pursuant to Law No. 241/1990.

It follows that, especially in areas with a high incidence of companies compromised by mafia logic, the acquisition of information on the imminent adoption of an anti-mafia measure could compromise the public interest in its issuance. The economic operators involved could, in fact, resort to evasive techniques, such as replacing corporate bodies or changing the legal representation and ownership of companies or company shares, with the intention of circumventing anti-mafia legislation.
These strategies, which are well documented in case law, allow colluding entrepreneurs to maintain control of their activities through front men in their dealings with the public administration.
The regulatory action therefore aims to amplify the preventive effectiveness of the criminal provision, ensuring its consistent application at the jurisprudential level.
Sanctions applicable to the Entity:

- a financial sanction of 250 to 600 units;
- Disqualification sanctions: 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

OFFENCES RELATING TO THE VIOLATION OF EUROPEAN UNION RESTRICTIVE MEASURES (ART. 25-OCTIES.2 OF THE DECREE)

Legislative Decree No. 211 of 30 December 2025 was published in Official Gazette No. 6 of 9 January 2026, implementing Directive 2024/1226/EU on the definition of offences and sanctions for the violation of EU restrictive measures, which in turn amends Directive 2018/1673/EU.
The new legislation provides, in particular, for:

i) the introduction of new types of offences and Chapter I bis 'Offences against the foreign policy and common security of the European Union' in Book II, Title I of the Criminal Code;
ii) the inclusion of the relevant offences in the list of predicate offences in Decree 231, with significant changes to the system for calculating financial sanctions and the duration of disqualification sanctions compared to the previous legislation.

Certain provisions contained in the Code of Criminal Procedure, Legislative Decree No. 286 of 25 July 1998, the Consolidated Law on Immigration, Legislative Decree No. 24 of 10 March 2023 on whistleblowing, and Legislative Decree No. 109 of 22 June 2007 containing measures for the prevention and combating of terrorism (Article 9).
EU restrictive measures – such as the freezing of funds and economic resources, prohibitions on the provision of financial assets and on entry into or transit through the territory of Member States, sectoral financial measures and arms embargoes – are a central instrument of the common foreign and security policy, implementing Article 21 TEU.
Directive 1226 was issued in order to 'ensure the effective application of Union restrictive measures' by establishing, in Member States, 'effective, proportionate and dissuasive criminal and non-criminal sanctions to be applied in the event of a breach of those measures' (see Recital 3). In short, the aim of the legislation is to increase enforcement in the sector by filling gaps and aligning national legal systems.
The adoption of Directive 1226 comes at a particularly complex time internationally: the European landscape has seen continuous revision of the regulatory framework relating to restrictive measures, in particular those adopted against the Russian Federation and contained mainly in Regulations (EU) No 833/2014 and No 269/2014.
The first measure regulates sectoral restrictions, such as those concerning exports, financial services and technical assistance; the second concerns subjective sanctions, i.e. the inclusion of natural persons

and entities in specific lists, for which there are obligations to freeze assets and prohibit the provision of economic resources.
The aforementioned regulations, adopted in the aftermath of the annexation of Crimea by the Russian Federation, have been amended several times in recent years, thereby significantly expanding the list of 'designated' persons and goods and services whose sale, supply, provision, etc. is prohibited.
The legislative measure in question introduces a new Chapter I bis of Title I, Book II, entitled "Offences against the foreign policy and common security of the European Union" into the Criminal Code, comprising Articles 275-bis to 275-decies of the Criminal Code.
This introduces new types of offences. Three of the new offences punish the malicious conduct of:

i) Violation of European Union restrictive measures (Article 275-bis of the Criminal Code);
ii) Violation of information obligations imposed by a European Union restrictive measure (Article 275-ter of the Criminal Code);
iii) Violation of the conditions of authorisation to carry out activities (Article 275-quater of the Italian Criminal Code).

The list of new offences is completed by an offence aimed at punishing conduct committed with gross negligence, entitled "Negligent violation of European Union restrictive measures" (Article 275-quinquies of the Criminal Code).
In addition to these offences, the legislative measure introduces special aggravating and mitigating circumstances (Articles 275-sexies and 275-septies of the Italian Criminal Code), the mandatory confiscation of assets linked to the offence (or their equivalent) and the publication of the sentence in the case of prison sentences of three years or more. The aggravating circumstance for offences committed in the course of professional, commercial, banking or financial activities is particularly broad.
The new decree also amends Article 12 of Legislative Decree 286/1998 (the so-called Consolidated Law on Immigration), introducing a common aggravating circumstance with respect to the criminal offence of aiding and abetting illegal immigration, providing for an increase in the sanction if the relevant conduct is committed in violation of an EU restrictive measure or national provisions implementing such measures.
Finally, the measure amends Article 1, paragraph 1, of Legislative Decree No. 24/2023 on whistleblowing, in order to extend the safeguards and protection measures applicable to whistleblowers to those who report violations of EU restrictive measures.
Legislative Decree No. 211/2025 therefore intervenes on the catalogue of predicate offences, introducing Article 25-octies.2 into Legislative Decree 231/2001, entitled "Offences relating to the violation of European Union restrictive measures" with the criminal offences described in more detail below.

Violation of European Union restrictive measures (Article 275-bis of the Italian Criminal Code)
The offence, in paragraph 1, punishes anyone who, in violation of a prohibition, obligation or restriction deriving directly from a European Union restrictive measure or from national provisions implementing a European Union restrictive measure, carries out one of the following actions or omissions:

a) directly or indirectly makes funds or economic resources available to, or allocates funds or economic resources for the benefit of, a designated person, entity, body or group;
b) fails to take measures to freeze funds or economic resources belonging to, or owned, held or controlled by, a designated person, entity, body or group;
c) concludes economic, commercial or financial transactions of any kind, including the award or continuation of public procurement or concession contracts, with a third country or its

bodies or with entities or bodies directly owned or controlled by that third country or its bodies;

d) imports, exports, trades, sells, purchases, transfers, transits or transports goods, including intangible goods, or provides intermediation, technical assistance or other services related to such goods;
e) provides services of any kind, including financial services, or carries out financial transactions.

Paragraph 2 specifies two specific forms, punishing those who 'circumvent the implementation' of a restrictive measure of the European Union by:

a) transactions involving funds or economic resources attributable to designated persons ('the use, transfer to third parties or otherwise disposal of frozen funds or economic resources directly or indirectly owned, held or controlled by a designated person, entity, body or group');
b) the use of false statements or documents with the intent to "obstruct the identification of the beneficial owner or final beneficiary of funds or economic resources subject to freezing".

However, the law introduces thresholds for punishment: the conduct outlined above (unless it concerns products included in the European Union's common list of military equipment or dual-use products) is only punishable under criminal law if the funds, economic resources, goods, services, transactions or activities have a value of more than €10,000 at the time of the offence. If the value is lower, the conduct is classified as an administrative offence and punished with a fine of between €15,000 and €90,000.
Paragraph 5, on the other hand, specifies that cases of 'transactions carried out without the relevant authorisation, or with authorisation obtained by providing false statements or documentation' also constitute an offence.

Violation of reporting obligations (Article 275-ter of the Criminal Code)
The provision punishes the violation of the obligation to provide the competent administrative authorities with information, known by virtue of one's office or profession, concerning funds or economic resources present in the territory of the State that belong to designated persons or are owned, held or controlled by them.
Punishment is provided for both anyone who is required to do so under a restrictive EU measure or implementing national legislation (e.g. persons subject to anti-money laundering legislation, referred to in Article 5 of Legislative Decree 109/2007) and the designated persons themselves or their legal representative, if required to do so under the same legislation.
In this case too, the law provides for a threshold of punishability, stipulating that the aforementioned omissions are punishable provided that the funds or economic resources have a value of more than €10,000 at the time of the offence. If they have a lower value, the conduct constitutes an administrative offence, punishable by a fine of between €5,000 and €45,000.
However, the legislative measure introduces a subjective limitation to the scope of application of this provision, establishing that professionals practising a legal profession are exempt from the obligation to provide the competent administrative authorities with the information required by the second paragraph of Article 275-ter of the Criminal Code when such information concerns one of their clients. Specifically, the exemption applies when the information has been obtained by the solicitor in the course of examining the client's legal position, or in the performance of 'tasks of defending or representing the client in proceedings before a judicial authority or in connection with such proceedings', including advice 'on whether to bring or avoid such proceedings'.

Violation of authorisation conditions (Article 275-quater of the Italian Criminal Code)
The newly introduced provision punishes anyone who carries out operations or provides services or otherwise performs activities in breach of the obligations prescribed in the authorisation issued by the competent authority.
In this case too, a threshold of relevance similar to that provided for in Articles 275-bis and 275-ter of the Criminal Code is introduced, providing that the conduct is punishable on condition that the activities subject to the violated authorisation regime concern funds, goods and services that, at the time of the offence, have a value exceeding €10,000.
In the case of below-threshold transactions, however, the conduct would constitute an administrative offence, punishable by a fine of between €15,000 and €80,000.
Sanctions applicable to the Entity:

- financial sanction: for violation of Articles 275-bis, first, second and fifth paragraphs, and 275-quater, first paragraph, of the Italian Criminal Code, as well as Article 12, paragraph 1-bis, of Legislative Decree No. 286/1998, a percentage ranging from 1% to 5% of the entity's total turnover in the financial year preceding that in which the offence was committed or, if lower, in the financial year preceding the application of the financial sanction; for violation of Article 275-ter, first and second paragraphs, of the Italian Criminal Code, a percentage ranging from 0.5% to 1% of the entity's total turnover in the financial year preceding that in which the offence was committed or, if lower, in the financial year preceding the application of the financial sanction.
  If it is not possible to establish the entity's total annual turnover, the new provision provides for financial sanctions, respectively in the above cases: (i) from 3 to 40 million euros and (ii) from 1 to 8 million euros. In the event of repeated offences, the above financial sanctions are increased by one third.
- Disqualification sanctions: not less than two years and not more than six years if the offence is committed by 'senior' persons and for a period of not less than one year and not more than three years if the offence is committed by 'subordinate' persons. This is also a 'special' provision, as it derogates from the general rule setting the maximum duration of disqualification sanctions at two years (a derogation that was previously provided for in Decree 231 only for certain types of corruption offences).

COMPUTER OFFENCES AND UNLAWFUL 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 cybercrime and concerning, in particular, offences committed using a computer system in any way or to its detriment, or which in any way require the collection of evidence in electronic form. Article 1 of the Convention defines a computer system as *'any equipment or group of interconnected or related equipment, one or more of which, based on a programme, performs automatic data processing*'.
Article 24-bis of the Decree covers the liability of entities with regard to three distinct categories:

a) offences involving **unauthorised access to or damage to a computer system (Article 24-bis, paragraph 1)**;
b) offences resulting from **the possession or dissemination of codes, programmes or equipment designed to cause computer damage (Article 24-bis, paragraph 2)**;
c) offences relating to **forgery of computer documents and fraud by persons providing certification services through digital signatures (Article 24-bis, paragraph 3)**.

Article 24-bis, paragraph 1, provides for the liability of entities in relation to seven distinct offences that have as a common factor the intrusion into or damage to a computer system, i.e. that cause the

interruption of the functioning of a computer system or damage to software, in the form of programmes or data.
More specifically, computer damage occurs when, considering both the hardware and software components, even separately, a change occurs that prevents, even temporarily, the functioning of the system.
The following offences are particularly relevant:

- **unauthorised access to a computer or telecommunications system (Article 615 ter of the Italian Criminal Code)**, which occurs when a person gains unauthorised access to a computer or telecommunications system protected by security measures or remains in the system against the express or tacit will of the person who has the right to exclude them. The offence is also committed by merely accessing the protected computer system, without actually damaging the data.[73]
  Sanctions applicable to the Entity:
  a fine of between two hundred and seven hundred units and, in the event of conviction, the disqualification sanctions provided for in Article 9, paragraph 2, letters a), b) and e).
- **Illegal interception, obstruction or interruption of computer or telecommunications communications (Article 617-quater of the Italian Criminal Code)**, which occurs when a person fraudulently intercepts communications relating to a computer or telecommunications system or between multiple systems, or obstructs or interrupts such communications. The offence is aggravated, among other things, if the conduct causes damage to a computer or telecommunications system used by the State or other public body or by a company providing public services or services of public utility.[74]
  sanctions applicable to the entity:
  a fine of between two hundred and seven hundred units and, in the event of conviction, the disqualification sanctions provided for in Article 9, paragraph 2, letters a), b) and e).
- **possession, dissemination and unlawful installation of equipment and other means designed to intercept, prevent or interrupt computer or telecommunications communications (Article 617-quinquies of the Italian Criminal Code)**, which applies to anyone who, outside the cases permitted by law, in order to intercept communications relating to a computer or telecommunications system between multiple systems, or to prevent or interrupt them, procures, possesses, produces, reproduces, disseminates, imports, communicates, delivers, otherwise makes available to others or installs equipment, programmes, codes, passwords or other means.[75] The offence is therefore constituted, by way of example, by the mere installation of the equipment, regardless of whether it is actually used to commit offences.
  Sanctions applicable to the Entity:

[73] Paragraphs 2 and 3 of Article 615-ter of the Criminal Code have been amended by Article 16 of Law No. 90/2024, which now provides as follows: *"2. The sanction shall be imprisonment for a term of between two and ten years: 1) if the offence is committed by a public official or a public service employee, through abuse of power or violation of the duties inherent in their role or service, or by anyone who practises the profession of private investigator, even unlawfully, or through abuse of their position as a system operator; 2) if the offender uses threats or violence against property or persons to commit the offence, or if he or she is clearly armed; 3) if the act results in the destruction or damage of the system or the total or partial interruption of its functioning, or the destruction or damage or theft, including through reproduction or transmission, or the inaccessibility to the data owner of the information or programmes contained therein. 3. If the acts referred to in the first and second paragraphs concern computer or telecommunications systems of military interest or relating to public order or public safety or health or civil protection or in any case of public interest, the sanction shall be imprisonment for a term of between three and ten years and between four and twelve years, respectively.*

[74] Paragraph 4 of Article 617-quater has been amended by Article 16 of Law No. 90/2024, which now provides as follows: *"However, proceedings shall be brought ex officio and the sanction shall be imprisonment for a term of between four and ten years if the offence is committed: 1) to the detriment of any of the computer or telecommunications systems referred to in Article 615-ter, paragraph 3; 2) to the detriment of a public official in the exercise or because of his or her functions, or by a public official or a public service employee, with abuse of power or violation of the duties inherent in the function or service, or by anyone who practises, even abusively, the profession of private investigator, or with abuse of the status of system operator."*

[75] Article 617-quinquies of the Criminal Code was amended by Article 19, paragraph 6, of Law No. 238 of 23 December 2021 containing *'Provisions for the fulfilment of obligations arising from Italy's membership of the European Union - European Law 2019-2020'*. Finally, Law No. 90/2024 introduced the following paragraphs 2 and 3: *'Where any of the circumstances referred to in Article 617-quater, paragraph 4, point 2) apply, the sanction shall be imprisonment for a term of between two and six years. When any of the circumstances referred to in Article 617-quater, fourth paragraph, number 1) apply, the sanction shall be imprisonment for a term of between three and eight years*."

a fine of between two hundred and seven hundred units and, in the event of conviction, the disqualification sanctions provided for in Article 9, paragraph 2, letters a), b) and e).

- **damage to information, data and computer programmes (Article 635-bis of the Italian Criminal Code)** and **damage to public information, data and computer programmes or those of public interest (Article 635-ter of the Italian Criminal Code); damage to computer or telecommunications systems (Article 635-quater of the Criminal Code) and damage to computer or telecommunications systems of public interest (Article 635-quinquies of the Criminal Code).** The offences in question are characterised by the common element of destruction, deterioration, deletion, alteration or suppression and differ in relation to the material object (information, data, computer programmes or computer or telecommunications systems), whether or not they are of public importance in that they are used by the State or other public body or are otherwise of public interest.[76]

  sanctions applicable to the body:

  a fine of between two hundred and seven hundred units and, in the event of conviction, the disqualification sanctions provided for in Article 9, paragraph 2, letters a), b) and e).

The offences referred to in Article 24-bis, paragraph 2, may be considered 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 telematic system. In particular, the following offences are relevant:

- **possession, dissemination and unlawful installation of equipment, codes and other means designed to access computer or telecommunications systems (Article 615-quater of the Italian Criminal Code)**, which punishes anyone who, in order to obtain an advantage for themselves or others or to cause damage to others, unlawfully obtains, possesses, produces, reproduces, disseminates, imports, communicates, delivers, otherwise makes available to others or installs devices, instruments, parts of devices or instruments, codes, passwords or other means suitable for accessing a computer or telecommunications system protected by security measures, or in any case provides information or instructions suitable for the aforementioned purpose[77] . Consequently, conduct preparatory or functional to unauthorised access is punishable, as it consists of procuring for oneself or others the means of access necessary to overcome the security measures of computer systems.

  Sanctions applicable to the Entity:

  a financial sanction of up to four hundred units and, in the event of conviction, the disqualification sanctions provided for in Article 9, paragraph 2, letters b) and e).

- **unlawful possession, dissemination and installation of computer equipment, devices or programmes intended to damage or interrupt a computer or telecommunications system (Article 635-quater.1 of the Italian Criminal Code)**, which punishes anyone who, for the purpose of unlawfully damaging or interrupting a computer or telecommunications system or the information, data or programmes contained therein or pertaining thereto, or to facilitate the total or partial interruption or alteration of its functioning, unlawfully procures,

[76] The first three offences in question were reformed by Article 16, letters n), o) and p) of Law No. 90/2024, to which reference should be made for further details, and Article 635-quinquies of the Criminal Code was replaced by the following: *'Damage to computer or telecommunications systems of public interest. Unless the act constitutes a more serious offence, anyone who, through the conduct referred to in Article 635-bis or through the introduction or transmission of data, information or programmes, commits acts aimed at destroying, damaging or rendering, in whole or in part, unusable computer or telecommunications systems of public interest or seriously hindering their operation shall be punished with imprisonment for a term of between two and six years. The sanction shall be imprisonment for a term of between three and eight years: 1) if the offence is committed by a public official or a person in charge of a public service, with abuse of power or in violation of the duties inherent in the function or service, or by a person who practises, even abusively, the profession of private investigator, or with abuse of the status of system operator; 2) if the offender uses threats or violence to commit the offence or is clearly armed; 3) if the offence results in the destruction, deterioration, deletion, alteration or suppression of information, data or computer programs. The sanction is imprisonment for a term of between four and twelve years when any of the circumstances referred to in points 1) and 2) of the second paragraph coincide with any of the circumstances referred to in point 3).*

[77] Article 615-quater of the Italian Criminal Code was amended by Article 19, paragraph 1, of Law No. 238 of 23 December 2021 containing *'Provisions for the fulfilment of obligations arising from Italy's membership of the European Union - European Law 2019-2020'*. Finally, Article 16 of Law No. 90/2024 introduced the following paragraphs 2 and 3: *'The sanction shall be imprisonment for a term of between two and six years where any of the circumstances referred to in Article 615-ter, second paragraph, number 1, apply. The sanction shall be imprisonment for a term of between three and eight years when the offence concerns the computer or telecommunications systems referred to in Article 615-ter, third paragraph.*"

possesses, produces, reproduces, imports, disseminates, communicates, delivers or otherwise makes available to others or installs computer equipment, devices or programmes.[78]

Sanctions applicable to the Entity:

a fine of up to four hundred units and, in the event of conviction, the disqualification sanctions provided for in Article 9, paragraph 2, letters b) and e).

Article 24-bis, paragraph 3, also penalises the use of electronic means aimed at undermining the reliability of means used to ensure certainty in relations between associates: electronic documents and digital signatures, the regulation of which is now fully outlined in the Digital Administration Code (Legislative Decree No. 82 of 2005, as amended). In particular:

- **Article 491-bis of the** Italian **Criminal Code** ([79]) extends the provisions of the Criminal Code on document forgery to public electronic documents with probative value. By virtue of this extension, therefore, the falsification of an electronic document may give rise, among other things, to the offences of material and ideological forgery in public documents, certificates, administrative authorisations, authentic copies of public documents, certificates of the content of documents (Articles 476-479 of the Italian Criminal Code), material falsification by a private individual (Article 482 of the Criminal Code), ideological falsification by a private individual in a public document (Article 483 of the Criminal Code), falsification in registers and notifications (Article 484 of the Criminal Code), and use of a false document (Article 489 of the Criminal Code).

  Sanctions applicable to the Entity:

  except as provided for in Article 24 of this decree for cases of computer fraud against the State or other public entity, and the offences referred to in Article 1, paragraph 11, of Decree-Law No. 105 of 21 September 2019, No. 105, a financial sanction of up to four hundred units and, in the event of conviction, disqualification sanctions provided for in Article 9, paragraph 2, letters c), d) and e).
- **computer fraud by a person providing electronic signature certification services (Article 640-quinquies of the Criminal Code)**, which punishes a person who, while providing electronic signature certification services, violates the obligations imposed by law for the issuance of a qualified certificate, in order to obtain an unfair profit for themselves or others or to cause damage to others. This offence is therefore a so-called specific offence, as it can only be committed by qualified certifiers, or rather, by persons providing qualified electronic signature certification services.

  Sanctions applicable to the Entity:

  except as provided for in Article 24 of this decree for cases of computer fraud against the State or other public body, and the offences referred to in Article 1, paragraph 11, of Decree-Law No. 105 of 21 September 2019, No. 105, a financial sanction of up to four hundred units and, in the event of conviction, disqualification sanctions provided for in Article 9, paragraph 2, letters c), d) and e).

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

The legislation in question provides for the definition of a national cyber security perimeter aimed at *"ensuring a high level of security for the networks, information systems and IT services of public*

[78] Article 16 of Law No. 90/2024 repealed Article 615-quinquies of the Criminal Code and introduced Article 635-quater.1 of the Criminal Code, which also provides for the following paragraphs 2 and 3: "*The sanction shall be imprisonment for a term of between two and six years when any of the circumstances referred to in Article 615-ter, second paragraph, number 1) apply. The sanction shall be imprisonment for a term of between three and eight years when the offence concerns the computer or telecommunications systems referred to in Article 615-ter, third paragraph.*"

[79] This article was amended by Legislative Decrees nos. 7 and 8/2016 (also known as the "decriminalisation package"), which decriminalised and transformed Article 485 of the Italian Criminal Code (forgery in private documents), which in turn is referred to in the predicate offence provided for and punished by Article *491-bis* of the Criminal Code.

administrations, entities and public and private operators based 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 fundamental to the interests of the State and whose malfunctioning, interruption, even partial, or improper use could prejudice national security"(Article 1, paragraph 1).
More specifically, the offences referred to in Article 1, paragraph 11, of the aforementioned Decree-Law No. 105 of 21 September 2019 have been added to the list of predicate offences.
This article provides that it is a criminal offence to provide information, data or facts that are untrue and relevant to the preparation or updating of lists of networks, information systems and IT services used (Article 1, paragraph 2, letter b), or for the purposes of prior notification to the National Assessment and Certification Centre or CVCN (Article 1, paragraph 6, letter a), or for the performance of specific inspection and surveillance activities (paragraph 6, letter c), or failing to communicate the aforementioned data, information or facts within the prescribed time limits.
All this with the aim of obstructing or influencing – according to the criminal law concept of specific intent – the completion of the procedures described in the aforementioned Article 1, for which the obligation of truthfulness is imposed.
Therefore, this is a 'blank' criminal offence that refers to extra-criminal legislation, both for the identification of the perpetrator of the 'specific offence' (even though the legislator has used the pronoun 'anyone'), concerning only those operating within the 'national cyber security perimeter', and for the precise procedures and, therefore, the unlawful conduct.
Subsequently, the Prime Minister's Decree No. 131 of 30 July 2020 was published in the Official Gazette No. 261 of 21 October 2020, containing *'Regulations on the national cyber security perimeter, pursuant to Article 1, paragraph 2, of Decree-Law* No. *105 of 21 September 2019, No. 105, converted, with amendments, by Law No. 133 of 18 November 2019*'. More specifically, the Regulation deals with: defining the characteristics of entities that perform an essential function for the State; identifying the sectors of activity in which the entities to be included in the cyber security perimeter operate; defining the procedures and criteria for identifying public administrations, entities and public and private operators included in the national cybersecurity perimeter; defining the criteria for preparing and updating lists of networks, information systems and IT services.
The sanction for individuals is imprisonment for one to three years, while organisations are subject to a fine of up to 400 units and the disqualification sanctions provided for in Article 9, paragraph 2, letters c), d) and e).
Subsequently, the regulatory framework for the protection of the so-called national cyber security perimeter was completed with the enactment of the following implementing measures:

- Presidential Decree No. 54 of 5 February 2021, which defined the procedures and methods for evaluating acquisitions by entities included in the cyber security perimeter of supply items and the procedures for verification and inspection activities (Article 1, paragraph 6, Decree Law 105/2019);
- Prime Ministerial Decree No. 81 of 14 April 2021, which defines the procedures for notification in the event of incidents involving ITC assets (Article 1, paragraph 2, letter b), Decree Law 105/2019);
- Decree-Law No. 82 of 14 June 2021, converted, with amendments, by Law No. 109 of 4 August 2021, containing *"Urgent provisions on cybersecurity, definition of the national cybersecurity architecture and establishment of the National Cybersecurity* Agency";
- Prime Ministerial Decree of 15 June 2021, which identifies the categories of ICT goods, systems and services intended for use within the national cyber security perimeter (Article 1, paragraph 6, letter a) of Decree Law 105/2019;
- Prime Ministerial Decree No. 92 of 18 May 2022 on the accreditation of testing laboratories and links between the National Assessment and Certification Centre, accredited testing laboratories and the Assessment Centres of the Ministry of the Interior and the Ministry of Defence, pursuant to Article 1, paragraph 7, letter b) of Decree Law 105/2019;

- Decision of 3 January 2023 of the National Cybersecurity Agency concerning the "Taxonomy of incidents that must be reported".

Finally, on 17 July, Law No. 90/2024 came into force, containing *'Provisions on strengthening national cybersecurity and* cybercrime', which is notable for a general increase in sanctions, an extension of the scope of cybercrimes already contained in Article 24-bis of the Decree, which also includes - in Article 1-bis - a new offence of cyber extortion provided for in **Article 629, paragraph 3,** of **the Criminal Code**, as well as the introduction of certain aggravating and mitigating circumstances. More specifically, extortion committed (or threatened) through the offences of unauthorised access to a computer or telecommunications system, interception, unlawful obstruction or interruption of computer or telecommunications communications, falsification, alteration or deletion of the content of computer or telecommunications communications, damage to information, data and computer programmes, damage to computer or telecommunications systems, damage to public utility computer or telecommunications systems, or with the threat of committing the aforementioned acts, by anyone who forces someone to do or omit something, procuring for themselves or others an unjust profit to the detriment of others.
The aim is to take decisive action against so-called *'cyber* extortion', which seeks to block or limit the functions of a device until a ransom is paid.
Indeed, the Government has moved in this direction 'due to the specific seriousness and frequency of blackmail carried out through the threat or implementation of cyber attacks'.
This may involve, for example, sensitive information about a company's employees or customers; confidential data which, if disclosed, could, for example, result in financial losses or damage the company's reputation.
Sanctions applicable to the Entity:
a fine of between three hundred and eight hundred units and, in the event of conviction, the disqualification sanctions provided for in Article 9, paragraph 2, for a period of not less than two years.

ENVIRONMENTAL OFFENCES (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 types of environmental offences into the legal system in the form of crimes.
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, whose Preamble (Article 5) specifies that *'activities that damage 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 sanctions with greater deterrent effect*'.
In particular, the aforementioned Law introduced Title VI-bis into the Criminal Code, dedicated to crimes against the environment, providing for new crimes and amending (see Art. 8, Law No. 68/2015) Article 25-undecies of Legislative Decree No. 231/2001, in order to incorporate new types of offences among the predicate offences, namely:

- Article *452-bis* of the Criminal Code, 'Environmental *pollution*';
- Article *452-quater*, Criminal Code, 'Environmental *disaster*';
- Art. *452-quinquies*, Italian Criminal Code, *"Negligent crimes against the* environment";
- Art. 452-sexies, Italian Criminal Code, "*Trafficking and abandonment of highly radioactive material*";
- Art. *452-octies*, Italian Criminal Code, *"Aggravating circumstances*" and

has made changes to certain predicate offences already provided for in Article 25-undecies of Legislative Decree No. 231/01:

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

Subsequently, 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, No. 12, repealed the electronic waste traceability control system (SISTRI) as of 1 January 2019.

On 26 March 2024, the EU Council approved Directive 2024/1203 on the protection of the environment through criminal law, which will improve investigations and criminal prosecution, tightening sanctions and introducing new environmental offences.

In particular, the Directive sets minimum standards at EU level on the definition of offences and sanctions and repeals Directives 2008/99/EC and 2009/123/EC.

The number of offences covered by the Directive will increase from nine to twenty, and the new environmental offences will include:

- trafficking in timber;
- illegal recycling of polluting components of ships;
- serious violations of legislation on chemicals.

In addition, the new Directive introduces a clause on 'aggravated offences', which applies when one of the offences covered by the Directive is committed intentionally and causes the destruction of the environment or irreversible or lasting damage to it.

As for sanctions:

- intentional offences resulting in the death of a person will be punishable by a maximum prison sentence of at least ten years, although Member States may decide to provide for even more severe sanctions in their national legislation;
- other offences will be punishable by imprisonment of up to five years;
- the maximum term of imprisonment for aggravated offences will be at least eight years;
- for companies, financial sanctions will amount to at least 5% of total worldwide turnover for the most serious offences or, alternatively, €40 million;
- for all other offences, the maximum financial sanction will be at least 3% of turnover or, alternatively, 24 million euros.

Member States will have to ensure that natural persons and companies can be punished with additional measures, such as the obligation for the offender to restore the environment or compensate for damage, exclusion from access to public funding, or the withdrawal of permits or authorisations.

Once it enters into force, Member States will have two years – until 21 May 2026 – to bring their national rules into line with the directive.

Finally, Decree Law No. 116 of 8 August 2025 (known as "Terra dei fuochi"), containing "*Urgent provisions for combating illegal activities relating to waste, for the remediation of the area known as Terra dei fuochi, and for assisting the population affected by natural disasters*", converted, with amendments, by Law No. 147 of 3 October 2025, aims to ensure the fight against illegal waste activities affecting the entire national territory and, in particular, the areas better known as the so-called 'Terra dei fuochi', even after the European Court of Human Rights (ECHR) ruling of 30 January 2025, which gave Italy two years to approve general measures capable of adequately addressing the pollution in question.

Many new features have been introduced, which can be summarised as follows:

- amendments to the Consolidated Environment Act (Legislative Decree No. 152/2006): the entire punitive response to combat the abandonment of hazardous and non-hazardous waste, which leads to situations of potential contamination, including serious contamination, has been redesigned, providing for new types of offences and transforming the previous contraventions into crimes with a renewed framework of sanctions;

- amendments to Title VI bis of the Criminal Code: the offence of 'trafficking and abandonment of highly radioactive material' (Article 452-sexies of the Criminal Code) is made more severe and, together with the offence of 'organised activities for the illegal trafficking of waste' (Article 452-quaterdecies of the Criminal Code), a new aggravating circumstance with special effect is introduced for cases where the offence also results in a danger to the life or safety of persons or a danger of compromising or deteriorating the environment;
- changes to the liability of entities for environmental offences (Article 25-undecies of Legislative Decree No. 231/2001): the list of predicate offences is extended to include both the new offences introduced to combat the increasingly serious and widespread phenomenon of waste abandonment and existing offences such as 'obstruction of control' (Article 452-septies of the Criminal Code) and 'failure to remediate' (Article 452-terdecies of the Criminal Code);
- amendments to the Code of Criminal Procedure and other special laws: arrest is also provided for in cases of deferred flagrante delicto for the most serious environmental offences, such as environmental disaster and illegal waste trafficking; sanctions for the abandonment and unauthorised management of waste are strengthened, with additional measures such as the suspension of driving licences, the impounding of vehicles and the exclusion of non-compliant companies from the Register of Environmental Managers; video surveillance images may also be used to combat the abandonment of waste from vehicles.

Environmental pollution (Article 452-bis of the Criminal Code)
This offence punishes anyone who, in violation of legislative, regulatory or administrative provisions specifically designed to protect the environment and whose non-compliance constitutes in itself an administrative or criminal offence, causes significant damage or deterioration to:

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

Law No. 137 of 9 October 2023 replaced the second paragraph with the following: *'When pollution is produced in a protected natural area or an area subject to landscape, environmental, historical, artistic, architectural or archaeological restrictions, or to the detriment of protected animal or plant species, the sanction shall be increased by one third to one half. If the pollution causes deterioration, impairment or destruction of a habitat within a protected natural area or an area subject to landscape, environmental, historical, artistic, architectural or archaeological restrictions, the sanction shall be increased by one third to two thirds*."
Sanctions applicable to the Entity:

- a fine of between four hundred and six hundred units and, in the event of conviction, disqualification sanctions for a period not exceeding one year. If the Entity or one of its organisational units is used on a permanent basis for the sole or main purpose of enabling or facilitating the commission of the offence referred to in Article 452-bis of the Italian Criminal Code, the sanction of permanent disqualification from carrying out the activity shall apply pursuant to Article 16, paragraph 3, of Legislative Decree No. 231/2001.

Environmental disaster (Article 452-quater of the Italian Criminal Code)
The offence is committed if, unlawfully:

- irreversibly alters the balance of an ecosystem;
- the balance of an ecosystem is altered in a reversible but particularly burdensome manner and can only be remedied by exceptional measures;
- public safety is compromised due to the significance of the event in terms of the extent of the damage or its harmful effects, or the number of people harmed or exposed to danger.

Law No. 137 of 9 October 2023 replaced the second paragraph with the following: "*When the disaster occurs in a protected natural area or an area subject to landscape, environmental, historical, artistic, architectural or archaeological restrictions, or causes damage to protected animal or plant species, the sanction is increased by one third to one half*."

Sanctions applicable to the Entity:
a fine ranging from six hundred to nine hundred units and, in the event of conviction, disqualification sanctions for a period not exceeding one year. If the Entity or one of its organisational units is used on a permanent basis for the sole or main purpose of enabling or facilitating the commission of the offence referred to in Article 452-quater of the Italian Criminal Code, the sanction of permanent disqualification from carrying out the activity shall apply, pursuant to Article 16, paragraph 3, of Legislative Decree No. 231/2001.

Negligent offences against the environment (Article 452-quinquies of the Italian Criminal Code)
The offence in question occurs when the cases referred to in Articles 452-bis and 452-quater of the Italian Criminal Code are punishable as negligence.
If the commission of the acts referred to in the previous paragraph results in the danger of environmental pollution or environmental disaster, the sanctions are further reduced by one third.
Sanctions applicable to the Entity:
a fine of between two hundred and five hundred units**.**

Trafficking and abandonment of highly radioactive material (Article 452-sexies of the Italian Criminal Code)
Law No. 147/2025 does not intervene in terms of the typical nature of the criminal conduct described in the first paragraph, but repeals the third paragraph and replaces the second paragraph with a new aggravating circumstance with special effect, when special conditions of danger to health or the environment occur.
The offence is committed, unless the act constitutes a more serious offence, when anyone unlawfully transfers, acquires, receives, transports, imports, exports, procures for others, possesses, transfers, abandons or unlawfully disposes of highly radioactive material (paragraph 1).
The sanction referred to in the first paragraph is increased by up to half when:
a) the act results in danger to the life or safety of persons or danger of compromise or deterioration:
1) water or air, or extensive or significant portions of the soil or subsoil;
2) an ecosystem, biodiversity, including agricultural biodiversity, flora or fauna;
b) the act is committed in contaminated or potentially contaminated sites within the meaning of Article 240 of Legislative Decree No. 152 of 3 April 2006, or in any case on the access roads to the aforementioned sites and related appurtenances (paragraph 2).
In fact, the condition described above reproduces the description of the typical offence of environmental pollution, such as significant and measurable impairment or deterioration of water and air, or of extensive or significant portions of the soil or subsoil or of an ecosystem, biodiversity, including agricultural biodiversity, flora or fauna, differing from the latter in terms of the different level of offensiveness: while the offence referred to in Article 452-bis of the Criminal Code is based on events and damage, the offence in question is structured as a typical case of abstract danger, with reference to the violation referred to in the first paragraph for the various activities indicated therein, regardless of the actual damage caused to the environment, and concrete danger in aggravated cases. The same conclusions are reached with reference to the further aggravating circumstance referred to in letter b).
Sanctions applicable to the Entity:

- for the violation of paragraph 1, a financial sanction of between five hundred and nine hundred units;
- for violation of paragraph 2, a fine ranging from six hundred to twelve hundred units;
- for paragraphs 1 and 2, in the event of conviction, disqualification sanctions for a period not exceeding one year. If the Entity or one of its organisational units is used on a permanent basis for the sole or main purpose of enabling or facilitating the commission of the offence referred to in Article 452-sexies of the Italian Criminal Code, the sanction of permanent disqualification from carrying out the activity shall apply pursuant to Article 16, paragraph 3, of Legislative Decree No. 231/2001.

Obstruction of control (Article 452-septies of the Italian Criminal Code)

The offence is committed when anyone, unless the act constitutes a more serious offence, denies access, creates obstacles or artificially alters the state of the premises, thereby preventing, hindering or evading environmental and occupational health and safety monitoring and control activities, or compromising their results.

This is a common offence and therefore applicable to 'anyone', not only to the holder of the authorisation but also to those without such authorisation (and, in theory, also to public officials with supervisory functions).

With the introduction of Article 452-septies of the Criminal Code, the exercise of any environmental control and surveillance function carried out by any person legally entitled to exercise it and in any field is protected.

Control is a phase of supervision as well as its culmination, in the sense that the actual performance of supervisory activities may reveal the conditions or prerequisites for proceeding with control, which may be required, for example, following the acquisition of qualified information about a violation of the provisions of the authorisation and, more generally, of the sector regulations. just as it is conceivable that an inspection may be carried out even without prior supervision by the inspector, as in the case of supervision carried out by a person other than the holder of the power of inspection who reports a qualified violation to the latter.

Prior to Law No. 68/2015, the protection of the exercise of environmental control activities was governed, where applicable, by the general provisions of Articles 336 and 337 of the Italian Criminal Code (violence, threats and resistance to public officials) and the special case provided for in Article 137, paragraph 8, of the TUA (Consolidated Environmental Act) on the control of discharges.

Furthermore, Article 452-septies contains a reference to health and safety in the workplace, which potentially significantly broadens the scope of application of the offence, albeit in a non-systematic manner, given its placement in Title VI-bis of the Criminal Code, dedicated to crimes against the environment.

The criminal offence in question has therefore introduced a criminal offence that protects so-called 'instrumental assets' as it aims to safeguard the regular exercise of control by inspection personnel.

The structure of the new offence is based on the prevention, obstruction or evasion of surveillance and control activities; it must therefore be conduct aimed at preventing or obstructing and, consequently, making control activities more difficult and less effective, regardless of where the control is to take place.

The regulation therefore specifies various alternative ways in which the conduct can be carried out, namely: denying access; creating obstacles, impediments or delays; artificially altering the state of the premises; compromising the results of the control; providing partial or erroneous information in response to requests from control bodies.

In the waste sector, the Province has control authority, pursuant to Article 197 of the TUA, and may use ARPA to carry out periodic checks on companies that produce hazardous waste, companies that collect and transport waste on a professional basis, and plants and companies that dispose of or recover waste.

With regard to Part IV of the TUA (waste management), the Ministry of the Environment is involved, which, for this purpose, makes use of ISPRA and may carry out audits (Article 206-bis).

With regard to atmospheric emissions, control functions are exercised by the Region or by the various authorities indicated by regional law or by the autonomous province or by the authority competent to issue the integrated environmental authorisation.[80]

[80] Article 269, paragraph 9, of the TUA provides that: "*The competent control authority is authorised to carry out all inspections it deems necessary at the establishments to verify compliance with the authorisation. The operator shall provide that authority with the necessary cooperation for the controls, including through sampling and analysis and the collection of data and information, for the purpose of verifying compliance with the provisions of Part V of this decree. The operator shall in all cases ensure safe access, including on the basis of technical standards in the sector, to the sampling points*'.

With regard to the control of discharges, the regulatory basis for this function is provided by Article 128 of the TUA, which requires the competent authority to carry out discharge controls on the basis of a programme that ensures a periodic, widespread, effective and impartial system of controls.
Article 129 indicates the control instruments: inspections and sampling necessary to verify compliance with emission limit values, for which the plant operator is obliged to allow access to representatives of the control authority.
Furthermore, as mentioned above, Article 137(8) contains a provision for administrative offences – if the act does not constitute a more serious offence – in cases where the owner of the discharge does not allow access to the facilities by the person responsible for monitoring.
The environmental control function also includes verification of compliance with the requirement under Article 318-quater of the TUA.
Finally, it performs the control function pursuant to Article 14 of Law No. 36/2001 (framework law on protection from exposure to electric, magnetic and electromagnetic fields), which allows personnel responsible for controls on behalf of provincial and municipal administrations to access facilities that are sources of electromagnetic emissions and request the data, information and documents necessary for the performance of their duties.
Finally, the control function provided for by Law No. 447/1995 (framework law on noise pollution): provincial personnel may access facilities and places of business that are sources of noise and request the data, information and documents necessary for the performance of their duties (the operator of the business may not invoke industrial secrecy).
sanctions applicable to the Authority:
financial sanction of up to two hundred and fifty units.

Aggravating circumstances relating to associative cases (Article 452-octies of the Criminal Code)
The aggravating circumstance arises when:

- a criminal association *pursuant to* Article 416 of the Italian Criminal Code is directed, exclusively or concurrently, towards the commission of any of the above environmental offences (Articles 452-bis, 452-quater, 452-quinquies, 452-sexies of the Italian Criminal Code);
- a mafia-type association *pursuant to* Article *416-bis* of the Italian Criminal Code is aimed at committing any of the above environmental offences (Articles 452-bis, 452-quater, 452-quinquies, 452-sexies of the Italian Criminal Code) or to acquire the management or control of economic activities, concessions, authorisations, contracts or public services in the environmental field;
- the association referred to in Articles 416 or *416-bis* of the Italian Criminal Code includes public officials or persons in charge of a public service who exercise functions or perform services in the environmental field.

Sanctions applicable to the Entity:
a fine of between four hundred and fifty and one thousand units and, in the event of conviction, disqualification sanctions for a period not exceeding one year.

Failure to remediate (Article 452-terdecies of the Italian Criminal Code)
The offence is committed when anyone, unless the act constitutes a more serious offence, being obliged by law, by order of a judge or a public authority, fails to remediate, restore or recover the state of the sites.
The heading may be misleading for two reasons: firstly, because the law also covers failure to comply with the obligation to restore and recover; secondly, because restorative criminal law has as its 'core' the restoration of the sites in the *strict sense* of the term and not merely their remediation, because the latter may well coexist with an environmental situation different from that existing immediately before the pollution occurred.

In selecting the typical offences, no distinction was made between the sources of the obligation to remediate, recover and restore, as the law, court orders and orders from other public authorities were placed on the same level.
As for the legal source, it does not necessarily have to be a provision of Title VI bis of the Criminal Code, because this seems to be the interpretation of the letter of the law, which typifies the failure to fulfil the obligation of remediation *tout court*, regardless of the provision of law, h , including that which may be contemplated in the other regulatory framework constituted by the T.U.A.
The latter, for example, provides for the obligation to restore the state of the sites for distinct categories of polluters and, in particular, for those who abandon or deposit waste in an uncontrolled manner on or in the ground or release it into surface and groundwater (pursuant to Article 255, paragraph 3), those who manage it without authorisation and, finally, those who set fire to such waste (pursuant to Article 256 bis, paragraph 1).
Article 192, after stipulating in paragraph one that the abandonment and uncontrolled deposit of waste on and in the ground is prohibited and, in paragraph two, that it is also prohibited to discharge it, in any form, into surface water and groundwater, in paragraph 3, it establishes the obligation of the offender to remove, recover or dispose of the waste in question and to restore the site to its original condition.
The third paragraph of the provision also stipulates that the mayor shall issue an order specifying the operations necessary for this purpose and the deadline for carrying them out, after which he or she is entitled to proceed with enforcement against the person responsible and to recover the sums advanced.
The source of the obligation to restore the site to its original condition in this case refers to both the law and the order of the administrative authority, failure to comply with which was already a criminal offence under the third paragraph of Article 255, according to which anyone who fails to comply with the mayor's order provided for in the third paragraph of Article 192 is punishable by imprisonment for up to one year.
In such a case, it is necessary to ask whether failure to comply with the mayor's order falls under Article 255, paragraph 3, or Article 452-terdecies.
Part of the doctrine has proposed resolving the conflict of laws by resorting to Article 15 of the Criminal Code, according to which, when several criminal laws or several provisions of the same criminal law regulate the same matter, the special law or provision of law shall prevail over the general law or provision of law, unless otherwise specified. It is therefore considered that, in this specific area of waste, Article 255, paragraph 3, applies as a special rule. Article 255, paragraph 3, applies as a special rule.
The Supreme Court of Cassation took a different view in its ruling No. 32117 of 29 May 2024, Section III, noting the distinctive difference between the two cases in the different nature of the conduct involved: according to the Supreme Court, the criminal offence requires a potentially polluting event, while the offence is based on the mere abandonment of waste without such a characteristic, with the consequence that, when an order requires the restoration of the state of the premises without explicitly requiring remediation, failure to comply with it is qualifiable under Article 255, paragraph 3, and not as a crime under Article 452-terdecies of the Criminal Code.[81]
Continuing the examination, without any claim to exhaustiveness, of the legal sources of the restoration obligation, Article 256, which deals with unauthorised waste management activities, provides that, in the event of the creation or management of an unauthorised waste dump, the conviction or sentence issued pursuant to Article 444 of the Code of Criminal Procedure obliges the perpetrator of the offence to remediate or restore the site.

[81] See Criminal Court of Cassation, Section III - 7 August 2024 (hearing of 29 May 2024) No. 32117: *"With regard to environmental offences, the crime of failure to remediate, provided for in Article 452 terdecies of the Criminal Code, differs from the offence of failure to comply with a municipal order to remove waste, referred to in Article 255, paragraph 3, of Legislative Decree No. 152 of 3 April 2006, in that the former presupposes conduct with polluting potential, while the latter requires the abandonment of waste, including uncontrolled dumping and discharge into water, which does not result in an event with the potential to cause pollution*."

Article 256 bis, paragraph 1, in turn, provides that anyone who sets fire to abandoned or uncontrolled waste is required to restore the site to its original condition and, in the case referred to in paragraph 5, also to clean it up.
There are also several cases in which the obligation to restore the site is based on a court order contained in a judgment, preferably when it has become final.
The wording of Article 452-terdecies of the Criminal Code does not distinguish between the judge of the offence provided for in Title VI bis and the civil or administrative judge, a distinction that is, however, proposed in the wording of Article 452-duodecies, which regulates the power of restoration only of the judge responsible for ascertaining one of the offences referred to in the same title.
The first case is that provided for in Article 452-duodecies of the Criminal Code, entitled 'Restoration of the state of the premises', under which the judge, when pronouncing a sentence of conviction or applying the sanction at the request of the parties in accordance with Article 444 of the Code of Criminal Procedure for any of the offences provided for in the title, orders the recovery and, where technically possible, the restoration of the state of the places, placing the execution thereof at the expense of the convicted person and also of the person indicated in Article 197 of the Criminal Code.
The provision is completed by a second paragraph which provides that the provisions of Title II of Part Six of the T.U.A. (Consolidated Environmental Act) on environmental restoration shall apply to the restoration of the state of the places.
The second case is that provided for in Article 452-quaterdecies of the Criminal Code, which deals with organised activities for the illegal trafficking of waste and which, in the fifth paragraph, establishes that the judge, in the conviction or in the judgment issued pursuant to Article 444 of the Code of Criminal Procedure, shall order the restoration of the environment.
Finally, as regards the genetic source constituted by the order of another public authority, there are equally numerous cases covered outside the scope of Title VI bis, such as that already illustrated, provided for in the third paragraph of Article 192 of the TUA, and those provided for in Articles 244 and 313 of the same legislative source.
Sanctions applicable to the Entity:
a financial sanction of between four hundred and eight hundred units.

Activities organised for the illegal trafficking of waste (Article 452-quaterdecies of the Italian Criminal Code)
The offence is committed when anyone, for the purpose of obtaining an unfair profit, through multiple operations and by setting up organised means and ongoing activities, transfers, receives, transports, exports, imports or otherwise illegally manages large quantities of waste. (paragraph 1)
In the case of highly radioactive waste, the sanction of imprisonment for a term of between three and eight years shall apply. (paragraph 2)
The sanctions provided for in the preceding paragraphs are increased by up to half when:
a. the act results in danger to the life or safety of persons or danger of compromise or deterioration:
    1. the water or air, or extensive or significant portions of the soil or subsoil;
    2. of an ecosystem, biodiversity, including agricultural biodiversity, flora or fauna;
b. the act is committed in contaminated or potentially contaminated sites within the meaning of Article 240 of Legislative Decree No. 152 of 3 April 2006, or in any case on the access roads to the aforementioned sites and related appurtenances. (paragraph 3)

With regard to the above-mentioned case, Law No. 147/2025 does not intervene in terms of the typical nature of the incriminated conduct[82] - described in paragraph 1 - but introduces a new paragraph that provides for a new aggravating circumstance with special effect - with an increase of up to half - when special conditions of danger to health or the environment occur.
The conduct of 'illegal waste trafficking' takes on greater criminal significance when the continuous and organised activities of transfer, receipt, transport, export, import or illegal management of large

[82] The provision fully reflects the repealed provision of the TUA (Article 260).

quantities of waste result in a situation of danger to the life or safety of persons or a danger of compromise or deterioration of water or air, or of extensive or significant portions of the soil or subsoil (point 1) or of an ecosystem, biodiversity, including agricultural biodiversity, flora or fauna (point 2) or if the offence is committed on contaminated or potentially contaminated sites pursuant to Article 240 of Legislative Decree No. 152/2006 or in any case on the access roads to the aforementioned sites and related appurtenances.
Sanctions applicable to the Entity:

- for violation of paragraph 1, a fine of between four hundred and six hundred units;
- for violation of paragraph 2, a fine ranging from four hundred and fifty to seven hundred and fifty units;
- for violation of paragraph 3, a fine ranging from five hundred to one thousand units;
- in the event of conviction, disqualification sanctions for a period not exceeding one year. If the Entity or one of its organisational units is used on a permanent basis for the sole or main purpose of enabling or facilitating the commission of the offence referred to in Article 452-quaterdecies of the Italian Criminal Code, the sanction of permanent disqualification from carrying out the activity shall apply pursuant to Article 16, paragraph 3 of Legislative Decree No. 231/2001.

Killing, destruction, capture, removal, possession and trade[83] of specimens of protected wild animal or plant species (Article 727-bis of the Italian Criminal Code)
The offence is committed when anyone, unless the act constitutes a more serious offence, outside of permitted cases, kills, captures or possesses specimens belonging to a protected wild animal species, except in cases 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 when anyone, outside of permitted cases, destroys, removes or possesses specimens belonging to a protected wild plant species, except in cases where the action concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species. 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.
Sanctions applicable to the Entity:
a fine of up to two hundred and fifty units.

Destruction or deterioration of a habitat within a protected site (Article 733-bis of the Criminal Code)
The offence is committed when anyone, except in permitted cases, destroys a *habitat* within a protected site or otherwise damages it, compromising its conservation status.
Habitat within a protected site means 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.
sanctions applicable to the Authority:
a fine of between one hundred and fifty and two hundred and fifty units.

Offences relating to industrial waste water discharges (Article 137 of Legislative Decree No 152/2006, as amended)
The offence occurs when:

[83] Article 15 of Legislative Decree No. 135 of 5 August 2022 amended the heading of Article 727-bis of the Criminal Code, adding the term 'trade' and inserting the following third paragraph: *'Unless the act constitutes a more serious offence, anyone who, outside the permitted cases, violates the marketing prohibitions referred to in Article 8, paragraph 2, of Presidential Decree No. 357 of 8 September 1997, shall be punished with imprisonment for two to eight months and a fine of up to €10,000.'*

- new discharges of industrial waste water containing hazardous substances included in the families and groups of substances indicated in Tables 5 and 3/A of Annex 5 are opened or otherwise carried out without authorisation, or such discharges continue to be carried out or maintained after the authorisation has been suspended or revoked (Article 137, paragraph 2).
- industrial waste water containing hazardous substances included in the families and groups of substances indicated in Tables 5 and 3/A of Annex 5 to Part Three is discharged without complying with the requirements of the authorisation or other requirements of the competent authority pursuant to Articles 107, paragraph 1, and 108, paragraph 4 (Article 137, paragraph 3).
- unless the act constitutes a more serious offence, when discharging industrial waste water, the limit values set out in Table 3 are exceeded in relation to the substances indicated in Table 5 of Annex 5 to Part Three, or, in the case of discharge onto the ground, in Table 4 of Annex 5 to Part Three, or the more restrictive limits set by the regions or autonomous provinces (utore) or by the competent authority pursuant to Article 107, paragraph 1, or if the limit values set for the substances contained in Table 3/A are exceeded (Article 137, paragraph 5).
- the prohibitions on discharge laid down in Articles 103 and 104 of the decree are not observed on land or in surface layers, in the subsoil and in groundwater (Article 137, paragraph 11).
- discharges into the sea by ships and aircraft of substances or materials for which there is a total ban on spillage, in accordance with the provisions contained in the relevant international conventions ratified by Italy (Article 137, paragraph 13).

Sanctions applicable to the Entity:

- for violation of paragraphs 3, 5, first sentence, and 13, a financial sanction of between one hundred and fifty and two hundred and fifty units;
- for violation of paragraphs 2, 5, second sentence, and 11, a fine of between two hundred and three hundred units;
- for violation of paragraphs 2, 5, second sentence, and 11, in the event of conviction, disqualification sanctions for a period not exceeding six months.

Abandonment of non-hazardous waste in specific cases (Article 255-bis of Legislative Decree No. 152/2006, as amended)

The offence is committed when:

- anyone, in violation of the provisions of Articles 192, paragraphs 1 and 2, 226, paragraph 2, and 231, paragraphs 1 and 2, abandons or deposits non-hazardous waste or discharges it into surface or groundwater if:

a) the act results in danger to the life or safety of persons or danger of compromise or deterioration:
   1. the water or air, or extensive or significant portions of the soil or subsoil;
   2. an ecosystem, biodiversity, including agricultural biodiversity, flora or fauna;

b) the act is committed on contaminated or potentially contaminated sites within the meaning of Article 240 or in any case on the access roads to the aforementioned sites and related appurtenances.

- business owners and managers of entities who, in any of the cases referred to in paragraph 1, abandon or deposit non-hazardous waste in an uncontrolled manner or discharge it into surface water or groundwater in violation of the prohibition referred to in Article 192, paragraphs 1 and 2.

Among the objectives of the reform is the reorganisation of criminal protection of the environment in relation to the abandonment of waste.

This offence was previously provided for in Articles 255 and 256, paragraph 2, of the TUA (depending on whether the perpetrator was anyone, in the first case, or owners or managers of entities and companies in the second) and punished, as a misdemeanour and with a sanction varying according to the nature (hazardous or otherwise) of the waste, the abandonment or uncontrolled dumping of waste.

The reform provides for a completely different approach: Article 256, paragraph 2, is repealed and three distinct types of offences are provided for, which, according to the legislator, correspond to three progressive levels of offence against the protected legal interest.
Article 255-bis therefore introduces a new and separate offence, as clearly indicated both by its placement within a separate provision, with *a* separate and distinct *nomen iuris*, and by the description of the offence itself, defined as a criminal offence and limited solely to cases of 'abandonment of non-hazardous waste in specific cases', i.e. when the conduct of abandoning or disposing of non-hazardous waste presents a *quid pluris* of danger to the protection of health and environmental integrity.
As regards the structure of the offence, it appears *at first glance* to be an offence of concrete danger in the case of letter a), where the sanction is imposed insofar as a danger has actually occurred, and of presumed danger in the case referred to in letter b), where the sanction is imposed solely on the basis that the offence was committed on contaminated sites.
The offence seems to be part of a much broader progression of offensiveness in that, where the conduct of abandoning or discharging non-hazardous waste into a surface or underground water body causes actual damage that goes beyond mere exposure to danger of the final assets protected by the criminal offence – individual and collective life and health or the integrity and quality of environmental matrices – then the basic conduct will constitute the more serious criminal offence of pollution or environmental disaster, depending on whether the presence of the abandoned non-hazardous waste has resulted in a mere compromise or a significant and measurable deterioration of the aforementioned environmental matrices (Article 452-bis of the Italian Criminal Code) or even caused unintended consequences such as death or injury to persons (Article 452-ter of the Italian Criminal Code) or, in the most serious cases, irreversible or reversible alteration at very high cost or harm to public safety due to the significance of the abandonment (Article 452-quater of the Italian Criminal Code).
Finally, there is an increase in the sanction in relation to the subjective quality of the perpetrators who are owners of companies or managers of entities (paragraph 2).
sanctions applicable to the organisation:
A fine ranging from three hundred and fifty to four hundred and fifty units.

Abandonment of hazardous waste (Article 255-ter of Legislative Decree No. 152/2006, as amended)
The offence is committed when:

- anyone, in violation of the provisions of Articles 192, paragraphs 1 and 2, 226, paragraph 2, and 231, paragraphs 1 and 2, abandons or deposits hazardous waste or discharges it into surface or groundwater (paragraph 1); the sanction is imprisonment for a term of between one year and six months and six years when:

a) the act results in danger to the life or safety of persons or danger of compromise or deterioration:
   1) water or air, or extensive or significant portions of the soil or subsoil;
   2) an ecosystem, biodiversity, including agricultural biodiversity, flora or fauna;
b) the act is committed in contaminated or potentially contaminated sites within the meaning of Article 240 or in any case on the access roads to the aforementioned sites and related appurtenances (paragraph 2);

- business owners and managers of entities who abandon or deposit hazardous waste in an uncontrolled manner or discharge it into surface water or groundwater in violation of the prohibition referred to in Article 192, paragraphs 1 and 2. (paragraph 3)

Article 255 ter extends the material scope of the conduct of abandonment or discharge provided for in Articles 255 and 255 bis to hazardous waste.
The first paragraph repeats the repealed Article 256(2), but in this case, unlike what was previously provided for, the offence becomes a criminal offence with a sanction of one to five years in the common case and one to five years and six months in the qualified case; the second paragraph repeats the scheme of the offence of danger provided for non-hazardous waste in Article 255 bis of the TUA

and provides for a sanction, in the common case, of between one year and six months and six years and, in the aggravated case, of between two years and six years and six months.
Sanctions applicable to the Entity:

- for violation of paragraph 1, a fine of between four hundred and five hundred and fifty units;
- for violation of paragraph 2, a fine of between five hundred and six hundred and fifty units.

Unauthorised waste management activities (Article 256 of Legislative Decree No. 152/2006, as amended)

Both the case of unauthorised waste management referred to in paragraph 1 and the case of illegal dumping referred to in paragraph 3 are not affected in their description of the typical offence, which remains as it was in the previous formulation.
However, while illegal dumping ceases to be a misdemeanour and becomes a crime, punishable today with imprisonment from one (1) to five (5) years if the conduct of setting up or managing the dump concerns non-hazardous waste, or imprisonment from one (1) year and six (6) months to five (5) years and six (6) months if the landfill is intended, even in part, for the disposal of hazardous waste. Conversely, the offence of 'unauthorised waste management', although originally redefined as a criminal offence, was converted back to a misdemeanour punishable by imprisonment for three months to one year or a fine of €2,600 to €26,000 if the waste is non-hazardous (while the decree-law provided for imprisonment from six (6) months to three (3) years), and if the facts concern hazardous waste, on the other hand, the offence becomes a criminal offence punishable by imprisonment from one (1) to five (5) years, with the framework outlined in the decree-law remaining unchanged.
Furthermore, even with reference to these offences, the most severe sanctions are guaranteed for cases in which the unauthorised management of waste or the creation or management of an illegal landfill exposes life, personal safety and the environment to danger, seen in its essential elements, similarly to the measures taken with regard to the basic and aggravated cases of waste abandonment.
With regard to the additional elements linking the offences provided for in Article 256 and the previous ones, it should also be reiterated that the offence of abandonment qualified by the personal condition of 'owner of the company or person in charge of entities', previously provided for in the context of unauthorised waste management (Article 256, paragraph 2), has been repositioned within the scope of the cases referred to in Articles 255 et seq., as it properly relates to the conduct of waste abandonment.
More specifically, the offence is now committed when activities involving the collection, transport, recovery, disposal, trade and brokering of waste are carried out without the required authorisation, registration or notification referred to in Articles 208, 209, 210, 211, 212, 214, 215 and 216. (paragraph 1)
The sanction for the offences referred to in the first sentence of paragraph 1 is imprisonment for a term of between one and five years when:

a) the offence results in danger to the life or safety of persons or danger of compromise or deterioration:
   1. the water or air, or extensive or significant portions of the soil or subsoil;
   2. of an ecosystem, biodiversity, including agricultural biodiversity, flora or fauna;
b) the offence is committed in contaminated or potentially contaminated sites within the meaning of Article 240 or in any case on the access roads to the aforementioned sites and related appurtenances. If, in any of the cases referred to in the preceding sentence, the offences concern hazardous waste, the sanction shall be imprisonment for a term of between two years and six years and six months. (paragraph 1-bis)

Except for the cases punishable under Article 29-quattuordecies, paragraph 1, anyone who establishes or operates an unauthorised landfill shall be punished with imprisonment for a term of between one and five years. Imprisonment for a term of between one year and six months and five years and six months shall apply if the landfill is intended, even in part, for the disposal of hazardous waste. (paragraph 3)

The construction or management of an unauthorised landfill shall be punished with imprisonment for a term of between two and six years when:

a) the act results in danger to the life or safety of persons or danger of compromise or deterioration:
   1. water or air, or extensive or significant portions of the soil or subsoil;
   2. an ecosystem, biodiversity, including agricultural biodiversity, flora or fauna;
b) the act is committed on contaminated or potentially contaminated sites within the meaning of Article 240 or in any case on the access roads to the aforementioned sites and related appurtenances. If, in any of the cases referred to in the preceding sentence, the landfill is intended, even in part, for the disposal of hazardous waste, the sanction shall be imprisonment for a term of between two years and six months and seven years. (paragraph 3-bis)

Unless the offence constitutes a more serious crime, a fine of between €6,000 and €52,000 or imprisonment for up to three years shall be imposed on anyone who, despite being the holder of authorisations, registrations or communications referred to in Articles 208, 209, 210, 211, 212, 214, 215 and 216, fails to comply with the requirements contained or referred to in the authorisations or in cases of failure to meet the requirements and conditions for registrations or notifications, provided that the offence concerns non-hazardous waste and when the conditions referred to in paragraph 1-bis, letter a), numbers 1) and 2), and letter b) do not apply. (paragraph 4).

Anyone who, in violation of the prohibition referred to in Article 187, carries out unauthorised waste mixing activities shall be punished with imprisonment for a term of between six months and two years or with a fine of between €2,600 and €26,000. (paragraph 5)

Anyone who carries out temporary storage at the place of production of hazardous medical waste, in violation of the provisions of Article 227, paragraph 1, letter b), shall be punished with imprisonment from three months to one year or with a fine of between €2,600 and €26,000. An administrative fine of between €2,600 and €15,500 shall be imposed for quantities not exceeding 200 litres or equivalent quantities. (paragraph 6)

Furthermore, even with reference to these types of offences, the most severe sanctions are guaranteed for cases in which the unauthorised management of waste or the creation or management of an illegal landfill exposes life, personal safety and the environment to danger, seen in its essential elements, similarly, therefore, to what is done with reference to cases of waste abandonment.

Sanctions applicable to the Entity:

- for violation of paragraph 1, first sentence, a fine of between three hundred and four hundred and fifty units;
- for violation of paragraphs 1, second sentence, and 3, first sentence, a fine of between four hundred and six hundred units;
- for violation of paragraph 3, second sentence, a fine of between 450 and 750 units;
- for violation of paragraphs 1-bis, first sentence, and 3-bis, first sentence, a fine of between five hundred and one thousand units;
- for violation of paragraphs 1-bis, second sentence, and 3-bis, second sentence, a fine of between six hundred and twelve hundred units;
- for violation of paragraphs 5 and 6, first sentence, a fine of between one hundred and fifty and two hundred and fifty units;
- the aforementioned sanctions are reduced by half in the case of commission of the offence referred to in Article 256, paragraph 4, of Legislative Decree No. 152 of 3 April 2006;
- in the event of conviction, disqualification sanctions for a period not exceeding one year.

If the Entity or one of its organisational units is used on a permanent basis for the sole or main purpose of enabling or facilitating the commission of the offence referred to in Article 256 of Legislative Decree No. 152/2006, the sanction of permanent disqualification from carrying out the activity shall apply pursuant to Article 16, paragraph 3 of Legislative Decree No. 231/2001.

Illegal waste incineration (Article 256-bis of Legislative Decree No. 152/2006, as amended)

Inspired by the same philosophy of strengthening the punitive response to illegal waste management practices, Law No. 147/2025 contains provisions amending the offence of illegal combustion referred to in Article 256-bis of the TUA by providing for more severe sanctions where there are consequences that endanger the life or safety of persons, or the danger of compromising or deteriorating the essential elements of theecosystem, or where combustion takes place in contaminated or potentially contaminated sites, in accordance with the provisions of special legislation, as well as specific provisions aimed at preventing conflicts of law (including those in the Criminal Code designed to protect public safety) that could arise in relation to the actual development of individual cases of 'combustion' in fires (Article 256-bis, paragraph 3-ter).

More specifically, the offence is committed when anyone, unless the act constitutes a more serious offence, sets fire to abandoned or uncontrolled waste. If the fire is set to hazardous waste, the sanction is imprisonment for three to six years. The responsible person ( ) is required to restore the site to its original condition, compensate for environmental damage and pay, including by way of recourse, the costs of remediation. (paragraph 1)

The same sanctions shall apply to anyone who engages in the conduct referred to in Article 255, paragraphs 1 and 1.1, for the purpose of the subsequent illegal burning of waste. If the acts referred to in Articles 255 bis, 255 ter, 256 and 259 are committed in connection with the subsequent illegal incineration of waste, the sanctions for the aforementioned offences may not be less than those established in paragraph 1. (paragraph 2)

The incineration of non-hazardous waste is punishable by imprisonment for a term of between three and six years when:

a) the act results in danger to the life or safety of persons or danger of compromise or deterioration:
1. water or air, or extensive or significant portions of the soil or subsoil;
2. of an ecosystem, biodiversity, including agricultural biodiversity, flora or fauna;
b) the act is committed in contaminated or potentially contaminated sites pursuant to Article 240 or in any case on the access roads to the aforementioned sites and related appurtenances. The incineration of hazardous waste, when any of the cases referred to in the preceding period occur, shall be punished with imprisonment from three years and six months to seven years. (paragraph 3-bis)

If the acts referred to in paragraph 3-bis are followed by fire, the sanctions provided for therein shall be increased by up to half. (paragraph 3-ter).

The sanction shall be increased by one third if the acts referred to in paragraphs 1 and 3-bis are committed in areas which, at the time of the conduct and in any case in the previous five years, are or have been affected by declarations of a state of emergency in the waste sector pursuant to Law No. 225 of 24 February 1992. (paragraph 4)

Sanctions applicable to the Entity:

- for violation of paragraph 1, first sentence, a fine of between two hundred and four hundred and fifty units;
- for violation of paragraph 1, second sentence, a fine of between three hundred and six hundred units;
- for violation of paragraph 3-bis, first sentence, a fine of between four hundred and eight hundred units;
- for violation of paragraph 3-bis, second sentence, a fine of between five hundred and one thousand units;
- in the event of conviction, disqualification sanctions for a period not exceeding one year.

If the Entity or one of its organisational units is used on a permanent basis for the sole or main purpose of enabling or facilitating the commission of the offence referred to in Article 256-bis of Legislative Decree No. 152/2006, the sanction of permanent disqualification from carrying out the activity shall apply pursuant to Article 16, paragraph 3 of Legislative Decree No. 231/2001.

Remediation of polluted sites (Article 257, paragraphs 1 and 2 of Legislative Decree No. 152/2006 and subsequent amendments and additions)

The offence is committed, unless the act constitutes a more serious offence, if:

- pollution of the soil, subsoil, surface water or groundwater is caused, exceeding the risk threshold concentrations, without providing for remediation in accordance with the project approved by the competent authority within the framework of the procedure referred to in Articles 242 et seq. of Legislative Decree 152/2006, as amended and supplemented; the notification referred to in Article 242 of Legislative Decree 152/2006, as amended (paragraph 1), is not made;

a sanction of imprisonment for one to two years and a fine of between five thousand two hundred euros and fifty-two thousand euros shall apply if the pollution is caused by hazardous substances. (paragraph 2)

Sanctions applicable to the Entity:

- for violation of paragraph 1, a fine of up to two hundred and fifty units;
- for violation of paragraph 2, a fine of between one hundred and fifty and two hundred and fifty units.

Violation of the obligations to communicate, keep mandatory records and forms (Article 258, paragraph 4, second sentence, Legislative Decree No. 152/2006 and subsequent amendments and additions)

It should also be noted that Law No. 147/2025 made a significant amendment to the fourth paragraph of Article 258 of the Consolidated Environmental Act (T.U.A.), which increases the sanction previously provided for the transport of such waste in the absence of the waste identification form (FIR), provided for in Article 193 of the TUA, or equivalent documentation that guarantees the traceability of the waste and the transparency of the entire supply chain.

The new provision provides for a more severe sanction than the previous provision, which referred to Article 483 of the Criminal Code, punishable by up to two years' imprisonment, as well as compared to that for the unauthorised transport of non-hazardous waste, which remains subject to administrative sanctions.

The new sanction, in particular, consists of imprisonment for one to three years, highlighting the legislator's intention to strengthen the protection of the environment and public health against the most insidious conduct, often attributable to environmental crime.

This is a significant regulatory intervention, aimed at filling a gap in sanctions and aligning the repressive apparatus with the seriousness of the risk associated with the lack of traceability of potentially harmful substances.

More specifically, this is a classic case of a common offence that punishes the transport of hazardous waste by someone who has all the necessary transport authorisations and is registered in the National Register of Environmental Managers. Furthermore, this is a case of binding conduct, as punishment is limited to the transport of hazardous waste without the possession of the form. Here too, the conduct is to be understood as having been committed by the mere failure to possess the form, even if it actually exists, has been completed but not delivered or collected by the transporter.

Sanctions applicable to the Entity:

a fine of between one hundred and fifty and two hundred and fifty units.

Illegal shipment of waste (Article 259, paragraph 1, Legislative Decree 152/2006 and subsequent amendments)

The 'Terra dei fuochi' decree also intervenes to bring the offence referred to in Article 259 of the TUA into line with the most recent supranational legislation; previously entitled *'Illegal trafficking of* waste', it now becomes *'Illegal shipment of waste*'.

The most significant change is the nature of the offence, which is no longer a misdemeanour, as in the previous formulation, but a criminal offence, punishable by imprisonment for between one and

five years, increased by up to one third in the absence of specific indications in the case of hazardous waste.
The reference to the relevant legislation used to define the illegality of shipment has also been adapted and updated, and the provision in question has now been reworded as follows: *'Anyone who ships waste constituting illegal shipment within the meaning of Articles 2, point 35 of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 and Article 3, point 26 of Regulation (EU) No 2024/1157 of the European Parliament and of the Council of 11 April 2024, shall be punished with imprisonment for a term of between one and five years. The sanction shall be increased in the case of shipment of hazardous waste*.
Sanctions applicable to the Entity:
a fine of between three hundred and four hundred and fifty units and, in the event of conviction, disqualification sanctions for a period not exceeding one year.
If the Entity or one of its organisational units is used on a permanent basis for the sole or main purpose of enabling or facilitating the commission of the offence referred to in Article 259 of Legislative Decree No. 152/2006, the sanction of permanent disqualification from carrying out the activity shall apply pursuant to Article 16, paragraph 3 of Legislative Decree No. 231/2001.

Negligent offences relating to waste (Article 259-ter, Legislative Decree 152/2006 and subsequent amendments)
Finally, Law No. 147/2025 introduces Article 259-ter of Legislative Decree No. 152/2006 which, in a sort of 'recovery' of the previous system of administrative offences, provides for a reduced sanction in cases where the offences referred to in Articles 255-bis, 255 ter, 256 and 259, now classified as crimes, are committed through negligence. The provision therefore allows for the punishment to be modulated on the basis of the subjective element, recognising a reduction in the sanction of between one third and two thirds in cases where there is no intent ( ), thus restoring, at least in part, the flexibility in sanctions typical of the old offences.
Sanctions applicable to the Entity:
when the circumstances referred to in Article 259-ter of Legislative Decree No. 152 of 2 April 2006 apply, the sanctions provided for in paragraph 2, letters a-bis), a-ter), b) and e) are reduced by one third to two thirds.

Offences relating to atmospheric emissions (Article 279, paragraph 5, Legislative Decree No. 152/2006)
The offence occurs when, in the operation of a plant, the emission limit values set out in Annexes I, II, III or V to Part Five of Legislative Decree 152/2006, the plans and programmes or the regulations referred to in Article 271 of the decree or the requirements otherwise imposed by the competent authority, exceeding the air quality limit values laid down in the regulations in force.
Sanctions applicable to the Entity:
a financial sanction of up to two hundred and fifty units.

Offences relating to the protection of endangered animal and plant species (Law No. 150/1992)
The offence is committed if:

- (Article 1, paragraph 1) anyone, in violation of the provisions of Regulation (EC) No. 338/97 for specimens belonging to the species listed in Annex A to the Regulation:
  a) imports, exports or re-exports specimens, under any customs regime, without the required certificate or licence, or with an invalid certificate or licence;
  b) fails to comply with the requirements for the safety of specimens, specified in a licence or certificate issued in accordance with Regulation (EC) No 338/97 and Regulation (EC) No 939/97;
  c) uses the aforementioned specimens in a manner that does not comply with the requirements contained in the authorisation or certification measures;

d) transports or causes to be transported, including on behalf of third parties, specimens without the required licence or certificate issued in accordance with Regulation (EC) No 338/97 and Regulation (EC) No 939/97;
e) trades in artificially propagated plants in contravention of the requirements laid down in Article 7(1)(b) of Regulation (EC) No 338/97 and Regulation (EC) No 939/97;
f) possesses, uses for profit, purchases, sells, displays or holds for sale or for commercial purposes, offers for sale or otherwise transfers specimens without the required documentation;

- (Article 1, paragraph 2): with reference to the aforementioned offences, in the event of a repeat offence, the sanction of imprisonment for 1 to 3 years and a fine of between €30,000 and €300,000 shall apply. If the aforementioned offence is committed in the course of business activities, the conviction shall result in the suspension of the licence for a minimum of six months and a maximum of two years;
- (Art. 2, para. 1) anyone who, in violation of the provisions of Regulation (EC) No. 338/97, for specimens belonging to the species listed in Annexes B and C of the Regulation:
  a) imports, exports or re-exports specimens, under any customs regime, without the required certificate or licence;
  b) fails to comply with the requirements for the safety of specimens, specified in a licence or certificate issued in accordance with Regulation (EC) No 338/97 and Regulation (EC) No 939/97;
  c) uses the aforementioned specimens in a manner that does not comply with the requirements contained in the authorisations or certificates issued together with the import licence or certificates subsequently;
  d) transports or causes to be transported, including on behalf of third parties, specimens without the required licence or certificate;
  e) trades in artificially propagated plants in contravention of the requirements laid down in Article 7(1)(b) of Regulation (EC) No 338/97 and Regulation (EC) No 939/97;
  f) possesses, uses for profit, purchases, sells, displays or holds for sale or for commercial purposes, offers for sale or otherwise transfers specimens without the required documentation;
- (Article 2, paragraph 2): with reference to the aforementioned offences, in the event of a repeat offence, the sanction of imprisonment for a period of between 6 and 18 months and a fine of between €20,000 and €200,000 shall apply. If the above offence is committed in the course of business activities, the conviction shall result in the suspension of the licence for a minimum of six months and a maximum of eighteen months;
- (Art. 3-bis, para. 1): anyone who introduces specimens into the Community or exports or re-exports them from the Community with false, falsified or invalid certificates or licences, or certificates or licences that have been altered without the authorisation of the issuing authority (Art. 16, para. 1, EC Regulation 338/97, letter A);
- anyone who makes a false declaration or knowingly provides false information in order to obtain a licence or certificate (Article 16(1) of Regulation (EC) No 338/97, letter C);
- anyone who uses a false, falsified or invalid licence or certificate, or one that has been altered without authorisation, as a means of obtaining a Community licence or certificate or for any other purpose relevant to this Regulation (Art. 16, para. 1, EC Regulation 338/97, letter D);
- anyone who omits or falsifies import notification (Article 16(1) of Regulation (EC) No 338/97, letter E);
- falsifies or alters any licence or certificate issued in accordance with the Regulation (Art. 16, para. 1, EC Regulation 338/97, letter L);
- (Art. 6, para. 4): without prejudice to the provisions of Law No. 157 of 11 February 1992, it is prohibited for anyone to keep live specimens of wild mammals and reptiles and live specimens of mammals and reptiles from captive breeding that constitute a danger to public health and safety.

Sanctions applicable to the Entity:

- for violation of Articles 1, paragraph 1, 2, paragraphs 1 and 2, and 6, paragraph 4, a financial sanction of up to two hundred and fifty units;
- for violation of Article 1, paragraph 2, a fine of between one hundred and fifty and two hundred and fifty units;
- for offences under the Criminal Code referred to in Article 3-bis, paragraph 1, of the same Law No. 150 of 1992 (Article 16, paragraph 1, EC Regulation 338/97), respectively:
    1) a fine of up to two hundred and fifty units, in the case of offences for which the maximum sanction is one year's imprisonment;
    2) a fine of between one hundred and fifty and two hundred and fifty units, in the case of offences punishable by a maximum sentence of two years' imprisonment;
    3) a fine of between two hundred and three hundred units, in the case of offences punishable by a maximum sentence of up to three years' imprisonment;
    4) a fine of between three hundred and five hundred units, in the case of offences punishable by a maximum sentence of more than three years' imprisonment.

Offences relating to the protection of the stratospheric ozone layer and the environment (Law No. 549 of 28 December 1993)

The offence is committed when the provisions on the production, consumption, import, export, possession and marketing of harmful substances referred to in the regulations (EC) in force are violated.

Sanctions applicable to the Entity:

for the offence of violating the provisions on the cessation and reduction of the use of ozone-depleting substances provided for in Article 3, paragraph 6, of Law No. 549/1993, a fine of between one hundred and fifty and two hundred and fifty units.

Pollution caused by ships (Articles 8 and 9 of Legislative Decree No. 202/2007)

The offence is committed in the case of:

- deliberate discharge of pollutants into the sea or causing such discharge (Article 8, paragraph 1);
- negligent discharge of pollutants into the sea or causing such discharge (Article 9, paragraph 1);
- deliberate discharge of pollutants into the sea or causing such discharge to occur, resulting in permanent or particularly serious damage to water quality, animal or plant species or parts thereof (Article 8, paragraph 2);
- negligent discharge of pollutants into the sea or causing such discharge to occur, resulting in permanent or particularly serious damage to water quality, animal or plant species or parts thereof (Article 9, paragraph 2).

Sanctions applicable to the Entity:

- for the offence of negligent spillage of pollutants into the sea under Article 9, paragraph 1, a financial sanction of up to two hundred and fifty units. For the offence of deliberate spillage of pollutants into the sea under Article 8, paragraph 1, of Legislative Decree No. 202/2007 and for the negligent discharge of such substances that has caused serious or permanent damage to water quality, animal or plant species or parts thereof, as provided for in Article 9, paragraph 2 of Legislative Decree No. 202/2007, a fine of between one hundred and fifty and two hundred and fifty units. For the offence of deliberate spillage of pollutants into the sea causing serious or permanent damage to water quality, animal or plant species or parts thereof, as provided for in Article 8, paragraph 2, of Legislative Decree No. 202/2007, the financial sanction shall be between two hundred and three hundred units.

- For violation of Article 8, paragraphs 1 and 2, and Article 9, paragraph 2, in the event of conviction, disqualification sanctions for a period not exceeding six months.

If the Entity or one of its organisational units is used on a permanent basis for the sole or main purpose of allowing or facilitating the commission of the offence referred to in Article 8 of Legislative Decree No. 202/2007, the sanction of permanent disqualification from carrying out the activity pursuant to Article 16, paragraph 3, of Legislative Decree No. 231/2001 shall apply.

TRANSNATIONAL OFFENCES 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 Organised 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 to prevent and combat 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 legal persons and companies for the offences specified therein.
More specifically, Article 10 of the law in question provides for the extension of the provisions of the Decree 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 offence is considered to be *'an offence punishable by imprisonment of not less than four years, where an organised criminal group is involved*, *and where:*

a) it 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) or is committed in one State, but involves an organised criminal group engaged in criminal activities in more than one State;
d) i.e. committed in one State but having substantial effects in another State.

For the purposes of the Convention, an '*organised criminal* group' means *'a structured group existing for a period of time, composed of three or more persons acting in concert with the aim of committing one or more serious crimes or offences established in the Convention, in order to obtain, directly or indirectly, a financial or other material benefit*'.
With reference to the offences giving rise to the administrative liability of the entity, Article 10 of Law No. 146/06 lists the following cases:

Criminal association (Article 416 of the Criminal Code)
This offence punishes those who promote, establish or organise an association for the purpose of committing multiple crimes. Even the mere fact of participating in the association constitutes an offence. The criminal relevance of the conduct described in the provision appears to be conditional upon the actual establishment of the criminal association. In fact, even before referring to the individual acts of promotion, establishment, management, organisation or simple participation, the provision makes punishment conditional upon 'three or more persons' actually associating to commit multiple crimes. The offence of criminal association is therefore characterised by the autonomy of the offence from any crimes subsequently committed in implementation of *the pactum sceleris*. Such crimes, in fact, contribute to the crime of criminal association and, if not perpetrated, leave the crime provided for in Article 416 of the Criminal Code to stand. The sanction 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 removed from living persons) and 602 (purchase and sale of slaves) of the Criminal Code, Article 12, paragraph 3-bis, of Legislative Decree No. 286/1998 (offences concerning violations of provisions

on illegal immigration and regulations on the status of foreigners), as well as Articles 22, paragraphs 3 and 4, and 22-bis, paragraph 1 (sanctions for trafficking in organs intended for transplantation; *reference to be understood as referring to Article 601-bis of the Criminal Code pursuant to Article 7 of Legislative Decree No. 21/2018*), imprisonment of between five and fifteen years shall apply in the cases provided for in the first paragraph and between four and nine years in the cases provided for in the second paragraph. 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 or access to pornographic material), 600-quater-1 (virtual pornography), 600-quinquies (tourism initiatives aimed at the exploitation of child prostitution), 609-bis (sexual violence), when the offence is committed against a minor under the age of eighteen, 609-quater (sexual acts with minors), 609-quinquies (corruption of minors), 609-octies (gang rape), when the offence is committed against a minor under the age of eighteen, 609-undecies (grooming of minors) of the Criminal Code, imprisonment of between four and eight years shall apply in the cases provided for in the first paragraph and between two and six years in the cases provided for in the second paragraph.
Sanctions applicable to the Entity:

- financial sanction: from 400 to 1000 units;
- disqualification sanctions (for a period of not 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

Mafia-type associations, including foreign ones (Article 416-bis of the Criminal Code)
Anyone who is a member of a mafia-type association consisting of three or more persons shall be punished with imprisonment for a term of between ten and fifteen years. The article punishes those who promote, establish or organise the association with imprisonment for a term of between twelve and eighteen years. An association is of a mafia type when its members use the intimidating power of the association and the resulting condition of subjugation and silence to commit crimes, to acquire, directly or indirectly, the management or control of economic activities, concessions, authorisations, contracts and public services, or to obtain unfair profits or advantages for themselves or others, or in order to prevent or hinder the free exercise of voting rights or to procure votes for themselves or others in elections. If the association is armed, the sanction of imprisonment from twelve to twenty years shall apply 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 access to weapons or explosives, even if concealed or kept in storage, for the purpose of achieving the association's objectives.
sanctions applicable to the organisation:

- financial sanction: from 400 to 1000 units;
- disqualification sanctions (for a period of not less than one year): 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

Criminal association for the purpose of smuggling manufactured tobacco (Article 86 of Legislative Decree No. 141/2024)
When three or more persons associate for the purpose of committing more than one of the offences referred to in Article 84 or Article 40-bis of the Consolidated Law on Production and Consumption Taxes and Related Criminal and Administrative sanctions, referred to in Legislative Decree No. 504 of 26 October 1995, including with reference to the products referred to in Articles 62-quater, 62-

quater.1, 62-quater.2 and 62-quinquies referred to in the aforementioned consolidated text, those who promote, establish, direct, organise or finance the association shall be punished, for that alone, with imprisonment for a term of between three and eight years. Sanctions applicable to the Entity:

- financial sanction: from 400 to 1000 units;
- disqualification sanctions (for a period of not 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

Association for the purpose of illicit trafficking in narcotic drugs and psychotropic substances (Article 74 of Presidential Decree 309/90)

An association is aimed at the illicit trafficking of narcotic or psychotropic substances when three or more persons associate for the purpose of committing more than one of the offences referred to in Article 73 of Presidential Decree No. 309/90 (illicit production, trafficking and possession of narcotic or psychotropic substances). Anyone who promotes, establishes, directs, organises or finances the association shall be punished for this alone with imprisonment of not less than twenty years.
Sanctions applicable to the Entity:

- financial sanction: from 400 to 1000 units;
- disqualification sanctions (for a period of not 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

Provisions against illegal immigration (Article 12, paragraphs 3, 3-bis, 3-ter, 5 of Legislative Decree No. 286/98)

Article 12 of the Consolidated Law referred to in Legislative Decree No. 286/98 provides in paragraph 1 for the criminal offence known as aiding and abetting illegal immigration, consisting of the fact that anyone who, "*in violation of the provisions of this consolidated law ... performs acts aimed at procuring the entry of a foreigner into the territory of the State*". Article 12, paragraph 3, provides for the following aggravating circumstances:

• *'the offence concerns the illegal entry or stay in the territory of the State of five or more persons;*
• *in order to procure illegal entry or stay, the person was exposed to danger to their life or safety*;
• *in order to procure illegal entry or stay, the person was subjected to inhuman or degrading treatment;*
• *the act is committed by three or more persons acting in concert or using international transport services or forged or altered documents or documents obtained illegally*";
• *the perpetrators of the offence have access to weapons or explosive materials*.

Paragraphs 3-bis and 3-ter of Article 12 provide, respectively, that the sanctions are also increased "*if the acts referred to in paragraph 3 are committed in two or more of the cases referred to in letters a), b), c), d) and e) of the same paragraph"* and "*the prison sentence shall be increased by one third to one half and a fine of €25,000 shall be imposed for each person if the acts referred to in paragraphs 1 and 3: a) are committed for the purpose of recruiting persons for prostitution or sexual or labour exploitation or concern the entry of minors to be employed in illegal activities for the purpose of facilitating their exploitation; b) are committed for the purpose of obtaining profit, even indirectly.*

The fifth paragraph of Article 12 provides for a further criminal offence, known as aiding and abetting illegal residence, consisting of the fact that anyone who, *'in order to derive unjust profit from the illegal status of a foreign national or in the context of activities punishable under this article, aids*

and abets the residence of such persons in the territory of the State in violation of the provisions of this consolidated text'.
Sanctions applicable to the Entity:

- financial sanction: from 200 to 1000 units;
- 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

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, please refer to the section on offences against the public administration.
Sanctions applicable to the Entity:

- financial sanction: up to 500 units.

Aiding and abetting (Article 378 of the Italian Criminal Code)
Article 378 of the Italian Criminal Code punishes the conduct of anyone who, after a crime has been committed for which the law establishes life imprisonment or imprisonment, and outside the cases of complicity in the same, helps someone to evade the investigations of the Authority or to escape its searches. The provisions of this article also apply when the person assisted is not criminally liable or is found not to have committed the crime. For the offence to be committed, the conduct of the person providing assistance must be at least potentially detrimental to the investigations of the authorities.
Sanctions applicable to the Entity:

- financial sanction: up to 500 units.

For offences provided for and punished by Articles 377-bis and 378 of the Criminal Code, please refer to the provisions relating to offences against the Public Administration.

ORGANISED CRIME OFFENCES (ART. 24-TER OF THE DECREE)

Law No. 94 of 15 July 2009 ("*Provisions on public safety*") extended, with the introduction of Article 24-ter in Legislative Decree No. 231/2001, the administrative liability of entities to offences related to organised crime committed within the territory of the State, even if they do not meet the requirement of transnationality.
The article lists the following types of offences:

Criminal association (Article 416 of the Italian Criminal Code)
For a description of the offence in question, please refer to the previous paragraph.
Sanctions applicable to the Entity:

- financial sanction: for the first 5 paragraphs of Article 416 of the Italian Criminal Code, from 300 to 800 units; for the sixth paragraph of Article 416 of the Italian Criminal Code, from 400 to 1000 units;
- disqualification sanctions (for a period of not less than 1 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 to obtain public services; exclusion from benefits, financing,

contributions or subsidies and the possible 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 offence in question, please refer to the previous paragraph.
Sanctions applicable to the Entity:

- financial sanction: from 400 to 1000 units;
- disqualification sanctions (for a period of not 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 for the purpose of obtaining public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

Political-mafia electoral exchange (Article 416-ter of the Italian Criminal Code)[84]
The first paragraph of this criminal provision 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 by the means referred to in the third paragraph of Article 416-bis in exchange for the payment or promise of payment of money or any other benefit or in exchange for the willingness to satisfy the interests or needs of the mafia association. The same sanction shall apply to anyone who promises, directly or through intermediaries, to procure votes in the cases referred to in the first paragraph. If the person who accepted the promise of votes, following the agreement referred to in the first paragraph, is elected in the relevant election, the sanction provided for in the first paragraph of Article 416-bis shall be increased by half.
Sanctions applicable to the Entity:

- financial sanction: from 400 to 1000 units;
- disqualification sanctions (for a period of not 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

Kidnapping for the purpose of robbery or extortion (Article 630 of the Criminal Code)
The criminal provision in question punishes anyone who kidnaps a person for the purpose of obtaining, for themselves or for others, an unjust profit as the price of release. If the kidnapping results in the death of the kidnapped person, as an unintended consequence of the offender's actions, the offender shall be punished with imprisonment for thirty years. If the offender causes the death of the kidnapped person, the sanction of life imprisonment shall apply. Any accomplice who, dissociating themselves from the others, acts to ensure that the victim regains their freedom, without this result being a consequence of the ransom paid, shall be punished in accordance with Article 605. However, if the victim dies as a result of the kidnapping after their release, the sanction shall be imprisonment for a term of between six and fifteen years. A participant who, dissociating himself from the others, endeavours, outside the case provided for in the previous paragraph, to prevent the criminal activity from having further consequences or who actively assists the police or judicial authorities in gathering decisive evidence for the identification or capture of the participants, the sanction of life imprisonment shall be replaced by imprisonment for a term of between twelve and twenty years and the other sanctions shall be reduced by one third to two thirds.

[84] The criminal provision in question was amended by Law No. 43 of 21 May 2019.

Sanctions applicable to the Entity:

- financial sanction: from 400 to 1,000 units;
- disqualification sanctions (for a period of not 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

Association for the purpose of illicit trafficking in narcotic drugs and psychotropic substances (Article 74 of Presidential Decree No. 309/90)

For a description of the offence in question, please refer to the previous paragraph.

Sanctions applicable to the Entity:

- financial sanction: from 400 to 1000 units;
- disqualification sanctions (for a period of not less than 1 year): 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

Illegal manufacture, introduction into the country, sale, transfer, possession and carrying in a public place or a place open to the public of weapons of war or war-like weapons or parts thereof, explosives, illegal weapons and multiple common firearms (Article 407, paragraph 2, letter a), number 5), Code of Criminal Procedure).

Article 24 ter of the Decree also refers to the offences of illegal manufacture, introduction into the State, sale, transfer, possession and carrying in a public place or place open to the public of weapons of war or war-like weapons or parts thereof, explosives, illegal weapons and multiple common firearms, excluding those provided for in Article 2, paragraph 3, of Law No. 110 of 18 April 1975.

Sanctions applicable to the Entity:

- financial sanction: from 300 to 800 units;
- disqualification sanctions (for a period of not less than one year): 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

COUNTERFEITING OF CURRENCY, PUBLIC CREDIT CARDS, REVENUE STAMPS AND IDENTIFICATION INSTRUMENTS OR MARKS (ARTICLE 25-BIS, LEGISLATIVE DECREE NO. 231/2001)

Article 6 of Decree Law No. 350 of 25 September 2001, converted into law, with amendments, by Law No. 409 of 23 November 2001, added the offences described below to Article 25-bis of Legislative Decree No. 231/2001.

Counterfeiting of coins, spending and introduction into the State, by prior agreement, of counterfeit coins (Article 453 of the Criminal Code)

The provision punishes counterfeiting, i.e. the alteration of coins (domestic or foreign), the introduction into the State of altered or counterfeit coins, the purchase of counterfeit or altered coins

for the purpose of putting them into circulation, and the unlawful manufacture of quantities of coins in excess of the requirements[85] .

Sanctions applicable to the Entity

- financial sanctions: from 300 to 800 units;
- disqualification sanctions: prohibition from contracting with the public administration, except for the purpose of obtaining public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

Alteration of coins (Article 454 of the Criminal Code)

The law punishes anyone who alters coins by reducing their value in any way or who commits one of the acts indicated in the previous article with regard to coins altered in this way.

Sanctions applicable to the Entity

- financial sanctions: up to 500 units;
- disqualification sanctions: prohibition from contracting with the public administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

Spending and introducing counterfeit coins into the country without consultation (Article 455 of the Criminal Code)

The law punishes anyone who, except in the cases provided for in the previous articles, introduces into the territory of the State, purchases or holds counterfeit or altered coins for the purpose of spending them or putting them into circulation.

Sanctions applicable to the Entity

- financial sanctions: the financial sanctions provided for in Articles 453 and 454 of the Criminal Code, reduced by one third to one half;
- disqualification sanctions: prohibition from contracting with the public administration, except for obtaining public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

Spending counterfeit coins received in good faith (Article 457 of the Italian Criminal Code)

The law punishes anyone who spends or otherwise puts into circulation counterfeit or altered coins received in good faith.

Sanctions applicable to the Entity

financial sanction: up to 200 units.

Counterfeiting of revenue stamps, introduction into the State, purchase, possession or circulation of counterfeit revenue stamps (Article 459 of the Criminal Code)

The provision punishes the conduct referred to in Articles 453, 455 and 457 of the Italian Criminal Code, including in relation to the counterfeiting or alteration of revenue stamps and the introduction into the State, purchase, possession and circulation of counterfeit revenue stamps.

Sanctions applicable to the Entity

[85] Legislative Decree No. 125/2016 amended Article 453 of the Criminal Code by adding the following after the first paragraph: "*The same sanction shall apply to anyone who, being legally authorised to produce coins, unlawfully manufactures quantities of coins in excess of the requirements, abusing the tools or materials at their disposal. The sanction is reduced by one third when the conduct referred to in the first and second paragraphs concerns coins that are not yet legal tender and the initial term of the same is determined*."

- financial sanction: the financial sanctions provided for in Articles 453, 455, 457 and 464, paragraph 2, of the Italian Criminal Code, reduced by one third;
- disqualification sanctions: prohibition from contracting with the public administration, except for the purpose of obtaining public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

Counterfeiting of watermarked paper used for the manufacture of public credit cards or revenue stamps (Article 460 of the Italian Criminal Code)
The law punishes the counterfeiting of watermarked paper used for the manufacture of public credit cards or revenue stamps, as well as the purchase, possession and sale of such counterfeit paper.
Sanctions applicable to the Entity

- financial sanction: up to 500 units;
- Disqualification sanctions: prohibition from contracting with the Public Administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

Manufacture or possession of watermarks or instruments intended for the counterfeiting of coins, revenue stamps or watermarked paper (Article 461 of the Italian Criminal Code[86])
The law punishes the manufacture, purchase, possession or disposal of watermarks, computer tools or tools intended exclusively for the counterfeiting or alteration of coins, revenue stamps or watermarked paper, as well as holograms or other components of coins intended to protect against counterfeiting or alteration.
Sanctions applicable to the Entity

- financial sanction: up to 500 units;
- disqualification sanctions: prohibition from contracting with the Public Administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

Use of counterfeit or altered revenue stamps (Article 464 of the Italian Criminal Code)
The law punishes the use of counterfeit or altered revenue stamps, even if received in good faith.
Sanctions applicable to the Entity
financial sanction: up to 200 units.

Law No. 99/2009, containing "*Provisions for the development and internationalisation of businesses, as well as in the field of* energy", amended the heading of Article 25-bis of the Decree, adding a reference to forgery in instruments or signs of recognition, and including the offences referred to in Articles 473 and 474 of the Criminal Code, as set out below.

Counterfeiting, alteration or use of trademarks or distinctive signs or patents, models and designs (Article 473 of the Italian Criminal Code)
The provision punishes the counterfeiting or alteration of national or foreign trademarks or distinctive signs of industrial products, or the use of such counterfeit or altered trademarks or signs.

[86] Legislative Decree No. 125/2016 amended Article 461 of the Italian Criminal Code, first paragraph, as follows: *"1) after the word: 'programmes', the following words are inserted: 'and data'; 2) the word: 'exclusively' is deleted"*.

The provision also punishes the counterfeiting or alteration of domestic or foreign patents, industrial designs or models, or the use of such counterfeit or altered patents, designs or models.
The offences referred to in the first and second paragraphs are punishable provided that the provisions of domestic laws, Community regulations and international conventions on the protection of intellectual or industrial property have been observed.
The offence referred to in Article 473 of the Criminal Code is considered a concrete danger offence, given that the objective element of the offence does not require actual damage to public trust, but rather requires the specific offensive nature of the conduct, or the actual risk of confusion for consumers in general. The registration of the trademark/patent, in accordance with domestic, EU and international regulations, is an essential element for the offence to be established.
Sanctions applicable to the Entity

- financial sanctions: up to 500 units;
- disqualification sanctions: prohibition from contracting with the public administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

Introduction into the State and trade in products with false markings (Article 474 of the Criminal Code)
The law punishes, except in cases of complicity in the offences provided for in Article 473, the introduction into the State, for the purpose of making a profit, of industrial products bearing counterfeit or altered trademarks or other distinctive signs, whether national or foreign.
The provision also punishes, except in cases of complicity in counterfeiting, the alteration, introduction into the State, possession for sale, sale or other circulation, for profit, of the products referred to in the first paragraph.
The offences referred to in the first and second paragraphs are punishable provided that the provisions of domestic laws, Community regulations and international conventions on the protection of intellectual or industrial property have been observed.
The offence referred to in Article 474 of the Criminal Code is subsidiary to that referred to in Article 473 of the Criminal Code, i.e. only those who have not participated in the counterfeiting may be held liable for the introduction into the State or the placing on the market. For the purposes of punishment, there must be specific intent represented by profit and general intent relating to awareness of the counterfeiting of another's trademark.
Sanctions applicable to the Entity

- financial sanctions: up to 500 units;
- disqualification sanctions: prohibition from contracting with the Public Administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

OFFENCES AGAINST INDUSTRY AND COMMERCE (ART. 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 No. 231/2001, which extends the criminal liability of legal persons to the offences described in the articles below.

Disruption of industry and commerce (Article 513 of the Italian Criminal Code)
The provision punishes those who, if the act does not constitute a more serious offence, use violence against property or fraudulent means to prevent or disrupt the operation of a business or trade. The offence provides for the alternative use of violence against property or fraudulent means to prevent

or disrupt the operation of an industry or trade. The conduct must be aimed at preventing or disrupting an industry or trade, therefore, the offence is considered to have been committed in advance, as it is not necessary for the prevention or disruption to have actually taken place for the offence to be completed, provided that the conduct is theoretically capable of achieving the result.
Sanctions applicable to the Entity
financial sanction: up to 500 units.

Unlawful competition with threats and violence (Article 513-bis of the Italian Criminal Code)
The provision punishes anyone who, in the exercise of a commercial, industrial or productive activity, engages in acts of competition involving violence or threats. The legal interest protected by the provision is the proper functioning of the entire economic system, in order to prevent violent or intimidating behaviour from jeopardising the very foundations of fair competition.
Sanctions applicable to the Entity

- financial sanction: up to 800 units;
- disqualification sanctions: prohibition from contracting with the public administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

Fraud against national industries (Article 514 of the Criminal Code)
The law punishes anyone who sells or otherwise circulates, on domestic or foreign markets, industrial products with counterfeit or altered names, trademarks or distinctive signs, which cause damage to national industry. This provision aims to protect the economic order and, more specifically, national production. Damage to national industry can take any form of prejudice, whether in the form of loss of profit or actual damage (i.e. decrease in business in Italy or abroad, failure to increase business, tarnishing of the industry's good name in relation to the product in question or commercial fairness).
Sanctions applicable to the Entity

- financial sanction: up to 800 units;
- Disqualification sanctions: prohibition from contracting with the public administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

Fraud in the exercise of trade (Article 515 of the Italian Criminal Code)
The law punishes anyone who, in the exercise of a commercial activity or in a shop open to the public, delivers to the purchas ly one movable item for another, or a movable item whose origin, provenance, quality or quantity differs from that declared 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 item for another. The protected asset is the fairness of commercial exchanges.
The offence in question is committed upon delivery of the movable property, delivery being understood to mean not only the *transfer* of the property but also the mere handing over of the document representing it (waybill, pledge policy) when civil law or commercial practice equates the delivery of the document with *the transfer*.
Sanctions applicable to the Entity
financial sanction: up to 500 units.

Sale of non-genuine foodstuffs as genuine (Article 516 of the Criminal Code)
The interest protected by this provision is, in this case too, good faith in commercial transactions. The term 'genuineness' means, on the one hand, the conformity of the product with the legal requirements of the sectoral legislation and, on the other, the integrity and non-alteration of the essential characteristics of the goods.
For the offence to be committed, the perpetrator must be aware that the substance is not genuine and must intend to present it as genuine.
Sanctions applicable to the Entity
financial sanction: up to 500 units.

Sale of products with false markings (Article 517 of the Italian Criminal Code)
The law punishes the conduct of holding for sale[87] , offering for sale or otherwise circulating intellectual works or industrial products with names, trademarks or distinctive signs, whether national or foreign, that are likely to mislead the buyer as to the origin, provenance or quality of the work or product.
This provision differs from the previous cases referred to in Articles 473 and 474 of the Italian Criminal Code, in that it punishes conduct involving trademarks/distinctive signs which, although not imitating other registered trademarks/distinctive signs, are nevertheless likely to mislead consumers. Therefore, the interest protected is not the protection of trademarks but the protection of consumers.
For the purposes of establishing the elements of the offence in question, the imitated product must be capable of misleading, i.e. the product must be capable of misleading the average consumer, and it is not necessary for actual damage to the consumer to have been caused (case of actual danger).
Sanctions applicable to the Entity
financial sanction: up to 500 units.

Manufacture and trade of goods made by usurping industrial property rights (Article 517-ter of the Italian Criminal Code)
The law punishes anyone who, being aware of the existence of industrial property rights, manufactures or uses industrially objects or other goods produced, usurping industrial property rights or in violation of the same or who, for the purpose of making a profit, introduces into the territory of the State, holds for sale, offers for sale directly to consumers or otherwise puts into circulation the goods referred to in the first paragraph. The offence is configurable when the cases referred to in Articles 473 and 474 of the Criminal Code are excluded. The legal right protected by the provision concerns the right to exploit industrial property rights, i.e. trademarks and other distinctive signs, geographical indications, designations of origin, designs and models, inventions, utility models, topographies of semiconductor products, and confidential business information. 'Usurpation' occurs when the perpetrator does not hold any rights over the item and nevertheless manufactures/markets the goods; 'title infringement' occurs when the rules relating to the existence, scope and exercise of industrial property rights referred to in Chapter II of the Industrial Property Code (Legislative Decree No. 30 of 10 February 2005, as amended) are not complied with.
Sanctions applicable to the Entity
financial sanction: up to 500 units.

Counterfeiting of geographical indications or designations of origin of agri-food products (Article 517-quater of the Italian Criminal Code)
The law punishes the counterfeiting or alteration of geographical indications or designations of origin of agri-food products; or the introduction into the territory of the State, the possession for sale, the

[87] Conduct added by Article 52 of Law No. 206 of 27 December 2023 containing "*Comprehensive provisions for the enhancement, promotion and protection of products made in Italy*".

sale with direct offer to consumers and the placing in circulation, for profit, of products with counterfeit indications or designations. The offences in question are punishable provided that the provisions of domestic laws, EU regulations and international conventions on the protection of geographical indications and designations of origin of agri-food products have been observed.
Sanctions applicable to the Entity
financial sanction: up to 500 units.

OFFENCES RELATING TO COPYRIGHT INFRINGEMENT (ARTICLE 25-NOVIES OF LEGISLATIVE DECREE NO. 231/2001)

Law No. 99 of 23 July 2009, containing "*Provisions for the development and internationalisation of businesses and on energy" (the so-called "Development-Energy Law*"), in force since 15 August 2009, made a further addition to *the body* of legislation of Legislative Decree No. 231/2001, introducing Article 25-novies, , which extends the administrative liability of the Entity to 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: 171, paragraph 1, letter a-bis) and paragraph 3, Law 633/1941); Article 171-bis of Law 633/1941; Article 171-ter of Law 633/1941; Article 171-septies of Law 633/1941; Article 171-octies of Law 633/1941.
Finally, Article 25 entitled *'Protection of copyright in works generated with the aid of artificial* intelligence' of Law No. 132/2025 amended the first paragraph of Article 1 of Law No. 633/1941, which is now reworded as follows: *"Creative works of human intellect belonging to literature, music, the visual arts, architecture, theatre and cinematography are protected under this law, regardless of their mode or form of expression, even when created with the aid of artificial intelligence tools, provided that they are the result of the author's intellectual work.*"

Art. 171, paragraph 1, letter a-bis) and paragraph 3 (Law No. 633/1941)
The provision punishes the conduct of making available to the public, through the introduction of a telematic network system and through connections of any kind, a protected intellectual work or part thereof, as well as if the aforementioned offence is committed on a work by another person not intended for publicity, or by usurping the authorship of the work, or by distorting, mutilating or otherwise modifying the work itself, if this results in damage to the honour or reputation of the author. This provision protects the financial interests of the author of the work, who could see their expectations of earnings frustrated in the event of the free circulation of their work on the internet.
Sanctions applicable to the Entity

- financial sanction: up to 500 units;
- disqualification sanctions: 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services (for a period not exceeding one year).

Art. 171-bis (Law No. 633/1941)
[88]The law punishes anyone who unlawfully duplicates computer programs for profit, or for the same purposes imports, distributes, sells, holds for commercial or business purposes, or leases programs contained in media that are not marked in accordance with this law; or those who, for profit, reproduce, transfer to another medium, distribute, communicate, present or demonstrate in public the contents of a database in violation of the provisions of Articles 64-quinquies and 64-sexies, or extracts

[88] Law No. 166 of 14 November 2024, "*Conversion, with amendments, of Decree-Law No. 131 of 16 September 2024, containing urgent provisions for the implementation of obligations arising from European Union acts and from infringement and pre-infringement proceedings pending against the Italian State*", replaced the phrases "*by the Italian Society of Authors and Publishers (SIAE)*" and "*SIAE*" with the phrase "*pursuant to this law*".

or reuses the database in violation of the provisions of Articles 102-bis and 102-ter, or distributes, sells or leases a database.
This provision is intended to provide criminal protection for software and databases. The term 'software' refers to computer programs, in any form, provided they are original, as the result of the intellectual creation of the author; while 'databases' refers to collections of works, data or other independent elements, systematically or methodically arranged and individually accessible by electronic or other means.
Sanctions applicable to the Entity

- financial sanction: up to 500 units;
- disqualification sanctions: 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services (for a period not exceeding one year).

Art. 171-ter (Law No. 633/1941)
This provision is aimed at protecting a wide range of intellectual works, including those intended for radio, television and cinema, as well as musical, literary, scientific or educational works. The conditions for punishability ly concern the non-personal use of intellectual works and the specific intent to make a profit.
Article 3 of Law No. 93 of 14 July 2023 on *'Provisions for the prevention and suppression of the unlawful dissemination of content protected by copyright through electronic communications* networks' amended paragraph 1 of Article 171-ter of Law No. 633/1941, introducing letter h-bis), which punishes anyone who "*unlawfully, including by the methods indicated in paragraph 1 of Article 85-bis of the Consolidated Law on Public Security, referred to in Royal Decree No. 773 of 18 June 1931, makes a recording on digital media, audio, video or audiovisual recording, in whole or in part, of a cinematographic, audiovisual or editorial work, or reproduces, performs or communicates to the public the unlawfully made recording*'.[89]
Sanctions applicable to the Entity

- financial sanction: up to 500 units;
- disqualification sanctions: 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services (for a period not exceeding one year).

Art. 171-septies (Law No. 633/1941)[90]
The provision punishes, unless the act constitutes a more serious offence, anyone who falsely declares that they have fulfilled the obligations referred to in Article 181-bis, paragraph 2, of this law.
The provision in question is intended to protect the control functions of the SIAE, other collective management organisations and independent management entities that verify the accuracy of the applicant's certification regarding the fulfilment of obligations arising from copyright and related rights legislation.
Sanctions applicable to the Entity

- financial sanction: up to 500 units;

[89] The aforementioned Law No. 166 of 14 November 2024 replaced the phrase *'pursuant to this law, the affixing of a mark by the Italian Society of Authors and Publishers (SIAE)'* with the phrase *'the affixing of a mark pursuant to this law'*.
[90] The aforementioned Law No. 166 of 14 November 2024 repealed letter a) of Article *171-septies*, which provided as follows: *"to 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 of the date of placing on the market in Italy or importation the data necessary for the unambiguous identification of the media themselves;*".

- disqualification sanctions: 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services (for a period not exceeding one year).

Art. 171-octies (Law No. 633/1941)
The provision punishes anyone who, for fraudulent purposes, produces, offers for sale, imports, promotes, installs, modifies or uses for public or private use equipment or parts of equipment designed to decode conditional access audiovisual transmissions carried out via terrestrial, satellite or cable means, in both analogue and digital form. Conditional access refers to all audiovisual 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 entity transmitting the signal, regardless of whether a fee is charged for the use of this service.
Sanctions applicable to the Entity
- financial sanction: up to 500 units;
- disqualification sanctions: 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 to obtain public services; exclusion from benefits, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services (for a period not exceeding one year).

TAX OFFENCES (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, among other things, for "*amendments to criminal law and the administrative liability of* entities" and the introduction of the following criminal offences into the list of predicate offences under Legislative Decree No. 231/2001:
- "*fraudulent declaration through the use of invoices or other documents for non-existent transactions*" (Article 2, paragraphs 1 and 2-bis, Legislative Decree No. 74/2000);
- "*fraudulent declaration through other means*" (Article 3 of Legislative Decree No. 74/2000);
- "*issuing invoices or other documents for non-existent transactions*" (Article 8, paragraphs 1 and 2-bis, Legislative Decree No. 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 No. 74/2000).

More specifically, the aforementioned law inserts Article *25-quinquiesdecies* entitled "*Tax offences*" into Decree 231.
Subsequently, on 15 July 2020, Legislative Decree No. 75 of 14 July 2020 was published in the Official Gazette (No. 177), *implementing 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.
The main changes introduced by the enactment of the aforementioned Decree, as far as is relevant here, concern:
- the amendment of Article 6 of Legislative Decree No. 74/2000, which in its new version also punishes as attempted offences the tax offences referred to in Articles 2 ("*Fraudulent declaration through the use of invoices or other documents for non-existent transactions*"), 3 ("*Fraudulent*

declaration by other means") and 4 ("*Unfaithful declaration*"), if committed in the territory of another Member State of the European Union, for the purpose of evading value added tax for a total value of not less than ten million euros;

- the inclusion in Article *25-quinquiesdecies* of Legislative Decree No. 231/2001 of the offences provided for and punished by Articles 4 ("*Unfaithful declaration*"), 5 ("*Failure to declare*") and *10-quater* ("*Undue compensation*") of Legislative Decree No. 74/2000, 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 euros.

Legislative Decree No. 156 of 4 October 2022, containing "*Corrective and supplementary provisions to Legislative Decree No. 75 of 14 July 2020, implementing Directive (EU) 2017/1371 on the fight against fraud affecting the financial interests of the Union through criminal law*" then amended the provisions of Article 6 ('Attempt') of Legislative Decree No. 74/2000 and Article 25-quinquiesdecies of Legislative Decree No. 231/2001 ('Tax offences').

Subsequently, Legislative Decree No. 87 of 14 June 2024 was published in the Official Gazette, introducing a revision of the tax and criminal tax sanction system in order to implement Delegated Law No. 111/2023 through greater integration between the various sanctions, in accordance with the principle of *ne bis in idem*.[91]

More specifically, the legislator redesigns the structure of so-called payment offences, introduces a specific definition of non-existent and undue credits in the criminal sphere, and significantly affects certain provisions common to tax offences, providing for new grounds for non-punishment and new mitigating circumstances (amendments to Article 13-bis) and reforming the provisions relating to seizure and confiscation (amendments to Article 12-bis).

Finally, Legislative Decree No. 173 of 5 November 2024 contains the Consolidated Law on Administrative and Criminal Tax sanctions, also adopted in implementation of the delegated powers contained in Article 21 of Law No. 111 of 9 August 2023.

More specifically, the Government had been delegated, as part of a broad mandate to reform the Italian tax system, to adopt, within twelve months of the entry into force of the law, one or more legislative decrees for the comprehensive reorganisation of the provisions governing the tax system, through the drafting of consolidated texts; this deadline had been postponed to 31 December 2025.

The intervention is purely compilative in nature, with the result that, apart from interventions aimed at updating the text or introducing coordination provisions, the provisions already in force have been included in the consolidated text without changing their wording.

At the same time, provisions deemed obsolete or incompatible have been expressly repealed.

The consolidated text collects and reproduces the current rules on tax sanctions in a structure that replaces: the general principles contained in Legislative Decree No. 472 of 1997, containing general provisions on administrative sanctions for violations of tax rules; the sanction provisions contained in Legislative Decree No. 471 of 1997, concerning direct taxes, value added tax and collection; the sanction provisions contained in individual tax laws concerning: registration, mortgages, land registry, inheritance, donations, stamp duty, government concessions, private insurance and life annuity contracts, entertainment tax, and RAI licence fees; criminal provisions on taxation and the regulation of offences relating to income tax and value added tax, currently summarised in Legislative Decree No. 74 of 2000.[92]

It should be noted, in general, that the violation of the obligation to truthfully disclose income and taxable bases is the basis for three types of offences provided for by Legislative Decree No. 74/2000, which constitute the infrastructure of the repressive system: fraudulent declarations through the use of invoices or other documents for non-existent transactions (Article 2) or through other artifices (Article 3), cases relating not only to false declarations but also characterised by a particular degree of 'insidiousness'; unfaithful declarations (Article 4) and, finally, failure to declare (Article 5).

[91] On the last point in question, reference should be made to the new provisions on coordination between criminal and administrative proceedings (Articles 19-21 ter of Legislative Decree No. 74/2000).

[92] Pursuant to Article 102 of Legislative Decree No. 173/2024, "*The provisions of this consolidated text shall apply from 1 January 2027*."

These offences are accompanied by three 'collateral' offences, which are equally harmful, aimed at targeting the issuance of invoices or other documents for non-existent transactions in order to allow third parties to evade tax (Article 8), the concealment or destruction of accounting documents so as to prevent the reconstruction of income or turnover (Article 10) and, finally, the evasion of enforced tax collection by means of fraudulent acts on one's own or others' assets (Article 11).
With a view to limiting the use of criminal sanctions, the above offences remain subject - with the exception of fraudulent declarations using invoices or other documents for non-existent transactions, the issuance of such documents and the concealment or destruction of accounting records - to thresholds of punishability designed to limit punitive measures to offences of significant economic importance.

Fraudulent declaration through the use of invoices or other documents for non-existent transactions
This offence is provided for and punished by Article 2 of Legislative Decree No. 74/2000.[93]
This provision is intended to punish anyone who, in order to evade income tax or value added tax, uses invoices or other documents for non-existent transactions to indicate fictitious liabilities in one of the tax returns relating to those taxes.
The offence in question was introduced by the 2000 criminal tax reform and represents a complete reversal of the previous legislation, with the strategic objective of limiting criminal prosecution to acts directly related, both objectively and subjectively, to the damage of fiscal interests, with a corresponding renunciation of criminalisation. the strategic objective of limiting criminal prosecution to acts directly related, both objectively and subjectively, to the infringement of tax interests, with the related renunciation of the criminalisation of purely 'formal' and 'preparatory' violations.
As with the other criminal offences referred to in Legislative Decree No. 74/2000, the legal interest protected by the offence in question coincides with the Treasury's interest in the collection of taxes, unlike the previous law of 1982, which mainly protected the Treasury's interest in the proper conduct of tax assessment.
The active subject of the offence can only be a person who is a taxpayer for direct taxes and VAT, or is an administrator, liquidator or representative of companies, entities or natural persons or a withholding agent, in the cases provided for by law (Article 1, paragraph 1, letter c) of Legislative Decree No. 74/2000).
Article 2 of Legislative Decree No. 74/2000 also defines an offence of danger or mere conduct, as the legislator intended to strengthen the protection of the protected legal interest, anticipating it at the time of the commission of the typical conduct (Criminal Cassation, Joint Divisions, 19 January 2011, judgment No. 1235).
With specific regard to the subjective element, the offence is punished as specific intent because it is characterised by the aim of evading income or value added tax.
The offence therefore occurs both when the declaration reduces the tax paid at the same time (or reduces it to zero) and when the declaration is intended to justify a credit position towards the tax authorities.
The untruthful declaration must be supported by full knowledge of the non-existence of the passive transactions taken into account to determine the final result shown in it, as well as by the intention to use it instrumentally in representing that false result as corresponding to impeccable accounting.
Furthermore, the offence in question is instantaneous and is committed at the time of filing the tax return (Criminal Cassation, Section II, 2 November 2010, no. 42111).
Indeed, the preparation and registration of documents certifying non-existent transactions are merely preparatory acts and are not normally punishable as attempts, as expressly provided for by the

[93] *"1. Anyone who, in order to evade income or value added tax, uses invoices or other documents for non-existent transactions to indicate fictitious liabilities in one of the declarations relating to said taxes shall be punished with imprisonment for a term of between four and eight years. 2. The offence is considered to have been committed using invoices or other documents for non-existent transactions when such invoices or documents are recorded in the mandatory 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 less than one hundred thousand euros, imprisonment for a term of between one year and six months and six years shall apply."*

legislator: "*the offences referred to in Articles 2, 3 and 4 are not punishable as attempts, except as provided for in paragraph* 1-bis" (Article 6, Legislative Decree No. 74/2000).[94]
On this point, it should be reiterated that in the new version of Article 6 of Legislative Decree No. 74/2000, the tax offences referred to in Articles 2 ("*Fraudulent declaration through the use of invoices or other documents for non-existent transactions*"), 3 ("*Fraudulent declaration by other means*") and 4 ("*Unfaithful declaration*"), if committed within the framework of cross-border fraudulent schemes connected to the territory of at least one other Member State of the European Union , with the aim of evading value added tax for a total value equal to or greater than ten million euros.[95]
As regards the definition of an invoice or document issued for non-existent transactions, this 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 understood to mean invoices or other documents having similar probative value under tax regulations, issued for transactions that have not actually been carried out in whole or in part, or that indicate amounts or value added tax higher than the actual amount, or that refer the transaction to parties other than the actual ones*."
As regards the relationship of subsidiarity between Article 2 and Article 3 of Legislative Decree No. 74/2000, the Supreme Court has clarified that the distinguishing feature between the two offences is to be found in the probative value of the invoices or other documents for non-existent transactions used for fraudulent declarations, in the presence of which the offence referred to in Article 2 rather than that *referred* to in Article 3 is committed (Cass., Sec. III, 19 December 2011 No. 46785 and 23 March 2007 No. 12284).
Furthermore, based on the considerations set out in Report No. III/05/2015 of 28 October 2015 of the Office of the Court of Cassation, it is considered that the criterion for determining whether a fraudulent transaction falls within the scope of one or the other offence lies in the type of fictitious documentation used.
The very wording of Article 3 – which begins with *'Except for the cases provided for in Article* 2' – in fact, supports a logical approach that first involves verifying whether the transaction identified is relevant to the case typified in Article 2, based on the existence or otherwise of *'invoices or other documents of similar probative* value' and then, if not, to that referred to in Article 3.
In light of the above regulatory definition, it therefore emerges that:

- in addition to invoices, other fiscally relevant documents (receipts, notes, accounts, bills, contracts, transport documents, debit and credit notes) may also constitute the offence;
- [96] 1 falsification of the aforementioned documents is relevant both objectively and subjectively.

An invoice is objectively false when it documents transactions that have not actually been carried out, either in whole or in part.
More specifically, a transaction is objectively non-existent in two cases:

- when the invoices document a transaction that was never fully carried out (objective non-existence, known as absolute or total);

[94] On this point, in judgment no. 21025 filed on 21 May 2015, the Court of Cassation ruled that the mere performance of preparatory and preliminary acts prior to the submission of the tax return (such as the preparation of accounting records and the entry of false invoices in them), even if functional to the commission of the offence itself, cannot be equated with typical conduct. Indeed, the general approach of criminal tax law, as mentioned above, requires that such conduct, considered in itself, cannot be considered criminally relevant. With regard to this offence (of mere conduct, instantaneous in nature and causing damage), however, complicity may be established in the case of persons who, although unrelated and not holding positions in the company to which the return refers, have in any way instigated or determined the person required to file the return to carry out the typical action. Therefore, a person who simply holds 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 for attempted offences.
[95] Article 4 of Legislative Decree No. 156/2022 introduced a change to the rules on attempted offences. For a commentary on the above conditions, please refer to the section on the offence of making a false declaration.
[96] The offence of 'tax fraud' provided for in Article 2 of Legislative Decree No. 74/2000 occurs whenever a taxpayer, in order to make a fraudulent declaration, uses invoices or other documents certifying transactions that have not actually been carried out, regardless of whether the falsehood is ideological or material. (see, in this regard, Criminal Cassation, judgment no. 6360 of 11 February 2019)

- when invoices document a transaction that was never carried out in part, i.e. in terms of quantities that are different and lower than those represented on paper (relative or partial objective non-existence).

In the cases mentioned above, although the transaction is totally or partially non-existent in material terms, it allows the user to obtain an undue tax advantage (both for direct tax and VAT purposes) by indicating fictitious liabilities in the relevant tax returns, which will ensure that their income is minimised.

A subjectively non-existent invoice[97] , on the other hand, occurs when the documented transactions took place between parties other than those formally listed as parties to the relationship.

This is because even the false indication of the issuer and/or recipient of the invoice invalidates the authenticity 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, are not documented or cannot be officially documented for various reasons.

This circumstance occurs most frequently in the case of VAT fraud, which involves entities that operate only on a 'paper' basis and have no economic function.[98]

The second paragraph of Article 2 also defines the scope of the criminal conduct, with the clear aim of avoiding any doubts of interpretation, particularly in relation to the fact that there is no obligation to attach supporting documentation for fictitious items to the declaration, specifying that the offence is considered to have been committed, 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.[99]

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 its applicability regardless of a tax evasion threshold and therefore regardless of the amount of tax evaded.

The Constitutional Court recently ruled on this point in its judgment no. 95 of 2019.

In particular, the *referring* court noted that Article 2 does not provide for any threshold for punishment, unlike the offence of fraudulent declaration by other means (Article 3 of Legislative Decree No 74 of 2000), which provides for two distinct thresholds: one relating to the amount of tax evaded, and the other to the total amount of assets evaded from taxation, or fictitious credits and withholdings reducing the tax.

The Court declared the question of constitutional legitimacy unfounded on the basis of the following arguments: firstly, it stated that the configuration of criminal offences and the determination of sanctions are matters entrusted to the discretion of the legislator, whose choices are subject to review for constitutional legitimacy only if they are 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, to be particularly harmful to the interests of the Treasury: namely, false invoicing intended to prove transactions that have not been carried out in whole or in part – either at all, or by the parties to whom they refer – or with 'inflated' fees or VAT, for the purpose of undue deduction of costs or tax relief by the taxpayer.

The legislator's intention to rigorously combat this phenomenon is evident, in the Court's opinion, in the lack of thresholds for punishment for the offence.

---

[97] The case of 'interposition', whether 'fictitious' or 'real', falls within the scope of subjective non-existence. The former occurs when the transaction has actually taken place, but between parties other than those declared, and all the parties involved want the effects of the transaction to be produced in relation to a person other than the one appearing 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 defined as subjective relative simulation (which occurs when there is a de facto agreement between the parties that differs from that resulting *from the contract*, in order to conceal the actual contracting party). Real interposition, on the other hand, occurs when the effects of the sale are actually produced in favour of the purchaser and, therefore, there is no simulated agreement. Therefore, in order for there to be criminally relevant tax effects, a third person must carry out a subsequent transfer transaction in favour of another person. In real interposition, therefore, the interposed party is the taxable person, which arises from the 'presumed fact' in turn originating from the completion of the legal transaction with the third party; on the other hand, in fictitious interposition, the interposing party is the taxable person for the relevant tax obligation.

[98] See, in this regard, the *'Operational Manual on Combating Tax Evasion and* Fraud' No. 1/2018, Volume I, p. 10, of the GdF.

[99] See, in this regard, the "*Operational Manual on Combating Tax Evasion and Fraud*" No. 1/2018, Volume I, p. 152, of the GdF.

This also applies to direct taxes, as invoices (or equivalent documents) play an important role, being the typical means by which taxpayers certify their right to deduct items of expenditure from their taxable income or to claim tax deductions, in accordance with tax legislation, or to take advantage of any tax credits.
The Council therefore did not consider the legislative choice to treat this case differently and more severely than the other types of fraud covered by Article 3 of Legislative Decree No. 74 of 2000 to be arbitrary.
Sanctions applicable to the Entity

- financial sanction: up to 500 units for paragraph 1 and up to 400 units for paragraph 2-bis; however, if the Entity has made a significant profit, the financial sanction is increased by one third;
- disqualification sanctions: prohibition from contracting with the public administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

Fraudulent declaration by other means
This offence is provided for and punished by Article 3 of Legislative Decree No. 74/2000.[100] This is a residual offence with respect to the offence referred to in Article 2[101] , which the 2015 reform sought to expand by eliminating the previous requirement of *'false representation in mandatory accounting* records'[102] , with a now two-stage structure[103] :

- the performance of *'objectively or subjectively* simulated' transactions[104] or the use of false documents or other fraudulent means capable of hindering verification and misleading the tax authorities (these requirements are to be considered alternative, as the occurrence of only one of them is sufficient for the offence to be established);
- submission of an untruthful income tax or VAT return containing assets or liabilities that do not correspond to reality or fictitious credits and withholdings.

---

[100] "*1. Except for the cases provided for in Article 2, anyone who, in order to evade income or value added tax, by carrying out objectively or subjectively simulated transactions or by using false documents or other fraudulent means suitable for obstructing the assessment and misleading the tax authorities, indicates in one of the declarations relating to said taxes assets for an amount lower than the actual amount or fictitious liabilities or fictitious credits and withholdings, when, jointly:*
a) the tax evaded exceeds, with reference to any of the individual taxes, thirty thousand euros;
b) the total amount of assets evaded, including through the indication of fictitious liabilities, exceeds five per cent of the total amount of assets indicated in the tax return, or in any case exceeds one million five hundred thousand euros, or if the total amount of fictitious credits and withholdings reducing the tax is greater than five per cent of the amount of the tax itself or, in any case, thirty thousand euros.
2. The offence is considered to have been committed using false documents when such documents are recorded in the mandatory accounting records or are held for the purposes of evidence against the tax authorities.
3. For the purposes of applying the provision of paragraph 1, the mere violation of the obligations to invoice and record assets in the accounting records or the mere indication in invoices or records of assets lower than the actual ones does not constitute fraudulent means.

[101] However, the concurrence of the provisions of Articles 2, 3 and 4 of Legislative Decree No. 74/2000 cannot be excluded in cases where there are separate fraudulent acts attributable simultaneously to one or more of the regulatory provisions included in the same tax return (e.g., indication of fictitious liabilities documented by invoices for non-existent transactions and additional assets or liabilities, with the use of other fraudulent means; use of false invoices and simultaneous under-invoicing of revenues, such as to exceed the thresholds for punishment referred to in Article 4, etc.). On this specific point, the Supreme Court upheld the conclusion of the lower courts regarding the applicability of both Article 2 and Article 3, based on the use in the tax returns of the company managed by the defendant of self-generated or third-party invoices relating to partially non-existent transactions, as well as *'multiple and fraudulent conduct by the defendant (consisting, as can be inferred from the charges, the indication in the journal and VAT register of sales revenues and VAT payable lower than the actual amounts, by replacing the originally issued sales documents with others showing lower amounts; the indication in the journal of fictitious costs; the unfaithful or omitted recording of multiple sales and purchase invoices, in order to reduce revenues and increase costs; in the allocation of depreciation not shown in the accounting records), in addition to the mere use of invoices for non-existent transactions, aimed at deceitfully concealing revenues or fictitiously increasing costs, with the consequent correct assertion of the configurability of the offence of fraudulent declaration by other means, since the fraudulent conduct in addition to the use of invoices relating to wholly or partly non-existent transactions has been described in detail*" (Criminal Cassation, Section III, judgment no. 35156 of 18 July 2017).

[102] The offence has been transformed from a specific offence (taxpayers required to keep accounting records) to an offence attributable to any person required to file an income tax or VAT return.

[103] In the previous formulation, the offence was characterised by the following three-phase structure:

- preparation of a false representation of mandatory accounting records;
- use of fraudulent means to hinder its detection;
- indication of assets for an amount lower than the actual amount or fictitious liabilities.

[104] With regard to '*objectively or* subjectively *simulated* transactions', letter *g-bis* introduced by Legislative Decree No. 158/2015 clarifies that these are to be understood as apparent transactions, other than those covered by the rules on abuse of rights, carried out with the intention of not carrying them out in whole or in part, or those relating to fictitious intermediaries.

In order to constitute a 'fraudulent means', there must therefore be a *quid pluris* which, in addition to the false representation offered in the declaration, allows the objective element to be attributed a value of insidiousness, deriving from the use of devices capable of enabling tax evasion by preventing its assessment (see, in this regard, Criminal Cassation, Section III, judgment no. 2292 of 16 January 2013).[105]

With regard to the concept of fraudulent means, Article 1(*g-ter*) identifies them as *'active fraudulent conduct and omissions in violation of a specific legal obligation, which result in a false representation of reality*'.

The interpreter is therefore provided with a broad and general definition, without specifying the specific types of conduct that may be relevant under Article 3, which does not make it easy to identify artificial omissions carried out in violation of specific legal obligations.

Over time, case law has identified, with reference to the previous wording of Article 3 of Legislative Decree No. 74/2000, a wide range of 'fraudulent means'[106] , considered to exist in the following cases:

- the use of forged or altered documents, other than invoices or other documents for non-existent transactions that are ideologically and materially false, for which the provision of 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 Cassation, Section III, 18 April 2002, no. 14616);
- simulated contracts (i.e. notarial deeds certifying real estate sales) indicating a sale price much lower than the actual price (Criminal Cassation, Section III, 5 November 1996, no. 9414);
- keeping double accounts, which in itself is not sufficient to constitute a criminal offence, which may be recognised, where the taxpayer uses a complex system to systematically conceal both revenues and costs, creating specific codes and access procedures designed to present fraudulently altered data to third parties during any inspections (Criminal Cassation, Section III, 10 April 2002, no. 13641);
- discovery by the control bodies of 'black' accounting in a place other than that indicated by the taxpayer for the custody of the records (Criminal Cassation, Section III, 12 October 2005, no. 1402);
- fictitious registration of financial transactions to which assets destined not to be accounted for are credited (Criminal Cassation, Section VI, 25 March 2009, no. 13098);
- systematic issuance of credit instruments without indicating the beneficiary in order to conceal payments (Criminal Cassation, Section III, 12 October 2005, no. 36977).

The third paragraph of Article 3 specifies that simple violations of invoicing and recording obligations in accounting records or the mere indication in invoices or notes of assets lower than the actual ones do not constitute fraudulent means.

In fact, the principle has been codified whereby mere omissions are not criminally relevant, but rather, for this purpose, acts of a commission nature are relevant, the fraudulence of which must be manifested in ways that are objectively distinct from less complex accounting irregularities (failure to certify payments – under-invoicing) aimed at lending credibility to the declaration and, therefore characterised by their suitability to deceive the inspection bodies. With regard to the concept of false documents, paragraph 2 of the provision in question establishes that the offence is considered to have been committed using such documents when they are recorded in the mandatory accounting records or held for the purposes of evidence against the tax authorities.[107]

Both ideological and material falsification fall within the scope of Article 3 in the case of documents, other than those indicated in Article 2, of direct or indirect fiscal relevance, other than accounting records.

[105] On this point, it is also worth referring to the principles developed by case law, according to which the suitability of the conduct to hinder the assessment must be assessed *ex ante*, regardless of the contingent difficulties encountered by the auditors in reconstructing the tax base (Criminal Cassation, Section III, judgment no. 20785 of 18 April 2002).

[106] See, in this regard, the *'Operational Manual on Combating Tax Evasion and* Fraud' No. 1/2018, Volume I, p. 165, of the GdF.

[107] See, in this regard, the *'Operational Manual on Combating Tax Evasion and* Fraud' No. 1/2018, Volume I, p. 164, of the GdF.

Furthermore, unlike the offence referred to in Article 2, the offence in question is configurable in the event of the joint exceeding of a double threshold of punishability[108] :

- 30,000 euros of evaded tax, with regard to any of the individual taxes (income - VAT). For the purposes of establishing the criminal offence, it is sufficient that the amount is exceeded with reference to a single tax sector;
- the amount of assets evaded from taxation (including through the indication of fictitious liabilities) exceeds five per cent of the total declared assets or, in any case, €1,500,000, or the amount of fictitious credits and withholdings exceeds five per cent of the tax (which they reduce) or, in any case, the amount of €30,000.

Finally, by explicit exclusion under Article 6(1) of Legislative Decree No 74/2000, the offence is not punishable as an attempt[109] , except as provided for in paragraph 1-bis.
Indeed, with the introduction of the aforementioned paragraph, the tax offence referred to in Article 3 of the Italian Criminal Code is punishable, even as an attempt, if committed within the framework of cross-border fraudulent schemes connected to the territory of at least one other Member State of the European Union, with the aim of evading value added tax for a total value equal to or greater than ten million euros.[110]

Sanctions applicable to the Entity

- financial sanction: up to 500 units; however, if the entity has made a significant profit, the financial sanction is increased by one third;
- disqualification sanctions: prohibition from contracting with the public administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

Untruthful declaration

Article 4 of Legislative Decree No. 74/2000[111] punishes mere 'false declarations' that do not constitute fraud. This is a criminal offence conceived by the legislator as residual with respect to the case of fraudulent declaration, focused solely on the disclosure of untruthful information (statement of assets lower than the actual amount or non-existent liabilities).

---

[108] More generally, the thresholds for punishment provided for tax offences by Legislative Decree No. 74/2000 are constituent elements of the offence and not objective conditions for punishment. It follows that these thresholds must be 'invested' with intent, so that if the defendant is not aware of having exceeded them, he or she cannot be convicted. (See, in this regard, Criminal Cassation, Section III, judgment no. 42868 of 18 October 2013).

[109] Law No. 157/2019 also amended paragraph 2 of Article 13 of Legislative Decree No. 74/2000 entitled "*Grounds for non-punishment. Payment of tax debt*", to add - among the offences that are extinguished by full payment of the tax debt, provided that the voluntary correction or the submission omitted within the deadline for submitting the return for the following tax period occurred before the perpetrator of the offence had formal knowledge of access, inspections, audits or the start of any administrative assessment or criminal proceedings - the offences provided for and punished by Articles 2 and 3 of the aforementioned decree. Finally, Legislative Decree No. 87/2024 introduced the following paragraph 3-ter: *"For the purposes of non-punishability due to the particular insignificance of the offence, as referred to in Article 131-bis of the Criminal Code, the judge shall assess, in a prevalent manner, one or more of the following indicators: a) the extent of the deviation of the evaded tax from the threshold value established for the purposes of punishability; b) except as provided for in paragraph 1, full compliance with the payment obligation according to the instalment plan agreed with the tax authorities; c) the amount of the remaining tax debt, when it is being paid off in instalments; d) the crisis situation within the meaning of Article 2, paragraph 1, letter a), of the Code of Business Crisis and Insolvency, referred to in Legislative Decree No. 14 of 12 January 2019*.

[110] Article 4 of Legislative Decree No. 156/2022 introduced a change to the rules governing attempts. For a commentary on the above conditions, please refer to the section on the offence of making a false declaration.

[111] Article 4 of Legislative Decree No. 74/2000 provides as follows: *"Except in the cases provided for in Articles 2 and 3, anyone who, in order to evade income or value added tax, indicates in one of the annual returns relating to such taxes assets for an amount lower than the actual amount or non-existent liabilities, shall be punished with imprisonment for a term of between two years and four years and six months, when, jointly:*

a) the tax evaded exceeds, with reference to any of the individual taxes, one hundred thousand euros;
b) the total amount of assets not declared for taxation, including through the indication of non-existent liabilities, exceeds ten per cent of the total amount of assets indicated in the return, or, in any case, exceeds two million euros.

1-bis. For the purposes of applying the provision of paragraph 1, no account shall be taken of the incorrect classification or valuation of objectively existing assets or liabilities, in respect of which the criteria actually applied have in any case been indicated in the financial statements or in other documentation relevant for tax purposes, of the violation of the criteria for determining the relevant financial year, of the non-relevance or non-deductibility of real liabilities.

1-ter. Except for the cases referred to in paragraph 1-bis, valuations that, when considered as a whole, differ by less than 10 per cent from the correct ones shall not give rise to punishable offences. The amounts included in this percentage shall not be taken into account when verifying whether the thresholds for punishment provided for in paragraph 1, letters a) and b) have been exceeded.

More specifically, an untruthful declaration occurs when a taxpayer reports income that is lower than the actual amount or non-existent costs, without the taxpayer having used the devices typified in Articles 2 and 3 of Legislative Decree No. 74/2000.
Due to the lower criminal value, less severe sanctions and higher thresholds for punishment are provided for : the evaded tax must exceed €100,000 for one of the taxes; the total amount of assets evaded, including thos d by indicating non-existent liabilities, must exceed ten per cent of the total assets indicated in the tax return or, in any case, €2,000,000.
The material object of the offence consists of annual income tax or value added tax returns. Ultimately, this is a case of ideological falsification of the return.
Article 4 of Legislative Decree No. 158/2015 also added two new paragraphs (1-bis and 1-ter) that amend the previous criminal law provisions on false declarations.
Paragraph 1-bis provides that, for the sole purpose of establishing the offence in question, no account should be taken of the incorrect classification, the valuation of objectively existing assets or liabilities, in respect of which the criteria actually applied were in any case indicated in the financial statements or in other documentation relevant for tax purposes, the violation of the criteria for determining the relevant financial year, the non-relevance, or the non-deductibility of actual liabilities. Furthermore, unlike the repealed Article 7, exemption from punishment no longer requires that the error be made on the basis of consistent methods: it follows that the exemption also applies where the error concerns a single tax period.
Paragraph 1-ter provides that, except in the cases referred to in the previous paragraph, valuations that, taken as a whole, differ by less than ten per cent from the correct ones do not give rise to punishable offences.
In any case, there is exclusion from punishment for valuation operations carried out using criteria made known to the tax authorities, either through the financial statements or through other documentation relevant to the tax sector.
The circumstances that may give rise to the indication of assets for an amount lower than the actual amount relevant for the purposes of establishing the offence of false declaration are essentially attributable to the under-invoicing of revenues or fees, as expressly stated in Article 3, paragraph 3, of Legislative Decree No. 74/2000.
As mentioned above, false reporting may concern both 'assets', which are declared at a lower value than their actual value, and 'liabilities', which must be non-existent.
The criminal offence in question therefore refers to a concept of liabilities oriented towards an effective and naturalistic interpretation of the same, following the replacement of the term 'fictitious' with 'non-existent'.
Therefore, for the purposes of establishing the offence of false declaration, 'non-existent' corresponds to 'not corresponding to reality' and no longer to 'incorrectly determined' on the basis of tax rules.
The criminal interest in the offence in question therefore falls solely on cases of material non-existence of the negative components.
In view of the above, no costs actually incurred, even if non-deductible, can be used to determine the tax evaded as set out in Legislative Decree No. 74/2000.
Classic examples can be found in entertainment expenses, advertising expenses, and the purchase of goods contested as non-related by the tax authorities.
Similarly, any issue relating to purchase values assessed by the tax authorities as exceeding the normal value, as defined in Article 9, paragraph 3, of Presidential Decree No. 917/1986 (e.g., in the case of disputes based on the 'uneconomic nature' of the transactions), is irrelevant for the purposes of establishing the criminal tax offence of false declaration, as these are costs related to prices actually charged and paid, even if they are not deductible because they are not correctly estimated from a tax point of view.[112]

[112] See, in this regard, the *'Operational Manual on Combating Tax Evasion and* Fraud' No. 1/2018, Volume I, pp. 167-168, of the GdF.

Therefore, residual cases remain subject to the criminal offence in question, such as, for example, the indication in the tax return of completely non-existent liabilities, not supported in any way by invoices or other documents of similar probative value (or, in the latter case, showing amounts lower than those reported in the tax return).
The offence in question, like Articles 2 and 3, is not normally punishable as an attempt under Article 6(1) of Legislative Decree No. 74/2000.
This latter provision was recently amended by Article 4 of Legislative Decree No. 156/2022, referred to above, which replaced the previous paragraph 1-bis with the following: *"When the conduct is carried out for the purpose of evading value added tax within the framework of cross-border fraudulent schemes connected to the territory of at least one other Member State of the European Union, resulting in or likely to result in total damage equal to or greater than EUR 10,000,000, the offence referred to in Article 4 is punishable as an attempt. Except in cases of complicity in the offence referred to in Article 8, the offences referred to in Articles 2 and 3 are punishable as attempted offences when the same conditions as those referred to in the first sentence apply."* [113]
The above new provision therefore applies when four conditions are met:

a) the evasion must involve a qualifying amount;
b) it must relate solely to the evasion of value added tax;
c) it must involve transnational facts affecting several EU Member States;
d) the contested act must not constitute the offence referred to in Article 8 of Legislative Decree No. 74/2000.

The condition referred to in point (d) suggests that the legislator intended to exclude the possibility that a person who issues a false invoice, an offence punishable under Article 8, could also be held liable for attempting to use that invoice: the principle set out in Article 9(a) therefore remains unchanged, according to which the issuer of invoices or other documents for non-existent transactions and anyone who assists them is not punishable for complicity in the offence of making a fraudulent declaration through the use of such invoices. However, according to case law, the exception to the rule on complicity in crime provided for in the aforementioned Article 9 does not apply where the person issuing invoices for non-existent transactions is also the person using them (Criminal Cassation, Section III, Judgment No. 5434/2017: this principle was affirmed in the case in question in relation to the director of a company that issued and used the same invoices for non-existent transactions) and it is to be assumed that this approach will also apply when the offence referred to in Article 2 is not committed but only attempted.
As regards the requirement that the acts must be committed within several EU Member States, the legislator requires that the conduct must be materially carried out in several EU States, so that the fraud, deception or, in general, evasion has the effect of evading VAT to the detriment of any of the Member States.
Finally, Article 5 of Legislative Decree No. 75/2020 provided for the inclusion of the offence of false declaration, if committed *'within the framework of cross-border fraudulent schemes and for the purpose of evading value added tax for a total amount of not less than ten million* euros', in Article 25-quinquiesdecies of Legislative Decree No. 231/2001, for which a financial sanction of up to 300 units and the disqualification sanctions referred to therein apply.
Finally, Article 5 of Legislative Decree No. 156/2022 replaced the above condition with the following: "*when committed for the purpose of evading value added tax within the framework of cross-border fraudulent schemes connected to the territory of at least one other Member State of the European Union, resulting in or likely to result in total damage equal to or greater than ten million euros*."[114]

[113] The regulatory amendment in question was necessary to ensure the correct identification of the EU transnational profile for the purposes of integrating the PIF case of VAT fraud. More specifically, the concept 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 interest and sanctions.
[114] See previous note on *the rationale* for the regulatory amendment.

With regard to the concept of *'cross-border fraudulent* schemes', the PIF Directive covers three types of unlawful conduct, already referred to in paragraph 1 above, which are summarised here:

- the use or submission of false, inaccurate or incomplete VAT returns or documents, resulting in a loss of resources from the Union budget;
- failure to communicate VAT-related information in breach of a specific obligation, resulting in the same effect;
- submission of accurate VAT returns in order to fraudulently conceal non-payment or the unlawful establishment of VAT refund entitlements.

Additional characteristics of the above conduct must be the causing of total damage of at least €10 million in evaded VAT and the commission of the offence in at least one other EU Member State.

Sanctions applicable to the Entity

- financial sanction: up to 300 units; however, if the Entity has made a significant profit, the financial sanction is increased by one third;
- disqualification sanctions: prohibition from contracting with the public administration, except for obtaining public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

Failure to declare

Article 5 of Legislative Decree No. 74/2000 punishes *'with imprisonment of between two and five years anyone who, in order to evade income or value added tax, fails to submit, when required to do so, one of the declarations relating to said taxes, when the tax evaded exceeds, with reference to any of the individual taxes, fifty thousand euros*'.[115]

The offence in question is an instantaneous offence, which is committed ninety days after the deadline for filing the return and concerns annual returns relating to income tax, VAT and withholding taxes made by withholding agents.

According to established case law, the ninety-day extension granted to taxpayers to file their tax returns after the ordinary deadline does not constitute grounds for non-punishment, but is an additional period for fulfilling the reporting obligation. (See Criminal Cassation, Section III, Judgment No. 8340 of 2 March 2020, which reiterated the following principles of law regarding the offence of failure to file a tax return: *'the 90-day extension granted to taxpayers – pursuant to Article 5(2) of Legislative Decree No. 74 of 10 March 2000 (and, previously, Article 7 of Presidential Decree No. 322 of 1998) – to file their tax returns after the ordinary deadline does not constitute grounds for non-punishment, but constitutes an additional deadline for fulfilling the declaration obligation and for identifying the moment when the offence of failure to declare, as provided for in the first paragraph of the aforementioned Article 5, was committed*"; *"since this is a specific offence of omission of an instantaneous nature, the offence referred to in Article 5, paragraph 1, of Legislative Decree No. 74 of 2000 is committed upon expiry of the ninety-day period starting from the final deadline established for tax purposes for the submission of the annual tax return; since the agent may comply after the expiry of the deadline set for tax purposes, but before the further deadline of ninety days, it is therefore necessary to provide evidence that, at the expiry of the latter deadline, the agent failed to submit the declaration.*")

In judgment no. 37532/2019, the Court of Cassation ruled that the specific intent to evade tax referred to in the offence of failure to file a tax return cannot be inferred from the mere fact of non-compliance with the reporting obligation or from *the culpa in vigilando* of the external professional appointed for this purpose.

It is necessary, in fact, to distinguish between the objective and subjective aspects of the offence.

[115] Pursuant to paragraph 1-bis, anyone who fails to submit the withholding agent's declaration, when required to do so, is subject to the same sanction when the amount of unpaid withholdings exceeds fifty thousand euros. For criminal purposes, as specified in paragraph 2, a return submitted within ninety days of the deadline or not signed or not drawn up on a form complying with the prescribed model shall not be considered omitted.

Otherwise, the reproach for the wrongful attitude of the will to commit the offence referred to in Article 5 of Legislative Decree No. 74/2000 would end up being transformed from intentional to negligent.
In concrete terms, it is necessary to ascertain, on the basis of specific factual elements, that the taxpayer has consciously and premeditatedly planned the failure to declare tax evasion for amounts exceeding the threshold of criminal liability, outside of undue automatisms.
Moreover, entrusting a professional with the task of preparing and filing the tax return does not negate the taxpayer's criminal liability for the offence of failure to file a tax return, given the personal and non-delegable nature of the reporting obligations.
The following is a summary of the most complex cases in which, if the threshold for criminal liability is exceeded, the offence in question may be committed[116] :

- cases involving international taxation: these are cases in which the subjective and territorial link between the production and taxation of income is fraudulently severed. Consider cases of corporate foreign relocation, i.e. the fictitious location 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. A case similar to that of foreign incorporation is the establishment in the territory of the State of a hidden permanent establishment or permanent personnel of a non-resident company;
- failure to declare income from illegal sources: this refers to income deriving from facts, acts or activities that can be classified as civil, criminal or administrative offences, if not already subject to seizure or criminal confiscation, which are considered to be included in the categories of income referred to in Article 6 of the TUIR;
- 'total evaders' not falling within the two categories mentioned above: these are persons who, for the purposes of direct taxes and VAT, outside the cases already examined, fail, for various reasons, to submit the relevant tax return for at least one tax and at least one year.

Finally, Article 5 of Legislative Decree No. 75/2020 provided for the inclusion of the offence of failure to file a tax return, if committed "*within the context of cross-border fraudulent schemes and for the purpose of evading value added tax for a total amount of not less than ten million* euros", in Article 25-quinquiesdecies of Legislative Decree No. 231/2001, for which a financial sanction of up to 400 units and the disqualification sanctions referred to therein apply.
Finally, Article 5 of Legislative Decree No. 156/2022 replaced the above condition with the following: "*when committed for the purpose of evading value added tax in the context of cross-border fraudulent schemes connected to the territory of at least one other Member State of the European Union, resulting in or likely to result in total damage equal to or greater than ten million euros*."
For an examination of the above conditions, please refer to the previous paragraph.
Sanctions applicable to the Entity

- financial sanction: up to 400 units; however, if the Entity has made a significant profit, the financial sanction is increased by one third;
- disqualification sanctions: prohibition from contracting with the public administration, except for the provision of public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

Issuing invoices or other documents for non-existent transactions
The offence in question is provided for and punished by Article 8 of Legislative Decree No. 74/2000.[117]

[116] See in this regard the *'Operational Manual on Combating Tax Evasion and* Fraud' No. 1/2018, Volume I, pp. 170-173, of the GdF .
[117] *1. Anyone who, in order to enable third parties to evade income or value added tax, issues or releases invoices or other documents for non-existent transactions shall be punished with imprisonment for a term of between four and eight years.*

For the offence to be considered as such, the law requires the issuance or release of invoices or other documents for non-existent transactions, in order to allow third parties to evade income or value added tax, as the mere preparation of false documentation not followed by delivery to the potential beneficiary is not sufficient.
For the offence in question to be committed, the issuance of even a single false invoice is sufficient, as there is no threshold for punishment.
The offence referred to in Article 8 is an abstract offence, which is committed by the mere issue or release of false invoices, regardless of whether they have actually been used by the beneficiary of the issue and, therefore, regardless of whether such issue has resulted in actual tax evasion.[118]
In this regard, the Supreme Court has also specified that in the case of multiple issuances during the same tax period, the moment the offence is committed coincides with the issuance of the last invoice.[119]
Finally, with regard to the psychological element, specific intent to facilitate tax evasion by others is required[120] : the perpetrator must therefore be aware that they are issuing false invoices for the purpose of tax evasion by third parties, regardless of whether 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 specific intent required by law for the agent to be punished.[121]
Article 8 in question is also not included among those for which Article 6 of Legislative Decree No. 74/2000 excludes the possibility of attempted crime: consequently, if the person responsible carries out acts unequivocally aimed at issuing invoices or other documents for non-existent transactions, they may be punishable under Article 56 of the Criminal Code.[122]
Finally, 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 takes place, often also incorporating the cases referred to in Articles 5 and 10 of the aforementioned decree: we refer to fraud, of which the so-called 'carousel' fraud is a particularly insidious type.
In a typical fraud scheme, based on the issuance 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 'paper companies' or 'missing traders'), created for the sole purpose of enabling other economic operators to evade taxes through the accounting justification of sales of goods or services carried out by other companies that are actually operational but are concealed from the tax authorities.
Recurring characteristics of 'paper companies' are:

- formal representation attributed to 'front men' or 'figureheads', individuals who generally lack managerial experience and, in most cases, have no assets or have criminal or police records;
- limited operation over time;
- exponential growth in turnover;
- the absence of an actual or unsuitable registered office in relation to the nature of the operations carried out at the declared address, or the inactivity or lack of organisational structures and business resources;

---

2. For the purposes of applying the provision set out in paragraph 1, the issuing or releasing of multiple invoices or documents for non-existent transactions during the same tax period shall be considered a single offence.
2-bis. If the amount indicated in the invoices or documents that does not correspond to the truth, per tax period, is less than one hundred thousand euros, imprisonment from one year and six months to six years shall apply.
In order to avoid unequal treatment between issuers and users of invoices for non-existent transactions – who, even if they use several such documents, remain subject to a single sanction, as the declaration must still be submitted – paragraph 2 of the article in question expressly provides that the issuance or release of multiple invoices or documents relating to non-existent transactions during the same tax period constitutes a single offence.
[118] See Criminal Court of Cassation, judgment no. 6842 of 19 December 2014 and Criminal Court of Cassation, judgment no. 3918 of 28 January 2015.
[119] 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.
[120] See Criminal Court of Cassation, judgment no. 19116 of 9 May 2014; Criminal Court of Cassation, judgment no. 50847 of 3 December 2014.
[121] See, *among others*, Criminal Court of Cassation, judgment no. 44665 of 15 October 2013.
[122] Furthermore, there are no particular doubts about the possibility of establishing concurrence between the offence in question and that of failure to submit a tax return, pursuant to Article 5 of Legislative Decree No. 74/2000 (see Criminal Court of Cassation, Section III, judgment No. 35858 of 4 October 2011). This is in relation to the fact that, on the basis of tax regulations, the VAT shown on invoices issued, even if fictitious, is always due and, as such, must be declared.

- failure to comply with accounting, reporting and payment obligations.

In the mechanism described, the tax liability remains with the 'paper company', which does not file a tax return 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 service, by recording in its accounts the invoices for transactions issued by the 'paper company' to justify the purchases made, obtains considerable advantages both from a tax point of view - being able to deduct the cost and the VAT indicated on the invoice - and from a commercial point of view, being able to purchase (from the real supplier) and resell (often to parties not involved in the fraud) at prices below market value, with distortive effects on competition.

Additional economic entities (so-called 'filter' or 'buffer' companies) are often included in the mechanism with the function of hindering any investigations and the identification of those responsible.

As regards tax fraud within the European Union, which illegally exploits the intra-Community VAT rules on the 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, this can be summarised as follows:

- a national entity makes non-taxable supplies of goods to a 'shell company' based in another EU country, without the goods ever leaving the national territory (or, using false documentation, alters the evidence of the physical movement of the goods to another Member State), as they are actually intended for other national entities, which purchase them at competitive prices;
- the foreign 'shell company' transfers the same goods on paper to another Italian 'shell company', which resells the goods to the real domestic purchasers without fulfilling its tax obligations.

The domestic 'shell company' assumes the tax liability arising at the time of the domestic transfer, but fails to pay VAT to the tax authorities and quickly ceases trading, while the transferee has the advantage of deducting the tax on the purchase and at the same time having the VAT paid on the invoice refunded by the 'shell company'.

It is therefore considered that Article 8 may be applicable to the first domestic transferor, who carries out a VAT-exempt transfer, as the third party to whom he allows evasion can be identified as the ultimate (domestic) beneficiary of the carousel fraud.

According to the same interpretative criterion, the other intermediaries (missing traders and domestic buffers) are also liable under Articles 2 and 8 of Legislative Decree No. 74/2000 and, if the elements are present, the associative offence referred to in Article 416 of the Criminal Code may also be assumed, aggravated by the transnational nature referred to in Law No. 146 of 16 March 2006.[123]

Sanctions applicable to the Entity

- financial sanction: up to 500 units for paragraph 1 and up to 400 units for paragraph 2-bis; however, if the Entity has made a significant profit, the financial sanction is increased by one third;
- Disqualification sanctions: prohibition from contracting with the public administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from 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[124] and punishes conduct consisting of the concealment or destruction of accounting records

[123] See, in this regard, the *'Operational Manual on Combating Tax Evasion and* Fraud' No. 1/2018, Volume I, pp. 156-157, of the GdF.

[124] *'1. Unless the act constitutes a more serious offence, it is punishable by imprisonment for a term of between three and seven years. Anyone who, for the purpose of evading income or value added tax, or of enabling third parties to evade such taxes, conceals or destroys, in whole or in part, the accounting records or documents that must be kept, so as to prevent the reconstruction of income or turnover.*"

or documents that must be retained, when this makes it impossible to reconstruct income and turnover.[125]
In fact, orderly accounting (in compliance with the provisions of Article 2214 of the Italian Civil Code) allows, first and foremost, an understanding of the performance of the business and also serves to protect creditors, including the tax authorities.
This offence therefore aims to safeguard the tax assessment function of the finan l administration, anticipating the threshold of criminal relevance to conduct leading up to tax evasion, which constitutes potential damage to the State's tax claims.
This is a common offence in that, from the literal wording of the provision, it is clear that the legislator intended to highlight that it cannot be referred to solely to the person obliged to keep records, as it may also be committed to enable evasion by third parties.
More specifically, concealment consists of physically hiding the records; refusal to hand over the records, unless this results in their failure to be found, as is often the case, is only punishable by administrative sanctions.
Similarly, the storage of records in a place other than that indicated to the Administration (Article 35 of Presidential Decree No. 633/72) is not punishable, unless the records are taken to places where they cannot be found, essentially resulting in their concealment.
Destruction, on the other hand, consists of the physical elimination of all or part of the records, or rendering them illegible and therefore unsuitable for use by means of abrasion, erasure or other means.
The material object of the offence consists of accounting records and documents that must be kept in accordance with tax or civil law (Article 2214 of the Italian Civil Code), which distinguishes between absolutely mandatory books (journal, inventories, originals of letters, telegrams and invoices received, as well as copies of letters, telegrams and invoices sent) and relatively mandatory records, such as those required by the size of the business.[126]
The offence is committed when, as a result of the destruction or concealment, it becomes impossible to reconstruct the income or turnover.
It is therefore necessary that the conduct described is followed by the impossibility of reconstructing the income or turnover. These consequences are considered to be the result of the offence.
Destruction gives rise to an instantaneous offence, while concealment gives rise to a permanent offence, and therefore, in the latter case, the limitation period will begin to run from the moment the permanence ceases, which is considered to be the result of the tax assessment.[127]
The impossibility of reconstructing income, precisely because it is envisaged '*in whole or in* part', is to be understood in terms of even relative impossibility, i.e. when the reconstruction of income or turnover is considerably difficult or in any case requires particular diligence, for example, making cross-checks necessary.[128]

---

[125] 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 omission, the pre-existing keeping of accounting records is necessary for the offence referred to in Article 10 of Legislative Decree No. 74/2000 to be committed. In this case, the concealment or destruction of pre-existing accounting records or documents that must be kept is punishable when it makes it impossible to reconstruct income and turnover. On this point, according to the Supreme Court, mere omission, i.e. failure to keep accounting records, which makes it objectively more difficult, but not impossible, to reconstruct the accounting situation, is not sufficient; rather, a *'quid* pluris' is required, consisting of the concealment or destruction of accounting documents whose creation and retention is required by law (Criminal Cassation, Section III, judgment no. 19106 of 02/03/2016).
[126] Where the taxpayer has opted for electronic record-keeping and document storage, if the digital storage process is not carried out in accordance with the relevant provisions, the documents are not validly enforceable against the tax authorities. Where the relevant conditions are met, the offence may also be contested in relation to accounting records stored digitally.
[127] The Supreme Court has specified that, unlike destruction, which constitutes an instantaneous offence, the moment of which coincides with the removal of the documentation, concealment - which consists of the temporary or permanent unavailability of the documentation to the auditing bodies - constitutes a permanent offence that is committed at the time of the audit, i.e. until the agents have an interest in examining the documentation. (see, in this regard, Criminal Cassation, Section III, judgments no. 14461/2017 and no. 13716/2006). Therefore, in order for the offence in question to be considered committed, no importance should be attached to the moment when the tax return for the tax year to which the documentation not found during the tax audit pertained was filed. The fact that the destroyed or concealed documentation refers 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 refers to a single tax year or to several tax years, given that the offence is committed when the conduct described by the legislator as prohibited is carried out.
[128] In this regard, the case law of the Court of Cassation (see, *among others*, Criminal Cassation, Section III, judgment no. 39711 of 12 October 2009 and Criminal Cassation, Section III, judgment no. 5791 of 6 February 2008) has clarified that the impossibility of such reconstruction must be understood

If, on the other hand, after the destruction or concealment of evidence, the taxpayer himself makes the documentation available during the assessment, so as to allow the income or business turnover to be reconstructed, this would render the act harmless and, in any case, would mean that a constituent element of the offence, and in any case the subjective element, is missing.
On the last point in question, this is a specific intent offence, because it is characterised by the purpose to which the will of the perpetrator must tend, namely to evade or allow evasion by third parties.
As this is an event-based offence and the exclusion referred to in Article 6 of Legislative Decree No. 74/2000 does not apply, the attempt is theoretically punishable, for example, in the event that the perpetrator is caught in the act of performing acts unequivocally aimed at concealing or destroying, even partially, accounting records or documents necessary for the reconstruction of income or turnover.
Sanctions applicable to the Entity

- financial sanction: up to 400 units; however, if the Entity has made a significant profit, the financial sanction is increased by one third;
- disqualification sanctions: prohibition from contracting with the public administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

Undue compensation (Article 10-quater of Legislative Decree No. 74/2000)
The offence in question punishes in the first paragraph *'with imprisonment from six months to two years anyone who fails to pay the sums due, using in compensation, pursuant to Article 17 of Legislative Decree No. 241 of 9 July 1997, credits not due, for an annual amount exceeding fifty thousand euros*'. and in the second paragraph, *'with imprisonment from one year and six months to six years, anyone who fails to pay the amounts due, using non-existent credits for an annual amount exceeding fifty thousand euros as compensation, pursuant to Article 17 of Legislative Decree No. 241 of 9 July 1997*'.
In order to outline the credits on which undue compensation may be exercised, Legislative Decree No. 87/2024 has recently introduced a *new* definition of non-existent credits and undue credits in the criminal sphere.
More specifically, the amended Article 1, paragraph 1, letters *g-quater* and *g-quinquies* of Legislative Decree No. 74/2000 (*"Definitions"*) provides as follows:
"non-existent credits" means: 1) credits for which the objective or subjective requirements specifically indicated in the relevant regulatory framework are wholly or partially lacking; 2) credits for which the objective and subjective requirements referred to in point 1) are subject to fraudulent representations, implemented with materially or ideologically false documents, simulations or artifices;
"Unjustified credits" means: 1) credits used in violation of the terms of use provided for by applicable laws or, for the relevant excess, those used in excess of the amount established by the relevant regulations; 2) credits which, despite meeting the subjective and objective requirements specifically indicated in the relevant regulations, are based on facts that do not fall within the scope of the regulations governing the attribution of credits due to the lack of additional elements or specific qualities required for the purposes of credit recognition; 3) credits used without complying with the administrative requirements expressly provided for under *sanction of forfeiture*.
Furthermore, with Article 1, paragraph 1, letter d) of Legislative Decree No. 87/2024, without affecting criminally relevant conduct, the legislator introduced a new cause for non-punishability,

in 'relative' rather than absolute terms , and should therefore be interpreted more accurately as a 'reconstruction difficulty', since the offence in question may well exist where the tax authorities are able to redetermine the tax liability by using their investigative powers (e.g. financial investigations, sending questionnaires, etc.). The offence in question also contributes to the offences relating to declarations referred to in Chapter I of Title II, as well as to the offence of issuing invoices for non-existent transactions, since the aim of achieving impunity with regard to the other offences, there being no relationship of specificity, because the destruction of accounts or invoices, for example, may well be linked to the purpose of tax evasion pursued by issuing false invoices, and even in the case of issuing false invoices, it does not remove the obligation to keep them or to pay VAT.

inserting paragraph 2-bis, according to which: "*The punishability of the agent for the offence referred to in paragraph 1 is excluded when, also due to the technical nature of the assessments, there are conditions of objective uncertainty regarding the specific elements or particular qualities that establish the entitlement to the credit*."[129]

As is well known, the institution of compensation represents a method of extinguishing tax obligations, consisting in the use of credits claimed from the tax authorities.

There are two types of compensation: "vertical" and "horizontal".

Vertical offsetting, provided for by individual tax laws, consists of carrying forward a credit to a subsequent period in order to reduce, by means of a deduction, a debt that has arisen or will arise in the same period. Such offsetting concerns credits and debts relating to the same type of tax and can be carried out without limitation.

Horizontal compensation, governed by Article 17 of Legislative Decree No. 241/97, applies to credits and debts relating to different taxes, contributions, sanctions and all other payments that can be made using the F24 form. Based on the decree of the Minister of Finance of 31 March 2000, it has also been extended to sums, including sanctions, due under Legislative Decree No. 218/97.[130]

The offence 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 in question and not at the time of the subsequent tax return.

Therefore, the mere fact that a payment has not been made is not sufficient to constitute the offence, as it must be formally justified by an offset between the sums due to the Treasury and credits due to the taxpayer, which in reality are not due or do not exist.

In this context, it is precisely the necessary compensation that represents the distinguishing factor between the offence in question and a simple case of failure to pay.

On the basis of this assumption, the Supreme Court, in its ruling no. 44737 of 5 November 2019, emphasised that the undue compensation must be shown on 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, VAT returns and tax payments made, but no mention was made of the necessary implementation of the offsets deemed undue in the F24 forms, which, in this case, were not even acquired.

In the absence of this verification, it must be concluded that there is no evidence of the compensation having been made, which is a necessary prerequisite for the failure to pay.

Ultimately, the offence in question is committed when, in the same tax period, an additional amount of credits that are not due or do not exist is offset which, when added to the amounts being offset, exceeds €50,000, and is completed when the F24 form is sent or submitted to the affiliated credit institution, which has been granted a specific irrevocable authorisation.

---

[129] The cause of non-punishability in question applies exclusively to the criminal offence of undue compensation through undue credits, excluding from the benefit the 'more serious' conduct of undue compensation through non-existent credits. Furthermore, it only applies where it is possible to recognise conditions of objective uncertainty regarding the specific elements or particular qualities that establish the entitlement to the credit, including due to the technical nature of the assessments. It is clear that the reference to 'conditions of objective uncertainty' is a reference to the grounds for non-punishment referred to in Article 15 of Legislative Decree No. 74/2000. However, the two exemptions do not coincide, as the new grounds for non-punishment seem to have a broader scope of application than the previous Article 15, as they may also cover cases of error on the facts (therefore attributable rather to the exemption referred to in Article 47 of the Criminal Code) and not only regulatory uncertainties.

[130] With regard to this distinction, the Supreme Court, in its ruling no. 8705 of 28 February 2019, stated that: "*The offence of undue compensation of credits that are not due or do not exist, referred to in Legislative Decree no. 74 of 2000, Article 10-quater, can be configured 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), noting that Legislative Decree No. 241 of 9 July 1997, Article 17, referred to in the criminal case, has broadened the scope of compensation already provided for in tax regulations, extending the right of compensation 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 doctrine, the applicability of the criminal sanction provided for in the provision in question is not conditioned by the vertical or horizontal nature of the compensation, but by the circumstance, considered decisive, that it is opposed in the single form, i.e. in the so-called F24 form, which is submitted with the single tax return for income tax, VAT and IRAP purposes, because it is with this form that the 'amounts due' are paid pursuant to the aforementioned Legislative Decree No. 241 of 1997, Article 17, referred to in Article 10-quater, with the consequence that the nature of the non-existent or undue credit renders irrelevant the allocation made by the taxpayer in the return to effect the undue compensation, as the provision refers generically to the use of 'undue or non-existent credits' for compensation, without any specification as to the homogeneity or heterogeneity of the compensation. The negative value of the fact, according to the aforementioned doctrine, is given by the failure to pay the amounts due, committed through false compensation, and not by the nature of the compensation used to evade payment of the amount due*.

Finally, Article 5 of Legislative Decree No. 75/2020 provided for the inclusion of the offence of undue compensation, if committed *'within the framework of cross-border fraudulent schemes and for the purpose of evading value added tax for a total amount of not less than ten million* euros', in Article 25-quinquiesdecies of Legislative Decree No. 231/2001, for which a financial sanction of up to 400 units and the disqualification sanctions referred to therein apply.
Finally, Article 5 of Legislative Decree No. 156/2022 replaced the above condition with the following: "*when committed for the purpose of evading value added tax in the context of cross-border fraudulent schemes connected to the territory of at least one other Member State of the European Union, resulting in or likely to result in total damage equal to or greater than ten million euros*."
For an examination of the above conditions, please refer to the previous paragraph.
Sanctions applicable to the Entity

- financial sanction: up to 400 units; however, if the Entity has made a significant profit, the financial sanction is increased by one third;
- Disqualification sanctions: prohibition from contracting with the public administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

Fraudulent evasion of tax payments
This offence is provided for and punished by Article 11 of Legislative Decree No. 74/2000[131] and is one of a number of measures aimed at combating tax arrears collected through tax assessment, punishing, in paragraph 1, the material conduct of taxpayers who simulate or commit fraudulent acts on their own or others' assets in order to render the relevant tax collection measures to protect the tax claim wholly or partially ineffective.
The offence in question requires two conditions to be met:

- the performance of acts aimed at evading the payment of income tax or VAT, related interest and administrative sanctions;
- exceeding the threshold of punishability of €50,000, calculated on the amount of taxes due, in addition to interest and administrative sanctions imposed.

Despite the use of the term "anyone" in the provision to indicate the person who may be liable for the offence, the offence in question can only be committed by a taxpayer (active subject) already classified as a tax debtor for income tax or value added tax purposes, against whom the tax authorities can make a tax claim for an amount exceeding €50,000.
The offence is committed when the taxpayer, aware of not having paid the taxes due, engages in conduct aimed at removing their own or others' assets subject to subsequent enforcement action.
Compared to its legislative antecedent[132] , given the identity of both the subjective element, consisting of the intent to evade and constituting specific intent, and the material conduct, represented by the fraudulent activity, the offence referred to in Article 11, on the one hand, does not require, as a prerequisite for the offence, prior access, inspections or checks, or prior notification to the perpetrator of the criminal conduct of invitations, requests, assessment notices or entries in the tax roll and, on the other hand, requires, for the purposes of establishing the offence, the mere suitability of the conduct to render the collection procedure ineffective (even if only partially) and not the actual occurrence of such an event. (Criminal Cassation, Section III, judgment no. 13233 of 1 April 2016).

[131] *"1. Anyone who, in order to evade payment of income tax or value added tax, or interest or administrative sanctions relating to such taxes, for a total amount exceeding fifty thousand euros, fraudulently disposes of or performs other fraudulent acts on their own or others' assets, rendering the enforcement procedure wholly or partially ineffective, shall be punished with imprisonment for a term of between six months and four years. If the amount of taxes, sanctions and interest exceeds two hundred thousand euros, imprisonment for a term of between one and six years shall apply.*
2. Anyone who, in order to obtain for themselves or others a partial payment of taxes and related accessories, indicates in the documentation submitted for the purposes of the tax settlement procedure assets for an amount lower than the actual amount or fictitious liabilities for a total amount exceeding fifty thousand euros shall be punished with imprisonment for a term of between six months and four years. If the amount referred to in the previous period exceeds two hundred thousand euros, imprisonment for a term of between one and six years shall apply.
[132] The provision in question replaces the provision of Article 97, sixth paragraph, of Presidential Decree No. 602/73 (so-called tax collection fraud), as amended by Article 15 of Law 413/91, with significant elements of discontinuity.

The legal object of the offence does not, in fact, relate to the tax authority's claim to credit but to the general guarantee provided by the assets of the person liable, as a result of which the offence is still configurable even when, after the fraudulent acts have been committed, the tax and related charges are paid (Criminal Cassation, Section III, judgment no. 36290 of 18 May 2011).
Unlike the previous provision, therefore, on the one hand, the prerequisite of conduct is no longer required, and on the other hand, the material event envisaged is transformed from 'damage' to 'danger', demonstrating the clear interest of the State not only in the effective collection of taxes but also in the preservation of the financial guarantees that protect the tax claim (Criminal Cassation, Section III, judgment no. 14720 of 9 April 2008).
It is, therefore, a (concrete) offence of danger, in relation to which the criminally relevant conduct may consist of any act that is abstractly capable of prejudicing the enforcement procedure and whose suitability must be verified on a case-by-case basis, based on an *ex ante* assessment of its potential for harm.
Consequently, the legal interest protected by the provision must be identified as the general financial guarantee offered to the tax authorities by the assets of the person liable, taking into account that the debtor, pursuant to Article 2740 of the Italian Civil Code, is liable for the fulfilment of his obligations with all his present and future assets.
The constitutional 'validity' (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 requirement that the conduct aimed at the removal of the asset is characterised by the simulated nature of the disposal of the asset or by the fraudulent nature of the acts performed on one's own or others' assets.
In other words, only an act of disposal of assets characterised by such methods, strictly defined by the law, can be suitable for undermining the legitimate expectations of the Treasury, given that, otherwise, any possible conduct involving the disposal of assets would be punished, in contrast with the constitutionally guaranteed right to property.
[133]It is clear that conduct characterised by simulation, fraud, or deceitful acts is not necessarily, *ipso jure*, capable of *'rendering the enforcement procedure wholly or partially ineffective*': the fact that the legislator has expressly added this requirement as a constituent element of the offence, even in the presence of deceptive conduct of the type mentioned above, makes it clear that suitability is not a concept equivalent to the realisation of a simulated alienation or a fraudulent act, since the assessment of the existence of the requirement cannot be separated from an evaluation of the taxpayer's entire assets in relation to the claims of the tax authorities, which are likely to be equally guaranteed even in the presence of similar acts.
This consideration becomes even more relevant when considering the following number of case law cases, reported purely by way of example, in which the possibility of fraudulent evasion of tax payments has been hypothesised:

- the establishment of a *trust*, through which the defendant transferred to himself, as *trustee*, the entire assets of the company of which he was the liquidator (Criminal 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 a trust fund (Criminal Cassation, Section III, judgment no. 23986/2011);
- transfers of companies and corporate spin-offs, aimed at transferring real estate to new legal entities (Criminal Cassation, Section III, judgment no. 19595/2011);
- transformation of a limited liability company into a general partnership, whose shares cannot be expropriated until the company is dissolved or the relationship with the debtor partner is terminated (Criminal Cassation, Section III, judgment no. 20678/2012);

[133] This is the first type of conduct expressly provided for by the provision and may take the following forms: absolute simulation, when the parties pursue the sole purpose of pretending to enter into a contract but do not want the act apparently performed to produce effects; relative simulation, when the parties tend towards effects other than those produced by the act apparently performed; fictitious interposition of a person, when the real recipient of the effects is a person other than the one appearing in the simulated act; partial simulation, when it concerns only one or more contractual elements; total simulation, when it concerns all contractual elements.

- simulated transfer of commercial goodwill (Criminal 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);
- disposal of assets through the conclusion of an apparent *'sale and lease* back' contract (Criminal Cassation, Section III, judgment no. 14720 of 9 April 2008).

The common feature of the above cases is the appearance that the simulated act is intended to create: the effects produced are not those actually intended by the contracting parties.
Simulated disposal must therefore be understood as any legal transaction involving the fictitious transfer of ownership, whether for consideration or free of charge, or any disposal characterised by a preordained divergence between the declared intention and the actual intention.
The offence in question is also characterised by specific intent, which occurs when the simulated transfer or the performance of other fraudulent acts, capable of rendering the enforcement procedure ineffective, are aimed at evading *'the payment of income or value added taxes or interest or administrative sanctions relating to such taxes*'.
On this point, the Supreme Court ruled out the possibility of establishing psychological intent with regard to the simulated sale of an asset whose proceeds were used to settle a tax debt, except in the event that the amount paid was less than the actual value of the asset sold, the assessment of which was referred to the referring court (see Criminal Cassation, Section III, judgment no. 27143 of 22/04/2015).
The formula used by the legislator to define the second *type* of conduct provided for by the law (*"commits other fraudulent* acts") includes, on the other hand, any act, legal or material, which, although formally lawful, is characterised by an element of artifice or deception, aimed at rendering enforcement ineffective.
With regard to the concept of fraudulent act, case law limits its meaning to the performance of any act of disposal of assets, not simulated, in which the taxpayer's artifice can be identified (Criminal 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 included in the regulatory provision.
Precisely for this reason, for the purposes of integrating the case in question, the majority of case law requires careful verification of the evidence gathered, with a view to assessing its suitability to prejudice tax collection.[134]
Indeed, the generality and breadth of this regulatory formulation often raise the question of assessing, in concrete terms, whether the transactions carried out by the taxpayer, even in their sequence, can be classified as conduct outlined by the legislator.
According to case law, criminally relevant conduct may consist of 'any' fraudulent act or deed intentionally aimed at reducing the taxpayer's financial capacity. This *reduction* in assets must be such, both from a quantitative and qualitative point of view, as to nullify, in whole or in part, or in any case make more difficult, any enforcement proceedings (see Criminal Cassation, Section III, judgment no. 39079/2013; Criminal Cassation, Section III, judgment no. 29243/2017).

[134] With specific reference to proving the fraudulent nature of transactions, it should be noted that claiming to recognise this characteristic in the mere suitability of the acts to compromise the recovery of the credit by the Treasury would in fact make it impossible for the taxpayer to freely dispose of their assets once the financial administration has carried out a verification or assessment. In view of a possible limitation of the right of private individuals to freely decide on the destination of their assets, a right that cannot be compromised solely 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 its ruling no. 273 of 2 July 2018 appears timely. The Supreme Court recognises that *'the logical sequence of the acts performed by the defendant points to a pattern of conduct aimed at progressively depleting his assets in view of the imminent enforcement actions by the tax authorities*'. Nevertheless, it is recognised that the mere suitability of the acts cannot alone be sufficient to recognise the deceptive or artificial nature of the acts, as argued by a line of case law formed mainly in precautionary proceedings (Criminal Cassation, judgment no. 40561/2012; Criminal Cassation, judgment no. 23986/2011; Criminal Cassation, judgment no. 38925/2009), which sought to obliterate the prerogative of fraudulence in order to resolve the issue of conduct in terms of suitability. In the absence of a proper examination of all the elements of the case, the rule of judgement beyond reasonable doubt could only lead to the annulment of the judgement, otherwise there would be no certainty about the limits of the lawfulness of one's conduct and, considering the *'sedes* materiae', a compromise of the relationship between the taxpayer and the tax authorities.

In this regard, certain criteria have been identified that are symptomatic of the transaction's suitability for jeopardising the enforced collection of the tax debt, which are listed here by way of example only:

- the lack of economic justification underlying the transaction carried out;
- failure to collect the proceeds of the sale, as, for example, in the case of 'disposal' of the assets of companies with tax debts, carried out through transfers of businesses and contributions of real estate, without any consideration or increase in assets (Criminal Cassation, Section III, judgment no. 19595 of 18 May 2011);
- the timing of the fraudulent disposal of assets, such as, for example, during inspections.

Finally, the second paragraph of Article 11 punishes falsehood in the documentation submitted for the purposes of the tax settlement procedure, i.e. when assets are indicated for an amount lower than the actual amount or fictitious liabilities are indicated.
Also with reference to this case, the offence is classified as a danger offence, since no damage to the Treasury is required, but only that the final stage of tax collection is jeopardised.
This is still a specific offence, which can only be committed by a taxpayer (active subject) already classified as a tax debtor for income or value added tax purposes, who submits a tax settlement proposal containing false information.
The prerequisite for the offence is the establishment of a tax settlement procedure, which provides that taxpayers in financial difficulty may, as part of a debt restructuring plan, propose the payment, in part or even in instalments, of taxes and related accessories, as well as contributions administered by the bodies managing compulsory social security and welfare schemes and related accessories, limited to the portion of the debt that is unsecured, even if not registered.
The offence in question provides for a punishability threshold of €50,000, which qualifies as a constituent element of the offence and must be satisfied with regard to both the assets and liabilities indicated falsely.
The offence is instantaneous in nature, occurring upon the presentation of false documentation.
Sanctions applicable to the Entity

- financial sanction: up to 400 units; however, if the Entity has made a significant profit, the financial sanction is increased by one third;
- disqualification sanctions: prohibition from contracting with the public administration, except to obtain public services; exclusion from benefits, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

SMUGGLING (ART. 25-SEXIESDECIES)

Legislative Decree No. 141 of 26 September 2024 was published in Official Gazette No. 232 of 3 October 2024, which, in implementation of the Enabling Law for tax reform (Law No. 111/2023), introduces the ' ' (*Reform of the Customs Code) 'Revision of customs regulations and the system of sanctions relating to excise duties and other indirect taxes on production and consumption*'.
The objectives of the legislative decree are:

- to reorganise domestic customs legislation in accordance with European Union provisions;
- to update the regulations governing the profession of customs agents;
- to revise the sanction system for customs, excise duties and tobacco;
- to extend the liability of entities for administrative offences resulting from crimes referred to in Legislative Decree No. 231/2001 to crimes referred to in the Consolidated Law on Excise Duties;
- changes to VAT regulations relating to import operations (the express classification of VAT and any other consumption tax due to the State at the time of import as a border duty).

With regard to customs (Article 11), the Government, in exercising the enabling law, intended to move along five fundamental guidelines:

- *'a) to reorganise the regulatory framework for customs matters by updating or repealing the provisions currently in force, in accordance with European Union law on customs matters;*
- *b) complete the computerisation of customs procedures and institutions in order to increase and improve the range of services offered to users;*
- *c) to increase the quality of customs controls by improving coordination between the customs authorities referred to in point 1) of Article 5 of Regulation (EU) No 952/ 2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, and simplify checks on customs procedures, including through greater coordination between the administrations involved, by strengthening the Single Window for customs and controls;*
- *d) reorganise the procedures for settlement, assessment, review of assessment and collection referred to in Legislative Decree No. 374 of 8 November 1990;*
- *e) revise the institution of customs disputes provided for in Title II, Chapter IV, of the consolidated text of customs legislation, referred to in Presidential Decree No. 43 of 23 January 1973*.

More specifically, Article 1 of Legislative Decree No. 141/2024 establishes that "*the provisions contained in Annex 1, which forms an integral part of this* decree, *are approved*", therefore "*from the date of entry into force of this* decree", i.e. the day following its publication in the Official Gazette (Article 10), Annex 1 replaces the Consolidated Customs Law (hereinafter "TULD"), which is repealed (Article 8, paragraph 1, letter f).
The TULD, which consisted of 352 articles, is amended and reduced to 122 articles, containing national provisions complementary to the Union Customs Code.
The rules in Annex 1 therefore apply *'insofar as not expressly* provided for' by the regulations of the Union Customs Code (founding regulation No 952/2013 and implementing regulations No 2015/2446 and No 2015/2447), which are directly applicable, even in derogation from national legislation.
The reform also modifies the customs sanction system, providing for both criminal sanctions (Articles 78-95), including offences of smuggling due to failure to declare or false declaration, and administrative sanctions (Articles 96-103).
With regard to the reorganisation of the system of sanctions relating to excise duties and other indirect taxes on production and consumption provided for in the Consolidated Law referred to in Legislative Decree No. 504/1995, the Government, in exercising the enabling law (Article 20, paragraph 2), has set out, among others, the following specific guiding principles and criteria:

- *"(a) rationalisation of the administrative and criminal sanction systems in order to simplify them and make them more consistent with the principles expressed in the case law of the Court of Justice of the European Union, including, in particular, those of predetermination and proportionality to the seriousness of the conduct; ...*
- *e) the integration of Legislative Decree No. 231 of 8 June 2001 with the offences provided for in the aforementioned consolidated text, providing for the application of effective, proportionate and dissuasive administrative sanctions." (Articles 40 et seq. of Legislative Decree No. 504/1995)".*

With specific regard to the impact on Legislative Decree No. 231/2001, Article 4 of the Decree in question amends Article *25-sexiesdecies* ("Smuggling"), which now reads:
"1. In relation to the commission of offences provided for by national provisions complementary to the Union Customs Code, referred to in the legislative decree issued pursuant to Articles 11 and 20, paragraphs 2 and 3, of the Law of 9 August 2023, No. 111, and the consolidated text of the legislative provisions concerning production and consumption taxes and related criminal and administrative sanctions, referred to in Legislative Decree No. 504 of 26 October 1995, a financial sanction of up to two hundred units shall be applied to the entity.
2. When the taxes or border duties due exceed one hundred thousand euros, a financial sanction of up to four hundred units shall be imposed on the entity.
3. In the cases provided for in paragraphs 1 and 2, the disqualification sanctions provided for in Article 9, paragraph 2, letters c), d) and e) shall be applied to the entity and, in the case provided for

in paragraph 2 only, the disqualification sanctions provided for in Article 9, paragraph 2, letters a) and b) shall *also* be applied.
A first significant change in the Decree under consideration, with inevitable repercussions also on the criminal side, is the express classification of import VAT as a border duty (and not as an internal tax), except in the cases referred to in paragraph 3 of Article 27 of Annex 1; therefore, failure to pay value added tax may also constitute smuggling by means of a false declaration as provided for in the new Article 79.
In this regard, and to complete a picture that had not taken into account the critical issues represented by import/export activities that characterise the wider audience of national companies, Legislative Decree No. 75/2020 had already implemented Directive (EU) No. 1371/2017 of the European Parliament and of the Council of 5 July 2017 *'on the fight against fraud affecting the financial interests of the Union by means of criminal* law', including among the predicate offences of the 231 system offences relating to income tax and VAT under Legislative Decree No. 74 of 10 March 2000 (if committed as part of cross-border fraudulent schemes and for the purpose of evadingvalue added tax for a total amount of not less than ten million euros) and the offence of smuggling, which, pursuant to Article 34 of the TULD (now repealed), punished - in general terms - anyone who brought goods subject to customs duties into the territory of the State in violation of customs regulations.
The provision in question provided in the first paragraph that *'Customs duties are all those duties that customs is required to collect by law in relation to customs* operations' and established in the second paragraph that *'Customs duties include border duties: import and export duties, levies and other charges on imports or exports provided for by Community regulations and related implementing rules and, in addition, as regards imported goods, monopoly duties, border surcharges and any other consumption tax or surcharge in favour of the State*'.
The wording of the repealed Article 34 of the TULD already makes it clear that excise duties – as consumption taxes – must fall within the broader category of 'border duties'.
This assessment was confirmed by the Constitutional Court, which, in its ruling no. 233 of 7 December 2018, specified that border duties "*as described in Article 34 of the TULD include not only customs duties (the Union's own resource) but also excise duties on consumption*".
The choice made today by the legislator is therefore in line with both the prevailing case law[135] and European legislation and fills a clear gap in protection relating to all those cases in which the malicious conduct of the offender has resulted in the goods being removed from excise duty assessment.
Moreover, if the potential risk of customs smuggling arises – by traditional definition – for all companies that have commercial relations with entities resident in third countries, smuggling relating to products governed by the TUA regulations can also occur in intra-EU transactions, which – for the purposes of excise duty assessment – are always sensitive operations.
In other words, because excise duty becomes payable when goods cross any EU border, with the tax liability falling on the Member State where the goods are actually released for consumption, every single transfer of a product that complies with harmonised rules (and non-harmonised rules, as in the case of lubricating oils) represents a potential risk.
Ultimately, with regard to the scope of Legislative Decree 231/2001, the relevance of the typical case of smuggling, which until now has been limited to international transactions between the EU and third countries, now extends to phenomena of actual 'internal smuggling', with the irregularities referred to in the TUA (Consolidated Environmental Act) for the removal of products from the assessment of excise goods in domestic and intra-EU transfers, for which there is no formal control channel as there is for imports, also being classified as relevant.

[135] See Court of Cassation, judgment no. 24847 of 15 June 2016, according to which: *'the concept of smuggling, therefore, relates both to forms of evasion (violation of financial laws imposing duties on foreign goods) that constitute foreign customs smuggling and to forms of evasion of other taxes provided for by non-customs financial laws, such as manufacturing taxes, tax monopolies, municipal consumption taxes, which take the form of fraudulent conduct relating to internal consumption duties and state monopolies, known as internal smuggling*".

Moreover, the risk of evading assessment does not arise exclusively from the movement of excise goods as such, as the criminal offence may also be committed in cases where such goods are structurally hidden in machinery or components that contain them for technical construction reasons, thus remaining concealed from detection by operators, such as, among others, energy products.
Moving on to examine the individual provisions of interest here, the aforementioned Legislative Decree No. 141/2024 has brought about a significant *'reorganisation and simplification of the regulatory framework* for sanctions' (see Customs and Monopolies Agency Circulars Nos. 20 and 22/2024 for a detailed examination of the new regulations), providing for only two types of offences, criminal and administrative, and making the relevant distinction exclusively on the basis of a purely objective criterion determined by the amount of border duties due, set at €10,000.
Numerous offences have therefore been reorganised into: i) smuggling due to failure to declare (Article 78); and ii) smuggling due to false declaration (Article 79): the former includes all cases of wilful failure to comply with the declaration obligation in relation to customs procedures not specifically governed by special rules; the second, on the other hand, occurs in all cases where, despite the party having submitted the required declaration, a deliberately intended discrepancy is found with regard to the quality, quantity, origin and value of the goods or any other element necessary for the application of the tariff and for the payment of the duties due.
As anticipated, Legislative Decree No. 141/2024 also includes in Article *25-sexiesdecies* of Legislative Decree No. 231/2001 the offences provided for in the so-called Consolidated Law on Excise Duties (Legislative Decree No. 504/995), which is amended at the same time.
Excise duty is an indirect tax on the production or consumption of energy products, ethyl alcohol and alcoholic beverages, electricity and manufactured tobacco (other than the other indirect taxes provided for in Title III of the Consolidated Law). The following are the offences provided for in the Consolidated Law:

- Art. 40 (Evasion of assessment or payment of excise duty on energy products);
- Art. 40-bis. (Evasion of assessment or payment of excise duty on manufactured tobacco);
- Art. 40-quinquies (Sale of manufactured tobacco without authorisation or purchase from persons not authorised to sell);
- Art. 41 (Illegal manufacture of alcohol and alcoholic beverages);
- Art. 42 (Association for the purpose of clandestine manufacture of alcohol and alcoholic beverages);
- Art. 43 (Evasion of the assessment and payment of excise duty on alcohol and alcoholic beverages);
- Art. 46 (Alteration of devices, imprints and markings);
- Art. 47 (Deficiencies and surpluses in the storage and circulation of products subject to excise duty);
- Art. 48 (Irregularities in the operation of processing and storage facilities for products subject to excise duty);
- Art. 49 (Traffic offences);
- Art. 50 (Failure to comply with requirements and regulations).

Finally, on 12 June 2025, Legislative Decree 81/2025 was published, containing *'Supplementary and corrective provisions on tax compliance, two-year preventive agreements, tax justice and tax* sanctions', which introduced a number of amendments to the national provisions supplementing the Union Customs Code contained in Legislative Decree No 141/2024.
More specifically, the threshold for criminal liability for smuggling under Article 96[136] has been raised from €10,000 to €100,000 for border duties other than customs duties (including VAT due on importation).

[136] The new wording of Article 96 now provides that: *'Anyone who, without the aggravating circumstances referred to in Article 88, commits the violations referred to in Articles 78 to 83 shall be punished with an administrative sanction of between 100 per cent and 200 per cent of the border duties due or unduly collected or unduly claimed as a refund, and in any case not less than EUR 2,000, and, for the violations referred to in Article 79,*

The increase in the threshold in question refers to all 'border duties' other than customs duties, such as levies and other import or export charges, monopoly duties, excise duties, value added tax and any other consumption tax due on importation to the State.
The decree in question also specified that, in the case referred to in Article 79, when the judicial authority does not recognise malicious conduct, the perpetrator shall be punished, on the grounds of negligence, with an administrative sanction of between 80 per cent and 150 per cent of the border duties due or unduly collected or unduly claimed as a refund, and in any case not less than EUR 500. In such cases, paragraphs 2, 3 and 4 shall also apply.
Finally, the Corrective Decree amended the thresholds for the configuration of aggravating circumstances provided for in Article 88, paragraphs 2 and 3, adapting them to the new threshold introduced in Article 96.[137]

OFFENCES AGAINST CULTURAL HERITAGE (ARTICLES 25-SEPTIESDECIES AND 25-DUODEVICIES)

Law No. 22 of 9 March 2022, containing *'Provisions on offences against cultural* heritage'[138] , was published in the Official Gazette (No. 68/2022) and entered into force on 23 March 2022.
The text reforms the criminal provisions for the protection of cultural heritage – currently contained mainly in the Cultural Heritage Code (Legislative Decree No. 42 of 2004) – and incorporates them into the Criminal Code, with the aim of carrying out a profound reform of the subject, redefining the structure of the regulations with a view to a general tightening of sanctions.
More specifically, the law consists of seven articles through which:

i) places offences currently also provided for in the Cultural Heritage Code exclusively in the Criminal Code;
ii) introduces new types of offences and increases the existing sanctions, implementing the constitutional principles according to which cultural and landscape heritage requires additional protection compared to that offered to private property;
iii) it introduces aggravating circumstances when cultural heritage is the object of common offences;
iv) it amends Article 240-bis of the Criminal Code, expanding the list of offences for which so-called extended confiscation is permitted;
v) extends the application of the rules on undercover operations to certain offences;

---

not less than EUR 1,000, anyone who, without the aggravating circumstances referred to in Article 88, commits the violations referred to in Articles 78 to 83, unless, alternatively:

a. the amount of border duties in the form of customs duties due or unduly collected or unduly claimed for refund is greater than EUR 10,000;
b. the total amount of border duties other than customs duties due or unduly collected or unduly claimed for refund exceeds €100,000.

Article 96 also provides for the diversification of sanctions according to the seriousness of the violation. In the case of simple smuggling, imprisonment can be up to 3 years if the amount of duties owed exceeds €50,000 for customs duties or €200,000 for VAT. In the case of aggravated smuggling, the sanction can be up to 5 years if the evasion exceeds €100,000 for customs duties or €500,000 for VAT.

[137] For the offences referred to in paragraph 1 of Article 88 of the Provisions (offences under Articles 78 to 83 punishable by a fine increased by up to half because they were committed using means of transport belonging to a person not involved in the offence), the Corrective Decree now provides - in addition to the circumstances already present in Article 88 - that *'the fine shall be increased by imprisonment for a term of between 3 and 5 years when: letter e): the amount of border duties owed or unduly collected or unduly claimed as a refund of customs duties exceeds €100,000;*
letter e-bis): the total amount of border duties owed or unduly collected or unduly claimed as a refund other than customs duties exceeds €500,000."
Paragraph 3 of Article 88 has also been amended, now providing that for the above offences, *'the fine shall be accompanied by imprisonment for up to three years when: a) the total amount of border duties owed or unduly collected or unduly claimed for refund as customs duties is greater than €50,000 and not greater than €100,000; b) the total amount of border duties owed or unduly collected or unduly claimed as a refund other than customs duties is greater than €200,000 and not exceeding €500,000*."

[138] Please note that, pursuant to Article 2 of the Cultural Heritage Code (Legislative Decree No. 42/2004), cultural heritage consists of cultural assets and landscape assets. Cultural assets are immovable and movable property which, pursuant to Articles 10 and 11, are of artistic, historical, archaeological, ethno-anthropological, archival and bibliographic interest, and other items identified by law or on the basis of the law as evidence of civilisational value. Landscape heritage consists of the immovable properties and areas indicated in Article 134, which constitute an expression of the historical, cultural, natural, morphological and aesthetic values of the territory, and other assets identified by law or on the basis of law.

vi) amends Legislative Decree No. 231 of 2001, providing for the administrative liability of legal persons when crimes against cultural heritage are committed in their interest and/or to their advantage;

vii) amends paragraph 3 of Article 30 of Law No. 394 of 1991 on protected areas.

More specifically, with regard to the amendments to Legislative Decree No. 231/2001, the following are inserted after Article *25-sexiesdecies*:

- **Article 25-septiesdecies *"Crimes against cultural heritage"***
  "*1. In relation to the commission of the offence provided for in Article 518-novies of the Criminal Code, a financial sanction of between one hundred and four hundred units shall be imposed on the entity.*
  2. In relation to the commission of the offences provided for in Articles 518-ter, 518-decies and 518-undecies of the Criminal Code, a fine of between two hundred and five hundred units shall be imposed on the entity.
  3. In relation to the commission of the offences provided for in Articles 518-duodecies and 518-quaterdecies of the Criminal Code, a financial sanction of between three hundred and seven hundred units shall be imposed on the entity.
  4. In relation to the commission of the offences provided for in Articles 518-bis, 518-quater and 518-octies of the Criminal Code, a financial sanction of between four hundred and nine hundred units shall be imposed on the entity.
  5. In the event of conviction for the offences referred to in paragraphs 1 to 4, the disqualification sanctions provided for in Article 9, paragraph 2, shall be imposed on the entity for a period not exceeding two years.";
- **Art. 25-duodevicies "*Recycling of cultural property and devastation and looting of cultural and landscape heritage*"**
  "*1. In relation to the commission of the offences referred to in Articles 518-sexies and 518-terdecies of the Criminal Code, a financial sanction of between five hundred and one thousand units shall be imposed on the entity.*
  2. *If the entity or one of its organisational units is used on a permanent basis for the sole or main purpose of enabling or facilitating the commission of the offences referred to in paragraph 1, the sanction of permanent disqualification from carrying out the activity shall be applied in accordance with Article 16, paragraph 3.*"

The individual criminal offences included in the catalogue of predicate offences are listed below:

- **518-bis (Theft of cultural property)**
  Anyone who takes possession of another person's movable cultural property, removing it from its owner, for the purpose of obtaining a profit for themselves or others, or who takes possession of cultural property belonging to the State, found underground or on the seabed, shall be punished with imprisonment for a term of between two and six years and a fine of between €927 and €1,500. The sanction shall be imprisonment for a term of between four and ten years and a fine of between €927 and €2,000 if the offence is aggravated by one or more of the circumstances referred to in the first paragraph of Article 625 or if the theft of cultural property belonging to the State is committed by a person who has obtained the research permit required by law.
- **518-ter (Misappropriation of cultural property)**
  Anyone who, in order to obtain an unjust profit for themselves or others, misappropriates cultural property belonging to others which they have in their possession for any reason shall be punished with imprisonment for a term of between one and four years and a fine of between €516 and €1,500. If the offence is committed in relation to items held in necessary custody, the sanction shall be increased.
- **518-quater (Receiving stolen cultural property)**
  Except in cases of complicity in the offence, anyone who, in order to obtain a profit for themselves or others, purchases, receives or conceals cultural property originating from any

crime, or in any case interferes in its purchase, receipt or concealment, shall be punished with imprisonment for a term of between four and ten years and a fine of between €1,032 and €15,000.

The sanction shall be increased when the offence concerns cultural property originating from the crimes of aggravated robbery pursuant to Article 628, paragraph 3, and aggravated extortion pursuant to Article 629, paragraph 2.

The provisions of this article shall also apply when the perpetrator of the crime from which the cultural property originates is not liable or punishable, or when there is no condition for prosecution in relation to that crime.

- **518-sexies (Money laundering of cultural property)**
  Except in cases of complicity in the offence, anyone who replaces or transfers cultural property originating from a non-culpable offence, or carries out other operations in relation to it, in such a way as to hinder the identification of its criminal origin, shall be punished with imprisonment for a term of between five and fourteen years and a fine of between €6,000 and €30,000.
  The sanction shall be reduced if the cultural property originates from a crime for which the maximum prison sentence is less than five years.
- **518-octies (Falsification of private documents relating to cultural property)**
  Anyone who creates, in whole or in part, a false private document or, in whole or in part, alters, destroys, suppresses or conceals a genuine private document relating to movable cultural property, in order to make its origin appear lawful, shall be punished with imprisonment for a term of between one and four years.
  Anyone who uses the private document referred to in the first paragraph, without having participated in its creation or alteration, shall be punished with imprisonment for a term of between eight months and two years and eight months.
- **518-novies (Violations relating to the disposal of cultural property)**
  The following shall be punished with imprisonment for a term of between six months and two years and a fine of between €2,000 and €80,000: 1) anyone who, without the required authorisation, disposes of or places cultural property on the market; 2) anyone who, being required to do so, fails to report the transfer of ownership or possession of cultural property within thirty days; 3) the transferor of a cultural asset subject to pre-emption who delivers the item within sixty days of the date of receipt of the transfer report.
- **518-decies (Illegal importation of cultural property)**
  Anyone who, except in cases of complicity in the offences referred to in Articles 518-quater, 518-quinquies, 518-sexies and 518-septies, imports cultural property originating from a crime or found as a result of unauthorised searches, where provided for by the law of the State in which the discovery took place, or exported from another State in violation of the law on the protection of that State's cultural heritage, shall be punished with imprisonment for a term of between two and six years and a fine of between €258 and €5,165.
- **518-undecies (Illegal removal or export of cultural property)**
  Anyone who transfers cultural property, items of artistic, historical, archaeological, ethno-anthropological, bibliographic, documentary or archival interest, or other items subject to specific protection provisions under the legislation on cultural property, abroad without a certificate of free circulation or export licence shall be punished with imprisonment for a term of between two and eight years and a fine of up to €80,000.
  The sanction provided for in the first paragraph shall also apply to anyone who fails to return cultural heritage, items of artistic, historical, archaeological, ethno-anthropological, bibliographic, documentary or archival items or other items subject to specific protection provisions under cultural heritage legislation, for which temporary exit or export has been authorised, as well as to anyone who makes false statements in order to prove to the competent export office, in accordance with the law, that items of cultural interest are not subject to authorisation for exit from the national territory.

- **518-duodecies (Destruction, dispersion, deterioration, defacement, defilement and unlawful use of cultural or landscape heritage)**
  Anyone who destroys, disperses, deteriorates or renders wholly or partly unusable or, where applicable, un[139] *r inaccessible cultural or landscape heritage belonging to themselves or others shall be punished with imprisonment for a term of between two and five years and a fine of between €2,500 and €15,000.*
  Anyone who, outside the cases referred to in the first paragraph, defaces or damages cultural or landscape heritage belonging to themselves or others, or uses cultural heritage in a manner incompatible with its historical or artistic character or prejudicial to its conservation or integrity, shall be punished with imprisonment for a term of between six months and three years and a fine of between €1,500 and €10,000.
  The conditional suspension of the sentence is subject to the restoration of the state of the places or the elimination of the harmful or dangerous consequences of the offence, or the performance of unpaid work for the community for a specified period, in any case not exceeding the duration of the suspended sentence, in accordance with the terms indicated by the judge in the sentence.
- **518-terdecies (Devastation and looting of cultural and landscape heritage)**
  Anyone who, except in the cases provided for in Article 285, commits acts of devastation or looting targeting cultural or landscape heritage or cultural institutions and sites shall be punished with imprisonment for a term of between ten and sixteen years.
- **518-quaterdecies (Counterfeiting of works of art)**
  The following shall be punished with imprisonment for a term of between one and five years and a fine of between €3,000 and €10,000: 1) anyone who, for profit, counterfeits, alters or reproduces a work of painting, sculpture or graphic art or an object of antiquity or historical or archaeological interest; 2) anyone who, even without having participated in the counterfeiting, alteration or reproduction, places on the market, holds for trade, introduces into the territory of the State for this purpose or otherwise puts into circulation, as authentic, counterfeit, altered or reproduced examples of paintings, sculptures or graphic works, antiques or objects of historical or archaeological interest; 3) anyone who, knowing them to be false, authenticates counterfeit, altered or reproduced works or objects referred to in points 1) and 2); 4) anyone who, by means of other declarations, expert reports, publications, affixing stamps or labels or by any other means, accredits or contributes to accrediting, knowing them to be false, as authentic works or objects indicated in numbers 1) and 2) that are counterfeit, altered or reproduced.
  The confiscation of counterfeit, altered or reproduced copies of the works or objects referred to in the first paragraph is always ordered, unless they belong to persons not involved in the offence. The sale of confiscated items at auctions of criminal proceeds is prohibited without time limits.

OFFENCES AGAINST ANIMALS (ART. 25-UNDEVICIES)

Law No. 82 of 6 June 2025, containing *'Amendments to the Criminal Code, the Code of Criminal Procedure and other provisions for the integration and harmonisation of regulations on crimes against* animals', was published in the Official Gazette (No. 137/2025) and entered into force on 1 July 2025.
Law 82/2025 introduces the following criminal offences into the list of predicate offences in Legislative Decree No. 231/2001:

- "*Killing of animals*" (Article 544-bis of the Criminal Code);
- '*Mistreatment of* animals' (Article 544-ter of the Italian Criminal Code);

[139] The phrase '*where* applicable' was inserted by Article 2 of Law No. 6 of 22 January 2024.

- 'Prohib*ited shows or events*' (Article 544-quater of the Italian Criminal Code);
- "*Prohibition of animal fighting*" (Article 544-quinquies of the Italian Criminal Code);
- *"Killing or harming animals"* (Article 638 of the Italian Criminal Code).

More specifically, with regard to the amendments to Legislative Decree No. 231/2001, the following has been inserted after Article *25-duodevicies*:

- **Article 25-undevicies "Crimes against animals"**
  1. In relation to the commission of the offences provided for in Articles 544-bis, 544-ter, 544-quater, 544-quinquies *and* 638 of the Criminal Code*, a financial sanction of up to five hundred units shall be applied to the entity.*
  2. In the event of conviction or application of the sanction at the request of the parties, pursuant to Article 444 of the Code of Criminal Procedure*, or of a criminal conviction decree, pursuant to* Article 459 of the Code of Criminal Procedure*, for the crimes referred to in paragraph 1 of this article, the disqualification sanctions provided for in Article 9, paragraph 2, of this decree shall be applied to the entity for a period not exceeding two years.*
  3. Paragraphs 1 and 2 shall not apply to the cases provided for in Article 19-ter of the coordinating and transitional provisions for the Criminal Code.[140]

The individual criminal offences included in the catalogue of predicate offences are listed below:

- **544-bis (Killing of animals)**
  Anyone who, out of cruelty or without necessity, causes the death of an animal shall be punished with imprisonment from six months to three years and a fine of €5,000 to €30,000.
  If the act is committed by torturing or deliberately prolonging the suffering of the animal, the sanction is imprisonment for between one and four years and a fine of between €10,000 and €60,000.
- **544-ter (Animal abuse)**
  Anyone who, out of cruelty or without necessity, causes injury to an animal or subjects it to torture or behaviour or exertion or work that is unbearable for its ethological characteristics shall be punished with imprisonment for six months to two years and a fine of €5,000 to €30,000.
  The same sanction shall apply to anyone who administers narcotic or prohibited substances to animals or subjects them to treatments that cause damage to their health.
  The sanction shall be increased by half if the acts referred to in the first and second paragraphs result in the death of the animal.
- **544-quater (Prohibited shows or events)**
  Unless the act constitutes a more serious offence, anyone who organises or promotes shows or events involving cruelty or torture to animals shall be punished with imprisonment for a term of between four months and two years and a fine of between €15,000 and €30,000.
  The sanction shall be increased by one third to one half if the acts referred to in the first paragraph are committed in connection with illegal betting or for the purpose of obtaining profit for oneself or others, or if they result in the death of the animal.
- **544-quinquies (Prohibition of animal fighting)**
  Anyone who promotes, organises or directs unauthorised fights or competitions between animals that may endanger their physical integrity shall be punished with imprisonment for two to four years and a fine of €50,000 to €160,000.
  The sanction shall be increased by one third to one half: 1) if the aforementioned activities are carried out in conjunction with minors or by armed persons; 2) if the aforementioned activities are promoted using video recordings or material of any kind containing scenes or images of the fights or competitions; 3) if the offender films or records the fights or competitions in any form.

[140] Cases provided for by special laws are excluded from the scope of application, including, by way of example, slaughtering, scientific experimentation, felling, etc.

Anyone, except in cases of complicity in the offence, who breeds or trains animals for any purpose, including through third parties, for their participation in the fights referred to in the first paragraph shall be punished with imprisonment for a term of between three months and two years and a fine of between €5,000 and €30,000.
The same sanction shall also apply to the owners or keepers of animals used in the fights and competitions referred to in the first paragraph, if they consent, and to anyone who participates in any capacity in the fights or competitions referred to in the first paragraph 4.
Anyone who, even if not present at the scene of the crime, except in cases of complicity in the same, organises or places bets on the fights and competitions referred to in the first paragraph shall be punished with imprisonment from three months to two years and a fine of between €5,000 and €30,000.

- **638 (Killing or harming animals belonging to others)**
  Anyone who, without necessity, kills or renders unusable or otherwise damages three or more animals gathered in a flock or herd, or commits the act on cattle or horses, even if not gathered in a herd, shall be punished with imprisonment for a term of between one and four years.

ANNEX 2

HISTORY OF REVISIONS MADE TO THE MODEL

The Model, initially adopted on 11 July 2003, has been updated numerous times over the years in line with changes in the regulatory framework, as specified below:

- with reference to the additions made to the Decree by Law No. 62/05 (the so-called Community Law 2004) and Law No. 262/05 (the so-called Savings Law), in 2007, ASPI updated the Model to take into account the risks associated with market manipulation and insider trading offences, as well as failure to disclose conflicts of interest;
- subsequently, in the 2010 update, the extensions of the liability of entities in relation to offences of manslaughter and negligent injury in violation of regulations on health and safety at work, offences of receiving stolen goods, money laundering and use of money, goods or benefits of illegal origin, computer crimes and unlawful data processing, organised crime offences, crimes against industry and commerce, crimes relating to copyright infringement and, finally, the offence of inducing others not to make statements or to make false statements to the judicial authorities;
- in 2013, a further extension of the list of predicate offences was analysed in relation to environmental offences, the use of third-country nationals whose stay is irregular, undue inducement to give or promise benefits, and corruption between private individuals;
- in 2016, the Model was updated to reflect regulatory additions to the list of predicate offences with reference to the following cases: self-laundering, referred to in Law No. 186/2014; environmental crimes, referred to in Law No. 68/2015, and provisions on crimes against the public administration, mafia-type association and false accounting, referred to in Law No. 69/2015;
- in 2017, the amendments and/or additions to the administrative liability of entities were analysed in relation t : to cybercrimes under Legislative Decrees No. 7 and 8/2016[141] ; to the new EU provisions aimed at harmonising the rules on market abuse within the European Union, which have an impact on Article 25-sexies of the Decree; the predicate offences referred to in Article 25-bis of Legislative Decree No. 231/2001, entitled *'Counterfeiting of currency, public credit cards, revenue stamps and identification instruments or* marks' by Legislative Decree No. 125/2016[142] ; the offence of "*Illegal intermediation and exploitation of* labour" provided for in Article 603-bis of the Italian Criminal Code, as amended by Law No. 199/2016; the offence of corruption between private individuals referred to in Article 2635 of the Italian Civil Code and the inclusion of the new offence of "incitement to corruption" referred to in Article 2635-bis of the Italian Civil Code by means of a specific provision of Legislative Decree No. 38/2017;
- in 2020, the following legislative changes were analysed:
    - Law No. 157 of 19 December 2019, converting with amendments Decree Law No. 124/2019 containing *'Urgent provisions on tax matters and for un d* needs', which introduced tax offences into the Decree with Article 25-quinquiesdecies;

[141] The so-called 'decriminalisation package', which, among other measures, repealed Article 485 of the Criminal Code (*'falsehood in private documents*') and transformed it into a civil offence, an 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 was therefore amended as follows: "*If any of the falsifications provided for in this chapter concerns a public electronic document having probative value, the provisions of this chapter concerning public documents shall apply...*".

[142] Legislative Decree No. 125/2016 amended Articles 453 and 461 of the Italian Criminal Code referred to in Article 25-bis of Legislative Decree No. 231/2001 as follows: i) "*in Article 453, after the first paragraph, the following paragraphs are added: "The same sanction shall apply to anyone who, being legally authorised to produce coins, unlawfully manufactures quantities of coins in excess of the requirements, abusing the tools or materials at their disposal. The sanction shall be reduced by one third when the conduct referred to in the first and second paragraphs concerns coins that 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 words shall be inserted: 'and data'; 2) the word: 'exclusively' shall be deleted*".

- Law No. 133 of 18 November 2019, which converted Decree-Law No. 105 of 2019 containing *'urgent provisions on national cyber security and the regulation of special powers in sectors of strategic importance*'. The legislation in question provides for the definition of a national cyber security perimeter aimed at *'ensuring a high level of security for the networks, information systems and IT services of public administrations, entities and public and private operators based 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 fundamental to the interests of the State and whose malfunctioning, interruption, even partial, or misuse could result in damage to national security*" (Article 1, paragraph 1);
- Law No. 43 of 21 May 2019, which amended Article 416-ter of the Italian Criminal Code concerning political-mafia vote trading;
- Law No. 39 of 3 May 2019, which introduced Article 25-quaterdecies of the Decree entitled *'Fraud in sports competitions, illegal gambling or betting and gambling carried out using prohibited* devices';
- Law No. 3 of 9 January 2019 on *'Measures to combat crimes against the public administration, as well as on the statute of limitations for crimes and on the transparency of political parties and* movements', which, for the part relevant here, concerned the tightening of sanctions for crimes against the public administration; the introduction of trafficking in illicit influences (Article 346-bis of the Criminal Code) in Article 25 of the Decree, the modification of the duration and methods of application of disqualification sanctions for offences against the public administration (Articles 13 and 25 of the Decree) and precautionary measures (Article 51 of the Decree), the reform of the conditions for the prosecution of offences of corruption between private individuals and incitement to corruption between private individuals;
- Decree-Law No. 135 of 14 December 2018, containing *'Urgent provisions on support and simplification for businesses and the public* administration' and converted with amendments by Law No. 12 of 11 February 2019, No. 12, 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 reserve in criminal matters and repealed Article 260 of Legislative Decree No. 152/2006 ("*Organised activities for the illegal trafficking of* waste"). Following the amendment, the repealed provision does not lose its criminal relevance but is regulated within the Criminal Code in Article 452-quaterdecies;
- Legislative Decree No. 107 of 10 August 2018, which reformed the rules on market abuse, adapting the domestic legal system, specifically Legislative Decree No. 58/1998, known as the T.U.F., to Regulation (EU) No. 596/2014;
- Law No. 179 of 30 November 2017, containing "*Provisions for the protection of persons reporting 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;
- Law No. 20 of 20 November 2017, containing "*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 entitled "*Racism and* xenophobia";
- Law No. 161 of 17 October 2017, which added two further paragraphs to Article 25-duodecies of the Decree concerning 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 the "*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, were analysed.
  More specifically, the main changes introduced by the aforementioned Decree, insofar as they are relevant here, concerned:
  - the tightening of the sanction regime for certain offences against the Public Administration (Articles 316, 316-ter, 319-quater, 322-bis, 640, paragraph 2, no. 1, of the Italian Criminal Code) if the offence harms the financial interests of the EU[143];
  - the amendment of Article 6 of Legislative Decree No. 74/2000, which in its new version also punishes attempted tax offences referred to in Articles 2 ('*Fraudulent declaration through the use of invoices or other documents for non-existent* transactions'), 3 ("*Fraudulent declaration by other* means") and 4 ("*Unfaithful declaration*"), if committed in the territory of another Member State of the European Union, for the purpose of evading value added tax for a total value of not less than ten million euros;
  - the inclusion in Article 24 of Legislative Decree No. 231/2001 of the offence of fraud in public procurement, provided for and punished by Article 356 of the Italian Criminal Code, and the offence provided for and punished by Article 2 of Legislative Decree No. 898 of 23 December 1986 ( ) concerning aid, premiums, indemnities, refunds, contributions or other payments borne in whole or in part by 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 provided for and punished by Articles 314, paragraph 1 ("Embezzlement"), 316 ("*Embezzlement by taking advantage of another person's mistake*") and 323 ("*Abuse of office*") of the Italian Criminal Code, when the offence harms 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 ("Unfaithful *declaration*"), 5 ("*Failure to declare*") and *10-quater* ("*Undue compensation*") of Legislative Decree No. 74/2000, if committed within the context of cross-border fraudulent schemes and for the purpose of evading value added tax for a total amount of not less than ten million euros;
  - the inclusion of Article *25-sexiesdecies* of Legislative Decree No. 231/2001 entitled "Smuggling", which covers the offences of smuggling referred to in Presidential Decree No. 43 of 1973 ;
- in 2022, the following regulatory changes introduced were analysed:
  - Law No. 238 of 23 December 2021 containing "*Provisions for the fulfilment of obligations arising from Italy's membership of the European Union - European Law 2019-2020*", which came into force on 1 February 2022, introducing changes to cybercrime and market abuse offences;
  - Legislative Decree No. 184 of 8 November 2021, which came into force on 14 December 2021, implementing EU Directive 2019/713 on combating fraud and counterfeiting of non-cash means of payment, introducing Article 25-octies.1 of the Decree;

[143] Article 1 of the Decree extends the above criminal offences to acts that harm the financial interests of the EU, with damage or profit exceeding €100,000.00, increasing the maximum sanctions and extending the punishability of the offence provided for and punished by Article 322-bis of the Criminal Code to public entities or public institutions that do not belong to EU Member States and, finally, adding a reference to the EU in Article 640, paragraph 2, no. 1) of the Italian Criminal Code.

- Legislative Decree No. 195/2021, which came into force on 14 December 2021, which broadened the scope of the predicate offences referred to in Articles 648, 648-bis, 648-ter and 648-ter.1 of the Italian Criminal Code, as contained in Article 25-octies of the 231 catalogue;
- Decree-Law No. 13 of 25 February 2022, containing *'Urgent measures to combat fraud and ensure safety in the workplace in the construction sector, as well as on electricity produced by renewable energy* sources' (the so-called fraud decree), which introduced amendments, of an expansive nature, to the heading and/or text of Articles 316-bis (now entitled 'Misappropriation of public funds'), 316-ter (now entitled 'Unlawful receipt of public funds') and 640-bis of the Criminal Code ;
- Law No. 22 of 9 March 2022, containing "*Provisions on offences against cultural heritage*", which introduced offences against cultural heritage into the catalogue of predicate offences (Art. 25-septiesdecies of Legislative Decree No. 231/2001) and the laundering of cultural assets and the devastation and looting of cultural and landscape assets (Art. 25-duodevicies of Legislative Decree No. 231/2001);
- Legislative Decree No. 156 of 4 October 2022, containing *'Corrective and supplementary provisions to Legislative Decree No. 75 of 14 July 2020, No. 75, implementing Directive (EU) 2017/1371 on the fight against fraud affecting the financial interests of the Union through criminal* law', which amended the heading of Art. 322-bis of the Criminal Code, supplementing it with the offence of abuse of office; introduced paragraph 3-bis of Article 2 of Law No. 898 of 23 December 1986 on aid, premiums, allowances, refunds, contributions or other payments charged in whole or in part to the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development; amended Article 6 ('Attempt') of Legislative Decree No. 74/2000 and Article 25-quinquiesdecies of Legislative Decree No. 231/2001 (*'Tax* offences');
- Legislative Decree No. 150 of 10 October 2022, containing "*Implementation of Law No. 134 of 27 September 2021, delegating powers to the Government for the efficiency of criminal proceedings, as well as in matters of restorative justice and provisions for the swift conclusion of judicial proceedings*", which introduced amendments to Article 640 of the Criminal Code and Article 640-ter of the Criminal Code;
- draft legislative decree, approved in preliminary examination by the Council of Ministers held on 9 December 2022 and submitted for parliamentary opinion, "*implementing Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law and laying down provisions concerning the protection of persons who report breaches of national law*" (implementing Articles 1 and 13 of Law No. 127 of 4 August 2022);

- in 2023, the following regulatory changes introduced were analysed:
  - Legislative Decree No. 24 of 10 March 2023 *implementing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law and laying down provisions concerning the protection of persons who report breaches of national law*;
  - Legislative Decree No. 19 of 2 March 2023 *implementing Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border mergers and divisions, which introduced among the corporate offences under Article 25-ter of the Decree that of false or omitted declarations for the issue of the preliminary certificate mergers and* cross-border divisions', which introduced among the corporate offences under Article 25-ter of the Decree, that of false or omitted declarations for the issue of the preliminary certificate (Articles 54 and 55);

- Law No. 93 of 14 July 2023 containing "*Provisions for the prevention and repression of the unlawful dissemination of content protected by copyright through electronic communications networks*", which amended paragraph 1 of Article 171-ter of Law No. 633/1941, an offence already included in the 231 catalogue;
- Law No. 137 of 9 October 2023 entitled *'Conversion into law, with amendments, of Decree-Law No. 105 of 10 August 2023 No. 105, containing urgent provisions on criminal proceedings, civil proceedings, combating forest fires, recovery from drug addiction, health and culture, as well as on judicial and public administration personnel*." More specifically, Article 6-ter amended Articles 24 and 25-octies.1 of the Decree, introducing, respectively, the offences of disruption of public auctions (Article 353 of the Criminal Code) and of the contractor selection process (Article 353-bis of the Criminal Code) and fraudulent transfer of assets (Article 512-bis of the Criminal Code). The same law also amended Articles 452-bis of the Italian Criminal Code (Environmental pollution) and 452-quater of the Italian Criminal Code (Environmental disaster), already included in the list of predicate offences 231;
- Law No. 206 of 27 December 2023 containing *'Comprehensive provisions for the enhancement, promotion and protection of Made in* Italy', which amended Article 517 of the Italian Criminal Code;

- in 2024, the following regulatory changes introduced were analysed:
  - Decree Law No. 19 of 2 March 2024, containing *'Further urgent provisions for the implementation of the National Recovery and Resilience Plan (PNRR)*', converted with amendments by Law No. 56 of 29 April 2024, which inserted the second paragraph into Article 512-bis of the Italian Criminal Code, an offence already contained in Article 25-octies.1 of the Decree;
  - Directive No. 1203 approved by the Council on 26 March 2024 on the criminal protection of the environment, which will improve investigations and criminal prosecution, tightening sanctions and introducing new environmental offences. From its entry into force, Member States will have two years - until 21 May 2026 - to bring their national rules into line with the Directive;
  - Legislative Decree No. 87 of 14 June 2024, which introduces a revision of the tax and criminal tax sanction system in order to implement Delegated Law No. 111/2023 through greater integration between the various sanctions, in accordance with the principle of ne bis in idem. More specifically, the legislator has redesigned the structure of so-called payment offences, introduced a specific definition of non-existent and undue credits in the criminal sphere, and significantly affected certain provisions common to tax offences, providing for new grounds for non-punishment and new mitigating circumstances (amendments to Article 13-bis of Legislative Decree No. 74/2000) and reforming the provisions relating to seizure and confiscation (amendments to Article 12-bis of Legislative Decree No. 74/2000);
  - Law No. 90 of 17 July 2024, containing *'Provisions on strengthening national cybersecurity and* cybercrime', which introduces a general increase in sanctions, an extension of the scope of cybercrimes already contained in Article 24-bis of the Decree, which also includes - in Article 1-bis - as a new offence, that of cyber extortion provided for in Article 629, paragraph 3, of the Criminal Code, as well as the introduction of certain aggravating and mitigating circumstances;
  - Law No. 112 of 8 August 2024, which converted, with amendments, Decree-Law No. 92 of 4 July 2024, containing *'urgent measures in the field of prisons, civil and criminal justice and Ministry of Justice* personnel', and introduced the new offence against the public administration of 'misappropriation of money or movable property' (Article 314-bis of the Italian Criminal Code), which in turn was included

in the list of predicate offences provided for in Article 25 of Legislative Decree 231/2001;

- Law No. 114/2024 of 9 August entitled "*Amendments to the Criminal Code, the Code of Criminal Procedure, the judicial system and the military code*," which repealed the offence of abuse of office referred to in Article 323 of the Criminal Code, introducing further amendments aimed at coordinating other provisions of the Criminal Code with the aforementioned repeal, and reformed the offence of trafficking in illicit influences referred to in Article 346-bis of the Criminal Code, in order to restrict its scope of application;
- Legislative Decree No. 141 of 26 September 2024, implementing the Enabling Law for Tax Reform No. 111/2023, containing *'National provisions complementary to the Union Customs Code and revision of the system of sanctions for excise duties and other indirect taxes on production and* consumption', which removed from Article *25-sexiesdecies* the reference to Presidential Decree No. 43/1973 (repealed) and inserted the 'new' offences of smuggling and excise duties *pursuant* to Legislative Decree No. 504/1995 as predicate offences;
- Legislative Decree No. 145 of 11 October 2024, converted, with amendments, by Law No. 187 of 9 December 2024, No. 187, which deleted the phrase *'of particular* exploitation' contained in paragraph 12-bis, letter c) of Article 22 of Legislative Decree No. 286/1998 and introduced the new residence permit referred to in Article 18-ter of the same Consolidated Law on Immigration;
- the two directives and the regulation, published in the Official Journal of the European Union on 14 November 2024, which make up the so-called 'Listing Act', a regulatory package aimed at making EU capital markets more attractive to businesses and facilitating access to capital for SMEs. The Listing Act, Regulation (EU) 2024/2809 and Directive (EU) 2024/2811 must be transposed by 5 June 2026; Directive (EU) 2024/2810 by 5 December 2026. The above amendments will have an impact on the offences contained in Article *25-sexies* of the Decree;
- Law No. 166 of 14 November 2024 '*Conversion, with amendments, of Decree-Law No. 131 of 16 September 2024, containing urgent provisions for the implementation of obligations arising from European Union acts and from infringement and pre-infringement proceedings pending against the Italian* State', which amended the provisions of Articles *171-bis*, *171-ter* and *171-septies* of the Copyright Law, already included in Article 25-novies of the Decree.

- In 2025, the following regulatory changes introduced were analysed:
  - Decree-Law No. 48 of 11 April 2025 containing *'Urgent provisions on public safety, the protection of personnel on duty, as well as victims of usury and the prison* system', converted by Law No. 80 of 9 June 2025, which introduced the offence provided for and punished by Article 270-quinquies.3 of the Criminal Code, with the consequent extension of the 231 catalogue, in implementation of the general referral clause referred to in Article 25-quater of the Decree, to all offences for the purposes of terrorism or subversion of the democratic order, provided for both by the Criminal Code and by special laws, as well as the addition of a paragraph to Article 435 of the Criminal Code referred to therein.
  - Law No. 82 of 6 June 2025, containing *'Amendments to the Criminal Code, the Code of Criminal Procedure and other provisions for the integration and harmonisation of the rules on offences against* animals', which introduced the new Article 25-undevicies into Legislative Decree 231/2001 entitled 'Offences against animals';
  - Legislative Decree No. 81 of 12 June 2025 containing "*Supplementary and corrective provisions on tax compliance, two-year preventive agreements, tax justice and tax sanctions*", which amended Article 88 (Aggravating circumstances

of smuggling) and further provisions contained in Legislative Decree No. 141/2024, in turn referred to in Article 25-sexiesdecies;

- Law No. 132 of 23 September 2025 containing '*Provisions and delegated powers to the Government on artificial* intelligence', which amended Articles 2637 of the Italian Civil Code and 185 of the Consolidated Law on Finance, adding the respective aggravating circumstances *'if the offence is committed through the use of artificial intelligence* systems' and broadening the definition of *'intellectual works*' referred to in Article 1, paragraph 1, Law No. 633/1941;
- Law No. 147 of 3 October 2025, converting Decree Law No. 116/2025, known as the 'Terra dei Fuochi' Decree Law, containing "*Urgent provisions to combat illegal activities relating to waste, for the reclamation of the area known as Terra dei Fuochi, and for assistance to the population affected by natural disasters*", which introduced significant changes in the field of criminal protection of the environment, intervening, among others, on Article 25-undecies of the Decree;
- Law No. 198 of 29 December 2025 "Conversion into law, with amendments, of Decree-Law No. 159 of 31 October 2025, containing urgent measures for the protection of health and safety in the workplace and in the field of civil protection", which amended Article 30, paragraph 5, of Legislative Decree No. 81/2008, providing for the replacement of the reference to "British Standard OHSAS 18001:2007" with "UNI EN ISO 45001:2023+A1:2024";
- Legislative Decree No. 211 of 30 December 2025 implementing *'Implementation of Directive 2024/1226/EU of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and sanctions for the violation of Union restrictive measures and amending Directive (EU)* 2018/1673', which introduced Article 25 octies.2 entitled "Offences relating to the violation of European Union restrictive measures" and amended the provisions of Decree 231 relating to the calculation of financial sanctions and the duration of disqualification sanctions.