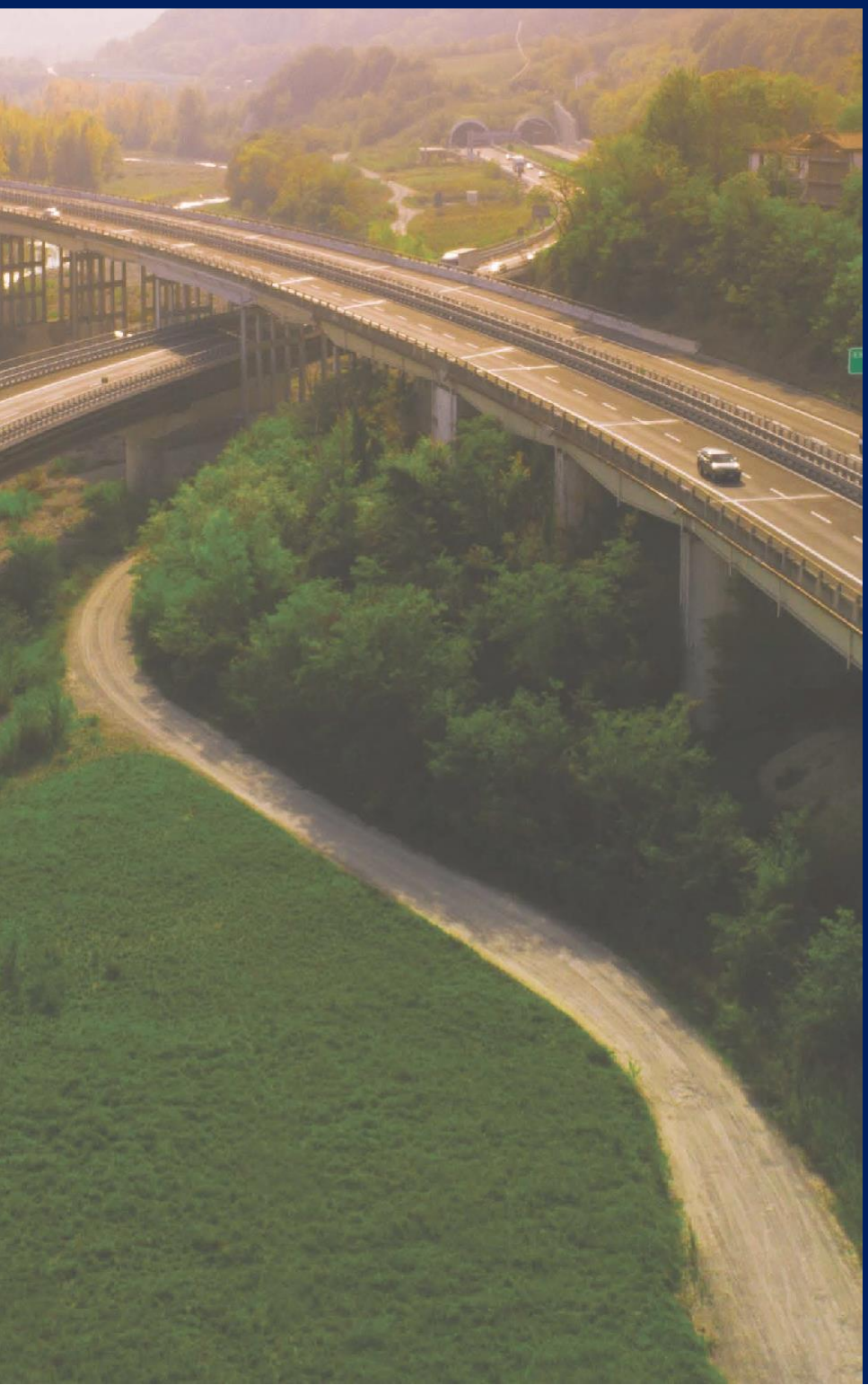
Organisation, Management and Control Model of Autostrade per l'Italia S.p.A.

GENERAL PART



Approved by resolution of the Board of Directors on 08th February 2024

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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 in charge of a public service
Decree or D. Legislative Decree No. 231/2001	Legislative Decree No. 231 of 8 June 2001
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	Organisation, Management and Control Model provided for 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	ASPI Group 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 make constant reference in the exercise of its business activities
ASPI Group Anti-Corruption Guidelines	The Group's Anti-Corruption Guidelines, which integrate the Group's existing rules for preventing and combating corruption into an organic framework
Offences	Offences under Legislative Decree No. 231/2001
Sensitive Activities	Activities considered potentially at risk in relation to offences under Legislative Decree No. 231/2001
Supervisory Body or SB	Body responsible for supervising the functioning, effectiveness and observance of the Model and for updating it, pursuant to Article 6(1)(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
Senior Persons	Pursuant to Article 5(1)(a) of the Decree, persons who *hold positions of representation, administration or management of the entity or one of its organisational units with financial and functional autonomy, as well as persons who exercise, also de facto, the management and control thereof*. In ASPI, these may be: Directors, the Chief Executive Officer and the General Manager (if appointed), Directors and Section Managers

Subordinates	Pursuant to Article 5(1)(b) of the Decree, *persons subject to the direction or supervision of one of the persons referred to in subparagraph (a) (*i.e. Senior Persons). In ASPI, Managers and Employees may be
Board of Auditors	Board of Statutory Auditors of ASPI
Control, Risk, Audit and Related Parties Committee	ASPI's Control, Risk, Audit and Related Parties Committee
Third party recipients	Those who have commercial and/or financial relations of any kind with the Company
CCNL	Applicable National Collective Labour Agreements for the sector
General Protocols	The set of documents defining the general principles of conduct, such as: ASPI Group Code of Ethics, ASPI Group Anti-Corruption Guideline, ASPI Group Internal Control and Risk Management System Guidelines, ASPI Group Reporting Management Guideline, Group Management Procedure Managing Conflicts of Interest.
Protocols	Set of company rules, such as management procedures, operating instructions, manuals, forms and staff notices
ASPI Ethics Office or Ethics Office	A collegial body set up within ASPI with responsibility for overseeing the process of managing reports relating to the Company, assessing its adequacy, suggesting any improvements to the process to the Board of Directors, and promoting the necessary information and training actions, in accordance with the "ASPI Group's Management of Reports" Guideline
ASPI Group Report Management Guideline	Document formalising the governance, process and control principles for the management of reports for Autostrade per l'Italia Group companies to ensure compliance with Legislative Decree 24/2023.
Report	Communication relating to violations which have occurred or are likely to occur within the ASPI Group, or within a third party who has or has had a relationship of any nature with the Group, concerning facts which are considered to be: illegal conduct or irregularities; violations of regulations; actions likely to damage the company's assets or image; violations of the ASPI Group Code of Ethics; violations of the ASPI Group Anti-Corruption Guidelines; violations of the Organisation, Management and Control Model; violations of company procedures and provisions.
Human Capital and Organisation Department	Human Capital and Organisation Directorate of ASPI

Legal Affairs and Compliance Department	Legal Affairs and Compliance Department of ASPI
Internal Audit Department	ASPI Internal Audit Department

2 FOREWORD

Legislative Decree No. 231 of 8 June 2001, implementing Article 11 of Law 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 - sensitive to the need to ensure conditions of correctness and transparency in the conduct of business and corporate activities, to protect the market position it has assumed and its 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') with which to define a structured system of rules and controls to be followed in order to pursue the corporate purpose in full compliance with the provisions of the law in force.
This document is therefore the descriptive document of the Organisation, Management and Control Model of the Company.

3 THE SOCIETY

Autostrade per l'Italia S.p.A. carries out construction and management activities on the national territory for: motorways, transport infrastructure adjacent to the motorway network, parking and intermodal infrastructures as well as related adjuncts.
In carrying out this activity, the Company therefore, by way of example and not exhaustively, takes care of and manages:

a) the construction of major works related to the motorway network;
b) maintenance, extraordinary repairs, innovations, modernisations and completions;
c) rights of way and parking and those in any case connected with the use of the motorway network and infrastructure, in the form of subscriptions or other fees.

The Company also promotes, operates and develops, including insofar as they are connected with or, in any case, relevant to the construction and management of motorways, transport, parking and intermodal infrastructures and their adjuncts:

- study, consultancy, technical assistance and design activities;
- activities aimed at the acquisition, in whatever manner, and marketing of patents, know-how, equipment, technology, computer, telematic and value-added services;
- marketing of goods and services;
- the provision of services, including information and publishing, for the benefit of users;
- activities aimed at the economic use of motorway appurtenances, including the telecommunications network.

4 LEGISLATIVE DECREE NO. 231/2001

4.1 THE ADMINISTRATIVE LIABILITY REGIME FOR LEGAL PERSONS

Legislative Decree No. 231 of 8 June 2001 (hereinafter referred to as the 'Decree'), which introduces the '*Regulations on the administrative liability of legal persons, companies and associations, including those without legal personality*', brought Italian legislation on the liability of legal persons into line with the following international conventions, to which Italy had already adhered for some time:

- 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 its 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 to their advantage, by

a) natural persons holding functions 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 exercising, also de facto, the management and control of the Entities themselves (so-called '*persons in top positions*');
b) natural persons subject to the direction or supervision of one of the above-mentioned persons (so-called '*subordinates*').

The administrative liability of the legal person is additional to the (criminal) liability of the natural person who materially committed the offence, and both are subject to investigation in proceedings before a criminal court.

In this regard, the legal representative who is under investigation/defendant for the predicate offence cannot, because of the incompatibility condition in which he finds himself, appoint a lawyer for the entity, due to the general and absolute prohibition of representation laid down by Article 39 of Legislative Decree no. 231/2001.[1]

Moreover, the liability of the entity 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 set out in the Decree, the pecuniary penalties and disqualification sanctions are reduced by between one third and one half, while sanctions are not imposed in cases where the entity voluntarily prevents the action from being carried out or the event from occurring (Article 26 of Legislative Decree No. 231/2001).

Pursuant to Article 23 of Legislative Decree No. 231/2001, the Entity is also liable in the event that anyone who, in the performance of the Entity's activities, and in the interest or to the advantage of the Entity, has transgressed the obligations or prohibitions inherent in disqualifying sanctions applicable to the Entity.

[1] Paragraph 1 of Article 39 of the Decree provides that: "*The entity participates in criminal proceedings with its legal representative, unless the latter is charged with the offence on which the administrative offence depends.*" On the point in question, reference is made to what was ruled by the Cass. pen, sect. III, sentence no. 32110 of 22 March 2023: "*In this case, the United Sections established that, on the subject of the criminal liability of entities, the legal representative who is, as in the case in point, under investigation or accused of the predicate offence cannot, due to the condition of incompatibility in which he finds himself, appoint the entity's defence counsel due to the general and absolute prohibition on representation laid down by Leg. 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, aimed at providing the entity with a lawyer, appointed by a specifically delegated person, to protect its interests*".

To date, the liability of the entity exists exclusively in the case 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 (misappropriation of funds, fraud to the detriment of the State, a public body or the European Union or for the purpose of obtaining public funds, computer fraud to the detriment of the State or a public body and fraud in public supply; embezzlement, extortion, undue inducement to give or promise benefits, bribery and abuse of office) (Articles 24 and 25 of Legislative Decree No. 231/2001);
ii. Computer crimes and unlawful processing of data (Article 24-bis of Legislative Decree No. 231/2001);
iii. organised crime offences (Article 24-ter of Legislative Decree No. 231/2001);
iv. forgery of money, public credit cards, revenue stamps and identification instruments or signs (Article 25-bis of Legislative Decree No. 231/2001);
v. offences against industry and trade (Art. 25-bis.1 Legislative Decree No. 231/2001);
vi. corporate offences (Article 25-ter of Legislative Decree No. 231/2001);
vii. offences for the purpose of terrorism or subversion of the democratic order (Article 25-quater of Legislative Decree No. 231/2001);
viii. female genital mutilation practices (Article 25-quater.1 of Legislative Decree No. 231/2001);
ix. offences against the individual (Article 25-quinquies of Legislative Decree No. 231/2001);
x. market abuse (Article 25-sexies of Legislative Decree No. 231/2001);
xi. culpable homicide or grievous or very grievous bodily harm, committed in breach of the rules on the protection of health and safety at work (Article 25-septies of Legislative Decree No. 231/2001);
xii. Receiving, laundering and using money, goods or benefits of unlawful origin, as well as selflaundering (Article 25-octies of Legislative Decree No. 231/2001);
xiii. offences relating to non-cash payment instruments and fraudulent transfer of values (Article 25-octies.1 of Legislative Decree No. 231/2001);
xiv. copyright infringement offences (Article 25-novies of Legislative Decree No. 231/2001);
xv. inducement not to make statements or to make false statements to the judicial authorities (Article 25-decies of Legislative Decree no. 231/2001);
xvi. transnational offences relating to criminal associations, money laundering, smuggling of migrants, obstruction of justice (Law 146 of 16 March 2006, Articles 3 and 10);
xvii. environmental offences (Article 25-undecies of Legislative Decree No. 231/2001);
xviii. Employment of third-country nationals whose stay is irregular (Article 25-duodecies of Legislative Decree No. 231/2001);
xix. racism and xenophobia (Article 25-terdecies of Legislative Decree No. 231/2001);
xx. fraud in sporting competitions, unlawful gaming or betting and gambling by means of prohibited devices (Article 25-quaterdecies of Legislative Decree no. 231/2001);
xxi. tax offences (Article 25-quinquiesdecies of Legislative Decree No. 231/2001);
xxii. smuggling (Article 25-sexiesdecies of Legislative Decree No. 231/2001);
xxiii. offences against the cultural heritage (Article 25-septiesdecies of Legislative Decree No. 231/2001);
xxiv. laundering of cultural goods and devastation and looting of cultural and landscape heritage (Art. 25-duodicies Legislative Decree No. 231/2001).

4.2 OFFENCES COMMITTED ABROAD

The entity is also liable for offences committed abroad, provided that the State of the place of commission does not prosecute for them.

In particular, according to the provisions of Article 4 of the Decree, the entity based in Italy may be called to answer 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(1) of the Decree);
b) the entity must have its head office in the territory of the Italian State;
c) the entity may be liable only in the cases and under the conditions provided for in Articles 7 (offences committed abroad), 8 (political offence committed abroad), 9 (common offence of a citizen abroad)[2] and 10 (common offence of a foreigner 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 are brought against the entity only if the request is also made against the latter.

4.3 SANCTIONS

The sanctions provided for the offences covered by Article 9 of the Decree are:

- financial penalties;
- disqualifying sanctions;
- confiscation;
- publication of the judgment.

In particular, the interdictory sanctions, without prejudice to the provisions of Article 25(5) and (*5-bis*) of the Decree[4] , have a duration of no less than three months and no more than two years, are applied to the specific activity to which the offence of the entity refers, and consist of

- disqualification from exercising the activity;
- the prohibition to contract with the Public Administration, except to obtain the performance of a public service;
- suspension or revocation of authorisations, licences or concessions functional to the commission of the offence;
- exclusion from facilitations, financing, contributions and subsidies, and/or the revocation of those already granted;
- the ban on advertising goods or services.

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

- the entity has derived a significant profit from the offence and the offence was committed by persons in a senior position or by persons subject to the direction and supervision of

[2] Article 1(1)(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 preceding provisions, the request of the Minister of Justice or the petition or complaint of the offended person shall not be necessary for the offences provided for in Articles 320, 321 and 346-bis*.

[3] Article 1(1)(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 request or complaint of the offended person is not necessary for the offences provided for in Articles 317, 318, 319, 319-bis, 319-ter, 319-quater, 320, 321, 322 and 322-bis*.

[4] Article 25(5) of Legislative Decree No. 231/2001 reads as follows: "*In cases of conviction for one of the offences indicated in paragraphs 2 and 3, the disqualification sanctions provided for in Article 9, paragraph 2, shall apply for a duration of no less than four years and no 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 duration of no less than two years and no 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 provides, in paragraph 5-bis, as follows: "*If, prior to the first degree judgement, the entity has effectively taken steps to prevent the criminal activity from having further consequences, to ensure the evidence of the offences and the identification of the perpetrators or the seizure of the sums or other benefits transferred, and has eliminated the organisational deficiencies that led to the offence by adopting and implementing organisational models capable of preventing offences of the kind that have occurred, the disqualification sanctions have the duration established in Article 13(2).*"

others when the commission of the offence was determined or facilitated by serious organisational deficiencies;
- in the event of repeated offences.

The type and duration of prohibitory sanctions are established by the judge, taking into account the seriousness of the offence, the degree of liability of the Entity and the activity carried out by the Entity to eliminate or mitigate the consequences of the offence and to prevent the commission of further offences. Instead of applying the sanction, the judge may order the continuation of the Entity's activity by a judicial commissioner.

Disqualification sanctions may be applied to the Entity as a precautionary measure when there is serious evidence to believe that the Entity is responsible for the commission of the offence and there are well-founded and specific elements that lead to the belief that there is a concrete danger that offences of the same nature as the one for which the offence is being prosecuted may be committed (Article 45 of the Decree). If the prerequisites exist for the application of a disqualification sanction that results in the interruption of the body's activity, the judge, instead of applying the sanction, may order the continuation of the body's activity by a commissioner, for a period of the same duration as that of the disqualification measure, when at least one of the following conditions is met: the body performs a public service or public necessity, the interruption of which could cause serious harm to the community; the interruption of the activity could cause significant repercussions on employment.

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

- fully compensate the damage by eliminating the harmful and dangerous consequences of the offence or has effectively done so;
- eliminate the organisational deficiencies that led to the event by adopting and implementing organisational models suitable for preventing offences of the kind that occurred;
- making available the profit gained from the commission of the offence for the purposes of confiscation.

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

The pecuniary sanctions, applicable to all offences, *pursuant to* Article 10 of the Decree, are determined according to a system based on "quotas", in a number of no less than one hundred and no more than one thousand, and with a variable amount of a single quota between a minimum of Euro 258 and a maximum of Euro 1,549. The judge determines the number of quotas by taking into account the seriousness of the offence, the degree of liability of the entity and the activity carried out to eliminate or mitigate the consequences of the offence and to prevent the commission of further offences. The amount of the quota is fixed on the basis of the entity's economic and asset conditions, in order to ensure the effectiveness of the sanction (Article 11 of the Decree).

In addition to the aforementioned sanctions, the Decree provides that the confiscation of the price or profit of the offence is always ordered, which may also concern goods or other utilities of equivalent value, as well as the publication of the conviction in the presence of a disqualification sanction.

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 exoneration from administrative liability of the entity for offences committed in its interest or to its advantage by both senior persons and employees.

In particular, Article 6(1) of the Decree, in the case of offences committed by persons in apical positions - inasmuch as they hold the functions of representation, administration or management of the Entity or of one of its organisational units with financial and functional autonomy, or hold 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 proves that

a) the management body has adopted and effectively implemented, prior to the commission of the offence, organisational and management models capable of preventing offences of the kind committed;
b) the task of supervising the functioning of and compliance with the models as well as ensuring that they are updated has been entrusted to a body endowed 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 or insufficient supervision by the body referred to in (b) above.

In the case, on the other hand, 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 the failure to comply with the obligations of direction and supervision. Such non-compliance is in any case excluded if the entity, prior to the commission of the offence, adopted and effectively implemented an Organisation, Management and Control Model capable of preventing offences of the kind committed.

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 within the scope of 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's decisions in relation to the offences to be prevented;
- identify ways of managing financial resources that are suitable for preventing the commission of such offences;
- provide for information obligations vis-à-vis the body in charge of supervising the functioning of and compliance with the Model;
- introduce an internal disciplinary system suitable for penalising 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 the "*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 on the provisions concerning the protection of persons who report breaches of national laws*".

More specifically, paragraphs 2-ter and 2-quater of Article 6 of Legislative Decree No. 231/2001 were repealed, and at the same time, paragraph 2-bis was 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, the internal reporting channels, the prohibition of retaliation and the disciplinary system, adopted pursuant to paragraph 2, letter e).*'

In this regard, ASPI has adopted, as represented in paragraph 8 below, an internal system for receiving and managing reports which applies to Autostrade per l'Italia S.p.A. and the Companies of the ASPI Group. This system ensures discretion and confidentiality at each stage of the process, protecting the identity of the person making the report, the persons involved and the persons in any case mentioned, as well as the content of the report and the relevant documentation.

Finally, Legislative Decree No. 231/2001 provides that organisational, management and control models may be adopted, guaranteeing the above requirements, on the basis of codes of conduct drawn up by representative trade associations.

5 ADOPTION OF THE MODEL

5.1 AIMS AND ADDRESSEES OF THE MODEL

The Model can be defined as an organic complex of principles, rules, provisions, organisational schemes and responsibilities, functional to the implementation and diligent management of a control and monitoring system of the activities at risk with reference to the offences provided for in the Decree.

The Model has the following aims:

- strengthen the corporate governance system;
- set up a structured and organic system of prevention and control aimed at eliminating or reducing the risk of commission of the offences referred to in Legislative Decree No. 231/2001, including in the form of attempt, connected to the company's activities, with particular regard to the elimination or reduction of any unlawful conduct;
- determine in all those who perform "sensitive activities" in the name and on behalf of ASPI the awareness that they may incur, in the event of violation of the provisions of the Model, an offence punishable, not only against its author but also against the company, with criminal and administrative sanctions;
- inform all those who work in any capacity in the name of, on behalf of or in the interest of ASPI, that violation of the provisions contained in the Model will result in the application of appropriate sanctions;
- reiterate that ASPI does not tolerate unlawful conduct and opposes all corrupt practices, the purpose pursued or the erroneous belief of acting in the interest or to the advantage of the Company not mattering in any way, since such conduct is in any case contrary to the ethical principles with which the Company intends to comply and, therefore, in conflict with its interest;
- censure violations of the Model with the imposition of disciplinary and/or contractual sanctions.

They shall be considered Addressees of this Model and, as such, bound to its knowledge and observance within the scope of their specific competences:

- 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 Company's performance;
- the members of the Board of Statutory Auditors, in performing their function of controlling and verifying the formal and substantial correctness of the Company's activities and the functioning of the internal control system;
- the General Manager (if appointed), Directors, Section Managers and Executives;

- employees and all those with whom one has a working relationship, in any capacity, even temporary and/or only occasional.

The Recipients of the Model, required to comply with this General Section[5] , the Code of Ethics, the ASPI Group Anticorruption Guideline, the Group Integrated Management Systems Policy and the ASPI Group Reporting Management Guideline also include all those who have commercial and/or financial relations of any nature with the Company (i.e. outsourcers, consultants, suppliers and service contractors, business partners).

In view of the specific organisational structure adopted by the Company, the Directors, the Managing Director and General Manager, the Managers and Section Managers are considered 'Senior Persons'.

On the other hand, managers and employees are considered 'subordinates'.

5.2 MODEL STRUCTURE

ASPI's Model consists of this 'General Section' - which contains its main principles - and the 'Special Section'.

The Special Part of the Model is characterised by a "process-based" structure which, in more detail, provides for a special section to be devoted to the individual Sensitive Activities mapped out in relation to corporate processes.

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

- Relevant crime families;
- Sample ways of committing the offence;
- (recall to) Transversal Control Standards[6] ;
- Peculiar Control Standards (General and Specific)[7] ;
- Information flows to the Supervisory Body (if any).

5.3 UPDATING THE MODEL

Taking into account the complexity of the Company's organisational structure, in order to promote the *compliance of* the various corporate activities with the provisions of Legislative Decree No. 231/2001 and, at the same time, to guarantee an effective control of the risk of the commission of predicate offences, a procedure for updating the Model is envisaged annually or, in any case, upon the occurrence of one or more of the following conditions

- legislative innovations (see, on this point, Annex 2 to this General Section) or jurisprudential innovations in the rules governing the liability of Entities for administrative offences;
- significant changes in the organisational structure or business sectors of the Company;
- significant violations of the Model;

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

[6] Control standards which, being characterised by the element of transversality, by their very nature are applicable indiscriminately to all mapped company processes and sensitive activities. These control standards are formulated in such a way as to be verifiable regardless of their association with specific sensitive processes and/or activities.

[7] Control provisions which, unlike the Transversal ones, are specifically associated with the individual Company Processes and Sensitive Activities identified. These are instructions aimed at regulating, within the applicable provisions of the Regulatory System, more detailed aspects characteristic of each Process/Sensitive Activity. The specific control standards are in turn subdivided into:

- "**General Control Standards**": behavioural indications that, for each mapped Process, illustrate the "best practices" to be observed;
- "**Specific Control Standards**": organisational and/or operational control measures, specifically associated with individual Sensitive Activities, implemented in order to mitigate the risk of commission of offences.

- results of risk assessment, results of internal audit activities, checks on the effectiveness of the Model;
- issuing sector best practices;
- requests by the Supervisory Body;
- reports to the Ethics Office from which a violation of the Model is ascertained or from which the need to update the Model is inferred.

The Model is approved by ASPI's Board of Directors. Any updates to the Model that do not substantially affect the general or special part of the Model may be approved severally by the Chairman and the Chief Executive Officer, subject to subsequent reporting to the Board of Directors.

5.3.1 UPDATING GENERAL PROTOCOLS

The "General Protocols" represent the set of documents defining the general principles of conduct, i.e:

- ***Code of Ethics***

  ASPI adopted the Code of Ethics as early as 2003 and subsequently updated it. The ASPI Ethics Office is responsible for monitoring compliance with the Code.

  The Code of Ethics requires members of the Board of Directors, members of the Board of Statutory Auditors and other Control Bodies, Group employees, Collaborators (e.g. consultants, representatives, intermediaries, agents, etc.), as well as partners in business relations and all those who have commercial relations with the Group, to have ethical and professional integrity, correct behaviour and full compliance with the laws and regulations in all the countries in which it operates and with the principles of honesty, reliability, impartiality, loyalty, transparency, fairness and good faith.

  A close interaction has been established between the Model and the Code of Ethics, so as to form a *body of* internal rules with the aim of fostering a culture of ethics and corporate transparency, also in line with the provisions of the Confindustria Guidelines;

- ***ASPI Group Anticorruption Guidelines and Management System for the Prevention of Corruption***

  ASPI issued the Group's Anti-Corruption Guideline, which integrates the Group's existing rules for preventing and combating corruption into an organic framework. On the point in question, the Company, although not a recipient of the obligations and fulfilments envisaged by Law No. 190/2012 laying down '*Provisions for the prevention and repression of corruption and illegality in the public administration*', in order to actively contribute to the fight against corruption and the strengthening of the culture of legality, has voluntarily implemented a Management System for the prevention of corruption, committing to its continuous improvement and identifying the international technical standard UNI ISO 37001:2016 as the management model to which its System is inspired. The aforesaid Management System, which obtained certification to the international technical standard UNI ISO 37001:2016 in April 2019 and renewal in May 2022 and which is described in the "*Integrated Management System Manual*" adopted by ASPI, is represented by a set of activities designed and implemented with an integrated and synergic approach, aimed at the continuous improvement of *performance* and effectiveness of action to contain corruption risks.

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

- ***ASPI Group Internal Control and Risk Management System Guidelines***
  The Guidelines describe ASPI's Internal Control and Risk Management System (ICSRM) defined as the set of tools, rules, procedures and corporate organisational structures aimed at an effective and efficient identification, measurement, management and monitoring of the main risks, in order to contribute to the sustainable success of the Company.

- ***Group Management Procedure 'Managing Conflicts of Interest***
  The Group procedure in force is intended to detail, with respect to the obligations mentioned in the Code of Ethics, the process of receiving, analysing and processing communications, the methods of managing the relevant preliminary investigation, in compliance with privacy legislation or other legislation in force the persons and roles involved and their respective responsibilities;

- ***ASPI Group Report Management Guideline***
  The Guideline formalizes the governance, process and control principles for the management of whistleblowing 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 employees, members of corporate bodies, self-employed consultants/collaborators, employees/external collaborators and, more generally, anyone who becomes aware of violations (conduct, acts or omissions), even if only potential, of national or European Union regulatory provisions or the Company's regulatory system.
  With regard to this protocol, please refer to the provisions of Section 8 Reporting alleged violations of the Model (so-called 231 Reports);

- ***Tax Compliance Model***
  In 2020, the Company adopted the Tax Compliance Model, which defines the guidelines for tax risk management, through the Tax Control Framework[8] , in order to adhere to the cooperative compliance regimes and in coherence with and in application of the principles and operating rules set forth in the Tax Strategy.

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 reference best practices. The Model updating process is divided into the phases described below:

[8] The 'Tax Control Framework' ('TCF') is defined as a set of rules, procedures, organisational structures and controls, aimed at enabling the detection, measurement, management and control of tax risk, understood as the risk of operating in violation of tax regulations or in contrast with the principles or purposes of the tax system (so-called abuse of law). The TCF implemented by ASPI for the purposes of adhering to the collaborative compliance regime, as per Legislative Decree no. 128/2015, was positively assessed by the Revenue Agency, which ordered the Company to be admitted to the regime.

Fase 1. MAPPING OF ACTIVITIES AT RISK

The corporate activities in the context of which one of the predicate offences could abstractly be committed, as well as those that could be instrumental in the commission of such offences, making possible or facilitating the perpetration of the predicate offence, were assessed.
The identification of processes/activities at risk was implemented through a 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 persons within the processes/activities at risk.
The offences that could potentially be committed in the context of the activities at risk were then identified and, for each offence, the possible perpetrators and some concrete examples of the manner in which they could be committed were indicated.
The result of this work was represented in a document containing the mapping of sensitive activities with an indication of the subjects (or company structures) that could carry them out or carry out activities instrumental to them and the relative ways of committing offences relating to them.

Fase 2. ANALYSIS OF CONTROL SYSTEMS

Having identified the potential risks, the existing control system in the processes/activities at risk was analysed in order to assess its adequacy in preventing the risks of offences.
In this phase, therefore, the existing internal control controls were verified (formal protocols and/or practices adopted, verifiability and traceability of operations and controls, separation or segregation of functions, etc.) through the analysis of the information and documentation provided by the corporate structures.
As part of the *risk assessment* activities, the elements of ASPI's Internal Control and Risk Management System were analysed[9] and the Structures responsible for/referring to the management of risk activities/areas were identified[10] . The Internal Control and Risk Management System is represented by the set of tools, rules, procedures[11] and

[9] On this point, see also the Annual Financial Report under the heading 'Internal Control and Risk Management System'.
[10] The management procedure 'Company Regulatory System and Documentation Management' defines criteria, responsibilities and methods for formalising company documentation, with consequent communication and dissemination thereof. In particular, it provides for:

- Service Orders, documents aimed at defining or modifying the organisational macro-structure, communicating the appointment of the heads of the first-level organisational structures (reporting to the President, Chief Executive Officer and General Manager), defining their mission, as well as communicating general organisational provisions of major importance;
- Service Instructions, documents aimed at defining or modifying the structure and areas of responsibility of second-level organisational structures and appointing the relevant Heads;
- Organisational Communications, documents aimed at defining or modifying the organisational structure of the teams of resources responsible for the implementation of transversal initiatives/projects of interest to the Company and/or the Group.

[11] In line with the provisions of the procedure 'Company Regulatory System and Documentation Management', the following type of company documentation is provided for:

- Guidelines, documents formalising corporate governance rules and control principles;
- Group Guidelines, Guidelines formalised by the Company that may apply to Subsidiaries (with "Comply or Explain" applicability);
- Management Procedures, Company documents that formalise company processes by defining methods, roles and responsibilities, information systems, and controls to ensure the application of guidelines;
- Group Management Procedures, management procedures formalised by the Company that may apply to Subsidiaries (with "Comply or Explain" applicability) irrespective of the presence or absence 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 communication of a financial nature (Consolidated Finance Act - Legislative Decree 58/98 as amended);
- Operational manuals, user-friendly documents containing a comprehensive, exhaustive and systematic treatment of a given topic;

corporate organisational structures aimed at allowing, through an adequate process of identification, measurement, management and monitoring of the main risks, a sound, correct and consistent management of the business in accordance with the corporate objectives defined by the Board of Directors. ASPI's Internal Control and Risk Management System is based on the following general principles:

- *control environment*: a constant commitment to integrity and ethical values that emanates from top management and is disseminated at all levels of the organisation, as well as making all parties responsible for applying controls and respecting company rules;
- compliance with laws and consistency with the general reference framework: compliance with applicable laws and consistency with the general reference framework (e.g. Model 231, regulatory system, power and delegation system, national and international best practices);
- *risk* culture: promotion of the dissemination of a risk management culture aimed at ensuring the adoption of a *risk-based* approach in the goal-setting and decision-making process of management and during the performance of activities by company personnel in support of the Group's strategic decisions;
- *business process-based approach to risk*: i.e. aimed at identifying, assessing, managing and monitoring risks in order to ensure that ASPI's activities, organisation and business processes are covered by analysis;
- *traceability of information flows*: the various company figures involved must guarantee, each for the part of their competence, the traceability of the activities and documents inherent in the process, ensuring the identification and reconstruction of the sources, information elements and controls carried out that support the activities;
- *Control* activities: development and implementation of control activities on processes and supporting technological systems aimed at mitigating risks within the defined levels of acceptability. Declination of control activities within the body of company regulations;
- *Use of* technology: promotion of the use of technology and information tools to have timely access to information for the purposes of control and monitoring activities, as well as consistent databases;
- *communication and reporting flows*: definition and maintenance of specific flows between the various control levels and the competent management and control bodies, suitably coordinated in terms of content and timing. These flows must be considered as fundamental operating mechanisms of the Internal Control and Risk Management System;
- autonomy: the corporate autonomy of the 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;

- Operational Instructions, documents containing detailed indications for carrying out activities or coordinating operational guidelines for the various production units;
- Certified Management Systems Manuals, documents that set out the company's 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 technical reference standards.

- *Continuous monitoring and improvement:* the efficiency and effectiveness of the Internal Control and Risk Management System are continuously monitored so that opportunities for improvement and strengthening can be identified, also as a result of changes in the business, processes, organisation and, consequently, business risks.

As defined in the document "Guidelines on the Internal Control and Risk Management System (ICSRM) of the ASPI Group" (to which reference should be made for detailed discussion), the Internal Control and Risk Management System is operated by a plurality of corporate Bodies and Structures, whose components are coordinated and interdependent and characterised by complementarity in the purposes pursued, in the characteristics of the system and in the operating rules.

The aforementioned Guidelines describe, inter alia, the governance of the Internal Control and Risk Management System and identifies the corporate entities/departments in charge of Level I, II and III controls.

With reference to Level III controls, for the purpose of verifying the functioning and suitability of the Internal Control and Risk Management System, the Internal Audit Department prepares, at least annually, ASPI's audit plan, to be submitted for approval to the Board of Directors after obtaining the favourable opinion of the Control, Risk, Audit and Related Parties Committee and after hearing the opinion of the Board of Statutory Auditors and the Chief Executive Officer.

Checks on 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 were 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, also with reference to the criteria for determining fees and the methods for authorising payments;
- the provision of appropriate controls on the activity actually performed by service companies on the basis of contractually defined services;
- the identification of the person responsible for the management of the contract (Single Procedure/Project Manager - RUP/ Technical Manager of the contract);
- the provision of the Parties' commitment to comply with the rules and ethical principles set out: i) in the Code of Ethics; ii) in the Organisation, Management and Control Model; iii) in the ASPI Group Anti-Corruption Guidelines.

With regard to updating the Model, the analysis of the control system, carried out by the competent corporate structures, concerned the existence of a suitable: i) system of proxies and powers of attorney consistent with the organisation; ii) regulatory system regulating corporate processes and activities; iii) organisation of activities in compliance with the principle of segregation of duties; iv) documentation management system, such as to allow traceability of operations; v) process monitoring system to verify results and any non-compliance.

Fase 3. GAP ANALYSIS

The design of the controls found 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 deemed optimal allowed the Company to identify a series of areas for integration and/or improvement of the control system, for which the improvement actions to be undertaken were defined.

Fase 4. APPROVAL OF THE MODEL

The draft Model updated by the competent corporate structures is subject to analysis by the Supervisory Body in order to verify its suitability with respect to the didactic - preventive function assigned to it by Legislative Decree 231/2001. The Supervisory Body is also presented with the results of the analysis of the control measures and gap analysis.
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 knowledge of the Model, the internal regulatory system and their updates among all the Recipients (see par. 5.1), with a different degree of depth depending on the position and role. The Addressees are therefore required to know its contents, observe it and contribute to its implementation.
The Model is formally communicated to the Directors and Statutory Auditors at the time of appointment by delivery of a full copy, also in electronic form, 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 by means of widespread dissemination in the workplace also through digital tools (e.g. QRCode). At the time of hiring, employees are also given the *Company's* Code of Ethics, the ASPI Group's Anti-Corruption Guideline, the Model, the ASPI Group's Report Management Guideline, the Group Procedure "Managing Conflicts of Interest" and the regulatory provisions of interest to the Company, knowledge of which is necessary for the correct performance of work activities.
The General Part of this Model, the Code of Ethics, the ASPI Group Whistleblowing Management Guideline, the ASPI Group Anti-Bribery Guideline and the Group's Integrated Management Systems Policy are made available to third parties and any other interlocutor of the Company required to comply with their provisions by means of publication on the Company's website[12] .

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

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, ASPI's Board of Directors has appointed a body (Supervisory Body, or 'SB') entrusted with the task of supervising the functioning, effectiveness and observance of the Model as well as updating it.

In consideration of the specific nature of the tasks that fall to it, the Supervisory Body is a collegial body, with one Member acting as Chairman. The specific criteria for the identification and composition of the Supervisory Body are identified in the "Guidelines for the Composition, Selection and Appointment of the 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 identifies the Chairman. The appointment is communicated to each member of the Supervisory Body in accordance with the communication system of Board of Directors' resolutions. Each member of the Body, in turn, must formally accept the appointment.

The composition, duties, prerogatives and responsibilities of the Supervisory Body as well as the purpose of its establishment are communicated to all levels of the company by means of a Service Order.

6.3 REQUIREMENTS OF THE SUPERVISORY BODY

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

Autonomy and independence, which the Supervisory Body must necessarily have, are ensured by the presence of authoritative external members, without operational duties and interests that may affect their autonomy of judgement, as well as by the fact that the Supervisory Body operates without hierarchical constraints in the context of corporate governance, reporting to the Board of Directors and reporting to the Board of Auditors, as well as to the Chairman and the Managing Director. Furthermore, the activities performed by the SB cannot be reviewed by any corporate body or structure, without prejudice to the power-duty of the Board of Directors to supervise the adequacy of the intervention performed by the SB, in order to ensure the effective adoption and implementation of the Model.

Continuity of action is also guaranteed by the circumstance that the Supervisory Body operates on a permanent basis at the Company, normally meeting once a month to perform the task assigned to it, and that its members have an effective and in-depth knowledge of corporate processes, thus being able to have immediate knowledge of any critical issues. Appointment as a member of the Supervisory Body is conditional on the absence of causes of incompatibility with the appointment itself[13] and on the possession of the requirements of honourability, the absence of which constitutes grounds for ineligibility and/or disqualification as a member of

[13] Any situation of conflict of interest as referred to in the Code of Ethics is deemed to be included in the causes of incompatibility.

the Supervisory Body. The permanence of the requirements is verified by the function in charge throughout the duration of the appointment.
For further details on causes of ineligibility, please refer to the document 'Guidelines for the Composition, Selection and Appointment of the Supervisory Bodys of ASPI Group Companies'.

6.4 FUNCTIONS AND POWERS OF THE SUPERVISORY BODY

The Supervisory Body of ASPI is generally entrusted with the task:

a) to supervise the adequacy of the Model to prevent the commission of the offences referred to in the Decree;
b) to supervise compliance with the provisions of the Model by the Recipients within the Company and to promote the same compliance also by third parties (consultants, suppliers, etc.);
c) to take care of updating the Model in relation to changes in the organisational structure, in the regulatory framework of reference or as a result of supervisory activities as a result of which significant violations of the provisions are discovered.

On a more operational level, the ASPI Supervisory Body is entrusted with the task of:

- Stimulate the Company so that it constantly carries out a reconnaissance of the Company's activities and the reference legislation, in order to update the mapping of activities at risk of offences and propose the updating and integration of the Model and procedures, where the need arises. The process of updating the Model is carried out with the support of the Company structures that are competent from time to time;
- monitor the validity over time of the Model and procedures and their effective implementation, promoting, also after consulting the corporate structures concerned, all necessary actions to ensure their effectiveness. This task includes the formulation of adaptation proposals and the subsequent verification of the implementation and functionality of the proposed solutions;
- periodically carry out targeted checks on specific transactions or acts carried out in the context of activities at risk;
- verify existing authorisation and signature powers, in order to ascertain their consistency with the defined organisational and management responsibilities and propose their update and/or amendment, where necessary;
- examining periodic or ad hoc information flows enabling the Supervisory Body to be periodically updated by the corporate structures concerned on the activities assessed to be at risk of offences, 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 on the effectiveness of and compliance with the Model;
- share the training programmes promoted by the Training and Spacing Design structure for the dissemination of knowledge and understanding of the Model and verify, through the aforementioned structure, the effective fulfilment of training obligations by the Addressees;
- verify the initiatives adopted by the Company to facilitate the knowledge and understanding of the Model and the procedures relating thereto by all those working on behalf of the Company;
- verify the validity of the reports received concerning conduct allegedly constituting offences under the Decree;
- ascertain the causes that led to the alleged violation of the Model and who committed it;

- verify the violations of the Model reported or learnt directly and proceed with the communications to the competent company structures for the aspects of competence, including those concerning the start of the disciplinary procedure.

In order to perform its duties, the Supervisory Body is vested with the powers set out below:

- access to any document and/or company information relevant to the performance of the functions assigned to the Supervisory Body pursuant to the Model. In this regard, any company structure, employee and/or member of the corporate bodies is obliged to provide the information in its possession upon request by the Supervisory Body or upon the occurrence of events or circumstances relevant to the performance of the activities falling within its competence;
- access, without the need for any prior consent, all the Company's facilities in order to obtain any information or data deemed necessary for the performance of its tasks;
- make use of external consultants of proven professionalism in cases where this is necessary for the performance of the activities for which they are responsible;
- ensure that the heads of company structures provide the information, data and/or news requested from them in a timely manner;
- request, if necessary, the direct hearing of employees, directors and members of the Board of Statutory Auditors of the Company;
- requesting information from external consultants, business partners and auditors.

For the purposes of a better and more effective performance of the tasks and functions assigned, the Supervisory Body avails itself, for the performance of its operational activities, of the Internal Audit Department, to which it may request audit and verification activities on specific issues, as well as of the various corporate structures that, from time to time, may be useful.
In order to guarantee its independence, the Body reports directly to the Board of Directors and, in the performance of its functions, acts in full autonomy with adequate financial means to ensure its full operational independence.
To this end, the Board of Directors ensures that the Body is provided with all the financial means it requires to perform its task.
In the performance of the operational activities delegated by the SB, the appointed structures report on their work only to the SB and, likewise, the SB is accountable to the Board of Directors for the activities carried out, on its behalf, by company structures and external consultants.

6.5 REPORTING TO CORPORATE BODIES

The Supervisory Body reports half-yearly on its activities to the Board of Directors and the Board of Auditors. In particular, the report shall concern:

- the overall activity 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, which may lead to violations of the provisions of the Model;
- the proposed corrective and improvement measures of the Model and their state of implementation;
- any reports received during the year by ASPI's Ethics Office and managed for the aspects within its competence, including any corrective and/or improvement actions identified by the Supervisory Body itself, the Ethics Office and the other parties concerned;
- any other information deemed useful.

The Control, Risk, Audit and Related Parties Committee issues its prior opinion to the Board of Directors on the half-yearly report of the Company's Supervisory Body on its activities.
The Supervisory Body promptly reports to the Chairman and the Managing Director on

- any ascertained violation of the Model of which it has become aware either autonomously or through reports;
- detected organisational or procedural shortcomings capable of determining the concrete danger of commission of offences relevant for the purposes of the Decree;
- regulatory changes particularly relevant to the implementation and effectiveness of the Model;
- lack of cooperation from corporate structures;
- any other information deemed useful for the Chairman and the Chief Executive Officer to take urgent decisions.

6.6 RULES GOVERNING THE FUNCTIONING OF THE SUPERVISORY BODY

The Supervisory Body regulates and approves its internal functioning (Supervisory Body Regulations).

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

Respecting their mutual autonomy, the Supervisory Body informs the Control, Risk, Audit and Related Parties Committee, at its request, on compliance with the Organisation, Management and Control Model.

6.8 RELATIONS BETWEEN THE SUPERVISORY BODY, THE BOARD OF AUDITORS AND THE ANTI-BRIBERY OFFICER

The Supervisory Body exchanges with the Board of Auditors and, as far as it is competent, with the Anti-Bribery Officer, on an equal footing and respecting their reciprocal autonomy, information on the activities carried out, the issues that have arisen as a result of the audits carried out and the supervisory activity performed.

6.9 RELATIONS BETWEEN THE SUPERVISORY BODY AND ASPI'S ETHICS OFFICE

In cases of receipt of a report concerning violations or attempted circumvention of the 231 Model, alleged corruption offences or violations of the Code of Ethics which could have potential relevance pursuant to Legislative Decree 231/2001, the ASPI Ethics Office informs the Company Supervisory Body of this report through a dedicated communication, 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 make its own assessment and actions. In addition, the Supervisory Body exchanges with the ASPI Ethics Office information relating to matters which could be potentially relevant pursuant to the Decree in full compliance with the guarantees of confidentiality and the protections provided by the ASPI Group's Report Management Guidelines.

6.10 DURATION, REVOCATION, DISQUALIFICATION AND RESIGNATION OF THE SUPERVISORY BODY

The determination of the term of office of members of the Supervisory Body is the responsibility of the Board of Directors[14] . In any case, each member of the Supervisory Body remains in office until his successor is appointed or the new Board is established.

In order to guarantee the requisites of honourableness and independence, the external members of the Body, at the time of their appointment, must make a specific declaration, under penalty of forfeiture. In the context of the same declaration, the members of the Supervisory Body undertake to promptly communicate any loss of the envisaged requirements of independence and honourableness, as well as, more generally, any circumstances that may arise that make them incompatible with the performance of their duties.

The dismissal of the Supervisory Body or one of its members is the sole responsibility of the Board of Directors, after consulting the Board of Statutory Auditors. The Board of Directors may dismiss the members of the Supervisory Body for just cause, at any time. Just cause for revocation shall mean: a) disqualification or incapacitation, or a serious infirmity that renders the member of the Supervisory Body unfit to perform his 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 peculiar to the Supervisory Body, such as, purely by way of example, the acceptance of professional appointments, also through other Group Companies, which may give rise to a conflict of interest, even if only potential c) a serious breach of the duties of the Supervisory Body, as defined in the Model and in the Decree itself; d) breach of the obligation of confidentiality; e) breach of the requirements of honour.

If the mandate is revoked in respect of all the members of the Supervisory Body, the Board of Directors, having heard the opinion of the Board of Auditors, shall set up a new Board.

Cases of revocation for just cause are distinguished from those of disqualification resulting from the loss of eligibility requirements, which operate automatically.

Where serious reasons exist, the Board of Directors shall proceed to order - after hearing the opinion of the Board of Auditors and, where not involved, of the other members of the Supervisory Body - the suspension from office of one or all of the members of the Supervisory Body, promptly appointing a new member or the entire Supervisory Body.

Lastly, in the event of the resignation of one or all of the members of the Supervisory Body, to be formalised by means of a specific written notice, the Board of Directors shall promptly replace the member(s) of the Supervisory Body.

7 INFORMATION FLOWS TO THE SUPERVISORY BODY

The obligation to provide structured information flows is one of the tools needed 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 the company procedures, the Supervisory Body must be informed of any useful information relevant to the implementation of the Model in 'at risk' activities.

In particular, the Addressees of the Model must inform the Supervisory Body about

- any changes in the organisational structure and procedures in force;

[14] Details are contained in the Guideline 'Composition, Selection and Appointment of Supervisory Bodies of the ASPI Group'.

- any changes to the system of delegated and proxy powers;
- operations of particular importance or which present risk profiles such as to lead to the reasonable risk of offences being committed;
- measures and/or information from judicial police bodies, or any other authority, from which it can be inferred that investigations are being carried out, even against unknown persons, for offences under the Decree;
- requests for legal assistance made by managers and/or employees in the event of legal proceedings being initiated for offences under the Decree;
- reports prepared by the heads of the corporate structures as part of their control activities and from which facts, actions, events or omissions may emerge with critical profiles with respect to compliance with the provisions of the Decree;
- regular reports by the Anti-Bribery Officer on the activities carried out;
- information on the actual implementation, at all levels of the company, of the Model, with evidence of the disciplinary proceedings carried out and any sanctions imposed or orders to dismiss such proceedings with the relevant reasons;
- initiation of inspections by public bodies (judiciary, Public Prosecutor's Office, other Authorities, etc.) within the scope of the activities at risk;
- periodic account, in number and quality, regarding reports received and handled by the Ethics Office;
- periodic summary report in training provided on 231, Anticorruption, Code of Ethics and whistleblowing matters.

8 REPORTS OF ALLEGED VIOLATIONS OF THE MODEL

Reports relating to alleged violations of the Model and to the possible commission or suspected commission of violations of the Group's internal rules as well as any other violation or irregular conduct concerning the conduct of company activities, including those which could have potential relevance pursuant to Legislative Decree 231/2001, must be addressed to the ASPI Ethics Office in compliance with the provisions of the ASPI Group's Reporting Management Guideline.
In cases of receipt of a report concerning violations or attempted circumvention of the 231 Model, alleged corruption offences or violations of the Code of Ethics that could have potential relevance pursuant to Legislative Decree No. 231/2001, the ASPI Ethics Office informs the Company Supervisory Body of this report through a dedicated communication, 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 make its own assessment and actions.
In the event of a potentially relevant report pursuant to Legislative Decree 231/01 involving not only ASPI but also other Group companies, the Ethics Office and the Reporting Management Body of each other Group company shall forward it to the respective Supervisory Body.
ASPI's Supervisory Body, to the extent of its competence, acts so as to ensure compliance with the provisions of Legislative Decree of 10/03/2023 No. 24 on "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 on provisions concerning the protection of persons who report breaches of national laws" and the ASPI Group's Whistleblowings Management Guideline.

In order to facilitate the forwarding of reports by persons who become aware of violations of the Model, including potential ones, the Company has set up dedicated communication channels, namely

- a dedicated IT platform, a recommended tool for the transmission of reports, access to which is granted to all whistleblowers (employees and non-employees) from ASPI's website and corporate intranet;
- a voicemail at 06/43634213 or by attaching an audio file on the platform; the way the report is recorded involves distortion of the tone and falsification of the voice and guarantees the anonymity of the reporter.

The Company, in order to disseminate knowledge of the whistleblowing management process, of the relevant channels and of the safeguards provided for, both to its own staff and to all relevant stakeholders: (i) organises special dissemination sessions for all the Company's internal stakeholders, (ii) makes available specific information to all external stakeholders on the channels, procedures and conditions for making Whistleblowing reports.

In addition, the Ethics Office is available to meet with the whistleblower to collect the report, taking minutes of the meeting, if the whistleblower so requests through the above-mentioned channels. In this case, the minutes of the meeting should be signed by the whistleblower and duly filed.

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

In the event that a report has been shared by the ASPI Ethics Office with the Supervisory Body, the latter examines the reports received and the results of the preliminary investigation phase, which are transmitted before the final closure of the report, in order to take charge of any further investigation needs.

In addition, the Supervisory Body may carry out investigative activities autonomously, carrying out any other activity allowed to it by its prerogatives, such as, for instance, the entrusting of professional appointments and external consultancies, and requests for in-depth investigations from corporate bodies identified for their competence.

In the event of a violation of the Model, the Supervisory Body activates the competent person or corporate structure for disciplinary proceedings (see section 10.5 below).

8.2 PROTECTING THE REPORTER FROM RETALIATION OR DISCRIMINATION

The Supervisory Body, in order to protect and safeguard the author of the report, the reported persons and the other persons involved in the report, oversee to ensure that is guaranteed discretion and confidentiality in every phase of the report management process and prohibits any form of retaliation[15] , even indirectly, ensuring - where required - the adoption of support measures[16] through the ASPI Ethics Office.

Confidentiality guarantees and protection measures are regulated in detail in the ASPI Group's Report Management Guideline.

[15] For a non-exhaustive example of cases of retaliation, please refer to Article 17 of the Decree, which also regulates the burden of proof in judicial and extrajudicial proceedings.

[16] With regard to support measures, please also refer to the provisions of Article 18 of the Decree and to the List of Third Sector entities that have entered into agreements with the A.NA.C. published on the institutional website of the aforementioned Authority.

9 TRAINING

9.1 STAFF TRAINING

ASPI promotes awareness of the Model and its updates among all employees, who are therefore required to know and implement it. ASPI's Training and Spacing Design structure organises and plans personnel training on the regulatory provisions of the Decree and the contents of the Model, including the procedures concerning reporting channels and whistleblowing protection, providing the Supervisory Body with periodic information.

Participation in the training sessions, as well as in the on-line course, due to the adoption of the Model, is compulsory and the Training and Spacing Design structure monitors that the training course is actually attended, activating the appropriate reminders where necessary. The traceability of participation in the training sessions on Decree No. 231/2001 is ensured by the registration of attendance in the appropriate form and, as regards e-learning activities, by the certificate of attendance. These documents are kept by the Training and Spacing Design structure and periodically transmitted to the Supervisory Body for the appropriate evaluations and monitoring.

Update training sessions are held in the event of significant changes to the Model, the Code of Ethics and the general protocols, in the event of the entry into force or integration of regulatory provisions of significant interest for the Company's business, or in the event that the Supervisory Body does not deem the use of telematic corporate information media sufficient due to the complexity of the subject matter.

9.2 INFORMATION TO COLLABORATORS AND PARTNERS

ASPI promotes awareness of and compliance with the Code of Ethics and this General Section of the Model, including clear information on the channels, procedures and conditions for making Whistleblowing reports through a dedicated section on its institutional website, also among the Company's business and financial partners, consultants, collaborators in various capacities, customers and suppliers.

In order to formalise and give cogency to the obligation of compliance with the principles of the Code of Ethics and of this General Section of the Model by third parties who have contractual relations with the Company, it is envisaged that a specific clause to this effect be included in the relevant contract. This clause provides for specific sanctions of a contractual nature (the right to terminate the contract by right and with immediate effect, without prejudice to the right to compensation for the damage suffered, depending on the seriousness of the violation and ASPI's greater or lesser exposure to risk), in the event of violation of the Code of Ethics, this General Section, the ASPI Group Anticorruption Guidelines and the Group's Integrated Management Systems Policy.

10 DISCIPLINARY SYSTEM

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

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 provided for in the Model and in the 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 of the company protocols committed both by persons in an 'apical' position and by persons subject to the direction or supervision of others or working in the name of and/or on behalf of the Company are punishable. Furthermore, any collaborators and partners of the Company are also addressees of this Disciplinary System.
The institution of disciplinary proceedings and the possible imposition of sanctions are independent of whether or not criminal proceedings are pending for the same act and do not take into account its outcome.

10.1 RELEVANT CONDUCT

For the purposes of this Disciplinary System and in compliance with the provisions of the law and of collective bargaining, actions or conduct, including omissions, carried out in violation of the Model constitute relevant conduct, for the application of any sanction.
Moreover, in accordance with the provisions of Article 6, paragraph 2-bis, of Legislative Decree no. 231/2001 and the ASPI Group's Whistleblowing Management Guidelines, disciplinary sanctions are adopted pursuant to the provisions of the relevant CCNL:

- against those who are responsible for any act of retaliation or discrimination or in any case of unlawful prejudice, whether direct or indirect, against the Whistleblower (or anyone who has cooperated in the investigation of the facts that are the subject of a report) for reasons connected, directly or indirectly, with the report;
- against the reported person if the checks carried out reveal unlawful conduct;
- against anyone who violates the confidentiality obligations referred to in the ASPI Group's Whistleblowing Management Guideline;
- against employees, as provided for by law, who have made an unfounded report with malicious intent or gross negligence.

Disciplinary measures shall be imposed promptly and immediately, by means of appropriate measures proportionate to the extent and gravity of the unlawful conduct ascertained, and may go as far as termination of employment in the most serious cases, in accordance with the provisions of 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 actions provided by law apply, in addition to the contractual clauses of compliance with the Code of Ethics, the ASPI Group Anti-Corruption Guideline, the ASPI Group Integrated Management Systems Policy and this Model.
In identifying the related sanction, account is taken of the objective and subjective profiles of the relevant conduct. In particular, the objective elements, graduated in increasing order of seriousness, are:

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

Moreover, the relevant conduct takes on greater or lesser seriousness depending on the different value of the subjective elements indicated below and, in general, the circumstances in which

the offence was committed. In particular, in compliance with the principle of gradualness and proportionality in determining the penalty to be imposed, account is taken of

- the possible commission of more than one infringement in the course of the same conduct, in which case the aggravation shall be made with respect to the sanction provided for the most serious infringement;
- the possible recidivism of its author(s);
- the level of hierarchical and/or technical responsibility of the person to whom the alleged conduct relates;
- the possible sharing of responsibility with other persons who contributed to the violation.

10.2 SANCTIONS AGAINST MEMBERS OF THE BOARD OF DIRECTORS[17] AND MEMBERS OF THE BOARD OF AUDITORS

In the event of a violation of Section 9.1[18] by a Director or Member of the Board of Statutory Auditors, the following sanctions may be applied against you:

- formal written warning;
- fine, equal to the amount of two to five times the emoluments calculated on a monthly basis;
- removal from office.

In particular:

- for the breach referred to in number 1 of section 9.1, a written warning will be imposed;
- for the infringements referred to in number 2 of section 9.1, a fine shall be imposed;
- for the violations referred to in number 3 of section 9.1, revocation will be imposed.

10.3 SANCTIONS AGAINST EMPLOYEES (MANAGERS[19] , MIDDLE MANAGERS, CLERKS, WORKERS)

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 Civil Code and a disciplinary offence.

The adoption by a Company employee of a conduct that can be qualified, on the basis of the previous point, as a disciplinary offence, also constitutes a violation of the obligation of workers to perform the tasks entrusted to them with the utmost diligence, complying with the Company's directives, as provided for by the current CCNL, as well as by the provisions of the Disciplinary Code (posted on the company notice boards).

Sanctions shall be applied on the basis of the importance of the individual cases considered and proportionate according to their gravity, as provided for in paragraph 9.1 above.

[17] Limited to directors who are not in an employment relationship.

[18] By way of example and not exhaustive of what is indicated in the preceding paragraph 10.1the following types of conduct may constitute grounds for the application of the sanctions set out below:

- non-compliance with the principles and protocols contained in the Model;
- violation and/or circumvention of the control system, effected through the removal, destruction or alteration of the documentation provided for by the corporate protocols or in preventing the persons in charge and the Supervisory Body from controlling or accessing the requested information and documentation;
- infringement of the provisions concerning signature powers and, in general, the system of delegated powers, except in cases of necessity and urgency, of which the Board of Directors shall be promptly informed;
- violation of the obligation to inform the Supervisory Body and/or any over-ordered Person about conduct leading to the commission of an offence or administrative offence included among those set out in the Decree.

[19] The sanction criteria and the disciplinary procedure take into account the type of employment relationship that binds these persons to the Company. According to Art. 1(2) of the CCNL, *<<Directors, co-directors, those who are placed in charge of important departments or offices with broad managerial powers, instigators and attorneys on whom the power of attorney confers continuous powers of representation and decision-making for the whole or a considerable part of the company>> fall under this definition.*

If a violation of the Model attributable to the Employee[20] is ascertained, taking into account the provisions of Article 7, Law 300/1970 and the CCNL, 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 daily global remuneration referred to in point 1 of Article 22;
   d. suspension from work and pay for up to 10 days (for part-time staff up to 50 hours).
2. decisive disciplinary measures:
   a. dismissal with notice;
   b. dismissal without notice.

Pursuant to paragraph 9.1 and without prejudice to the provisions of the collective labour agreements and the Disciplinary Code:

1) for the violations referred to in numbers 1 and 2 of section 9.1, the conservative disciplinary measures provided for in Article 36 of the applicable CCNL may be imposed;
2) for infringements referred to in number 3 of section 10.1the resolutive disciplinary measures provided for in Article 37 of the aforementioned CCNL may be imposed.

Pursuant to Article 38 of the CCNL, moreover, if the nature of the misconduct affects the fiduciary relationship, the Company may proceed with the precautionary suspension of the employee pending the appropriate investigations.

With regard to managerial staff, given the eminently fiduciary nature and the fact that managers perform their duties in order to promote, coordinate and manage the achievement of the company's objectives, violations of the Model will be assessed in relation to collective bargaining, consistently with the peculiarities of the relationship itself.

10.4 SANCTIONS APPLICABLE AGAINST 'THIRD PARTY RECIPIENTS

The purpose of this Disciplinary System is to sanction violations of the Code of Ethics and the General Part of the Model committed by persons collectively referred to as 'Third Party Recipients'.

Within this category, one can include:

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

[20] By way of example and not exhaustive of what is indicated in paragraph 9.1 above, and without prejudice to what is provided for in the CCNL for the purposes of the application of any disciplinary measures, some relevant conduct is indicated:

- violation of internal procedures or the adoption, in the performance of activities at risk, of a conduct which does not comply with the provisions of the Model itself, such conduct constituting a failure to comply with the orders issued by the Company, whether in written or verbal form (e.g. a worker who fails to observe the prescribed procedures, omits to notify the Supervisory Body of the prescribed information, fails to carry out checks, etc.);
- adoption, in the performance of activities at risk, of a conduct that does not comply with the prescriptions of the Model or violates its principles, such conduct constituting a failure to comply with the orders issued by the Company (for example, a worker who refuses to undergo health checks pursuant to art. 5 of law no. 300 of 20 May 1970; falsifies and/or alters internal or external documents; does not voluntarily apply the orders issued by the Company, in order to gain an advantage for himself or for the Company itself; is a recidivist in any of the offences that gave rise to the application of precautionary disciplinary measures).

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

10.5 PRELIMINARY INVESTIGATION PROCEDURE

With regard to the investigative activities resulting from the audits and inspections conducted by the Supervisory Body, the latter shall promptly inform and, subsequently, report in writing to the holder of disciplinary power, as identified below, on any breach detected and the person (or persons) to whom it relates.

10.5.1 INVESTIGATION PROCEEDINGS AGAINST MEMBERS OF THE BOARD OF DIRECTORS

If it finds that the Model has been violated by one or more persons holding the office of Director, who are not linked to the Company by a subordinate employment relationship[21] , the Supervisory Body transmits to the Board of Directors and the Board of Statutory Auditors, through their respective Chairmen, a report containing:

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

Following the acquisition of the Supervisory Body's report, the Board of Directors convenes the Director to whom the breach is alleged.

The convocation must:

- be made in writing;
- contain an indication of the conduct complained of and the provisions of the Model that have been breached;
- inform the person concerned of the date of the convocation, with notice of the right to formulate any observations and/or deductions, both written and oral.

Meetings must be convened in accordance with the established procedures of the Board of Directors.

When the Board of Directors is convened, and the Supervisory Body is also invited to attend, the hearing of the person concerned, the acquisition of any statements made by him and the performance of any further investigations deemed appropriate shall be arranged.

The Board of Directors, with the abstention of the Director concerned, assesses the validity of the elements acquired and, pursuant to Article 2392 et seq. of the Civil Code, convenes the Shareholders' Meeting for the appropriate determinations.

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

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

[21] In the event that the breach of the Model is ascribable to a Director linked to the Company by a subordinate employment relationship, the holder of the disciplinary power is the Board of Directors, and the procedure of investigation and possible dispute is subject to the precautions set out in Article 7 of Law No. 300/1970 and the applicable CCNL.

10.5.2 INVESTIGATION PROCEEDINGS AGAINST MEMBERS OF THE BOARD OF AUDITORS

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

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

Following the acquisition of the Supervisory Body's report, the Board of Statutory Auditors, in a joint meeting with the Board of Directors, convenes the Statutory Auditor concerned to whom the breach is alleged.

The convocation must:

- be made in writing;
- contain an indication of the conduct complained of and the provisions of the Model that have been breached;
- inform the person concerned of the date of the convocation, with notice of the right to formulate any observations and/or deductions, both written and verbal.

Meetings must be convened in accordance with the established procedures of the Board of Directors.

The Board of Directors of the Company, having assessed the relevance of the report, shall activate the Shareholders' Meeting for the appropriate determinations.

If it finds that the Model has been violated by more than one Statutory Auditor or by the entire Board of Statutory Auditors, the Supervisory Body shall inform the Board of Directors so that the latter may convene the Shareholders' Meeting without delay for appropriate measures.

10.5.3 INVESTIGATION PROCEEDINGS AGAINST EMPLOYEES (MANAGERS, MIDDLE MANAGERS, CLERKS, WORKERS)

In the event of a violation of the Model by an Employee, the procedure for establishing the violation is carried out in compliance with the applicable legal provisions as well as the applicable collective agreement by the holder of the disciplinary power.

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

- the Board of Directors for Directors reporting to the Chief Executive Officer[22] ;
- Director Human Capital and Organisation[23] for employees and managers;
- the Section Director as far as it is concerned.[24]

The Supervisory Body then submits a report to the disciplinary authority holder containing:

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

Following the acquisition of the report of the Supervisory Body, the holder of the disciplinary power shall convene the person concerned, by means of a written reprimand containing:

[22] Including the Director of Human Capital and Organisation.
[23] By virtue of the authority received from the Managing Director.
[24] In particular, the Section Manager may, inter alia, take disciplinary measures against non-managerial employees.

- an indication of the conduct complained of and the provisions of the Model that have been breached;
- the time limits within which the interested party is entitled to formulate any observations and/or deductions, both written and verbal.

If the person concerned intends to respond orally to the dispute, the Supervisory Body shall also be invited to attend that meeting. At that meeting, the elements represented by the person concerned are acquired.

Upon conclusion of the above activities, the disciplinary authority holder shall decide on the possible determination of the sanction, as well as on its actual imposition.

The measure imposing any sanction is communicated in writing to the person concerned, by the competent company structure, in compliance with any deadlines laid down by the collective agreement applicable in the specific case.

The holder of the disciplinary power shall ensure, where appropriate, the effective imposition of the sanction, in compliance with the law and regulations, as well as with the provisions of collective bargaining and company regulations, where applicable.

The Supervisory Body shall be sent, for information, the measure imposing the sanction by the holder of the disciplinary power, also with the help of the competent corporate structures.

10.5.4 INVESTIGATION PROCEEDINGS AGAINST "THIRD PARTY RECIPIENTS

In order to enable the initiatives envisaged in the contractual clauses aimed at ensuring compliance with the principles of the Code of Ethics, the Anticorruption Guideline and this General Section of the Model by third parties that have contractual relations with the Company, the Supervisory Body shall transmit a report to the Manager managing the contractual relationship, containing

- the details of the person responsible for the violation;
- the description of the conduct complained of;
- an indication of the provisions of the Code of Ethics, the Anticorruption Guideline and this General Section of the Model that have been violated;
- any documents proving the infringement and/or other evidence.

This report, if the contract has been approved by the Board of Directors, must also be forwarded to the Board of Directors and the Board of Auditors.

The person responsible for managing the contractual relationship, in agreement with the competent structure of the Legal Affairs and Compliance Department, sends the person concerned a written notice containing an indication of the conduct complained of, the provisions that have been breached, as well as an indication of the specific contractual clauses included in the letters of appointment, contracts or partnership agreements that are to be applied.

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)

Foreword

Law No. 190 of 6 November 2012 (the so-called 'Anticorruption Law'), entitled '*Provisions for the prevention and suppression of corruption and illegality in the public administration*', was published in the Official Gazette No. 265 and subsequently came 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), provided for only for public officials, when they force someone to unduly give or promise money or other benefits;
- the introduction of the offence of '*undue inducement to give or promise benefits*' (Article 319-quater of the Criminal Code), provided for public officials and persons in charge of a public service, if they induce someone to give or promise money or other benefits unduly;
- the amendment of the offence of '*bribery for an official act*' (Article 318 of the Criminal Code), which occurs when a public official or a person in charge of a public service unduly receives the giving of a benefit for the exercise of his functions or powers.

Subsequently, Law No. 69 of 27 May 2015 concerning '*Provisions on crimes against the public administration, mafia-type associations and false accounting*', published in the Official Gazette No. 124 of 30 May 2015 and entered into force on 14 June 2015, amended the rules set out in Articles 317 et seq. of the Criminal Code, substantially tightening the penalty regime associated with the individual incriminating cases.

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

- the tightening of the penalty treatment for the offence of corruption for the exercise of a function (Article 318 of the Criminal Code);
- the amendment of the offence provided for and punished by Article 322-bis of the Criminal Code, entitled '*Embezzlement, extortion, undue inducement to give or promise benefits, bribery and incitement to bribery of members of international courts or organs of the European Communities or of international parliamentary assemblies or international organisations and officials of the European Communities and of foreign States*';
- the introduction of trafficking in unlawful influence (Article *346-bis of* the Criminal Code), after its reformulation, in the list of offences against the P.A. relevant under Legislative Decree no. 231/2001;
- the amendment of the duration and application methods of prohibitory 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 on '*Implementation of Directive (EU) 2017/1371 on the fight against fraud affecting the financial interests of the Union by means of criminal law*' was published in the Official Journal (No. 177)[25] , which entered into force on 30 July 2020.

The main changes introduced with the issuance of the aforementioned Decree, for the part of interest here, concern:

- the tightening of the penalty regime provided for certain offences against the Public Administration (Articles 316, 316-ter, 319-quater, 322-bis, 640(2)(1) of the Criminal Code) if the offence offends the financial interests of the EU[26] ;
- 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 Criminal Code;

[25] For a better understanding of the aims and principles underlying the so-called "BIP Directive", below are some textual extracts of the most significant points contained therein:

- *"The protection of the Union's financial interests requires a common definition of fraud within the scope of this Directive, which should cover fraudulent conduct on the revenue, expenditure and assets side of the general budget of the European Union ('Union budget'), including financial transactions such as borrowing and lending. The notion of serious offences against the common system of value added tax ('VAT') established by Council Directive 2006/112/EC (8) ('the common VAT system') refers to the most serious forms of VAT fraud, in particular carousel fraud, missing trader VAT fraud and VAT fraud committed within the framework of a criminal organisation, which create serious threats to the common system of VAT and consequently to the Union budget. Crimes against the common VAT system should be considered serious where they relate to the territory of two or more Member States, result from a fraudulent scheme whereby such crimes are committed in a structured way with the aim of obtaining undue advantage from the common VAT system and where the total damage caused by the crimes is at least EUR 10 000 000. The notion of total damage refers to the estimated damage caused by the entire fraudulent scheme, both to the financial interests of the Member States concerned and to the Union, excluding interest and penalties. ...*' (see, to that effect, Recital 4);
- "*Corruption constitutes a particularly serious threat to the financial interests of the Union and can 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, irrespective of the law or regulatory provisions applicable in the country or international organisation to which the official concerned belongs.*" (see, to this effect, Recital 8);
- "*The financial interests of the Union may be harmed by certain types of conduct of a public official in charge of the management of funds or property, whether in office or acting in a supervisory capacity, which are aimed at misappropriating funds or property, for a purpose contrary to that intended and through which those interests are damaged. It is therefore necessary to introduce a precise definition of the offences covered by these types of conduct.*" (see, to this effect, Recital 9);
- "With regard to the *offences of passive corruption and embezzlement, it is necessary to include a definition of a public official that encompasses all those who hold a formal office in the Union, the Member States or third countries. Private actors are increasingly involved in the management of Union funds. In order to adequately protect Union funds against corruption and misappropriation, the definition of 'public official' must therefore encompass persons who, while not holding a formal office, are nevertheless entrusted with a public service function, and exercise that function in a similar manner, in relation to Union funds, as contractors involved in the management of such funds.*" (see, to that effect, Recital 10);
- "*Sanctions for natural persons should provide for a maximum sentence of at least four years imprisonment in certain cases. Such cases should include at least those where considerable damage has been caused or considerable advantage obtained, presuming damage or advantage of a value of more than EUR 100 000. ... However, for offences against the common system of VAT, the threshold at which considerable damage or advantage should be presumed to exist is, according to this Directive, EUR 10 000 000. The introduction of minimum levels of maximum prison sentences is necessary to ensure equivalent protection of the Union's financial interests throughout the Union. The penalties are intended to serve as a strong deterrent for potential offenders, with effects throughout the Union.*" (see, to that effect, Recital 18);
- "*... (a) 'financial interests of the Union' shall mean all revenue, expenditure and assets which are covered or acquired by, or payable under: (i) the budget of the Union; (ii) the budgets of institutions, bodies, offices and agencies of the Union established pursuant to the Treaties or budgets managed and controlled directly or indirectly by them;... In respect of revenue accruing 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 system of VAT shall be regarded as serious offences where the intentional act or omission, as defined in Article 3(2)(d), relates to the territory of two or more Member States of the Union and results in total damage of at least EUR 10 000 000.*" (see, to that effect, Article 2);
- As regards, on the other hand, conduct affecting the financial interests of the Union, in Art. 3 refers to: "the *use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or property from the Union budget or budgets managed by, or on behalf of, the Union; the failure to provide information in breach of a specific obligation, which has the same effect; or the misapplication of such funds or property for purposes other than those for which they were originally granted; ... the use or presentation of false, incorrect or incomplete VAT declarations or documents, which has the effect of diminishing the resources of the Union budget; the failure to communicate VAT information in breach of a specific obligation, which has the same effect; or the presentation of correct VAT declarations in order to fraudulently conceal non-payment or the unlawful establishment of VAT refund claims.*";
- Articles Lastly, Articles 4 and 5 refer, respectively, to cases of active and passive corruption damaging or likely to damage the Union's financial interests and of 'misappropriation', i.e. '*the action by a public official, directly or indirectly entrusted with the management of funds or assets, of committing or disbursing funds or appropriating assets or using them for a purpose other than that for which they were intended, which damages the Union's financial interests*', as well as the punishability of the offences provided for by the Directive also by way of instigation, aiding and abetting and attempt.

[26] Article 1 of the Decree integrates the aforementioned criminal offences also to the commission of acts detrimental to the financial interests of the EU, with damage or profit exceeding EUR 100.000.00, increasing the maximum edictal penalties, extending the punishability of the offence provided for and punished by Article 322-bis of the Criminal Code also to P.U. or P.S.I.'s that do not belong to EU Member States, and finally adding the mention of the EU in Article 640, para. 2, no. 1) of the Criminal Code.

- the inclusion in Article 25 of Legislative Decree no. 231/2001 of the offences provided for in and punished by Articles 314(1) ("*Embezzlement")*, 316 ("*Embezzlement by profiting from the error of others*") and 323 ("*Abuse of office*") of the Criminal Code, when the offence offends the financial interests of the European Union.

Decree-Law No. 13/2022 was then published in the Official Gazette No. 47 of 25 February 2022, on '*Urgent measures to combat fraud and safety in the workplace in the construction sector, as well as on electricity produced by plants from renewable sources*' (the so-called Fraud Decree).
Of particular relevance to criminal law is Article 2 ("*Sanctioning Measures against Fraud in the Matter of Public Disbursements*"), which, for the part of interest herein, introduces amendments, of an amplifying nature, to the heading and/or text of Articles 316-bis (now headed "*Misappropriation of Public Disbursements*"), 316-ter (now headed "*Undue Receipt of Public Disbursements*") and 640-bis of the Criminal Code.
Subsequently, Legislative Decree No. 156 of 4 October 2022 on " *Corrective and supplementary provisions of Legislative Decree No. 75 of 14 July 2020 implementing Directive (EU) 2017/1371 on combating fraud affecting the financial interests of the Union by means of 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, on '*Implementation of Law No. 134 of 27 September 2021, delegating the Government for the efficiency of the criminal trial, as well as on restorative justice and provisions for the speedy definition of judicial proceedings*', then introduced amendments to Article 640 of the Criminal Code[27] and Article 640-ter of the Criminal Code[28] .
Lastly, Law No. 137 of 9 October 2023, entitled '*Conversion into law, with amendments, of Decree-Law No. 105 of 10 August 2023, containing urgent provisions on criminal trial, civil trial, combating forest fires, recovery from drug addiction, health and culture, as well as on the subject of personnel in the judiciary and public administration.*" amended Article 24 of the Decree, introducing the offences of disturbing the freedom of tenders (Article 353 of the Criminal Code) and the procedure for choosing a contractor (Article *353-bis of the* Criminal Code).
In order to better understand the ways in which the offences in question are committed, a description of the notions of Public Official and Person in Charge of a Public Service is set out below.

Notion of Public Official and Person in Charge of a Public Service (Articles 357, 358, 322-bis of the Criminal Code)

Public officials are defined as those who, within the meaning of Article 357 of the Criminal Code, exercise a legislative, judicial or administrative public function, the latter being governed by rules of public law and characterised by the exercise of authorising or certifying deliberative acts.
Persons in charge of a public service are defined as those who, for whatever reason, perform a public service, meaning an activity governed in the same manner as a public function, but characterised by the absence of the latter's typical powers.
The title of "Public Official" and "Person in Charge of a Public Service" is also held by members of international courts, members of the bodies of the European Communities or of international parliamentary assemblies, or of international organisations, or by officials of the European

[27] Article 2(1)(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 on complaint by the injured party, unless any of the circumstances set out in the preceding paragraph apply*.
[28] Article 2(1)(p) of Legislative Decree No. 150/2022 amended the fourth paragraph of Article 640-ter of the Criminal Code, which now reads as follows: '*The offence is punishable on complaint by the injured party, unless any of the circumstances set out in the second and third paragraphs or the circumstance provided for in Article 61(1)(5), limited to having taken advantage of personal circumstances, also with reference to age, apply*.

Communities, of foreign states and by those who, within the framework of other states, exercise functions corresponding to those of public officials and persons in charge of a public service.

Some examples are given below:

1. persons performing a legislative or administrative public function, such as, for example:
   - parliamentarians and members of the government;
   - regional and provincial councillors;
   - MEPs and members of the Council of Europe;
   - persons performing ancillary functions (persons in charge of the preservation of parliamentary acts and documents, drafting of stenographic reports, bursars, technicians, etc.);
2. persons performing a public judicial function, such as, for example:
   - magistrates (ordinary magistracy of courts, Appeal Courts, Supreme Court of Cassation, Superior Court of Waters, TAR, Council of State, Constitutional Court, military tribunals, popular judges of the Assize Courts, justices of the peace, honorary and aggregate deputy praetors, members of ritual arbitration panels and parliamentary commissions of enquiry, magistrates of the European Court of Justice, as well as of the various international courts, etc.);
   - persons carrying out related functions (judicial police officers and agents, financial police and carabinieri, chancellors, secretaries, judicial custodians, bailiffs, witnesses, conciliation messengers, bankruptcy receivers, operators in charge of issuing certificates at court registry offices, experts and consultants of the Public Prosecutor, liquidators in bankruptcy proceedings, liquidators in composition with creditors proceedings, extraordinary commissioners of the extraordinary administration of large enterprises in crisis, etc.);
3. persons performing a public administrative function, such as, for example:
   - officials employed by the Public Administration, international and foreign bodies and territorial authorities (e.g. officials and employees of the State, the European Union, supranational bodies, foreign States and territorial authorities, including Regions, Provinces, Municipalities and Mountain Communities; persons who perform ancillary functions with respect 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 in charge of practices concerning the occupation of public land, municipal correspondents in charge of the employment office, employees of State-owned companies and municipalised companies; persons in charge of tax collection, health personnel of 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, the Supervisory Authorities, public welfare institutions, ISTAT, the UN, the FAO, etc.);
   - private individuals exercising public functions or public services (e.g. notaries, private entities operating under a concessionary regime or whose activity is in any event governed by public law or which in any event perform activities in the public interest or are wholly or partly controlled by the State, etc.).

Activities that, although governed by rules of public law or authoritative acts, nevertheless consist in the performance of simple orderly tasks or the performance of purely material work, i.e. activities of a predominantly applicative or executive nature that do not entail any autonomy or discretion, are not considered to be public services.

The figures of the Public Official and the Person in Charge of a Public Service are identified not on the basis of the criterion of belonging to or being dependent on a Public Entity, but with reference to the nature of the activity concretely performed by them, i.e., respectively, public function and public service. Even a person not belonging to the Public Administration may therefore be qualified as a Public Official or a Person in Charge of a Public Service, when he performs one of the activities defined as such in Articles 357 and 358 of the Criminal Code.

1. **Aggravated fraud to the detriment of the State or other public body or the European Union (Article 640(2)(1) of the Criminal Code)**
   The offence occurs if, by resorting to artifice or deception and thereby misleading someone, an unjust profit is obtained to the detriment of the State or other public body or the European Union. This offence may occur when, for instance, within the framework of contractual relations with the Public Administration, tricks or deception are used in order to obtain advantages or benefits not due.
   Penalties applicable to the Entity
   - Monetary sanction: up to 500 quotas; however, if the Entity has obtained a significant profit or particularly serious damage has been caused, a monetary sanction of 200 to 600 quotas shall apply;
   - disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

2. **Aggravated fraud to obtain public funds (Article 640-bis of the criminal code)**
   The offence is committed where the fraudulent conduct described above relates to grants, subsidies, loans, subsidised loans or other disbursements of the same type, however denominated, granted or disbursed by the State, other public bodies or the European Union.[29]
   With regard to the material object of the offence, it should be noted that contributions and subsidies are pecuniary disbursements that may be periodic or *one-off*, fixed or determined on the basis of variable parameters, of a nature linked to the *an or quantum* or of pure discretionary nature; loans are negotiated acts characterised by the obligation to allocate the sums or to repay them or by further and different charges; subsidised loans are disbursements of sums of money with the obligation to repay them for the same amount, but with interest at a lower rate than market rates. (In any case, the rules take into account all disbursements of money characterised by an advantageousness compared to market conditions).
   Penalties applicable to the Entity
   - Monetary sanction: up to 500 quotas; however, if the Entity has obtained a significant profit or particularly serious damage has been caused, a monetary sanction of 200 to 600 quotas shall apply;
   - disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing,

[29] Article 2(1)(d) of Decree-Law No. 13/2022 added the term '*subsidies*' as the object of the offending conduct.

contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

3. Misappropriation of public funds (Article 316-bis of the criminal code)[30]

The offence is constituted by the conduct of anyone who, having obtained a loan, a subsidised loan or other disbursement of the same type, however denominated, from the State, another public body or the European Union, for the realisation of one or more public purposes, uses all or part of the funds received for purposes other than those for which they were obtained.

Penalties applicable to the Entity

- Monetary sanction: up to 500 quotas; however, if the Entity has obtained a significant profit or particularly serious damage has been caused, a monetary sanction of 200 to 600 quotas shall apply;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

4. Misappropriation of public funds (Article 316-ter of the criminal code)[31]

This offence occurs in cases where - through the use or presentation of false declarations or documents or through the omission of required information - one obtains, without being entitled to them, contributions, financing, subsidised loans, grants or other disbursements of the same type granted or disbursed by the State, other public bodies or the European Union. [32]

In this case, contrary to the preceding point (Article 316-bis of the Criminal Code), the destination of the public funds disbursed is of no importance, since the offence is committed at the time of their undue receipt. It should be noted that this offence, being of a subsidiary nature, only takes place where the conduct does not constitute the more serious offence of fraud to obtain public funds (Article 640-bis of the Criminal Code).

Penalties applicable to the Entity

- Monetary sanction: up to 500 quotas; however, if the Entity has obtained a significant profit or particularly serious damage has been caused, a monetary sanction of 200 to 600 quotas shall apply;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

5. Computer fraud to the detriment of the State or other public body (Article 640-ter of the criminal code)

[30] Article 2(1)(b) of Decree-Law No. 13/2022 amended the heading and broadened the subject matter of the offending conduct.
[31] Article 2(1)(c) of Decree-Law No. 13/2022 amended the heading and broadened the subject matter of the offending conduct.
[32] The penalty is imprisonment from six months to four years when the act offends the financial interests of the European Union and the damage or profit exceeds EUR 100,000.

This offence occurs when, by altering the operation of a computer or telecommunications system or by manipulating the data, information and programmes contained therein, an unfair profit is obtained for oneself or others, causing damage to the State or another public body.[33]

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 operation of a computer system committed to the detriment of the State or another public body.

The agent's fraudulent activity involves not the person, but rather the computer system pertaining to that person, through its manipulation.

Penalties applicable to the Entity

- Monetary sanction: up to 500 quotas; however, if the Entity has obtained a significant profit or particularly serious damage has been caused, a monetary sanction of 200 to 600 quotas shall apply;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

6. The crime of fraud in public procurement (Article 356 of the criminal code)

This criminal offence[34] punishes anyone who commits fraud in the performance of supply contracts or in the performance of other contractual obligations set out in Article 355 of the Criminal Code (which refers to the obligations arising from a supply contract concluded with the State, with another public body, or with an undertaking exercising public services or public necessity).

By supply contract is not meant a specific type of contract, but, in general, any contractual instrument intended to supply the P.A. with goods or services: consequently, the offence of fraud in public supply can be recognised not only in the fraudulent performance of a supply contract (Article 1559 of the Civil Code), but also of a contract of tender (Article 1655 of the Civil Code).

Therefore, as also established by a consolidated orientation of the jurisprudence of legitimacy, Article 356 of the Criminal Code punishes all frauds to the detriment of the Public Administration, regardless of the contractual schemes under which the suppliers are required to perform particular services (most recently, Criminal Court of Cassation, sect. VI, 27 May 2019).

For the purposes of the constitution of the offence, the mere breach of contract is not, therefore, sufficient, since the incriminating provision requires a *quid pluris* that must be identified in bad faith in the contract, i.e. in the presence of a malicious expedient (Criminal Court of Cassation, sect. VI, judgment no. 5317 of 11 February 2011).

In this regard, on the other hand, it is not necessary for specific deception or for the defects of the goods supplied to be concealed, but the fraudulent execution of the public contract for the supply of goods or services is sufficient, with the consequence that, where the above-mentioned elements

[33] As a result of 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 penalty shall be imprisonment for a term of one to five years and a fine ranging from EUR 309 to EUR 1,549 if one of the circumstances set out in number 1 of the second paragraph of Article 640 occurs, or if the act results in a transfer of money, monetary value or virtual currency or is committed with abuse of the quality of system operator.*"

[34] All predicate offences *under* Article 24 of the Decree, now entitled "*Undue receipt of funds, fraud to the detriment of the State, a public body or the European Union or for the purpose of obtaining public funds, computer fraud to the detriment of the State or a public body and fraud in public supply*" will therefore be relevant not only if committed to the detriment of the State or another public body, but also if committed to the detriment of the EU.

characterising fraud are also present, the concurrence of the two offences is configurable (Court of Cassation, VI, 18 September 2014, no. 38346).

In fact, the expression '*commits fraud*' does not necessarily allude to devious or artificial conduct, because it refers to any breach of contract, irrespective of the intention of the perpetrator to obtain an undue profit or pecuniary damage that the commissioning body may suffer.

Article 356 of the Criminal Code therefore penalises contractual conduct that, in dealings with the administration, violates the principle of good faith in the performance of the contract, enshrined in Article 1375 of the Civil Code.: "*Fraud is an objective fact that damages the public interest regardless of the addition of fraudulent expedients and, in a relationship with the Public Administration, it is not the psychological conditions of the contracting physical persons that count but the manner in which the goods are presented in relation to what was 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 acting on behalf of the Public Administration.*" (see in this sense Cass. pen., sec. III, judgment no. 58448 of 28 December 2018).

From the point of view of the psychological element, general intent is required for the integration of the offence, consisting of the consciousness and intent to deliver things other than those agreed upon or affected by flaws or defects[35] .

Finally, it should be pointed out that a person may also be held liable for aiding and abetting the fraudulent misperformance of public supply contracts who, although not acting as an immediate interlocutor of the Public Administration concerned, supplies products, labour energy and anything else directly used by the contracting company for the performance of the public work or service covered by the contract, provided that he is aware that the thing supplied is directly used in the performance of the public work and is an essential element for its implementation (see Criminal Court of Cassation, sec. VI, judgment of 13 December 2013 no. 50334).

Penalties applicable to the Entity

- Monetary sanction: up to 500 quotas; however, if the Entity has obtained a significant profit or particularly serious damage has been caused, a monetary sanction of 200 to 600 quotas shall apply;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

7. The crime of embezzlement (Article 314 of the criminal code)

This criminal offence, included in Article 25 of Decree no. 231, now entitled "*Embezzlement, extortion, undue inducement to give or promise benefits, bribery and abuse of office*", punishes in its first paragraph the Public Official or the Public Official (thus falling within the category of the so-called "proper offence"), who, having by reason of his office or service the possession or in any case the availability of money or other movable property of others, appropriates it.

[35] The following are some case law cases: supply for a school canteen of a foodstuff of a different origin and preparation that is less valuable than that provided for in the contract specifications; delivery to various commissioning hospital bodies of orthopaedic materials of brands other than the agreed one (the fraud was to be appreciated in having concealed the substitution of the object of the supply without informing the public commissioners); affirmation of liability of the owner of a company contracting work to adapt the electrical system of a public building carried out in breach of accident prevention regulations and the content of the contract. The contractor, once the work had been completed, had issued a declaration certifying that it complied with the aforementioned regulations and contractual provisions; during the execution of the work, it had emerged that it had been carried out using materials with different characteristics and inferior to those prescribed by the contract specifications.

As is clear from the letter of the provision, the prerequisite for the objective element of the offence under consideration is the possession or availability of another person's money or other movable property.
By 'possession' doctrine and jurisprudence agree not to consider it in the same way as civil possession, but to regard it as de facto power over the property, directly linked to the powers and functional duties of the office held, thus adopting a broader concept.
L'affiancamento al possesso anche della "disponibilità" chiarisce che la possibilità di disporre della cosa a prescindere dalla materiale detenzione è già di per sé idonea ad integrare, sotto il profilo dell'elemento oggettivo, il reato in esame, ogni qual volta che il soggetto agente sia in grado, mediante atto dispositivo di sua competenza o connesso a prassi e consuetudini invalse nell'ufficio, di ingerirsi nel maneggio o nella disponibilità di denaro e di conseguire quanto poi oggetto di appropriazione (cfr., *ex multis,* Criminal Court of Cassation, sect. II, judgment no. 3327 of 8.1.2010).
Another prerequisite of the case is that the availability of the thing or money on the part of the P.U. or the I.P.S. derives its reasons from the office or service held.
It is therefore necessary that the availability of the property finds its justification and legal admissibility in the public function exercised and that the public official can dispose of it 'because of' his position and that this faculty is expressly provided for by his functions.
On the other hand, as regards the psychological element, embezzlement is punished by way of general intent consisting in the intention to appropriate a movable item and to enjoy it for private profit, with the knowledge that one has it at one's disposal for official reasons.
It is, in fact, on this cognitive basis that the volitional aspect of the subjective element is grafted, which consists, precisely, in the will on the part of the P.U./I.P.S. to act as *dominus of* the property.
On the other hand, the requirement of the altruity of the asset has replaced the requirement of the asset's belonging or not belonging to the P.A., which characterised the previous provision: the rule in question, in fact, has brought together in a single case the old figures of embezzlement and misappropriation to the detriment of private individuals.
Therefore, this is a multi-offence, in the sense that not only the regular and good performance of the P.A. is harmed by the conduct, but also and above all the patrimonial interests of the latter and of private persons, since the conduct is totally incompatible with the title for which it is held and from which derives a total removal of the asset from the patrimony of the person entitled thereto.
Therefore, embezzlement is characterised as a mere conduct offence: appropriation, understood as acting *uti dominus with regard to the* money or movable thing possessed, is punished.
With the reform of Law No. 86 of 1990, on the other hand, the further conduct of diversion, i.e. the use of the asset for purposes other than those underlying the reason for possession, was cancelled in order to avoid interpretative distortions in practice.
However, also as a result of various contrasts in case law, the equalisation between conduct of misappropriation (i.e. imparting to the thing a destination different from the one intended) and appropriation now seems to be unequivocal.
In fact, the fact of improperly allocating an item to a different use means in substance exercising typically proprietary powers over it: "*in the offence of embezzlement, the concept of "appropriation" also includes the conduct of "diversion" insofar as giving the item a destination other than that permitted by the title of possession means exercising typically proprietary powers over it and, therefore, taking possession of it*" (see in this sense, Criminal Court of Cassation, Sect. VI, judgment no. 25258 of 4.6.2014, in which the Court qualified as embezzlement the conduct of a public service

officer who, instead of investing the resources he had at his disposal for the public purposes institutionally envisaged, had used them to purchase shares of speculative funds).[36]

Turning to the examination of the relevance, pursuant to Legislative Decree No. 231/2001, of the offence in question, it is immediately necessary to examine the possible incompatibility between its commission and the requirements of the interest or advantage of the entity/company to which the agent belongs.

On this specific point, the Illustrative Report attached to Legislative Decree No. 75/2020 clarified the following: *"... in reality, the hypothesis to which the Directive seems to refer mainly sees the person for whose actions the entity is answerable (a senior person or employee) taking part, as an "extraneous" competitor, in the appropriative conduct materially put in place by a "public official", as defined in Article 4(4) of the same Directive. By way of example, one might think of the case in which the general manager of a company persuades an EU official to appropriate EU funds and invest them in his company, or again of the cases of so-called 'embezzlement', recognised in case law in the case of the use of public funds for purposes totally unrelated to the public authority and with irreversible leakage of the money, in theory intended in part for the public authority, through the payment of non-existent debts to a colluding company, in part to the latter or to its director. Clearly, these are cases in respect of which no doubts appear to be allowed as to the existence of the prerequisites ("interest" and/or "advantage") required for the attribution to the entity of the administrative liability provided for by Legislative Decree No. 231*".

Lastly, it should also be reiterated that "231" liability is triggered pursuant to Article 314(1) of the Criminal Code, as provided by Article 5 of Legislative Decree No. 75/2020, only "*when the act offends the financial interests of the European Union*".

Penalties applicable to the Entity

Fine: up to 200 quotas.

8. The offence of embezzlement by profiting from another person's error (Article 316 of the criminal code)

Unlike the previous criminal offence, for the rule under consideration here[37] the performance of the function or service does not constitute the reason for the possession or in any case the availability of the goods, but only a chronological moment within which the typical conduct must materialise, which consists in receiving, i.e. accepting what is mistakenly given or made available, or in withholding it, i.e. not returning it.

More specifically, taking advantage of another's mistake means taking advantage of a pre-existing misrepresentation of the third party such as to put the agent in a position to commit the offence.

The error that generates the appropriation may arise from any cause, but cannot be produced voluntarily, i.e. with malice aforethought, by the agent.

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[36] In its grounds, the Court also specified that: "*in this perspective, also considering the nature of the legal interest protected by the incriminating provision dictated by Article 314 of the Criminal Code, it can be stated that appropriation is recognisable not only when the public agent makes the thing "his", but also when, by abusing the use of the money or the thing he has possession or availability of by reason of his office or service, he deprives the public administration of the possibility of using that money or that movable thing for the pursuit of public purposes: This is the case where, as in the present case, the public agent, instead of using the money he has at his disposal to achieve the intended public interest purposes, uses it to satisfy an exclusively private need, such as that of favouring a financial promoter who is the beneficiary of the relevant commissions, commits that money, in breach of statutory and statutory provisions, in order to purchase high-risk investment funds, and thereby effecting that interversion of possession which qualifies appropriation, with the exercise over those sums of a power uti domini*'.

[37] Article 316 of the Criminal Code now provides as follows: "*1. A Public Official or a person in charge of a Public Service, who, in the performance of his duties or service, taking advantage of the error of others, unduly receives or considers, for himself or for a third party, money or other benefits, shall be punished by imprisonment from six months to three years. 2. The punishment shall be imprisonment from six months to four years when the act offends the financial interests of the European Union and the damage or profit exceeds EUR 100,000.*"

The defendant's error must therefore pre-exist the conduct of the public official, be spontaneous and therefore not determined, otherwise it would fall under the offence of extortion.
Therefore, an essential prerequisite of the offence is that the third party is mistakenly convinced that he or she must deliver money or other benefits into the hands of the Public Official or the Person in Charge of a Public Service, who accepts them or believes them by exploiting the mistake.
Required for its existence, from the point of view of the psychological element, is general intent, i.e. awareness of another's mistake and the intention to receive or retain the thing.
Finally, it should also be reiterated that '231' liability is triggered under Article 316 of the Criminal Code, as provided by Article 5 of Legislative Decree No. 75/2020, only '*when the act offends the financial interests of the European Union*'.

Penalties applicable to the Entity

Fine: up to 200 quotas.

9. Extortion (Article 317 of the Criminal Code)

The offence occurs when a Public Official or a Person in Charge of a Public Service, abusing his position or powers, forces someone to give or promise unduly, to himself or to others, money or other benefits.

The figure of the Person in Charge of a Public Service was reinserted in the incriminating case of Article 317 of the Criminal Code following the entry into force of Law No. 69/2015, mentioned above.

This reintroduction, according to the illustrative report of the original bill, is justified on the grounds that it would be incongruous to punish only the Public Official when even a concessionaire of a public service can engage in the same behaviour '*with equally devastating effects on the ethics of relations*'.

The Public Official or the Person in Charge of a Public Service determines the subjugation of the will of the offended person through the abuse of his capacity (irrespective of his specific competences but instrumentalising his position of pre-eminence) or of his powers (conduct representing manifestations of his functional powers for purposes other than that with which he has been entrusted).

The perpetrators of this offence (offended persons) are, at the same time, the public administration and the private concussión.

Penalties applicable to the Entity

- Fine: 300 to 800 quotas;
- sanzioni interdittive: interdizione dall'esercizio dell'attività; sospensione o revoca delle autorizzazioni, licenze o concessioni funzionali alla commissione dell'illecito; divieto di contrattare con la Pubblica Amministrazione, salvo che per ottenere le prestazioni di un pubblico servizio; esclusione da agevolazioni, finanziamenti, contributi o sussidi ed eventuale revoca di quelli già concessi; divieto di pubblicizzare beni o servizi (per una durata non inferiore a 4 anni e non superiore a 7 anni, se il reato è stato commesso da uno dei soggetti di cui all'art. 5(1)(a); for a term 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(1)(b). If, prior to the first degree judgement, the entity has effectively taken steps to prevent the criminal activity from having further consequences, to ensure the evidence of the offences and the identification of the perpetrators or the seizure of the sums or other benefits transferred, and has eliminated the organisational deficiencies that led to the offence by adopting and

implementing organisational models capable of preventing offences of the kind committed, the disqualification sanctions have the duration established by Article 13(2).

10. Corruption for the exercise of a function (Article 318 of the criminal code)

The offence occurs where a Public Official, in the exercise of his functions or powers, unduly receives, for himself or a third party, money or other benefits or accepts the promise thereof.

The offence under consideration may be committed not only by the Public Official, but also by the Person in Charge of a Public Service within the meaning of Article 320 of the Criminal Code.

Compared to extortion, bribery is characterised by the unlawful agreement reached between the qualified party and the private party acting on an equal footing.

In the case of the Company, the offence of bribery should be considered from a twofold perspective:

- *active corruption* when a senior or subordinate person of the Company bribes a Public Official or a Person in Charge of a Public Service in order to obtain some benefit or advantage for the Company;
- *passive bribery* when a senior or subordinate person of the Company, in his capacity as Public Official or Person in Charge of a Public Service (i.e. in expropriation procedures), receives money or the promise of money or other benefits to perform acts contrary to the duties of his office. In the latter hypothesis, in order for the Company to incur "administrative" liability, there must be an interest or advantage for it, as well as for the senior or subordinate person who accepted the bribe.

Lastly, Law No. 3/2019 has tightened the penalty regime of the offence under consideration, providing for a sentencing framework of three to eight years.

Penalties applicable to the Entity

Fine: up to 200 quotas.

11. Bribery for an act contrary to official duties (Article 319 of the criminal code)

The offence occurs when a Public Official or a Person in Charge of a Public Service receives, for himself or for a third party, money or other benefits or accepts a promise thereof, in order to omit or delay or to have omitted or delayed an act of his office or to perform or to have performed an act contrary to his official duties.

In this particular type of offence, the private corruptor secures by promise or undue gift an act of the Public Official or the Person in Charge of a Public Service that contravenes the duties of his office.

In order to establish whether or not an act is contrary to the duties of office it is necessary to have regard not only to the act in itself in order to ascertain whether or not it is lawful or unlawful, but also to its compliance with all the duties of office or service that may come into consideration, with the result that an act may not be unlawful in itself and yet be contrary to the duties of office.

Acts that are contrary to official duties include both those that contravene legal rules or service instructions and those acts that in any event breach the duties of loyalty, impartiality and honesty connected with the exercise of a public function.

Penalties applicable to the Entity

- Fine: 200 to 600 quotas;
- sanzioni interdittive: interdizione dall'esercizio dell'attività; sospensione o revoca delle autorizzazioni, licenze o concessioni funzionali alla commissione dell'illecito; divieto di

contrattare con la Pubblica Amministrazione, salvo che per ottenere le prestazioni di un pubblico servizio; esclusione da agevolazioni, finanziamenti, contributi o sussidi ed eventuale revoca di quelli già concessi; divieto di pubblicizzare beni o servizi (per una durata non inferiore a 4 anni e non superiore a 7 anni, se il reato è stato commesso da uno dei soggetti di cui all'art. 5(1)(a); for a term 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(1)(b). If, prior to the first degree judgement, the entity has effectively taken steps to prevent the criminal activity from having further consequences, to ensure the evidence of the offences and the identification of the perpetrators or the seizure of the sums or other benefits transferred, and has eliminated the organisational deficiencies that led to the offence by adopting and implementing organisational models capable of preventing offences of the kind committed, the disqualification sanctions have the duration established by Article 13(2).

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

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

"*The punishment shall be increased if the offence referred to in Article 319 relates to the conferment of public employment or salaries or pensions or to the conclusion of contracts in which the administration to which the Public Official belongs is concerned*".

In such cases, i.e. when the Entity has obtained a significant profit from the act, the following sanctions shall apply:

- Fine: 300 to 800 quotas;
- sanzioni interdittive: interdizione dall'esercizio dell'attività; sospensione o revoca delle autorizzazioni, licenze o concessioni funzionali alla commissione dell'illecito; divieto di contrattare con la Pubblica Amministrazione, salvo che per ottenere le prestazioni di un pubblico servizio; esclusione da agevolazioni, finanziamenti, contributi o sussidi ed eventuale revoca di quelli già concessi; divieto di pubblicizzare beni o servizi (per una durata non inferiore a 4 anni e non superiore a 7 anni, se il reato è stato commesso da uno dei soggetti di cui all'art. 5(1)(a); for a term 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(1)(b). If, prior to the first degree judgement, the entity has effectively taken steps to prevent the criminal activity from having further consequences, to ensure the evidence of the offences and the identification of the perpetrators or the seizure of the sums or other benefits transferred, and has eliminated the organisational deficiencies that led to the offence by adopting and implementing organisational models capable of preventing offences of the kind committed, the disqualification sanctions have the duration established by Article 13(2).

13. Bribery in judicial proceedings (Article 319-ter of the criminal code)

The offence occurs when someone offers or promises a Public Official or a Person in Charge of a Public Service money or other benefits in order to favour or damage a party in civil, criminal or administrative proceedings. Therefore, a company may be held liable for this offence if, being a party to a judicial proceeding, it bribes, even through an intermediary (for example, its lawyer), a Public Official (not only a magistrate, but also a clerk or other official, or a witness), in order to obtain a positive outcome of the proceedings.

Article 319-ter constitutes an independent offence in relation to the bribery hypotheses provided for in Articles 318 and 319 of the Criminal Code. The purpose of the provision is to ensure that judicial activity is carried out impartially.

It is not necessary, in order for the offence to be committed, for the acts incriminated to be directly attributable to the exercise of a judicial function, since the scope of the offence falls not only on activities that are properly judicial, but also on activities that are more strictly an expression of the exercise of judicial activity and also attributable to persons other than the judge or the public prosecutor.

Penalties applicable to the Entity

- Paragraph 1, fine: 200 to 600 quotas;
- paragraph 1, prohibitory sanctions: disqualification from carrying on the business 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 the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services;
- Paragraph 2, fine: 300 to 800 quotas;
- paragraph 2, prohibitory 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 in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services (for a duration of no less than 4 years and no more than 7 years, if the offence was committed by one of the persons referred to in Article 5(1)(a); for a term 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(1)(b). If, prior to the first degree judgement, the entity has effectively taken steps to prevent the criminal activity from having further consequences, to ensure the evidence of the offences and the identification of the perpetrators or the seizure of the sums or other benefits transferred, and has eliminated the organisational deficiencies that led to the offence by adopting and implementing organisational models capable of preventing offences of the kind committed, the disqualification sanctions have the duration established by Article 13(2).

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

This offence, introduced by Article 1(75)(i) of Law No. 190/2012, occurs when a Public Official or a Person in Charge of a Public Service, abusing his position or powers, induces someone to give or promise unduly, for himself or a third party, money or other benefits.

The offence exists both in the event that the Public Official or the Person in Charge of a Public Service, in return for payment, performs a due act (for example: speeding up a file, the processing of which falls within his competence), and in the event that he performs an act contrary to his duties (for example: procuring or favouring the unlawful award of a tender).[38]

[38] The penalty is imprisonment of up to four years when the act offends the financial interests of the European Union and the damage or profit exceeds EUR 100,000.

This case differs from extortion, which is characterised by the threat or prospect of an unjust evil, in that the inducement is aimed at conferring an undue advantage. This distinction justifies the punishability of the induced person.
The distinguishing criterion between undue inducement and bribery, on the other hand, is to be found in the different significance assumed by the abuse of power and/or quality in the two offences, given that only in undue inducement does it play the role of an indispensable instrument for obtaining, with causal efficiency, the undue performance.
Penalties applicable to the Entity

- Fine: 300 to 800 quotas;
- sanzioni interdittive: interdizione dall'esercizio dell'attività; sospensione o revoca delle autorizzazioni, licenze o concessioni funzionali alla commissione dell'illecito; divieto di contrattare con la Pubblica Amministrazione, salvo che per ottenere le prestazioni di un pubblico servizio; esclusione da agevolazioni, finanziamenti, contributi o sussidi ed eventuale revoca di quelli già concessi; divieto di pubblicizzare beni o servizi (per una durata non inferiore a 4 anni e non superiore a 7 anni, se il reato è stato commesso da uno dei soggetti di cui all'art. 5(1)(a); for a term 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(1)(b). If, prior to the first degree judgement, the entity has effectively taken steps to prevent the criminal activity from having further consequences, to ensure the evidence of the offences and the identification of the perpetrators or the seizure of the sums or other benefits transferred, and has eliminated the organisational deficiencies that led to the offence by adopting and implementing organisational models capable of preventing offences of the kind committed, the disqualification sanctions have the duration established by Article 13(2).

15. Bribery of a person in charge of a public service (Article 320 of the criminal code)

The provisions of Arts. 318 and 319 also apply to the Person in Charge of a Public Service.
In any case, the penalties shall be reduced by no more than one third.

16. Penalties for the corruptor (Art. 321 of the criminal code)

The penalties laid down in Article 318(1), Article 319, Article 319-bis, Article 319-ter and Article 320 in relation to the aforesaid cases of Articles 318 and 319 shall also apply to any person who gives or promises the Public Official or the Person in Charge of a Public Service money or other benefit.

17. Incitement to bribery (Article 322 of the criminal code)

The penalty laid down for this offence applies to anyone who offers or promises money or other benefits not due to a Public Official or a Person in Charge of a Public Service, in order to induce him to perform an act contrary to or in accordance with his official duties, if the promise or offer is not accepted. Similarly, the conduct of a public agent who solicits a promise or an offer from a private individual to induce him to perform an act contrary to his official duties is penalised.
The offence under consideration is therefore an offence of mere conduct. The objective element of the offence is constituted by inciting conduct, whereby, on the one hand, the agent must provoke such pressure in others as to induce them to perform a certain action and, on the other hand, the person subjected to the solicitation must not accept the offer or promise made.
Penalties applicable to the Entity

- Paragraphs 1 and 3, fine: up to 200 quotas;
- Paragraphs 2 and 4, fine: 200 to 600 quotas;
- paragraphs 2 and 4, disqualification sanctions: disqualification from engaging in the activity; suspension or revocation of authorisations, licences or concessions functional to the commission of the offence; prohibition from contracting with the Public Administration, except in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services (for a period of no less than 4 years and no more than 7 years, if the offence was committed by one of the persons referred to in Article 5(1)(a); for a period of no less than 2 years and no more than 4 years, if the offence was committed by one of the persons referred to in Article 5(1)(b). If, prior to the first degree judgement, the entity has effectively taken steps to prevent the criminal activity from having further consequences, to ensure the evidence of the offences and the identification of the perpetrators or the seizure of the sums or other benefits transferred, and has eliminated the organisational deficiencies that led to the offence by adopting and implementing organisational models capable of preventing offences of the kind committed, the disqualification sanctions have the duration established by Article 13(2).

18. Embezzlement, extortion, undue inducement to give or promise benefits, bribery and incitement to bribery, abuse of office[39] of members of international courts or bodies of the European Communities or of international parliamentary assemblies or international organisations and of officials of the European Communities and of foreign States (Article 322-bis of the criminal code)

The provisions laid down for the offences of embezzlement, extortion, bribery for the exercise of office, bribery for an act contrary to official duties, bribery in judicial proceedings, undue inducement to give or promise benefits, incitement to bribery and abuse of office, also apply to the Entity when these 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 under the Staff Regulations of Officials of the European Communities or the Conditions of Employment of Other Servants of the European Communities;
- persons seconded by the Member States or any public or private body to the European Communities, who perform functions corresponding to those of officials or servants of the European Communities;
- members and employees of bodies established on the basis of the Treaties establishing the European Communities;
- those who, within other Member States of the European Union, perform functions or activities corresponding to those of public officials and persons in charge of a public service;
- Judges, the Prosecutor, Assistant 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

[39] Article 1 of Legislative Decree No. 156/2022 supplemented the heading of Article 322-bis of the Criminal Code by adding the offence of abuse of office.

agents of the Court, members and employees of bodies established under the Treaty establishing the International Criminal Court;

- persons exercising functions or activities corresponding to those of Public Officials and Persons in Charge of a Public Service within public international organisations;
- members of international parliamentary assemblies or of an international or supranational organisation and judges and officials of international courts;[40]
- persons exercising functions or activities corresponding to those of Public Officials and Persons in Charge of a Public Service within non-EU States, when the act offends the financial interests of the Union.[41]

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

- to the persons named above;
- to persons exercising functions or activities corresponding to those of Public Officials and Persons in Charge of a Public Service within other foreign States or international public organisations.

Penalties applicable to the Entity

- Monetary sanction: from 200 to 600 quotas; if the Entity has made a significant profit, a monetary sanction from 300 to 800 quotas shall apply;
- sanzioni interdittive: interdizione dall'esercizio dell'attività; sospensione o revoca delle autorizzazioni, licenze o concessioni funzionali alla commissione dell'illecito; divieto di contrattare con la Pubblica Amministrazione, salvo che per ottenere le prestazioni di un pubblico servizio; esclusione da agevolazioni, finanziamenti, contributi o sussidi ed eventuale revoca di quelli già concessi; divieto di pubblicizzare beni o servizi (per una durata non inferiore a 4 anni e non superiore a 7 anni, se il reato è stato commesso da uno dei soggetti di cui all'art. 5(1)(a); for a term 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(1)(b). If, prior to the first degree judgement, the entity has effectively taken steps to prevent the criminal activity from having further consequences, to ensure the evidence of the offences and the identification of the perpetrators or the seizure of the sums or other benefits transferred, and has eliminated the organisational deficiencies that led to the offence by adopting and implementing organisational models capable of preventing offences of the kind committed, the disqualification sanctions have the duration established by Article 13(2).

19. The crime of abuse of office (Article 323 of the criminal code)

The offence in question punishes "*unless the act constitutes a more serious offence, any Public Official or Person in Charge of a Public Service who, in the performance of his duties or service, in breach of specific rules of conduct expressly laid down by law or by acts having the force of law and from which no margin of discretion remains*[42] *, or by omitting to abstain in the presence*

[40] The persons indicated in the first paragraph of Article 322-bis of the Criminal Code are assimilated to public officials, if they perform corresponding functions, and to persons in charge of a Public Service in other cases.
[41] Number 5-quater) added to the first paragraph of Article 322-bis of the Criminal Code by Article 1 of Legislative Decree No. 75/2020.
[42] Amendment most recently inserted by Article 23 of Decree-Law No. 76/2020, converted with amendments by Law No. 120 of 11 September 2020, which replaced the former phrase '*in breach of the law or regulations*'.

of one's own interest or that of a close relative or in the other prescribed cases, intentionally procures for oneself or others an unfair pecuniary advantage or causes unfair damage to others.".

Abuse of office[43] , like the previous offences analysed, is also a proper offence, in that it can only be committed by a Public Official or a Person in Charge of a Public Service.

This clause limiting the criminal relevance of the conduct implies that the active party perpetrates the abuse in his aforementioned capacity, with the consequence that the offence referred to in Article 323 of the Criminal Code cannot be committed in respect of all those forms of conduct performed outside the actual exercise of official duties which, even where perpetrated in breach of the duty of fairness, are carried out as a private person without, therefore, making use of the functional activity performed in any way, and therefore do not assume criminal relevance (see Criminal Cass, judgment no. 6489/2008).

With regard to the legal asset protected by the rule in question, according to the settled case law of the Supreme Court, "*the offence of abuse of office aimed at causing unjust damage to others has a multi-offensive nature, in that it is capable of harming, in addition to the public interest in the good performance and transparency of the P.A., the concurrent interest of the private individual in not being disturbed in his rights by the unlawful and unjust conduct of the Public Official. It follows that the aggrieved private individual has the status of person aggrieved by the offence and is entitled to lodge an objection against the public prosecutor's request for the case to be dismissed*" (see Criminal Court of Cassation, judgment no. 7642/2008).

The 1997 legislative amendment also transformed abuse of office from an offence of pure conduct into an event offence: the offence can be said to be committed only when the agent procures an unfair pecuniary advantage for himself or others or causes unfair damage to others.

The requirement of the so-called double "unfairness" of the damage or advantage must not, moreover, be a reflection of the unlawful conduct, but must be assessed on the basis of the objective law regulating the matter and according to an assessment related to the factual situation at the time of the conduct (Criminal Court of Cassation, judgment no. 36125/2014; Criminal Court of Cassation, judgment no. 1733/2013; Criminal Court of Cassation, judgment no. 27936/2008).

On the other hand, as regards the subjective element of the offence, following the amendment introduced by Law No 234/1997, it is necessary that the abuse be committed by the agent with the aim of pursuing an unfair advantage or damage '*intentionally*'.

Accordingly, the intentionality required today by the criminal law restricts the scope of the subjective element of the offence *under* Article 323 of the Criminal Code, making punishable under criminal law only conduct carried out with an ascertained degree of participation by the agent, who, in order to constitute the offence, must act with the very purpose of procuring or obtaining an unfair financial gain or causing unjust damage (Criminal Court of Cassation, judgment no. 4979/2010).

It is not sufficient, in essence, that '*the active party acts with direct intent, i.e. that he represents the event as verifiable with a high degree of probability, nor that he acts with possible intent, in the sense that he accepts the risk of its occurrence, but it is necessary that the event of damage or the event of advantage is intended and realised as the immediate and direct objective of the conduct, and is not merely realised as an accessory result of it*'.

[43] The agent may also be liable in civil, tax and disciplinary proceedings.

On the other hand, the offence must be excluded where the primary objective pursued by the agent is the public interest (Criminal Court of Cassation, judgment No. 708/2003), even in the knowledge that he is '*also bringing in this way an unfair favour to a single private individual. This, however, can only apply if the act is committed by the person who was entrusted with the care of the public interest and if the means chosen in concrete terms turn out to have been the only means capable of realising that interest*'. (Cass. pen., judgment no. 21165/2009)

Still on the subject of proof of the subjective element, case law has also ruled that 'it is *not only the act or conduct of the Public Official that is individually assessed that is relevant, but also any other element that, apparently extrinsic to the act or conduct, nevertheless allows a more significant verification and, therefore, also the attitudes prior to, contextual to and subsequent to the activity that in itself carries out the abuse*' (Criminal Court of Cassation, judgment No. 11204/1997).

Lastly, special mention should be made of Article 23 of Decree-Law No. 76/2020 (the so-called 'Simplification Decree'), converted with amendments by Law No. 120 of 11 September 2020, which has affected the objective core of the legal offence under consideration, by setting back the criminal protection, with the following two interventions:

1) the relevance of the violation of rules contained in regulations was excluded: abuse can in fact only be integrated by the violation of '*specific rules of conduct expressly laid down by law or by acts having the force of law*', i.e. by primary sources;
2) it was also made clear that only rules of conduct '*from which no margin of discretion remains*' were relevant.

The effort to circumscribe the incrimination to the violation of specific and express rules of conduct is intended to increase the selective capacity of the offence in question and to ensure greater predictability of the consequences of offences in administrative activity.

This means, in other words, ruling out the possibility that the violation of a specific and express rule of conduct, characterised by margins of discretion, can constitute a criminal abuse of office.

The reforming intervention is justified by the existence of jurisprudential guidelines, which, under certain conditions, consider abuse of office to be configurable in the event of excess of power, in the form of misuse, which occurs when in discretionary measures the power is exercised for a purpose other than that for which it is attributed (see, *ex multis*, Criminal Court of Cassation, section VI, judgment no. 19519 of 13 April 2018; Criminal Court of Cassation, section VI, judgment no. 32237 of 13 March 2014).

The United Sections of the Supreme Court of Cassation have also expressed the same opinion, stating that "*the requirement of violation of the law exists not only when the conduct of the Public Official is carried out in contrast with the rules governing the exercise of power, but also when it is oriented solely towards the realisation of an interest that collides with the interest for which the power is attributed, in which case the defect of misuse of power is realised, which constitutes a violation of the law since the power is not exercised in accordance with the regulatory framework that legitimises its attribution*" (see Cass. pen, Sec. Un., 29 September 2011, no. 155).

Behind the figure of excess of power, however, lurks the risk of the encroachment of criminal scrutiny and control into administrative activity.

The reference to the need for the provision and/or rule infringed not to be one of those that offer room for discretion to the public official does not seem to leave any doubts as to the purpose of the amendment: the public administrator can never be prosecuted under Article 323 of the Criminal Code whenever he finds himself operating in regulatory contexts which - while setting out the

public interest objectives to be pursued in the specific case - leave him free to choose the concrete methods for achieving them.

The reform of the criminal offence in question, by operating a greater typification of the criminally relevant conduct, therefore aims to reduce as far as possible the (not infrequent) possibility that the risk of being subjected to the invasive and penetrating intervention of the criminal judge may hinder the public administrator's initiative.

Finally, it should also be reiterated that '231' liability is triggered under Article 323 of the Criminal Code, as provided by Article 5 of Legislative Decree No. 75/2020, only '*when the act offends the financial interests of the European Union*'.

Penalties applicable to the Entity

Fine: up to 200 quotas.

20. Trafficking in unlawful influence (Article 346-bis of the Criminal Code)

Law No. 3 of 9 January 2019 (published in the Official Gazette No. 13 of 16 January 2019) introduced the crime of trafficking in unlawful influence provided for and punished by Article 346-bis of the Criminal Code[44] into the catalogue of 231 offences-presumed offences, and at the same time repealed the crime of extortion of credit (Article 346 of the Criminal Code).[45]

The provision provides for the offence of anyone who, apart from cases of complicity in the offences of bribery for the exercise of a function (Article 318 of the Criminal Code), bribery for an act contrary to official duties (Article 319 of the Criminal Code), bribery in judicial proceedings (Article 319 ter of the Criminal Code) and in the bribery offences referred to in Article 322-bis of the Criminal Code "*by exploiting or boasting existing or alleged 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, unduly causes him to give or promise, to himself or to others, money or other benefits, as the price of his unlawful mediation 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, or to remunerate him in connection with the exercise of his functions or powers*.

The purpose of the incrimination is to strike at the phenomena of unlawful intermediation between the private individual and the public official, aimed at corrupting the latter.

The provision, in view also of the subsidiarity clause provided for in the *opening words of* the first paragraph, is therefore aimed at targeting conduct that is prodromal with respect to (subsequent) corrupt agreements involving the holder of public office, over whose decisions one would unlawfully seek to influence, and consequently does not apply in the event that the Public Official or the Person in Charge of a Public Service accepts the promise or the giving of the money or other benefit by the intermediary, there being in that case a concurrence of the private individual, the intermediary and the Public Official or the Person in Charge of a Public Service in a consummated offence of bribery.

The current provision extends the scope of the offence to the offer or giving to the intermediary of "*money or other benefits*", thus including any other benefit of a non-pecuniary nature.

The intermediary's conduct must also be carried out '*by exploiting or boasting of existing or alleged 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*'.

[44] The offence of trafficking in unlawful influence was included in the Criminal Code by Law No. 190/2012.
[45] The repealed offence has been absorbed into the new wording of the crime of trafficking in unlawful influence.

The reform thus absorbs into the offence of trafficking in unlawful influence the conduct that, in the period prior to the entry into force of Law No. 3/2019, constituted the elements of extortionate credit .[46]

On this point, according to the consolidated orientation of the Supreme Court of Cassation, the offence of extortion of credit differs from the offence of trading in influence in that it presupposes that there is neither credit nor a relationship with the Public Official/Public Service Officer, let alone influence, whereas trading in influence presupposes a factual situation in which the relationship exists, as well as some capacity to condition or in any event to direct the conduct of the public official (see Criminal Court of Cassation, Sec. VI, judgment no. 53332 of 2017).

The second paragraph of Article 346-bis of the Criminal Code also provides that the penalty laid down in the first paragraph shall apply to any person who unduly gives or promises money or other benefits and, therefore, to the private individual who takes advantage of the unlawful intermediation.

The third and fourth paragraphs then provide for two special aggravating circumstances with common effect respectively for the particular case in which the intermediary is himself a Public Official or a Person in Charge of a Public Service or one of the persons referred to in Article 322-bis of the Criminal Code, as well as for that in which the offence is committed "in connection with *the performance of judicial activities or to remunerate the Public Official or the Person in Charge of a Public Service or one of the persons referred to in Article 322-bis in connection with the performance of an act contrary to the duties of his office or the omission or delay of an act of his office*", and therefore takes the form of a preparatory activity with respect to the offences of bribery in judicial proceedings referred to in Article 319-ter of the Criminal Code and bribery for an act contrary to official duties under Article 319 of the Criminal Code.

Finally, the last paragraph provides for a mitigating circumstance with common effect for acts of particular tenuity.

With regard to the psychological element, the offence in question is a general intent crime, so the acceptance of the risk of its occurrence is sufficient (so-called possible intent).

The intentionality of the conduct must also extend to the element of special unlawfulness referred to in the adverb "*unduly*" and in the parenthesis "*unlawful mediation*": the agent must therefore be aware that the interference is unlawful and that it tends to distort the administrative activity.

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

- Fine: up to 200 quotas.
- sanzioni interdittive: interdizione dall'esercizio dell'attività; sospensione o revoca delle autorizzazioni, licenze o concessioni funzionali alla commissione dell'illecito; divieto di contrattare con la Pubblica Amministrazione, salvo che per ottenere le prestazioni di un pubblico servizio; esclusione da agevolazioni, finanziamenti, contributi o sussidi ed eventuale revoca di quelli già concessi; divieto di pubblicizzare beni o servizi (per una durata non inferiore a 4 anni e non superiore a 7 anni, se il reato è stato commesso da uno dei soggetti di cui all'art. 5(1)(a); for a term of not less than 2 years and not more than 4 years,

[46] In the sense of the regulatory continuity between the repealed offence of extortion of credit and the offence of trafficking in unlawful influence, the Supreme Court also expressed itself in judgment No. 17980 of 14 March 2019, which ruled as follows: "*In relation to the conduct of a person who, boasting actual or merely asserted influence with a Public Official or a person in charge of a Public Service, has money and/or other utilities given to him as the price of his mediation, there is full regulatory continuity between the case under Article 346 of the Criminal Code, formally repealed by Article 1, paragraph 1, letter S), Law No. 3/2019, and the case referred to in Article 346-bis of the Criminal Code, as amended by Article 1, paragraph 1, letter t), of the same law.*"

if the offence was committed by one of the persons referred to in Article 5(1)(b). If, prior to the first degree judgement, the entity has effectively taken steps to prevent the criminal activity from having further consequences, to ensure the evidence of the offences and the identification of the perpetrators or the seizure of the sums or other benefits transferred, and has eliminated the organisational deficiencies that led to the offence by adopting and implementing organisational models capable of preventing offences of the kind committed, the disqualification sanctions have the duration established by Article 13(2).

21. Obstructing the freedom to invite tenders (Article 353 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, containing urgent provisions on criminal trial, civil trial, combating forest fires, recovery from drug addiction, health and culture, as well as on the personnel of the judiciary and public administration*' amended Article 24 of the Decree, introducing, among others, the offence of disturbing the freedom of tenders (Article 353 of the Criminal Code).

The article in question reads as follows: "*1. Whoever, by means of violence or threats, or by gifts, promises, collusion or other fraudulent means, prevents or disrupts competitive bidding in public auctions or private tenders on behalf of public administrations, or drives away the bidders, shall be punished by imprisonment of from six months to five years and a fine of from EUR 103 to EUR 1.2. If the offender is a person entrusted by law or authority with the aforementioned auctions or tenders, the term of imprisonment shall be one to five years and the fine shall be from EUR 516 to EUR 2,065. 3. The penalties laid down in this Article shall also apply in the case of private auctions on behalf of private persons, conducted by a public official or a person legally authorised to do so; but they shall be reduced by half.*"

The current systematic allocation of the offence is among the offences against the Public Administration; however, according to the majority doctrine and jurisprudence, the legal asset protected by the rule must be identified not only in the regular conduct of the tenders and precisely in the interest that the tender, prelude to the stipulation of a contract binding the Public Administration, should be conducted in a transparent and regular manner, but also in respect of the freedom of competition; as a matter of fact, the penal protection stands as a closure of a complex and articulated system, such as that of public tenders, regulated by the Code of Public Contracts, which pivots precisely on the application of free competition, non-discrimination, *favor partecipationis*, equality and transparency.

The incriminated conducts are therefore those aimed at preventing the participants in a "tender", understood in the broadest sense of the term, i.e. those who aspire to it, from competing in accordance with the rules governing the market of free competition, thus favouring the interests of the Public Administration. This reconstruction in terms of a multi-offence offence makes it possible to emphasise, on the one hand, the interest of the public party in entering into a truly advantageous contract and, on the other hand, the private party who has a legitimate interest in competing fairly. From this point of view, the protected interest becomes not only respect for the procedure and the freedom to participate in the tender, but also the competitive conduct of the entire selection *process*.

The active subject of the offence of disrupting the freedom of tenders can be anyone, whether an outsider, interested or even counterinterested in the 'tender'.

The second paragraph of Article 353 of the Criminal Code, on the other hand, introduces, in relation to the active subject of the offence, an aggravating circumstance with special effect, where the latter is identified as "*a person appointed by law or by the authority to the public auctions or bids*". With regard to the notion of "person *in charge", it* was specified that it "*should be determined with*

reference not limited to the terminal moment - i.e. the celebration of the tender - but having regard to the entire procedural process that the public auction entails: the holding of the public auction, in fact, gives rise to a complex administrative procedure, in the arc of which the function of the person in charge is inserted and operates through the specific tasks to which the same is called, so that the qualification of person in charge by law or by the authority to public auctions or private tenders cannot be limited to the person who presides over and directs the tender, but includes all those who perform essential functions in the entire procedural course." (cf. Criminal Cass., sect. VI, 13.1.2005, no. 4185; Criminal Cass., sect. VI, 28.11.2003, no. 10886).

The conduct, alternatively indicated in the regulation, must necessarily be carried out in relation to one or more specified 'races', assuming, according to the peremptory list (restricted offence), the form of violence, threats, gifts or promises, collusion or other fraudulent means.

It may be observed that '*violence' is* configured in any conduct in the absence of which the addressee would not have resolved to do (omit or tolerate) what he did. It therefore also includes violence against property or third parties bound to the offender by ties of kinship or solidarity. According to this understanding, the constitutive requirement of violence would translate into a form of coercion or coercion detrimental to the capacity for self-determination, liable to transcend the common understanding of violence understood as the explication of physical force.

As regards the '*threat*', it consists, according to the traditional definition, in the representation of a future and unjust evil whose realisation is dependent on the agent.

The "*gift or promise of gifts*" are, on the other hand, assimilated to the concept of utility typical of bribery conduct and may be identified in a *quid* susceptible of directing the recipient's conduct towards a direction other than the one he would have taken; the "gift" must be objectively proportionate or appropriate to the persuasive function. The 'promise', in any case, cannot be abstract or generic, but must, on the contrary, possess the requirements of typicality, precision and concreteness, in the sense that the act of promising cannot be reduced to a mere negotiated agreement, but must interfere with the choices of others, preventing the correct 'tender' procedure.

Collusion' has been held to mean '*any agreement between two or more persons to achieve an unlawful end by the irregular conduct of an auction or bidding procedure'; 'any clandestine agreement aimed at influencing the normal conduct of bidding ... any clandestine agreement between two or more persons to achieve an unlawful end through the betrayal of trust or the circumvention of the legitimate activity of third parties", "any clandestine relationship between private parties in any way interested in the tender or between them and the persons in charge of the tender, aimed at influencing the outcome of the tender*" (Cass. pen, sec. VI, sentence no. 40304/2014).

More specifically, as also ruled by the Cass. pen, Sec. VI, judgment 16 May 2019 no. 4113, fraudulent agreements between the person in charge of the tender and one of the competitors, whereby the former provides the latter with "suggestions" and "advice" for the purpose of determining the content of the tender to be submitted, are relevant: it is, therefore, an undue contribution, offered by one who should guarantee the fairness and equality of conditions of the competitors, to the advantage of one of them only, and, therefore, to the detriment of the others, in such a way as to influence the normal course of the tenders (in the present case, the private individual had received indications from the public official who had drawn up the technical specifications for the tender, was the contact person for the reconnaissance of the sites by the competitors concerned and was part of the office responsible for the appointment of two of the three members of the adjudicating commission).

A further conduct in this sense is that relating to the communication of the provisional scores awarded to the competitors in a tender procedure by the members of the commission to an outsider, because

in this way that outsider was put in a position to decide how to award the scores and to interfere in the work of the commissioners. (Cass. Pen., sec. V, judgment 09/09/2020, no. 30726).

Finally, considering that 'collusion' is defined as the clandestine agreement between economic operators aimed at influencing the normal course of the bids, the Supreme Court, having regard to coordinated bids, has clarified on several occasions that the link, whether formal or substantial, between companies participating in the tender for the award of a public contract is not in itself sufficient to constitute the offence under Article 353 of the Criminal Code, it is necessary to prove that, behind the establishment of apparently separate companies, a single decision-making centre of coordinated bids is concealed or that the companies, using the relationship of connection, have submitted bids agreed in their specific and actual contents (Cass. pen., Sec. VI, 13 June 2018, no. 3264; Cass. pen., Sec. VI, 17 September 2019, no. 42371).

Another type of conduct constituting the structure of 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 lie that* is *concretely capable of achieving the event of the offence, which is configured not only in an immediate and effective damage, but also in a mediated and potential damage*. (Cass. pen., sec. VI, 8.5.1998, no. 8443).

The broad conception of '*fraudulent means*', which is undoubtedly lacking in taxability, has led to the case under Article 353 of the Criminal Code being considered to include, in this particular form, a variety of cases. By way of example, it has been held that the following conduct may be an expression of disruption by fraudulent means the unjustifiably restrictive interpretation of particular clauses; the exclusion of a bidder on the basis of a strict formalism in checking the requirements of the applications, or, again, the initiative of the person in charge to declare a bid inadmissible on the basis of the mere failure to comply with formal requirements of the application such as, for example, the date of birth of the bidder the preparation of applications to take part in the tender that, having been filled out in all their constituent elements and signed in blank, were completed with the indication of the percentage of the rebate to only one of the participants (Cass. No. 8443/1998, cit.); the formation of a document provided with probative suitability *ex lege* and, however, bearing a declaration *contra verum* instrumental to misleading the P.A. (Cass. pen, sez. VI, 9.11.2017, no. 57251; Criminal Court of Cassation, section V, 11.11.2003, no. 561); the absolutely anomalous and economically unjustified bid, made in the knowledge that it contributes in a totally prevalent manner to determining the so-called average bid at a minimum level, suitable for identifying the successful bidder (Criminal Court of Cassation, section V, 29.4.2017, no. 561), sez. V, 29.4.1999, no. 9062); procedural anomalies, such as the use of nominees or the provision of incorrect information to the participants (Criminal Court of Cassation, section VI, 11/07/2014, no. 42770); the minimum conscious alteration of the calculation of the averages for the identification of the successful bidder, provided that it is suitable to affect the regularity of the competition in compliance with the principle of offensiveness. (Cass. pen., sez. V, 20/09/2019, no. 3223); the fraudulent conduct carried out by the agent, following the awarding of the contract, during the period of time necessary for the controls and checks prodromal to the stipulation of the contract, considering that only with this act does the procedure for choosing the contractor come to an end. (Cass. pen., sec. II, 04/05/2018, no. 34746).

The naturalistic event of the offence of disrupting the freedom of tenders may be constituted not only by the impediment of the tender, but also by its disturbance, a circumstance that may occur when the fraudulent or collusive conduct has even only influenced the regular procedure of the tender itself by determining a "diversion", an anomalous development with respect to its ordinary course, it being

irrelevant that an actual alteration of its results is produced. (Cass. pen., Sec. II, 23 June 2016 no. 43408).
In the same sense, Criminal Court of Cassation, Sec. VI, 11 March 2013, no. 12821: the commission of the offence of disturbing the freedom to bid does not coincide with the final moment of the awarding of the contract, given that the disturbance of the tender occurs by the mere fact of the submission of the 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 the configurability of the offence[47] .
The offence in question, therefore, occurs not only in the case of actual damage, but also in that of mediated and potential damage: that is, it is not necessary to actually achieve the result pursued (the awarding of the tender), it being sufficient that the collusive agreements influence the regular course of the tender.
This alone results in an impairment of the legal goods protected by the offence.
As for the further alternative event of removal, the latter hypothesis "*is realised by diverting the bidders from the tender or by preventing them from participating in it, since those who do not have the requirements to participate in the tender may also be qualified as bidders; those who merely have the possibility of submitting an offer in the presence of the requirements; those who have the possibility and the intention of participating; those who are about to participate; those who have actually participated in it.*" (Cass. pen., sec. VI, Ordinance No. 41379/2023).
On the other hand, with regard to the moment of consummation, it has also been pointed out that the disruption may take place not only at the precise moment when the tender takes place, but also in the complex procedure leading up to the tender, in which the competitors themselves are protagonists, or outside the tender itself (Criminal Court of Cassation, Sec. VI, 5 April 2012, no. 18161).
In the application practice of the criminal offence, where explicit reference was and is made only to the hypotheses of public tenders and private bids, the problem has naturally also arisen of establishing whether the margins of the criminally relevant sphere should be brought within the procedures with the above-mentioned characteristics in peremptory terms or whether recourse should be had to a more elastic and broader interpretation of the hypotheses of 'tenders'.
In the most recent case law, the scope of Article 353 of the Criminal Code was considered to refer to the hypotheses of "competitive tendering" (an institution similar to private tendering) and to the so-called "consultation tenders", consisting of "informal" or "consultation" administrative procedures, in which the public administration makes the award of works, supplies or services depend on the outcome of contacts with natural persons or representatives of legal persons proposing their conditions. This case, although in truth appearing to fall outside the concepts of 'private treaty' and 'private bidding', was nevertheless considered susceptible to fall within the provisions of Article 353 of the Criminal Code, since "*when the public administration, although not being obliged to do so, proceeds to informally consult private firms in competition with each other, thus deciding to place a limit on its activity not provided for by law, it must in any event respect that limit, with the consequence that for criminal purposes the disruption of a tender thus informally arranged is placed on the same level as that carried out in compliance with the law, inasmuch as the legal asset protected by the criminal rule (with respect to the rules of free competition both in the interest of the*

[47] In this regard, it should be pointed out that the conduct constituting an offence may also be committed in the interval between the provisional award and the final award, since the provisional award has a merely endoprocedural value and it is only with the final award that the procedure for the selection of the contractor comes to an end (Criminal Court of Cassation, Section VI, judgment no. 57251/2017).

participants, in whom the expectation of the regularity of the procedure has been created, and in the interest of the administration) is in any case harmed" (Cass. pen, sec. 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 can also be committed in any case of an "unofficial tender" connected to a private negotiation, when by choice of the administration or by regulatory provisions the tender is procedural, its performance being subject to predetermined rules to which the private parties must be subject and to which the administration must comply (Criminal Court of Cassation, section VI, 28.4.1999, no. 9387).
Ultimately, the conception of public auctions or private tenders accepted by the older doctrine and jurisprudence attaches importance to the substantial, rather than the formal, fact of the presence of a 'tender' characterised by the establishment of predetermined criteria for identifying the winner.
This interpretation has since been confirmed by more recent case law:

- the offence of disrupting the freedom of tenders does not apply in competition procedures for the recruitment of university professors, since the evaluation among the "offers" in the tenders referred to in Article 353 of the Criminal Code relates to the content, congruity, quantitative and qualitative relevance of the activity that the tenderer 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 Criminal Code is certainly applicable to any tender procedure, even an informal or atypical one, whenever the public administration proceeds to identify the contractor on a comparative basis, provided that the informal notice or the call for tenders and, in any event, the equivalent deed indicate in advance the criteria for selecting and submitting bids, thereby placing the potential participants in a position to assess the rules governing the comparison and the criteria on the basis of which they are to formulate their own. However, the operativeness of the rule still only concerns the procedures called for the awarding of public contracts or for the sale of public assets, which now find their organic regime in the public contracts code (Criminal Court of Cassation, section VI, 10/05/2023, no. 26225);
- the offence of disturbing the freedom of bidding does not require the presence of public tenders or private bids, since a tender procedure, even an informal and atypical one, is sufficient provided that there is a real and free competition between the persons taking part in it, so that it cannot be committed when the administration retains full freedom to choose according to criteria of convenience and opportunity typical of negotiations between private parties. (Criminal Court of Cassation, section VI, 09/02/2022, no. 20930).

The subjective element of the offence of disrupting the freedom of bidding is the generic intent, consisting of the consciousness and will to prevent, disrupt the bidding process or turn away the bidders, in the manner described by the rule. The use of violence or threats, the offer of gifts or the promise thereof, collusion or other forms of anomalies falling within the definition of fraudulent means must therefore be the subject of wilful misconduct, reflecting on the concrete result of preventing or disrupting the tender or turning away the tenderers. It is therefore necessary, for the purposes of ascertaining the psychological element, that the active party also represented and intended the naturalistic event resulting from his conduct.

22. Disturbing the freedom to choose a contractor (Article 353-bis of the Criminal Code)

The limitation of the rule under the heading 'Disturbing freedom of tenders' lies in its inherent restriction to the time when the 'tender' or 'private bidding' is already in progress.
Aware of this seemingly insurmountable limit and of the fact that the evolution of the world of public procurement has created new forms of risky conduct, almost sentinel events, the legislature considered it appropriate to make a specific intervention that would anticipate the criminal protection to the moment prior to the publication of a call for tenders, including the conduct that may be carried out in that entire phase, which is not insignificant, that lies between the moment when the public authority identifies the need and the moment when the call for tenders is published.
Therefore, the legal vacuum was filled with the introduction of Article 353-bis of the Criminal Code, which reads as follows: "*Unless the fact constitutes a more serious offence, anyone who, with violence or threats, or with gifts, promises, collusion or other fraudulent means, disturbs the administrative procedure aimed at establishing the content of the call for tenders or other equivalent act in order to condition the manner in which the public administration chooses the contractor shall be punished with imprisonment from six months to five years and with a fine ranging from euro 103 to euro 1,032*".
The conduct of disturbance envisaged by Article 353-bis of the Criminal Code, in order to be relevant for the purposes of the subsistence of the offence, must therefore take place in an administrative procedure contemplating any selective procedure (the publication of a notice or of a deed having the same function); therefore, conduct not aimed at polluting the content of the notice (or of a deed equivalent thereto), but aimed at preventing the tender by means of the unlawful direct award of the works, is outside the textual perimeter of the provision.
It follows that: "*in the case of direct awarding, the offence provided for in Article 353-bis of the Criminal Codea) can be configured when the private negotiation, beyond the nomen juris, provides, within the administrative procedure for the choice of the contractor, for a "tender", albeit informal, i.e. a competitive assessment segment; b) cannot be configured in the case of contracts concluded by the public administration by means of private negotiation in which the procedure is not subject to any competition scheme; c) cannot be configured when the decision to proceed with the direct award is itself the result of disruptive conduct aimed at avoiding the tender*". (Criminal Court of Cassation, section VI, judgment no. 5536/2022).
Finally, this is an offence of danger, protecting the public administration's interest in being able to contract with the highest bidder, for the perfection of which it is necessary that the correctness of the procedure for the preparation of the call for tenders or other equivalent act is concretely endangered, but not that the content of such acts is actually modified in such a way as to condition the choice of contractor; Hence the anticipation of the protection with respect to the time of the actual formal call for competition[48] , in order to prevent the preparation and approval of customised notices tailored to the characteristics of certain operators.

[48] On the point in question, it is however worth noting a recent ruling of the Supreme Court (Criminal Court of Cassation, section VI, judgment no. 7260/2022), which recognised the configurability of the offence of disrupting the freedom of tenders even where the offending conduct was committed prior to the publication of the call for tenders, but in the imminence of the same. According to the Judges of legitimacy, in particular, the offence referred to in Article 353 of the Criminal Code may also be committed when, although the call for tenders has not yet been published, the tender is already 'specific and determined'. The judging panel stated that '*the conduct alternatively indicated by the offence, through which the tender can be prevented or disturbed, does not necessarily have to be perpetrated at the precise time when the tender takes place, as it may well take place at any time of the procedure leading up to the tender or even outside the tender and, therefore, the disturbance 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 the light of the introduction of the offence of disturbing the freedom of the procedure for choosing a contractor (Article 353-bis of the Criminal Code), through which the legislature would have limited itself to making punishable as completed offences disturbances which, if a call for tenders had not yet been issued, would previously have constituted only an attempt to disturb the freedom of tenders, without, however, making the formal call for tenders an objective prerequisite for the offence under Article 353 of the Criminal Code.

All the further assessments already set out with regard to Article 353 of the Criminal Code are hereby referred to, 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 Criminal Code are set out below:
Criminal Cassation sec. VI, 05/04/2018, no. 29267
The offence of 'disturbing the freedom to choose a contractor' can be committed if pressure is brought to bear to get the contracting authority to invite a friendly company to submit a tender. And this even if no tender is then called. The Court states that the rule is aimed at striking at conduct that, by unlawfully affecting the free economic dialectic, jeopardises the interest of the public administration in being able to contract with the best bidder. For the purpose of the integration of the case, then, it is not necessary that there has been conditioning in the choice of the contractor, but it is sufficient that the correctness of the procedure for the preparation of the tender is concretely jeopardised.
Criminal Cassation Section VI, 13/07/2021, No. 44700
On the subject of the disturbance of the freedom to choose a contractor, the notice with which, in the "pre-commercial procurement" contractual procedure, the phase of search and selection of the contractor is commenced, as well as the technical annex describing the content of the future contract, constitute "acts equivalent" to the contract notice. (Case where the technical annex had been prepared by the company that had won the contract and modelled on its expertise and management choices).
Criminal Cassation sec. VI, 07/02/2019, no.14148
For the offence referred to in Article 353-bis of the Criminal Code to be committed, it is necessary that an administrative procedure aimed at the approval of the call for tenders or the choice of contractor is actually pending, in the absence of which the correctness of the public authority's activity 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, prodromal to the commencement of the procedure, the content of which is entirely neutral with respect to the future call for tenders, irrespective of the main purpose of the conduct. (Case in which the Court of Review held that the mere preparation of draft resolutions of the Council and the Municipal Council was incapable of affecting the conduct of the tender and of influencing its outcome, even though the intention existed).
Penalties applicable to the entity
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 pecuniary sanction of up to 500 quotas or of 200 to 600 quotas in the event of significant profit or damage;
- disqualifying sanctions: prohibition from contracting with the public administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition 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 criminal code - predicate offence referred to in Article 25-decies of Legislative Decree No. 231/2001)

The purpose of the criminal law under review is to avoid the possible exploitation of the right to remain silent granted to suspects and defendants, as well as to the so-called suspects/defendants in related proceedings, to close relatives and to witnesses (in the case of so-called self-incrimination),

in accordance with the principle of "*nemo tenetur se detegere*", also with a view to protecting the proper conduct of the trial against any undue interference.
This is a subsidiary rule, which only applies where the act actually committed does not constitute a more serious offence.
The offence is characterised by the provision of a general intent, consisting in the consciousness and intention to induce, as a result of violence or threat to the person entitled to silence or the offer or promise of money or other benefits to the latter, not to make statements or to make false statements to the judicial authority (Judge or Public Prosecutor).
The addressees of the conduct are, therefore, witnesses, suspects and defendants (also in related proceedings or in a connected offence), to whom the right to remain silent is recognised by law.
As regards the typical methods of conduct, inducement relevant to the commission of the offence is achieved through the action by which a person exerts an influence on the psyche of another individual, inducing him to behave in a certain way, through the means exhaustively indicated by the rule, i.e. threats, violence or the promise of money or other benefits.
It is also required for the constituent elements of the case that:

- the induced person has not made statements or has made them falsely in the same proceedings;
- the person induced, in the manner indicated by the provision, not to make statements or to make them untrue, had the right to remain silent.

Penalties applicable to the Entity

- fine of up to 500 quotas.

24. Non-compliance with prohibitory sanctions (Article 23 of the Decree)

This offence punishes any person who, in the performance of the activity of the Entity to which a prohibitory sanction or precautionary measure has been applied, transgresses the obligations or prohibitions inherent in such sanctions or measures. For the purposes of this rule, all those activities carried out by the Entity that may in any case present interference with the execution of a prohibitory sanction or a prohibitory precautionary measure are taken into account.
Penalties applicable to the Entity

- Fine: 200 to 600 quotas;
- Disqualification sanctions: if the Entity has made a significant profit, disqualification sanctions are applied, even if different from those previously imposed.

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

Illegal intermediation and exploitation of labour (Article 25-quinquies, Legislative Decree No. 231/2001)[49]

[49] Offence added by Law No. 199/2016 (OJ General Series No. 257 of 3 November 2016, measure entered into force on 4 November 2016). The list of offences contained in Article 25-quinquies of the Decree is completed by the following criminal offences: Reduction to 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 criminal code); Possession of or access to pornographic material (Article 600-quater); Virtual pornography (Article 600-quater.1 of the criminal code); Tourism initiatives aimed at exploiting child prostitution (Article 600-quater.2 of the criminal code); Tourism initiatives aimed at exploiting child prostitution (Article 600-quater.2 of the criminal code). criminal code); Tourism initiatives aimed at the exploitation of child prostitution (Article 600-quinquies

Article 6 of Law no. 199 of 29 October 2016, containing '*Provisions on combating the phenomena of undeclared work, labour exploitation in agriculture and wage realignment in the agricultural sector*' and published in the Official Gazette no. 257 of 3.11.2016, amended Article *603-bis of the* Criminal Code, headed '*Illegal intermediation and exploitation of labour*', which was also included in Article *25-quinquies,* co. 1, lett. a), of Legislative Decree no. 231/2001.

The novelty is aimed at extending the protection of workers and more generally of the market. As specified in the explanatory memorandum to the text of the law, '*the exploitation of workers always reverberates to the benefit of companies, which are often set up in corporate or associative form*'.

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

- riscrive the unlawful conduct of the 'caporale', i.e. the person who recruits labour in order to employ them with third parties in exploitative conditions, taking advantage of their state of need (the reference to '*state of need*' is deleted);
- rispetto to the former case law, it introduces a case-basis that is independent of violent, threatening or intimidating behaviour (there is no longer any reference to the carrying out of an organised brokering activity or to the organisation of work characterised by exploitation).[50]

The offence of illicit brokering and exploitation of labour is therefore now applicable to all employers.

The new wording, compared to the one introduced for the first time in our legal system by Decree-Law no. 138 of 13 August 2011, converted into Law no. 148 of 14 September 2011, clearly specifies the sanctionability also of the employer, identical to that of the 'corporal', who *uses/exploits/employs* labour '*subjecting workers to exploitative conditions and taking advantage of their state of need*', even without unlawful recruitment through third parties.

The innovations just described must be carefully examined, especially in the light of the so-called exploitation indices, the occurrence of which - these are alternative indices - potentially constitutes exploitation of the worker.

This includes not only the repeated payment of remuneration in a manner manifestly inconsistent with the provisions of collective bargaining signed by the comparatively 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, non-compliance with the rules on working hours/rest/expectations/holidays or those on safety in the workplace, now understood in their generality and no longer only those hazardous to health, safety or personal safety.

Exploitation invokes habitual conduct and occurs when a person is prevented from freely determining his or her existential choices.

The Supreme Court of Cassation (Sec. V, sentence no. 14591 of 4 April 2014) clarified that the offence of 'caporalato' (forced labour) '*is aimed at punishing those behaviours that do not result in the mere violation of the rules laid down by Legislative Decree no. 276/2003, without however*

criminal code); Trafficking in persons (Article 601 criminal code); Purchase and sale of slaves (Article 602 criminal code); Illegal brokering and exploitation of labour (Article 603-bis criminal code); Luring of minors (Article 609-undecies criminal code). Please refer to paragraphs 1 and 2 of Article 25-quinquies of the Decree for the provision of the relevant pecuniary and prohibitory sanctions.

[50] Paragraph 4 of Article 603-bis of the criminal code reads as follows: "The *following constitute a specific aggravating circumstance and entail an increase in the penalty from one third to one half: 1) the fact that the number of recruited workers is greater than three; 2) the fact that one or more of the recruited persons are minors of non-working age; 3) having committed the act by exposing the exploited workers to situations of serious danger, having regard to the characteristics of the services to be performed and the working conditions.*"

reaching the heights of extreme exploitation, as referred to in the case prefigured by Article 600 of the Criminal Code [reduction to slavery]'.

In essence, the concept of exploitation is to be understood as any conduct, even if carried out without violence or threat, that inhibits or limits the victim's freedom of self-determination without it being necessary to achieve the state of total and continuous subjection that characterises the crime of enslavement.

And so for 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 Supreme Court (*ex multis*, sect. II, sentence no. 18778 of 25 March 2014) - "*a state of necessity that tends to be irreversible, which, while not absolutely annihilating any freedom of choice, entails a pressing need, such as to strongly compromise the contractual freedom*" of the person.

In order to commit the offence of unlawful brokering and exploitation of labour, a general intent is required, which encompasses all the elements of the offence, since it is therefore necessary for the agent, in addition to intending the conduct typified by Article *603-bis of the* criminal code and its particular modal connotations, to represent the state of need in which the exploited worker finds himself.

Penalties applicable to the Entity

-finement: from 400 to 1000 quotas;

-discretionary 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 performance of a public service; exclusion from facilitations, 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)

The incriminating provision in question applies in the event of the occurrence of one of the aggravating conditions provided for in paragraph 12-bis of Article 22 of Legislative Decree no. 286/1998 (the so-called Consolidated Act on Immigration), which states: "*The penalties for the offence provided for in paragraph 12* (*Editor's note: the offence of "employer who employs foreign workers without a residence permit provided for in this Article, or whose permit has expired and whose renewal has not been requested, within the legal deadlines, by the employer) shall be imposed on the person who employs the foreign workers in question"*.i.e. the fact of "an employer who employs foreign workers without a residence permit as provided for in this article, or whose permit has expired and whose renewal, revocation or cancellation has not been requested within the legal deadlines") *are increased by between one third and one half:*

(a) if more than three workers are employed;

(b) if the workers employed are minors of non-working age;

(c) if the employed workers are subjected to other particularly exploitative working conditions as referred to in the third paragraph of Article 603-bis of the Penal Code'.

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

- Article 12(3), (3-bis) and (3-ter), i.e. the conduct of a person who '*promotes, directs, organises, finances or carries out the transport of foreigners into the territory of the State or carries out 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 hold permanent residence*', including the relevant aggravating circumstances;
- Article 12(5), i.e. the conduct of anyone who 'in order *to gain an unfair profit from the illegal status of the foreigner or within the scope of the activities punishable under this Article, favours the permanence of the latter in the territory of the State*'.

Penalties 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, the Entity shall be subject to a fine ranging from 100 to 200 quotas, within the limit of EUR 150,000.

In relation to the commission of the offence referred to in Article 12(3), (3-bis) and (3-ter) of Legislative Decree No. 286/1998, the Entity shall be subject to a fine ranging from 400 to 1,000 quotas.

In relation to the commission of the offence referred to in Article 12(5) of Legislative Decree No. 286/1998, the Entity shall be subject to a fine ranging from 100 to 200 quotas.

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

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

1. False communications, prospectuses and reports

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

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

The new set of offences of false corporate communications, in essence, consists of two different incriminating offences (Articles 2621 and 2622 of the Civil Code), both characterised by their nature as mere danger offences and by the fact that they can be prosecuted ex officio.

Both cases typified in Articles 2621 and 2622 of the Civil Code are committed by the disclosure, in financial statements, reports and other communications addressed to shareholders or the public, of untrue material facts, or by the omission of material facts whose disclosure is required by law on the economic, asset or financial situation of the company or the group to which it belongs.

The legal asset that the aforementioned provisions protect is to be found in complete and correct corporate information.

The active parties, in both offences, are the directors, general managers, managers in charge of drafting corporate accounting documents, auditors and liquidators and, therefore, there are 'proper' 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 also at the functional level, i.e. at the level of the concrete performance of those activities typical of directors, general managers, auditors, liquidators and managers by persons not formally invested with these roles.
In fact, the provision set out in Article 2639 of the Civil Code operates a true and proper extension of the subjective qualifications of interest herein, including among the active parties of the offence of false corporate communications both those who perform the same functions held by the persons specifically identified by the criminal precept (even if differently qualified in the assignment), and the so-called de facto person in charge, i.e. the person who, in the absence of formal investiture, exercises in a continuous and significant manner the powers typically inherent in the qualification or function referred to by the case in point.
It should also be noted that:

- The notion of 'corporate communication' includes all communications provided for by law addressed to shareholders or the public. This reservation of the law excludes the criminal relevance of any atypical and non-institutionalised communication, even if directed to shareholders and the public, such as, for example, commonly used statements such as press releases and press conferences, as well as the same extemporaneous statements to shareholders assembled in shareholders' meetings and even communications prescribed by CONSOB by virtue of regulatory powers. Instead, corporate communications could include the written declaration of the manager in charge that must accompany the deeds and communications of companies disclosed to the market and relating to the company's accounting information, including interim information, aimed at certifying that they correspond to the documentary results, books and accounting records *pursuant to* Article 154-bis TUF (in relation to Law No. 262/2005 concerning S.p.A.). Included in the notion of corporate communications are the 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 case of interim dividends, pursuant to Article 2433-bis of the Italian Civil Code;
- the scope of application of both rules is delimited by the requirements of materiality and relevance of the falsified facts and the awareness and concreteness of the danger to the protected legal asset;
- the false or partial representation must be materially likely to mislead the recipients of the falsified communication;
- the conduct must be aimed at obtaining an unjust profit for oneself or others (*animus lucrandi*) and the intention to cause unjust financial loss to shareholders or the public is not required;
- the falsification of business information must be conscious;
- liability also extends to cases where the information relates to assets owned or administered by the company on behalf of third parties;
- Law No. 69/2015 also provides for a discount of one third to two thirds of the penalty and this measure is provided for in the case of industrious repentance or for those who work

effectively to avoid further consequences of the crime, secure evidence, identify the culprits or, again, for those who cooperate in the seizure of the illicitly transferred sums.

On the other hand, the scope of application of the offences set forth in Articles 2621, 2621-bis and 2622 of the Civil Code is different.

While Article 2621 of the Civil Code exclusively concerns unlisted companies, Article 2622 of the Civil Code is applicable only to conduct involving companies issuing financial instruments traded on regulated markets (Italian or of other EU Member States), controlling the latter, issuing financial instruments traded on *multilateral trading facilities (Italian or of other EU Member States), which* have applied for admission to trading on regulated markets (Italian or of other EU Member States) and which appeal to the public for savings or which in any case manage such savings.

A further difference between the two provisions just referred to concerns the absence of the phrase "*provided for by law*" with reference to corporate communications addressed to shareholders or the public, as referred to in Article 2622 of the Civil Code, which therefore seem to include a broader range of communications relevant for the purposes of the rule and not only those communications "provided for by law".

Moreover, for the sole hypothesis set forth in Article 2621 of the Civil Code and, therefore, for unlisted companies, a milder penalty framework has been provided for under Article 2621-bis of the Civil Code for acts of 'minor entity', taking into account the nature and size of the company and the manner or effects of the conduct, and which are prosecutable on complaint by the company itself or by its shareholders or other recipients of corporate communications.

Penalties applicable to the Entity

- for the offence of false corporate communications, provided for in Article 2621 of the Civil Code, the fine ranges from two hundred to four hundred shares;
- for the offence of false corporate communications, provided for in Article 2621-bis of the Civil Code, the fine ranges from one hundred to two hundred shares;
- For the offence of false corporate communications by listed companies, provided for in Article 2622 of the Civil Code, the fine ranges from four hundred to six hundred quotas.

False prospectus (Article *173-bis* T.U.F.)

The offence in question is committed by presenting, in the prospectuses required for the public offering of financial products, for the purposes of soliciting investment or admission to listing on regulated markets or in the documents to be published on the occasion of 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 unjust profit for oneself or others.

It should be noted that:

- the prospectus must be drawn up in accordance with the general provisions determined by CONSOB;
- there must be intent to deceive the recipients of the prospectus;
- the conduct must be likely to mislead the recipients of the prospectus;
- the conduct must be aimed at obtaining an unjust profit for oneself or others.

By providing, therefore, for a case in addition to those governed by Articles 2621 and 2622, the legislature 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, at the same time providing for the repeal of Article 2623 of the Civil Code, which was inserted with a new wording in Article 173-bis of the T.U.F. Since Article 25-ter, letters c) and d) still expressly refer to Article 2623 of the Civil Code as a prerequisite for the administrative offence, the repeal of the Civil Code provision, which has not been 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 determine, as a consequence, the non-applicability of Legislative Decree no. 231/2001 to the new offence of false prospectus.
However, as a matter of prudence, this case was also 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 active parties to the offence, even though it is a common offence, by identifying them as those responsible for drafting and transmitting the prospectus (such as, for example, the directors of the company that intends to make an investment solicitation).
With regard to the objective element of the offence, it should be noted that it may nowadays be integrated in both hypotheses - criminal and misdemeanour - either by a commission of conduct (exposure of false information) or by an omission of conduct (concealment of data or information), characterised by the ability to mislead the recipients of the prospectus.
Penalties applicable to the Entity:

- For the offence of false accounting, provided for in the repealed Article 2623(1) of the Civil Code, the fine ranges from one hundred to one hundred and thirty shares;
- for the offence of false accounting, provided for in the repealed Article 2623(2) of the Civil Code, the fine ranges from two hundred to three hundred and thirty shares.

False statements in the reports or communications of the persons responsible for the statutory audit (Article 27, Legislative Decree No. 39/2010)

The offence is committed through the false attestation or concealment of information in reports or other communications, by the persons responsible for the audit, concerning the economic, asset or financial situation of the company, in order to obtain an unjust profit for themselves or others with the awareness of the falsehood and with the intention of deceiving the recipient of the communication. The penalty is more serious if the conduct has caused financial damage to the recipients of the communications, or if the audit concerns a public interest entity.
Article 37 of Legislative Decree No. 39/2010 introduced the new offence of 'False statements in the reports or communications of the persons responsible for the statutory audit', at the same time providing for the repeal of Article 2624 of the Civil Code.
Since Article 25 ter, paragraph 1, letters f) and g) of Decree no. 231/2001 still expressly refers to Article 2624 of the Civil Code as a prerequisite for the administrative offence, the repeal of the Civil Code provision, which was not followed by the simultaneous integration of the article of the Decree with the reference to the new case of Article 27 of Legislative Decree no. 39/2010, should determine, as a consequence, the non-applicability of Legislative Decree no. 231/2001 to the new offence of "False statements in the reports or communications of the persons responsible for the statutory audit". 27 of Legislative Decree No. 39/2010, should determine, as a consequence, the non-applicability of Legislative Decree No. 231/2001 to the new offence of "False statements in the reports or communications of the persons responsible for the statutory audit".

In this regard, the United Criminal Sections of the Court of Cassation, with judgment no. 34476 of 23 June 2011, ruled, with regard to the applicability of Article 37 of Legislative Decree no. 39/2010, that the principle of legality prevents the express reference, contained in Article 25-ter of Legislative Decree no. 231/2001, to the repealed Article 2624 of the Italian Civil Code from being interpreted as a "mobile" reference to another regulatory provision, regardless of any consideration relating to the continuity between the cases in question and the other regulatory provisions. 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 relationship of continuity between the incriminating provisions in diachronic succession.
However, as a matter of prudence, this case was also taken into account in the mapping of risk areas pursuant to Legislative Decree No. 231/2001.
In the light of a systematic interpretation of this principle of law affirmed by the Court, the issue, addressed above, of the reference to the corporate criminal offences of false accounting in prospectuses under Article 2623 of the Civil Code, contained in Article 25-ter, can also be considered resolved in the sense of the inapplicability to such offences of the administrative liability of entities.
Active parties in this offence are the persons responsible for the statutory audit, while members of the company's management bodies and its employees may only be involved as accessories to the offence.
It is, in fact, conceivable that the directors, statutory 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 have taken part in it, pursuant to Article 110 of the Criminal Code.
Penalties applicable to the Entity:

- for the offence of misrepresentation in the reports or communications of auditing companies, provided for in the repealed Article 2624(1) of the Civil Code, a pecuniary sanction of between one hundred and one hundred and thirty shares;
- for the offence of misrepresentation in the reports or communications of auditing companies, provided for in the repealed Article 2623(2) of the Civil Code, a pecuniary sanction of two hundred to four hundred shares.

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 markets in Italy or in another European Union Member State or widely distributed among the public (within the meaning of Article 116 of the Consolidated Law on Finance), infringes the rules on conflicts of interest for directors laid down in Article 2391(1) of the Civil Code and causes damage to the company or third parties.
In particular, Article 2391 of the Civil Code requires the members of the Board of Directors to disclose (to the other members of the Board and to the Statutory Auditors) any interest they may have, on their own behalf or on behalf of third parties, in a given company transaction, specifying its nature, terms, origin and scope. Managing Directors must also abstain from carrying out the transaction, referring it to the Board of Directors. The Managing Director must give notice of this at the first useful meeting.
In view of the fact that in the majority of cases of transactions entered into by Directors with a conflict of interest, the company is the damaged party, as also highlighted by the rule 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 adopted by the individual company, but also in a group perspective, where certain potentially disadvantageous transactions, although concluded in the perspective of the compensatory advantages of the group and, therefore, assessed in the interest of the entire corporate structure, may instead present disadvantages for third parties with respect to the group.
On the basis of these considerations, the most important hypothesis is that in which the director's omissive conduct caused damage not to the company to which he belongs, but to third parties who came into contact and 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, in that it requires for the purposes of its consummation the actual impairment of the legal asset protected by the criminal provision.
Penalties applicable to the Entity:

- For the offence of failure to disclose a conflict of interest under Article 2629-bis of the Civil Code, the fine ranges from two hundred to five hundred shares.

2. Criminal Protection of Share Capital

Wrongful restitution of contributions (Article 2626 of the Civil Code)
This offence occurs when, outside the cases of legitimate reduction of share capital, contributions are returned, even simulated, to shareholders or released from the obligation to make them.
Active parties to the offence may only be the directors (and persons exercising, even de facto, management and control of the company).
It should be noted that:

- Only contributions in cash, receivables and assets in kind that are capable of constituting the share capital are relevant for the punishability of the offence in question; punishability begins at the moment when the capital is affected;
- release or restitution may take place in a different form, even indirectly, such as, for example, set-off against a fictitious claim against the company;
- It is not necessary for all partners to be discharged from the obligation in order to integrate the case, but it is sufficient for a single partner or several partners to be discharged;
- those partners who instigated or directed the directors are also punishable as accessories to the offence.

The offence punishes conduct likely to cause harm to the company, resulting in a form of aggression against the share capital, to the benefit of the shareholders.
From an abstract point of view, it seems indeed difficult that the offence in question could be committed by the 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, since it is possible that one company, being in urgent need of funds, may unduly return the contributions made to the detriment of another company in the group. In this hypothesis, in view of the position taken by the prevailing case law, which disavows the autonomy of the corporate group understood as a unitary concept, it is quite possible that, all the prerequisites being met, the entity may be held liable for the offence of undue repayment of contributions committed by its directors.
Penalties applicable to the Entity:

- for the offence of undue return of contributions provided for in Article 2626 of the Civil Code, a pecuniary sanction of between one hundred and one hundred and eighty shares.

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

This offence is committed by distributing profits (or advances on profits) that have not actually been earned or which are allocated to reserves by law, or by distributing reserves (even if not established with profits), which may not be distributed by law.

The active parties in the offence are the directors (and the persons exercising management and control, including de facto management and control), with whom, pursuant to Article 110 of the Criminal Code, any participants in the offence may also be liable.

In essence, the rule in question punishes the unjustified diversion of a part of the share capital from what, by law, is its natural destination, namely its function as an instrument for the attainment of the company's profit and as a guarantee for creditors.

In this regard, it should be noted that:

- the return of profits or the re-establishment of reserves before the deadline for the approval of the balance sheet extinguishes the offence, but this special cause of extinction of the offence only benefits the material author of the offence and is not capable of extinguishing the liability of the body;
- Both the profit for the year and the total profit from the balance sheet, which is equal to the profit for the year minus the losses not yet covered plus the profit carried forward and the reserves set aside in previous years (so-called balance sheet profit), are relevant for the purposes of punishability;
- For the purposes of punishability, only distributions of profits intended to constitute legal reserves are relevant, and not distributions from optional or hidden reserves. Therefore, the distribution of profits actually earned but intended by statute to reserves does not constitute an illegal distribution of reserves.

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

- For the offence of illegal distribution of profits and reserves provided for in Article 2627 of the Civil Code, the fine ranges from one hundred to one hundred and thirty shares.

Illegal transactions involving shares or quotas of the company or the parent company (Article 2628 of the Civil Code)

The offence punishes directors (and persons exercising management and control, including de facto management and control) who, outside the 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 respect, it should be noted that the reconstitution of the share capital or reserves, before the deadline for the approval of the balance sheet for the financial year in respect of which the conduct took place, extinguishes the offence.

The purpose of the provision is therefore to protect the integrity and effectiveness of the share capital and of the reserves that cannot be distributed by law, against the phenomena of watering it down, which could be detrimental to 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 Civil Code), outside the cases permitted by law (see, in particular, Articles 2357, 2359-bis, paragraph 1, 2360, 2474 and 2529 of the Civil Code), thereby causing damage to

the company's assets, is punished, in particular, Articles 2357, 2359-bis, paragraph 1, 2360, 2474 and 2529 of the Civil Code), thereby causing damage to the company's assets.
The active parties to the offence may only be the directors: the selling shareholder or director of the parent company may only be liable for the offence as an accomplice if they caused or instigated the directors to commit the offence.
The offence in question is punishable on the basis of general intent, consisting in the will to purchase or subscribe to the shares or quotas, accompanied by the awareness of the irregularity of the transaction, as well as the will - or at least the acceptance of the risk - to procure an event detrimental to the share capital.
Penalties applicable to the Entity:

- For the offence of unlawful transactions involving the company's own shares or quotas or those of the parent company provided for in Article 2628 of the Civil Code, the fine ranges from one hundred to one hundred and eighty quotas.

Transactions to the detriment of creditors (Article 2629 of the Civil Code)
The provision punishes directors (and persons exercising, also de facto, management and control of the company) who carry out, in breach of the legal provisions protecting creditors, operations to reduce the share capital or to merge or demerge, in such a way as to cause damage to creditors. The juxtaposition in the same case of three events modifying the corporate contract is justified by the similarity of the procedure on which the legal protection is grafted: in all cases a resolution of the extraordinary shareholders' meeting is taken into consideration that determines an amendment of the memorandum of association and the execution of which could jeopardise the reasons of the creditors, who are therefore granted a right of opposition.
It should be noted that the offence is punishable on complaint and that compensation for damages to creditors before trial extinguishes the offence.
Penalties applicable to the Entity:

- for the offence of transactions to the detriment of creditors provided for in Article 2629 of the Civil Code, a fine ranging from one hundred and fifty to three hundred and thirty shares.

Fictitious capital formation (Article 2632 of the Civil Code)
This offence is committed by means of the following conduct: a) fictitious formation or increase of the share capital through the allocation of shares or quotas for an amount lower than their nominal value; b) reciprocal subscription of shares or quotas; c) significant overvaluation of contributions in kind, receivables, or of the company's assets in the case of transformation.
With regard to the first of the aforementioned ways in which the typical conduct is carried out, the *ratio of* the rule is to prevent the shares or quotas from being issued for a nominal value lower than the declared one: in fact, in this hypothesis, the share capital would be inflated to an extent corresponding to the difference between the attribution value and the nominal value. The second form of conduct under the rule under review, which refers to the phase of exercising corporate management, concerns the reciprocal subscription of shares or quotas, which is sanctioned in so far as it is likely to create an illusory multiplication of wealth with a consequent damage to the protected interests. It should be pointed out that the conduct in question does not presuppose the simultaneous and connected nature of the two transactions, an agreement aimed at exchanging shares or quotas being sufficient. The third offending conduct, which is carried out through a significant overvaluation of the contributions of assets in kind or of receivables or of the assets of

the company in the event of transformation, also gives rise to the illusion of an increase in wealth to the detriment of shareholders and third parties.
Active parties to the offence are the directors and contributing shareholders.
The offence is punishable as a general offence, so the consciousness and intention to fictitiously form or increase share capital is required, through the conduct described in the provision.
Penalties applicable to the Entity:

- For the offence of fictitious capital formation provided for in Article 2632 of the Civil Code, the fine 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 corporate assets among the shareholders before paying the company's creditors or setting aside the sums necessary to satisfy them, which causes damage to the creditors.
The rule protects the company creditors' right of pre-emption over the company's assets with respect to the shareholders.
It should be noted that the payment of damages to creditors before trial extinguishes the offence.
The active parties to the offence are exclusively the liquidators, but by virtue of Article 2639 of the Civil Code, those who, although not formally appointed, actually carry out the activity in question (for example, shareholders who, in the absence of the appointment of liquidators, act as such) shall also be liable for the offence in question. The beneficiary partner, on the other hand, not being listed among the active parties, may only be liable for the offence in question if his conduct does not end with the passive acceptance of the asset (for example, in the case of incitement to commit the offence).
It is also required, as a prerequisite of the typical act, that the liquidation phase has been opened, which is a necessary condition for the criminal conduct to take place.
For the purpose of the existence of the subjective element, the general intent is relevant, i.e., the mere intention to make the distribution to the shareholders with the knowledge of the amount of the claims, it not being required that the person also intends to harm the creditors' reasons.
Penalties applicable to the Entity:

- For the offence of undue distribution of corporate assets by liquidators under Article 2633 of the Civil Code, the fine 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 hindering the performance of control activities through the concealment of documents or other suitable devices.
The offence, which can only be attributed to the directors (and to persons exercising, also de facto, management and control of the company), can only entail the Entity's liability if the conduct has caused damage.
It should be noted that:

- the *modus operandi* of the suitable artifices presupposes fraudulent conduct and, in other words, the conduct must be capable of misleading the persons who are to carry out the control activities;

- In addition to the impediment, the obstacle alone is also relevant;
- For the purposes of this rule, activities carried out by members of the Board of Directors, as well as by employees working for them, which may have an influence on the initiatives and control activities incumbent on shareholders, other corporate bodies or auditing firms are taken into account.

These are, more precisely, the influencing activities:

- on shareholder control initiatives provided for in the Civil Code and other regulatory acts, such as Article 2422 of the Civil Code, which provides for the right of shareholders to inspect the company books;
- on 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 inspection and control acts and to request information from the directors on the performance of corporate operations or certain business affairs.

The offence has been partially decriminalised limited to cases in which no damage to shareholders has resulted from the conduct of the directors. Consequently, the possibility of the Entity's administrative liability exists only in relation to the offence, which can be prosecuted on complaint by the offended party, provided for in Article 2625(2). Finally, for the offence to exist, a general intent is required, which must obviously also include the representation and volition, at least by way of possible intent, of damage to shareholders.

Penalties applicable to the Entity:

- For the offence of impeding control provided for in Article 2625(2) of the Civil Code, the fine ranges from one hundred to one hundred and eighty shares.

Unlawful influence on the Assembly (Article 2636 of the Civil Code)

The typical conduct involves determining, by simulated or fraudulent acts, the majority in a shareholders' meeting in order to obtain an unjust profit for oneself or others.

The purpose of the rule is to prevent fraudulent conduct from illegitimately influencing the formation of the assembly majority.

The offence may be committed by anyone, thus not only by directors, although in substance it may be assumed that only shareholders (obviously of relative weight) may be further active parties to 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 accordance with the law and the articles of association.

For the subjective element to exist, specific intent is required, consisting of the purpose of pursuing an unjust profit for oneself or others.

It should be recalled that the liability of the Entity can only be incurred when the conduct provided for in the Article under review is carried out in the interest of the Entity. This makes it difficult to conceive of the offence in question, which, as a rule, is carried out to further the interests of a party and not of the Entity.

Penalties applicable to the Entity:

- for the offence of unlawful influence on the shareholders' meeting provided for in Article 2636 of the Civil Code, a fine ranging from one hundred and fifty to three hundred and thirty shares.

4. Criminal protection against fraud

Market rigging (Article 2637 of the Civil Code)

The offence is committed through the dissemination of false news or the performance of simulated transactions or other devices capable of causing a significant alteration in the price of unlisted financial instruments or of affecting the public's trust in the financial stability of banks or banking groups. In particular, the 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 performance of the quotations, while other artifices are to be understood as 'any conduct which, by means of deception, is capable of altering the normal course of prices'.

It should be noted that:

- there is no extreme of disclosure when the news has not been disseminated or made public, but is directed only to a few persons;
- Simulated transactions include both transactions that the parties did not in any way intend and transactions that have an appearance that differs from those actually intended;
- In order for the offence to be configured, it is sufficient that the information or artifice is capable of producing the effect of appreciably altering the price of unlisted financial instruments.

A situation of danger is sufficient for the existence of the offence, irrespective of the occurrence of an artificial price change.

The offence in question for listed companies, or for those issuing listed financial instruments, must be related to the offence of market manipulation, discussed later in this General Section (see Market abuse offences).

Penalties applicable to the Entity:

- for the offence of market rigging provided for in Article 2637 of the Civil Code, a fine ranging from two hundred to five hundred shares.

5. Criminal protection of supervisory functions

Obstructing 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 competent public authorities:

- the presentation in communications to the supervisory authorities of facts that do not correspond to the truth, even though they are the subject of assessments of the economic, asset or financial situation; or the concealment, by fraudulent means, in whole or in part, of information that should have been communicated, in order to hinder the exercise of the supervisory functions of the Authority. In both cases, for the purposes of the existence of the offence, specific intent is required (and, therefore, the specific awareness and intention to obstruct the supervisory activity), accompanied by the awareness of the falsity of the communications transmitted or the omissions made. Liability also exists where the information relates to assets owned or administered by the company on behalf of third parties. In the second hypothesis, represented by the conduct of concealment, the material object of the offence is not identified in the communications provided for by law, but in

those that are due and, therefore, communications that are provided for by sources other than the law, such as regulations, may also be relevant;

- mere obstruction of the exercise of supervisory functions, knowingly implemented in any way.

  In relation to para. 2 of Article 2638 of the Civil Code, general intent is required, which, as may be inferred from the adverb 'knowingly', is characterised in particular as direct intent, thus excluding possible intent.

The perpetrators of the offence are the directors, the general manager, the manager responsible for preparing the company's accounting documents, the statutory auditors and the liquidators required to fulfil their obligations towards the Public Supervisory Authorities.

Penalties applicable to the Entity:

- For the offence of obstructing the exercise of the functions of public supervisory authorities provided for in Article 2638 of the Civil Code, the fine ranges from two hundred to four hundred shares.

6. Bribery and incitement to bribery among private individuals

6.1 Background: the regulatory process

Law 190/2012[51] introduced into our legal system new measures aimed at strengthening the effectiveness and efficiency of the prevention and repression of corruption, in compliance with the obligations arising from international conventions to which Italy is a party.

In particular, Article 1(76) of the aforementioned Law amended Article 2635 of the Civil Code, introducing the offence of bribery between private individuals.

From the point of view of the administrative liability of Entities, Law No. 190/2012 added to Article 25 ter, paragraph 1, of Legislative Decree No. 231/2001, the letter s-bis), referring to the new offence of bribery between private individuals only in the cases referred to in the third paragraph of Article 2635 of the Civil Code, i.e. with exclusive reference to cases of active bribery: in other words, the liability of legal persons can only be incurred against the company of the corruptor (i.e. the person who, in order to obtain a benefit or advantage for his own company, bribes, by giving or promising money or another benefit, a senior manager or an employee of another company to make him perform or omit acts in breach of the obligations inherent in his office or the obligations of loyalty, with simultaneous damage to his own company).

However, in reformulating Article 2635 of the Civil Code, the Italian legislature did not fully transpose 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 evident.

As a result of this, the legislator (in implementation of the delegation provided for in Article 19 of Law No. 170 of 2016) with Legislative Decree No. 38 of 15 March 2017, supplemented the previous measures adopted for the prevention and repression of corruption between private individuals in order to bring the national legislation in line with EU requirements. Briefly, with this regulatory intervention, the following was done:

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

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

- amend the offence of bribery between private individuals *pursuant to* Article 2635 of the Civil Code;
- introduce the new offence of inciting bribery between private individuals pursuant to Article 2635 bis of the Civil Code, also including it as a predicate offence within Article 25 ter of Legislative Decree No. 231/2001;
- introduce accessory penalties *pursuant to* Article 2635b of the Civil Code;
- tighten up the sanctions imposed on the Entity, pursuant to Legislative Decree No. 231/2001, in the event of conviction for the offence of bribery among private individuals referred to in Article 2635(3) of the Civil Code and for the offence of incitement to bribery among private individuals referred to in Article 2635 bis of the Civil Code.

Legislative Decree No. 38/2017 also profoundly affected the structure of the offence of bribery between private individuals under Article 2635 of the Civil Code:

- expanding the number of active parties (by introducing, in addition to directors, general managers, managers in charge of drafting corporate accounting documents, auditors, liquidators and those subject to management and supervision, also those within the entity who exercise management functions other than those performed by them);
- by clarifying that such persons may belong to companies or private entities (extending the scope of the offence to any private law entity, including, for example, foundations or non-profit entities);
- broadening the range of criminal conduct (by including 'solicitation of money or other benefits');
- punishing, among the conduct committed by the corruptor, not only the promise and the giving of gifts, but also the 'offering' of money or other benefits. Such conduct is also relevant if committed through a 'third party';
- it is specified that 'the money or other benefits' must be 'not due';
- it is provided that the measure of confiscation for equivalent may not be less than the value of the utilities 'given', 'promised' or 'offered';
- bringing forward the threshold of punishability to a time prior to the performance of the act in breach of the obligations inherent in office or the obligations of loyalty;
- no longer providing, for the purposes of punishability of the offence, 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 per se, irrespective of the actual detrimental consequences, whether pecuniary or non-pecuniary, deriving from the company or private entity to which the corrupt party belongs.

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

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

The provision punishes anyone who, even through an intermediary, offers, promises, or gives undue money or other benefits to certain categories of persons working in companies or private entities (directors, general managers, managers in charge of drafting corporate accounting documents, statutory auditors, liquidators, those who perform management functions other than those of the aforementioned persons, or those who are subject to the management or supervision of one of the aforementioned persons), so that they perform or omit acts in breach of the obligations inherent in their office or of loyalty obligations.

Therefore, like the previous rules, the Entity's administrative liability only arises in cases of 'active corruption' (Article 25-ter, paragraph 1, letter s-bis), continues to refer exclusively to the third paragraph of Article 2635 of the Civil Code).
Lastly, Law No. 3 of 9 January 2019 repealed paragraph 5 of Article 2635 of the Civil Code, thus making the offence in question prosecutable ex officio.

6.2.2 The new offence of 'Incitement to bribery' under Article 2635-bis of the Civil Code
The catalogue of 231 corporate offences is supplemented with the new case referred to in the first paragraph of Article 2635-bis of the Civil Code, namely, incitement to bribery among private individuals.
Pursuant to the aforementioned provision, the conduct of those who offer or promise money or other benefits to senior persons of companies or private entities (directors, general managers, managers in charge of drafting corporate accounting documents, statutory auditors and liquidators), as well as to those who perform their work activities with management functions, for the performance or omission of an act in breach of the obligations inherent in their office or of loyalty obligations, when the offer or promise is not accepted, is punished.
Lastly, Law No. 3 of 9 January 2019 repealed subsection 3 of Article 2635-bis of the Civil Code, thus making the offence in question prosecutable ex officio.

6.3 Sanctions applicable to the Entity:
6.3.1 Financial penalties:
- For the offence of bribery between private individuals provided for in Article 2635(3) of the Civil Code, a fine of 400 to 600 shares shall be imposed;
- For the offence of inciting bribery between private individuals, provided for in Article 2635 bis, first paragraph, of the Civil Code, a fine of 200 to 400 shares shall be imposed.

6.3.2 Disqualification sanctions:
The disqualification sanctions referred to in Article 9 of Legislative Decree No. 231/2001 are applied to both of the aforementioned offences, in accordance with the criteria for their application set out in Article 13 of Legislative Decree No. 231/2001 (i.e. for a duration of no less than three months and no more than two years).

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

In the Official Gazette No. 56 of 7 March 2023, Legislative Decree No. 19 of 2 March 2023 was published on '*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 transformations, mergers and divisions*'.
More specifically and for the part of interest herein, Article 29 of the Decree, to which reference is made, regulates the issue of the preliminary certificate, which is the step in which the notary verifies the proper fulfilment of the formalities required by law for the completion of the merger.
The certificate is issued at the request of the Italian company participating in the merger.
The documents to be attached to the application for the issue of the preliminary certificate are listed and the checks that the notary makes on the basis of the documents, information and declarations at his disposal are described.
The article contains the so-called 'anti-abuse clause', i.e. a general provision attributing to the notary the verification that the merger has not been carried out for manifestly abusive or fraudulent

purposes resulting in the violation or avoidance of a mandatory rule of EU law or Italian law and that it is not aimed at the commission of offences under the same Italian law.

It regulates the issuance of the certificate and legal remedies against the notary's determinations, the appeal to the court in the event of a refusal to issue the certificate or in the event of failure to issue it within the time limits set by law, the publicity of the certificate by providing for its registration in the commercial register by the directors and the publicity of the notary's refusal to issue the preliminary certificate or the operative part of the order rejecting an appeal brought before the court.

Penalties for infringements of the provisions transposing the Directive are instead provided for in Articles 52, 54 and 55, which implement the specific delegation principle contained in Article 3(1)(r) of Law no. 127 of 2022 (European Delegation Act 2021), according to which the legislation implementing the directive must provide for '*the application of criminal and administrative sanctions, which are effective, dissuasive and proportionate to the gravity of the breaches of the provisions themselves, within the limit, for criminal sanctions, of imprisonment for a minimum of not less than six months and a maximum of not more than five years, without prejudice to the rules in force for criminal offences already provided for*'.

In particular, Article 52 concerns the penalties to be imposed on notaries who, in the context of the verification and control operations entrusted to them by Articles 5, 13, 33 and 47 of the decree in question, act in breach of the prohibition to receive or authenticate deeds expressly prohibited by law or manifestly contrary to morality or public order laid down in Article 28(1)(1) of the Notary Law.

Articles 54 and 55, on the other hand, provide for criminal sanctions, as evidenced 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. The offence, which is punished with imprisonment from 6 months to 3 years (paragraph 1) and with the accessory penalty - in the event of conviction to a sentence of not less than 8 months imprisonment - of temporary disqualification from the offices of legal persons and companies pursuant to Article 32-bis of the Criminal Code. (para. 2), is intended to penalise the conduct of anyone who wholly or partially forges documents, alters true documents, makes false statements or omits relevant information in order to demonstrate the existence of the conditions required by Article 29 for the issue of the preliminary certificate.

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 set out in Article 25-ter(1) of Legislative Decree No. 231 of 2001, establishing a fine of between 150 and 300 shares for the company.[53]

CRIMES FOR THE PURPOSE OF TERRORISM OR SUBVERSION OF THE DEMOCRATIC ORDER (ART. 25-QUATER LEGISLATIVE DECREE NO. 231/2001)

Article 25-quater of the Decree, introduced by Article 3 of Law no. 7 of 14 January 2003, which ratified and implemented in Italy the International Convention for the Suppression of the Financing of Terrorism, signed in New York on 9 December 1999, provides for the punishability of the Entity,

[53] Article 56 '*Transitional and Final Provisions*' states the following: "*The provisions of this Decree, unless otherwise provided, shall take effect as of 3 July 2023 and shall apply to cross-border and international transactions in which none of the participating companies, as of the same date, has published the draft.*"

where the prerequisites are met, in the event that offences for the purpose of terrorism or subversion of the democratic order, provided for by the Criminal Code, special laws or in violation of the New York International Convention for the Suppression of the Financing of Terrorism, are committed in the interest or to the advantage of the Entity. 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 offences implicitly referred to in Article 25-quater are briefly described below:

Crimes for the purpose of terrorism or subversion of the democratic order under the Criminal Code Subversive associations (Article 270 of the Criminal Code)

This offence, for which a term of imprisonment ranging from five to ten years is provided for, is committed by anyone who, in the territory of the State, promotes, sets up, organises or directs associations aimed at violently establishing the dictatorship of one social class over the others, or at violently suppressing a social class or, in any case, at violently subverting the economic or social order constituted in the State or, finally, aimed at violently suppressing any political or legal order in society. Whoever participates in the above-mentioned associations shall be punished by imprisonment from one to three years.

Association for the purposes of terrorism, including international terrorism or subversion of the democratic order (Article 270-bis of the criminal code)

This offence is committed by anyone who promotes, sets up, organises, leads or finances associations that propose the perpetration of 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 the acts of violence are directed against a foreign State, an institution or an international organisation. The offence in question is punishable by imprisonment from seven to fifteen years.

Assistance to associates (Article 270-ter of the criminal code)

This offence is committed by any person who, except in cases of complicity in the offence or aiding and abetting, gives refuge or provides food, hospitality, means of transport, or means of communication to any of the persons participating in the associations referred to in the preceding Articles 270 and 270-bis of the Criminal Code. The offence in question is punishable by imprisonment of up to four years. However, a person who commits the offence for the benefit of a close relative is 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, outside the cases referred to in Article 270-bis, enlists one or more persons for the perpetration of acts of violence, for the purpose of terrorism, even if they are directed against a foreign State, an institution or an international organisation. The offence in question is punishable by imprisonment from seven to fifteen years.

Organisation of transfer for the purposes of terrorism (Art. 270-quater 1. Penal Code)

"Apart from the cases referred to in Articles 270 bis and 270 quater, anyone who organises, finances or propagandises trips to foreign territory with the aim of carrying out the conduct for terrorist purposes referred to in Article 270 sexies shall be punished by imprisonment of five to eight years".

Training in activities for the purposes of terrorism, including international terrorism (Article 270-quinquies of the criminal code)

This offence is committed by anyone who, outside the cases referred to in Article 270-bis, instructs or in any case 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 the perpetration of acts of violence, for terrorist purposes, even if directed against a foreign State, institution or international body. The offence in question is punishable by imprisonment from five to ten years. The same penalty applies to the person trained.

Financing of conduct for the purposes of terrorism (Art. 270-quinquies 1. Penal Code)
"Whoever, outside the cases provided for by Articles 270-bis and 270-quater.1, collects, disburses or makes available goods or money, howsoever realised, intended to be used in whole or in part for the perpetration of the conduct for terrorist purposes referred to in Article 270-sexies, shall be punished by imprisonment of from seven to fifteen years, regardless of the actual use of the funds for the commission of the aforesaid conduct. Anyone who deposits or keeps the goods or money indicated in the first paragraph shall be punished by imprisonment of from five to ten years".
Subtraction of seized property or money (Art. 270-quinquies 2. Penal Code)
"Whoever removes, destroys, disperses, suppresses or deteriorates property or money, subject to seizure for the purpose of preventing the financing of the conduct for terrorist purposes referred to in Article 270 sexies, shall be punished by imprisonment of two to six years and a fine of between EUR 3,000 and EUR 15,000".
Conduct for the purposes of terrorism (Article 270-sexies of the criminal code)
Conduct which, by its nature or context, is likely to 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 abstain from performing any act or destabilising or destroying fundamental public structures, shall be deemed to be carried out for the purpose of terrorism, constitutional, economic and social structures of a country or an international organisation, as well as other conduct defined as terrorist or committed for the purpose of terrorism by conventions or other rules of international law binding on Italy.
Attacks for the purposes of terrorism or subversion (Article 280 of the criminal code)
This offence is committed by anyone who, for the purposes of terrorism or subversion of the democratic order, attacks the life or safety of a person . The offence is punishable, in the first case, by imprisonment of not less than twenty years and, in the second case, by imprisonment of not less than six years. The offence is aggravated if the attempt on a person's life results in grievous bodily harm (punishable by a term of imprisonment of not less than eighteen years), grievous bodily harm (punishable by a term of imprisonment of not less than twelve years) or death (punishable by life imprisonment), or if the act is directed against persons exercising judicial or prison functions or public security functions in the exercise or because of their functions (in the latter case, the penalties are increased by a third).
Acts of terrorism with deadly or explosive devices (Article 280-bis of the criminal code)
This offence is committed by anyone who, for the purposes of terrorism, commits any act intended to damage movable or immovable property belonging to others, by using explosive or otherwise deadly devices. This offence is punishable by imprisonment from two to 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 in any case bodies provided for by the Constitution or constitutional laws, the punishment shall be increased by up to half. If the act causes danger to public safety or serious damage to the national economy, the penalty shall be imprisonment for a term of five to ten years.
Act of nuclear terrorism (Article 280-ter of the criminal code)
"A sentence of not less than fifteen years' imprisonment shall be imposed on anyone who, for the purposes of terrorism as referred to in Article 270e:
1) procuring radioactive material for oneself or others;
2) creates a nuclear device or otherwise comes into possession of one.
A sentence of imprisonment of not less than twenty years shall be imposed on anyone who, for the purposes of terrorism as set forth in Article 270e:
1) uses radioactive material or a nuclear device;

(2) uses or damages a nuclear installation in such a manner that it releases or with the actual danger that it will release radioactive material.
The penalties referred to in the first and second paragraphs shall also apply when the conduct described therein relates to chemical or bacteriological materials or aggressives."

Kidnapping for the purpose of terrorism or subversion (Article 289-bis of the Criminal Code)
This offence is committed by anyone who kidnaps a person for the purposes of terrorism or subversion of the democratic order. This offence is punishable by imprisonment from twenty-five to thirty years. The offence is aggravated by the death, intended or unintended, of the kidnapped person (and is punishable by thirty years' imprisonment or life imprisonment). Finally, an accomplice who, by dissociating himself from the others, endeavours to ensure that the passive subject of the offence regains his freedom, shall be punished by imprisonment of two to eight years. If the passive subject dies, as a consequence of the kidnapping, after release, the penalty is imprisonment for a term of eight to eighteen years.

Incitement 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 instigates someone to commit one of the non-culpable offences provided for in the title of the criminal code dedicated to offences against the personality of the State, for which the law establishes life imprisonment or imprisonment. Extenuating circumstances are those cases where the incitement is not accepted or, if accepted, the offence is in any case not committed. The offence is punishable, if the instigation is not accepted, or if the instigation is accepted but the offence is not committed, by imprisonment from one to eight years.

Political conspiracy by agreement and political conspiracy by association (Arts. 304 and 305 of the Criminal Code)
This offence is committed by anyone who agrees or associates with a view to committing one of the offences referred to in the previous point (Article 302 of the criminal code). Those who participate in the agreement are liable, if the offence is not committed, to imprisonment for a term of between one and six years.

Armed gang, formation and participation; assistance to participants in conspiracy or armed gang (Sections 306 and 307 of the criminal code)
This offence is committed against any person who promotes, sets up, or organises an armed gang with a view to committing one of the offences set out in Article 302 of the Criminal Code, or against any person who, apart from cases of aiding and abetting an offence, gives refuge, provides food, hospitality, means of transport or means of communication to any of the persons participating in the association or the gang, pursuant to Articles 305 and 306 of the Criminal Code. The penalties envisaged for these offences are punishable at most by imprisonment of up to fifteen years.

Crimes for the purpose 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, the offences provided for by special laws are also taken into account. Terrorist offences, provided for by special laws , consist of all that part of Italian legislation, enacted in the 1970s and 1980s, aimed at combating terrorism. Among these provisions, it is worth mentioning Article 1 of Law No. 15 of 6 February 1980, which provides, as an aggravating circumstance applicable to any offence, that the offence was 'committed for the purpose of terrorism or subversion of the democratic order'. It follows that any offence provided for by the Criminal Code or by special laws, even those different from those expressly aimed at punishing terrorism, may become, provided that it is committed for such purposes, one of those liable to constitute, under Article 25-quater, a prerequisite for the entity's liability. Other provisions specifically aimed at preventing offences committed for the purpose of terrorism are contained in Law no. 342 of 10 May 1976 on the repression of offences against the safety of air navigation, and

Law no. 422 of 28 December 1989 on the repression of offences directed against the safety of maritime navigation and offences directed against the safety of fixed installations on the intercontinental platform.

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

The reference to this provision clearly tends to avoid possible gaps in the already general and generic discipline and is therefore intended to strengthen and complete the scope of reference also by referring to international acts.

According to the above-mentioned Article, an offence is committed by any person 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 the death or serious bodily injury to a civilian, or to any other person not taking an active part in situations of armed conflict, when the purpose of such act is to intimidate a population, or to compel a government or international organisation to do or to abstain from doing something. For an act to involve one of the above-mentioned offences, it is not necessary that the funds are actually used to do the above. An offence is also committed by anyone who attempts to commit the offences described above. An offence is also committed by anyone who: takes part as an accomplice in the commission of an offence described above; organises or directs other persons to commit an offence described above; contributes to the commission of one or more offences described above with a group of persons acting with a common purpose. Such contribution must be intentional and: must be made in order to facilitate 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 intent of the group is to commit an offence.

In order to be able to affirm whether or not there is a risk of committing this type of offence, it is necessary to examine the subjective profile required by the law for the offence to be committed. From the point of view of the subjective element, terrorist offences are crimes of intent. Therefore, in order for a wilful 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 intends to achieve it through conduct attributable to him. Therefore, in order for the criminal offence in question to take shape, it is necessary for the agent to be aware of the terrorist nature of the activity and to have the intention of promoting it. Moreover, it would also be possible for the criminal offence to be committed if the person acts with intent. In that case, the agent would have to foresee and accept the risk of the occurrence of the event, even though he did not directly intend it. The foreseeing of the risk of the occurrence of the event and the voluntary determination to adopt the criminal conduct must, however, be inferred from unambiguous and objective elements.

Penalties applicable to the Entity

- Monetary sanction: if the offence is punished with imprisonment of less than ten years, from two hundred to seven hundred shares; if the offence is punished with imprisonment of not less than ten years or with life imprisonment, from four hundred to one thousand shares;
- disqualification sanctions (for a period of no 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 the performance of a public service; exclusion from facilitations, 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)

Foreword

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 broadened the catalogue of offences constituting the Entity's administrative liability under the Decree and provided, in relation to the commission of such offences, that a fine ranging from a minimum of four hundred to a maximum of one thousand quotas (i.e. approximately one and a half million euro) may be imposed on the Entity.

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

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

As of the same date, level 2 regulatory acts, issued by the European Commission on the basis of the delegations contained in the MAR, in the form of delegated or implementing regulations, which contain technical provisions on how the obligations are to be fulfilled, are also directly applicable. [54]

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

- Insider trading (Arts. 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 (Arts. 12 and 15).

The main novelties concerning 'inside information and related disclosure' introduced by the MAR Regulation and related Regulations concern

1) the codification of the principle according to which even intermediate steps in a process that may lead to the occurrence of a '*price-sensitive'* event may in themselves constitute inside information and thus be subject to '*disclosure*' to the market;
2) the proceduralisation of the decision to '*delay*' the disclosure of inside information;
3) the introduction of a new discipline for 'market surveys';
4) 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 on "*Rules 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*". It adapted the domestic legislation to the aforementioned European legislation and consequently amended the regulations set

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

forth in Legislative Decree No. 58/1998 (better known as the "Testo Unico della Finanza" or "TUF"). This Legislative Decree also partly transposed the provisions of Directive 2014/57/EU (better known as the "MAD2 Directive") on criminal sanctions for market abuse.
Lastly, Article 26 of Law 23 December 2021 No. 238 setting forth "*Provisions for the fulfilment of obligations arising from Italy's membership of the European Union - European Law 2019-2020*" introduced further amendments to the rules set forth in Articles 182-185 and 187 of the Consolidated Law on Finance, which are described in more detail below.

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

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

a) purchases, sells or carries out other transactions, directly or indirectly, on its own behalf or on behalf of third parties, on financial instruments (admitted to trading or for which a request for admission to trading on an Italian or other EU regulated market has been submitted), using inside information acquired in the manner described above;
b) discloses such information to others outside the normal course of one's employment, profession, function or office or a market survey carried out pursuant to Article 11 of EU Regulation No. 596/2014 (irrespective 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 inside information in its possession, to carry out any of the transactions referred to in subparagraph (a).

The offence also punishes persons who, coming into possession of inside information as a result of preparing or carrying out criminal activities, commit any of the actions referred to above: so-called "criminal insider". *Criminal insider* (this is the case, for example, of the 'hacker' who, following unauthorised access to a company "s computer system, manages to gain possession of *price-sensitive* confidential information and uses it for speculative purposes).
Apart from cases of complicity in the offences referred to in the preceding two paragraphs, a term of imprisonment ranging from one year and six months to ten years and a fine ranging from EUR 20,000 to EUR 2,500,000 shall be imposed on any person who, being in possession of inside information for reasons other than those referred to in paragraphs 1 and 2 and knowing the privileged nature of such information, commits any of the acts referred to in paragraph 1.
In the cases referred to in the preceding paragraphs, the penalty of a fine may be increased up to three times or up to the amount of ten times the proceeds or profit gained from the offence when, owing to the seriousness of the offence, the personal qualities of the offender or the amount of the proceeds or profit gained from the offence, it appears inadequate even if applied to the maximum.[55]

[55] Finally, Article 184 of the TUF just analysed, as amended by Article 26 of Law No. 238 of 23 December 2021 laying down "*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 facts referred to in paragraphs 1, 2 and 3 relate to conduct or transactions, including bids, 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 penalties set out above are doubled pursuant to Article 39(1) of Law No. 262/2005, within the limits set for each type of penalty by Book I, Title II, Chapter II of the Criminal Code.
As to the notion of financial instruments, Article 180 of the Consolidated Law on Finance (TUF), under the heading 'Definitions', specifies that they are those envisaged by Article 1, para. 2, TUF: "admitted to trading or for which a *request for admission to trading on an Italian or other EU country's regulated market has been submitted, (...) admitted to trading or for which a request for admission to trading on an Italian or other EU country's multilateral trading facility has been submitted, (...)*", as well as those "*traded on an Italian or other European Union country's organised trading facility, (...) not covered by the previous numbers, whose price or value depends on, or has an effect on, the price or value of a financial instrument mentioned therein, including, but not limited to, credit default swaps and contracts for differences.*"[56]
The definition of inside information, on the other hand, pursuant to Article 7 of the MAR Regulation, is 'information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the prices of financial instruments linked to them'.
Article 7(4) of the MAR Regulation itself specifies the notion of price-sensitive news, defining it as "*information that a reasonable investor would be likely to use as one of the elements on which to base his investment decisions*".
Furthermore, according to the same Article 7(2) of the MAR, information is deemed to be of a precise nature if: "(*a) it relates to a set of circumstances which exists or may reasonably be expected to come into existence or to an event which has occurred or may reasonably be expected to occur; (b) and if that information is sufficiently specific to enable conclusions to be drawn as to the possible effect of that set of circumstances or that event on the prices of the financial instruments or the related derivative financial instrument [...]*".
The MAR Regulation has also clarified that intermediate steps in a prolonged process, as a result of which inside information may arise (e.g. information on the state of contract negotiations; provisionally agreed contractual terms; the possibility of placing financial instruments), may also be considered inside information, it being understood that they must also meet the other requirements of Article 7 of the MAR Regulation for *price-sensitive information* (non-public information which could have a significant effect on the prices of instruments).
Paragraph 1 of Art. 7 of the MAR Regulation also specifies, in point (d), that "*in the case of persons charged with the execution of orders concerning financial instruments, inside information shall also mean information conveyed by a client and related to the client's pending orders in financial instruments, which is of a precise nature and which relates, directly or indirectly, to one or more issuers or one or more financial instruments and which, if communicated to the public, would be likely to have a significant effect on the prices of those financial instruments, on the price of related spot commodity contracts or on the price of related derivative financial instruments*".
The definition and characteristics of 'Inside Information' provided for in Article 7 of the MAR Regulation therefore present, as an important element of novelty compared to the previous discipline, the extension of the notion of inside information also to the intermediate stages of a prolonged

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

process, which refer to circumstances or facts whose materialisation develops progressively over time[57] .

In terms of the subjective element, whereas the offence is punishable only by way of intent, thus requiring the awareness and intention to unduly exploit the privileged information in one's possession, the administrative offence is also punishable by way of guilt, negligence consisting in the careless use or mere communication to third parties of the privileged information being sufficient.

As already anticipated, insider trading is also punished as an administrative offence by Article 187-bis TUF with a fine ranging from EUR 20,000 to EUR 5 million. This sanction is provided for anyone who violates the prohibition against insider trading and unlawful disclosure of inside information set forth in Article 14 of Regulation (EU) No. 596/2014.[58]

Penalties applicable to the Entity:

- Monetary sanction: from four hundred to one thousand shares. If the product or profit made by the entity is significant, the penalty is increased up to ten times such product or profit.[59]

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

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

Market rigging was discussed in the corporate crime section.

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

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

Whoever spreads false news or carries out simulated transactions or other devices concretely capable of causing a significant alteration in the price of financial instruments shall be punished by imprisonment of one to six years and a fine of between EUR 20,000 and EUR 5 million.

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

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

The constitutive conduct of market manipulation offences thus consists of:

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

[58] There is also provision for the application of ancillary administrative sanctions set out in Article 187-quater.

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

- in the dissemination of false news (so-called market rigging); more specifically, news is to be considered false 'when, by creating a false representation of reality, it is such as to mislead traders by causing an irregular rise or fall in prices';
- in 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 market rigging); other artifices are to be understood as 'any conduct which, by means of deception, is capable of altering the normal course of prices'. A situation of danger is sufficient for the existence of the offence, regardless of the occurrence of an artificial price variation.

It is also punished, pursuant to Article 187-ter of the TUF, with a fine of between twenty thousand euros and five million euros for anyone who violates the prohibition on market manipulation set forth in Article 15 of Regulation (EU) No. 596/2014, which reads as follows: "It shall *not be permitted to engage in market manipulation or attempt to engage in market manipulation.*"[60]

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

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

The MAR Regulation also provides for:

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

Penalties applicable to the Entity:

- Monetary sanction: from four hundred to one thousand shares. If the product or profit made by the entity is significant, the penalty is increased up to ten times such product or profit.[61]

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

Manslaughter (Article 589 of the Criminal Code)

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

Unintentional bodily harm (Article 590 of the Criminal Code)

[60] There is also provision for the application of ancillary administrative sanctions set out in Article 187-quater.

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

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 another person through negligence as a result of violation of the rules for the prevention of accidents at work.
With regard to the definition of criminally relevant injury, those capable of causing any disease consisting of an alteration - anatomical or functional - of the organism are particularly taken into consideration. This definition also includes harmful changes in functional psychic activity.
Serious injuries are defined as those which have endangered the life of a person or have caused an illness or incapacity to attend to one's occupations lasting more than 40 days, or permanent impairment of a sense or organ; on the other hand, very serious injuries are those in which there has been loss of a sense, or loss of a limb, or mutilation rendering the limb useless, or loss of the use of an organ or the capacity to procreate, or permanent and serious difficulty of speech, or permanent deformation or disfigurement of the face, or a disease that is certainly or probably incurable.
The active party in the offences may be anyone who has to observe or cause to be observed the rules on prevention and protection 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 liability of the persons in charge in the company for the adoption and implementation of preventive measures subsists in the hypothesis that a causal relationship exists between the failure to adopt or comply with the prescription and the harmful event. Consequently, the causal relationship and therefore the fault of the persons in charge is lacking in the event that the accident occurs due to a culpable conduct of the worker that is, however, entirely atypical and unforeseeable and has the characteristics of abnormality, inoperability and exorbitance with respect to the work process and directives 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 connected to a saving of the costs necessary to ensure compliance with such regulations, or is a consequence of the (albeit unintentional) pursuit of greater speed in work processes or less difficulty in the management of work to the detriment of the relative safety.
Penalties applicable to the Entity
For the offence referred to in Article 589 of the Criminal Code, committed in breach of Article 55 ("*Penalties for the employer and the manager*"), co. 2, of the legislative decree implementing the delegated power referred to in Law No. 123 of 3 August 2007:

- fine: in the amount of 1,000 quotas;
- disqualification sanctions (for a period of no less than three months and no more 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 in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

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

- Fine: in an amount not less than 250 quotas and not more than 500 quotas;

- disqualification sanctions (for a period of no less than three months and no more 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 in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

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

- fine: not exceeding 250 quotas;
- disqualification sanctions (for a period of no more than six months): disqualification from carrying out the activity; suspension or revocation of authorisations, licences or concessions functional to the commission of the offence; prohibition from contracting with the Public Administration, except in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition from advertising goods or services.

THE OFFENCES OF RECEIVING, STORAGE AND USE OF MONEY, GOODS OR USE OF ILLEGAL PROVENANCE, AND SELF-LOCKS (ART. 25-OCTIES OF THE DECREE)

Foreword

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

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

This provision provided that Entities would be liable and sanctioned under the Decree for the same offences only if they met the specific conditions set out in Article 3 of the same Law with regard to the definition of transnational offences.

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

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

Lastly, Legislative Decree No. 195/2021, which entered into force on 14 December 2021, extended the scope of the offences set out in Articles 648, *648-bis*, *648-ter* and 648-ter.1 of the Criminal Code, which are also extended to contraventions (provided they are punished with certain edictal limits) and

now, for all, to culpable offences, as well as introducing new circumstantial hypotheses and the amendment of certain already existing circumstances, in addition to the extension of the rules on Italian jurisdiction to certain facts committed abroad, with a substantial 'restructuring' and internal redistribution of the regulatory articles.

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

The common purpose of the rules laid down in Articles 648, 648-bis and 648-ter of the Criminal Code is to prevent and repress the introduction into the lawful economic circuit of money, goods or utilities originating from the commission of contraventions (provided that they are punishable within certain edictal limits) and offences, in order to

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

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

The principal of the offences referred to in Article 25-octies is that of **money laundering** under Article 648-bis of the Criminal Code, which penalises the conduct of anyone who, except in cases of complicity in the offence, replaces or transfers money, goods or other utilities originating from any crime or contravention[62] , or carries out other transactions in connection with them, in such a way as to hinder the identification of their criminal origin.

Article 25-octies also provides for the offence of **receiving stolen goods,** which punishes anyone who, except in cases of complicity in the offence, in order to procure a profit for himself or others, purchases, receives or conceals money or goods resulting from any offence or contravention[63] , or in any event interferes in having them purchased, received or concealed.

Also relevant for the purposes of the Decree is the offence of **using money, goods or benefits of unlawful origin**, which, as a residual offence with respect to the offences mentioned above, punishes anyone who, apart from cases of complicity in the offence and the cases provided for in Articles 648

[62] *"The punishment shall be imprisonment for a term of between two and six years and a fine of between EUR 2,500 and EUR 12,500 when the offence concerns money or things deriving from an offence punishable by imprisonment for a maximum of more than one year or a minimum of six months."*

[63] *"The punishment shall be imprisonment for a term of between one and four years and a fine ranging from EUR 300 to EUR 6,000 when the offence concerns money or things deriving from an offence punishable by imprisonment for a maximum of more than one year or a minimum of more than six months.*
The penalty is increased if the offence is committed in the exercise of a professional activity.
If the offence is particularly trivial, the penalty is imprisonment for a term of up to six years and a fine of up to EUR 1,000 in the case of money or things deriving from a crime, and imprisonment for a term of up to three years and a fine of up to EUR 800 in the case of money or things deriving from a contravention."

and 648-bis of the Criminal Code, uses money, goods or other benefits resulting from an offence or contravention in economic or financial activities[64] .

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

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

This therefore includes not only means of payment, but also immovable property, companies, securities, precious metals, credit rights, etc., i.e. everything that, like money, can have an economic utility or, in any case, can be the subject of rights.

The offence also exists when the goods originate from a chain of intermediaries and therefore not directly from the predicate offence, provided, as will be mentioned above, that the active person is aware of the criminal origin of the goods and may also relate to the equivalent, i.e. the proceeds of the sale of the goods subject of the predicate offence, or the goods purchased with the money from the commission thereof.

By way of example, all offences liable to generate unlawful proceeds of money may constitute predicate offences: these include, in particular, robbery, kidnapping, extortion, trafficking in weapons or drugs, bribery, tax offences, usury, financial offences, corporate offences, EU fraud, fraud, embezzlement, and the possibility of receiving stolen goods.

It is not required, however, that the existence of the predicate offence be ascertained in court, nor that the perpetrator be identified, since the offences in question may also be committed if the perpetrators of the predicate offence are unknown.

Pursuant to Article 648(3) of the Criminal Code - referred to in Articles 648-bis(4) and 648-ter(4) of the Criminal Code - the offence also exists when the perpetrator of the predicate offence cannot be charged (e.g. because he is a minor) or is not punishable (e.g. because a tax amnesty has been granted in respect of a tax offence) or when a condition of prosecution relating to that offence is lacking (e.g. because a complaint has been lodged in respect of an embezzlement case), because a tax amnesty has been granted in respect of a tax offence) or where a condition of prosecution relating to that offence is lacking (e.g. a complaint in respect of embezzlement). Neither are any causes of extinction of the predicate offence (such as, for example, the statute of limitations) occurring after the commission of the offences in question relevant.

The difference between the three cases is delineated, first of all, by reference to the objective element. The offence of receiving stolen goods requires conduct of purchase, receipt or concealment: the first hypothesis exists with reference to any negotiation activity, whether for consideration or free of charge, which transfers the goods to the purchaser; the second includes any act involving the transfer of the availability, even if only temporarily, of the goods; finally, the third implies the wilful concealment of the goods, even if only temporarily, after having them at one's disposal. Pursuant to Article 648 of the Criminal Code, the conduct of a person who meddles in causing goods to be purchased, received or concealed, i.e. the intermediation aimed at transferring the goods, without it being necessary for the latter to actually materialise, also assumes criminal relevance.

The offence of money laundering consists in replacing or transferring goods of unlawful origin or, in any case, in carrying out any operation in connection therewith in such a way as to obstruct the

[64] *"The punishment shall be imprisonment for a term of between two and six years and a fine of between EUR 2,500 and EUR 12,500 when the offence concerns money or things deriving from an offence punishable by imprisonment for a maximum of more than one year or a minimum of six months."*

identification of the origin of the goods: it is therefore, by virtue of this last reference, a free form offence, which ends up penalising any activity consisting in obstructing or making more difficult the search for the perpetrator of the predicate offence. Moreover, despite the perplexity expressed by doctrine, case law admits the configurability of money laundering by omission, in view of the broad closing formula used by the legislature to describe the criminally relevant conduct ("other transactions").

Article 2 of Legislative Decree No. 231 of 2007 provides a detailed list of the conduct that can be qualified as money laundering, mentioning, in particular, '*the conversion or transfer of assets ... the concealment or disguise of the real nature, origin, location, disposition, movement, ownership of assets or rights over them ... the purchase, holding or use of assets*'.

In addition, the Financial Action Task Force (FATF), as a result of its studies, found that the money laundering process can be considered to have three characteristic stages: placement, layering and integration.

The first phase involves the introduction of dirty money, usually in fractional form, into legal financial circuits through traditional (banks and insurance companies) and non-traditional financial institutions (bureaux de change, sellers, precious metals, commodity brokers, casinos), or other means (e.g. smuggling).

The second phase usually takes place through successive transfers, aimed at losing the paper trail of the dirty money, for instance through the use of false credit documents or currency exchanges in foreign countries.

The last phase, finally, aims to attribute an apparent legitimacy to assets of criminal origin, re-introducing them into the legal financial circuit, through, for example, the issuance of invoices for non-existent transactions.

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

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

The wilfulness of receiving stolen goods consists in the wilfulness of the fact of purchasing, receiving, concealing or brokering the transfer of the goods, in the awareness of the criminal origin of the same, the precise knowledge of the circumstances of time, manner and place relating to the predicate offence not being required. Such awareness may be inferred from objective circumstances relating to the transaction, such as, in particular, the quality and characteristics of the goods sold and of the relevant price, and the condition or identity of the offeror. In the offence of receiving stolen goods (as well as in the offence of money laundering), wilful intent can be recognised in the hypothesis of conscious acceptance of the risk of the unlawful provenance of the thing purchased or received.

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

According to case law, the structural differences between the two offences must be sought not only in the subjective element (profit motive as specific intent in the case of receiving stolen goods, and general intent in the case of money laundering), but also in the material element and in particular in the ability to obstruct the identification of the provenance of the goods, which is the element characterising the conduct of the offence set out in Article 648-bis of the Criminal Code. 648-bis of the Criminal Code: in other words, when the purchase or receipt is accompanied by the performance of transactions or activities designed to obstruct the identification of the criminal origin of the money, goods or utilities, the offence of receiving stolen goods cannot be committed, but the more serious offence under Article 648-bis of the Criminal Code is committed.
As regards the difference between money laundering and the use of goods of unlawful origin - which also requires the specific suitability of the conduct to cause the traces of the unlawful origin to be lost - it has been pointed out that the offence referred to in Article 648-ter of the Criminal Code is characterised by the fact that such purpose must be achieved through the specific modality of using the resources in economic or financial activities: the provision is, therefore, in a special relationship with Article 648-bis of the Criminal Code and the latter is, in turn, in a special relationship with Article 648 of the Criminal Code.
Penalties applicable to the Entity

- Monetary sanction: 200 to 800 quotas. If the money, goods or other benefits originate from an offence for which a maximum term of imprisonment of more than five years is prescribed, a fine of 400 to 1,000 shares shall be imposed.
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

The offence of self money laundering

The offence of self money laundering was included by Law No. 186 of 15 December 2014 as a predicate offence in Article 25-octies, headed '*Receiving, laundering and using money, goods or benefits of unlawful origin, as well as self money laundering*', of Legislative Decree No. 231/01.
Lastly, as already mentioned in the introduction, the offence in question was amended by Legislative Decree No. 195/2021:
"A sentence of imprisonment from two to eight years and a fine ranging from EUR 5,000 to EUR 25,000 shall be imposed on any person who, having committed or having conspired to commit a crime, uses, substitutes, transfers, in economic, financial, entrepreneurial or speculative activities, the money, goods or other utilities deriving from the commission of such crime, in such a way as to concretely hinder the identification of their criminal origin.
The penalty shall be imprisonment for a term of between one and four years and a fine ranging from EUR 2,500 to EUR 12,500 when the offence concerns money or things deriving from an offence punishable by imprisonment for a maximum of more than one year or a minimum of more than six months.
The penalty is reduced if the money, goods or other benefits originate from an offence for which the maximum term of imprisonment is less than five years.
In any case, the penalties provided for in the first paragraph shall apply if the money, goods or other benefits originate from an offence committed under the conditions or for the purposes set forth in Article 416-bis.1

Outside the cases referred to in the preceding paragraphs, conduct whereby the money, goods or other benefits are intended merely for personal use or enjoyment shall not be punishable.
The penalty is increased when the acts are committed in the exercise of a banking or financial activity or other professional activity.
The punishment is reduced by up to one half for those who have taken effective steps to prevent the conduct from being carried out to further consequences or to secure evidence of the offence and the identification of assets, money and other utilities derived from the offence
The last paragraph of Article 648 applies'.
As already highlighted above, there is criminal relevance for the purposes of the offence of money laundering *under* Article 648-bis of the Criminal Code of the criminal activity carried out by a person other than the perpetrator of or a participant in the predicate offence.
On the other hand, a person who directly conceals the proceeds of an offence that he himself has committed or conspired to commit (so-called self-laundering) will be punishable under the new Article 648-ter.1 of the Criminal Code.
The typical conduct of the offence follows three different factual patterns: substitution, transfer and use in economic or financial activities.
The determination of punishable conduct is circumscribed to conduct which, although not necessarily artificial in itself (i.e. incorporating extremes referable to the archetype of artifice and deception), expresses a deceptive content, i.e. capable of making it objectively difficult to identify the criminal origin of the goods.
Therefore, the offence under consideration will be committed if the following three circumstances exist simultaneously:

1) a provision consisting of money, goods or other benefits is created or helped to be created - through a first offence, the predicate offence;
2) the aforementioned provision is used, through further and autonomous conduct, in entrepreneurial, 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 selflaundering is punishable by generic intent, which consists in the consciousness and intention to carry out the substitution, transfer or other operations concerning money, goods or other utilities, together with the awareness of the suitability of the conduct to create an obstacle to the identification of such provenance.
<u>Penalties applicable to the Entity</u>

- Monetary sanction: 200 to 800 quotas. If the money, goods or other benefits originate from an offence for which a maximum term of imprisonment of more than five years is prescribed, a fine of 400 to 1,000 shares shall be imposed.
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

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

It was published in the Official Gazette of 29 November 2021 the Legislative Decree No. 184 of 8 November 2021, entered into force on 14 December 2021, implementing the 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, is aimed at intensifying the fight against fraud and counterfeiting of non-cash means of payment, both because they constitute means of financing organised crime and related criminal activities and because they limit the development of the digital single market by eroding 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 implies the adoption of common provisions, Art. 1 of the legislative decree adopts definitions that replicate the euronian dictate with regard to the phrases "*non-cash payment instrument*" (an intangible or tangible device, object or protected record, or a combination thereof, other than legal tender, which, alone or in conjunction with a procedure or series of procedures, enables the holder or user to transfer money or monetary value including through digital means of exchange), "*protected device, object* or record" (an object device or record protected against imitation or fraudulent use, e.g. by design, code or signature), "*digital medium of exchange*" (any electronic money as defined in Article 1(2)(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 body, 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 medium of exchange, and which can be transferred, stored and exchanged electronically).
Also in accordance with the requirements addressed by the directive to the Member States, in order to provide for effective criminal law measures against criminal conduct involving fraud and counterfeiting of non-cash payment instruments, Article 2 of the decree intervenes in the Criminal Code by supplementing the provisions of Articles 493-ter of the Criminal Code[65] and 640-ter of the Criminal Code and introducing a new specific criminal offence for the possession and distribution of computer equipment, devices or programmes aimed at committing offences involving 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 undue use and falsification of credit and payment cards, in order to extend the scope of criminalisation of unlawful conduct to all non-cash payment instruments.
Another provision on which the legislator is merely surgically affecting, since the Italian criminal legislation already complies with the provisions of the directive also with regard to the sanctioning response, is Article 640-ter of the Criminal Code,[66] which, as is well known, punishes computer fraud with a penalty ranging from six months to three years and a fine ranging from euro 51 to euro 1,032

[65] *"(a) in Article 493-ter: 1) the heading shall be replaced by the following: "Misuse and counterfeiting of non-cash payment instruments"; 2) in the first paragraph, first sentence, after the word "services," the following shall be 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 the provision of services" shall be replaced by the following: "the instruments or documents referred to in the first sentence" and the words "such cards" shall be replaced by the following: "such instruments";"*

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

by anyone who, by altering in any way the operation of a computer or telematic system or by intervening without the right to do so in any manner whatsoever on data, information or programmes contained in a computer or telematic system or pertaining to it, procures for himself or others an unjust profit to the detriment of others.

The Decree in question intervenes in particular on the special aggravating circumstance referred to in the second paragraph (the penalty is imprisonment for a term of one to five years and a fine ranging from EUR 309 to EUR 1.549 if one of the circumstances set out in number 1 of the second paragraph of Article 640 occurs, or if the offence is committed with abuse of the role of system operator), by providing as a condition for the aggravation of the penalty for the offence of computer fraud (with consequent ex officio prosecution) the circumstance that the offending conduct results in a transfer of money, monetary value or virtual currency.

An additive intervention instead concerns the new Article 493-quater[67] - inserted in the Criminal Code after Article 493-ter - which punishes with a term of imprisonment of up to two years and with a fine of up to €1,000, unless the act constitutes a more serious offence, anyone who manufactures, imports, exports, sells, transports, distributes, makes available or in any way procures for himself or for others equipment, devices or computer programmes which, by virtue of their technical-constructive or design characteristics, are primarily intended to commit offences involving non-cash means of payment, or are specifically adapted to the same purpose.

This is a common offence, as per the *incipit of* the incriminating provision ('*anyone*'), punished on the basis of specific intent, since the aforementioned conduct becomes a criminal offence when it is carried out with the specific aim of making use of the instruments indicated or of enabling 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 the mandatory confiscation, in the event of conviction or plea bargaining, of computer equipment, devices or programmes used to commit offences involving non-cash means of payment, as well as the confiscation of the profit or product of the offence or, when the latter is not possible, the confiscation in equivalent terms of assets, sums of money and other utilities the offender has at his disposal for a value corresponding to the profit or product.

Article 3 of the decree under review adapts the provisions of Legislative Decree No. 231 of 8 June 2001, as per Art. 10 and 11 of the EU Directive referred to above, which require Member States to take the necessary measures to ensure that legal persons: can be held liable for offences of fraud and counterfeiting of non-cash means of payment committed for their benefit by any person acting either individually or as a member of an organ of the legal person and who occupies a prominent position within the legal person or is subject to its authority, control and supervision; can be subject, if held liable, to effective, proportionate and dissuasive sanctions.

To this end, Article 25-octies.*1* was introduced into Decree 231 entitled "Crimes relating to *payment instruments other than cash*" is introduced into Decree 231, which identifies the financial penalties

[67] "(*b) the following shall be inserted after Article 493-ter: "493-quater (Possession and dissemination of computer equipment, devices or programmes aimed at committing offences concerning non-cash payment instruments). - Unless the offence constitutes a more serious offence, any person who, in order to make use of them or to allow others to use them in the commission of offences concerning non-cash means of payment, manufactures, imports, exports, sells, transports, distributes, makes available or in any way procures for himself or others equipment, devices or computer programmes which, by virtue of their technical-constructive or design characteristics, are primarily intended for committing such offences, or are specifically adapted to the same purpose, shall be punished with imprisonment of up to two years and a fine of up to 1,000 euro. In the event of conviction or application of the penalty upon 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 above-mentioned equipment, devices or computer programmes shall always be ordered, as well as the confiscation of the profit or product of the offence or, when this is not possible, the confiscation of goods, sums of money and other utilities the offender has at his disposal for a value corresponding to such profit or product.";*"

applicable to the entity in relation to the commission of the offences provided for by the Criminal Code relating to payment instruments other than cash: a) for the offence referred to in Article 493-ter, the monetary sanction ranging from 300 to 800 quotas; b) for the offence referred to in Article 493-quater and for the offence referred to in Article 640-ter, in the hypothesis aggravated by the carrying out of a transfer of money, monetary value or virtual currency, the monetary sanction up to 500 quotas.
The second paragraph of the amendment further provides that, unless the act constitutes another administrative offence punishable more severely, in relation to the commission of any other offence against public faith, against property or which in any event offends property provided for by the Criminal Code, involving non-cash means of payment, the following financial penalties shall apply to the entity a) if the offence is punished with imprisonment of less than ten years, a fine of up to 500 quotas; b) if the offence is punished with imprisonment of not less than ten years, a fine of between 300 and 800 quotas. Furthermore, in cases of conviction for one of the offences referred to in paragraphs 1 and 2, the disqualification sanctions provided for in Article 9, paragraph 2 shall apply to the entity.

Fraudulent transfer of valuables (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, containing urgent provisions on criminal trial, civil trial, combating forest fires, recovery from drug addiction, health and culture, as well as on the subject of personnel in the judiciary and public administration*" amended Article 25-octies.1 (now entitled 'Offences *relating to non-cash means of payment and fraudulent transfer of valuables*') of Legislative Decree 231/2001, introducing the offence of fraudulent transfer of valuables (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 deed constitutes a more serious offence, anyone who fictitiously attributes to others the ownership or availability of money, goods or other utilities in order to evade the provisions of the law on patrimonial prevention measures or smuggling, or to facilitate the commission of one of the offences referred to in Articles 648, 648-bis and 648-ter, shall be punished by imprisonment of two to six years.*"
The rule (formerly Article 12-quinquies of Legislative Decree No. 306/1992, converted by Law No. 356 of 7 August 1992 and then transfused into the Criminal Code without amendments by Legislative Decree No. 21/2018 bearing "*Provisions implementing the principle of delegation of code reservation in criminal matters*") was first introduced immediately after the 1992 stragista phase and in fact was born with the main purpose of combating mafia crime, which had as its ultimate goal the uncontrolled accumulation of assets and capital of an illicit nature.
However, this rule is still perfectly suited today as a tool for combating even common crime, allowing the aggression of illicitly accumulated assets that could escape, or be difficult to attack, if they were transferred to third parties in a fictitious manner, especially through the use of negotiating means that have recently been affirmed in the sphere of commercial exchanges increasingly influenced also by contractual instruments of a European nature that were initially foreign to the Italian civil law tradition. [68]

[68] This rule, in fact, currently also lends itself to a use that often goes beyond any connection with both the qualified crime referred to in Article 416-bis of the Criminal Code, as well as with unqualified crime, since it does not require a true and proper associative phenomenon as its basis; suffice it to think of its usefulness in the area of financial and tax crimes, when they are committed by means of asset disposal systems aimed at evading patrimonial prevention measures (or smuggling) or at facilitating the crimes referred to in Articles 648, 648-bis and 648-ter.

Article 512-bis of the Criminal Code establishes as the basis of the offence a negotiation transaction of a merely apparent nature between the person who carries out the fictitious registration and the person who knowingly accepts the role, i.e., most often, a trusted person who may be either the originator or a mere front man.

In Judgement No. 34192 of 3 August 2023, the First Criminal Section of the Court of Cassation, recalling, moreover, compliant precedents, examined the prerequisites for the crime in question to be committed.

The expression "*fictitiously attributes to others the availability or ownership of money, assets or other utilities*" is to be understood, according to established case law, in an extremely broad manner, so as to refer not only to the traditional forms of negotiation, but to any type of act or "mechanism" (i. e. trust or estate fund) capable of creating an apparent relationship of lordship between a certain person and an asset, in respect of which the power of the person making the attribution remains intact.e. trust or patrimonial fund[69]) capable of creating an apparent relationship of lordship between a given subject and the asset, in respect of which the power of the person making the attribution, on whose behalf - or in whose interest - it is made, remains intact.

The consequence of the qualification of the offence in question as an offence of abstract danger with instantaneous consummation and permanent effects is the sufficiency, for its commission, that the agent carries out any legal transaction for the purpose of evading the provisions of the law on asset prevention measures, regardless of the subsequent achievement of the intended purpose; the assessment of the danger of evasion of the measure must be made *ex ante* and on a partial basis, i.e. in the light of the circumstances that, at the time of the conduct, were known or knowable by an average person in that particular space-time situation (Cass. pen, Sec. II, 9 March 2016, no. 12871).

A tool widely used by the perpetrators of the offence in *question* is the transfer of quotas or shares in order to ostensibly extricate themselves from the company structure and thus avoid possible ablative interventions by the company itself: when the former shareholder who has divested himself of the shares or quotas continues in fact to determine company policy, this would integrate the fictitious nature of the asset transfer. In this direction, the jurisprudence of legitimacy of the well-known "*Aemilia"* trial has pronounced itself by affirming the principle according to which: "The *conduct of a person who, in order to evade the provisions of the law on the subject of patrimonial prevention measures, acquires the quality of hidden shareholder in an already existing company, participating in the management and profits deriving from the entrepreneurial activity, constitutes the crime of fraudulent transfer of values as per Article 512 bis of the Criminal Code*". (Criminal Court of Cassation, section II, judgment no. 39774/2022)[70]

The Court of Cassation also clarified that, for the purposes of establishing the offence, an investigation aimed at ascertaining the illicit origin of the resources used in the establishment and start-up of the fictitious company registered in the name of a third party is not necessary, since the offence in *question* must be deemed to be committed also in the presence of conduct involving assets not derived from crime, in accordance with the *rationale of the offence*, which pursues the sole

[69] These schemes are absolutely lawful, but only achieve their specific segregating effect if, in the concrete case, they are not set up for the purpose of fraudulent intentions or to circumvent or violate mandatory rules. In practice, there must always be 'availability of the assets' on the part of the offender, which commonly includes the existence of an effected relationship with them, as such characterised by the exercise of de facto powers corresponding to the right of ownership. This is the only way to delineate that fictitious character of the transfer of assets which constitutes the cornerstone of the criminal law.

[70] In accordance with Criminal Court of Cassation, section II, December 2018, no. 2080: the offence in question can be committed when, in order to evade the application of measures of patrimonial prevention, the shares of a commercial or service company that is already operational are purchased, leaving the formal ownership unchanged in the hands of third parties, who thus acquire the role of intermediaries.

objective of preventing manoeuvres by persons potentially subject to preventive measures, aimed at preventing them from disclosing the availability of assets or other utilities, regardless of their origin (Cass. pen, sec. II, 16 April 2019, no. 28300).

As regards, instead, the subjective element, the offence in question requires, as mentioned above, the specific intent to evade the provisions on property prevention measures, even irrespective of the concrete possibility of the adoption of property prevention measures at the outcome of the relevant proceedings, as it is also integrated only if the perpetrator may fear their establishment (Criminal Court of Cass, sec. V, 7 December 2021, no. 1886; Cass. pen., sec. II, 28 March 2017, no. 22954; Cass. pen., sec. V, 28 February 2014, no. 13083).

The '*ratio puniendi*' of the rule, in view of the breadth of the provision, must disengage itself from civil law formalisms and focus precisely on the fictitious nature of the transaction, an element that connotes the typical nature of the fact. This is intended to mean that the attribution of the ownership or availability takes place in an essentially 'fraudulent' manner, as precisely qualified in the heading (Criminal Court of Cassation, sect. V, judgment no. 10271/2014). In this sense, there is that necessary connection between the objective parameter: fictitious-fraudulent transfer (which leaves unchanged the relationship between the asset and the person who had title to it) and the purpose pursued by the agent, which consists in obstructing the ascertainment of the real availability of the asset in order to evade the provisions on the subject of measures of asset prevention or on the subject of smuggling or to facilitate the commission of the offences referred to in Articles 648, 648-bis and 648-ter of the Criminal Code. The creation of a situation of apparent lordship over the thing still does not therefore attain any significance in relation to the criminal law, it being indispensable, in order to qualify that conduct as deserving of punishment, that it be directed to/connected with the elusive-agentive purpose connected with the repression of facts relating to the circulation of economic means of unlawful provenance.

These purposes, which represent the subjective profile of the offence, qualify and select the disvalue of the conduct by completing its typicality.

For the configurability of concurrence pursuant to Article 110 of the Criminal Code in the offence in question, the Supreme Court ruled as follows: "*The offence of fraudulent transfer of valuables is an instantaneous offence with permanent effects, which is consummated at the moment in which the fictitious registration is carried out, so that, in order to be able to affirm the concurrence by a third party, it is necessary to demonstrate that the latter has provided his own material or moral contribution at the very moment of the fraudulent attribution, on the other hand, any assistance provided to the continuation of the unlawful situation resulting from the criminal conduct is of no relevance (case in point, in which the appellant who, in her capacity as an employee of a bank, allegedly allowed the hidden shareholders of a company to operate on its accounts, was subjected to a personal precautionary measure for aiding and abetting the offence of fraudulent transfer of valuables*" (Cass. pen, Sec. II, judgment no. 16520/2021).

The second purpose envisaged by Article 512 bis of the Criminal Code, i.e. facilitating the commission of the offences of receiving stolen goods, money laundering or reutilisation, must also be examined in relation to simulative conduct. The endiadi that comes into being demands a rigorous verification on an objective level of the significant elements capable of facilitating/facilitating the commission of the aforementioned offences.

Notwithstanding the silence of the provision, the existence of a prior offence from which the money, goods or other utilities forming the subject-matter of the simulated transaction originate constitutes an essential requirement for the configuration of the offence set out in Article 512-bis of the Criminal

Code, Part Two. It is therefore necessary for the predicate offence to be prior to, and therefore autonomous from, the commission of the offence of fraudulent transfer, constituting a necessary antecedent which cannot be avoided for the purpose of verifying the aptitude of the conduct to perpetrate the criminal offence which is the subject of the specific purpose.
However, neither the exact identification nor the judicial ascertainment of the predicate offence is necessary for the crime of fictitious registration, since it is sufficient that the offence in question is abstractly conceivable (Criminal Court, sect. II, sentence no. 13448/2015).
Penalties applicable to the Entity:

-finement of 250 to 600 quotas;

-discretionary 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 performance of a public service; exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

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

Law No. 48 of 18 March 2008 ratified and implemented the Budapest Convention of 23 November 2001, promoted by the Council of Europe on the subject of computer crime and concerning, in particular, offences committed by making use of a computer system in any way or to its detriment, or which in any way pose the need to gather evidence in computer form. Article 1 of the same Convention defines a computer system as '*any equipment or group of interconnected or related equipment, one or more of which, pursuant to a program, performs automatic processing of data*'.
Article 24-bis of the Decree contemplates 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(1))**;
b) offences arising from the **possession or dissemination of codes or programmes or equipment designed to cause computer damage (Article 24-bis(2))**;
c) offences relating to **forgery of computer documents and fraud by the person providing certification services by means of a digital signature (Article 24-bis(3))**.

Article 24-bis, first paragraph, 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 result in the interruption of the operation of a computer system or the damaging of software, in the form of a programme or data.
More specifically, computer damage occurs when, considering both hardware and software components, even separately, a change occurs that prevents, even temporarily, their functioning.
In particular, the offences of:

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

Penalties applicable to the Entity:

Monetary sanctions ranging from one hundred to five hundred shares and, in the event of conviction, the disqualification sanctions provided for in Article 9(2)(a), (b) and (e).

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

  Penalties applicable to the Entity:

  Monetary sanctions ranging from one hundred to five hundred shares and, in the event of conviction, the disqualification sanctions provided for in Article 9(2)(a), (b) and (e).
- **unlawful possession, dissemination and installation of equipment and other means of intercepting, impeding or interrupting computer or telematic communications (Article 617-quinquies of the Criminal Code)**, which exists in the case of anyone who - outside the cases permitted by law - in order to intercept communications relating to a computer or telematic system between several 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.[71] The offence is thus constituted, by way of example, by the mere installation of the equipment, regardless of whether it is then actually used to commit offences.

  Penalties applicable to the Entity:

  Monetary sanctions ranging from one hundred to five hundred shares and, in the event of conviction, the disqualification sanctions provided for in Article 9(2)(a), (b) and (e).
- **damaging computer information, data and programmes (Article 635-bis of the Criminal Code)** and damaging computer information**, data and programmes used by the State or another public body or in any case of public utility (Article 635-ter of the Criminal Code); damaging computer or telematic systems (Article 635-quater of the Criminal Code) and damaging computer or telematic systems of public utility (Article 635-quinquies of the Criminal Code).** The offences under consideration are characterised by the common element of the conduct of destruction, deterioration, deletion, alteration or suppression and differ in relation to the material object (information, data, computer programmes or computer or telematic systems), whether or not of public relevance in that they are used by the State or by another public body or in any case of public utility.

  Penalties applicable to the Entity:

  Monetary sanctions ranging from one hundred to five hundred shares and, in the event of conviction, the disqualification sanctions provided for in Article 9(2)(a), (b) and (e).

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

[71] Article 617-quinquies of the Criminal Code was amended by Article 19(6) of Law No. 238 of 23 December 2021 concerning '*Provisions for the fulfilment of obligations arising from Italy's membership of the European Union - European Law 2019-2020*'.

- **Unauthorised possession, dissemination and installation of equipment, codes and other means of accessing computer or telematic systems (Article 615-quater of the Criminal Code)**, which punishes anyone who, in order to procure a profit for himself or others or to cause damage to others, unlawfully obtains, possesses, produces, reproduces, disseminates, imports, communicates, delivers, otherwise makes available to others or installs equipment, tools, parts of equipment or tools, codes, passwords or other means suitable for accessing a computer or telecommunications system protected by security measures or in any case provides indications or instructions suitable for the aforesaid purpose[72] . Therefore, the conduct preparatory to or functional to unlawful access is punished, since it consists in procuring for oneself or others the availability of means of access necessary to overcome the security safeguards of computer systems.

  Penalties applicable to the Entity:

  pecuniary sanction of up to three hundred shares and, in the event of conviction, the disqualification sanctions provided for in Article 9(2)(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 615-quinquies of the Criminal Code)**, which penalises anyone who unlawfully obtains, possesses, produces, reproduces, imports, disseminates, communicates, delivers or in any other way makes available to others or installs computer equipment, devices or programmes, with the aim of unlawfully damaging a computer or telecommunications system, the information, data or programmes contained therein or pertaining thereto, or of facilitating the total or partial interruption or alteration of its operation. [73]

  Penalties applicable to the Entity:

  financial penalty of up to three hundred shares and, in the event of conviction, the disqualification sanctions provided for in Article 9(2)(b) and (e).

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

- **Article 491-bis of the Criminal Code**[74] extends the rules laid down by the Criminal Code on document forgery also to public computer documents having evidentiary effect. By virtue of this extension, therefore, the falsification of a computer document may give rise, inter alia, to the offences of material and ideological falsification of public deeds, certificates, administrative authorisations, certified copies of public deeds, attestations of the content of deeds (Articles 476-479 of the Criminal Code), forgery of documents (Articles 476-479 of the Criminal Code), forgery of documents (Articles 476-479 of the Criminal Code), and forgery of documents (Articles 476-479 of the Criminal Code). 476-479 of the Criminal

[72] Article 615-quater of the Criminal Code was amended by Article 19(1) of Law No. 238 of 23 December 2021 concerning '*Provisions for the fulfilment of obligations arising from Italy's membership of the European Union - European Law 2019-2020*'.
[73] Article 615-quinquies of the Criminal Code was amended by Article 19(2) of Law No. 238 of 23 December 2021 concerning '*Provisions for the fulfilment of obligations arising from Italy's membership of the European Union - European Law 2019-2020*'.
[74] Article amended by Legislative Decrees Nos. 7 and 8/2016 (also known as the 'decriminalisation package'), which decriminalised and converted Article 485 of the Criminal Code (forgery in a private contract), in turn referred to by the predicate offence provided for and punished by Article *491-bis of the* Criminal Code, into a civil offence.

Code), material forgery of a private individual (Article 482 of the Criminal Code), ideological forgery of a private individual in a public deed (Article 483 of the Criminal Code), forgery in registers and notifications (Article 484 of the Criminal Code), use of a false deed (Article 489 of the Criminal Code).

Penalties applicable to the Entity:

with the exception of the provisions of Article 24 of this Decree for cases of computer fraud to the detriment of the State or other public body, and the offences referred to in Article 1(11) of Decree-Law No. 105 of 21 September 2019, pecuniary sanctions of up to four hundred shares and, in the event of conviction, disqualification sanctions provided for in Article 9(2)(c), (d) and (e).

- **Computer fraud by the person providing electronic signature certification services (Article 640-quinquies of the Criminal Code)**, which penalises the person who, by providing electronic signature certification services, violates the obligations laid down by law for the issuance of a qualified certificate, in order to procure an unfair profit for himself or others or to cause damage to others. This offence is therefore a so-called proper offence, as it can only be committed by qualified certifiers, or rather, by persons providing qualified electronic signature certification services.

  Penalties applicable to the Entity:

  with the exception of the provisions of Article 24 of this Decree for cases of computer fraud to the detriment of the State or other public body, and the offences referred to in Article 1(11) of Decree-Law No. 105 of 21 September 2019, pecuniary sanctions of up to four hundred shares and, in the event of conviction, disqualification sanctions provided for in Article 9(2)(c), (d) and (e).

Most recently, the third paragraph of Article 24-bis of the Decree was amended with the approval of Law No. 133 of 18 November 2019, which converted Decree-Law No. 105 of 2019 containing '*urgent provisions on the perimeter of national cybersecurity 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 of the networks, information systems and computer services of public administrations, bodies 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 from the malfunctioning, interruption, even partial, or improper use of which, harm to national security may result*' (Article 1 para. 1).

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

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

All with the aim of hindering or conditioning - according to the criminal law scheme of specific intent - the performance of the proceedings, described in the same Article 1 cited, for which the duty of truth is imposed.
Therefore, this is a 'blank' criminal offence that refers to extra-criminal legislation, both for the identification of the active subject of the 'proper offence' (even though the legislator used the pronoun 'anyone'), concerning only those who operate within the 'perimeter of national cyber security', and for the precise modalities of the procedures and, therefore, of the unlawful conduct.
Subsequently, the Decree of the President of the Council of Ministers No. 131 of 30 July 2020 was published in the Official Gazette No. 261 of 21 October 2020 on '*Regulations on the subject of the national cyber security perimeter, pursuant to Article 1, paragraph 2, of Decree-Law No. 105 of 21 September 2019, converted, with amendments, by Law No. 133 of 18 November 2019*'. More specifically, the Regulation deals with: defining the characteristics of the entities that perform an essential function for the State; identifying the sectors of activity in which the entities to be included in the cybersecurity perimeter operate; defining the modalities and procedural criteria for identifying public administrations, entities and public and private operators included in the national cybersecurity perimeter; and defining the criteria for preparing and updating the lists of networks, information systems and information services.
The penalty for the natural person acting as agent is imprisonment for a term of between one and three years, while the entity is subject to a fine of up to 400 quotas and the prohibitory sanctions laid down in Article 9(2)(c), (d) and (e).
Finally, the legal framework protecting the so-called National Cybersecurity Perimeter was completed with the issuance of the following implementing measures:

- Presidential Decree No. 54 of 5 February 2021, which defined the procedures and modalities for the evaluation of acquisitions by entities included in the cybersecurity perimeter, of supply objects the procedures of verification and inspection activities (Art. 1, para. 6, DL 105/2019);
- Prime Minister's Decree No. 81 of 14 April 2021 defining the procedures for notification in the case of incidents involving ITC assets (Art. 1(2)(b), DL 105/2019);
- Decree-Law No. 82 of 14 June 2021, converted, with amendments, by Law No. 109 of 4 August 2021, on '*Urgent provisions on cybersecurity, definition of the national cybersecurity architecture and establishment of the National Cybersecurity Agency*';
- Prime Minister's Decree of 15 June 2021, which identifies the categories of ICT goods, systems and services to be deployed in the national cyber security perimeter (Art. 1(6)(a) DL 105/2019;
- Prime Ministerial Decree No. 92 of 18 May 2022 on the accreditation of testing laboratories and connections between the National Assessment and Certification Centre, the accredited testing laboratories and the Assessment Centres of the Ministry of the Interior and the Ministry of Defence, pursuant to Article 1(7)(b) of Decree-Law 105/2019;
- Determination of 3 January 2023 of the National Cybersecurity Agency concerning the 'Taxonomy of notifiable incidents'.

ENVIRONMENTAL OFFENCES (ARTICLE 25-UNDECIES OF THE DECREE)

Foreword

Law No. 68 of 22 May 2015, which was published in the Official Gazette No. 122 of 28 May 2015 and came into force on 29 May 2015, entitled '*Provisions on crimes against the environment*', introduced new environmental offences into the legal system in the form of a crime.
The amendment ties in with the requirements of the European Union Directive 2008/99/EC of 19 November 2008 on the protection of the environment through criminal law, whose Preamble (Art. 5) states that '*activities damaging the environment, which generally cause or are likely to cause a significant deterioration in the quality of the air, including the stratosphere, soil, water, fauna and flora, including the conservation of species, require criminal penalties of greater dissuasiveness*'.
In particular, the aforementioned Law introduced into the Criminal Code Title VI-bis, dedicated to offences against the environment, providing for new offences and amended (see Article 8, Law No. 68/2015) Article 25-undecies of Legislative Decree No. 231/2001, in order to incorporate new cases among the predicate offences, namely:

- Article *452-bis*, Criminal Code, '*Environmental Pollution*';
- Article *452-quater*, Criminal Code, '*Environmental Disaster*';
- Article *452-quinquies*, Criminal Code, "*Culpable offences against the environment*";
- Article 452-sexies, Criminal Code, '*Trafficking in and abandonment of highly radioactive material*';
- Article *452-octies*, Criminal Code, "*Aggravating circumstances*" and

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, '*Activities organised for the illegal trafficking of waste*'.

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

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

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

Law No. 137 of 9 October 2023 replaced the second paragraph with the following: "*When the pollution is produced in a protected natural area or subject to landscape, environmental, historical, artistic, architectural or archaeological constraints, or to the detriment of protected animal or plant species, the penalty is increased by between one third and one half. In the event that the pollution causes deterioration, impairment or destruction of a habitat within a protected natural area or subject to landscape, environmental, historical, artistic, architectural or archaeological constraints, the penalty is increased by between one third and two thirds.*"
Penalties applicable to the Entity:

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

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

The offence is committed when abusive:

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

Law No. 137 of 9 October 2023 replaced the second paragraph with the following: '*When the disaster is produced in a protected natural area or an area subject to landscape, environmental, historical, artistic, architectural or archaeological constraints, or to the detriment of protected animal or plant species, the penalty is increased by between one third and one half*'.

Penalties applicable to the Entity:

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

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

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

Penalties applicable to the Entity:

- monetary penalty of two hundred to five hundred shares**.**

Trafficking and abandonment of highly radioactive material (Article 452-sexies of the criminal code)

The offence is committed when anyone unlawfully disposes of, purchases, receives, transports, imports, exports, procures for others, holds, transfers, abandons or disposes of highly radioactive material.

Penalties applicable to the Entity:

- monetary penalty of two hundred and fifty to six hundred quotas.

Aggravating circumstances relating to association offences (Article 452-octies of the criminal code)

The aggravating circumstance occurs when:

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

Penalties applicable to the Entity:

- fine of three hundred to one thousand shares.

Killing, destroying, capturing, taking, keeping and trading[75] specimens of protected wild animal or plant species (Article 727-bis of the criminal code)

The offence is committed if anyone, except where the act constitutes a more serious offence, kills, captures or possesses specimens belonging to a protected wild animal species outside the permitted cases, except where the action concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species.

Likewise, the offence is committed if anyone destroys, takes or possesses specimens belonging to a protected wild plant species outside the permitted cases. Protected wild animal or plant species are those listed in Annex IV of Directive 92/43/EC and Annex I of Directive 2009/147/EC.

Penalties applicable to the Entity:

- monetary penalty of up to two hundred and fifty quotas.

Destruction or deterioration of a habitat within a protected site (Article 733-bis of the criminal code)

The offence is committed if anyone, outside the permitted cases, destroys a *habitat* within a protected site or otherwise deteriorates it by compromising its state of conservation.

A *habitat* within a protected site is any *habitat of* species for which a site is designated as a special protection area under Article 4(1) or (2) of Directive 2009/147/EC or any natural *habitat* or *habitat* of species for which a site is designated as a special area of conservation under Article 4(4) of Directive 92/43/EC.

Penalties applicable to the Entity:

- monetary penalty of between one hundred and fifty and two hundred and fifty shares.

Offences relating to the discharge of industrial waste water (Article 137 of Legislative Decree No. 152/2006 as amended and supplemented)

The offence is committed if:

- new discharges of industrial waste water containing the hazardous substances included in the families and groups of substances listed in Tables 5 and 3/A of Annex 5 are opened or otherwise carried out without authorisation, or such discharges are continued or maintained after the authorisation has been suspended or revoked (Article 137(2)).
- the discharge of industrial waste water containing dangerous substances included in the families and groups of substances listed in Tables 5 and 3/A of Annex 5 to Part Three is effected without complying with the requirements of the authorisation or other requirements of the competent authority pursuant to Articles 107(1) and 108(4) (Article 137(3)).
- when discharging industrial waste water, the limit values set out in table 3 or, in the case of 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 or by the competent authority pursuant to Article 107(1) are exceeded in relation to the substances indicated in table 5 of Annex 5 to Part Three,

[75] 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 prohibitions on trade set forth in Article 8, paragraph 2, of Presidential Decree No. 357 of 8 September 1997, shall be punished by arrest from two to eight months and a fine of up to EUR 10,000.*"

or if the limit values set out for the substances contained in table 3/A are exceeded (Article 137(5)).
- the prohibitions on discharges laid down in Articles 103 and 104 of the decree on the soil or in the surface layers, subsoil and groundwater are not observed (Article 137(11)).
- there is a discharge into the sea by ships and aircraft of substances or materials for which an absolute prohibition of spills is imposed, pursuant to the provisions contained in the relevant international conventions in force and ratified by Italy (Article 137(13)).

Penalties applicable to the Entity:
- for the breach of subsections 3, 5, first sentence, and 13, a fine ranging from one hundred and fifty to two hundred and fifty shares;
- for the breach of paragraphs 2, 5, second sentence, and 11, a pecuniary sanction ranging from two hundred to three hundred quotas.

Offences relating to unauthorised waste management (Article 256 of Legislative Decree No. 152/2006)

The offence is committed if:
- activities of collection, transport, recovery, disposal, trade and intermediation of waste (hazardous and non-dangerous) are carried out in the absence of the prescribed authorisation, registration or communication (Article 256(1)(a), (b) or in the event of non-compliance with the requirements contained in or referred to in the authorisations, as well as in the event of lack of the requirements and conditions required for registration or communication (Article 256(4));
- an unauthorised landfill is created or managed (Article 256, paragraph 3) or in the event of non-compliance with the requirements contained in or referred to in the authorisations, as well as in the event of lack of the requirements and conditions required for registrations or communications (Article 256, paragraph 4). The unlawful conduct of creating and operating an unauthorised landfill exists where the conduct of accumulating a significant quantity of waste in an area is repeated over time and results in the degradation of the area itself;
- unauthorised mixing of waste, e.g. waste with different hazardous characteristics or hazardous waste with non-hazardous waste (Article 256(5));
- the rules on temporary storage of hazardous medical waste pursuant to Presidential Decree 254/2003 (Article 256(6)(I)) are infringed.

Penalties applicable to the Entity:
- for the breach of paragraphs 1(a) and 6, first sentence, a fine of up to two hundred and fifty shares;
- for the breach of paragraphs 1(b), 3, first sentence, and 5, a fine ranging from one hundred and fifty to two hundred and fifty shares;
- for the breach of subsection 3, second sentence, a pecuniary sanction ranging from two hundred to three hundred quotas.

The aforementioned penalties shall be reduced by half in the case of the commission of the offence provided for in Article 256(4).

Crimes relating to the reclamation of polluted sites (Article 257, paragraphs 1 and 2 of Legislative Decree No. 152/2006 as amended and supplemented)

The offence is committed if:

- pollution is caused to the soil, subsoil, surface water or groundwater by exceeding the risk threshold concentrations, by failing to carry out remediation in accordance with the project approved by the competent authority within the framework of the proceedings pursuant to Article 242 et seq. of Legislative Decree 152/2006, as amended and supplemented
- the communication referred to in Article 242 of Legislative Decree 152/2006 and subsequent amendments and additions is not made.

Penalties applicable to the Entity:

- for the breach of subsection 1, a fine of up to two hundred and fifty shares;
- for the breach of subsection 2, a fine ranging from one hundred and fifty to two hundred and fifty shares.

Breach of reporting obligations, keeping of compulsory registers and forms (Article 258(4)(II) of Legislative Decree No. 152/2006)

The offence is committed if a waste analysis certificate is prepared that provides false information on the nature, composition and chemical and physical characteristics of the waste and if a false certificate is used during transport.

Penalties applicable to the Entity:

- monetary penalty of between one hundred and fifty and two hundred and fifty shares.

Illegal waste trafficking (Article 259(1) of Legislative Decree 152/2006)

The offence is committed when a cross-border shipment of waste constitutes illegal trafficking in violation of applicable EC Regulations.

Penalties applicable to the Entity:

- monetary penalty of between one hundred and fifty and two hundred and fifty shares.

Organised activities for the illegal trafficking of waste (Article 260 of Legislative Decree No. 152/2006)[76]

The offence is committed if:

- in order to obtain an unjust profit, by means of several operations and through the setting up of means and continuous organised activities, sells, receives, transports, exports, imports, or in any case illegally manages large quantities of waste (Article 260(1) of Legislative Decree 152/2006);
- the preceding conduct concerns high-level radioactive waste (Article 260(2) of Legislative Decree 152/2006).

Lastly, Legislative Decree No. 21/2018, introducing provisions to implement the principle of code reservation in criminal matters, repealed Article 260 of Legislative Decree No. 152/2006.

Following the amendment, the repealed offence does not lose criminal relevance but is regulated within the criminal code in Article *452-quaterdecies*.

Penalties applicable to the Entity

- Monetary sanctions ranging from three hundred to five hundred shares in the case provided for in paragraph 1 and from four hundred to eight hundred shares in the case provided for in paragraph 2;

[76] Recall to be understood as referring to Article *452-quaterdecies of* the Criminal Code pursuant to Article 7 of Legislative Decree No. 21 of 1 March 2018.

- definitive disqualification from exercising the activity if the entity or one of its organisational units is permanently used for the sole or predominant purpose of enabling or facilitating the commission of the offences referred to above.

Offences concerning emissions into the atmosphere (Article 279 of Legislative Decree No. 152/2006)

The offence is committed if, in the operation of an establishment, the emission limit values or the prescriptions laid down in the authorisation, in Annexes I, II, III or V to Part Five of Legislative Decree No. 152/2006, in the plans and programmes or in the regulations referred to in Article 271 of the decree or in the prescriptions otherwise imposed by the competent authority are violated, exceeding the air quality limit values laid down by the legislation in force.

Penalties applicable to the Entity:

- monetary penalty of up to two hundred and fifty quotas.

Offences relating to the protection of endangered animal and plant species (Law No. 150/1992)

The offence is committed if:

- (Art. 1(1)) anyone in breach of the provisions of Regulation (EC) No 338/97 for specimens belonging to species listed in Annex A of the Regulation:
  a) imports, exports or re-exports specimens, under any customs procedure, without the required certificate or permit, or with an invalid certificate or permit;
  b) fails to observe the requirements for the safety of specimens specified in a permit or certificate issued in accordance with Regulation (EC) No. 338/97 and Regulation (EC) No. 939/97;
  c) uses the aforementioned specimens in a manner contrary to the prescriptions contained in the authorisation or certification measures;
  d) transports or causes to be transported, also for third parties, specimens without the prescribed permit or certificate issued in accordance with Regulation (EC) No. 338/97 and Regulation (EC) No. 939/97;
  e) trades artificially propagated plants contrary to the requirements laid down on the basis of Article 7(1)(b) of Regulation (EC) No. 338/97 and Regulation (EC) No. 939/97;
  f) holds, uses for profit, buys, sells, exhibits or holds for sale or commercial purposes, offers for sale or otherwise disposes of specimens without the prescribed documentation;
- (Article 1(2)): with reference to the aforementioned offences, in the event of recidivism, the penalty is imprisonment from 1 to 3 years and a fine ranging from EUR thirty thousand to EUR three hundred thousand. If the aforementioned offence is committed in the exercise of business activities, the conviction is followed by the suspension of the licence from a minimum of six months to a maximum of two years;
- (Art. 2(1)) anyone who, in breach of the provisions of Regulation (EC) No 338/97, for specimens belonging to species listed in Annexes B and C of the Regulation:
  a) imports, exports or re-exports specimens, under any customs procedure, without the required certificate or permit;
  b) fails to observe the requirements for the safety of specimens specified in a permit or certificate issued in accordance with Regulation (EC) No. 338/97 and Regulation (EC) No. 939/97;

c) uses the aforementioned specimens in a manner contrary to the requirements contained in the authorisations or certificates issued together with the import permit or subsequently certified;
d) transports or causes to be transported, even for third parties, specimens without the prescribed permit or certificate;
e) trades artificially propagated plants contrary to the requirements laid down on the basis of Article 7(1)(b) of Regulation (EC) No. 338/97 and Regulation (EC) No. 939/97;
f) holds, uses for profit, buys, sells, exhibits or holds for sale or commercial purposes, offers for sale or otherwise disposes of specimens without the prescribed documentation;

- (Article 2(2)): with reference to the aforementioned offences, in the event of recidivism, the penalty is imprisonment from six months to 18 months and a fine ranging from EUR 20,000 to EUR 200,000. If the aforementioned offence is committed in the exercise of business activities, the conviction is followed by 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 a forged, falsified or invalid certificate or permit, or one that has been altered without the authorisation of the issuing body (Art. 16(1), Regulation (EC) No 338/97, point A);
- any person who makes a false statement or knowingly provides false information in order to obtain a licence or certificate (Art. 16(1), Regulation EC 338/97 (C));
- any person who uses a forged, falsified or invalid permit or certificate, or one that has been altered without authorisation, as a means of obtaining a Community permit or certificate or for any other purpose relevant to this Regulation (Art. 16 (1) Regulation EC 338/97 (D));
- anyone who omits or falsifies import notifications (Art. 16(1), Regulation EC 338/97 (E));
- falsifies or alters any licence or certificate issued in accordance with the Regulation (Art. 16(1), Regulation EC 338/97 lett. L).

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

- for breach of Articles 1(1) and 2(1) and (2), a fine of up to two hundred and fifty shares;
- for the breach of Article 1(2), a fine ranging from one hundred and fifty to two hundred and fifty shares;
- for offences under the Criminal Code referred to in Article 3-bis(1) of the same Law No. 150 of 1992 (Article 16(1), EC Regulation 338/97), respectively:
  1) a fine of up to two hundred and fifty shares, in the case of commission of offences for which the maximum penalty is one year imprisonment;
  2) a pecuniary sanction ranging from one hundred and fifty to two hundred and fifty shares, in the event of the commission of offences for which the maximum penalty is two years' imprisonment;
  3) a pecuniary sanction ranging from two hundred to three hundred shares, in the case of commission of offences for which the maximum penalty is three years imprisonment;
  4) a fine ranging from three hundred to five hundred shares, in the event of the commission of offences for which the maximum sentence is three years imprisonment.

Offences relating to the protection of stratospheric ozone and the environment (Law No. 549 of 28 December 1993)

The offence is committed if the provisions on production, consumption, import, export, possession and marketing of harmful substances set out in the applicable (EC) regulations are violated.

Penalties applicable to the Entity:

- for the offence of breach of the provisions on the cessation and reduction of the use of ozone-depleting substances provided for by Article 3(6) of Law 549/1993, a fine ranging from one hundred and fifty to two hundred and fifty quotas.

Ship-source pollution (Art. 8 and 9 Legislative Decree No. 202/2007)

The offence occurs in the case of:

- wilful spillage of polluting substances into the sea or causing such spillage (Article 8(1)).
- culpable spilling of polluting substances into the sea or causing such spills (Article 9(1)).
- malicious spilling of pollutants into the sea or causing spillage of pollutants that has caused permanent or particularly serious damage to water quality, animal or plant species or parts thereof (Article 8(2)).
- culpable spilling of pollutants into the sea or causing spillage of pollutants that has caused permanent or particularly serious damage to water quality, animal or plant species or parts thereof (Art. 9(2)).

Penalties applicable to the Entity:

- for the offences of culpable or intentional spillage of pollutant substances in the sea provided for by Articles 9, paragraph 1, and 8, paragraph 1, of the Legislative Decree no. 202/2007 and of culpable spillage of such substances that have caused serious or permanent damage to the quality of the waters, to animal or vegetable species or to parts of them, provided for by Article 9, paragraph 2 of the Legislative Decree no. 202/2007, the monetary sanction up to two hundred and fifty quotas, for the offence of wilful spillage of polluting substances into the sea which have caused serious or permanent damage to the quality of the waters, to animal or vegetable species or to parts of them, provided for by art. 8, paragraph 2 of Legislative Decree no. 202/2007, the monetary sanction from two hundred to three hundred quotas. Should the Entity or one of its organisational units be permanently utilised for the sole or prevalent purpose of enabling or facilitating the commission of the offence referred to in Art. 8, paragraph 2 of Legislative Decree no. 202/2007, the sanction of definitive disqualification from carrying out the activity pursuant to Art. 16, paragraph 3 of Legislative Decree no. 231/2001 shall apply.

THE 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 purpose of the Convention is 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 entities and companies for the offences referred to therein.
More specifically, Article 10 of the law in question provides for the extension of the Decree's rules to certain offences, where the conditions set out in Article 3 are met, i.e. where the offence can be considered transnational.
Pursuant to Article 3 of Law No. 146/06, a transnational crime is considered to be '*an offence punishable by imprisonment of not less than a maximum of four years, when an organised criminal group is involved, as well as:*

a) is committed in more than one State;
b) or 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 an organised criminal group engaged in criminal activities in more than one state is involved;
d) or is committed in one State but has substantial effects in another State'.

An '*organised criminal group*', within the meaning of the Convention, is defined as '*a structured group, existing over a period of time, consisting of three or more persons acting in concert for the purpose of committing one or more serious crimes or offences established by the Convention, in order to obtain, directly or indirectly, a financial or other material advantage*'.
With reference to the offences giving rise to the entity's administrative liability, Article 10 of Law No. 146/06 includes the following cases:

Criminal conspiracy (Article 416 of the criminal code)
The offence under consideration punishes those who promote, constitute or organise the association for the purpose of committing several offences. Even the mere fact of participating in the association constitutes an offence. The criminal relevance of the conduct described by the provision appears to be conditioned by the actual constitution of the criminal association. In fact, even before referring to the individual forms of conduct of promotion, constitution, management, organisation or mere participation, the rule subordinates punishability to the moment in which 'three or more persons' have actually associated to commit several offences. The crime of criminal association is therefore characterised by the autonomy of the incrimination with respect to any crimes subsequently committed in implementation of the *pactum sceleris*. These possible crimes, in fact, are concurrent with the crime of criminal conspiracy and, if not perpetrated, leave the crime under Article 416 of the criminal code in place. The penalty is increased if the number of associates is ten or more. If the criminal association is aimed at committing any of the offences referred to in Articles 600 (enslavement), 601 (trafficking in persons), 601-bis (trafficking in organs removed from a living person) and 602 (purchase and sale of slaves) of the Criminal Code, all'art. 12, co. 3-bis, del D.Lgs. n. 286/1998 (reati concernenti le violazioni delle disposizioni sull'immigrazione clandestina e norme sulla condizione dello straniero), nonché agli articoli 22, commi 3 e 4 e 22-bis, co. 1 (penalties relating to trafficking in organs 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 from five to fifteen years in the cases provided for in the first paragraph and from four to nine years in the cases provided for in the second paragraph shall apply. If the criminal association is aimed at committing any of the offences referred to in Articles 600-bis (child prostitution), 600-ter (child pornography), 600-quater (possession of or access to pornographic material), 600-quater-1 (virtual pornography), 600-quinquies (tourist initiatives aimed at exploiting child prostitution), 609-bis

(sexual violence), when the act is committed to the detriment of a minor of less than eighteen years of age, 609-quater (sexual acts with a minor), 609-quinquies (corruption of a minor), 609-octies (group sexual violence), when the act is committed to the detriment of a minor of less than eighteen years of age, 609-undecies (grooming of minors) c.p., imprisonment from four to eight years in the cases provided for in the first paragraph and from two to six years in the cases provided for in the second paragraph shall apply.

Penalties applicable to the Entity:

- Fine: from 400 to 1000 quotas;
- disqualifying sanctions (for a duration of no 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 in order to obtain the performance of a public service; exclusion from facilitations, 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 part of a mafia-type association consisting of three or more persons shall be punished by imprisonment of ten to fifteen years. The Article punishes those who promote or set up or organise the association with imprisonment from twelve to eighteen years. The association is mafia-type when those who are part of it make use of the intimidating force of the association bond and of the condition of subjugation and code of silence deriving therefrom to commit offences, to directly or indirectly acquire the management or control of economic activities, concessions, authorisations, tenders and public services or to realise unjust profits or advantages for themselves or others, or in order to prevent or hinder the free exercise of the vote or to procure votes for themselves or others during elections. If the association is armed, the punishment is imprisonment from twelve to twenty years in the cases provided for in the first paragraph and from fifteen to twenty-six years in the cases provided for in the second paragraph. The association shall be considered armed when the participants have the availability, for the achievement of the purpose of the association, of weapons or explosive materials, even if concealed or kept in a storage place.

Penalties applicable to the Entity:

- Fine: from 400 to 1000 quotas;
- disqualifying sanctions (for a duration of no 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 in order to obtain the performance of a public service; exclusion from facilitations, 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 foreign manufactured tobacco (Article 291-quater of Presidential Decree No. 43/73)

Criminal association for the purpose of smuggling foreign processed tobacco occurs when three or more persons associate in order to commit several of the offences provided for in Article 291-bis of the Criminal Code (which punishes anyone who introduces, sells, transports, purchases or holds in the territory of the State a quantity of smuggled foreign processed tobacco exceeding ten conventional

kilograms). Those who promote, constitute, direct, organise or finance the association are punished with imprisonment from three to eight years.

Penalties applicable to the Entity:

- Fine: from 400 to 1000 quotas;
- disqualifying sanctions (for a duration of no 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 in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

Association aimed at the illegal trafficking of narcotic and psychotropic substances (Article 74 of Presidential Decree 309/90)

The purpose of association is the illegal trafficking of narcotic or psychotropic substances when three or more persons associate in order to commit several of the offences set out in Article 73 of Presidential Decree No. 309/90 (production, trafficking and illegal possession of narcotic or psychotropic substances). Whoever promotes, sets up, directs, organises or finances the association is liable to a term of imprisonment of not less than twenty years.

Penalties applicable to the Entity:

- Fine: from 400 to 1000 quotas;
- disqualifying sanctions (for a duration of no 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 in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

Provisions against clandestine immigration (Art. 12, paras. 3, 3-bis, 3-ter, 5 Legislative Decree no. 286/98)

Article 12 of the Consolidation Act, pursuant to Legislative Decree no. 286/98, first of all provides for the offence known as aiding and abetting clandestine immigration, consisting in the act of anyone who '*in violation of the provisions of this Consolidation Act ... performs acts aimed at procuring the entry of a foreigner into the territory of the State*'. The second offence, contained in Article 12 and known as aiding and abetting clandestine emigration, consists in the act of anyone who '*carries out (...) acts aimed at procuring illegal entry into another State of which the person is not a citizen or does not have the right of permanent residence*'. The legislator provides for a higher penalty when the acts of aiding and abetting clandestine immigration or of aiding and abetting clandestine emigration are carried out 'for *the purpose of profiting, even indirectly*'.

Paragraph 3-bis of Article 12 provides for an increase in the penalties referred to in the first and third paragraphs if:

- "*the offence relates to the illegal entry or stay in the territory of the State of five or more persons;*
- *in order to procure the illegal entry or stay, the person was exposed to danger to his life or safety*;
- *in order to procure entry or illegal stay the person was subjected to inhuman or degrading treatment;*

- the offence is committed by three or more persons acting in complicity with each other or using international transport services or documents that have been forged or altered or otherwise unlawfully obtained';
- the perpetrators have the availability of weapons or explosive materials'.
Paragraph 3-ter of Article 12 provides that the penalties shall also be increased '*if the acts referred to in the third paragraph are committed with a view to recruiting persons to be assigned to prostitution or in any case to sexual exploitation, or concern the entry of minors to be employed in unlawful activities with a view to facilitating their exploitation*'.
The fifth paragraph of Article 12 provides for a further hypothesis of criminal offence, known as aiding and abetting clandestine residence, consisting in the fact of anyone who 'in order *to gain an unfair profit from the illegal status of the foreigner or within the scope of the activities punishable under this Article, favours the permanence of the latter in the territory of the State in violation of the rules of this Consolidated Text*'.
Penalties applicable to the Entity:

- Fine: 200 to 1000 quotas;
- disqualification sanctions (for a duration of no more than two years): disqualification from exercising the activity; suspension or revocation of authorisations, licences or concessions functional to the commission of the offence; prohibition from contracting with the public administration, except in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and 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 what has already been provided for in the section on offences against the Public Administration.
Penalties applicable to the Entity:

- Fine: up to 500 quotas.

Aiding and abetting (Article 378 of the criminal code)
Article 378 of the criminal code punishes the conduct of anyone who, after a crime has been committed for which the law establishes life imprisonment or imprisonment, and apart from cases of complicity in the same, aids someone to elude the investigations of the authorities or to evade their searches. The provisions of this Article shall also apply when the person aided is not chargeable or is found not to have committed the offence. It is necessary, for the commission of the offence, that the aiding conduct engaged in by the abettor is at least potentially detrimental to the investigations of the authorities.
Penalties applicable to the Entity:

- Fine: up to 500 quotas.

For the offences provided for and punished by Articles 377-bis and 378 of the Criminal Code, please refer to the provisions in the section on offences against the Public Administration.

ORGANISED CRIME OFFENCES (ART. 24-TER OF THE DECREE)

Law No. 94 of 15 July 2009 ("*Provisions on public security*") extended, with the introduction of Article 24-ter in Legislative Decree No. 231/2001, the administrative liability of entities to offences dependent on organised crime committed in the territory of the State, even if they do not have the requirement of transnationality.
The article includes the following offences:

Criminal conspiracy (Article 416 of the criminal code)
For the description of this offence, please refer to the previous paragraph.
Penalties applicable to the Entity:

- Monetary sanction: for the first five paragraphs of Article 416 of the criminal code, from 300 to 800 quotas; for the sixth paragraph of Article 416 of the criminal code, from 400 to 1,000 quotas;
- disqualifying sanctions (for a duration of no 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 in order to obtain the performance of a public service; exclusion from facilitations, 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 the description of this offence, please refer to the previous paragraph.
Penalties applicable to the Entity:

- Fine: from 400 to 1000 quotas;
- disqualifying sanctions (for a duration of no 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 in order to obtain the performance of a public service; exclusion from facilitations, 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 criminal code)[77]
The first paragraph of the incriminating provision under review punishes in the first paragraph anyone who accepts, directly or through intermediaries, the promise to procure votes from persons belonging to the associations referred to in Article 416-bis or through the methods referred to in the third paragraph of Article 416-bis in exchange for the disbursement or promise of disbursement of money or any other utility or in exchange for the willingness to satisfy the interests or needs of the mafia association. The same punishment applies to anyone who promises, directly or through intermediaries, to procure votes in the cases referred to in the first paragraph. If the person who has accepted the promise of votes, as a result of the agreement referred to in the first paragraph, is elected

[77] The incriminating provision under consideration was amended by Law No. 43 of 21 May 2019.

in the relevant election, the punishment provided for in the first paragraph of Article 416-bis shall apply, increased by half.

Penalties applicable to the Entity:

- Fine: from 400 to 1000 quotas;
- disqualifying sanctions (for a duration of no 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 in order to obtain the performance of a public service; exclusion from facilitations, 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 incriminating provision under consideration punishes anyone who kidnaps a person for the purpose of obtaining, for himself or others, an unjust profit as the price of release. If the kidnapping nevertheless results in the death, as an unintended consequence of the offender, of the kidnapped person, the offender shall be punished with thirty years' imprisonment. If the offender causes the death of the kidnapped person, the penalty shall be life imprisonment. The punishment provided for in Article 605 shall be applied to the accomplice who, dissociating himself/herself from the others, endeavours in such a way that the kidnapped person regains his/her freedom, without this result being a consequence of the price of release. If, however, the passive subject dies, as a consequence of the kidnapping, after release, the punishment shall be imprisonment for a term of six to fifteen years. With regard to the accomplice who, disassociating himself/herself from the others, takes action, outside the case provided for in the previous paragraph, to prevent the criminal activity from having further consequences, or concretely assists the police or judicial authorities in the collection of decisive evidence for the identification or capture of the accomplices, the penalty of life imprisonment shall be replaced by imprisonment of from twelve to twenty years and the other penalties shall be reduced by from one third to two thirds.

Penalties applicable to the Entity:

- Fine: from 400 to 1000 quotas;
- disqualification sanctions (for a duration of no 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 in order to obtain the performance of a public service; exclusion from facilitations, 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 the description of this offence, please refer to the previous paragraph.

Penalties applicable to the Entity:

- Fine: from 400 to 1000 quotas;
- disqualification sanctions (for a duration of no 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 in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

Illegal manufacture, introduction into the State, offering for sale, transfer, possession and carrying in a public place or a place open to the public of weapons of war or warlike weapons or parts thereof, explosives, clandestine weapons as well as several common firing weapons (Article 407(2)(a)(5) of the Code of Criminal Procedure)

Article 24 ter of the Decree also refers, as predicate offences, to the offences of unlawful manufacture, introduction into the State, sale, transfer, possession and carrying in a public place or a place open to the public of weapons of war or warlike weapons or parts thereof, explosives, clandestine weapons, as well as more common firing weapons, excluding those referred to in Article 2(3) of Law No. 110 of 18 April 1975.

Penalties applicable to the Entity:

- Fine: 300 to 800 quotas;
- disqualification sanctions (for a duration of no 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 in order to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted; prohibition from advertising goods or services.

CRIMES OF COUNTERFEITING COINS, PUBLIC CREDIT CARDS, REVENUE STAMPS AND IDENTIFICATION INSTRUMENTS OR SIGNS (ARTICLE 25-BIS, LEGISLATIVE DECREE NO. 231/2001)

Article 6 of Legislative Decree No. 350 of 25 September 2001, converted into law, with amendments, by Law No. 409 of 23 November 2001, included in Article 25-bis of Legislative Decree No. 231/2001 the offences described below.

Counterfeiting of money, spending and introduction into the State, in concert, of counterfeit money (Article 453 of the criminal code)

The regulation punishes the counterfeiting, i.e. the altering of coins (national or foreign), the introduction into the State of altered or counterfeit coins, the purchase of counterfeit or altered coins with a view to their being put into circulation, the undue manufacture of quantities of coins in excess of the prescriptions[78] .

Penalties applicable to the Entity

- Fine: 300 to 800 quotas;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing,

[78] Legislative Decree No. 125/2016 amended Article 453 of the Criminal Code by adding after the first paragraph the following: "*The same punishment shall apply to anyone who, legally authorised to produce, unduly manufactures, by misusing the instruments or materials at his disposal, quantities of coins in excess of the prescriptions. The punishment shall be reduced by one third when the conduct referred to in the first and second paragraphs relates to coins not yet legal tender and the initial term thereof is determined.*"

contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

Alteration of currency (Article 454 of the criminal code)

The provision punishes anyone who alters coins by diminishing their value in any way, or who, with respect to the coins thus altered, commits one of the acts referred to in the preceding Article.

Penalties applicable to the Entity

- Fine: up to 500 quotas;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

Spending and introduction into the State, without concert, of counterfeit money (Article 455 of the criminal code)

The provision punishes anyone who, outside the cases provided for in the preceding articles, introduces into the territory of the State, acquires or holds counterfeit or altered currency for the purpose of spending it or otherwise putting it into circulation.

Penalties applicable to the Entity

- Monetary sanction: the monetary sanctions provided for in Articles 453 and 454 of the Criminal Code, reduced by one third to one half;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

Spending of counterfeit currency received in good faith (Article 457 of the criminal code)

The provision punishes those who spend or otherwise put into circulation counterfeit or altered coins received in good faith.

Penalties applicable to the Entity

- Fine: up to 200 quotas.

Forgery of revenue stamps, introduction into the State, purchase, possession or putting into circulation of forged revenue stamps (Article 459 of the Criminal Code)

The provision punishes the conduct set out in Articles 453, 455 and 457 of the Criminal Code also in relation to the counterfeiting or alteration of revenue stamps and the introduction into the territory of the State, purchase, possession and putting into circulation of counterfeit revenue stamps.

Penalties applicable to the Entity

- Monetary sanction: the monetary sanctions provided for in Articles 453, 455, 457 and 464(2) of the Criminal Code, reduced by one third;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing,

contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

Counterfeiting watermarked paper in use for the manufacture of public credit cards or stamps (Article 460 of the criminal code)

The provision punishes the counterfeiting of watermarked paper used for the manufacture of public credit cards or stamps, as well as the purchase, possession and sale of such counterfeit paper.

Penalties applicable to the Entity

- Fine: up to 500 quotas;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

Manufacture or possession of watermarks or instruments intended for the counterfeiting of money, revenue stamps or watermarked paper (Article 461 of the Criminal Code)[79]

The provision punishes the manufacture, purchase, possession or disposal of watermarks, computer instruments, or instruments intended exclusively for the counterfeiting or alteration of currency, revenue stamps or watermarked paper, as well as holograms or other components of currency intended for protection against counterfeiting or alteration.

Penalties applicable to the Entity

- Fine: up to 500 quotas;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

Use of counterfeit or altered stamps (Article 464 of the Criminal Code)

The provision punishes the use of forged or altered stamps, even if received in good faith.

Penalties applicable to the Entity

- Fine: up to 200 quotas.

Law No. 99/2009, laying down '*Provisions for the development and internationalisation of enterprises, as well as on energy*', amended the heading of Article 25-bis of the Decree, adding a reference to forgery of instruments or signs of recognition, and inserting in it the offences referred to in Articles 473 and 474 of the Criminal Code, set out below.

Counterfeiting, alteration or use of trademarks or distinctive signs or of patents, models and designs (Article 473 of the criminal code)

[79] Legislative Decree No. 125/2016 amended Article 461, first paragraph of the Criminal Code to the following effect: *"1) after the word: 'programmes' the following shall be inserted: 'and data'; 2) the word: 'exclusively' shall be deleted"*.

The provision punishes the counterfeiting or alteration of trademarks or distinctive signs, national or foreign, of industrial products, or the use of such counterfeited or altered trademarks or signs.
The provision also punishes the counterfeiting or alteration of industrial patents, designs or models, whether domestic or foreign, or the use of such counterfeit or altered patents, designs or models.
The offences provided for 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 complied with.
The offence referred to in Article 473 of the Criminal Code takes the form of a crime of concrete danger, since the integration of the objective element of the offence does not require the actual damage to public faith, but rather requires the specific offensive attitude of the conduct, i.e. the actual risk of confusion for the generality of consumers. The registration of the trade mark/patent, according to domestic rules, Community and international regulations, constitutes an essential element for the integration of the offence.
Penalties applicable to the Entity

- Fine: up to 500 quotas;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

Introduction into the State and trade of products with false signs (Article 474 of the Criminal Code)

The provision punishes, apart from cases of complicity in the offences provided for in Article 473, the introduction into the territory of the State, in order to make a profit, of industrial products with counterfeit or altered trademarks or other distinctive signs, whether national or foreign.
The provision also punishes, apart from cases of aiding and abetting counterfeiting, the alteration, introduction into the territory of the State, holding for sale, offering for sale or otherwise putting into circulation, for the purpose of profiting therefrom, of products referred to in the first paragraph.
The offences provided for 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 complied with.
The case referred to in Article 474 of the criminal code is subsidiary to that of Article 473 of the criminal code, i.e., only those who are not complicit in the counterfeiting may be liable for the introduction into the State or the placing on the market. For punishability there must be a specific intent represented by the profit, and a generic intent relating to awareness of the counterfeiting of another person's trade mark.
Penalties applicable to the Entity

- Fine: up to 500 quotas;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

CRIMES AGAINST INDUSTRY AND TRADE (ARTICLE 25-BIS.1 OF LEGISLATIVE DECREE NO. 231/2001)

Article 15 of Law No. 99 of 23 July 2009 amended Article 25-bis and inserted Article 25-bis.1 into Legislative Decree No. 231/2001, which extends the criminal liability of legal persons to the offences provided for in the articles described below.

Disturbing the freedom of industry and trade (Article 513 of the criminal code)
The provision punishes those who, unless the act constitutes a more serious offence, use violence against property or fraudulent means to prevent or disrupt the operation of an industry or trade. The offence alternatively provides for the use of violence against things or fraudulent means to prevent or disrupt the exercise of an industry or trade. The conduct must be aimed at hindering or disturbing an industry or trade; therefore, the offence is an advance offence, since it is not necessary for its completion that the hindrance or disturbance be actually achieved, provided that the conduct is abstractly suitable for achieving the result.
Penalties applicable to the Entity

- Fine: up to 500 quotas.

Unlawful competition with threats and violence (Article 513-bis of the Criminal Code)
The provision punishes anyone who, in the exercise of a commercial, industrial or production activity, engages in acts of competition with violence or threats. The legal asset protected by the rule consists in the proper functioning of the entire economic system, in order to prevent the very prerequisites of fair competition from being jeopardised through violent or intimidating conduct.
Penalties applicable to the Entity

- Fine: up to 800 quotas;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

Fraud against national industries (Article 514 of the criminal code)
The provision punishes those who sell or otherwise put into circulation, on domestic or foreign markets, industrial products with counterfeit or altered names, trade marks or distinctive signs, which cause damage to domestic industry. This offence is aimed at protecting the economic order and, more specifically, national production. The harm to the national industry may take the form of any form of injury, whether in the form of loss of profit or consequential damage (i.e. loss of business in Italy or abroad, failure to increase business, tarnishing of the good name of the industry in relation to the product in question or to fair trading).
Penalties applicable to the Entity

- Fine: up to 800 quotas;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing,

contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

Fraud in the exercise of trade (Article 515 of the criminal code)

The provision punishes anyone who, in the exercise of a commercial activity or in a shop open to the public, delivers to the purchaser a movable item for another, or a movable item by origin, provenance, quality or quantity other than that stated or agreed, unless such conduct constitutes a more serious offence.

The offence, therefore, concerns the so-called delivery of *aliud pro alio*, i.e. of one thing for another.

The protected good is the fairness of trade.

The offence in question is perfected by the delivery of the movable, delivery being understood to mean not only the *traditio* of the thing but also the mere giving of the document representing it (consignment note, pledge policy) when civil law or commercial usage equates the delivery of the document with *traditio*.

Penalties applicable to the Entity

- Fine: up to 500 quotas.

Sale of non-genuine foodstuffs as genuine (Article 516 of the criminal code)

The interest protected by this rule is again good faith in trade. The term 'genuineness' is understood to mean, on the one hand, the conformity of the product with the legal requirements of the sector regulations and, on the other hand, the integrity and non-alteration of the substantial characteristics of the good.

Awareness of the non-genuineness of the substance and the intention to present it as genuine is required for the offence to be committed.

Penalties applicable to the Entity

- Fine: up to 500 quotas.

Sale of products with misleading signs (Article 517 of the Criminal Code)

The provision punishes the conduct of possession for sale[80], offering for sale or otherwise circulating intellectual works or industrial products with names, trademarks or distinctive signs, whether domestic or foreign, designed to mislead the buyer as to the origin, source or quality of the work or product.

This provision differs from the preceding offences under Articles 473 and 474 of the Criminal Code, in that it punishes conduct relating to trademarks/distinctive signs which, while not imitating other registered trademarks/distinctive signs, are nevertheless likely to mislead consumers. Therefore, the protected interest is not the protection of trademarks but the protection of consumers.

In order for the offence in question to be committed, the imitated product must be misleading, i.e. the product must be able to mislead the consumer of average diligence, and it is not relevant whether the consumer is actually harmed (case of concrete danger).

Penalties applicable to the Entity

[80] Conduct added by Art. 52 of Law Dec. 27, 2023 No. 206 on "Organic provisions for the valorization, promotion and protection of made in Italy."

- Fine: up to 500 quotas.

Manufacture of and trade in goods made by usurping industrial property rights (Article 517-ter of the Criminal Code)

The provision punishes the person who, being aware of the existence of the industrial property title, manufactures or industrially uses objects or other goods made by usurping an industrial property title or in violation thereof or who, in order to make 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 can be committed when the cases referred to in Articles 473 and 474 of the Criminal Code are excluded. The legal asset protected by the provision relates to the right of exploitation of industrial property rights, i.e. trademarks and other distinctive signs, geographical indications, appellations of origin, designs and models, inventions, utility models, topographies of semiconductor products, confidential business information. The conduct of 'usurpation' occurs when the agent is not the owner of any right to the thing and manufactures/markets the good anyway; on the other hand, there is 'infringement of title' when the rules on the existence, scope and exercise of industrial property rights set out in Chapter II of the Industrial Property Code (Legislative Decree No. 30 of 10 February 2005) are not complied with.

Penalties applicable to the Entity

- Fine: up to 500 quotas.

Counterfeiting of geographical indications or designations of origin of agri-food products (Article 517-quater of the criminal code)

The provision punishes the counterfeiting or alteration of geographical indications or designations of origin of agri-food products; that is, the introduction into the territory of the State, the holding for sale, the offering for sale with a direct offer to consumers and the putting into circulation, for profit, of products with counterfeit indications or designations. The offences in question are punishable provided that the rules of domestic laws, EU regulations and international conventions on the protection of geographical indications and designations of origin of agri-food products have been complied with.

Penalties applicable to the Entity

- Fine: up to 500 quotas.

COPYRIGHT INFRINGEMENT OFFENCES (ARTICLE 25-NOVIES OF LEGISLATIVE DECREE NO. 231/2001)

Law No. 99 of 23 July 2009, setting forth '*Provisions for the development and internationalisation of enterprises as well as in the field of energy', known as the 'Development-Energy Law*', in force since 15 August 2009, made a further addition to the *corpus of* Legislative Decree No. 231/2001, introducing Art. 25-novies, which extends the Entity's administrative liability to the offences covered by Law 633/41 on the "*protection of copyright and other rights related to its exercise*", with specific reference to the provisions of the following articles: Article 171, paragraph 1, letter a-bis) and paragraph 3, Law 633/1941); Article 171-bis Law 633/1941; Article 171-ter Law 633/1941; Article 171-septies Law 633/1941; Article 171-octies Law 633/1941.

Article 171(1)(a-bis) and (3) (L. No. 633/1941)

The provision punishes the conduct of making available to the public, through the entry of a protected intellectual work or part thereof into a system of telematic networks and through connections of any kind. This rule protects the patrimonial interest of the author of the work, who could see his expectations of profit frustrated in the event of free circulation of his work on the network.

Penalties applicable to the Entity

- Fine: up to 500 quotas;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

Article 171-bis (L. No. 633/1941)

The provision punishes anyone who unlawfully duplicates, for the purpose of gain, computer programmes or for the same purposes imports, distributes, sells, holds for commercial or entrepreneurial purposes or leases programmes contained on media not marked by the Italian Authors' and Publishers' Association (SIAE); or who, for the purpose of gain, on media not marked by the SIAE reproduces, transfers to another medium, distributes, communicates, presents or demonstrates in public the contents of a database in violation of the provisions of Articles 64-quinquies and 64-sexies, or performs the extraction or reuse of the database in violation of the provisions of Articles 102-bis and 102-ter, or distributes, sells or rents a database.

This provision is intended to protect software and databases under criminal law. By 'software', we mean computer programs, in whatever form they are expressed, provided they are original, as a result of the author's intellectual creation; whereas by 'databases', we mean collections of works, data or other independent elements, systematically or methodically arranged and individually accessible by electronic means or otherwise.

Penalties applicable to the Entity

- Fine: up to 800 quotas;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

Article 171-ter (L. No. 633/1941)

This provision is aimed at protecting a large number of original works, whether they are intended for the radio, television and film circuits, or musical, literary, scientific or educational works. The conditions of punishability concern the non-personal use of the intellectual work and the specific intent to make a profit.

Article 3 of Law no. 93 of 14 July 2023 laying down "*Provisions for the prevention and suppression of the unlawful distribution of copyright protected content through electronic communication networks*" amended para. 1 of Article 171-ter of Law no. 633/1941, introducing the letter h-bis), which punishes anyone who '*unlawfully, even in the manner 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, performs the fixation on digital, audio, video or audiovideo media, in whole or in part, of a*

cinematographic, audiovisual or editorial work or performs the reproduction, performance or communication to the public of the fixation unlawfully performed'.

Penalties applicable to the Entity

- Fine: up to 800 quotas;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

Article 171-septies (L. No. 633/1941)

The rule punishes producers or importers of media not subject to the marking referred to in Article 181-bis, who do not communicate to the SIAE within thirty days from the date of placing on the market in the national territory or of importation the data necessary for the unambiguous identification of the media themselves; or anyone who falsely declares the fulfilment of 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, with a view to the advance protection of copyright. It is therefore an offence of obstruction that is consummated by the mere violation of the duty to communicate.

Penalties applicable to the Entity

- Fine: up to 800 quotas;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

Article 171-octies (L. No. 633/1941)

The provision punishes whoever, for fraudulent purposes, produces, offers for sale, imports, promotes, installs, modifies, uses for public and private use apparatuses or parts of apparatuses suitable for decoding audiovisual transmissions with conditional access made via the airwaves, via satellite, via cable, in both analogue and digital form. Conditional access means all audiovisual signals transmitted by Italian or foreign broadcasters in such a form as to make them visible exclusively to closed groups of users selected by the entity broadcasting the signal, irrespective of the imposition of a fee for the use of such service.

Penalties applicable to the Entity

- Fine: up to 800 quotas;
- disqualification sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

TRIBUTARY OFFENCES (ARTICLE 25-QUINQUIESDECIES OF THE DECREE)

Law No. 157 of 19 December 2019, converting with amendments Decree-Law No. 124/2019 on "*Urgent provisions on tax matters and for unavoidable needs*", published in the Official Gazette No. 301 of 24 December 2019, provides for, among the various "*amendments to the criminal regulations and the administrative liability of entities*", the introduction into the catalogue of predicate offences of Legislative Decree No. 231/2001, of the following incriminating cases:

- '*fraudulent declaration using invoices or other documents for non-existent transactions*' (Article 2(1) and (2-bis) of Legislative Decree No. 74/2000);
- '*fraudulent declaration by means of other artifices*' (Article 3 of Legislative Decree No. 74/2000);
- "*issue of invoices or other documents for non-existent transactions*" (Article 8(1) and (2-bis) of Legislative Decree No. 74/2000);
- '*concealment or destruction of accounting documents*' (Article 10 of Legislative Decree No. 74/2000);
- '*fraudulent evasion of tax*' (Article 11 of Legislative Decree No. 74/2000).

More specifically, the aforementioned law inserts into Decree 231 Article *25-quinquiesdecies*, entitled "*Tax offences*".

Subsequently, on 15 July 2020, Legislative Decree No. 75 of 14 July 2020 was published in the Official Journal (No. 177), on '*Implementation of Directive (EU) 2017/1371 on the fight against fraud affecting the financial interests of the Union by means of criminal law*.', which entered into force on 30 July 2020.

The main changes introduced with the issuance of the aforementioned Decree, as far as it is relevant here, concern:

- the amendment of Article 6 of Legislative Decree No. 74/2000, which in the new version also punishes as attempted tax offences the tax offences referred to in Articles 2 ("*Fraudulent declaration by use of invoices or other documents for non-existent transactions")*, 3 ("*Fraudulent declaration by other means*") and 4 ("*Unfaithful declaration*"), if carried out also in the territory of another European Union Member State, in order to evade value added tax for a total value of not less than ten million euro;
- 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 ("*Omitted declaration*") 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 no less than ten million euro.

Most recently, Legislative Decree No. 156 of 4 October 2022, setting forth "*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 by means of criminal law*" amended the rules of Article 6 ("Attempt") of Legislative Decree No. 74/2000 and Article 25-quinquiesdecies of Legislative Decree No. 231/2001 ("Tax offences").

It should be noted, in general terms, that the breach of the obligation to truthfully disclose the income situation and taxable amounts is the basis, in particular, of three types of offences provided for by Legislative Decree No. 74/2000, which constitute the infrastructure of the repressive system: fraudulent declaration by means of invoices or other documents for non-existent transactions (Article 2) or by means of other devices (Article 3), hypotheses relating to declarations that are not only false but also characterised by a particular 'insidiousness' coefficient; untrue declarations (Article 4); fraudulent declarations (Article 4); fraudulent declarations by means of other documents (Article 4);

fraudulent declarations by means of other devices (Article 4). 2) or by means of other devices (Article 3), hypotheses relating to declarations that are not only false, but also characterised by a particular coefficient of 'insidiousness'; the unfaithful declaration (Article 4) and, finally, the omitted declaration (Article 5).
These offences are flanked by three 'collateral' offences, of equally significant detrimental capacity, aimed at targeting the issuance of invoices or other documents for non-existent transactions in order to allow third parties to evade (Article 8), the concealment or destruction of accounting documents so as not to allow the reconstruction of income or turnover (Article 10) and, finally, the evasion of forced tax collection by carrying out fraudulent acts on one's own or other people's property (Article 11).
With a view to limiting the use of criminal sanctions, the above-mentioned offences remain subject - with the exception of those of fraudulent declaration by means of invoices or other documents for non-existent transactions, issuance of such documents and concealment or destruction of accounting records - to punishability thresholds suitable for limiting punitive intervention to only offences of significant economic importance.

Fraudulent declaration through the use of invoices or other documents for non-existent transactions

The offence in question is provided for and punished by Article 2, Legislative Decree No. 74/2000. [81]

This provision is aimed at punishing anyone who, in order to evade income tax or value added tax, using invoices or other documents for non-existent transactions, indicates fictitious taxable items in one of the declarations relating to these taxes.
The case in question was introduced by the 2000 criminal-tax reform and implements a real inversion of course compared to the previous legislation, assuming, as a strategic objective, that of limiting criminal repression only to facts directly related, both objectively and subjectively, to the damage to tax interests, with the related renunciation of the criminalisation of merely 'formal' and 'preparatory' violations.
As in the case of the other offences under Legislative Decree No. 74/2000, the legal asset protected by the case under review coincides with the interest of the Treasury in the collection of taxes, unlike the provisions of the previous law of 1982, which mainly protected the interest of the Revenue in the proper performance of tax assessment actions.
The active party in the offence can only be a person who is a taxpayer for the purposes of direct taxes and VAT, or is a director, liquidator or representative of companies, bodies or natural persons or a tax substitute, in the cases provided for by law (Article 1(1)(c) of Legislative Decree No. 74/2000).
Article 2 of Legislative Decree No. 74/2000 also configures an offence of danger or of mere conduct, the legislator having intended to strengthen the protection of the protected legal asset, anticipating it at the time of the commission of the typical conduct (Criminal Court of Cassation, SS.UU., 19 January 2011, judgment No. 1235).

[81] "*1. A term of imprisonment from four to eight years shall be imposed on any person who, in order to evade taxes on income or value added tax, using invoices or other documents for non-existent transactions, indicates fictitious taxable items in one of the declarations[81] relating to such taxes. 2. The offence shall be deemed to have been committed by availing oneself of invoices or other documents for non-existent transactions when such invoices or documents are recorded in the compulsory accounting records, or are held for the purpose of providing evidence against the tax authorities. 2-bis If the amount of the fictitious passive elements is less than one hundred thousand euro, imprisonment from one year and six months to six years shall apply*".

With specific regard to the subjective element, the offence is punishable by specific intent since it is characterised by the purpose of evading income or value added tax.
The offence therefore occurs both when the declaration is used to reduce the tax paid at the same time (or to reduce it to zero) and when the declaration is used to justify a credit position vis-à-vis the tax authorities.
The untrue declaration must be supported by the full knowledge of the non-existence of the passive transactions taken into account to determine the final result set forth therein as well as by the intention to use them instrumentally in representing that false declared result as corresponding to impeccable accounting.
Moreover, the offence in question is an instantaneous offence and is committed at the time the tax return is filed (Criminal Court of Cassation, Sec. II, 2 November 2010, no. 42111).
Indeed, the preparation and registration of documents attesting to non-existent transactions are merely preparatory conduct and are not punishable, not even by way of attempt, by express provision of the legislature: '*the offences provided for in Articles 2, 3 and 4 are in any case not punishable by way of attempt*' (Article 6, Legislative Decree No. 74/2000).[82]
On this point, it should be reiterated that the new version of Article 6 of Legislative Decree No. 74/2000 punishes the tax offences set out in Articles 2 ("*Fraudulent declaration by means of invoices or other documents for non-existent transactions*"), 3 ("*Fraudulent declaration by means of other artifices*") and 4 ("*Untrue declaration*"), if committed as part of cross-border fraudulent schemes, connected to the territory of at least one other European Union Member State, in order to evade value added tax for a total value of ten million euro or more.[83]
On the other hand, as regards the definition of invoice or document issued for non-existent transactions, this is provided by subparagraph (a) of Article 1 of Legislative Decree No. 74/2000, according to which "invoices *or other documents for non-existent transactions are invoices or other documents of similar probative value under tax law, issued in respect of transactions not actually carried out in whole or in part or which indicate the consideration or value added tax in excess of the actual amount, or which refer the transaction to persons other than the actual persons*.
With regard to the subsidiary relationship between Article 2 and Article 3 of Legislative Decree no. 74/2000, the Supreme Court has clarified that the distinguishing element between the two offences is to be found in the probative effectiveness of the invoices or other documents for non-existent transactions used for the fraudulent declaration in the presence of which the offence under Article 2 rather than that *under* Article 3 is committed (Cass., Sez. III, 19 December 2011 no. 46785 and 23 March 2007 no. 12284).
It is also considered, also on the basis of the considerations set out in Report No. III/05/2015 of 28 October 2015 of the Office of the Supreme Court of Cassation, that the criterion for the attractiveness

[82] On the point at issue, with judgment No. 21025 filed on 21 May 2015, the Supreme Court of Cassation ruled that the mere performance of preparatory and prodromal acts with respect to the submission of the return (such as the preparation of the accounting records and the annotation of false invoices in the same), even if functional to the commission of the offence proper, cannot be equated with the typical conduct. On the contrary, the very general approach of the criminal tax legislation, as referred to above, makes it necessary to exclude that such conduct, considered per se, can have criminal relevance. With respect to this offence (of mere conduct, of an instantaneous and damaging nature), it is nevertheless configurable that a person who, despite being an outsider and not holding an office in the company to which the declaration refers, has in any way instigated or determined the person, required to submit the declaration, to carry out the typical action, may be complicit. Therefore, the person who simply holds the invoices relating to fictitious transactions issued by others or records them in the accounts without transferring the results to the declaration cannot be held criminally liable even on the grounds of attempt.
[83] Article 4 of Legislative Decree No. 156/2022 introduced an amendment to the rules on attempt. For a comment on the aforesaid conditions, please refer to the section devoted to the examination of the offence of false declaration.

of the fraudulent transaction to the scope of one or other offence lies in the type of fictitious documentation used.

The very literal wording of Article 3 - the incipit of which states "*Outside the cases provided for by Article 2*" - in fact argues in favour of a logical path which implies first of all the verification of the possible relevance of the transaction identified to the case typified by Article 2, on the basis of the existence or otherwise of "*invoices or other documents having similar probative value*" and then, if not, to that of Article 3.

In the light of the above-mentioned regulatory definition, it therefore emerges that:

- In addition to invoices, other tax-relevant documents (receipts, notes, bills, contracts, transport documents, debit and credit notes) may also constitute the offence;
- the falsity[84] of these documents is relevant both objectively and subjectively.

An invoice is objectively false when it documents transactions that were not actually performed in whole or in part.

More specifically, an objectively non-existent transaction occurs in two cases:

- when the invoices document a transaction that was never fully realised (so-called absolute or total objective non-existence);
- when the invoices document a transaction that was never realised only in part, i.e. in terms of quantities different and lower than those represented on paper (relative or partial objective non-existence).

In the aforementioned hypotheses, the transaction, although totally or partially non-existent in material terms, enables the user to obtain an undue tax advantage (for both direct tax and VAT purposes), through the indication in the relevant declarations of fictitious taxable items, which will ensure that he minimises his income.

A subjectively non-existent invoice[85] , on the other hand, occurs when the documented transactions have taken place between persons other than those formally identified as parties to the transaction.

This is because even the false indication of the issuer and/or recipient of the invoice invalidates the truthfulness of the documentary evidence of the transaction, allowing the user to deduct costs actually incurred or to deduct VAT on transactions that were never carried out and, nevertheless, not documented or not officially documentable for various reasons.

This circumstance occurs most frequently in the case of VAT fraud, in the context of which there are entities that operate only on a 'paper' level, as they have no economic function.[86]

The second paragraph of Article 2 also intervenes to delimit the contours of the offending conduct, with the obvious aim of avoiding interpretative doubts connected in particular with the fact that there is no obligation to enclose with the declaration the documentation justifying the fictitious elements, specifying that the act is deemed to have been committed, by availing oneself of invoices or other

[84] The offence of "tax fraud" provided for in Article 2 of Legislative Decree No. 74/2000 occurs whenever the taxpayer, in order to make a fraudulent declaration, makes use of invoices or other documents certifying transactions that were not actually carried out, regardless of whether the falsity is ideological or material. (see in this sense Cass. Pen., judgment no. 6360 of 11 February 2019)

[85] The case of 'interposition', whether 'fictitious' or 'real', falls within the scope of subjective non-existence. The first figure occurs when the transaction has in fact taken place, but between persons other than those declared, and all the parties to it want the effects of the transaction to be produced vis-à-vis a person other than the one who appears in the deed. Fictitious interposition exists, therefore, when the parties have actually put a transaction in place, but the latter has been the subject of what, in civil law terms, is called subjective relative simulation (which occurs when a factual agreement other than the one resulting *ex contractu has been made* between the parties, so as to disguise the actual contracting party). Real interposition, on the other hand, occurs when the effects of the sale are actually produced in the hands of the purchaser and, therefore, there is no simulative agreement. Therefore, in order for there to be criminally relevant tax effects, it is necessary for a third person to enter into a subsequent transfer transaction in favour of another person. In real interposition, therefore, it is the interposed person who is the party liable for the tax liability, which arises from the 'fact-presumed fact' which in turn originates from the completion of the legal transaction with the third party; on the other hand, in fictitious interposition, it is the interposed person who is the party liable for the relevant tax liability.

[86] Cf. in this sense the "*Operational Manual on Countering Tax Evasion and Fraud*" No. 1/2018, Volume I, p. 10, of the GdF.

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.[87]
Lastly, it is necessary to analyse a further distinctive element of the offence provided for and punished by Article 2 of Legislative Decree No. 74/2000, namely the applicability of the same regardless of a threshold of tax evasion and therefore regardless of the amount of tax evaded.
The Constitutional Court recently pronounced on this point in Judgment No. 95 of 2019.
In particular, the *a quo* court had noted that Article 2 does not provide for any threshold of punishability, unlike the offence of fraudulent declaration by means of other artifices (Article 3 of Legislative Decree No. 74 of 2000) which instead provides for two separate thresholds: one referring to the amount of tax evaded, the other to the total amount of the assets evaded from taxation, or of the fictitious credits and deductions deducting tax.
The Court declared the question of constitutional legitimacy unfounded on the basis of the following arguments: first, it stated that the definition of criminal offences and the determination of the penalty were matters entrusted to the legislature's discretion, the choices of which could be censured, in the context of a review of constitutional legitimacy, only if they bordered on manifest unreasonableness or arbitrariness.
Thus, 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 insidious for the interests of the Treasury: this is precisely false invoicing intended to prove transactions that have not been carried out in whole or in part - either at all, or by the persons to whom they are referred - or with 'inflated' consideration or VAT, in order to obtain an undue deduction of costs or tax deduction by the taxpayer.
The legislature's intention to rigorously combat the phenomenon is manifested, in the Court's view, in the failure to provide for punishment thresholds for the crime.
This also applies to direct taxes, however, as the invoice (or the equivalent document) plays an important role, constituting the typical instrument by means of which the taxpayer certifies his right to deduct items of expenditure from his tax base or to make deductions from the tax, in accordance with the provisions of tax legislation or to take advantage of any tax credits.
The Constitutional Court therefore did not regard as arbitrary the legislative choice to reserve to this case a distinct and stricter treatment than that envisaged in relation to the generality of the other devices covered by Article 3 of Legislative Decree No. 74 of 2000.
Penalties applicable to the Entity

- Monetary sanction: up to 500 quotas for para. 1 and up to 400 quotas for para. 2-bis; however, if the Entity has obtained a significant profit, the monetary sanction is increased by one third;
- disqualifying sanctions: the prohibition to contract with the public administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted; the prohibition to advertise goods or services.

Fraudulent declaration by means of other artifices

[87] Cf. in this sense the "*Operational Manual on Countering Tax Evasion and Fraud*" No. 1/2018, Volume I, p. 152, of the GdF.

The offence in question is provided for and punished by Article 3, Legislative Decree No. 74/2000.[88] It is a residual offence with respect to the offence set out in Article 2[89] , which the 2015 reform intended to extend by eliminating the former requirement of "*false representation in* compulsory *accounting records*"[90] , with a now biphasic structure[91] :

- execution of '*objectively or* subjectively *simulated*' transactions[92] or use of false documents or other fraudulent means likely to obstruct the assessment and mislead the tax authorities (requirements to be regarded as alternative, the occurrence of only one of them being sufficient for the purposes of configuring the offence);
- submission of an untrue declaration for income tax or VAT purposes as vitiated by assets or liabilities not corresponding to reality or by fictitious credits and deductions.

Therefore, in order for the "fraudulent means" to be realised, a *quid pluris* is required, which, in addition to the false representation offered in the declaration, enables the objective element to be given a value of insidiousness, deriving from the use of artifices capable of enabling tax evasion by preventing its assessment (see in this sense Cass. pen., Sec. III, judgment of 16 January 2013 no. 2292). [93]

On the other hand, with regard to the notion of fraudulent means, Article 1(*g-ter*) identifies them as '*active as well as omissive artificial conduct in breach of a specific legal obligation, resulting in a false representation of reality*'.

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[88] "*1. Apart from the cases provided for in Article 2, a term of imprisonment ranging from three to eight years shall be imposed on any person who, in order to evade taxes on income or value added, by carrying out objectively or subjectively simulated transactions or by using false documents or other fraudulent means likely to hinder the assessment and to mislead the tax authorities, indicates in one of the declarations relating to such taxes assets of an amount lower than the actual amount or fictitious liabilities or fictitious credits and deductions, when, together*
(a) the tax evaded exceeds, with reference to any one tax, thirty thousand euro;
b) the total amount of the assets evaded from taxation, including by means of the indication of fictitious passive elements, is higher than five per cent of the total amount of the assets indicated in the return, or in any case, is higher than one million five hundred thousand Euros, or if the total amount of the fictitious credits and deductions from taxation is higher than five per cent of the amount of the tax, or in any case, is higher than thirty thousand Euros.
2. The offence shall be deemed to have been committed with the aid of false documents when such documents are recorded in compulsory accounting records or are held for the purpose of providing evidence against the tax authorities.
3. For the purpose of the application of the provision of paragraph 1, the mere violation of the obligations to invoice and to record assets in the accounting records or the mere indication in the invoices or in the records of assets which are lower than the real ones do not constitute fraudulent means."

[89] However, the concurrence of the provisions of Articles 2, 3 and 4 of Legislative Decree no. However, the concurrence of the provisions of Articles 2, 3 and 4 of Legislative Decree No. 74/2000 cannot be ruled out in the event that separate fraudulent conduct exists, which can be attributed, at the same time, to one and the other provisions of the law, and which is included in the submission of the same tax return (for example, the indication of fictitious passive elements documented by invoices for non-existent transactions and of further elements, whether assets or liabilities, with the use of other fraudulent means; the use of false invoices and the simultaneous under-invoicing of revenues, such as to meet the thresholds of punishability set forth in Article 4, etc.). With regard to this specific profile, the Supreme Court considered correct the conclusion of the judges of merit as to the existence of both Art. 2 and Art. 3, on the basis of the use in the tax declarations of the company administered by the defendant of self-produced or hetero-produced invoices relating to partially non-existent transactions, as well as of "*several fraudulent behaviours of the defendant (consisting, as is clear from the contestation, in the indication in the sales ledger and VAT register of revenues and VAT payable lower than the real ones, through the replacement of the sales documents originally issued, with others showing lower amounts; in the indication in the ledger of fictitious costs in the unlawful or omitted registration of multiple sales and purchase invoices, so as to reduce revenue and increase costs; in the allocation of depreciation not resulting from the accounting records), in addition to the mere use of invoices for non-existent transactions, aimed, in a deceptive manner, at concealing revenues or fictitiously increasing costs, with the consequent correct affirmation of the configurability of the offence of fraudulent declaration by means of other artifices, since the fraudulent conduct further to the use of invoices relating to wholly or partially non-existent transactions has been amply described*" (Cass. pen, Sec. III, judgment 18 July 2017, no. 35156).

[90] The crime was transformed from an offence in its own right (taxpayers obliged to keep accounting records) to an offence attributable to any person required to file an income or VAT return.

[91] In the previous wording, the offence was characterised by the following three-phase structure:

- preparation of a false representation of compulsory accounting records;
- use of fraudulent means to obstruct its detection;
- under-reporting of assets or fictitious liabilities.

[92] By '*objectively or subjectively simulated transactions*', the 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 abuse of rights rules, entered into with the intention of not realising them in whole or in part, or those referring to fictitiously interposed persons.

[93] On the point in question, moreover, it is worth recalling the principles developed by the jurisprudence of legitimacy on the basis of which the suitability of the conduct to hinder the assessment must be assessed *ex ante*, regardless of the contingent difficulties encountered by the inspectors in reconstructing the taxable base (Criminal Court, Section III, judgment of 18 April 2002, No. 20785).

The interpreter is therefore provided with a broad and general definition, without typifying the concrete conduct that may be relevant under Article 3, which does not make it easy to identify artificial omissive conduct carried out in breach of specific legal obligations.
Jurisprudential guidelines over time have identified, with reference to the former wording of Article 3 of Legislative Decree No. 74/2000, a wide range of 'fraudulent means'[94] , deemed to exist in the following cases

- use of forged or altered documents, other than invoices or other documents for non-existent transactions that are subject to both ideological and material falsity, 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 Court, Sec. III, 18 April 2002, No. 14616);
- simulated contracts (i.e. notarial deeds certifying real estate sales) indicating a sale price much lower than the real one (Criminal Court, Sec. III, 5 November 1996, no. 9414);
- the keeping of double accounts, which is not in itself sufficient to integrate the criminal hypothesis, which can be recognised, however, where the taxpayer makes use of an articulated and complex system to systematically carry out the black economy, both on revenues and costs, with the creation of specific access codes and procedures suitable for presenting fraudulently altered data to third parties during any inspections (Criminal Court, Section III, 10 April 2002, No. 13641);
- discovery by the control bodies of 'off-the-books' accounts in a place other than the one indicated by the taxpayer for the safekeeping of the records (Criminal Cassation, Sec. III, 12 October 2005, no. 1402);
- fictitious registration in the name of financial relations to which assets intended not to be accounted for were credited (Criminal Court, Sec. VI, 25 March 2009, No. 13098);
- systematic issuance of credit instruments without indication of the beneficiary in order to conceal payments (Criminal Cassation, Sec. III, 12 October 2005, No. 36977).

Paragraph 3 of Article 3 specifies that mere violations of the obligations to invoice and record receipts in accounting records or the mere indication in invoices or entries of less than actual assets do not constitute fraudulent means.
In fact, the principle has been codified whereby conduct of a merely omissive nature does not assume criminal relevance, but rather conduct of a commissive nature whose fraudulence must take the form of manifestations objectively distinct from the less complex accounting infidelities (failure to certify the consideration - under-invoicing) aimed at attributing credibility to the declaration and, therefore, characterised by its suitability to deceive the inspecting bodies. With regard to the concept of false documents, paragraph 2 of the provision under review establishes that the act is considered to have been committed with the use of such documents when they are recorded in the compulsory accounting records or held as evidence against the tax authorities. [95]
Both ideological and material falsity are brought within the scope of Article 3 in the case of documents, other than those referred to in Article 2, of direct or indirect tax relevance, other than accounting records.

[94] Cf. in this sense the "*Operational Manual on Countering Tax Evasion and Fraud*" No. 1/2018, Volume I, p. 165, of the GdF.
[95] Cf. in this sense the "*Operational Manual on Countering Tax Evasion and Fraud*" No. 1/2018, Volume I, p. 164, of the GdF.

Moreover, unlike the offence referred to in Article 2, the offence under consideration can be committed if a double punishment threshold is jointly exceeded[96] :

- 30,000 euro of evaded tax, with regard to any of the individual taxes (income - VAT). For the criminal offence to be established, it is sufficient that the amount is exceeded with regard to a single taxation sector;
- the amount of assets subtracted from taxation (including by means of the indication of fictitious liabilities) exceeding five per cent of the total assets declared or, in any case, EUR 1,500,000, or the amount of fictitious credits and deductions exceeding five per cent of the tax (as a reduction of which they affect) or, in any case, the amount of EUR 30,000.

Finally, by virtue of the express exclusion made by Article 6(1) of Legislative Decree No. 74/2000, the offence is not punishable as an attempt[97] , except as provided for in paragraph 1-bis.
In fact, with the introduction of the aforementioned paragraph, the tax offence referred to in Article 3 is punished, also by way of attempt, if committed in the context of cross-border fraudulent schemes, connected to the territory of at least one other Member State of the European Union, in order to evade value added tax for a total value of ten million euro or more.[98]
Penalties applicable to the Entity

- Monetary sanction: up to 500 quotas; however, if the Entity has obtained a significant profit, the monetary sanction is increased by one third;
- disqualifying sanctions: the prohibition to contract with the public administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted; the prohibition to advertise goods or services.

Unfaithful declaration

Article 4 of Legislative Decree No. 74/2000[99] punishes the mere 'false declaration' without the connotations of fraud. This is a criminal hypothesis conceived by the legislator as residual compared to the case of fraudulent declaration, which is centred on the mere highlighting of untrue information (under-reporting of assets or non-existent liabilities).

[96] More generally, the punishability thresholds laid down for tax offences by Legislative Decree No. 74/2000 are in the nature of constituent elements of the offence and not objective conditions of punishability. It follows from this that such thresholds must be 'invested' with intent, so that if the defendant is not aware that he has exceeded them, he cannot be convicted. (cf. in this sense, Cass. pen., Sec. III, judgment of 18 October 2013, no. 42868).
[97] Law No. 157/2019 also amended paragraph 2 of Article 13 of Legislative Decree No. 74/2000, headed "*Cause of non-punishability. Payment of the tax* debt", in order to add - among the offences that are extinguished by full payment of the tax debt, provided that the repentance or submission took place before the offender had formal knowledge of accesses, inspections, audits or the commencement of any administrative assessment activity or criminal proceedings - the offences provided for and punished by Articles 2 and 3 of the aforementioned decree.
[98] Article 4 of Legislative Decree No. 156/2022 introduced an amendment to the rules on attempt. For a comment on the aforesaid conditions, please refer to the section devoted to the examination of the offence of misrepresentation.
[99] Article 4 of Legislative Decree No. 74/2000 provides as follows: "*Apart from the cases provided for in Articles 2 and 3, a term of imprisonment ranging from two years to four years and six months shall be imposed on anyone who, for the purpose of evading income tax or value added tax, indicates in one of the annual returns relating to such taxes assets in an amount lower than the actual amount or non-existent liabilities, when, in conjunction with:*

a) the tax evaded exceeds, with reference to any one of the individual taxes, one hundred thousand euro;
b) the total amount of the assets subtracted from taxation, including by means of the indication of non-existent passive elements, is more than ten per cent of the total amount of the assets indicated in the declaration, or, in any case, is more than EUR two million.

1-bis. For the purposes of applying the provision of paragraph 1, no account is taken of incorrect classification, of the valuation of objectively existing assets or liabilities, in respect of which the criteria actually applied have in any event been disclosed in the financial statements or in other documentation relevant for tax purposes, of the breach of the criteria for determining the accrual period, of the non-inherence, of the non-deductibility of real passive items.
1-ter. Apart from the cases provided for in paragraph 1-bis, assessments which, taken as a whole, differ by less than 10 per cent from the correct assessments shall not give rise to punishable offences. The amounts included in this percentage shall not be taken into account in the verification of the exceeding of the thresholds of punishability provided for in subsection 1 (a) and (b)."

More specifically, an untrue declaration occurs when a taxpayer's conduct is found to have indicated revenue in an amount lower than the actual revenue or non-existent costs, without the taxpayer having availed himself of the artifices typified in Articles 2 and 3 of Legislative Decree No. 74/2000.
Due to the more limited criminal offence, a less afflictive punishment and higher punishability thresholds are envisaged : the evaded tax must be higher, with reference to one of the taxes, than EUR 100,000; the total amount of the assets evaded from taxation, also by means of the indication of non-existent passive elements, must be higher than ten per cent of the total assets indicated in the declaration or, in any case, EUR 2,000,000.
The material object of the offence is the annual income or value added tax declarations. It is, in short, a commission offence of ideological falsification of declarations.
Article 4 of Legislative Decree No. 158/2015 also inserted two new subsections (1-bis and 1-ter) that amend the former criminal law rules on false declarations.
Paragraph 1-bis provides that, solely for the purposes of the offence in question, no account is to be taken of incorrect classification, of the valuation of objectively existing assets or liabilities, in respect of which the criteria actually applied have in any event been indicated in the financial statements or in other documentation relevant for tax purposes, of the breach of the criteria for determining the accrual period, of the non-inherence, and of the non-deductibility of real passive elements. Furthermore, it is no longer required, as was the case in the repealed Article 7, for the purposes of exemption from punishment, that the error be made on the basis of constant methods: it follows that the exemption operates even where the error concerns a single tax period.
Paragraph 1-ter, on the other hand, provides that, apart from the cases referred to in the preceding paragraph, assessments that, taken as a whole, differ by less than ten per cent from the correct ones do not give rise to punishable acts.
In any event, there is an exclusion of punishability in respect of valuation transactions carried out by adopting criteria that have been made known to the tax authorities, either by means of financial statements or by means of other documentation of value in the tax field.
The circumstances that may give rise to the indication of assets for an amount lower than the actual amount of interest for the purposes of the configurability of the offence of making an untrue declaration are essentially to be traced back to the under-invoicing of revenue or remuneration, pursuant to the express provision of Article 3(3) of Legislative Decree No. 74/2000.
As mentioned above, the misrepresentation may concern both 'assets', which are under-declared, and 'liabilities', which must be non-existent.
The criminal offence under comment thus recalls a conception of passive elements oriented towards an effective and naturalistic interpretation of them, following the replacement of the term 'fictitious' by 'non-existent'.
Therefore, for the purposes of the crime of false declaration, 'non-existent' corresponds to 'not corresponding to reality' and no longer to 'incorrectly determined' on the basis of the tax rules.
The criminal interest in the offence under consideration therefore falls solely on cases of material non-existence of negative components.
As a result of the foregoing, no cost actually incurred, even if non-deductible, can contribute to determining the tax evaded as defined by Legislative Decree No. 74/2000.
Classic examples can be found in entertainment expenses, advertising, and the purchase of goods contested as not inherent by the tax authorities.
Similarly, any question as to purchase values assessed by the tax authorities at an amount higher than the normal value, as understood pursuant to Article 9, paragraph 3, of Presidential Decree no.

917/1986 (for example, in the event of disputes on the basis of the "uneconomic nature" of the transactions), is irrelevant for the purposes of the criminal-tax case. 917/1986 (e.g. in the event of disputes on the basis of the "uneconomic nature" of the transactions), is irrelevant for the purposes of the configurability of the criminal-tax case of untrue declaration, since these are costs related to prices actually charged and paid, even if non-deductible inasmuch as they have not been correctly estimated from a tax point of view.[100]

Therefore, residual hypotheses, such as, for example, the indication in the declaration of completely non-existent passive elements, which are in no way supported by passive invoices or other documents of similar probative value (or which bear lower amounts than the values indicated in the declaration), remain eligible for the criminal offence in question.

The offence in question, like Articles 2 and 3, is not punishable as an attempt within the meaning of Article 6(1) of Legislative Decree No. 74/2000.

The latter provision was recently amended by Article 4 of Legislative Decree No. 156/2022, already 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 scope of cross-border fraudulent schemes, connected to the territory of at least one other Member State of the European Union, from which a total damage equal to or exceeding Euro 10,000,000 results or may result, the offence provided for by Article 4 is punishable as an attempt. Apart from cases of complicity in the offence referred to in Article 8, the offences provided for in Articles 2 and 3 are punishable by way of attempt, when the same conditions set out in the first sentence are met.*" [101]

The aforementioned new provision thus operates under four conditions:

a) the evasion must relate to a qualified amount;
b) must relate to the evasion of value added tax only;
c) the facts must be transnational, involving several EU states;
d) the contested act must not constitute the offence provided for in Article 8 of Legislative Decree No. 74/2000.

The condition set out in point d) allows us to consider that the legislature intended to exclude that the person issuing a false invoice, an offence punishable under Article 8, could also be liable for attempting the offence of using the same invoice: the principle set out in Article 9(a) therefore remains in force. 9(a), according to which the issuer of invoices or other documents for non-existent transactions and those who conspire with him are not punishable as accomplices to the offence of fraudulent misrepresentation by use of such invoices. However, according to the jurisprudence of legitimacy, the discipline derogating from the rule of concurrence of persons in the offence provided for by the aforementioned Article 9 does not apply where the person issuing the invoices for non-existent transactions coincides with the user of such invoices (Cass. pen, sz. III, judgment no. 5434/2017: this principle was affirmed in the case in point in relation to the director of a company, respectively, issuer and user of the same invoices for non-existent transactions) and it is to be considered that this approach will also be operative when the offence referred to in Article 2 is not committed but only attempted.

With regard to the circumstance 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 Member States,

[100] Cf. in this sense the "*Operational Manual on Countering Tax Evasion and Fraud*" No. 1/2018, Volume I, pp. 167-168, of the GdF.
[101] The legislative amendment in question was necessary to ensure the correct identification of the EU transnationality profile for the purposes of the integration of the PIF case of VAT fraud. More specifically, the notion of overall damage refers to the estimated damage resulting from the entire fraudulent scheme, both for the financial interests of the Member States concerned and for the Union, excluding interest and penalties.

so that the fraud, artifice or, in general, evasion has the effect of evading VAT to the detriment of any one of the Member States.
Lastly, Article 5 of Legislative Decree No. 75/2020 provided for the inclusion of the offence of making false declarations, if committed "as *part of cross-border fraudulent schemes and for the purpose of evading value added tax for a total amount of not less than ten million euro*", in Article 25-quinquiesdecies of Legislative Decree No. 231/2001, for which a fine of up to 300 quotas and the disqualification sanctions referred to therein apply.
Lastly, Article 5 of Legislative Decree No. 156/2022 replaced the aforesaid condition with the following: "*when they are 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, from which a total loss equal to or exceeding ten million euro results or may result*".[102]
With regard to the concept of '*cross-border fraudulent schemes*', the PIF Directive covers three types of unlawful conduct, already referred to above in section 1, which are summarised here:

- the use or presentation of false, incorrect or incomplete VAT declarations or documents, resulting in the diminution of resources of the Union budget;
- failure to disclose a VAT-related information in breach of a specific obligation to the same effect;
- submission of accurate VAT returns in order to fraudulently conceal non-payment or the unlawful establishment of VAT refund claims.

Further characteristics of the above-mentioned conducts must be the causing of a total loss of at least EUR 10 million in evaded VAT and the commission of the act at least in another EU Member State.
Penalties applicable to the Entity

- Monetary sanction: up to 300 quotas; however, if the Entity has obtained a significant profit, the monetary sanction is increased by one third;
- disqualifying sanctions: the prohibition to contract with the public administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted; the prohibition to advertise goods or services.

Failure to declare
Article 5 of Legislative Decree No. 74/2000 punishes '*with imprisonment from two to five years anyone who, in order to evade taxes on income or value added, does not submit, being obliged to do so, one of the declarations relating to those taxes, when the tax evaded is higher, with reference to any of the individual taxes, than EUR 50,000.*' [103]
The offence in question takes the form of an instantaneous offence, which is consummated after ninety days from the expiry of the deadline for submitting the declaration and concerns annual declarations relating to income tax, VAT and withholding taxes by withholding agents.
According to the established orientation of the jurisprudence, the deferment period of ninety days granted to the taxpayer to submit the tax return after the expiry of the ordinary time limit does not

[102] See previous note on the *rationale of* the regulatory change.
[103] Pursuant to paragraph 1-bis, the same penalty shall apply to any person who fails to submit, being obliged to do so, the declaration of withholding tax, when the amount of unpaid withholding tax exceeds EUR 50,000. For criminal purposes, as specified in paragraph 2, a declaration submitted within ninety days from the expiry of the deadline or not signed or not drawn up on a form conforming to the prescribed model shall not be deemed to have been omitted.

constitute a cause of non-punishability, but constitutes an additional time limit for complying with the declaration obligation. (cf. Criminal Cass, sez. III, judgment no. 8340 of 2 March 2020, which reiterated the following principles of law concerning the crime of failure to file a return: "*the extensions of time of ninety days, granted to the taxpayer - pursuant to Article 5, paragraph 2, of Legislative Decree no. 74 of 10 March 2000 (and, previously, Article 7 of Presidential Decree no. 322 of 1998) - to submit the tax return after the expiry of the ordinary time limit does not constitute a cause for non-punishability, but constitutes an additional time limit for complying with the declaratory obligation, and for identifying the consummation moment of the offence of failure to make a return provided for in the first paragraph of the aforementioned Article. 5*"; "*since it is a proper omissive offence of an instantaneous nature, the offence referred to in Article 5(1) of Legislative Decree No. 74 of 2000 is consummated upon expiry of the ninety-day period starting from the last time limit established, for tax purposes, for submitting the annual return; since the agent may comply after expiry of the time limit established for tax purposes, but before the further ninety-day period, it is therefore necessary to provide evidence that, upon expiry of the latter period, the agent has failed to submit the return*".

In its judgment No. 37532/2019, the Court of Cassation ruled instead that the specific intent to evade as referred to in the offence of omitted declaration cannot be inferred from the mere material fact of the failure to fulfil the obligation to declare or from the *culpa in vigilando* of the external professional appointed for that purpose.

It is indeed necessary to discern the objective profile from the subjective profile of the tort.

Otherwise, one would end up transforming the reproach for the willful intent of the offence under Article 5 of Legislative Decree No. 74/2000 from wilful to culpable.

In concrete terms, it is necessary to ascertain, on the basis of specific factual elements, that the taxpayer has consciously preordained the omitted declaration to the evasion of tax for amounts exceeding the punishability threshold of criminal relevance, beyond undue automatism.

Moreover, entrusting a professional with the task of preparing and submitting a tax return does not remove the taxpayer's criminal liability for the offence of failure to file a return, given the personal and indelegable nature of the tax return obligations.

The following is a brief description of the more complex cases in which the criminal hypothesis in question may exist, if the punishment threshold provided for therein is exceeded[104] :

- hypotheses characterised by international taxation profiles: these are those cases in which the subjective and territorial link between the production and taxation of income is fraudulently severed. One thinks of cases of corporate esterovestizione, i.e. the fictitious localisation or simulated transfer of tax residence to foreign countries with lower taxation by legal entities, with the aim of evading the tax obligations provided for by national legislation and benefiting from a more favourable tax regime. A mirror case to that of esterovestizione is the configurability in the territory of the State of a concealed material or personal permanent establishment of a non-resident enterprise;
- Non-declaration of income from unlawful sources: this refers to income deriving from acts, deeds or activities qualifying as a civil, criminal or administrative offence, if not already subject to seizure or criminal confiscation, which are considered to be included in the income categories set out in Article 6 of the TUIR;

[104] Cf. in this sense the "*Operational Manual on Countering Tax Evasion and Fraud*" No. 1/2018, Volume I, pp. 170-173, of the GdF .

- 'Total evaders' not falling within the two above-mentioned categories: these are those who, for the purposes of direct taxation and VAT, apart from the cases already examined, omit, for various reasons, with reference to at least one tax and at least one year, the submission of the relevant declaration.

Lastly, Article 5 of Legislative Decree No. 75/2020 provided for the inclusion of the offence of failure to make a declaration, if committed "as *part of cross-border fraudulent schemes and for the purpose of evading value added tax for a total amount of not less than ten million euro*", in Article 25-quinquiesdecies of Legislative Decree No. 231/2001, for which a fine of up to 400 quotas and the disqualification sanctions referred to therein apply.

Lastly, Article 5 of Legislative Decree No. 156/2022 replaced the aforesaid condition with the following: "*when they are 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, from which a total loss equal to or exceeding ten million euro results or may result*".

For an examination of these conditions, please refer to the previous paragraph.

Penalties applicable to the Entity

- Monetary sanction: up to 400 quotas; however, if the Entity has obtained a significant profit, the monetary sanction is increased by one third;
- disqualifying sanctions: the prohibition to contract with the public administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted; the prohibition to advertise goods or services.

Issuance of invoices or other documents for non-existent transactions

The offence in question is provided for and punished by Article 8, Legislative Decree No. 74/2000.[105]

The rule, in order for the offence to be committed, requires the issuance or issue of invoices or other documents for non-existent transactions, the mere preparation of false documentation not followed by delivery to the potential beneficiary not being sufficient.

The issuance of even a single false invoice is sufficient to constitute this offence, as there is no threshold of punishability.

The offence referred to in Article 8 is an offence of abstract danger, which is committed by the mere issuance or issue of false invoices; this is irrespective of whether these were actually used by the issuer and, therefore, irrespective of whether actual tax evasion resulted from such issuance.[106]

In this regard, the Supreme Court has also specified that in the case of multiple issues during the same tax period, the moment of consummation of the offence coincides with the issue of the last invoice.[107]

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[105] *A penalty of imprisonment from four to eight years shall be imposed on anyone who, in order to enable third parties to evade income tax or value added tax, issues or issues invoices or other documents for non-existent transactions.*
2. For the purposes of the application of the provision laid down in paragraph 1, the issuing or issuing of several invoices or documents for non-existent transactions during the same tax period shall be regarded as a single offence.
2-bis. If the untrue amount indicated in the invoices or documents, per tax period, is less than one hundred thousand euro, imprisonment from one year and six months to six years shall apply.
In order to avoid unequal treatment between the issuer and the user of invoices for non-existent transactions - who, even if using several such documents, remains subject to a single penalty, since the submission of the declaration is still required - it is expressly provided, in paragraph 2 of the article under review, that the issuing or issuing of several invoices or documents relating to non-existent transactions during the same tax period constitutes a single offence.

[106] See Cass. pen., judgment no. 6842 of 19 December 2014 and Cass. pen., judgment no. 3918 of 28 January 2015.

[107] 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.

Finally, as far as the psychological element is concerned, the specific intent to facilitate the tax evasion of other persons is required[108] : the agent must therefore be aware of issuing false invoices aimed at the tax evasion of third parties, irrespective of whether the fictitious invoices issued are then actually used.

In this regard, the Supreme Court has repeatedly stated that tax evasion is not a constituent element of the criminal offence, but an element of the specific intent required by law for the agent to be punishable.[109]

The Article 8 in question is also not included among those for which Article 6 of Legislative Decree No. 74/2000 excludes the possibility of attempt: consequently, if the person responsible carries out suitable acts unequivocally aimed at issuing invoices or other documents for non-existent transactions, he may be punishable under Article 56 of the Criminal Code.[110]

Lastly, it seems appropriate to outline a summary of the most insidious fraudulent contexts in which the conduct referred to in Articles 2 and 8 of Legislative Decree No. 74/2000, which often also include the offences referred to in Articles 5 and 10 of the aforesaid decree, can be found.

In a type of fraud system, based on the issuing and use of invoices for subjectively non-existent transactions, limited to the national territory, tax documents are issued by fictitious companies (also called 'shell companies', or 'cartiere' or 'missing traders'), created for the sole purpose of enabling other economic operators to evade taxes, through the accounting justification of supplies of goods or services carried out by other companies, which are really operational, and which are concealed from the tax authorities.

Recurring characteristics of 'paper mills' are:

- the formal representation attributed to 'front men' or 'blockheads', persons generally lacking managerial experience and, in the majority of cases, with no criminal or police record;
- a time-limited operation;
- exponential growth in turnover;
- the absence of an actual or unsuitable place of business in relation to the nature of the transactions carried out at the declared address, or the inactivity or lack of organisational structures and company means;
- failure to fulfil accounting, declaration and payment obligations.

In the mechanism described, the tax liability remains with the 'paper mill', which does not file a tax return and does not fulfil its payment obligations, while the real supplier operates 'in the black', not issuing any tax documents, and the transferee of the goods or purchaser of the service, noting in his accounts the invoices for insistent transactions issued by the 'paper mill', as justification for the purchases made, obtains considerable advantages both from a fiscal point of view - being able to deduct the cost and deduct the VAT indicated on the invoice - and from a commercial point of view, being able to purchase (from the real supplier) and resell (often to persons unconnected with the fraud) at prices lower than market prices, with distorting effects on competition.

Additional economic actors are often included in the mechanism (so-called 'filter' or 'buffer' companies) with the function of obstructing possible investigations and the identification of those responsible.

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[108] See Cass. pen., judgment no. 19116 of 9 May 2014; Cass. pen., judgment no. 50847 of 3 December 2014.

[109] See, *ex multis*, Criminal Cass., judgment no. 44665 of 15 October 2013.

[110] Moreover, there are no particular doubts as to the possibility of concurrence between the offence in question and the offence of failure to file a return, pursuant to Article 5 of Legislative Decree No. 74/2000 (see Criminal Court, Section III, judgment No. 35858 of 4 October 2011). This in relation to the fact that, under the tax regulations, the VAT shown on issued invoices, even if fictitious, is always due and, as such, must be declared.

As regards, on the other hand, tax frauds carried out within the European Union, which illicitly exploit the intra-EU VAT rules of non-taxability of supplies made to taxable persons in other Member States and the application of the principle of taxation in the country of destination, these can be summarised as follows:

- a domestic entity makes non-taxable supplies of goods to a 'paper mill' established in another EU country, without the goods ever leaving the national territory (or, by means of false documentation, alters the evidence of the physical movement of the goods in another Member State), because they are in reality destined for other domestic entities, which purchase them at competitive prices;
- the foreign 'paper mill' sells the same goods on a securitised basis to a further Italian 'shell company', which resells the goods to the real domestic purchasers without fulfilling its tax obligations.

The domestic 'paper mill' takes upon itself the tax liability arising at the time of the domestic supply, but fails to pay the VAT to the Treasury and soon ceases activity, 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 'paper mill'.

It is therefore considered that Article 8 may be applicable to the first domestic supplier, who makes a non-taxable VAT supply, since the third party to whom he permits evasion can be identified as the ultimate (domestic) beneficiary of the carousel fraud.

According to the same interpretative criterion, the other interposed parties (missing traders and domestic buffers) are also liable, in turn, under Articles 2 and 8 of Legislative Decree No. 74/2000 and, where the elements are present, the associative offence under Article 416 of the Criminal Code, aggravated by the transnationality referred to in Law No. 146 of 16 March 2006, may also be conceivable. [111]

Penalties applicable to the Entity

- Monetary sanction: up to 500 quotas for para. 1 and up to 400 quotas for para. 2-bis; however, if the Entity has obtained a significant profit, the monetary sanction is increased by one third;
- disqualifying sanctions: the prohibition to contract with the public administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted; the prohibition to advertise 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[112] and penalises conduct consisting in the concealment or destruction of accounting records or documents whose preservation is compulsory, where this makes it impossible to reconstruct income and turnover. [113]

[111] See in this sense the "*Operational Manual on Countering Tax Evasion and Fraud*" No. 1/2018, Volume I, pp. 156-157, of the GdF.

[112] "*1. Unless the act constitutes a more serious offence, a term of imprisonment from three to seven years shall be imposed on anyone who, in order to evade income tax or value added tax, or to allow third parties to evade them, conceals or destroys all or part of the accounting records or documents whose retention is mandatory, so that income or turnover cannot be reconstructed.*"

[113] The simple omission to keep accounting records does not constitute a criminal tax offence, but only an administrative offence under Article 9 of Legislative Decree No. 471/1997. Unlike the omission, the pre-existing keeping of accounting records is necessary for the offence under Article 10 of Legislative Decree No. 74/2000 to be committed. In this case, in fact, the concealment or destruction of pre-existing accounting records, or of the

In fact, an orderly bookkeeping (in compliance with the provisions of Article 2214 of the Civil Code) makes it possible to understand, first and foremost, the performance of the business activity and also has the instrumental function of protecting creditors, including the Treasury.
This offence aims, therefore, to safeguard the tax administration's assessment function by bringing forward the threshold of criminal relevance to conduct that is prodromal to tax evasion and constitutes potential damage to the State's tax claim.
This is a common offence insofar as, from the literal datum of the provision, it is clear that the legislator's intention was to emphasise that the offence cannot be referred only to the person obliged to retain, since it can also be committed in order to allow third parties to evade it.
More specifically, concealment consists in materially hiding the records; refusal to hand over the records, where this does not result, as is often the case, in their not being found, is only punished administratively.
Nor, by the same token, is the retention of the records in a place other than the one indicated to the Administration (Article 35 of Presidential Decree No. 633/72), unless the records are taken to places that preclude their discovery, essentially leading to their concealment.
Destruction, on the other hand, consists in the physical elimination of all or part of the writing, i.e. rendering it illegible and therefore unfit for use by means of abrasion, erasure or otherwise.
The material object of the criminal conduct consists of the accounting records and documents that must be kept in accordance with tax or civil law (Article 2214 of the Civil Code), which distinguishes between books that are absolutely compulsory (such as the journal, inventory book, originals of telegram letters and invoices received as well as copies of telegram letters of invoices sent) and relatively compulsory records, such as those required by the size of the business.[114]
The offence is committed when the destruction or concealment makes it impossible to reconstruct income or turnover.
It is therefore necessary that the conduct described be followed by the impossibility of reconstructing the income or turnover. Such consequences are deemed to be an event of the offence.
Destruction gives rise to an instantaneous offence while concealment gives rise to a permanent offence, and therefore the statute of limitations, in the latter case, will start to run from the moment the permanence ceases, which is deemed to follow the tax assessment. [115]
The impossibility of reconstructing income, precisely because it is envisaged 'in *whole or in part*', is to be understood in terms of even only relative impossibility, i.e. when the reconstruction of income

documents whose preservation is mandatory, are punishable conduct when they make it impossible to reconstruct income and turnover. On the point at issue, according to the Supreme Court's orientation, mere omissive conduct is not sufficient, i.e. the omission to keep accounting records, which objectively makes the reconstruction of the accounting situation more difficult, but not impossible, but a "*quid pluris*" is required, consisting in the concealment or destruction of accounting documents whose creation and keeping is mandatory by law (Criminal Court of Cassation, Sec. III, judgment no. 19106 of 02/03/2016).

[114] Where the taxpayer has opted to keep accounting records and documents electronically, if the digital preservation process is not carried out in accordance with the relevant provisions, the documents are not validly enforceable against the tax authorities. If the relevant prerequisites are met, the offence may also be contested in relation to accounting records kept in digital form.

[115] The Supreme Court has specified that, unlike destruction, which constitutes an instantaneous offence, the consummation moment of which coincides with the suppression of the documentation, concealment - which consists in the temporary or definitive unavailability of the documentation by the verifying bodies - constitutes a permanent offence that is consummated at the time the inspection is carried out, i.e. up to the time when the agents have an interest in examining said documentation. (cf. in this sense, Cass. pen., Sec. III, sentences no. 14461/2017 and no. 13716/2006). Therefore, in order for the offence in question to be said to have been committed, no relevance is to be attributed to the time at which the tax return for the tax year to which the documentation not found during the tax audit was relevant was filed. The fact that the destroyed or concealed documentation relates to a single tax year or to several years is a factor that does not affect the objectivity of the offence, so that it is irrelevant whether the concealed or destroyed documentation relates to a single tax year or to several tax years, since the completion of the offence occurs with the performance of the conduct described by the legislature as prohibited.

or business volume is considerably difficult or in any case requires particular diligence, e.g. cross-checks are necessary. [116]

If, on the other hand, subsequent to the commission of the acts of destruction or concealment, it was the taxpayer himself who made the documentation available in the course of the assessment, so as to make it possible in substance to arrive at the reconstruction of income or the movement of business, this would determine the harmlessness of the act and in any case the lack of a constituent element of the offence, and in any event of the subjective element.

On the last point at issue, this is a specific intent crime, because it is characterised by the purpose to which the agent's will must be directed, the purpose of evading or enabling others to evade.

Since this is an event offence and since the exclusion set out in Article 6 of Legislative Decree No. 74/2000 does not apply, attempt is in theory punishable, for instance where the active party is caught in the act of carrying out suitable acts unequivocally aimed at concealing or destroying, even partially, accounting records or documents necessary for the reconstruction of income or turnover.

Penalties applicable to the Entity

- Monetary sanction: up to 400 quotas; however, if the Entity has obtained a significant profit, the monetary sanction is increased by one third;
- disqualifying sanctions: the prohibition to contract with the public administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted; the prohibition to advertise goods or services.

Undue compensation (Article 10-quater of Legislative Decree No. 74/2000)

The offence under consideration punishes in the first paragraph "with a term of *imprisonment from six months to two years anyone who does not pay the sums due, using as offsetting, pursuant to Article 17 of Legislative Decree No 241 of 9 July 1997, undue credits for an annual amount exceeding fifty thousand euro.*" and in the second paragraph "*with imprisonment from one year and six months to six years anyone who does not pay the sums due, using in compensation, pursuant to Article 17 of Legislative Decree No 241 of 9 July 1997, non-existent credits*[117] *for an annual amount exceeding fifty thousand euro.*"

The institution of set-off represents a method of discharging a tax obligation, consisting of the use of receivables due from the Treasury.

Two types of compensation are distinguished: 'vertical' and 'horizontal'.

Vertical offsetting, which is provided for in the individual tax laws, consists of the carry-over of a credit to a subsequent period in order to reduce, by deduction, a debt that has arisen or will arise in

[116] In this respect, the jurisprudence of legitimacy (see, *ex multis*, Cass. pen., Sec. III, judgment no. 39711 of 12 October 2009 and Cass. pen, Sect. III, judgment no. 5791 of 6 February 2008) has clarified that the impossibility of such reconstruction should not be understood in absolute terms but in "relative" terms - it should be read, therefore, more properly as a "reconstructive difficulty" - since the offence in question may well exist where the tax authorities succeed in redetermining the tax liability through the use of their investigative powers (e.g. financial investigations, sending questionnaires, etc.). The offence in question is also concurrent with the offences concerning declarations under Chapter I of Title II as well as with the offence of issuing invoices for non-existent transactions since the purpose of achieving impunity with respect to the other offences, there being no special relationship, since the destruction of the accounts or invoices, for example, may well be linked to the purpose of tax evasion pursued with the issuance of false invoices, and even in the case of issuing false invoices, does not affect the obligation to keep them or to make VAT payments.

[117] In order to delineate the credits on which undue offsetting may be exercised, it is useful to refer to the report of the Supreme Court's Office of the Supreme Court (no. III/05/2015 of 28 October 2015), which explained that: "non-existent credits" are those that "appear to be such from the outset" (because, for example, it does not materially exist) or "do not exist from a subjective point of view" (i.e. because they are due to a party other than the party using them in undue offsetting) or, finally, "subject to a condition precedent"; "undue credits" are those used in excess of the regulatory limit or in offsetting in breach of the prohibition on offsetting for unpaid roles.

the same period. This set-off concerns credits and debits relating to the same type of tax and may be carried out without limit.
Horizontal offsetting, governed by Article 17 of Legislative Decree No. 241/97, operates in relation to credits and debts relating to various taxes, contributions, penalties and all other payments that can be made with the F24 form. Pursuant to the Decree of the Minister of Finance of 31 March 2000, it was also extended to the amounts, including penalties, due under Legislative Decree No 218/97.[118]
The offence referred to in Article 10-quater of Legislative Decree No. 74/2000 is committed at the time of the submission of the F24 form relating to the year concerned and not at the time of the subsequent tax return.
It is therefore not sufficient, in itself, for the offence to be said to have been committed, that there has been a failure to make a payment, since this must be formally justified by a set-off between the sums due to the Treasury and credits to the taxpayer, which in reality are not due or do not exist.
In this context, it is precisely the necessary compensatory conduct that is the distinguishing element between the offence in question and a simple failure to pay.
On the basis of this assumption, the Supreme Court, in Judgment No. 44737 of 5 November 2019, emphasised that the undue offsetting must be evidenced by the F24 form by means of which it was carried out.
In the case under examination, the integration of the alleged offence was inferred from the entries in the journal, the VAT returns and the tax payments made, but the necessary realisation of the allegedly undue compensations in the F24 forms, which, in the present case, were not even acquired, was not acknowledged.
In the absence of such a finding, it must be concluded that there is no proof of the offsetting as a necessary precondition for the omitted payment.
Ultimately, the offence in question is committed at the time when, in the same tax period, a further amount of undue or non-existent credit is set off which, added to the amounts set off, exceeds Euro 50,000, and is perfected when the F24 form is sent or submitted to the approved credit institution to which the irrevocable power of attorney has been granted.
Lastly, Article 5 of Legislative Decree No. 75/2020 provided for the inclusion of the offence of undue compensation, if committed "as *part of cross-border fraudulent schemes and for the purpose of evading value added tax for a total amount of not less than ten million euro*", in Article 25-quinquiesdecies of Legislative Decree No. 231/2001, for which a fine of up to 400 quotas and the disqualification sanctions referred to therein apply.
Lastly, Article 5 of Legislative Decree No. 156/2022 replaced the aforesaid condition with the following: "*when they are committed for the purpose of evading value added tax in the context of*

[118] With regard to the distinction in question, the Supreme Court in its judgment no. 8705 of 28 February 2019 ruled that: "*The offence of undue offsetting of undue or non-existent credits referred to in Article 10-quater of Legislative Decree No. 74 of 2000 may be committed both in the case of vertical offsetting (i.e. concerning credits and debts pertaining to the same tax) and in the case of horizontal offsetting (i.e. concerning tax credits and debts of a different nature), noting how Legislative Decree.Legislative Decree No. 241 of 9 July 1997, Article 17, referred to by the criminal offence, extended the cases of offsetting already provided for by the tax rules, extending the right of set-off also to credits and debts of a different nature as well as to sums owed to social security institutions*". In this regard, the Court of Cassation provided a further specification: '*As clarified by the doctrine, the applicability of the criminal sanction provided for by the provision in question is not conditioned by the vertical or horizontal nature of the set-off, but rather by the circumstance, considered decisive, that it is set off in the single form, i.e. in the so-called F24 form, which is submitted on the occasion of the single declaration for income tax, VAT and IRAP purposes, and this because it is with this form that the "sums due" pursuant to the aforementioned Legislative Decree No. 241 of 1997 are paid.Legislative Decree No 241 of 1997, Article 17, referred to in Article 10-quater, with the result that the nature of non-existent or non-deserving credit renders irrelevant the attribution made by the taxpayer in the declaration in order to operate the undue set-off, since the provision refers generically to the use of 'non-due or non-existent credit' in compensation, without any specification as to the homogeneity or non-homogeneity of the set-off. The disvalue of the act, the cited doctrine always observes, is given by the omission to pay the sums due, committed by means of a false set-off, and not by the nature of the set-off used to evade the payment of what is due*'.

cross-border fraudulent schemes connected to the territory of at least one other Member State of the European Union, from which a total loss equal to or exceeding ten million euro results or may result".
For an examination of these conditions, please refer to the previous paragraph.
Penalties applicable to the Entity

- Monetary sanction: up to 400 quotas; however, if the Entity has obtained a significant profit, the monetary sanction is increased by one third;
- disqualifying sanctions: the prohibition to contract with the public administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted; the prohibition to advertise goods or services.

Fraudulent evasion of taxes

The offence in question is provided for and punished by Article 11 of Legislative Decree No. 74/2000[119] and falls within the scope of the instruments aimed at combating delinquency in the payment of taxes levied by means of registration on a tax roll, sanctioning, in paragraph 1, the material conduct of the taxpayer who simulatously alienates or performs fraudulent acts on his own property and on the property of others, in order to render ineffective in whole or in part the relevant tax collection to protect the tax claim.
Two conditions are fulfilled in this crime:

- the performance of acts for the purpose of evading the payment of income tax or VAT, related interest and administrative penalties;
- exceeding the punishment threshold of EUR 50,000, calculated on the amount of tax due, plus interest and administrative penalties imposed.

In spite of the expression '*anyone*' with which the provision indicates the person who may be liable for the offence, the offence in question may only be committed by the taxpayer (active party) who is already qualified as a tax debtor for the purposes of income tax or value added tax, and against whom a tax claim of more than Euro 50,000 may be made by the Treasury.
The offence is committed when the taxpayer, aware that he has not paid the taxes due, engages in conduct aimed at evading his own or others' assets subject to a subsequent compulsory collection action.
Compared to its legislative predecessor[120] , in view of the identity of both the subjective element, consisting of the purpose of evasion and constituting the specific intent, and the material conduct, represented by the fraudulent activity, the offence referred to in Article 11, on the one hand, does not require, as a prerequisite for the offence, the prior carrying out of accesses, inspections or audits, or the prior notification to the perpetrator of the fraudulent conduct. 11, on the one hand, does not require, as a prerequisite of the offence, the prior carrying out of accesses, inspections or audits, or the prior notification to the perpetrator of the criminal conduct of invitations, requests, acts of

[119] *"Punishment shall be imprisonment from six months to four years for anyone who, in order to evade the payment of income or value added taxes or of interest or administrative penalties relating to such taxes for a total amount exceeding fifty thousand euro, falsely alienates or carries out other fraudulent acts on his own or on other persons' property such as to render ineffective, in whole or in part, the compulsory collection procedure. If the amount of taxes, penalties and interest exceeds two hundred thousand euro, imprisonment from one year to six years shall be applied.*
2. Punishment shall be imprisonment from six months to four years for anyone who, in order to obtain for himself or for others a partial payment of taxes and related accessories, indicates in the documentation submitted for the tax settlement procedure assets for an amount lower than the actual amount or fictitious liabilities for a total amount exceeding Euro fifty thousand. If the amount referred to in the preceding sentence exceeds two hundred thousand euro, imprisonment from one year to six years shall be applied."
[120] The rule in question replaces the provision of Article 97(6) of Presidential Decree No. 602/73 (so-called tax fraud), as amended by Article 15 of Law No. 413/91, with appreciable elements of discontinuity.

assessment or registrations and, on the other hand, requires, for the purposes of the configuration of the offence, the mere suitability of the conduct to render ineffective (even partially) the collection procedure and not also the actual occurrence of such event. (Cass. pen., Sec. III, judgment no. 13233 of 1 April 2016).

In fact, the legal object of the offence does not relate to the right of credit claimed by the tax authorities but rather to the general guarantee given by the assets of the obligor, as a result of which the offence can also be committed when, after the fraudulent acts have been carried out, payment of the tax and related accessories is made (Criminal Court, Sec. III, judgment no. 36290 of 18 May 2011).

Unlike the previous rule, therefore, on the one hand the presupposition of the conduct is lacking, on the other hand the material event envisaged is transformed from "damage" into "danger", manifesting the clear interest of the State not only in the effective collection of the taxes, but also in the preservation of the patrimonial guarantees that safeguard the tax credit (Criminal Court of Cassation, Sec. III, judgment no. 14720 of 9 April 2008).

It is, therefore, an offence of (concrete) danger, in respect of which the criminally relevant conduct may consist of any act abstractly capable of prejudicing the enforcement procedure and whose aptitude must be verified on a case-by-case basis, on the basis of a judgement of harmful potential to be made *ex ante.*

Consequently, the legal asset protected by the rule must be identified in the general asset guarantee offered to the tax authorities by the obligor's assets, taking into account that the obligor, pursuant to Article 2740 of the Civil Code, is liable for the performance of its obligations with all its present and future assets.

The constitutional 'fit' (in particular, from the point of view of the principle of offensiveness) of the configurability of the offence in terms of danger is ensured by the need for the conduct aimed at the misappropriation of the property to be characterised by the simulated nature of the alienation of the property or by the fraudulent nature of the acts performed on one's own or on others' property.

In other words, only an act of disposition of assets that is characterised by such modalities, strictly typified by the rule, can be capable of vulnerating the legitimate expectations of the Treasury since, otherwise, any possible conduct of disposition of assets, in contrast with the constitutionally guaranteed right of ownership, would be sanctioned.

It is self-evident that conduct characterised by the simulative[121] or fraudulent modalities is not necessarily, *ipso iure,* capable of '*rendering the compulsory collection procedure wholly or partially ineffective*': the fact that the legislature has expressly added this requirement as a constituent element of the offence, even in the presence of deceptive conduct of the type referred to, makes it clear that suitability is not a concept equivalent to the carrying out of a simulated alienation or a fraudulent act, since the assessment of the existence of the requirement cannot disregard an evaluation of the taxpayer's entire assets to be related to the claims of the Inland Revenue, which are well likely to be equally guaranteed even in the presence of the carrying out of similar acts.

This consideration takes on even greater relevance when one considers the following number of case law cases, given purely by way of example, in which fraudulent evasion of tax has been alleged:

[121] This is the first conduct expressly provided for by the rule and may occur in the following forms: absolute simulation, when the parties pursue the sole purpose of pretending to put in place a contract but do not want the act apparently put in place to produce effects; relative simulation, when the parties aim at effects other than those produced by the act apparently put in place; fictitious interposition of person, when the real recipient of the effects is a person other than the one who appears in the simulated act; partial simulation, when it concerns only one or more contractual elements; total simulation, when it concerns all the contractual elements.

- constitution of a *trust*, whereby the defendant had transferred to himself, as *trustee*, the entire assets of the company of which he was liquidator (Criminal Court, sect. III, judgment no. 15449/2015);
- multiple transfers of real estate in rapid succession (Criminal Cass., sec. III, judgment no. 19524/2013);
- constitution of an asset fund (Criminal Court, sect. III, judgment no. 23986/2011);
- transactions involving the sale of companies and corporate divisions, aimed at conferring real estate to the new legal entities (Criminal Court of Cassation, sect. III, judgment no. 19595/2011);
- transformation of the limited liability company into a general partnership, the shares of which cannot be subject to expropriation until the dissolution of the company or of the relationship limited to the debtor partner (Criminal Court of Cassation, section III, judgment no. 20678/2012);
- simulated transfer of commercial goodwill (Criminal Cass., Sec. III, judgment no. 37389 of 12 September 2013);
- corporate reorganisation operations (Criminal Court, Sec. III, judgment no. 45730 of 22 November 2012);
- alienation of goods by entering into an apparent *sale and lease back* contract (Criminal Court, Sec. III, judgment no. 14720 of 9 April 2008).

The common feature of the hypotheses outlined above is the appearance that the simulated act is intended to create: the effects produced are not those actually intended by the contracting parties.

A simulated alienation must therefore be understood as any legal transaction of fictitious transfer of ownership, whether in return for payment or free of charge, or any alienation 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 disposal or the performance of other fraudulent acts, capable of rendering the compulsory collection procedure ineffective, are aimed at evading '*the payment of income or value-added taxes or of interest or administrative penalties relating to those taxes*'.

On this point, the Supreme Court ruled out that the psychological element was not present with respect to the simulated sale of an asset the consideration for which was used to settle a tax debt, except in the event, the assessment of which was referred to the referring court, that the consideration paid was lower than the actual value of the asset purchased (see Criminal Court of Cassation, section III, judgment no. 27143 of 22/04/2015).

The formula used by the legislature for the definition of the second conduct envisaged by the provision ("*performs other fraudulent acts*") includes, on the other hand, any act, whether legal or material, which, although formally lawful, is characterised by an element of artifice or deception, aimed at rendering the compulsory collection ineffective.

With regard to the concept of fraudulent act, case law limits its meaning to the performance of any act of disposition of assets, not simulated, in which the taxpayer's artificial stratagem can be identified (Criminal Court of Cassation, Sec. III, judgment no. 40561 of 16 October 2012).

It is self-evident that all those formally lawful behaviours with profiles of artificiality and deception will be included in the regulatory provision.

Precisely for this reason, for the purposes of the integration of the case in question, the majority legal orientation requires a careful verification of the evidence collected, with a view to assessing the suitability of the same to prejudice the collection of the tax.[122]

Indeed, the vagueness and breadth of this normative formulation often pose the question of assessing, in concrete terms, whether or not the transactions put in place by the taxpayer, even in their concatenation, can be inscribed within the conduct outlined by the legislature.

The criminally relevant conduct, in fact, may be constituted, according to case law, by '*any*' fraudulent act or fact intentionally aimed at reducing the taxpayer's patrimonial capacity. Such patrimonial *deminutio* must be such, both from a quantitative and qualitative point of view, as to wholly or partially frustrate, or in any event make more difficult, any enforcement procedure (see Criminal Court of Cassation, section III, judgment no. 39079/2013; Criminal Court of Cassation, section III, judgment no. 29243/2017).

In this regard, a number of criteria have been identified as symptomatic of the suitability of the transaction to jeopardise the procedure for the compulsory collection of the tax debt, which are set out here by way of example only:

- the lack of underlying economic justification for the transaction entered into;
- the failure to collect the consideration for the sale, as, for example, in the case of "spoliation" of the assets of companies with tax debts, implemented through the sale of a business and the transfer of real estate, in return for no consideration or increase in assets (Criminal Court, sect. III, judgment no. 19595 of 18 May 2011);
- the moment at which the fraudulent act is carried out on the assets, such as, for example, the concomitance with inspection activities.

Finally, the second paragraph of Article 11 punishes falsity in the documentation submitted for the purposes of the tax settlement procedure, i.e. when assets are indicated therein in an amount lower than the actual amount or fictitious liabilities are indicated.

Also with reference to this case, the classification of the offence is one of danger, since the occurrence of damage to the Treasury is not required, but only that the final stage of the tax levy is jeopardised.

This is still a proper offence, which can only be committed by the taxpayer (active party) already qualified as a tax debtor for income or value added tax purposes, who submits the tax settlement proposal by providing false information.

The precondition for the offence is in fact the initiation of a tax settlement procedure, which provides that the taxpayer in a state of financial difficulty may, in the context of a debt restructuring plan, propose the partial or even deferred payment of taxes and related ancillary charges, as well as of contributions administered by the mandatory social security and assistance bodies and related

[122] Precisely with reference to the proof of the fraudulent nature of the transactions, it must be observed how the claim to recognise such characteristic in the mere suitability of the acts to jeopardise the recovery of the credit by the Treasury would in fact result in the impossibility for the taxpayer to freely dispose of his assets, once there has been an activity of verification or assessment by the tax authorities. In the face of a possible limitation of the private individual's right to freely decide on the destination of his assets, a right that cannot be compromised by the mere 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 judgment no. 273 of 2 July 2018 appears to be timely. In fact, the Supreme Court recognises that "*the logical sequence of the dispositive acts performed by the defendant depon[e] for a destination of the negotiating behaviour to the progressive emptying of his assets, in the perspective of the now imminent executive actions of the Treasury*". Notwithstanding the foregoing, it is recognised that the mere suitability of the acts cannot be sufficient on its own to recognise the deceptive or artificial nature of the acts, as instead sustained by a trend of legitimacy formed mostly in the precautionary phase (Criminal Court of Cassation, judgment no. 40561/2012; Criminal Court of Cassation, judgment no. 23986/2011; Criminal Court of Cassation, judgment no. 38925/2009), which claimed to obliterate the prerogative of fraudulence in order to resolve the dimension of the conduct in terms of suitability. Lacking a due scrutiny of all the elements of typicality of the case, correctly the judgement rule of beyond all reasonable doubt could not but impose the annulment of the judgement, on pain of the loss of certainty as to the boundaries of lawfulness of one's conduct and, considering the "*sedes materiae*", a compromise of the relations between the taxpayer and the financial administration.

ancillary charges, limited to the portion of debt of an unsecured nature, even if not registered on the tax rolls.
The offence in question provides for a punishability threshold of EUR 50,000, which can be qualified as a constituent element of the offence, and which must be met with regard to both the active elements and the passive elements indicated falsely.
The offence is instantaneous in nature, occurring with the submission of false documentation.
Penalties applicable to the Entity

- Monetary sanction: up to 400 quotas; however, if the Entity has obtained a significant profit, the monetary sanction is increased by one third;
- disqualifying sanctions: the prohibition to contract with the public administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and the possible revocation of those already granted; the prohibition to advertise goods or services.

THE OFFENCES PROVIDED FOR IN PRESIDENTIAL DECREE NO. 43 OF 23 JANUARY 1973 (ARTICLE 25-SEXIESDECIES)

On 15 July 2020, Legislative Decree No. 75 of 14 July 2020 on "*Implementation of Directive (EU) 2017/1371 on the fight against fraud affecting the financial interests of the Union by means of criminal law." was* published in the Official Journal (No. 177), which entered into force on 30 July 2020.
The main innovation introduced with the issuance of the aforementioned Decree, for what is most relevant here, concerns the inclusion of Article *25-sexiesdecies* of Legislative Decree No. 231/2001, entitled "*Contraband"*, which covers the contraband offences referred to in Presidential Decree No. 43 of 1973.
More specifically, Article 3 of Legislative Decree No. 75/2020 makes amendments to the Presidential Decree in question, in order to ensure that offences detrimental to the EU's financial interests, where the damage or advantages are considerable, are punished with a maximum term of imprisonment of no less than four years.
Indeed, following the establishment of a customs union common to all Member States, customs duties are an EU own resource and as such contribute to the financing of the unitary euro budget.
The legislator therefore intervened by adding a special aggravating circumstance to smuggling offences where the amount of border duties due exceeds one hundred thousand euros, in accordance with the limits set by Article 7 of the BIP Directive.
Consequently, since smuggling offences had to be identified as crimes directly affecting the EU's financial interests, it became necessary to criminalise conduct that had recently been decriminalised.
With Article 4 of Legislative Decree No. 75/2020, an exception was therefore made to the tendentially general scope of the decriminalisation ordered by Legislative Decree No. 8/2016 with regard to offences punishable only by a fine.
Consistent with the provisions of Article 7(4) of the BIP Directive, the new criminalisation of conduct has been limited to cases of offences in respect of which the border duties owed exceed the threshold of EUR 10,000.
More specifically, 'customs duties' are all those duties that customs is required by law to collect in connection with customs operations.

Among customs duties, the following constitute 'border duties' (Art. 34): import and export duties; levies and other import or export charges provided for by Community regulations and their implementing rules; in respect of imported goods, monopoly duties, border surcharges and any other taxes or surcharges in favour of the State.
For goods subject to border duties, the prerequisite for the tax liability is, in the case of foreign goods, their use for consumption within the customs territory and, in the case of domestic and nationalised goods, their use for consumption outside the customs territory (Article 36).
Lastly, Article 5 of Legislative Decree No. 75/2020 provides that for offences included in Presidential Decree No. 43/1973, both the pecuniary sanction (up to 200 quotas and, when the border fees due exceed Euro 100,000, up to 400 quotas) and the prohibitory sanctions set out in Article 9(2)(c), (d) and (e) shall apply to the entity.
The new provision under comment refers to the 'offences' of the Customs Code, therefore:
offences under Title VII Chapter I, the acts referred to therein being understood as such, but only if they exceed EUR 10,000 in evaded border duties:

- Article 282 (Smuggling in the movement of goods across land borders and customs areas);
- Article 283 (Smuggling in the movement of goods in border lakes);
- Article 284 (Smuggling in the maritime movement of goods);
- Article 285 (Smuggling in the movement of goods by air);
- Article 286 (Smuggling in non-customs zones);
- Article 287 (Smuggling by undue use of goods imported with customs facilities);
- Article 288 (Contraband in bonded warehouses);
- Article 289 (Smuggling in cabotage and traffic);
- Article 290 (Smuggling in the export of goods eligible for duty drawback);
- Article 291 (Smuggling on temporary import or export);
- Article 291-bis (Smuggling of foreign tobacco products);
- Article 291-ter (Aggravating circumstances of the crime of smuggling foreign tobacco products)
- Article 291-quater (Criminal association for the purpose of smuggling foreign tobacco products);
- Article 292 (Other cases of smuggling);
- Article 294 (Penalty for smuggling where the object of the offence has not been established or has been incompletely established)

offences under Title VII Chapter II, i.e. the offences provided for therein, but only if they exceed EUR 10,000 in evaded border duties (Article 302 et seq.).

OFFENCES AGAINST CULTURAL HERITAGE (ARTS. 25-SEPTIESDECIES AND 25-DUODICIES)

Law No. 22 of 9 March 2022 on '*Provisions on crimes against* cultural *heritage*'[123] was published in the Official Gazette (No. 68/2022) and came into force on 23 March 2022.

[123] Please note that, pursuant to Article 2 of the Cultural Heritage Code (Legislative Decree No. 42/2004), cultural heritage consists of cultural and landscape assets. Cultural assets are immovable and movable things that, pursuant to Articles 10 and 11, are of artistic, historical, archaeological, ethno-anthropological, archival and bibliographic interest, and other things identified by law or on the basis of the law as testimonies having civilisational value. Landscape assets are the buildings and areas indicated in Article 134, constituting an expression of the historical, cultural, natural, morphological and aesthetic values of the territory, and the other assets identified by law or on the basis of the law.

The text reforms the criminal provisions for the protection of cultural heritage - currently contained mainly in the Code of Cultural Heritage (Legislative Decree No. 42 of 2004) - and inserts them in the Criminal Code, with the aim of carrying out a thorough reform of the subject, redefining the structure of the discipline with a view to a tendency to tighten the penalty treatment.
More specifically, the law consists of 7 articles through which:

i) places the offences currently also provided for in the cultural heritage code exclusively in the criminal code;
ii) introduces new criminal offences and raises the existing sentences, thus implementing the constitutional principles under which cultural and landscape heritage requires further protection than that offered to private property;
iii) introduces aggravating circumstances when the object of common offences is cultural property;
iv) It intervenes on Article 240-bis of the criminal code by extending the catalogue of offences in relation to which the so-called extended confiscation is allowed;
v) extends the application of the rules on undercover operations to certain crimes;
vi) Amends Legislative Decree No. 231 of 2001, providing for the administrative liability of legal persons when offences 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.

As regards, more specifically, the amendments to Legislative Decree No. 231/2001, the following are inserted after Article *25-sexiesdecies:*

- **Article 25-septiesdecies "*Crimes against the cultural heritage*".**
  "*1. In relation to the commission of the offence provided for in Article 518-novies of the Penal Code, a fine of between one hundred and four hundred shares shall be imposed on the entity.*
  2. In relation to the commission of the offences set forth in Articles 518-ter, 518-decies and 518-undecies of the Penal Code, a financial penalty of two hundred to five hundred shares shall be applied to the entity.
  3. In relation to the commission of the offences set forth in Articles 518-duodecies and 518-quaterdecies of the Penal Code, a financial penalty of between three hundred and seven hundred shares shall be applied to the entity.
  4. In relation to the commission of the offences set forth in Articles 518-bis, 518-quater and 518-octies of the Penal Code, a financial penalty of between four hundred and nine hundred shares shall be applied to 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 apply to the entity for a period not exceeding two years."
- **Art. 25-duodevicies "*Laundering of cultural goods and devastation and looting of cultural and landscape heritage*".**
  "*In relation to the commission of the offences provided for in Articles 518-sexies and 518-terdecies of the Penal Code, a financial penalty of five hundred to one thousand shares shall be applied to the entity.*
  2. *If the entity or one of its organisational units is permanently used for the sole or prevalent purpose of enabling or facilitating the commission of the offences indicated in paragraph 1,*

the sanction of definitive disqualification from exercising the activity pursuant to Article 16(3) shall apply."

The individual offences included in the catalogue of predicate offences are listed below:

- **518-bis (Theft of cultural goods)**
  Whoever takes possession of another person's movable cultural property, removing it from its owner, in order to gain profit for himself or for others, or takes possession of cultural property belonging to the State, as found underground or on the seabed, shall be punished by imprisonment of from two to six years and a fine of from EUR 927 to EUR 1,500. The punishment shall be imprisonment for a term of four to ten years and a fine ranging from EUR 927 to EUR 2,000 if the offence is aggravated by one or more of the circumstances envisaged in the first paragraph of Article 625 or if the theft of cultural goods belonging to the State is committed by a person who has obtained a search licence as envisaged by law.
- **518-ter (Misappropriation of cultural goods)**
  Whoever, in order to procure for himself or for others an unjust profit, appropriates another person's cultural property in his possession for any reason whatsoever, shall be punished with imprisonment from one to four years and with a fine ranging from euro 516 to euro 1,500. If the offence is committed on things possessed by way of necessary deposit, the penalty shall be increased.
- **518-quater (Receiving cultural goods)**
  Apart from cases of complicity in the offence, anyone who, in order to procure a profit for himself or others, acquires, receives or conceals cultural goods resulting from any offence, or in any event interferes in having them acquired, received or concealed, shall be punished by imprisonment of four to ten years and a fine of between EUR 1,032 and EUR 15,000.
  The penalty is increased when the offence concerns cultural goods originating from the offences of aggravated robbery within the meaning of Article 628(3) and aggravated extortion within the meaning of Article 629(2).
  The provisions of this Article shall also apply when the perpetrator of the offence from which the cultural goods originate cannot be charged or is not punishable, or when a condition of prosecution relating to that offence is missing.
- **518-sexies (Laundering of cultural goods)**
  Apart from cases of complicity in the offence, any person who replaces or transfers cultural goods resulting from a non-culpable offence, or carries out other transactions in connection therewith, in such a way as to obstruct the identification of their criminal origin, shall be punished by imprisonment of five to fourteen years and a fine of between EUR 6,000 and EUR 30,000.
  The punishment is reduced if the cultural goods originate from a crime for which the maximum term of imprisonment is less than five years.
- **518-octies (Forgery of private contracts relating to cultural goods)**
  Whoever makes, in whole or in part, a false private contract or, in whole or in part, alters, destroys, suppresses or conceals a true private contract, in relation to movable cultural property, in order to make its provenance appear lawful, shall be punished by imprisonment of one to four years.
  Whoever makes use of the private contract referred to in the first paragraph, without having participated in its formation or alteration, shall be punished by imprisonment of from eight months to two years and eight months.

- **518-novies (Violations regarding the disposal of cultural goods)**
  The following shall be punished by imprisonment from six months to two years and a fine ranging from EUR 2,000 to EUR 80,000: 1) any person who, without the prescribed authorisation, disposes of or places cultural goods on the market; 2) any person who, being obliged to do so, does not submit within thirty days the report of the acts of transfer of ownership or possession of cultural goods; 3) the transferor of a cultural good subject to pre-emption who delivers the object during the period of sixty days from the date of receipt of the transfer report.
- **518-decies (Unlawful importation of cultural goods)**
  Whoever, except for cases of complicity in the offences provided for in Articles 518-quater, 518-quinquies, 518-sexies and 518-septies, imports cultural goods originating from a criminal offence or found as a result of searches carried out without authorisation, where provided for by the law of the State where the finding took place, or exported from another State in breach of the law on the protection of the cultural heritage of that State, shall be punished by imprisonment from two to six years and a fine ranging from EUR 258 to EUR 5,165.
- **518-undecies (Illicit export or export of cultural goods)**
  Anyone who transfers cultural goods, things of artistic, historical, archaeological, ethno-anthropological, bibliographic, documentary or archival interest or other things subject to specific protection provisions under the law on cultural goods abroad, without a certificate of free circulation or export licence, shall be punished by imprisonment of two to eight years and a fine of up to EUR 80,000.
  The punishment provided for in the first paragraph shall also apply to any person who does not return to the national territory, at the expiry of the term, cultural goods, things of artistic, historical, archaeological, ethno-anthropological, bibliographic, documentary or archival interest or other things subject to specific provisions of protection under the legislation on cultural goods, for which a temporary exit or export has been authorised, as well as against anyone who makes false declarations in order to prove to the competent export office, in accordance with the law, that things of cultural interest are not subject to exit authorisation.
- **518-duodecies (Destruction, dispersal, deterioration, defacement, defacement and unlawful use of cultural or landscape heritage)**
  Anyone who destroys, disperses, deteriorates or renders wholly or partially useless or unusable cultural or landscape assets belonging to him or to others shall be punished by imprisonment of two to five years and a fine of between EUR 2,500 and EUR 15,000.
  Anyone who, other than in the cases referred to in the first paragraph, defaces or defaces cultural property or landscape belonging to him or to others, or uses cultural property for a purpose that is incompatible with its historical or artistic character or detrimental to its preservation or integrity, shall be punished by imprisonment from six months to three years and a fine ranging from EUR 1,500 to EUR 10,000.
  The suspended sentence is subject to the restoration of the state of the place or the elimination of the harmful or dangerous consequences of the offence or the performance of unpaid activity in favour of the community for a specified time, in any case not exceeding the duration of the suspended sentence, in accordance with the modalities indicated by the judge in the conviction.
- **518-terdecies (Devastation and looting of cultural and landscape heritage)**

Anyone who, outside the cases provided for in Article 285, commits acts of devastation or looting concerning cultural or landscape heritage or cultural institutions and places shall be punished by imprisonment of ten to sixteen years.

- **518-quaterdecies (Counterfeiting of works of art)**
  shall be punished by imprisonment from one to five years and a fine ranging from EUR 3,000 to EUR 10.000: 1) whosoever, in order to gain profit, counterfeits, alters or reproduces a work of painting, sculpture or graphics or an object of antiquity or of historical or archaeological interest; 2) whosoever, even without having taken part in the counterfeiting, alteration or reproduction, places on the market, holds for trading, introduces into the territory of the State or in any case places in circulation, as authentic, counterfeited, altered or reproduced specimens of works of painting, sculpture or graphics, objects of antiquity or objects of historical or archaeological interest 3) anyone who, with knowledge of their falsity, authenticates counterfeit, altered or reproduced works or objects indicated at numbers 1) and 2); 4) anyone who, by means of other declarations, expert opinions, publications, affixing of stamps or labels or by any other means, accredits or contributes to accrediting as authentic works or objects indicated at numbers 1) and 2) counterfeited, altered or reproduced, with knowledge of their falsity.
  The confiscation of counterfeited, altered or reproduced copies of the works or objects indicated in the first paragraph shall always be ordered, unless they belong to persons not involved in the offence. The sale of the confiscated objects at auctions of criminal offences shall be prohibited without any time limit.

ANNEX 2

HISTORY OF REVISIONS MADE TO THE MODEL

The Model, which was initially adopted on 11 July 2003, has undergone numerous updates over the years, depending on the evolution of the regulatory framework, as detailed below:

- With reference to the additions made to the Decree by Law no. 62/05 (so-called Community Law 2004) and by Law no. 262/05 (so-called Savings Law), in 2007 ASPI updated the Model to take into account the risks connected to the commission of the offences of market manipulation and abuse of privileged information, as well as failure to disclose a conflict of interest;
- Subsequently, in the 2010 update, the extensions of the liability of Entities were analysed in relation to offences of murder and culpable injury in violation of occupational health and safety regulations, offences of receiving stolen goods, money laundering and use of money, goods or utilities of unlawful origin computer offences and unlawful processing of data, organised crime offences, offences against industry and trade, offences relating to violation of copyright and, finally, the offence of inducement not to make statements or to make false statements to the judicial authorities;
- in 2013, the further expansion of the list of predicate offences was analysed, in relation to environmental crimes, the employment of illegally staying third-country nationals, undue inducement to give or promise benefits, and bribery among private individuals;
- in 2016, the Model was updated to reflect the regulatory additions made to the catalogue of predicate offences with reference to the following cases: self-laundering, as set out in Law No. 186/2014; eco-offences, as set out in Law No. 68/2015 and provisions on offences against the public administration, mafia-type association and false accounting, as set out in Law No. 69/2015;
- in 2017, the amendments and/or additions to the administrative liability of entities were analysed in relation : to computer crimes by Legislative Decrees nos. 7 and 8/2016[124] ; to the new EU provisions aimed at homogenising the rules on market abuse within the European Union impacting art. 25-sexies of the Decree; to the predicate offences referred to in art. 25-bis of Legislative Decree no. 231/2001, entitled "*Counterfeiting money, public credit cards, revenue stamps and instruments or signs of recognition*" by Legislative Decree no. 125/2016[125] ; to the offence of "*Illegal intermediation and exploitation of labour*" provided for in art. 603-bis of the Criminal Code as amended by Law no. 199/2016; to the offence of bribery between private individuals referred to in Article 2635 of the Italian Civil Code and the inclusion of the new case of "incitement to bribery" referred to in Article

[124] C.d. 'decriminalisation package', which, among other interventions, repealed Article 485 of the Criminal Code '*falsity in a private contract*' and at the same time transformed it into a civil offence, an article referred to in turn by the predicate offence *pursuant to* Article 491-bis of the Criminal Code (Article 24-bis of Legislative Decree no. 231/2001.Legislative Decree No. 231/2001), which has therefore been amended to read as follows: '*If any of the offences set out in this chapter concern a public electronic document with evidentiary effect, the provisions of the same chapter concerning public documents shall apply...*'.

[125] Legislative Decree No. 125/2016 amended Articles 453 and 461 of the Criminal Code referred to in Article 25-bis of Legislative Decree No. 231/2001 to the following effect: i) "*in Article 453, after the first paragraph, the following shall be added: "The same penalty shall apply to anyone who, being legally authorised to produce, unduly manufactures, by misusing the instruments or materials at his disposal, quantities of coins in excess of the prescriptions. The punishment shall be reduced by one third when the conduct referred to in the first and second paragraphs relates to coins which are not yet legal tender and the initial term thereof 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*".

2635-bis of the Italian Civil Code by means of a specific provision of Legislative Decree no. 38/2017;

- in 2020, the following new legislation was analysed:
  - Law No. 157 of 19 December 2019 converting with amendments Decree-Law No. 124/2019 on '*Urgent provisions on tax matters and for unavoidable needs*', which introduced tax offences into the Decree under Article 25-quinquiesdecies;
  - Law No. 133 of 18 November 2019, which converted Decree-Law No. 105 of 2019 on '*Urgent provisions on the national cyber security perimeter and the regulation of special powers in sectors of strategic importance*'. The legislation under consideration provides for the definition of a national cyber security perimeter aimed at "*ensuring a high level of security of the networks, information systems and IT services of public administrations, public and private entities and operators with a base in the national territory, on which the exercise of an essential function of the State depends, or the provision of a service essential for the maintenance of civil, social or economic activities fundamental to the interests of the State and from whose malfunctioning, interruption, even partial, or improper use, harm to national security may result*" (art. 1 para. 1);
  - Law No. 43 of 21 May 2019, which amended Article 416-ter of the Criminal Code on the subject of political-mafia exchange voting;
  - Law No. 39 of 3 May 2019, which introduced Article 25-quaterdecies of the Decree entitled "*Fraud in sporting competitions, abusive gaming or betting and gambling exercised by means of prohibited devices*";
  - Law No. 3 of 9 January 2019 on "*Measures to combat offences against the public administration, as well as on the subject of the statute of limitations of offences and on the transparency of political parties and movements*", which, for the part of interest herein, concerned the tightening of the penalty treatment relating to offences against the Public Administration, the introduction of trafficking in unlawful influence (art. 346-bis of the Criminal Code) in Article 25 of the Decree, the amendment of the duration and application methods of prohibitory sanctions for offences against the Public Administration (Articles 13 and 25 of the Decree) and of precautionary measures (Article 51 of the Decree), the reform of the conditions of prosecution for offences of bribery among private individuals and incitement to bribery among private individuals;
  - Decree-Law No. 135 of 14 December 2018, containing '*Urgent provisions on support and simplification for businesses and public administration*' and converted with amendments by Law No. 12 of 11 February 2019, which repealed the electronic waste traceability control system (SISTRI) as of 1 January 2019;
  - Legislative Decree No. 21/2018, which introduced provisions to implement the principle of code reservation in criminal matters and repealed Article 260 of Legislative Decree No. 152/2006 ("*Activities organised for the illegal trafficking of waste*"). Following the amendment, the repealed offence does not lose 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 legislation, specifically Legislative Decree No. 58/1998, the so-called T.U.F., to Regulation (EU) No. 596/2014;
  - Law No. 179 of 30 November 2017 on '*Provisions for the protection of the authors of reports of crimes or irregularities of which they have become aware in the context*

of a public or private employment relationship', which amended Article 6 of Legislative Decree No. 231/2001;

- Law of 20 November 2017, entitled "*Provisions for the fulfilment of obligations arising from Italy's membership of the European Union - European Law 2017*", which introduced Article 25-terdecies of the Decree entitled "*Racism and Xenophobia*";
- Law No. 161 of 17 October 2017, which inserted into Article 25-duodecies of the Decree, two additional paragraphs concerning the employment of third-country nationals whose stay is irregular.

- in 2021, the new legislation introduced with Legislative Decree No. 75 of 14 July 2020 on '*Implementation of Directive (EU) 2017/1371 on the fight against fraud affecting the financial interests of the Union by means of criminal law.*', which entered into force on 30 July 2020, was analysed.
  More specifically, the main innovations introduced with the issuance of the aforementioned Decree, for what is most relevant here, concerned
  - the tightening of the penalty regime provided for certain offences against the Public Administration (Articles 316, 316-ter, 319-quater, 322-bis, 640(2)(1) of the Criminal Code) if the offence offends the financial interests of the EU[126] ;
  - the amendment of Article 6 of Legislative Decree No. 74/2000, which in the new version also punishes as attempted tax offences the tax offences referred to in Articles 2 ("*Fraudulent declaration using invoices or other documents for non-existent transactions*"), 3 ("*Fraudulent declaration using other devices*") and 4 ("*Unfaithful declaration*"), if carried out also in the territory of another European Union Member State, in order to evade value added tax for a total value of not less than ten million euro;
  - the inclusion in Article 24 of Legislative Decree No. 231/2001 of the offence of fraud in public supplies, provided for and punished by Article 356 of the Criminal Code and the offence provided for and punished by Article 2 of Law No. 898 of 23 December 1986 concerning aids, premiums, allowances, refunds, contributions or other disbursements charged in whole or in part to the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development;
  - the inclusion in Article 25 of Legislative Decree No. 231/2001 of the offences provided for and punished by Articles 314(1) ("*Embezzlement")*, 316 ("Embezzlement *by profiting from the error of others*") and 323 ("*Abuse of office*") of the Criminal Code, when the offence offends the financial interests of the European Union;
  - the inclusion in Article *25-quinquiesdecies* of Legislative Decree No. 231/2001 of the offences provided for and punished by Articles 4 ("*Unfaithful declaration*"), 5 ("*Omitted declaration*") 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 no less than ten million euro;

[126] Article 1 of the Decree integrates the aforementioned criminal offences also to the commission of acts detrimental to the financial interests of the EU, with damage or profit exceeding EUR 100.000.00, increasing the maximum edictal penalties, extending the punishability of the offence provided for and punished by Article 322-bis of the Criminal Code also to P.U. or P.S.I.'s that do not belong to EU Member States and finally adding the mention of the EU in Article 640, para. 2, no. 1), of the Criminal Code.

- the insertion of Article *25-sexiesdecies* of Legislative Decree No. 231/2001, entitled "*Smuggling*", which covers the smuggling offences referred to in Presidential Decree No. 43 of 1973 ;

- regulatory changes in 2022 were analysed:
  - by 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*', which came into force on 1 February 2022, and which introduced amendments to the offences of Computer Crime and Market Abuse;
  - by Legislative Decree No. 184 of 8 November 2021, which entered 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;
  - by Legislative Decree No. 195/2021, which came into force on 14 December 2021, and which broadened the scope of the predicate offences set out in Articles 648, 648-bis, 648-ter and 648-ter.1 of the Criminal Code, as known, contained in Article 25-octies of the '231' catalogue;
  - by Decree-Law No. 13 of 25 February 2022, concerning '*Urgent measures to combat fraud and safety in the workplace with regard to construction, as well as on electricity produced by plants from renewable sources*' (the so-called 'Fraud Decree'), which introduced amendments, of an amplifying nature, to the heading and/or text of Articles 316-bis (now headed 'Misappropriation of public funds'), 316-ter (now headed 'Misappropriation of public funds') and 640-bis of the Criminal Code;
  - by Law no. 22 of 9 March 2022, laying down '*Provisions on offences against cultural heritage*', which introduced into the catalogue of predicate offences the offences against cultural heritage (Article 25-septiesdecies Legislative Decree no. 231/2001) and the laundering of cultural assets and the devastation and looting of cultural and landscape assets (Article 25-duodicies Legislative Decree no. 231/2001);
  - by 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 combating fraud affecting the financial interests of the Union by means of criminal law*', which amended the heading of Article 322-bis of the Criminal Code, integrating it with the offence of abuse of office; introduced paragraph 3-bis of Article 2 of Law No. 898 of 23 December 1986 concerning aids, premiums, indemnities, refunds, contributions or other disbursements charged in whole or in part to the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development; amended Art. 6 ("*Attempt*") of Legislative Decree No. 74/2000 and Article 25-quinquiesdecies of Legislative Decree No. 231/2001 ("*Tax Crimes*");
  - by Legislative Decree No. 150 of 10 October 2022, concerning '*Implementation of Law No. 134 of 27 September 2021, delegating the Government for the efficiency of the criminal trial, as well as in the field of restorative justice and provisions for the speedy definition of judicial proceedings*', which introduced amendments to Article 640 of the Criminal Code and Article 640-ter of the Criminal Code;
  - from the legislative decree scheme, 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 laws' (implementing Articles 1 and 13 of Law No. 127 of 4 August 2022);

- regulatory changes in 2023 were analysed:
  - by Legislative Decree No. 24 of 10 March 2023 on '*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 on provisions concerning the protection of persons who report breaches of national laws*';
  - by Legislative Decree No. 19 of 2 March 2023 on the "*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 transformations, 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 (Articles 54 and 55);
  - by Law No. 93 of 14 July 2023 laying down "*Provisions for the prevention and suppression of the unlawful dissemination of copyright-protected content through electronic communication networks*", which amended paragraph 1 of Article 171-ter of Law No. 633/1941, an offence already included in Catalogue 231;
  - by Law No. 137 of 9 October 2023, entitled '*Conversion into law, with amendments, of Decree-Law No. 105 of 10 August 2023, containing urgent provisions on criminal trial, civil trial, combating forest fires, recovery from drug addiction, health and culture, as well as on the subject of personnel in the judiciary and public administration*'. More specifically, Article 6-ter amended Articles 24 and 25-octies.1 of the Decree, introducing, respectively, the offences of disrupting the freedom of invitations to tender (Article 353 of the Criminal Code) and of the procedure for choosing a contractor (Article 353-bis of the Criminal Code) and of fraudulent transfer of valuables (Article 512-bis of the Criminal Code). The same law also made amendments to Articles 452-bis of the Criminal Code (Environmental pollution) and 452-quater of the Criminal Code (Environmental disaster), which had already been included in the 231 catalogue of predicate offences.
  - by Law Dec. 27, 2023 No. 206 on "Organic provisions for the enhancement, promotion and protection of made in Italy," which amended Article 517 of the Criminal Code.