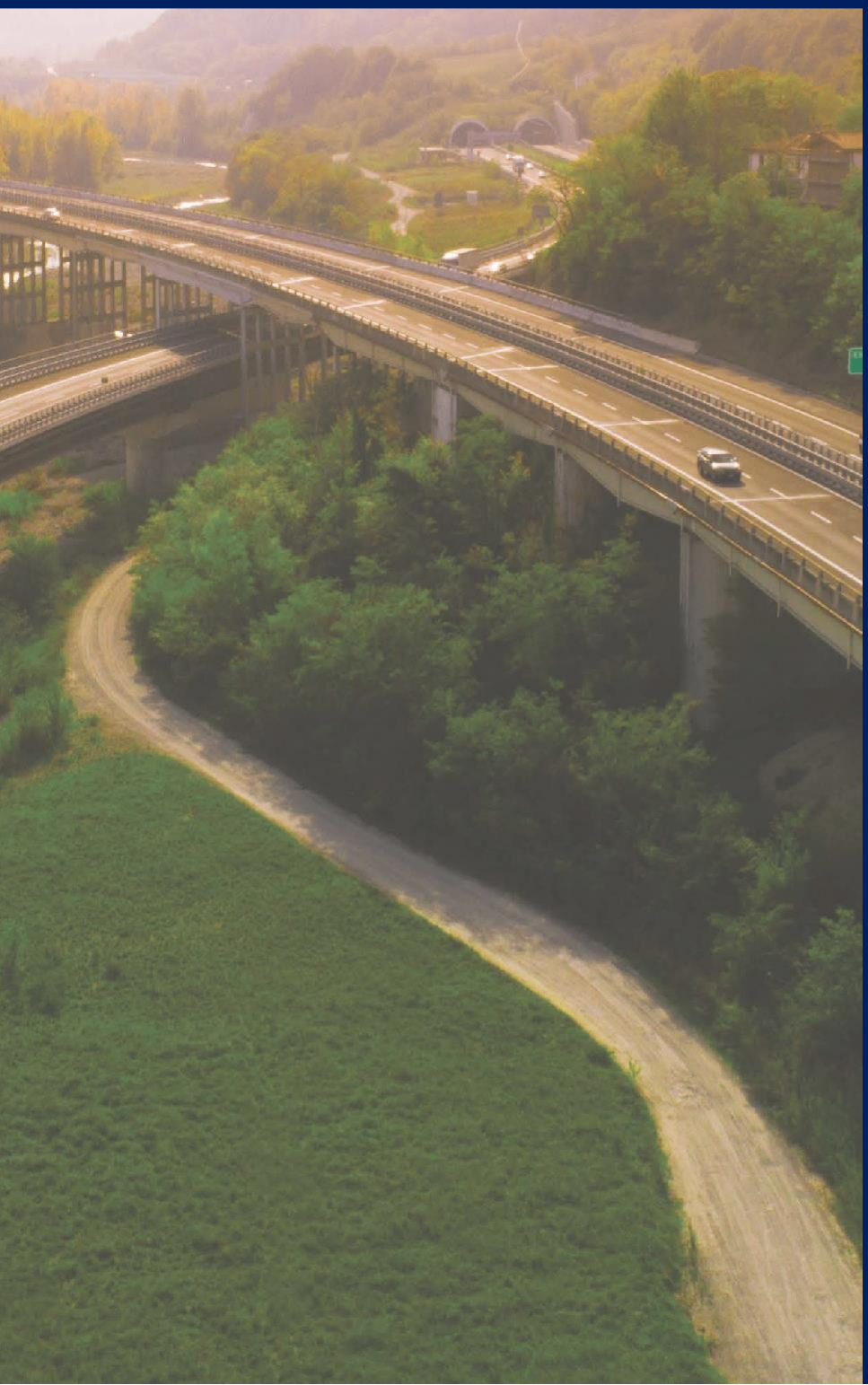
Organisation, Management and Control Model of Autostrade per l'Italia S.p.A.

GENERAL PART



Approved by resolution of the Board of Directors on February 13, 2025

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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 relevant officials and persons in charge of public service
Decree or D. Lgs. 231/2001	Legislative Decree 231 of June 8, 2001, as amended
Confindustria Guidelines	Guidelines for the construction of organization, management and control models pursuant to Legislative Decree 231/2001 issued by Confindustria on November 3, 2003 and subsequent additions
Model	Organisation, Management and Control Model provided for by Legislative Decree 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 summarizes the set of values and rules of conduct to which the Company intends to make constant reference in the exercise of business activities
ASPI Group Anti-Bribery Guideline	The Group Anti-Bribery Guideline, which integrates 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 to be potentially at risk in relation to the offences referred to in Legislative Decree 231/2001
Supervisory Body or SB	Body in charge of supervising the functioning, effectiveness, and observance of the Model and taking care of its updating, referred to in Article 6, paragraph 1, letter b), of Legislative Decree No. 231/2001
Corporate Bodies	Board of Directors and Board of Statutory Auditors of ASPI
Board of Directors or BoD	ASPI Board of Directors
Apical Subjects	Pursuant to Article 5, Paragraph 1 letter a) of the Decree, *persons who hold positions of representation, administration or management of the entity or one of its organizational units with financial and functional autonomy as well as by persons who exercise, including de facto, the management and control of the same*
Subordinates	Pursuant to Article 5, paragraph 1, letter b) of the Decree *persons subject to the direction or supervision of one of the persons referred to in letter a) (*i.e. Senior Persons)

Board of Auditors	Board of Statutory Auditors of ASPI
Control, Risk, Audit and Related Parties Committee	ASPI Control, Risk, Audit and Related Parties Committee
Third party recipients	Those who have commercial and/or financial relationships of any kind with the Company
CCNL	Applicable national collective bargaining agreements for the industry
General protocols	The set of documents defining general principles of behavior, such as, among others: ASPI Group Code of Ethics, ASPI Group Anti-Bribery Guideline, ASPI Group Management of Reports Guideline, ASPI Group Antitrust Compliance and Consumer Protection Guideline
Corporate regulatory system	Set of company regulations, such as Guidelines, management procedures, operating instructions, manuals, forms, service orders, service instructions, organizational communications, and staff notices
ASPI Ethics Office or Ethics Office	Collegial body constituted in ASPI with responsibility for overseeing the process of managing reports related to the Company, assessing its adequacy, suggesting to the Board of Directors any improvements to the process, and promoting the necessary information and training actions, consistent with the Guideline "Management of Reports of the ASPI Group"
ASPI Group Management of Reports Guideline	Document formalizing the governance, process and control principles for the management of reports for Autostrade per l'Italia Group Companies with the aim of ensuring compliance with Legislative Decree 24/2023
Report	Communication regarding violations that have occurred or are likely to occur within the ASPI Group, or within a third party that has or has had a relationship of any nature with the Group itself, and concerning facts that are believed to be: unlawful conduct or irregularities; violations of regulations; actions likely to cause financial or corporate image damage; violations of the ASPI Group's Code of Ethics; violations of the ASPI Group's Anti-Bribery Guideline; violations of the ASPI Group's Antitrust Compliance and Consumer Protection Guideline; violations of the Organization, Management and Control Model; violations of company procedures and provisions
Human Capital and Organization Department	ASPI Human Capital and Organization Department
Legal Affairs and Compliance Department	ASPI Legal Affairs and Compliance Department

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

2 FOREWORD

Legislative Decree 231 of June 8, 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 fairness 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 "Model"), by which it defines a structured system of rules and controls to be adhered to in order to pursue the corporate purpose in full compliance with current legal provisions.
This document is, therefore, the descriptive document of the Company Organisation, Management and Control Model.

3 THE COMPANY

Autostrade per l'Italia S.p.A. carries out construction and management activities on the national territory of: highways, transportation infrastructure bordering the highway network, parking and intermodal infrastructures as well as related adduction.
In carrying out this activity, the Company, therefore, by way of example and not exhaustively, cares for and manages:

a) The construction of major works pertaining to the highway network;
b) maintenance, extraordinary repairs, innovations, modernizations and completions;
c) rights of way and parking and those otherwise related to the enjoyment of the highway network and infrastructure, in the form of subscriptions or other fees.

The Company also promotes, exercises, and develops, including as related or, otherwise, pertinent to the construction and operation of highways, transportation, rest, intermodal, and related adduction infrastructure:

- Study, consulting, technical assistance and design activities;
- activities directed at the acquisition, whatever the mode, and commercialization of patents, know-how, equipment, technology, computer, telematics and value-added services;
- Marketing activities of goods and services;
- Activities of providing services, including information and publishing, for the benefit of users;
- Activities directed at the economic use of highway appurtenances, including the telecommunications network.

4 LEGISLATIVE DECREE 231/2001

4.1 THE ADMINISTRATIVE LIABILITY REGIME PROVIDED FOR LEGAL PERSONS

Legislative Decree 231 of June 8, 2001 (hereinafter the "Decree"), which introduces the "*Regulations on the administrative liability of legal persons, companies and associations, including those without legal personality*," adapted Italian regulations on the liability of legal persons to the following international conventions, to which Italy had long been a party:

- The *Brussels Convention of July 26, 1995* on the Protection of the Financial Interests of the European Communities;
- The *Brussels Convention of May 26, 1997* on Combating Corruption in Which Officials of the European Community or Member States are Involved;
- The *OECD Convention of December 17, 1997* on Combating Bribery of Foreign Public Officials in International and Economic Transactions.

The Decree introduced into the Italian legal system a regime 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) individuals who hold positions of representation, administration or management of the Entities themselves or of one of their organizational units with financial and functional autonomy, as well as by individuals who exercise, even de facto, the management and control of the Entities themselves (so-called "*individuals in top positions*");
b) Individuals subject to the direction or supervision of one of the above-mentioned individuals (so-called "*subordinates*").

The administrative liability of the legal person is in addition 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 of the predicate offense cannot provide, due to the condition of incompatibility in which he or she finds himself or herself, for the general and absolute prohibition of representation posed by Article 39 of Legislative Decree 231/2001.[1]

Moreover, the liability of the entity remains even if the individual perpetrator of the offence has not been identified or is found not to be punishable.

In the event of an attempt to commit one of the offenses specified in the Decree, the pecuniary penalties and disqualification penalties are reduced by one third to one half, while the imposition of penalties is excluded in cases where the entity voluntarily prevents the performance of the action or the realization of the event (Article 26 of Legislative Decree 231/2001).

Pursuant to Article 23 of Legislative Decree 231/2001, the Entity is also liable if anyone in the performance of the Entity's activities, and in the interest or to the advantage of the Entity, has

[1] Paragraph 1 of Article 39 of the Decree stipulates that: "*The entity participates in criminal proceedings with its legal representative, unless the latter is charged with the offence on which the administrative offense depends*." On the point in question, reference is made to what was ruled by Cass. pen, sec. III, ruling no. 38890 of Oct. 9, 2024, which confirms what has already been affirmed by the same section in ruling no. 32110 of March 22, 2023: "*In that case, the United Sections ruled 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 offense cannot provide, due to the condition of incompatibility in which he or she finds himself, for the appointment of the entity's lawyer due to the general and absolute prohibition of representation posed by the D. Legislative Decree No. 231, Art. 39, June 8, 2001, with the consequence that the organizational model of the entity must provide precautionary rules for the possible situations of conflict of interest of the legal representative under investigation for the predicate offense, worthwhile to provide the entity with a defender, appointed by specifically delegated person, who protects its interests*."

transgressed the obligations or prohibitions inherent in disqualifying sanctions applicable to the Entity.

The liability of the entity, to date, exists exclusively in the case of the commission of the following types of unlawful conduct (so-called predicate offenses) referred to expressly 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 supplies; embezzlement, misappropriation of money or movable property, concussion, undue induction to give or promise benefits, bribery) (Articles 24 and 25 of Legislative Decree 231/2001);
ii. computer offences and unlawful data processing (Art. 24-bis Legislative Decree 231/2001);
iii. organized crime offenses (Art. 24-ter Legislative Decree 231/2001);
iv. forgery of money, public credit cards, revenue stamps, and identification instruments or signs (Art. 25-bis Legislative Decree 231/2001);
v. offences against industry and trade (Art. 25-bis.1 Legislative Decree 231/2001);
vi. corporate offences (Art. 25-ter Legislative Decree 231/2001);
vii. offences for the purpose of terrorism or subversion of the democratic order (Art. 25-quater Legislative Decree 231/2001);
viii. female genital mutilation practices (Art. 25-quater.1 Legislative Decree 231/2001);
ix. offences against the individual (Art. 25-quinquies Legislative Decree 231/2001);
x. market abuse (Art. 25-sexies Legislative Decree 231/2001);
xi. culpable homicide or serious or very serious injury, committed in violation of occupational health and safety regulations (Art. 25-septies Legislative Decree 231/2001);
xii. receiving stolen goods, money laundering and use of money, goods or benefits of illicit origin, as well as self-money laundering (Art. 25-octies Legislative Decree 231/2001);
xiii. offences related to non-cash payment instruments and fraudulent transfer of values (Art. 25-octies.1 Legislative Decree No. 231/2001);
xiv. copyright infringement offenses (Art. 25-novies Legislative Decree No. 231/2001);
xv. inducement not to make statements or to make false statements to judicial authorities (Art. 25-decies Legislative Decree No. 231/2001);
xvi. transnational offences in the areas of criminal associations, money laundering, migrant smuggling, and obstruction of justice (Law No. 146, March 16, 2006, Articles 3 and 10);
xvii. environmental offences (Art. 25-undecies Legislative Decree No. 231/2001);
xviii. employment of third-country nationals whose stay is irregular (Art. 25-duodecies Legislative Decree No. 231/2001);
xix. racism and xenophobia (Art. 25-terdecies Legislative Decree No. 231/2001);
xx. fraud in sports competitions, abusive gaming or betting and gambling exercised by means of prohibited devices (Art. 25-quaterdecies Legislative Decree No. 231/2001);
xxi. tax offences (Art. 25-quinquiesdecies Legislative Decree No. 231/2001);
xxii. smuggling (Art. 25-sexiesdecies Legislative Decree No. 231/2001);
xxiii. offences against cultural heritage (Art. 25-septiesdecies Legislative Decree No. 231/2001);
xxiv. laundering of cultural property and devastation and looting of cultural and scenic property (Art. 25-duodevicies 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, an entity based in Italy can be held liable in connection with offences committed abroad under the following conditions:

a) the offence must be committed abroad by a person organically and functionally related 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 can only be liable in the cases and under the conditions stipulated in Articles 7 (offences committed abroad), 8 (political offence committed abroad), 9 (common offence of citizen abroad)[2] and 10 (common offence of foreigner abroad)[3] of the Criminal Code.

Finally, in cases where the law provides that the offender shall be punished at the request of the Minister of Justice, action shall be taken against the entity only if the request is also made against the latter.

4.3 SANCTIONS

The penalties for the offenses covered by Article 9 of the Decree are:

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

In particular, interdictionary sanctions, without prejudice to the provisions of Article 25, paragraphs 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 entity's offense relates, and consist of:

- Disqualification from engaging in the business;
- The prohibition of contracting with the public administration, except to obtain the performance of a public service;
- The suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense;
- exclusion from facilitations, financing, contributions and subsidies, and/or the revocation of any already granted;
- A ban on advertising goods or services.

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

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[2] Art. 1, co. 1(a) of Law No. 3 of January 9, 2019 added after the third paragraph of Article 9 of the Criminal Code the following: "*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, co. 1(b) of Law No. 3 of January 9, 2019, added after the second paragraph of Article 10 of the Criminal Code the following: "*The request of the Minister of Justice or the petition or complaint of the offended person is not necessary for the offences stipulated in Articles 317, 318, 319, 319-bis, 319-ter, 319-quater, 320, 321, 322 and 322-bis.*"

[4] Article 25, co. 5, of Legislative Decree No. 231/2001 reads as follows: "*5. In cases of conviction for one of the offences indicated in paragraphs 2 and 3, the disqualification penalties provided for in Article 9, paragraph 2, shall be applied for a duration of not less than four years and not more than seven years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter a), and for a duration of not less than two years and not more than four, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter b).*" The same provision also provides the following in paragraph 5-bis: "*If prior to the first instance judgment the entity has effectively taken steps to prevent the criminal activity from being taken to further consequences, to secure evidence of the offences and to identify the perpetrators or to seize the sums or other utilities transferred, and has eliminated the organizational deficiencies that led to the offence through the adoption and implementation of organizational models suitable to prevent offences of the kind that occurred, the disqualification penalties have the duration established by Article 13, paragraph 2.*"

- the entity has derived a significant profit from the offence and the offence has been committed by individuals in senior positions or by individuals subject to the direction and supervision of others when the commission of the offence was determined or facilitated by serious organizational deficiencies;
- In case of repeated offenses.

The type and duration of disqualification sanctions are determined by the judge, taking into account the seriousness of the act, the degree of responsibility of the Entity and the activity carried out by the Entity to eliminate or mitigate the consequences of the act and to prevent the commission of further offenses. Instead of the application of the sanction, the judge may order the continuation of the Entity's activity by a judicial commissioner.

Disqualifying sanctions may be applied to the Entity as a precautionary measure when there are serious indications 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 offenses of the same nature as the one for which it is being prosecuted will be committed (Article 45 of the Decree). If the conditions exist for the application of a disqualification sanction that results in the interruption of the entity's activity, the judge, instead of the application of the sanction, may order the continuation of the entity's activity by a commissioner, for a period of equal duration to that of the disqualification measure, when at least one of the following conditions is met: the entity 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 (Art. 15 and 45, co. 3, of the Decree)

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

- fully compensate for the damage by eliminating the harmful and dangerous consequences of the offence or has effectively worked to do so;
- Eliminate the organizational deficiencies that led to the event through the adoption and implementation of Organizational Models suitable for preventing offences of the kind that occurred;
- Make available the profit gained from the commission of the offence for the purpose of confiscation.

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

Monetary penalties, applicable to all offenses, *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 varying in amount by a single quota between a minimum of 258 euros and a maximum of 1,549 euros. The judge determines the number of quotas taking into account the seriousness of the fact, the degree of the entity's responsibility as well as the activity carried out to eliminate or mitigate the consequences of the fact and to prevent the commission of further offenses. The amount of the quota is set on the basis of the entity's economic and asset conditions in order to ensure the effectiveness of the penalty (Article 11 of the Decree).

In addition to the aforementioned penalties, the Decree stipulates that the confiscation of the price or profit of the offence, which may also involve goods or other utilities of equivalent value, as well as the publication of the conviction in the presence of a disqualifying sanction, must always be ordered.

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 specific forms of exoneration from administrative liability of the entity for offences committed in its interest or to its advantage by both apical individuals and employees.

In particular, Article 6(1) of the Decree, in the case of offenses committed by individuals in apical positions - insofar as they hold representative, administrative or managerial positions in the Entity or in one of its organizational 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 act, suitable organization and management models to prevent offences of the kind that occurred;
b) the task of supervising the operation of and compliance with the models as well as ensuring that they are updated has been entrusted to a body with autonomous powers of initiative and control;
c) the persons who committed the offences acted by fraudulently circumventing the aforementioned models;
d) there has been no failure or insufficient supervision by the body referred to in (b) above.

In the case, on the other hand, offences committed by subordinates-subjects subject to the management 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 management 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 Organization, Management and Control Model suitable to prevent offences of the kind that occurred.

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

- Identify the activities within the scope of which the offences under the Decree may be committed;
- Provide 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 suitable for preventing the commission of such offences;
- Provide for information obligations towards the body in charge of supervising the functioning and observance of the Model;
- Introduce an internal disciplinary system suitable for sanctioning non-compliance with the measures outlined in the Model.

Additional 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 24 of March 10, 2023 on "*Implementation of Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23, 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*"

More specifically, paragraphs 2-ter and 2-quater of Article 6 of Legislative Decree 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*

October 23, 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 equipped itself, as represented in paragraph 8 below, with an internal system for receiving and managing reports that applies to Autostrade per l'Italia S.p.A. and the Companies of the ASPI Group. This system ensures absolute confidentiality at every stage of the processprotecting the identity of the person making the report, the persons involved and the persons mentioned in any way, as well as the content of the report and related documentation.
Finally, Legislative Decree 231/2001 stipulates that Organisation, Management and Control Models may be adopted, ensuring the above requirements, on the basis of codes of conduct drawn up by representative trade associations.

5 ADOPTION OF THE MODEL

5.1 PURPOSE AND RECIPIENTS OF THE MODEL

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

- Strengthen the corporate governance system;
- Prepare a structured and organic system of prevention and control aimed at the elimination or reduction of the risk of commission of the offences referred to in Legislative Decree 231/2001, including in the form of attempt, related to the company's activities, with particular regard to the elimination or reduction of any illegal conduct;
- determine in all those who perform "sensitive activities" in the name and on behalf of ASPI the awareness that they may incur, in case of violation of the provisions of the Model, an offense punishable, not only against its author but also against the company, with criminal and administrative sanctions;
- inform all those who work in any capacity on behalf of, on behalf of, or otherwise in the interest of ASPI, that violation of the prescriptions contained in the Model will result in the application of appropriate sanctions;
- to reiterate that ASPI does not tolerate unlawful behavior and opposes all corrupt practices, regardless of the purpose pursued or the erroneous belief of acting in the interest or to the advantage of the Company, since such behaviors are in any case contrary to the ethical principles to which the Company intends to adhere and, therefore, contrary to the interest of the same;
- censure violations of the Model with the imposition of disciplinary and/or contractual sanctions.

They are considered Recipients of this Model and, as such, required to know and comply with it within the scope of their specific responsibilities:

- the members of the Board of Directors, who are responsible for setting goals, deciding on activities, implementing projects, proposing investments, and taking any decisions or actions related to the Company's performance;
- the members of the Board of Statutory Auditors, in performing the function of monitoring and verifying the formal and substantive correctness of the Company's activities and the functioning of the internal control system;

- the General Manager and Deputy General Managers if appointed), Directors, Trunk Managers, and Executives;
- employees and all those with whom one has a working relationship, in any capacity, even temporary and/or only occasional.

The Model's Recipients, who are required to comply with this General Part[5] , the Code of Ethics, the ASPI Group's Anti-Bribery Guideline, the Group's Integrated Management Systems Policy, the ASPI Group's Reporting Management Guideline, and the ASPI Group's Antitrust Compliance and Consumer Protection Guideline, also include all those have commercial and/or financial relationships of any kind with the Company (i.e. outsourcers, consultants, suppliers and service contractors, business partners).

5.2 STRUCTURE OF THE MODEL

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

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

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

- Relevant offence 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 organizational structure of the Company, in order to promote the *compliance* of the various business activities with the provisions of Legislative Decree 231/2001 and, at the same time, ensure effective control of the risk of the commission of predicate offenses, there is a procedure for updating the Model annually or, in any case, upon the occurrence of one or more of the following conditions:

- legislative (see, on this point, All. 2 to this General Part) or jurisprudential innovations in the rules governing the liability of Entities for administrative offenses dependent on offence;
- Significant changes in the organizational structure or business sectors of the Company;
- significant violations of the Model;
- results of risk assessment, results of internal audit activities, checks on the effectiveness of the Model;

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

[6] Control standards that, being characterized by the element of transversality, by their very nature are applicable indiscriminately to all company processes and mapped sensitive activities. These control standards are formulated in such a way that they can be verified independently of their association with specific sensitive processes and/or activities.

[7] Control Principles which, unlike the Transversal ones, are specifically associated with the individual Business 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 peculiar control standards are in turn subdivided into:

- "**General Control Standards**": behavioral indications that, for each mapped Process, illustrate the "best practices" to be observed;
- "**Specific Control Standards**": control of an organizational and/or operational nature, specifically associated with individual Sensitive Activities, implemented for the purpose of mitigating the risk of the commission of the offenses-prescribed.

- Issuing industry best practices;
- requests from the Supervisory Body;
- reports to the Ethics Office from which it is ascertained that the Model has been violated or from which the need to proceed with updating the Model is evident.

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

5.3.1 UPDATE OF GENERAL PROTOCOLS

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

- ***Code of Ethics***

  ASPI adopted the Code of Ethics in 2003, which was subsequently updated. Responsibility for overseeing compliance with the Code has been entrusted to ASPI Ethics Office.

  The Code of Ethics requires from members of the Boards of Directors, members of the Boards of Statutory Auditors and other Control Bodies, Group employees, Collaborators (such as, for example, consultants, representatives, intermediaries, agents, etc.), as well as partners in business relationships and all those who have business dealings with the Group, ethical-professional integrity, correctness of behavior and full compliance with laws and regulations in all countries in which it operates and with the principles of honesty, reliability, impartiality, loyalty, transparency, fairness and good faith.

  A close interaction between the Model and the Code of Ethics has been implemented to form a system of internal rules with the aim of fostering a culture of ethics and corporate transparency, also compliant with the provisions of the Confindustria Guidelines.

- ***ASPI Group Anti-Bribery Guideline and Anti Bribery Management System***

  ASPI has issued the Group Anti-Bribery 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 fulfillments provided for by Law 190/2012 as amended and supplemented bearing "*Provisions for the prevention and suppression of corruption and illegality in 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 in the International Technical Standard UNI ISO 37001:2016 the management model to inspire its System. The aforementioned 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 within the "*Integrated Management System Manual*" adopted by ASPI, is represented by a set of activities designed and implemented with an integrated and synergistic approach, aimed at the continuous improvement of the *performance* and effectiveness of the action of containing corruption risks.

  This System operates in synergy with the other anti-corruption compliance tools already integrated by the company, such as this Organisation, Management and Control Model *ex* Legislative Decree 231/2001 and with additional risk analysis tools (i.e. *Risk management*).

- ***ASPI Group Antitrust Compliance and Consumer Protection Guideline***
  It constitutes the foundation of the broader "Antitrust Compliance and Consumer Protection Program" of the ASPI Group, in line with the characteristics of the same and the markets in which it operates, as well as consistent with the "Antitrust Compliance Guidelines" issued by the Antitrust Authority and taking into consideration national and international best practices. This Program provides a unique design that includes principles, rules, organizational and procedural measures aimed at strengthening the Internal Control and Risk Management System and ensuring the following objectives: ensuring compliance with competition and consumer protection regulations; promoting awareness and spreading knowledge about the importance of the rules in question, in order to prevent possible conduct contrary to the Antitrust Regulations and the Consumer Code; strengthening a working and supervisory environment that reduces the risk of anti-competitive behavior and/or unfair business practices; and implementing monitoring tools to detect possible violations, together with consequent corrective actions.

- ***ASPI Group Management of Reports Guideline***
  The Guideline formalizes the governance, process and control principles for the management of reporting by Autostrade per l'Italia Group Companies with the aim of ensuring compliance with Legislative Decree of 10/03/2023 No. 24. It applies to all Group employees, members of corporate bodies, consultants/self-employed collaborators, employees/external collaborators and, more generally, to anyone who becomes aware of violations (behaviors, acts or omissions), even if only potential, of national or European Union regulatory provisions or the corporate regulatory system.
  Regarding this protocol, please refer to the provisions of Section 8 Reporting on alleged violations of the Model (so-called 231 reports).

5.3.2 MODEL UPDATING PROCESS

ASPI ensures the constant implementation and updating of the Model, according to the methodology indicated by the Confindustria Guidelines and reference best practices. The process of updating the Model has been divided into the phases described below:

Fase 1. MAPPING RISK ACTIVITIES

Company activities within the scope of which one of the predicate offenses could abstractly be committed, as well as those that could be instrumental to the commission of such offenses, making it possible or facilitating the completion of the predicate offense, were evaluated.
The identification of risk processes/activities was implemented through prior review of company documentation (organizational charts, main processes, powers of attorney, organizational arrangements, etc.) and subsequent conduct of a series of interviews with key individuals within the risk processes/activities.
The offences that could potentially be committed within the scope of risk activities were then identified and, for each of them, the possible perpetrators and some concrete examples of the mode of their commission were indicated.
The result of this work was represented in a document containing the mapping of sensitive activities with an indication of the individuals (or company structures) that

could carry them out or carry out activities instrumental to them and the related ways in which offences related to them could be committed.

Fase 2. ANALYSIS OF CONTROLS

Identified the potential risks, the existing system of controls in the processes/activities at risk was analyzed to assess their adequacy in preventing the risks of offence.
At this stage, therefore, the existing internal control safeguards (formal protocols and/or practices adopted, verifiability and traceability of operations and controls, separation or segregation of functions, etc.) were verified through the analysis information and documentation provided by the corporate structures.
As part of the *risk assessment* activities, the elements of ASPI Internal Control and Risk Management System[8] were analyzed and the responsible/reference Structures for the management of risk activities/areas were punctually identified[9]. The Internal Control and Risk Management System is represented by the set of tools, rules, the company's regulatory system[10] and the company's organizational structures aimed at enabling, through an adequate process of identification, measurement, management and monitoring of the main risks, a sound, correct and consistent conduct of the business with the corporate objectives defined by the Board of Directors. ASPI Internal Control and Risk Management System is based on the following general principles:

- Compliance with laws and consistency with the general frame of reference: compliance with applicable regulations and consistency with the general frame of reference (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 to support the Group's strategic decisions;

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

[9] The management procedure "Corporate Regulatory System and Documentation Management" defines criteria, responsibilities and methods for formalizing corporate documentation, resulting in its communication and dissemination. Specifically, it provides:

- Service Orders, documents aimed at defining or modifying the macro-organizational structure, communicating the appointment of the heads of the first-level organizational structures (employed by the President, CEO and General Manager), defining their mission as well as communicating general organizational provisions of considerable importance;
- Service Instructions, documents aimed at defining or modifying the articulation and areas of responsibility of second-level organizational structures and appointing their heads;
- Organizational Communications, documents aimed at defining or modifying the organizational structure of resource teams responsible for the implementation of cross-cutting initiatives/projects of interest to the Company and/or the Group

[10] In line with the "Corporate Regulatory System and Documentation Management" procedure, the following type of corporate documentation is provided:

- Guidelines, documents that formalize corporate governance rules and control principles;
- Group Guidelines, Guidelines formalized by the Company that may apply to Subsidiaries (with "Comply or Explain" applicability);
- Management Procedures, Company documents that formalize business processes by defining methods, roles and responsibilities, information systems, and controls designed to ensure the application of guidelines;
- Group Management Procedures, management procedures formalized by the Company that may apply to Subsidiaries (with "Comply or Explain" applicability) whether or not there are service contracts;
- TUF procedures, administrative and accounting procedures for the preparation of the annual financial statements and consolidated financial statements as well as any other communication of a financial nature (Consolidated Law on Finance - Legislative Decree 58/98, as amended);
- Operational manuals, user-friendly documents containing the accomplished, comprehensive and systematic treatment of a given topic;
- Operating Instructions, documents containing detailed directions for carrying out activities or coordinating operating guidelines for different 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, documented reference procedures, and a description of the interactions between the processes included in a specific field of application, in accordance with the requirements of the relevant technical standards.

- *business process-based approach to risk*: that is, aimed at identifying, assessing, managing and monitoring risks in order to ensure analysis coverage of ASPI's activities, organization and business processes;
- *autonomy*: the autonomy and independence of subsidiaries is guaranteed in relation to the establishment and maintenance of an adequate and functioning Internal Control and Risk Management System, in compliance with the direction and coordination guidelines defined by ASPI;
- *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;
- *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 also be identified as a result of changes in business, processes, organization and, consequently, business risks.

It is also guided by the following principles set forth in the CoSO Framework:

- *control environment*: ongoing commitment to integrity and ethical values that emanates from top management and is disseminated to all levels of the organization, as well as empowerment of all parties to the application of controls and compliance with corporate rules;
- *control activities*: development and implementation of control activities on processes and supporting technological systems aimed at mitigating risks within defined levels of acceptability. Declination of control activities within the corporate regulatory body;
- *use of technology*: promoting 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 levels of control and the competent management and control bodies, appropriately coordinated in terms of content and timing. These flows should be regarded as fundamental operational mechanisms for the functioning of the Internal Control and Risk Management System;

As defined in the document "Guideline on the ASPI Group's Internal Control and Risk Management System (ICSRM)" (to which please refer for detailed discussion), the Internal Control and Risk Management System is acted upon by a plurality of Corporate Bodies and Structures, the components of which are coordinated and interdependent with each other and characterized by complementarity in the aims pursued, the characteristics of the system and the rules of operation.

The aforementioned Guideline describes, among others, the governance of the Internal Control and Risk Management System and identifies the corporate entities/departments responsible for Level I, II and III controls.

With reference to Level III controls, for the purpose of verifying the operation and suitability of the Internal Control and Risk Management System, the Internal Audit Department prepares, at least annually, ASPI's "risk based" audit plan, to be submitted for approval to the Board of Directors, after receiving the favorable opinion of the Control, Risk, Audit and Related Parties Committee and having consulted with the Board of Statutory Auditors and the CEO.

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

- The formalization of services provided in specific service contracts;
- The existence of formalized procedures/corporate guidelines relating to the definition of service contracts and the implementation of control safeguards, including with reference to the criteria for determining fees and the way payments are authorized;
- The provision of appropriate control safeguards 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, according to the transitional regime under the new Procurement Code - RUP/Contract Technical Manager);
- the provision of the Parties' commitment to compliance with the standards and ethical principles set forth in: i) the Code of Ethics; ii) the Organisation, Management and Control Model; iii) the ASPI Group Anti-Bribery Guideline; iv) the Group Integrated Management Systems Policy; and v) the ASPI Group Antitrust Compliance and Consumer Protection Guideline.

With regard to the updating of the Model, the analysis of the control system, conducted by the relevant corporate structures, focused on the existence of a suitable: i) system of proxies and powers of attorney consistent with the organization; ii) regulatory system that regulates corporate processes and activities; iii) organization of activities in compliance with the principle of segregation of duties; iv) system of documentation management, such as to allow the traceability of operations; v) system of monitoring processes for the verification of results and any non-compliance.

Fase 3. GAP ANALYSIS

The design of the controls detected 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 control controls and the one considered optimal allowed the Company to identify a number 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 relevant corporate structures is subject to analysis by the Supervisory Body in order to verify its suitability with respect to the didactic - preventive function that Legislative Decree 231/2001 assigns to it. The Supervisory Body is also presented with the results of the activity of analysis of the controls and gap analysis.

The updated draft Model is presented to the Control, Risk, Audit and Related Parties Committee and then 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 Recipients (see previous par.5.1), with the degree of depth varying according to position and role. Recipients are therefore required to know its contents, observe it and contribute to its implementation.

The Model is formally communicated to Directors and Statutory Auditors at the time of their appointment by delivery of a full copy, also in electronic form, by the Secretary 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 activities. For employees who do not have access to the company intranet, the Model is made available through widespread dissemination methods in the workplace, including through digital tools (e.g., QRCodes). Upon hiring, employees are also given the *Company's Rules and Regulations Disclosure*, which mentions, among other things, the Code of Ethics, the ASPI Group's Anti-Bribery Guideline, the Model, the ASPI Group Management of Reports Guideline, the Group "Conflict of Interest Management" Procedure, and regulatory provisions of interest to the Company, knowledge of which is necessary for the proper performance of work activities.

The General Part of this Model, the Code of Ethics, the ASPI Group's Anti-Bribery Guideline, the Model, the ASPI Group Management of Reports Guideline, the Group Integrated Management Systems Policy, and the ASPI Group Antitrust Compliance and Consumer Protection Guideline are made available to third parties and any other stakeholders of the Company required to comply with the relevant provisions by posting them on the Company's website .[11]

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 compliance of the Model as well as updating it.

In view of the specificity of the tasks that fall to it, the Supervisory Body is a collegial body, with all members being external and one Member assuming the function of Chairman. The specific criteria for the identification and composition of the Supervisory Body are identified in the "Guideline for Composition, Selection and Appointment of Supervisory Bodies of ASPI Group Companies" adopted by the Company.

6.2 APPOINTMENT

The members of the Supervisory Body are appointed by the Board of Directors, which identifies the Chairman. The appointment is communicated to each member of the Supervisory Body according to the system of communication of resolutions of the Board of Directors. Each member of the Body, in turn, must formally accept the appointment by signing the "letter of

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

acceptance of office." Each member must at the same time formally declare the absence of the impeding conditions of independence, autonomy and honorability.
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 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, honorability and continuity of action of the Supervisory Body must be adequately guaranteed
Autonomy and independence, of which the SB must necessarily have, are ensured by the presence of authoritative external members, free of operational duties and interests that could condition its autonomy of judgment as well as by the circumstance that the Supervisory Body operates in the absence of hierarchical constraints in the context of corporate governance, reporting to the Board of Directors and reporting to the Board of Statutory Auditors, as well as to the Chairman and the Chief Executive Officer. Moreover, the activities carried out 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 carried out 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 carry out the task assigned to it, and that its members have an effective and in-depth knowledge of company 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[12] and the possession of the requirements of honorability, the absence of which constitutes grounds for ineligibility and/or disqualification as a member of the Supervisory Body. The permanence of the requirements is verified periodically from the time of appointment and throughout the duration of the office by the competent control structures of the Company.
For further details regarding causes of ineligibility, please refer to the document "Guideline for Composition, Selection and Appointment of Supervisory Bodies of ASPI Group Companies."

6.4 FUNCTIONS AND POWERS OF THE SUPERVISORY BODY

The Supervisory Body of ASPI is entrusted on the general level with the task:

a) to supervise the adequacy of the Model to prevent the commission of the offences set forth in the Decree;
b) to supervise compliance with the requirements of the Model by the Company's internal Recipients and to promote the same compliance also by third parties (consultants, suppliers, etc.);
c) to take care of updating the Model in relation to the evolution of the organizational structure, the regulatory framework of reference or as a result of the supervisory activity as a result of which significant violations of the requirements are discovered.

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

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

- to stimulate the Company to constantly carry out a reconnaissance of the Company's activities and the relevant regulations in order to update the mapping of activities at risk of offence and to propose the updating and integration of the Model and the Company's regulatory system, where the need arises. The process of updating the Model is taken care of through the support of the Company's structures that are competent from time to time;
- monitor the validity over time of the Model and the company's regulatory system and their effective implementation, promoting, also after consultation with the relevant company structures, all necessary actions in order to ensure their effectiveness. This task includes the formulation of proposals for adjustments and the subsequent verification of the implementation and functionality of the proposed solutions;
- Conduct periodic targeted audits of specific transactions or acts performed within the scope of risk activities;
- Verify existing authorization and signature powers in order to ascertain their consistency with defined organizational and managerial responsibilities and propose their update and/or modification, where necessary;
- examining periodic or ad hoc information flows that enable the SB to be periodically updated by the relevant corporate structures on activities assessed to be at risk of offence, as well as establishing communication methods in order to gain knowledge of alleged violations of the Model;
- implement, in accordance with the Model, periodic information flows to the relevant corporate bodies regarding the effectiveness of and compliance with the Model;
- share the training programs promoted by the Training structure for the dissemination of knowledge and understanding of the Model and verify, through the aforementioned structure, the effective fulfillment of training obligations by the Recipients;
- Verify the initiatives taken by the Company to facilitate the knowledge and understanding of the Model and related procedures by all those working on its behalf;
- verify the validity of reports received regarding conduct allegedly constituting offenses under the Decree;
- ascertain the causes that led to the alleged violation of the Model and who committed it;
- verify reported or directly learned violations of the Model and proceed with communications to the relevant corporate structures for the aspects of competence, including those related to the initiation of the disciplinary process.

To carry out its duties, the SB is granted the powers set forth below:

- access to any company document and/or information relevant to the performance of the functions assigned to it under the Model. In this regard, it is the obligation of any corporate structure, employee and/or member of the corporate bodies to provide the information in their possession in response to requests from the Supervisory Body or upon the occurrence of events or circumstances relevant to the performance of the activities falling within the competence of the same;
- access, without the need for any prior consent, at all Company facilities in order to obtain any information or data deemed necessary for the performance of its duties;
- To make use of external consultants of proven professionalism in cases where this is necessary for the performance of activities within their competence;
- Ensure that the heads of corporate facilities provide the information, data and/or news requested from them in a timely manner;
- To request, when necessary, a direct hearing of the Company's employees, directors and members of the Board of Statutory Auditors;

- Request information from external consultants, business partners and auditors.

For the purpose of better and more effective fulfillment of its assigned tasks and functions, the SB makes use of the Internal Audit Department in carrying out its operational activities, from which it may request audit and verification activities on specific issues, as well as the various corporate structures that, from time to time, may be useful.

As a guarantee of its independence, the Body relates directly to the Board of Directors and, in performing its functions, acts in full autonomy by having adequate financial means to ensure its total operational independence.

To this end, the Board of Directors shall ensure that the Body has all the financial means indicated by it for the performance of the task.

In carrying out the operational activities delegated by the SB, the assigned structures report on their work only to the SB and, likewise, the SB is accountable to the Board of Directors for the activity carried out on its own behalf by company structures and external consultants.

6.5 REPORTING TO CORPORATE BODIES

The Supervisory Body shall report semi-annually on its activities to the Board of Directors and the Board of Auditors. Specifically, the report will cover:

- the overall activity carried out during the period, with particular reference to monitoring the adequacy and effective implementation of the Model;
- the critical issues that have emerged in terms of conduct or events within the Company, which may result in violations of the requirements of the Model;
- the proposed corrective and improvement actions of the Model and their implementation status;
- any reports received during the year by ASPI's Ethics Office and handled for the aspects of competence, including any corrective and/or improvement actions identified by the SB itself, ASPI's Ethics Office and other stakeholders;
- Any other information deemed useful.

The Control, Risk, Audit and Related Parties Committee issues its prior opinion to the Board of Directors on the semi-annual report of the Company's Supervisory Body on its activities.

The SB reports promptly to the Chairman and CEO on:

- any ascertained violations of the Model of which it has become aware independently or through reports
- detected organizational or procedural deficiencies 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 facilities;

any other information deemed useful for the President and CEO to make urgent determinations.

6.6 OPERATING REGULATIONS OF THE SB

By special regulations, the Supervisory Body regulates and approves its internal functioning (SB Regulations).

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

While respecting their mutual autonomy, the Supervisory Body informs the Control, Risk, Audit and Related Parties Committee, upon its request, about compliance with the Organization, Management and Control Model.

6.8 RELATIONSHIP BETWEEN SB, BOARD OF AUDITORS AND ANTI-CORRUPTION OFFICER.

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

6.9 RELATIONSHIP BETWEEN SB AND ASPI'S ETHICS OFFICE.

In cases of receipt of a report regarding violations or attempted circumvention of the 231 Model, alleged corruption offenses or violations of the Code of Ethics that could have potential relevance under Legislative Decree 231/2001, ASPI Ethics Office informs the Company's Supervisory Body of the report through a dedicated communication, in compliance with the confidentiality guarantees imposed by Legislative Decree 24/2023, so that, in compliance with the prerogatives and independence of each entity, the Supervisory Body can make its own assessments and actions. In addition, the SB exchanges with ASPI Ethics Office information related to issues that could have potential relevance under the Decree in full compliance with the confidentiality guarantees and protections provided by the ASPI Group Management of Reports Guideline.

6.10 DURATION, REVOCATION , DISQUALIFICATION AND RESIGNATION OF THE SB

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

In order to ensure the requirements of honorability and independence, the external members of the Body, at the time of appointment must make a special declaration, under penalty of forfeiture. In the context of the same declaration, the members of the SB undertake to promptly communicate any failure to meet the expected requirements of independence and honorability, as well as, more generally, any circumstances that have arisen that make them incompatible with the performance of their duties.

The dismissal of the Supervisory Body or one of its members is the exclusive responsibility of the Board of Directors, after consulting the Board of Statutory Auditors. The Board of Directors may dismiss the members of the Supervisory Body for just cause at any time. Just cause for removal shall mean: (a) disqualification or incapacitation, or a serious infirmity that renders the member of the Supervisory Body unfit to perform his or her duties; b) the assignment to the member of the Supervisory Body of operational functions and responsibilities that are incompatible with the requirements of autonomy of initiative and control, independence and continuity of action, which are peculiar to the Supervisory Body, such as, purely by way of example, the acceptance of professional assignments, including through other Group Companies, which may give rise to a conflict of interest, even if only potential; c) a serious breach of the duties proper to the Supervisory Body, as defined in the Model and in the same regulations provided for by the Decree; d) the failure to comply with the obligation of confidentiality; e) the failure to meet the requirements of honorability.

If the revocation of the mandate is exercised with respect to all members of the Supervisory Body, the Board of Directors, after hearing the opinion of the Board of Statutory Auditors, will establish a new Board.
Cases of revocation for cause are distinguished from disqualification cases that result from loss of eligibility requirements and operate automatically.
If there are serious reasons, the Board of Directors will proceed to order - after hearing the opinion of the Board of Statutory Auditors and, where not involved, the other members of the SB - the suspension from office of one or all of the members of the Supervisory Body, promptly providing for the appointment of a new member or the entire SB.
Finally, in the event of the resignation of one or all of the members of the Supervisory Body, to be formalized by appropriate written notice, the Board of Directors shall promptly replace the member(s) of the SB.

7 INFORMATION FLOWS TO THE SUPERVISORY BODY

The requirement for structured information flows is one of the necessary tools to ensure efficient supervision by the SB of the adequacy and compliance with the Model.
In addition to the provisions of the Special Part of the Model and company procedures, any information useful and relevant to the implementation of the Model in "at risk" activities should be brought to the attention of the Supervisory Body.
In particular, Model Recipients must inform the Supervisory Body about:

- Any changes in the current organizational structure and procedures;
- Any changes in the system of proxies and powers of attorney;
- operations of particular significance or which have risk profiles such that there is a reasonable danger of offences being committed;
- measures and/or news from judicial police organs, or any other authority, from which it can be inferred that investigations are being carried out, even against unknown persons, for the offences referred to in the Decree;
- Requests for legal assistance made by managers and/or employees in case of initiation of legal proceedings for the offences under the Decree;
- reports prepared by the heads of corporate structures as part of their control activities and from which facts, actions, events or omissions with profiles of criticality with respect to compliance with the rules of the Decree may emerge;
- Periodic reports by the Anti-Bribery Officer on the activities carried out;
- news regarding the effective 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 reasons for them;
- initiation of interventions of an inspectional nature by public bodies (judiciary, P.G., other Authorities, etc.) within the scope of risk activities;
- Periodic numerical and qualitative reporting on reports received and handled by the Ethics Office;
- Periodic summary report of training provided/to be provided on 231, Anti-bribery, Code of Ethics and Whistleblowing.

8 REPORTS OF ALLEGED VIOLATIONS OF THE MODEL

Reports regarding alleged violations of the Model and the possible commission or suspected commission of violations of the company's regulatory system as well as any other violations or irregular conduct regarding the conduct of company activities, including those that could have potential relevance under Legislative Decree 231/2001, must be addressed to ASPI's Ethics Office in compliance with the provisions of the ASPI Group Management of Reports Guideline.
In cases of receipt of a report regarding violations or attempted circumvention of the 231 Model, alleged corruption offenses or violations of the Code of Ethics that could have potential relevance under Legislative Decree 231/2001, the Ethics Office must inform the Company's Supervisory Body of such report through a dedicated communication in compliance with the confidentiality guarantees imposed by Legislative Decree 24/2023, so that, in compliance with the prerogatives and independence of each entity, the Supervisory Body can make its own assessments and actions.
In the case of a potentially relevant report under Legislative Decree 231/01 involving other Group companies in addition to ASPI, the Ethics Office and the Reporting Management Body of each other Group company shall forward it to the respective Supervisory Body.
ASPI Supervisory Body, to the extent of its competence, acts to ensure, in turn, compliance with the provisions of Legislative Decree 24/2023 and the ASPI Group Reporting Management Guideline.
The Company, in order to facilitate the forwarding of reports by individuals who become aware of violations of the Model, including potential ones, has activated a dedicated computer platform (Whistleblowing Platform) that ensures the segregation, security and protection of data as well as the confidentiality of the contents of the report and the related documentation, through an advanced system of encryption of information in line with the provisions of the reference legislation. This platform allows reports to be made both in written form and via voicemail box[13] and access to it is allowed to all whistleblowers (employees and non-employees) from the websites and corporate intranets of the ASPI Group Companies.
The Company, in order to spread awareness of the whistleblowing management process, the related channels and the protections provided, both to its own personnel and to all relevant stakeholders: (i) organizes special disclosure sessions for all stakeholders internal to the Company, (ii) makes available to all stakeholders external to the Company specific information on the channels, procedures and prerequisites for making Whistleblowing reports.
In addition, ASPI Ethics Office is available to meet with the whistleblower to collect the report, verbalizing what has been reported, if the whistleblower makes a request through the platform. In such a case, the minutes of the meeting should be signed by the reporter and duly filed.

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

In the event that a report has been shared by ASPI Ethics Office, by competence, with the Supervisory Body, the latter shall review the reports received and the results of the investigation phase, which shall be transmitted before the final closure of the same, in order to take charge of any further needs for further investigation.
In addition, the Supervisory Body may carry out investigative activities independently, putting in place any other additional activities allowed by its prerogatives, such as entrusting

[13] The voicemail box provides ways of recording the report that ensure tone distortion and voice falsification while guaranteeing the anonymity of the reporter.

professional appointments and external consultancies, requesting in-depth investigations from company subjects identified by competence.
If a violation of the Model is found, the Supervisory Body activates the appropriate 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 additional parties involved in the report, ensures that discretion and confidentiality are guaranteed at every stage of the report handling process and prohibits any form of retaliation[14] , including indirect retaliation, ensuring - where required - the adoption of supportive measures[15] through ASPI Ethics Office.
Confidentiality guarantees and protective measures are regulated in detail in the ASPI Group Management of Reports Guideline.

9 TRAINING

9.1 PERSONNEL TRAINING

ASPI promotes awareness of the Model and its updates among all employees, who are therefore required to know and implement it. ASPI Training structure organizes and plans personnel training having to do with the regulatory provisions of the Decree and the contents of the Model, including procedures pertaining to reporting channels and whistleblowing protections, providing the Supervisory Body with periodic information.
Participation in the training sessions, as well as in the online course, due to the adoption of the Model, is compulsory and the Training structure monitors that the training course is actually enjoyed, activating the appropriate reminders where necessary. The traceability of participation in the training sessions on Decree 231/2001 is ensured by the recording of attendance in the appropriate form and, in the case of e-learning activities, by the certificate of fruition. These documents are kept by the Training structure and transmitted periodically to the Supervisory Body for appropriate evaluations of competence and related monitoring.
Any update training sessions are carried out in the event of significant changes to Model, Code of Ethics and general protocols, due to the entry into force or the integration of regulatory provisions of significant interest to the Company's business, or in the event that the Supervisory Board does not deem the use of telematic corporate information media sufficient due to the complexity of the subject matter.

9.2 DISCLOSURE TO COLLABORATORS AND PARTNERS

ASPI promotes awareness of and compliance with the Code of Ethics and this General Part of the Model, including clear information on the channels, procedures and prerequisites for making Whistleblowing reports through a dedicated section on its institutional website,

[14] For a non-exhaustive exemplification of cases of retaliation, please refer to the provisions of Article 17 of the Decree, which also regulates the burden of proof in judicial and extrajudicial proceedings.
[15] Having regard to support measures, please also refer to the provisions of Article 18 of the Decree and 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.

including among the Company's business and financial partners, consultants, collaborators in various capacities, customers and suppliers.
In order to formalize and give cogency to the obligation of compliance with the principles of the Code of Ethics and this General Part of the Model by third parties who have contractual relationships with the Company, it is provided that a special clause to this effect be included in the relevant contract. This clause provides for appropriate 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 the Code of Ethics, this General Part, the ASPI Group Anti-Bribery Guideline, the Group Integrated Management Systems Policy, and the ASPI Group Antitrust Compliance and Consumer Protection Guideline.

10 DISCIPLINARY SYSTEM

Pursuant to Articles 6 and 7 of Legislative Decree 231/2001, for the effective implementation of the Model, there must be, among other things, a disciplinary system suitable for sanctioning non-compliance with the measures specified therein.
ASPI, therefore, in compliance with current legal provisions and national collective bargaining regulations, has adopted a disciplinary system aimed at sanctioning violations of the principles and measures set forth in the Model and company protocols, by the Recipients of the Model.
On the basis of the provisions of Article 5 of the Decree, violations of the Model and company protocols committed both by individuals placed in "apical" positions and by individuals subject to the management or supervision of others or operating in the name of and/or on behalf of the Company are subject to sanctions. In addition, any collaborators and partners of the Company are recipients of this Disciplinary System.
The institution of disciplinary proceedings and the possible application of sanctions are irrespective of whether or not criminal proceedings are pending for the same fact 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 collective bargaining, actions or behaviors, including omissions, carried out in violation of the Model constitute relevant conduct, for the application of any sanction.
In addition, in accordance with the provisions of Article 6, Paragraph 2-bis, of Legislative Decree 231/2001 and the ASPI Group Management of Reports Guideline, disciplinary sanctions are taken 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, direct or indirect, against the Whistleblower (or anyone who has collaborated in the investigation of the facts that are the subject of a report) for reasons related, directly or indirectly, to the report;
- against the Reported Person, should the checks conducted reveal unlawful conduct;
- against anyone who violates the confidentiality obligations recalled in the ASPI Group Management of Reports Guideline;

- against Employees, as provided by law, who have made an unfounded report with malice or gross negligence.[16]

Disciplinary measures will be imposed with promptness and immediacy, through appropriate measures proportionate to the extent and seriousness of the unlawful conduct ascertained, reaching, for the most serious cases, up to the termination of the employment relationship in accordance with the provisions of company regulations, the reference collective bargaining agreement or other applicable national regulations.

Regarding Third Parties (e.g.: partners, suppliers, consultants, agents) the remedies and actions of the law apply, as well as the contractual clauses of compliance with the Code of Ethics, ASPI Group's Anti-Bribery Guideline, ASPI Group's Integrated Management Systems Policy, ASPI Group Third Party Monitoring Model Guideline, ASPI Group's Antitrust Compliance and Consumer Protection Guideline, and this Model.

Objective and subjective profiles of the relevant conduct are taken into account in identifying the related sanction. Specifically, the objective elements, graduated in an ascending order of severity, are:

1. violations of the Model that did not result in exposure to risk or resulted in modest exposure to risk;
2. violations of the Model that resulted in appreciable or significant exposure to risk;
3. violations of the Model that integrated a criminally relevant fact.

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

- of whether more than one violation is committed as part of the same conduct, in which case aggravation will be made with respect to the penalty for the most serious violation;
- Of the possible recidivism of its perpetrator(s);
- Of the level of hierarchical and/or technical responsibility of the individual, to whom the charged conduct is referable;
- Of the possible sharing of responsibility with other parties who assisted in bringing about the violation.

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

If the violation referred to in Section 10.1[18] by a Director or Member of the Board of Statutory Auditors is established, the following sanctions may be applied against you:

[16] Refer, in more detail, to the provisions of Article 16, co. 3, of Legislative Decree no. 24/2023: "*when the criminal liability of the reporting person for the offenses of defamation or slander or otherwise for the same offenses committed with the complaint to the judicial or accounting authority or his civil liability, for the same title, in cases of malice or gross negligence is established, the protections provided for in this chapter are not guaranteed and the reporting or whistleblowing person is imposed a disciplinary sanction*."

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

[18] By way of example and not exhaustive of what is indicated in the preceding paragraph10.1 , the following conduct may be a prerequisite for the application of the sanctions indicated below:

- Failure to comply with the principles and protocols contained in the Model;
- violation and/or circumvention of the control system, put in place through the removal, destruction or alteration of the documentation provided for in the company protocols or preventing the persons in charge and the SB from controlling or accessing the required information and documentation;
- violation of the provisions relating to signature powers and, in general, the system of delegated powers, except in cases of necessity and urgency, of which the Board of Directors must be promptly informed;
- Violation of the obligation to inform the Supervisory Body and/or any superordinate person about conduct directed at the commission of a offence or administrative offence included among those provided for in the Decree.

- 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:

- Written warning will be imposed for the violation under number 1 of Section 10.1;
- For violations under number 2 of Section 10.1, a fine will be imposed;
- for violations under number 3 of Section 10.1, revocation from the position will be imposed.

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

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

The adoption by an employee of the Company of a behavior that can be qualified, based on what is indicated in the previous point, as a disciplinary offense, also constitutes a violation of the obligation to perform with the utmost diligence the tasks entrusted to him/her, adhering to the directives of the Company, as provided by the current CCNL, as well as the provisions of the Disciplinary Code (posted on the company notice boards).

Penalties are applied on the basis of the significance of the individual cases considered and proportionate according to their severity, in accordance with Section 10.1 above.

If a violation of the Model attributable to the Employee[20] is ascertained, taking into account the provisions of Article 7, Law No. 300/1970 and the CCNLs, the following disciplinary measures may be applied:

1. conservative disciplinary measures:
   a. verbal reprimand;
   b. written reprimand;
   c. Fine of not more than four hours of the total daily wage referred to in Item 1 of Article 22;
   d. Suspension from duty 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.

Subject to the provisions of Section 10.1 and without prejudice to the provisions of the CCNLs and the Disciplinary Code:

[19] The sanction criteria and disciplinary procedure take into account the type of employment relationship that binds these individuals to the Company. According to Art. 1, para. 2, of the CCNL <<For *example, directors, co-directors, those who are placed with broad managerial powers at the head of important departments or offices, institors and attorneys on whom the power of attorney confers continuous powers of representation and decision-making for all or a considerable part of the company.*>>

[20] By way of example only and not exhaustive of what is indicated in Section 10.1 above, and subject to the provisions of the CCNL for the purpose of applying any disciplinary measures, some relevant conduct is indicated:

- violation of internal procedures or adoption, in the performance of activities at risk, of a behavior that does not comply with the prescriptions of the Model itself, having to recognize in such behavior a non-execution of the orders given by the Company both in written and verbal form (for example, the worker who does not observe the prescribed procedures, omits to notify the Supervisory Body of the prescribed information, omits to carry out controls, etc.);
- adoption, in the performance of activities at risk, of a behavior that does not comply with the prescriptions of the Model or violation of its principles, such behavior having to be recognized as a failure to comply with the orders given by the Company (for example, the worker who: refuses to undergo health checks referred to in Art. 5 of Law No. 300 of May 20, 1970; falsifies and/or alters internal or external documents; voluntarily fails to apply the orders given by the Company, in order to gain advantage for himself or for the Company itself; is a recidivist, in any of the failures that gave rise to the application of conservative disciplinary measures).

1) for the violations referred to in numbers 1 and 2 of section 10.1, conservative disciplinary measures may be imposed, as provided for in Article 36 of the applied collective bargaining agreement;
2) for the violations referred to in No. 3 of section10.1 , the resolutive disciplinary measures, provided for in Article 37 of the aforementioned CCNL, may be imposed.

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

With regard to managerial personnel, given the eminently fiduciary nature and considering that managers carry out their functions in order to promote, coordinate and manage the realization of the company's objectives, violations of the Model will be evaluated in relation to collective bargaining, consistent with the peculiarities of the relationship itself.

10.4 PENALTIES APPLICABLE TO "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 individuals collectively referred to as "Third Party Recipients."

Under this category, they can be made to include:

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

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

10.5 INVESTIGATION PROCESS

With regard to the investigative activities resulting from the audits and inspections conducted by the Supervisory Body, the Supervisory Body shall promptly inform and subsequently report in writing to the Disciplinary Power Holder, as identified below, on any violation detected and the person (or persons) to whom it is referable.

10.5.1 INVESTIGATION PROCEEDINGS AGAINST THE MEMBERS OF THE BOARD OF DIRECTORS.

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

- The description of the charged conduct;
- An indication of the provisions of the Model that are found to have been violated;
- The person responsible for the violation;
- any documents proving the violation and/or other evidence of the violation.

[21] In the event that the violation of the Model is attributable 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 eventual contestation is subject to the precautions set forth in Article 7 of Law No. 300/1970 and the applicable CCNL.

Following the acquisition of the Supervisory Body's report, the Board of Directors shall summon the Director to whom the violation is alleged.
The summons must:
- Be done in writing;
- contain an indication of the conduct complained of and the provisions of the Model that are being violated;
- Notify the interested party of the date of the convocation, with notice of the right to make any remarks and/or deductions, whether written or oral.

The call shall be made in accordance with the established procedures for convening the BOD.
When the Board of Directors is convened, and the Supervisory Body is also invited to attend, arrangements are made for the hearing of the person concerned, the acquisition of any deductions made by him or her, and the performance of any further investigations deemed appropriate.
The Board of Directors, with the abstention of the director concerned, evaluates the merits of the elements acquired and, in accordance with Articles 2392 ff. of the Civil Code, convenes the Shareholders' Meeting for appropriate determinations.
The decision of the Board of Directors, in the case of unfoundedness, or that of the convened Assembly is communicated in writing by the Board of Directors to the person concerned as well as to the Supervisory Body.
If it finds the violation of the Model by the entire Board of Directors or the majority of the Directors, the Supervisory Body shall inform the Board of Statutory Auditors so that the Board of Statutory Auditors may promptly convene the Shareholders' Meeting for appropriate measures

10.5.2 Investigation proceedings against the Members of the Board of Statutory Auditors

In the event of a violation 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 charged conduct;
- An indication of the provisions of the Model that are found to have been violated;
- The person responsible for the violation;
- any documents proving the violation and/or other evidence of the violation.

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 violation is alleged.
The summons must:
- Be done in writing;
- contain an indication of the conduct complained of and the provisions of the Model that are being violated;
- Notify the interested party of the date of the convocation, with notice of the right to make any remarks and/or deductions, whether written or verbal.

The call shall be made in accordance with the established procedures for convening the Board of Directors.
After assessing the significance of the report, the Board of Directors of the Company shall activate the Shareholders' Meeting for 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 Board of Directors may promptly convene the Shareholders' Meeting for appropriate action.

10.5.3 INVESTIGATION PROCEEDINGS AGAINST EMPLOYEES (EXECUTIVES, SUPERVISORS, CLERKS, WORKERS)

If it finds that an Employee has violated the Model, the procedure for determining the violation shall be carried out in accordance with the applicable regulatory provisions as well as the applicable collective bargaining agreement by the Holder of the disciplinary power.

In order to identify the Disciplinary Power Holder, based on existing powers, the following criteria apply:

- the Board of Directors for Directors in first dependence on the Chief Executive Officer ;[22]
- the Deputy General Manager Corporate or the Director Human Capital and Organization[23] for employees and executives;
- The Trunk Director to the extent of his competence.[24]

The Supervisory Body then submits a report containing:

- The description of the charged conduct;
- An indication of the provisions of the Model that are found to have been violated;
- The indication of the person responsible for the violation;
- any documents proving the violation and/or other evidence of the violation.

Following the acquisition of the Supervisory Body's report, the Disciplinary Power Holder shall summon the person concerned by sending an appropriate written notice containing:

- An indication of the contested conduct and the provisions of the Model that are being violated;
- the time limits within which the interested party has the right to make any remarks and/or deductions, whether written or verbal.

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

At the conclusion of the above activities, the Disciplinary Power Holder makes a decision regarding the possible determination of the sanction, as well as regarding the concrete imposition of the sanction.

The decision to impose any sanction shall be communicated in writing to the person concerned, by the competent corporate structure, in compliance with any terms provided for by the collective bargaining agreement applicable in the specific case.

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

The Supervisory Body is sent, for information, the order imposing the sanction by the Disciplinary Power Holder, also using the relevant corporate structures.

10.5.4 INVESTIGATION PROCEEDINGS AGAINST "THIRD PARTY RECIPIENTS"

[22] Including the Director Human Capital and Organization.
[23] By virtue of the authority received from the CEO.
[24] In particular, the Trunk Director may, among other things, take disciplinary action against non-management employees.

In order to enable the initiatives provided for in the contractual clauses aimed at ensuring compliance with the principles of the Code of Ethics, the Anti-Corruption Guideline, the Group's Integrated Management Systems Policy, the ASPI Group's Antitrust Compliance and Consumer Protection Guideline, and this General Part of the Model by third parties who have contractual relationships with the Company, the Supervisory Body submits a report containing:

- The details of the person responsible for the violation;
- The description of the charged conduct;
- an indication of the provisions of the Code of Ethics, the Anti-Corruption Guideline, the Group's Integrated Management Systems Policy, the ASPI Group's Antitrust Compliance and Consumer Protection Guideline, and this General Part of the Model that are found to have been violated;
- any documents proving the violation and/or other evidence of the violation.

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

The Head who manages 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 subject to violation, as well as an indication of the specific contractual clauses included in the letters of appointment, contracts or partnership agreements that are intended to be applied.

ANNEX 1

THE NORMATIVE DESCRIPTION OF PREDICATE OFFENSES UNDER LEGISLATIVE DECREE NO. 231/2001

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

Foreword

Law No. 190 of Nov. 6, 2012 (the so-called "Anticorruption Law"), titled "*Provisions for the prevention and suppression of corruption and illegality in public administration*," was published in Official Gazette No. 265 and subsequently came into effect on Nov. 28, 2012.

This reform was characterized by the following elements:

- the redefinition of the offence of "*extortion*" (Article 317 of the Criminal Code), which is provided for the Public Official alone, when he forces 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 the Public Official and the person 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 is recurring when the Public Official or person in charge of a public service unduly receives the giving of a benefit for the exercise of his or her functions or powers.

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

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

- The tightening of the penalty treatment related to the offence of bribery for the exercise of function (Article 318 of the Criminal Code);
- The amendment of the offence provided for and punished by Article 322-bis of the Criminal Code headed "*Embezzlement, extortion, undue inducement to give or promise benefits, bribery and incitement to bribery of members of international courts or bodies of the European Communities or international parliamentary assemblies or international organizations and officials of the European Communities and foreign states*."
- The introduction of trafficking in unlawful influence (Article *346-bis* of the Criminal Code), after reformulation of the same, to the list of offences against the P.A. relevant under Legislative Decree No. 231/2001;

- The modification of the duration and methods of application of prohibitory sanctions for offences against the P.A. (Articles 13 and 25 of the Decree) and precautionary measures (Article 51 of the Decree).

Subsequently, on July 15, 2020, Legislative Decree No. 75 of July 14, 2020 was published in the Official Gazette (No. 177) on "*Implementation of Directive (EU) 2017/1371 on combating fraud affecting the Union's financial interests through criminal law*."[25] , which entered into force on July 30, 2020.

The main changes introduced with the issuance of the above 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, para. 2, no. 1, Criminal Code) if the act offends the financial interests of the EU ;[26]

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

- *"The protection of the financial interests of the Union requires a common definition of fraud within the scope of this Directive, which should encompass fraudulent conduct on the revenue, expenditure and property side against the general budget of the European Union ("Union budget"), including financial transactions such as borrowing and lending. The notion of serious offenses against the common system of value added tax ("VAT") established by Council Directive 2006/112/EC (8) ("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 organization, which create serious threats to the common VAT system and, consequently, to the Union budget. Offenses against the common VAT system should be considered serious if they are related to the territory of two or more member states, result from a fraudulent scheme whereby such offenses are committed in a structured manner for the purpose of obtaining undue benefits from the common VAT system, and the total damage caused by the offenses is at least EUR 10,000,000. The notion of overall damage refers to the estimated damage resulting from the entire fraudulent scheme, both to the financial interests of the Member States concerned and to the Union, excluding interest and penalties. ..."* (see, to this effect, Recital 4);
- *"Corruption poses 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 judgment or discretion impartially, the giving of bribes to influence the judgment or discretion of a public official and the receipt of such bribes should fall within the definition of corruption, regardless of the law or regulatory provisions applicable in the country or international organization to which the official concerned belongs."* (see, to this effect, Recital 8);
- *"Certain types of conduct by 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 the misappropriation of funds or property, for a purpose contrary to that intended, and by means of which those interests are harmed, may harm the financial interests of the Union. It is therefore necessary to introduce a precise definition of offenses under which such types of conduct fall."* (see, to this effect, Recital 9);
- *"With regard to the offences of passive corruption and embezzlement, it is necessary to include a definition of public official that encompasses all those who hold a formal position in the Union, member states, or third countries. Private entities are increasingly involved in the management of Union funds. In order to adequately protect Union funds from corruption and embezzlement, the definition of "public official" must therefore encompass persons who, while not holding a formal office, are nevertheless vested with Public Service functions, and perform them in a similar manner, with respect to Union funds as contractors involved in the management of such funds."* (see, to this effect, Recital 10);
- *"Penalties for natural persons should provide for a maximum penalty of at least four years' imprisonment in certain cases. Such cases should include at least those in which considerable damage has been caused or considerable benefits obtained, presuming considerable damage or benefits with a value exceeding EUR 100,000. ... However, for offenses against the common system of VAT, the threshold at which the damage or advantage should be presumed considerable is, in accordance with this Directive, EUR 10 000 000. The introduction of minimum levels of maximum prison sentences is necessary to ensure equivalent protection of the Union's financial interests throughout the Union. The penalties are intended to serve as a strong deterrent to potential offenders, with Union-wide effects."* (see, to this effect, Recital 18);
- *"... (a) 'financial interests of the Union' means all revenue, expenditure and assets which are covered or acquired or due under (i) the budget of the Union; (ii) the budgets of institutions, bodies, offices and agencies of the Union established by virtue of the Treaties or budgets directly or indirectly administered and controlled by them; In respect of own resources revenue from VAT, this Directive shall apply only to cases of serious offences against the common system of VAT. For the purposes of this Directive, offenses against the common system of VAT shall be considered serious if the actions or omissions of an intentional character as defined in Article 3(2)(d) are related to the territory of two or more Member States of the Union and result in a total damage of at least EUR 10,000,000."* (see, to that effect, Article 2);
- As for, on the other hand, conduct affecting the financial interests of the Union, in Art. 3 refers to: "to *the use or presentation of false, inaccurate or incomplete statements or documents, resulting in the misappropriation or unlawful retention of funds or property from the Union budget or budgets administered by, or on behalf of, the Union; to the failure to disclose information in violation of a specific obligation, resulting in the same effect; or to the misappropriation of such funds or property for purposes other than those for which they were originally granted; ... to the use or submission of false, inaccurate or incomplete statements or documents relating to VAT, resulting in the diminution of resources of the Union budget; to the failure to disclose information relating to VAT in violation of a specific obligation, resulting in the same effect; or to the submission of accurate statements relating to VAT in order to fraudulently conceal the non-payment or unlawful establishment of VAT refund entitlements.*";
- Arts. 4 and 5, finally, recall, respectively, the cases of active and passive corruption that harms or may harm the financial interests of the Union and "embezzlement," namely, "*the action of the public official, directly or indirectly entrusted with the management of funds or property, aimed at committing or disbursing funds or appropriating property or using it for a purpose in any way other than that intended for them, which harms the financial interests of the Union*," as well as the punishability of the offenses provided for in the Directive also as instigation, aiding and abetting and attempt.

[26] Article 1 of the Decree also integrates the above criminal offenses to the commission of acts that harm the financial interests of the EU, with damage or profit exceeding 100.000.00, increasing the maximum sentences, extending the punishability of the offence provided for and punished by Article 322-bis of the Criminal Code also to P.U. or P.I.s that do not belong to EU states, and finally adding the mention of the EU in Article 640, co. 2, no. 1), Criminal Code.

- The inclusion in Article 24 of Legislative Decree No. 231/2001 of the offence of fraud in public supply, provided for and punished by Article 356 of the Criminal Code;
- The inclusion in Article 25 of Legislative Decree No. 231/2001 of the offences provided for and punished by Articles 314, co. 1 ("*Embezzlement*"), 316 ("*Embezzlement by profiting from the error of others*") and 323 ("*Abuse of office*") of the Criminal Code, when the act offends the financial interests of the European Union.

Then Decree Law No. 13/2022, on "*Urgent measures to combat fraud and safety in the workplace in construction, as well as on electricity produced by renewable energy plants*" (so-called Fraud Decree) was published in Official Gazette No. 47 of Feb. 25, 2022.

Of criminal relevance in particular is Article 2 ("*Sanctioning measures against fraud in public disbursements*"), by which, for the part of interest here, changes are introduced, of an amplifying sign, 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 Penal Code.

Subsequently, Legislative Decree No. 156 of October 4, 2022, on " *Corrective and supplementary provisions of Legislative Decree No. 75 of July 14, 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 heading of Article 322-bis of the Criminal Code, supplementing it with the offence of abuse of office.

Legislative Decree No. 150 of Oct. 10, 2022, on "*Implementation of Law No. 134 of Sept. 27, 2021, delegating to the government for the efficiency of the criminal process, as well as on restorative justice and provisions for the speedy settlement of judicial proceedings*," then introduced amendments to Article 640 of the Criminal Code[27] and Article 640-ter of the Criminal Code .[28]

Law No. 137 of Oct. 9, 2023, titled "*Conversion into law, with amendments, of Decree-Law No. 105 of Aug. 10, 2023, containing urgent provisions on criminal trial, civil trial, combating forest fires, recovery from drug addiction, health and culture, as well as on personnel in the judiciary and public administration.*" also 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).

SubsequentlyLaw No. 112 of August 8, 2024, which converted, with amendments, Decree-Law No. 92 of July 4, 2024, on "*Urgent measures on penitentiary, civil and criminal justice and Ministry of Justice personnel*," introduced the new offence against the public administration of misappropriation of money or movable property (Article 314-bis of the Criminal Code), which in turn was included in the catalog of predicate offenses provided for in Article 25 of Legislative Decree No. Legislative Decree 231/2001; the offence in question was also included in the list of offences for which Article 322-bis, paragraph 1, of the Criminal Code applies.

Most recently, Law No. 114 of Aug. 9, 2024, titled "*Amendments to the Criminal Code, the Code of Criminal Procedure, the Judiciary and the Code of Military Order*," repealed the offence of abuse of office under Article 323 of the Criminal Code, introducing further amendments aimed at coordinating

[27] Article 2, co. 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 the complaint of the offended person, unless some of the circumstances provided for in the preceding paragraph apply.*"

[28] Article 2, co. 1, lett. p), of Legislative Decree No. 150/2022 amended the fourth paragraph of Article 640-ter of the Criminal Code, which now reads, "*The offence is punishable on complaint by the offended person, except in the case of any of the circumstances referred to in the second and third paragraphs or the circumstance provided for in Article 61, first paragraph, number 5, limited to having taken advantage of circumstances of person, including with reference to age*

other provisions of the Criminal Code with the aforementioned repeal as well as reformed the offence of trafficking in unlawful influence in Article 346-bis of the Criminal Code in order to narrow its scope.

In order to better understand the ways in which the offences under consideration are carried out, a description of the notions of Public Official and Person in Charge of a Public Service is given 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, under Article 357 of the Criminal Code, exercise a legislative, judicial or administrative public function, the latter of which is governed by rules of public law and characterized by the exercise of deliberative authorizing or certifying acts.

On the other hand, persons in charge of a public service are defined under Article 358 of the Criminal Code as those who, in any capacity, perform a public service, meaning an activity governed in the same forms as a public function, but characterized by the lack of the powers typical of the latter.

The status of "Public Official" and "Person in Charge of a Public Service" is also held by members of international courts, members of bodies of the European Communities or international parliamentary assemblies, or international organizations, or officials of the European Communities, of foreign states, and those who, within other states, exercise functions corresponding to those of public officials and persons in charge of a public service (on this point, for more detail, see below what is provided in Article 322-bis of the Criminal Code).

Some examples are given below:

1. Entities performing a public legislative or administrative function, such as, for example:
   - MPs and members of the government;
   - Regional and provincial councilors;
   - European parliamentarians and members of the Council of Europe;
   - individuals who perform ancillary functions (persons in charge of the preservation of parliamentary acts and documents, drafting of stenographic reports, bursar, technicians, etc.);
2. Individuals who perform a public judicial function, such as, for example:
   - magistrates (ordinary judiciary of courts, Courts of Appeal, Supreme Court of Cassation, Superior Court of Waters, TAR, Council of State, Constitutional Court, military courts, popular judges of Assize Courts, justices of the peace, honorary and aggregate deputy praetors, members of ritual arbitration panels and parliamentary commissions of inquiry, magistrates of the European Court of Justice, as well as of various international courts, etc.);
   - individuals performing related functions (judicial police officers and agents, financial police and carabinieri, court clerks, secretaries, judicial custodians, bailiffs, witnesses, conciliation messengers, bankruptcy trustees, certificate issuers at court clerk's offices, experts and consultants to the Public Prosecutor, liquidators in bankruptcy proceedings, liquidators of composition with creditors, extraordinary commissioners of the extraordinary administration of large enterprises in crisis, etc.);
3. Individuals who perform a public administrative function, such as, for example:
   - officials employed by the Public Administration, international and foreign bodies and territorial entities (e.g. officials and employees of the State, the European Union, supranational bodies, foreign states and territorial entities, including regions, provinces, municipalities and mountain communities; persons performing functions ancillary 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, file clerks regarding the occupation of public land, municipal correspondents assigned to the employment office, employees of state-owned companies and municipal companies; tax collection persons, health personnel of public facilities, personnel of ministries, superintendencies, etc.);

- employees of other public, national and international entities (e.g., officers and employees of the Chamber of Commerce, Bank of Italy, Supervisory Authorities, public welfare institutions, ISTAT, UN, FAO, etc.);
- private individuals exercising public functions or public services (e.g. notaries, private entities operating under concessions or whose activities are otherwise regulated by rules of public law or which otherwise carry out activities in the public interest or are wholly or partially controlled by the state, etc.).

Activities which, although governed by rules of public law or authoritative acts, nevertheless consist in the performance of simple orderly tasks or the performance of merely material work, i.e., expressed in activities of a predominantly applicative or executive nature that do not involve any autonomy or discretion, are not considered public service.

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 dependence on a Public Entity, but with reference to the nature of the activity they concretely carry out, i.e., public function and public service, respectively. Therefore, even a person outside the Public Administration may hold the title of Public Official or Person in Charge of a Public Service, when he or she exercises one of the activities defined as such by 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, paragraph 2, no. 1, Criminal Code)**

   The offence is committed if, by resorting to artifice or deception and thereby misleading someone, an unfair profit is made to the detriment of the state or other public entity or the European Union. This offence can occur when, for example, in the context of contractual relations with the Public Administration, artifice or deception is employed so as to obtain advantages or benefits not due.

   Penalties applicable to the Entity

   - Monetary penalty: up to 500 quotas; however, if the Entity has made a significant profit or damage of particular gravity has resulted, a monetary penalty of 200 to 600 quotas shall apply;
   - Disqualifying 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 for obtaining public funds (Article 640-bis of the Criminal Code).**

   The offence is committed if the fraudulent conduct described above relates to grants, subsidies, loans, subsidized loans or other disbursements of the same type, however named, granted or disbursed by the State, other public bodies or the European Union.[29]

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

With regard to the material object of the offence, it is specified that contributions and grants are pecuniary disbursements that may be periodic or *one-off* in nature, fixed or determined on the basis of variable parameters, nature bound to the *an* or *quantum* or purely discretionary; loans are negotiated acts characterized by the obligation to allocate the sums or to repay them or by additional and different charges; subsidized 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 those practiced on the market. (In any case, the rules take into account all disbursements of money characterized by advantageousness compared to the conditions practiced by the market.)

Penalties applicable to the Entity

- Monetary penalty: up to 500 quotas; however, if the Entity has made a significant profit or damage of particular gravity has resulted, a monetary penalty of 200 to 600 quotas shall apply;
- Disqualifying 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.

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

The offence is integrated by the conduct of a person who, having obtained a loan, subsidized loan or other disbursement of the same type, however denominated, from the state, other public entity or the European Union, for the realization of one or more public purposes, allocates all or part of the funds received for purposes other than those for which they were obtained.

Penalties applicable to the Entity

- Monetary penalty: up to 500 quotas; however, if the Entity has made a significant profit or damage of particular gravity has resulted, a monetary penalty of 200 to 600 quotas shall apply;
- Disqualifying 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. Undue receipt of public disbursements (Article 316-ter of the Criminal Code).[31]

The offence is committed in cases where - through the use or submission of false statements or documents or through the omission of due information - grants, loans, subsidized loans, subsidies or other disbursements of the same type granted or disbursed by the state, other public bodies or the European Union are obtained without being entitled to them. [32]

In this case, contrary to what has been seen regarding the previous point (art. 316-bis of the Criminal Code), the destination of the public funds disbursed does not assume any importance, since the offence is consummated at the moment of their undue obtaining. It should be pointed out that this offence, having a subsidiary nature, only takes shape if the conduct does not integrate the

[30] Article 2(1)(b) of Decree-Law No. 13/2022 changed the rubric and expanded the subject matter of the offending conduct.
[31] Article 2(1)(c) of Decree-Law No. 13/2022 changed the rubric and expanded 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 is more than 100,000 euros.

extremes of the more serious offence of fraud to obtain public funds (Article 640-bis of the Criminal Code).

Penalties applicable to the Entity

- Monetary penalty: up to 500 quotas; however, if the Entity has made a significant profit or a particularly serious damage has resulted, a monetary penalty of 200 to 600 quotas shall apply;
- Disqualifying 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 entity (Article 640-ter of the Criminal Code).

This offence is committed when, by altering in any way the operation of a computer or telematic system or intervening without right in any manner on/manipulating the data, information and programs, contained therein, an unfair profit is obtained for oneself or others, causing damage to the State or other Public Entity.[33]

The objective element of this offense, which falls under the typical scheme of fraud, for the purposes of Legislative Decree No. 231/01 is characterized by the unlawful alteration of the operation of a computer system committed to the detriment of the state or other public entity.

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

Penalties applicable to the Entity

- Monetary penalty: up to 500 quotas; however, if the Entity has made a significant profit or a particularly serious damage has resulted, a monetary penalty of 200 to 600 quotas shall apply;
- Disqualifying 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 offence of fraud in public supply (Article 356 of the Criminal Code).

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

A supply contract does not mean a specific type of contract, but, in general, any contractual instrument intended to provide the P.A. with goods or services: consequently, the offence of fraud

[33] As a result of the amendments introduced by Legislative Decree No. 184 of November 8, 2021, the second paragraph of Article 640-ter of the Criminal Code provides as follows: "*The punishment shall be imprisonment from one to five years and a fine from 309 euros to 1,549 euros if any of the circumstances set forth in number 1 of the second paragraph of Article 640 apply, or if the act produces a transfer of money, monetary value or virtual currency or is committed with abuse of the quality of system operator*."

[34] All the offenses-presumed under Article 24 of the Decree, now headed "*Undue receipt of disbursements, fraud to the detriment of the state, a public entity or the European Union or for the purpose of obtaining public disbursements, computer fraud to the detriment of the state or a public entity and fraud in public supplies*"-will therefore detect not only if committed to the detriment of the state or other public entity, but also if committed to the detriment of the EU.

in public supply can be seen not only in the fraudulent execution of a supply contract (Art. 1559 Civil Code), but also of a contract of tender (Art. 1655 Civil Code).
Therefore, as also established by a well-established orientation of the jurisprudence of legitimacy, Article 356 of the Criminal Code punishes all fraud to the detriment of the Public Administration, whatever the contractual schemes under which suppliers are required to perform particular services (most recently, Criminal Cass., sec. VI, May 27, 2019).
For the purposes of the offence's configurability, mere breach of contract is, therefore, not sufficient, as the incriminating norm requires a *quid pluris* that must be identified in contractual bad faith, that is, in the presence of a malicious expedient (Criminal Cassation, sec. VI, ruling no. 5317, Feb. 11, 2011).
In this particular regard, on the other hand, it does not appear that specific deception is necessary, nor that the defects of the thing supplied are concealed, but the wilful in execution of the public contract for the supply of things or services is sufficient, with the consequence that, where the aforementioned elements characterizing fraud also occur, the concurrence between the two offences can be configured (Supreme Court, VI, Sept. 18, 2014, No. 38346).
In fact, the phrase "*commits fraud*" does not necessarily allude to devious or contrived behavior, because it refers to any breach of contract, regardless of the perpetrator's intent to make an undue profit or the pecuniary loss from which the commissioning entity may suffer.
Article 356 of the Criminal Code thus sanctions contractual conduct that, in relations with the administration, violates the principle of good faith in the execution of the contract, enshrined in Article 1375 of the Civil Code.: "*Fraud is an objective fact that harms the public interest regardless of the addition of fraudulent devices and, in a relationship with the Public Administration, it is not the psychological conditions of the contracting individuals that count but the manner in which the property is presented in relation to what was objectively agreed upon or provided for by law or administrative act, so that fraud is not excluded by the knowledge or knowability of the defect of the thing by those who acted on behalf of the Public Administration*." (see to this effect Cass. pen. sec. III, ruling no. 58448, Dec. 28, 2018).
In terms 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 defects or flaws .[35]
Finally, it is appropriate to point out that a person may also be held liable for aiding and abetting the fraudulent non-performance of public supply contracts who, although not playing the role of immediate interlocutor of the Public Administration concerned, supplies products, labor energies and anything else directly employed by the contracting company for the execution of the public work or service covered by the contract, provided that he or she is aware that the thing supplied is directly employed in the execution of the public work and stands in relation to it as an essential element for its realization (see Criminal Cass, sec. VI, judgment Dec. 13, 2013 No. 50334).
Penalties applicable to the Entity

[35] The following are some case law cases: supply for a school canteen of a food by origin and preparation that was different and less valuable than that provided for in the contract specifications; delivery to various commissioning hospital entities of the materials for orthopedic use of brands other than the one agreed upon (the fraud was to be appreciated in having concealed the substitution of the object of supply without notifying the public principals); affirmation of liability of the owner of a company contracting work on upgrading the electrical system of a public building that was carried out in a manner that was not in compliance with the accident prevention regulations and the content of the contract. The contractor, upon completion of the work, had issued a statement certifying that the work complied with the aforementioned regulations and contractual provisions; during the execution of the work, it had turned out that the work had been carried out with materials having different and inferior characteristics to those prescribed in the contract specifications.

- Monetary penalty: up to 500 quotas; however, if the Entity has made a significant profit or damage of particular gravity has resulted, a monetary penalty of 200 to 600 quotas shall apply;
- Disqualifying 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 offence of embezzlement (Article 314 of the Criminal Code).

This criminal case, included in Article 25 of Decree 231, now headed "*Embezzlement*, misappropriation *of money or movable property, extortion, undue inducement to give or promise benefits, and bribery*," punishes in the first paragraph the P.U. or P.I. (thus falling into the category of so-called "proper offence"), who, having by reason of his office or service the possession or otherwise the availability of money or other movable property of others, appropriates it.

As can be seen 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 related to the functional powers and duties of the office held, thus adopting a broader concept.

The addition to possession also of "availability" clarifies that the possibility of disposing of the thing regardless of material possession is already in itself capable of integrating, from the standpoint of the objective element, the offence under consideration, whenever the agent subject is able, by means of a dispositive act within his competence or connected to practices and customs established in the office, to interfere in the handling or availability of money and to achieve what is then appropriated (cf, *ex multis*, Cass. pen. sec. II, judgment no. 3327, 8.1.2010).

Another prerequisite of the case is that the availability of the thing or money by the P.U. or I.P.S. derives its reasons from the office or service held.

Therefore, it is necessary that the availability of the thing finds its legal justification and admissibility in the public function exercised and that the public official can dispose of it "because of" his position and that this power is expressly provided for by his functions.

Regarding the psychological element, on the other hand, embezzlement is punishable by general intent consisting of the intent to appropriate a movable thing and enjoy it for reasons of private profit, with the knowledge that instead one has the use of it for reasons of office.

It is in fact on said 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 behave as *dominus* of the property.

Instead, the requirement of the property's altruity has replaced the requirement of whether or not the property belongs to the P.A., which characterized the previous provision: the rule under consideration, in fact, combined the old figures of embezzlement and embezzlement to the detriment of private individuals into a single case.

Therefore, it is a multioffensive 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 are the patrimonial interests of the latter and of private individuals, realizing conduct that is completely incompatible with the title for which it is possessed and from which derives a total ouster of the property from the patrimony of the rightful owner.

Thus, peculation is characterized as a offence of mere conduct: appropriation, understood as behaving *uti dominus* with respect to the money or movable thing possessed, is punished.
On the other hand, with the reform of Law No. 86 of 1990, the additional conduct of diversion, i.e., the use of the property for purposes other than those underlying the reason for possession, was deleted in order to avoid interpretative distortions in practice.
However, even as a result of various jurisprudential contrasts, the equalization between conduct of misappropriation (i.e., imparting to the thing a destination different from that intended) and appropriation now seems to be unequivocal.
Indeed, the fact of improperly allocating a thing to a different use means in essence exercising typically proprietary powers over it: "*in the offence of embezzlement, the concept of 'appropriation' also includes the conduct of 'misappropriation' insofar as giving the thing a destination different from that permitted by the title of possession means exercising typically proprietary powers over it and, therefore, seizing it*" (see in this sense Cass. pen, Sec. VI, Judgment No. 25258 of June 4, 2014, in which the Court qualified as embezzlement the conduct of a public service appointee who, instead of investing the resources he had the availability of for the institutionally intended public purposes, had used them to purchase shares in speculative funds).[36]
Turning to the examination of the relevance under Legislative Decree No. 231/2001 of the offence in question, it is necessary from the outset to examine the possible incompatibility between its consummation 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 fact, the hypothesis to which the Directive seems primarily to refer sees the person for whose actions the entity is liable (a senior person or employee) take part, as an "extraneous" competitor, in the appropriative conduct materially carried out by a "public official," as defined by Article 4(4) of the Directive itself. To exemplify, one can think of the case in which the general manager of a company convinces an EU official to appropriate EU funds and invest them in his company, or again of the cases of so-called "appropriative diversion," recognized in case law in the case of the use of public funds for purposes completely unrelated to the public authority and with irreversible leakage of the money, hypothetically intended in part for the public authority, through the payment of nonexistent credits to a colluding company, in part to the latter or its director. Clearly, these are cases in respect of which no doubt appears to be permitted as to the recurrence of the prerequisite ("interest" and/or "advantage") required for the imputation to the entity of the administrative liability provided for by Legislative Decree No. 231*."
Finally, it should also be reiterated that "231" liability is triggered under Article 314, para. 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.

[36] In its reasoning, the Court also specified that: "*in this perspective, also considering the nature of the legal interest protected by the incriminating norm dictated by Art. 314 of the Criminal Code, it may be affirmed that appropriation is recognizable not only when the public agent makes the thing "his own," but also when, by abusing the use of the money or thing of which he has the possession or availability by reason of his office or service, he deprives the public administration of the possibility of using that money or 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 the availability of to achieve the intended public interest purposes, allocates it to the fulfillment of an exclusively private need, such as that of favoring a financial promoter who is the beneficiary of the relevant commissions, commits that money, in violation of legal and statutory regulations, to purchase high-risk investment funds, and thus implementing that interversion of possession that qualifies appropriation, with the exercise over those sums of a power uti domini*."

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

Unlike the previous incriminating case, for the rule under consideration here[37] the exercise of functions or service does not constitute the reason for the possession or otherwise the availability of the good, but only a chronological moment within which the typical conduct must materialize, which consists of receiving, that is, accepting what is mistakenly given or made available, or withholding it, that is, not returning it.

More specifically, taking advantage of another's mistake means taking advantage of a pre-existing misrepresentation by the third party such that the agent is in a position to be able to consummate the offence.

The error that generates the appropriation can descend from any cause, but it cannot be produced voluntarily, that is, with malice, by the agent.

The error of the passive party must therefore pre-exist the conduct of the public official, be spontaneous and therefore not determined, otherwise falling under the case of extortion.

Therefore, an essential prerequisite of the offence is that the third party is mistakenly convinced that he or she should deliver money or other benefits into the hands of the Public Official or Person in Charge of a Public Service, who accepts or believes them by exploiting the mistake.

A general intent, i.e., awareness of another's mistake and intent to receive or retain the thing, is required for its existence in terms of the psychological element.

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

Law No. 112 of August 8, 2024, which converted, with amendments, Decree-Law No. 92 of July 4, 2024, on "*urgent measures on penitentiary, civil and criminal justice and Ministry of Justice personnel matters*" introduced the new offence against the public administration of misappropriation of money or movable property (Article 314-bis of the Criminal Code), which in turn was included in the catalog of predicate offenses provided for in Article 25 of Legislative Decree No. Legislative Decree 231/2001; the offence in question was also included in the list of offences for which Article 322-bis, paragraph 1, of the Criminal Code applies.

The new criminal case, "*considering the extraordinary necessity and urgency of defining, also in relation to the Euro-unitary obligations, the offence of undue destination of goods by the public agent,*" even in the aftermath of the repeal of the offence of abuse of office, punishes in the first paragraph with imprisonment from 6 months to 3 years the public official or the person in charge of a public service who - outside the cases of embezzlement provided for in Article 314 c.p. - having by reason of his office or service the possession or otherwise the availability of money or other movable

[37] Article 316 of the Criminal Code today provides as follows: "*1. A Public Official or 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 retains, for himself or for a third party, money or other benefit, 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 100,000 euros*."

property of others, allocates it to a use other than that provided for by specific provisions of the law or acts having the force of law from which no margin of discretion remains and intentionally procures for himself or others an unfair pecuniary advantage or unjust damage to others.
By virtue of an amendment introduced during consideration in the Senate, a penalty of imprisonment from 6 months to 4 years is provided for when the act offends the financial interests of the European Union and the unfair advantage or damage exceeds 100,000 euros
Therefore, the realization of the new criminal offense requires:

- diversion i.e., the allocation of another person's money or movable property, by the public official or person in charge of a public service, to a use other than that provided for by specific rules of legislative rank, from which no margin of discretion remains;
- The unfair pecuniary benefit in favor of the agent or the unfair harm to a third party;
- the pecuniary advantage or damage must be intentionally procured (subjective element of the offence).

Having regard to the conduct of embezzlement, it should be premised, also in order to further understand the rationale of the reform under consideration, that from 1930 to 1990 embezzlement (Article 314 of the Criminal Code) punished the "*public official or person in charge of a public service, who, having by reason of his office or service the possession of money or other movable thing, belonging to the public administration, appropriates it, or embezzles it for his own or others' profit*."
When introduced, therefore, embezzlement encompasses conduct of both appropriation and misappropriation, the latter being understood to mean the allocation of money or property to a use other than that which legitimizes possession
The 1990 reform rewrote the case by limiting it to the conduct of appropriation; however, this did not entail an *abolitio criminis*, because since then doctrine and jurisprudence have been bringing the actual embezzlement by misappropriation back to the case of abuse of office (and embezzlement by embezzlement/appropriation to embezzlement under Article 314 of the Criminal Code).
In fact, according to the well-established direction of the jurisprudence of legitimacy, the provision of Article 314 of the Criminal Code has remained applicable "*in the case where the money or other assets are taken away from the public destination and used for the satisfaction of private interests of the agent,"* recurring, however, the different criminal hypothesis of Article 323 of the Criminal Code - now repealed - *"when there is a diversion for one's own profit that [.... takes the form of an undue use of the asset that does not result in its loss and the consequent patrimonial injury to the detriment of the entity to which it belongs [...] or if the use of public money takes place in violation of accounting rules and is functional to the realization, in addition to undue private interests, of objectively existing public interests [...]*" (see in this sense, Cass. Pen, Sec. VI, judgment no. 36496 of 30/09/2020).
Hence the need and urgency to intervene by decree-law to try to restore (at least) embezzlement by diversion.
In relation, however, to the locution of pecuniary damage and advantage, case law clarifies that damage includes both pecuniary and non-pecuniary aspects, such as any unjust aggression to the personal sphere, including subjective rights and legitimate interests. Patrimonial advantage, on the other hand, derives from the public official's wrongful conduct and can also be moral in nature if it can be evaluated economically.
Paragraph 2-bis amends Article 323-bis, paragraph 1, of the Criminal Code, including the offence of misappropriation of money or movable property in the list of those for which the mitigating circumstance of the particular tenuousness of the act operates.

Finally, paragraph 2-ter amends Article 25, paragraph 1, second sentence, of Legislative Decree No. 231/2001 to include the offence of misappropriation of money or movable property if the act offends the financial interests of the European Union.

Penalties applicable to the Entity

Fine: up to 200 quotas.

10. Concussion (art 317 c.p.)

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

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

This reintroduction, according to the explanatory report of the original bill, is justified because it would be incongruous to punish only the Public Official when a concessionaire of a public service can also engage in the same behavior "*with equally devastating effects on the ethics of relationships*."

The Public Official or Person in Charge of a Public Service determines the state of subjugation of the will of the offended person through the abuse of his or her quality (regardless of his or her specific competencies but by instrumentalizing his or her position of preeminence) or powers (conduct that represents manifestations of his or her functional powers for purposes other than that with which he or she has been vested).

The perpetrators of this offence (offended persons) are both the public administration and the private concussión.

Penalties applicable to the Entity

- Fine: 300 to 800 quotas;
- Disqualification sanctions: disqualification from carrying out the activity; suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense; 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 (for a duration of no less than 4 years and no more than 7 years, if the offense was committed by one of the persons referred to in 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 instance judgment, the entity has effectively taken steps to prevent the criminal activity from being carried to further consequences, to secure evidence of the offences and to identify the perpetrators or to seize the transferred sums or other utilities, and has eliminated the organizational deficiencies that led to the offence by adopting and implementing organizational models suitable for preventing offences of the kind that occurred, the disqualification penalties have the duration established by Art. 13, paragraph 2).

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

The offence is committed when a Public Official, for 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 can be committed not only by the Public Official but also by the Person in Charge of a Public Service under Article 320 of the Criminal Code.
Compared with bribery, corruption is characterized by the illicit 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 bribery* when a senior or subordinate person of the Company bribes a Public Official or Person in Charge of a Public Service in order to obtain some benefit or advantage for the Company;
- *passive bribery* when an apical or subordinate person of the Company, in the capacity of 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 in order to perform acts contrary to the duties of his or her office. In the latter hypothesis, in order for the Company's "administrative" liability to be configured, there must be an interest or advantage for it, as well as for the apical or subordinate person, who accepted the bribery.

Most recently, Law No. 3/2019 tightened the penalty regime of the incriminating case under consideration, providing a sentencing framework of 3 to 8 years.
Penalties applicable to the Entity
Fine: up to 200 quotas.

12. Bribery for an act contrary to official duties (Article 319 c.p.)

The offense occurs when a Public Official or Person in Charge of a Public Service receives, for himself or a third party, money or other benefit or accepts the 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 the duties of his office.
In this particular type of offence, the private corruptor secures by promise or undue gift an act of the Public Official or Person in Charge of a Public Service that contravenes the duties of his or her office.
To determine whether or not an act is contrary to the duties of office, it is necessary to have regard not only to the act itself in order to verify its legitimacy or illegitimacy, 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 be in itself not illegitimate and yet nevertheless be contrary to the duties of office. The characteristic of an act contrary to the duties of office covers both those acts that conflict with legal norms or service instructions and those acts that otherwise violate 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;
- Disqualification sanctions: disqualification from carrying out the activity; suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense; 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 (for a duration of no less than 4 years and no more than 7 years, if the offense was committed by one of the persons referred to in 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 instance judgment, the entity has effectively taken steps to prevent the criminal activity from being carried to further consequences, to secure evidence of the offences and to identify the perpetrators or to seize the transferred sums or other utilities, and has eliminated the organizational deficiencies that led to the offence by adopting and implementing organizational models suitable for preventing offences of the kind that occurred, the disqualification penalties have the duration established by Art. 13, paragraph 2).

For aggravating circumstances under Article 319-bis of the Criminal Code, please refer to the next section of this paper.

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

"*The punishment shall be increased if the act referred to in Article 319 has as its object the conferment of public employment or salaries or pensions or the conclusion of contracts in which the administration to which the Public Official belongs as well as the payment or reimbursement of taxes is involved*."

In such cases, that is, when the Entity has gained a significant profit from the act, the following sanctions will be applicable:

- Fine: 300 to 800 quotas;
- Disqualification sanctions: disqualification from carrying out the activity; suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense; 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 (for a duration of no less than 4 years and no more than 7 years, if the offense was committed by one of the persons referred to in 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 instance judgment, the entity has effectively taken steps to prevent the criminal activity from being carried to further consequences, to secure evidence of the offences and to identify the perpetrators or to seize the transferred sums or other utilities, and has eliminated the organizational deficiencies that led to the offence by adopting and implementing organizational models suitable for preventing offences of the kind that occurred, the disqualification penalties have the duration established by Art. 13, paragraph 2).

14. 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 benefit in order to favor or damage a party in a civil, criminal or administrative trial. Thus, a company may be held liable for the offence if, being a party in a judicial proceeding, it bribes, even through an intermediary (e.g., its own defense counsel) a Public Official (not only a magistrate, but also a clerk or other official, or a witness), in order to obtain the successful conclusion of the proceeding.

Article 319-ter configures an autonomous offence with respect to the bribery cases 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 configured, that the incriminated acts be directly attributable to the exercise of a judicial function, falling within the sphere of operation of the incriminating norm not only those activities that are properly jurisdictional, but also those that are more loosely an expression of the exercise of judicial activity and also attributable to persons other than the judge or the prosecutor.

Penalties applicable to the Entity

- Paragraph 1, fine: 200 to 600 quotas;
- paragraph 1, disqualifying sanctions: disqualification from carrying out the activity; suspension or revocation of authorizations, licenses 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;
- Paragraph 2, fine: 300 to 800 quotas;
- paragraph 2, prohibitory sanctions: disqualification from carrying out the activity; suspension or revocation of authorizations, licenses 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 (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 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 instance judgment, the entity has effectively taken steps to prevent the criminal activity from being carried to further consequences, to secure evidence of the offences and to identify the perpetrators or to seize the transferred sums or other utilities, and has eliminated the organizational deficiencies that led to the offence by adopting and implementing organizational models suitable for preventing offences of the kind that occurred, the disqualification penalties have the duration established by Art. 13, paragraph 2).

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

The offence, introduced by Art. 1, para. 75, lett. i), Law No. 190/2012, is committed when a Public Official or a Person in Charge of a Public Service, abusing his or her position or powers, induces someone to unduly give or promise, for himself or herself or for a third party, money or other benefit.

The offence exists both in the case where the Public Official or Person in Charge of a Public Service, for a fee, performs a due act (for example: speeding up a file, the processing of which is

within his or her competence), and in the case where he or she performs an act contrary to his or her duties (for example: procuring or favoring the illegitimate awarding of a tender).[38]
This case differs from extortion, which is characterized by the threat or prospect of an unjust evil in that 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, must be seen in the different significance that the abuse of power and/or quality takes on in the two cases, since only in undue induction does it play the role of an indefectible tool for obtaining, with causal efficiency, the undue performance.
Penalties applicable to the Entity

- Fine: 300 to 800 quotas;
- Disqualification sanctions: disqualification from carrying out the activity; suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense; 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 (for a duration of no less than 4 years and no more than 7 years, if the offense was committed by one of the persons referred to in Art. 5, paragraph 1, letter a); for a duration of not less than 2 years and not more than 4 years, if the offence was committed by one of the persons referred to in Article 5, paragraph 1, letter b. If prior to the judgment of first instance the entity has effectively taken steps to prevent the criminal activity from being carried to further consequences, to secure evidence of the offences and to identify the perpetrators or to seize the transferred sums or other utilities, and has eliminated the organizational deficiencies that led to the offence by adopting and implementing organizational models suitable for preventing offences of the kind that occurred, the disqualification penalties have the duration established by Art. 13, paragraph 2).

16. Bribery of a person in charge of a public service (art. 320, Criminal Code)

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

17. Penalties for the corruptor (art. 321 c.p.)

The punishments established in paragraph 1 of Article 318, Article 319, Article 319-bis, Article 319-ter, and Article 320 in connection with the aforementioned cases in Articles 318 and 319 also apply to a person who gives or promises the Public Official or Person in Charge of a Public Service money or other benefit.

18. Incitement to bribery (Article 322 of the Criminal Code).

The punishment provided for this offense 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 the duties of office, if the promise or offer

[38] In the cases provided for in the first paragraph, a person who gives or promises money or other benefits shall be punished by imprisonment of up to three years or by imprisonment of up to four years when the act offends the financial interests of the European Union and the damage or profit is more than 100,000 euros.

is not accepted. Similarly, the conduct of a public servant who solicits a promise or offer from a private individual to induce him or her to perform an act contrary to official duties is punished.
Thus, the offence under consideration is a offence of mere conduct. The objective element of the offence consists of inciting conduct, whereby, on the one hand, the agent must cause 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, disqualifying sanctions: disqualification from exercising the activity; suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense; 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 (for a duration of not less than 4 years and not more than 7 years, if the offense was committed by one of the persons referred to in 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 instance judgment, the entity has effectively taken steps to prevent the criminal activity from being carried to further consequences, to secure evidence of the offences and to identify the perpetrators or to seize the transferred sums or other utilities, and has eliminated the organizational deficiencies that led to the offence by adopting and implementing organizational models suitable for preventing offences of the kind that occurred, the disqualification penalties have the duration established by Art. 13, paragraph 2).

Embezzlement, misappropriation of money or movable property, extortion, undue inducement to give or promise benefits, bribery and incitement to bribery of members of international courts or bodies of the European Communities or international parliamentary assemblies or international organizations and officials of the European Communities and foreign states (Article 322-bis of the Criminal Code - amended by Law no. 114/2024) The provisions envisaged for the offences of embezzlement, misappropriation of money or movable property, embezzlement by profiting from the error of others, extortion, bribery for the exercise of function, bribery for an act contrary to official duties, bribery in judicial acts, undue induction to give or promise benefits, and incitement to bribery, 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 servants employed under contract under the Staff Regulations of Officials of the European Communities or the Conditions of Employment of Servants of the European Communities;
- persons seconded by the member states or any public or private entity to the European Communities, who perform functions corresponding to those of officials or agents 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 those in charge of a public service;
- judges, the prosecutor, assistant prosecutors, officers and agents of the International Criminal Court, persons commanded by the States Parties to the ICC Treaty who exercise functions corresponding to those of officers or agents of the ICC, members and employees of bodies established on the basis of the ICC Treaty;
- persons performing functions or activities corresponding to those of Public Officials and Persons in Charge of a Public Service within public international organizations;
- members of international parliamentary assemblies or an international or supranational organization and judges and officials of international courts;
- persons performing 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.

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

- To the persons named above;
- to persons performing functions or activities corresponding to those of Public Officials and Persons in Charge of a Public Service within other foreign states or public international organizations.

Penalties applicable to the Entity

- Monetary penalty: 200 to 600 quotas; if the Entity has made a significant profit, a monetary penalty of 300 to 800 quotas shall apply;
- Disqualification sanctions: disqualification from conducting business; suspension or revocation of authorizations, licenses 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 (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 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 instance judgment, the entity has effectively taken steps to prevent the criminal activity from being carried to further consequences, to secure evidence of the offences and to identify the perpetrators or to seize the transferred sums or other utilities, and has eliminated the organizational deficiencies that led to the offence by adopting and implementing organizational models suitable for preventing offences of the kind that occurred, the disqualification penalties have the duration established by Art. 13, paragraph 2).

19. Trafficking in unlawful influence (Article 346-bis of the Criminal Code - amended by Law No. 114/2024)

Law No. 3 of January 9, 2019 (published in Official Gazette No. 13, Jan. 16, 2019) introduced the offence of trafficking in unlawful influence provided for and punished by Article 346-bis of the

Criminal Code[39] into the catalog of 231 offenses-presumed offenses, and at the same time repealed the offence of extortion of credit (Article 346 of the Criminal Code).

Most recently, Article 1 (e) of Law No. 114/2024 reformed the offence under consideration, which now provides as follows: "*Whoever, outside the cases of complicity in the offences referred to in Articles 318, 319 and 319-ter and in the corruption offences referred to in Article 322-bis, intentionally using for the purpose existing relations with a public official or a person in charge of a public service or one of the other persons referred to in Article 322-bis, unduly causes to give or promise, to himself or to others, money or other economic benefit, in order to remunerate a public official or a person in charge of a public service or one of the other persons referred to in Article 322-bis, in connection with the performance of his duties, or in order to carry out another illicit mediation,...*

The purpose of the indictment is to strike at the phenomena of illicit intermediation between the private party and the public official, aimed at the latter's corruption.

The rule, also in view of the subsidiarity clause provided for in the *incipit of* the first paragraph, is therefore aimed at targeting conduct that is prodromal with respect to (subsequent) corrupt agreements involving the holder of public functions, on whose decisions one would like to illicitly influence, and consequently does not apply in the case in which the Public Official or Person in Charge of a Public Service accepts the promise or giving of the money or other economic benefit from the intermediary, there being in that case an accomplice of the private individual, the intermediary and the Public Official or Person in Charge of a Public Service in a consummated offence of corruption.

More specifically, the mediator's relations with the public official must be actually used (not just boasted) and must exist (not just asserted). In this regard, it is noted that during the Senate's referendum examination, the concept of exploitation, which was already present in the current text, was replaced by that of utilization. It should be noted that, in this way, the two amendments, introduced by Law No. 3 of 2019, (so-called "sweepacorrotti"), which had been made to the text in order to absorb the offence of extortion of credit within the case of illicit trafficking in influence, are eliminated. Such conduct of so-called "bragging" or "boasting" - as specified in the illustrative report - will remain punishable where the constituent elements of the general case of the offence of fraud are present (see in this sense Cass. Pen., judgment no. 5221/2020). Thus, the use of the reports must be done intentionally for the purpose of carrying out the conduct, subsequently described, that integrates the criminal case. The nature of the intent, in the form of intentional intent, required to constitute the criminal case is thus clarified

The benefit given or promised to the mediator, as an alternative to money, must be economic (this is also specified in the third paragraph, as well as in the fourth paragraph); this amendment, therefore, reaffirms the necessarily economic nature of the benefit given or promised to the mediator

The description of the typical conduct is modified to provide that the purpose of being wrongfully given or promised, for oneself or others, money or other economic benefit:

- to the remuneration of a public official or a person in charge of a public service or one of the other persons referred to in Article 322-bis in connection with the performance of his or her duties;

[39] The offence of trafficking in unlawful influence was included in the Criminal Code by Law No. 190/2012.

- To the implementation of another illicit mediation.

The penalty treatment of the minimum sentence is increased from 1 year to 1 year and 6 months. The explanatory report specifies that the increase in the minimum sentence is a result of the reduction in the scope of the offense, which is limited to particularly serious conduct.

In addition, a new second paragraph is introduced to Article 346-bis of the Criminal Code with an explicit definition of "*other unlawful mediation*" referred to in the first paragraph.

Thus, unlawful mediation is defined as mediating to induce the public official or person in charge of a public service or one of the other persons referred to in Article 322-bis to perform an act contrary to the duties of office constituting a offence from which undue advantage may be derived.

Therefore, in light of this specification, one of the two alternative endings of typical conduct previously provided is remodeled.

In fact, it is provided that, in the event that the money or economic benefit given or promised to the mediator is not aimed at the remuneration of the public official, the person in charge of a public service or the other persons referred to in Article 322-bis, the unlawful mediation agreement between the principal and the mediator must be aimed at the performance of an act contrary to the duties of office, constituting a offence, capable of producing an undue advantage to the principal.

This clarification would seem to be consistent with the most recent jurisprudence of legitimacy, which has held, in relation to so-called "onerous mediation," that it "*is illicit by reason of the 'external' projection of the relationship of the contracting parties, of the final objective of the influence bought, in the sense that mediation is illicit if it is aimed at the commission of a criminal offence - of a offence - suitable for producing advantages to the principal*" (Cass. pen, Sec. VI, Sent. Jan. 13, 2022, No. 1182). In the new fourth paragraph of Article 346-bis of the Criminal Code, the aggravating circumstance stipulated therein is extended in the sense of providing for the case in which the person who unduly causes to give or promise, to himself or others, money or other economic benefit also holds one of the qualifications referred to in Article 322-bis and not only the qualification of public official or person in charge of a public service.

In addition, this article makes further amendments to the Criminal Code aimed at:

- extend to the offence of trafficking in unlawful influence, the mitigating circumstances set forth in Article 323-bis of the Criminal Code. For this reason, in the new wording of the article under comment the fifth paragraph, which provided for a specific mitigating circumstance for acts of particular tenuousness, is eliminated;
- Extend to the offence of trafficking in unlawful influence the cause of non-punishment in Article 323-ter of the Criminal Code.

The same punishment applies to anyone who unduly gives or promises money or other economic benefit.

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

Penalties applicable to the Entity

Fine: up to 200 quotas.

20. Disturbance of freedom of incantations (art. 353 c.p.)

Law No. 137 of Oct. 9, 2023, headlined "*Conversion into law, with amendments, of Decree Law No. 105 of Aug. 10, 2023, containing urgent provisions on criminal trial, civil trial, combating forest fires, recovery from drug addiction, health and culture, as well as on personnel in the judiciary and public administration.*" amended Article 24 of the Decree, introducing, among others, the offence of disturbing the freedom of auctions (Article 353 of the Criminal Code).

The article in question reads as follows: "*1. Whoever, by violence or threat, or by gifts, promises, collusion or other fraudulent means, prevents or disrupts the bidding in public auctions or private bidding on behalf of public administrations, or drives away the bidders, shall be punished by imprisonment from six months to five years and a fine from EUR 103 to EUR 1.032. 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 euro 516 to euro 2,065. 3. The punishments established in this article shall also apply in the case of private bidding on behalf of private individuals, directed by a public official or legally authorized person; 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 norm must be identified, in addition to the regular conduct of the tenders and precisely in the interest that the tender, prelude to the stipulation of a contract that binds the Public Administration, be carried out in a transparent and regular manner, also in respect of freedom of competition; in fact, criminal protection stands as a closure of a complex and articulated system, such as that of public tenders, regulated by the Public Contracts Code, which pivots precisely on the application of free competition, non-disparity, *favor partecipationis*, equality and transparency.

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

Active subject of the offence of disturbing the freedom of tenders can be anyone, whether he is an outsider, interested and, 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 in charge by law or authority of public auctions or bidding*." Regarding the notion of "*person in charge*," it was clarified that it "*should be determined with reference not limited to the terminal moment - namely, the celebration of the tender - but having regard to the entire procedural process that the public enchantment for its realization entails: the holding of the public enchantment, 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 the person in charge by law or authority to public auctions or private bidding cannot be limited to those who preside over and direct the tender, but includes all those who perform essential functions in the entire procedural course.*" (see Criminal Cass., sec. VI, 13.1.2005, No. 4185; Criminal Cass., sec. VI, 28.11.2003, No. 10886).

The conduct, alternately stated in the rule, must necessarily be carried out in relation to one or more specified "races," taking, according to the peremptory enumeration (tied-form offence), the form of violence, threats, gifts or promises, collusion or other fraudulent means.
It may be observed that the one centered on "*violence*" is configurable in any behavior in the absence of which the recipient would not have resolved to do (omit or tolerate) what he did (omitted or tolerated). Therefore, it also includes violence on property or on third parties related to the passive party by ties of kinship or solidarity. According to this understanding, the constitutive requirement of violence would result in a form of coercion or coercion detrimental to the capacity for self-determination, likely to transcend the common understanding of violence understood as the explication of physical force.
As for "*threat*," it consists, according to the traditional definition, of the representation of a future, unjust evil whose realization is found to be dependent on the agent.
The "*gifts or the promise of gifts*" are, on the other hand, assimilated to the concept of utility typical of the conduct of bribery and can be identified in a *quid* susceptible to direct the recipient's behavior towards a direction different from the one he would have taken; the "gift" must assume a character objectively proportionate or adequate to the persuasive function. The "promise," in any case, cannot be abstract or generic, but must possess, on the contrary, the requirements of typicality, precision and concreteness, in the sense that the act of promising cannot be reduced to a simple negotiating 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 illicit end by the irregular conduct of the auction or bidding"; "any clandestine agreement directed at influencing the normal conduct of bidding ... any clandestine agreement between two or more persons to achieve an illicit 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 those in charge of the tender, directed to influence the outcome of the tender*" (Cass. pen, sec. VI, sent. no. 40304/2014).
More specifically, as also ruled by Cass. pen, Sec. VI, judgment May 16, 2019 no. 4113, fraudulent agreements between the person in charge of the tender and one of the competitors, by reason of which the former provides the latter with "suggestions" and "advice" for the purpose of determining the content of the bid to be submitted, are relevant: it is, therefore, an undue contribution, offered by those who should guarantee the fairness and equality of conditions of the competitors, for the benefit of only one of them, and, therefore, to the detriment of the others, in a manner likely to affect the normal course of tenders (in the case at hand, the private individual had received indications from the public official who had drafted the technical specifications for the tender, was the contact person for the reconnaissance of the places by the competitors concerned and was part of the office responsible for the appointment of two of the three members of the awarding commission).
A further conduct in this sense relates to the communication of provisional scores awarded to competitors in a bidding process by members of the commission to an outsider, because in this way that person was put in a position to decide how to award scores and to interfere in the commissioners' work. (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 had the opportunity to clarify on several occasions that the link, formal or substantial, between companies participating in the tender for the award of a public contract is not in itself sufficient to configure the offence provided for in Article 353 of the Criminal Code, requiring

proof that, behind the establishment of apparently separate companies, there is a single decision-making center of coordinated bids or that the companies, using the relationship of connection, have submitted bids agreed in their specific and actual content (Cass. pen., Sec. VI, June 13, 2018, no. 3264; Cass. pen., Sec. VI, Sept. 17, 2019, no. 42371).

Another type of conduct integral to 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*," namely, "*any artifice, deception or lie concretely capable of achieving the event of the offence, which is configured not only in an immediate and actual 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 terms of taxativity, has led to the view that the case under Article 353 of the Criminal Code, in this particular form, is integrated in a varied case history. By way of example, it has been held that the following conduct may be an expression of disturbance by fraudulent means: the unjustifiably restrictive interpretation of particular clauses; the exclusion of a bidder on the basis of strict formalism in checking the requirements of the applications; or, again, the initiative of the person in charge to proceed 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 for participation in the tender that, filled out in all their constituent elements and signed in blank, were completed with the indication of the percentage of discount to only one of the co-participants (Cass. pen. 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; Cass. pen., sez. V, 11.11.2003, no. 561); the absolutely anomalous and economically completely unjustified downward bid, made in the knowledge that it contributes in a totally prevalent way to determine at a minimum level the so-called average bid, suitable to identify the successful bidder (Cass. pen, sec. V, 29.4.1999, no. 9062); procedural anomalies, such as the use of nominees or the provision of incorrect information to participants (Criminal Cass., sec. VI, 11/07/2014, no. 42770); the minimum conscious alteration of the calculation of averages for the identification of the successful bidder, as long as 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 to the prodromal verifications to the stipulation of the contract, considering that only with this act the procedure of choice of the contractor comes to an end. (Cass. pen., sec. II, 04/05/2018, no. 34746).

The naturalistic event of the offence of disturbed freedom of tenders can be constituted not only by the impediment of the tender, but also by its disturbance, a circumstance that can occur when the fraudulent or collusive conduct has even only affected 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, June 23, 2016 No. 43408).

In the same vein, Criminal Cass., Sec. VI, March 11, 2013 no. 12821: the consummation of the offence of disturbed freedom of tenders 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

bids. It follows that the reference to the moment of the final awarding of the contract ends up representing a mere *post factum* irrelevant to the configurability of the offence[40]

The offence in question, therefore, occurs not only in the case of actual damage, but also in the case 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.

For this alone results in an injury to the legal goods protected by the incriminating norm.

As for the further alternative event of removal, the latter hypothesis "*is achieved by diverting bidders from the tender or preventing them from participating in it, since those who do not possess the requirements to participate in the tender; those who merely have the possibility of submitting a bid in the presence of the requirements; those who have the possibility and intention of participating; those who are about to participate; and those who have actually participated in it, can also be qualified as bidders*." (Criminal Cass., Sec. VI, Order No. 41379/2023).

On the other hand, with regard to the moment of consummation, it has also been pointed out that the disruption can take place not only at the precise moment in which the competition takes place, but also in the complex procedure leading up to the competition, in which the competitors themselves are protagonists, or outside the competition itself (Criminal Cassation, Sec. VI, April 5, 2012, no. 18161).

In the application practice of the incriminating case, where explicit was and is the reference only to the hypotheses of public tenders and private bids, the problem has naturally also arisen of whether the margins of the criminally relevant sphere should be traced in peremptory terms within the procedures with the aforementioned characteristics or whether recourse should be had to a more elastic and broader interpretation of the hypotheses of "tender."

In the earliest jurisprudence, the scope of application of Article 353 of the Criminal Code was considered referable to the hypotheses of "competitive bidding" (an institution akin to private bidding) and 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 it has had with individuals or representatives of legal persons who propose their conditions. Such a case, while appearing in truth to be outside the concepts of "private negotiation" and "private bidding," has nevertheless been considered susceptible to fall under the provisions of Article 353 of the Criminal Code, since "*when the public administration, although not obliged to do so, proceeds to informally consult private firms in competition with each other, thus deciding to place a limit on its activity that is not legislatively provided for, it must then nevertheless comply with 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 which takes place in compliance with the law, inasmuch as the legal good protected by the criminal rule (with respect to the rules of free competition both in the interest of the participants, in whom the expectation of 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 "unofficial tender" connected to a private negotiation, when by choice of the administration or by regulatory discipline the tender is procedural,

[40] In this regard, it should be pointed out that the conduct constituting a offence can also be carried out in the interval between the provisional and final award, given that the former has a merely endoprocedural value and it is only with the final award that the procedure for choosing the contractor comes to an end (Cass. pen., Sec. VI, judgment no. 57251/2017).

its performance being subject to predetermined rules to which the private parties must submit and to which the administration must comply (Criminal Cassation, sec. VI, 28.4.1999, no. 9387).
Ultimately, the conception of public auctions or private bidding accepted by the earliest doctrine and jurisprudence gives prominence to the substantive, rather than the formal, fact of the presence of a "competition" characterized 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 "offers" in competitions under Article 353 of the Criminal Code relates to the content, congruity, quantitative and qualitative relevance of the activity that the bidder undertakes to perform, while in competitions for the recruitment of university professors it relates only to the candidate's past activity (Criminal Cassation sec. VI, 24/05/2023, no. 32319);
- the offence referred to in Article 353 of the Criminal Code is certainly applicable to any tender procedure, including informal or atypical ones, whenever the public administration proceeds to identify a contractor on a comparative basis, provided that the informal notice or the announcement and in any case the equivalent act indicate in advance the criteria for selection and submission of bids, placing potential participants in the condition to evaluate the rules that govern the comparison and the criteria on the basis of which to formulate their own. However, the operativeness of the rule still concerns only the procedures called for the awarding of public contracts or the sale of public goods, which now find their organic regime in the Public Contracts Code (Criminal Cassation sect. VI, 10/05/2023, no. 26225);
- the offence of disrupting freedom of tenders does not require the presence of public tenders or private bidding, since a tender procedure, even an informal and atypical one, is sufficient as long as there is real and free competition among the people who participate in it, so that it cannot be configured when the administration retains full freedom to choose according to criteria of convenience and opportunity proper to contracting between private parties. (Cass. pen., sec. VI, 09/02/2022, no. 20930).

The subjective element of the offence of disrupting the freedom of auctions is the general intent, consisting of the consciousness and will to prevent, disrupt the tender or turn away bidders from it, in the manner described by the rule. The use of violence or threat, the offering 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 intent, reflecting on the concrete result of preventing or disrupting the tender or turning away bidders. It is necessary, therefore, for the purpose of ascertaining the psychological element that the active party also represented and intended the naturalistic event resulting from his conduct.

21. Disturbed freedom of the process of choosing a contractor (Article 353-bis of the Criminal Code).

The limitation of the rule under the rubric "Disturbed Freedom of Tenders," lies in its inherent circumscription to the time when the "tender" or "private bidding" is already in place.
Aware of this seemingly insurmountable limit and of the fact that the evolving world of public procurement has created new forms of risky behavior, almost sentinel events, the legislature deemed it appropriate to have a specific intervention that would anticipate criminal protection to the moment prior to the publication of a notice, encompassing conduct that may be engaged in throughout that not

insignificant phase between the moment of the P.A.'s identification of needs and the moment of the publication of the notice.

Therefore, the regulatory gap was filled with the introduction of Article 353-bis of the Criminal Code, which reads as follows: "*Unless the act constitutes a more serious offence, anyone who with violence or threats, or with gifts, promises, collusion or other fraudulent means, disrupts the administrative procedure aimed at establishing the content of the notice or other equivalent act in order to condition the manner in which the public administration chooses a contractor shall be punished by imprisonment from six months to five years and a fine from 103 euros to 1,032 euros*."

The conduct of disturbance envisaged by Article 353-bis of the Criminal Code, in order to assume relevance for the subsistence of the offence, must therefore be grafted into an administrative procedure that contemplates any selective procedure (the publication of a notice or an act that has the same function); so that conduct not aimed at polluting the content of the notice (or of an act that is equivalent to it), but aimed at preventing the tender through the illegitimate direct awarding of works, is external to the textual perimeter of the rule.

It follows that: "*in the case of direct awarding, the offence provided for in Article 353-bis of the Criminal Code.a) is configurable when the private negotiation, beyond the nomen juris, provides, as part of the administrative procedure of choice of contractor, a "tender," albeit informal, that is, a competitive evaluative segment; b) is not configurable in cases of contracts concluded by the public administration by means of private negotiation in which the procedure is freed from any competitive scheme; c) is not configurable when the decision to proceed to direct entrusting is itself the result of disruptive conduct aimed at avoiding the tender*." (Cass. pen., sec. VI, judgment no. 5536/2022)

Finally, this is a offence of danger, protecting the interest of the public administration in being able to contract with the best bidder, for the perfection of which it is necessary that the correctness of the procedure of preparing the tender notice or other equivalent act is concretely endangered, but not also that the content of said acts is actually modified in such a way as to condition the choice of contractor; hence the anticipation of protection with respect to the time of the actual formal calling of the tender[41] , this in order to prevent the preparation and approval of customized notices calibrated to the characteristics of certain operators.

It is intended here to recall all the further assessments already set out with regard to Article 353 of the Criminal Code, given the commonality of the constituent elements of the two offences.

Finally, the most significant case law pronouncements on the application of Article 353-bis of the Criminal Code are given below:

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

The offence of "disturbing the freedom of the procedure for choosing a contractor" can be committed if pressure is brought to bear to get the contracting authority to invite a friendly company to submit a bid. And this is the case even if no tender is then called. The Court points out that the rule is aimed at

[41] On the point at issue, however, it is worth noting a recent ruling of the Supreme Court (Cass. pen., sect. VI, judgment no. 7260/2022), which recognized the configurability of the offence of disrupting the freedom of tenders even in cases where the incriminated conduct was put in place before the publication of the call for tenders, but in the imminence of the same. According to the Justices of Legitimacy, in particular, the offence under Article 353 of the Criminal Code can be committed even when, although the notice has not yet been published, the tender is already "specific and determined." The judging panel affirmed that "*the conduct alternatively indicated by the incriminating norm, through which the tender can be prevented or disturbed, need not, in fact, necessarily be perpetrated at the precise moment in which the tender takes place, as it may well be carried out at any moment of the procedural process leading up to the tender or even outside of it and, therefore, the disturbance may also occur in the procedure preceding the tender through conduct aimed at influencing or altering its outcome*." This conclusion would also be reached in the face 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 consummated offenses disturbances that, if a tender had not yet been called, would previously have configured only an attempt to disturb the freedom of tenders, without, however, making the formal calling of the tender an objective prerequisite for the offence under Article 353 of the Criminal Code.

targeting conduct that, by unlawfully affecting the free economic dialectic, jeopardizes the public administration's interest in being able to contract with the best bidder. In order for the case to be integrated, then, it is not necessary that there has been conditioning in the choice of the contractor, but it is sufficient that the fairness of the procedure of preparing the tender is concretely jeopardized.
Criminal Cassation sec. VI, 13/07/2021, no. 44700
On the subject of disturbing the freedom of the procedure for choosing a contractor, the notice by which, in the "pre-commercial procurement" contract procedure, the phase of search and selection of the contractor is initiated, as well as the technical annex descriptive of the content of the future contract, constitute "equivalent acts" to the contract notice. (Case in point where the technical annex had been prepared by the company that was awarded the contract and modeled on its expertise and management choices).
Criminal Cassation sec. VI, 07/02/2019, no.14148
For the configurability of the offence referred to in Article 353-bis of the Criminal Code, the actual pendency of an administrative procedure aimed at the approval of the call for tenders or the selection of the contractor is necessary, in the absence of which the correctness of the activity of the public administration finds protection in other provisions of the Criminal Code. In this sense, the offence *de quo* does not exist in the case of mere preparation of draft resolutions, prodromal to the commencement of the proceedings, the content of which is entirely neutral with respect to the future calling of the tender, regardless of the precipitous purpose of the conduct. (Case in which the Review Court found the mere preparation of draft resolutions of the City Council and City Council unsuitable to affect the conduct of the tender and condition its outcome, although the intent existed).
Penalties applicable to the entity
In connection with the commission of the offences under Articles 353 and 353-bis of the Criminal Code, the following apply to the entity:

- the fine of up to 500 quotas or 200 to 600 quotas in the case of a significant profit or a particularly serious 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 the possible revocation of those already granted; prohibition from advertising goods or services.

22. Inducement not to make statements or to make false statements to the judicial authority (Article 377-bis of the Criminal Code - predicate offense referred to in Article 25-decies of Legislative Decree No. 231/2001)

The incriminating norm under consideration aims to avoid the possible exploitation of the right of nonresponse granted to suspects and defendants, as well as to the so-called suspects/defendants in related proceedings, next of kin and witness (in the case of so-called self-incrimination), in deference to the principle of "*nemo tenetur se detegere*," also in order to protect the proper conduct of procedural activities against all undue interference.
This is a subsidiary rule, which only applies if the act actually carried out does not constitute a more serious offence.
The offence is characterized by the provision of a generic intent, consisting of the consciousness and intent to induce, as a result of violence or threat of the person with the right to remain silent or the offer or promise of money or other benefits to the latter, not to make statements, that is, to

make use of that right or to make false statements to the judicial authority (Judge or Public Prosecutor).

The recipients of the conduct are, therefore, witnesses, suspects, and defendants (including those in related proceedings or in a related offence), who are granted the right to remain silent by the system.

As for the typical ways in which the conduct is carried out, the inducement relevant to the consummation of the offence is carried out through the action by which a person exerts an influence on the psyche of another individual, determining him or her to behave in a certain way, explicated through the means peremptorily indicated by the rule, that is, threats, violence or the promise of money or other utility.

It is also required for the realization of the constituent elements of the case that:

- the inducted person did not make statements or made them falsely in the same proceeding;
- the person induced, in the manner specified in the rule, not to make statements or to make them untrue, had the right to remain silent.

Penalties applicable to the Entity

- Monetary penalty of up to 500 quotas.

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

The offense punishes anyone 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 nevertheless present interference with the execution of a prohibitory sanction or a prohibitory precautionary measure are taken into consideration.

Penalties applicable to the Entity

- Fine: 200 to 600 quotas;
- Disqualifying sanctions: if the Entity has made a significant profit, disqualifying sanctions are applied, including those 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)[42]

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*

[42] 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 criminal code); Trafficking in persons (Article 601 criminal code); Purchase and sale of slaves (Article 602 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.

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):

- rewrites 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);
- observance 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).[43]

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 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 offence of enslavement.

[43] 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.*"

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 and updated by Decree-Law No. 145/2024, converted, with amendments, by Law No. 187 of 9 December 2024)

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 working conditions as referred to in the third paragraph of Article 603-bis of the Penal Code'.[44]

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:

[44] Article 5 of decree-law no. 145/2024, converted, with amendments, by Law no. 187 of 9 December 2024, suppressed the phrase 'particularly exploitative' contained in paragraph 12-bis, letter c) of Article 22 and introduced the new residency permit referred to in Article 18-ter of the same Consolidated Law on Immigration.

- 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 offence 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 offence, 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 Part (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 Foreword: the regulatory process

Law n. 190/2012[45] 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[46] 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:

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

[46] 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.[47]

OFFENCES 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,

[47] 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:

Offences 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 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 individuals 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 individuals 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. The penalty is increased if the offence is committed by use of cybernetic or telematic means.

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. Those who promote, constitute or organize the association are punished with imprisonment of five to twelve 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.

Offences 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 offences 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. [48]

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*

[48] 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.

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 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.

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.

Lastly, on 14 November 2024, the two directives and the regulation that make up the so-called 'Listing Act', a regulatory package aimed at making the EU capital markets more attractive to companies and facilitating access to capital for SMEs, were published in the Official Journal of the European Union.

In particular, the Listing Act is composed of:

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

Regarding the national transposition of the Listing Act, Regulation (EU) 2024/2809 and Directive (EU) 2024/2811 are to be transposed by 5 June 2026; Directive (EU) 2024/2810 by 5 December 2026.

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.[49]

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.*"[50]

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*

[49] 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.*"

[50] 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.

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 process, which refer to circumstances or facts whose materialisation develops progressively over time[51] .

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.[52]

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.[53]

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

[51] 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.

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

[53] 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 offence 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.*"

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

- 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.*"[54]
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:

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

- 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.[55]

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)

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.

[55] 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 offence 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.*"

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, MONEY-LAUNDERING AND USE OF MONEY, GOODS OR USE OF ILLEGAL PROVENANCE, AND SELF-MONEYL AUNDERING 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 offence.
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 offence or contravention[56] , 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[57] , 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 and 648-bis of the Criminal Code, uses money, goods or other benefits resulting from an offence or contravention in economic or financial activities[58] .

As for the material object, a common prerequisite for the three cases is the previous commission of a offence 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 offence.

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

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[56] *"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."*

[57] *"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 offence, 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."

[58] *"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."*

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 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 offence, uses, substitutes, transfers, in economic, financial, entrepreneurial or speculative activities, the money, goods or other utilities deriving from the commission of such offence, in such a way as to concretely hinder the identification of their criminal origin.
The penalty 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.

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.

OFFENCES INVOLVING NON-CASH PAYMENT INSTRUMENTS AND FRAUDULENT TRANSFER OF VALUABLES (ART. 25-OCTIES.1 OF THE DECREE)

It was published in the Official Gazette on November 29, 2021, Legislative Decree No. 184 of November 8, 2021entered into force on December 14, 2021, implementing EU Directive 2019/713 on combating fraud and counterfeiting of non-cash means of payment.

This directive, which replaces Council Framework Decision 2001/413/JHA, is aimed at intensifying the fight against fraud and counterfeiting of non-cash means of payment, both on the grounds that they constitute means of financing organized offence 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 acquisitions.

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 as well as to facilitate information exchange 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 euronitarian dictate with regard to the phrases "*non-cash payment instrument*" (an intangible or tangible protected device, object or 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 defined in Article 1, paragraph 2, letter h-ter, of Legislative Decree September 1, 1993, no. 385, and virtual currency), "*virtual currency*" (a representation of digital value that is not issued or guaranteed by a central bank or public entity, is not necessarily linked to a legally established currency and does not possess 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 prepare effective criminal law measures against criminal conduct of fraud and forgery 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[59] and 640-ter of the Criminal Code and introducing a new specific incriminatory case for the possession and dissemination of computer equipment, devices or programs aimed at committing offenses concerning non-cash instruments.
In more detail, the legislative decree amends the heading and first paragraph of Article 493-ter of the Criminal Code, which already regulates the undue use and forgery of credit and payment cards, to extend the scope of the criminalization of criminal conduct to all non-cash payment instruments.
Another provision on which the legislature merely surgically affects, 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,[60] which, as is well known, punishes as computer fraud with a penalty from six months to three years and a fine from 51 euros to 1,032 euros anyone who, by altering in any way the operation of a computer or telematic system or intervening without right in any way on data, information or programs contained in a computer or telematic system or pertaining to it, procures for himself or others an unfair profit to the detriment of others.
In particular, the Decree in question intervenes on the special effect aggravating circumstance in the second paragraph (the penalty is imprisonment from one to five years and a fine from 309 to 1 euro.549 if one of the circumstances envisaged in number 1 of the second paragraph of Article 640 occurs, or if the act is committed with abuse of the quality of system operator), providing as a condition of the aggravation of punishment for the offence of computer fraud (with consequent ex officio prosecution) the circumstance that the incriminated conduct produces a transfer of money, monetary value or virtual currency.
However, an additive intervention concerns the new Article 493-quater[61] - inserted into the Criminal Code after Art. 493-ter - which punishes with imprisonment of up to two years and a fine of up to 1,000 euros, 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 others equipment, devices or computer programs that, due to technical-constructive or design characteristics, are primarily constructed to commit offences regarding non-cash payment instruments, or are specifically adapted for the same purpose.
This is a common offence, as per the *incipit of* the incriminating provision ("*anyone*"), punished by specific intent, in that the aforementioned conducts assume criminal relevance when they are carried

[59] *"(a) in Article 493-ter: 1) the heading shall be replaced by the following: 'Misuse and forgery of non-cash payment instruments'; 2) in the first paragraph, first sentence, after the word 'services,' the following shall be inserted: "or otherwise any other non-cash payment instrument"; 3) in the first paragraph, second sentence, the words "credit or payment cards or any other similar document enabling the withdrawal of cash or the purchase of goods or the provision of services" 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";"*

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

[61] *"(b) after Article 493-ter, the following shall be inserted: "493-quater (Possession and dissemination of computer equipment, devices or programs aimed at committing offences concerning non-cash payment instruments). - Unless the act constitutes a more serious offence, anyone who, in order to make use of them or to allow others to use them in the commission of offences regarding payment instruments other than cash, manufactures, imports, exports, sells, transports, distributes, makes available or in any way procures for himself or others equipment, devices or computer programs that, due to technical-constructive or design characteristics, are constructed primarily for committing such offences, or are specifically adapted for the same purpose, shall be punished by imprisonment of up to two years and a fine of up to 1,000 euros. In case of conviction or application of punishment at the request of the parties pursuant to Article 444 of the Code of Criminal Procedure for the offence referred to in the first paragraph, the confiscation of the aforementioned equipment, devices or computer programs shall always be ordered, as well as the confiscation of the profit or product of the offence or, when this is not possible, the confiscation of property, sums of money and other utilities that the offender has the availability of to a value corresponding to such profit or product.";"*

out with the specific purpose of making use of the indicated instruments or allowing others to use them in the commission of offences involving non-cash payment instruments.
The provision is supplemented by the provision, in the second paragraph, for the mandatory confiscation, upon conviction or plea bargain, of computer equipment, devices or programs used to commit offences regarding non-cash payment instruments, as well as the confiscation of the profit or product of the offence or, when the latter is not possible, the confiscation for equivalent value of assets, sums of money and other utilities that the offender has the availability of for an amount corresponding to the profit or product.
Article 3 of the decree under review adapts the provisions of Legislative Decree No. 231 of June 8, 2001, as per Art. 10 and 11 of the EU Directive referred to above, which require member states to adopt the necessary measures so that legal persons: can be held liable for offenses of fraud and forgery of non-cash means of payment committed for their benefit by any person acting in an individual capacity or as a member of a body of the legal person and occupying a prominent position within the legal person or 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* is introduced into Decree 231. headed "Offences *regarding non-cash* payment instruments," which identifies the monetary penalties that apply to the entity in connection with the commission of the offences provided for in the Criminal Code regarding non-cash payment instruments: (a) for the offence referred to in Article 493-ter, a fine of 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, a fine of up to 500 quotas.
The second paragraph of the amendment further provides that, unless the act constitutes another administrative offense punishable more seriously, in relation to the commission of any other offence against public faith, against property or otherwise offending property provided for in the Criminal Code, involving non-cash payment instruments, the following pecuniary sanctions shall be applied to the entity: (a) if the offence is punished by imprisonment of less than ten years, a fine of up to 500 quotas; (b) if the offence is punished by imprisonment of not less than ten years, a fine of 300 to 800 quotas. In addition, 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, are applied to the entity.

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

Law No. 137 of Oct. 9, 2023, titled "*Conversion into law, with amendments, of Decree Law No. 105 of Aug. 10, 2023, containing urgent provisions on criminal trial, civil trial, combating forest fires, recovery from drug addiction, health and culture, as well as on personnel in the judiciary and public administration.*" amended Article 25-octies.1 (now headed "*Offences relating to non-cash payment instruments and fraudulent transfer of values*") of Legislative Decree 231/2001, introducing the offence of fraudulent transfer of values (Article 512-bis of the Criminal Code).
The article in question, which is part of the offences against the public economy, reads as follows: "*Unless the act constitutes a more serious offence, anyone who fictitiously attributes to others the ownership or availability of money, property or other utilities for the purpose of evading the provisions of the law on property 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 Art. 12-quinquies d.l. n. 306/1992, conv. by L. August 7, 1992 n. 356 and then transfused into the Criminal Code without changes by Legislative Decree n. 21/2018 bearing "*Provisions for the implementation of the delegation principle 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 offence, 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 offence, allowing the aggression of illicitly accumulated assets that could escape, or be difficult to attack, if they were arranged to be transferred to third parties in a fictitious manner especially through the use of negotiating means that have recently become established in the sphere of commercial exchanges increasingly influenced also by contractual instruments of a European nature initially foreign to the Italian civil law tradition. [62]

Article 512-bis of the Criminal Code sets as the basis of the case a negotiation transaction of a merely apparent nature that is perfected between the one who carries out the fictitious header and the one who knowingly accepts the role, that is, most often, a trusted person who can be either the originator or a mere front man.

In Judgment No. 34192 of Aug. 3, 2023, the First Criminal Section of the Supreme Court, recalling, moreover, conforming precedents, examined the prerequisites for the configurability of the offence under consideration.

The syntagm "*fictitiously attributes to others the availability or ownership of money, property or other utilities*" is to be understood, according to the established jurisprudential elaboration, in an extremely broad way, such as to refer not only to the traditionally understood forms of negotiation, but to any type of act or "mechanism" (i.e. trust or patrimonial fund[63]) suitable for creating an apparent relationship of lordship between a given subject and the asset, with respect to 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 a offence of abstract danger with instantaneous consummation and permanent effects is the sufficiency, for its commission, that the agent performs any legal transaction for the purpose of circumventing the legal provisions on asset prevention measures, regardless of the subsequent achievement of the intended purpose; the assessment regarding the danger of circumvention of the measure must be made *ex ante* and on a partial basis, that is, in light of the circumstances that, at the time of the conduct, were known or knowable by an average man in that particular space-time situation (Cass. pen, Sec. II, March 9, 2016, no. 12871).

A tool widely used by the perpetrators of the offence *de quo* is the transfer of quotas or shares in order to ostensibly alienate themselves from the structure and thus avoid possible ablative interventions of the same company: when the previous shareholder who has divested himself of the shares or quotas continues in fact to determine corporate policy, here would be integrated the fictitious character of

[62] This norm, in fact, also currently lends itself to a use that is often beyond any connection with both the qualified offence referred to in Article 416-bis of the Criminal Code, as well as with the unqualified one, as it does not require an actual associative phenomenon at its basis; suffice it to think of its usefulness in the area of financial and tax offences, when they are committed with systems of asset disposals aimed at circumventing patrimonial prevention measures (or smuggling) or facilitating the offences referred to in Articles 648, 648-bis and 648-ter.

[63] These are absolutely lawful schemes, but they achieve their specific segregative effect only if, in the specific case, they are not set up to be aimed at fraudulent intent or to circumvent or violate mandatory rules. In practice, there must always be an "availability of property" on the part of the perpetrator, which commonly includes the existence of an effected relationship with it, as such connoted 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 property that constitutes the cornerstone of the criminal norm.

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: "*Integrates the offence of fraudulent transfer of values referred to in Article 512 bis of the Criminal Code, the conduct of those who, in order to evade the provisions of the law on measures of patrimonial prevention, acquires the quality of hidden partner in an already existing company, participating in the management and profits from the business activity*." (Cass. pen., sec. II, sentence no. 39774/2022)[64]

The Court of Cassation has, moreover, clarified that, for the purpose of establishing the offence, there is no need for an investigation aimed at ascertaining the illicit origin of the resources used in the establishment and start-up of the company fictitiously registered in the name of third parties, given that the offence *de quo* must be considered integrated even in the presence of conduct involving assets not derived from offence, in *accordance with the rationale* of the incrimination, which only pursues the objective of avoiding maneuvers by subjects potentially subject to prevention measures, aimed at not showing their availability of assets or other utilities, regardless of their origin (Cass. pen, sec. II, April 16, 2019, no. 28300).

As for, on the other hand, the subjective element, the offence under consideration requires, as anticipated, the specific intent to evade the provisions on asset prevention measures, even regardless of the concrete possibility of the adoption of asset prevention measures at the outcome of the relevant proceedings, being integrated even only if the perpetrator may fear their establishment (Cass. pen, sec. V, Dec. 7, 2021, no. 1886; Cass. pen., sec. II, March 28, 2017, no. 22954; Cass. pen., sec. V, Feb. 28, 2014, no. 13083).

The "*ratio puniendi*" of the rule, given the breadth of the provision, must disengage from civil law formalisms and focus precisely on the fictitious nature of the transaction, an element that connotes the typicality of the act. This is meant to mean that the attribution of ownership or availability occurs in essentially "fraudulent" ways, as exactly qualified in the rubric (Cass. pen., sec. V, judgment no. 10271/2014). In this sense, that necessary connection is configured 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 asset prevention measures or on smuggling or to facilitate the commission of the offences referred to in Articles 648, 648-bis and 648-ter of the Criminal Code. Therefore, the creation of a situation of apparent lordship over the thing still does not attain any significance in relation to the criminal norm, making it indispensable, in order to qualify that conduct as deserving punishment, that it be directed/connected to the elusive-agentive purpose connected with the repression of facts relating to the circulation of economic means of illicit origin.

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

For the configurability of concurrence under Article 110 of the Criminal Code in the offence in question, the Supreme Court has 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 header is made, so that, in order to be able to affirm the concurrence by a third party, it is necessary to demonstrate that he or she has provided his or her material or moral contribution at the*

[64] In accordance with Cass. pen. sec. II, Dec. 2018, no. 2080: the offence in question is configurable in the case in which, in order to evade the application of asset prevention measures, the shares of a commercial or service company that is already operating are purchased, leaving its formal ownership unchanged in the hands of third parties, who thus come to acquire the role of interposed parties.

very moment of the fraudulent attribution, on the other hand, having no relevance whatsoever to the possible help ensured to the continuation of the unlawful situation resulting from the criminal conduct (case in which the appellant who, as an employee of a bank, allegedly allowed the hidden partners of a company to operate on its accounts, was subjected to a personal precautionary measure for complicity in the offence of fraudulent transfer of values" (Cass. pen, Sec. II, Judgment No. 16520/2021).

The second purpose envisaged by Article 512 bis of the Criminal Code, namely facilitation of the commission of the offences of receiving, laundering or reuse, must also be examined in relation to simulative conduct. The endiad that is formed demands a strict verification on the objective level of the significant elements suitable for facilitating/facilitating the commission of the aforementioned offences.

Despite the silence of the rule, the existence of a previous offence from which the money, goods or other utilities that will form the object of the simulated transaction originate constitutes an essential requirement for the configuration of the offence referred to in Article 512-bis of the Criminal Code, second part. It is necessary, therefore, that the predicate offence be prior to, and therefore autonomous from, the commission of the offence of fraudulent transfer, constituting a necessary antecedent inescapable for the purpose of verifying the aptitude of the conduct to consummate the criminal hypotheses covered by the specific purpose.

However, it is not necessary, for the purpose of the configuration of the offence of fictitious header, either the exact identification or the judicial determination of the presupposed offence, it being sufficient that the same is abstractly configurable (Criminal Cassation, Sec. II, Sentence No. 13448/2015).

Most recently, Decree Law No. 19 of March 2, 2024, containing "*Further Urgent Provisions for the Implementation of the National Recovery and Resilience Plan (PNRR)*" and converted with amendments by Law No. 56 of April 29, 2024, inserted the second paragraph to Article 512-bis of the Criminal Code reporting the following: "*The same punishment as in the first paragraph shall be applied to anyone who, in order to evade the provisions on anti-mafia documentation, fictitiously attributes to others the ownership of enterprises, company shares or shares or corporate offices, if the entrepreneur or company participates in procedures for the award or execution of contracts or concessions.*"

The need for the present regulatory intervention stems from the awareness that the significant public investments linked to the NRP represent a considerable opportunity for profit for organized offence, whose aims of interference in the implementation chain of planned interventions can be considered almost certain. This risk stems both from past judicial experience and from certain objective risk factors, including: the nature and type of projects financed, which, for the most part, concern sectors traditionally attractive to mafia interests, such as civil and infrastructure construction (roads and highways, railways, ports, airports; rapid mass transport in metropolitan cities) and renewable energy; the territorial distribution of interventions, with a 40 percent concentration (more than 60 billion euros) in southern Italian regions, where the mafia presence is higher; and the simplification of administrative procedures, considered necessary to speed up the implementation of projects financed by the program.

In this context, combating the infiltration of organized offence becomes crucial, particularly in the infrastructure works sector, where the activation of public procedures for the awarding of contracts for works, supplies and services is necessary. To this end, the system of administrative anti-mafia prevention plays a central role, regulated by the Code of Anti-Mafia Laws and Prevention Measures

(Legislative Decree No. 159/2011), which was subject to relevant amendments with the entry into force of Law No. 233/2021, which converted Decree-Law No. 152/2021, containing urgent measures for the implementation of the PNRR and for the prevention of mafia infiltration (so-called "Recovery Decree"). With this intervention, the legislature aimed to mitigate the rigidity of interdiction information, allowing the competent authorities to counter organized offence interference in the public contract sector, but at the same time ensuring the operational continuity of companies and the execution of works and services.
The reform introduced is based on two main pillars: the enhancement of participatory institutes, in line with the principle of due process also recognized internationally, and the introduction of a new administrative preventive measure, an alternative to the immediate disqualification of the economic operator, to be applied in cases where mafia influence is only occasional (so-called "collaborative prevention," Article 94-bis of the Code of Anti-Mafia Laws). However, these changes could theoretically reduce the effectiveness of the anti-mafia prevention system contained in Book II of the Code (Legislative Decree No. 159/2011) and, in particular, the tools provided by Articles 84 and 91. In fact, the adoption of cross-examination - albeit optional - in the context of the issuance of an anti-mafia interdiction (Art. 97, para. 7) or collaborative prevention in the case of mafia infiltration of an occasional nature (Art. 94-bis) provides for the communication of the initiation of proceedings under Law No. 241/1990.
It follows that, especially in territorial contexts with a high incidence of companies compromised by mafia logic, the acquisition of information on the imminent adoption of an antimafia measure could compromise the public interest in its issuance. Indeed, the economic operators involved could resort to evasive techniques, such as replacing corporate bodies or changing the legal representation and ownership of companies or company shares, with the intention of circumventing anti-mafia regulations.
These strategies, amply documented by case law experience, allow colluding entrepreneurs to preserve control of activities through front men in dealings with the public administration.
The regulatory action thus aims to amplify the preventive effectiveness of the criminal provision by ensuring its consistent application at the jurisprudential level.
Penalties applicable to the Entity:

- fine of 250 to 600 quotas;
- disqualifying sanctions: disqualification from conducting business; suspension or revocation of authorizations, licenses 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.

ILLEGAL DATA PROCESSING AND COMPUTER OFFENCES (ART. 24-BIS OF THE DECREE)

Law No. 48 of March 18, 2008, ratified and executed the Budapest Convention of November 23, 2001, promoted by the Council of Europe on computer offence and concerning, in particular, offenses committed by making use of a computer system in any way or to its detriment, or posing in any way 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, on the basis of a program, performs the automatic processing of data*."

Article 24-bis of the Decree contemplates the liability of entities with regard to three distinct categories:

a) offences involving **abusive access to or damage to a computer system (Art. 24-bis, para. 1)**;
b) offences arising from the **possession or dissemination of codes or programs or equipment suitable for computer damage (Art. 24-bis, para. 2)**;
c) Offenses related to **forgery of computer documents and fraud of the person providing certification services through digital signature (Art. 24-bis, para. 3)**.

Article 24-bis in the first paragraph provides for the liability of Entities in relation to seven separate offenses 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 damage to software, in the form of a program or data.

More specifically, computer damage occurs when, considering both hardware and software components, even separately, a change occurs that prevents, even temporarily, their operation.

Of particular relevance are the offences of:

- **Unauthorized access to a computer or telematic system (art. 615 ter of the Criminal Code)**, which occurs when a person abusively enters a computer or telematic system protected by security measures or is maintained against the express or tacit will of those who have the right to exclude him/her. The offence also occurs as a result of mere access to the protected computer system, without actual damage to the data.[65]

  Penalties applicable to the Entity:

  pecuniary sanction of two hundred to seven hundred quotas and, in case of conviction, the disqualification sanctions provided for in Article 9, paragraph 2, letters a), b) and e).

- **Illegal interception, obstruction or interruption of computer or telematic communications (Article 617-quater of the Criminal Code)**, which occurs when a person fraudulently intercepts communications related to a computer or telematic system or between several systems, or prevents or interrupts them. The offence is aggravated, among other things, if the conduct causes damage to a computer or telematic system used by the state or other public entity or enterprise exercising public services or public utilities.[66]

  Penalties applicable to the Entity:

  pecuniary sanction of two hundred to seven hundred quotas and, in case of conviction, the disqualification sanctions provided for in Article 9, paragraph 2, letters a), b) and e).

[65] Paragraphs 2 and 3 of Article 615-ter of the Criminal Code were amended by Article 16 of Law No. 90/2024, which now provide as follows: "*2. The punishment shall be imprisonment from two to ten years: 1) if the act is committed by a public official or a person in charge of a public service, with abuse of power or with violation of the duties inherent to the function or service, or by a person who also abusively exercises the profession of private investigator, or with abuse of the quality of system operator; 2) if the offender to commit the act uses threats or violence against things or persons, or if he is blatantly armed 3) if the act results in the destruction of or damage to the system or the total or partial interruption of its operation, or the destruction of or damage to or removal, including by reproduction or transmission, or inaccessibility to the owner of the data, information or programs contained therein. 3. If the facts referred to in the first and second paragraphs concern computer or telematic systems of military interest or relating to public order or public security or health or civil defense or otherwise of public interest, the punishment shall be, respectively, imprisonment of three to ten years and four to twelve years.*"

[66] Paragraph 4 of Article 617-quater was amended by Article 16 of Law No. 90/2024, which now provides as follows: "*However, it shall be prosecuted ex officio and the penalty shall be imprisonment from four to ten years if the act is committed: 1) to the detriment of any of the computer or telematic systems indicated in Article 615-ter, third paragraph; 2) to the detriment of a public official in the exercise or because of his functions or by a public official or a person in charge of a public service, with abuse of powers or violation of the duties inherent to the function or service, or by a person who exercises, also abusively, the profession of private investigator, or with abuse of the quality of system operator*."

- **Unauthorized possession, dissemination and installation of equipment and other means to intercept, prevent or interrupt 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, programs, codes, passwords or other means.[67] Thus, the offence is constituted, by way of example, by the mere installation of the equipment, regardless of whether it is then actually used to commit offenses.
  Penalties applicable to the Entity:
  pecuniary sanction of two hundred to seven hundred quotas and, in case of conviction, the disqualification sanctions provided for in Article 9, paragraph 2, letters a), b) and e).
- **damaging information, data and computer programs (Article 635-bis of the Criminal Code)** and **damaging public information, data and computer programs or of public interest (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 interest (Article 635-quinquies of the Criminal Code).** The offenses under consideration are characterized by the common element of the conduct of destruction, deterioration, deletion, alteration or suppression and differ in relation to the material object (information, data, computer programs or computer or telematic systems), whether or not having public relevance in that they are used by the State or other public entity or otherwise in the public interest.[68]
  Penalties applicable to the Entity:
  pecuniary sanction of two hundred to seven hundred quotas and, in case of conviction, the disqualification sanctions provided for in Article 9, paragraph 2, letters a), b) and e).

The offenses covered by Article 24-bis, second paragraph, can be considered ancillary to those previously considered and concern the possession or dissemination of access codes or the possession or dissemination of programs (viruses or spyware) or devices aimed at damaging or disrupting a computer system. In particular, the following offences are relevant:

- **Unauthorized possession, dissemination and installation of equipment, codes and other means of access to computer or telematic systems (Article 615-quater of the Criminal Code.)**, which punishes those who, in order to procure for themselves or others an advantage or to cause damage to others, abusively obtain, possess, produce, reproduce, disseminate,

[67] Article 617-quinquies of the Criminal Code was amended by Article 19, co. 6, of Law No. 238 of December 23, 2021 bearing "*Provisions for the fulfillment of obligations arising from Italy's membership of the European Union - European Law 2019-2020.*" Most recently, L. No. 90/2024 introduced the following paragraphs 2 and 3: "*When any of the circumstances referred to in Article 617-quater, fourth paragraph, number 2) occur, the punishment shall be imprisonment from two to six years. When any of the circumstances referred to in Article 617-quater, fourth paragraph, number 1), occurs, the punishment shall be imprisonment from three to eight years*."

[68] The first three offences in question have been reformed by Article 16 (n), (o) and (p) of Law No. 90/2024, to which reference is made for more detail, and Article 635-quinquies of the Criminal Code has been replaced by the following: "*Damage to computer or telematic systems of public interest. Unless the act constitutes a more serious offence, anyone who, through the conduct referred to in Article 635-bis or through the introduction or transmission of data, information or programs, commits acts aimed at destroying, damaging or making, in whole or in part, unserviceable computer or telematic systems of public interest or seriously their operation shall be punished by imprisonment of two to six years. The punishment shall be imprisonment from three to eight years: 1) if the act is committed by a public official or a person in charge of a public service, with abuse of power or violation of the duties inherent in the function or service, or by a person who exercises, also abusively, the profession of private investigator, or with abuse of quality of system operator; 2) if the offender to commit the act uses threats or violence or if he is manifestly armed; 3) if the act results in the destruction, deterioration, deletion, alteration or suppression of information, data or computer programs. The punishment shall be imprisonment four to twelve years when any of the circumstances set forth in numbers 1) and 2) of the second paragraph concur with any of the circumstances set forth in number 3).*"

import, communicate, hand over, otherwise make available to others or install equipment, tools, parts of equipment or tools codes, passwords or other means suitable for access to a computer or telematic system, protected by security measures or otherwise provide indications or instructions suitable for the aforementioned purpose[69] . Therefore, conduct preparatory or functional to abusive access is punished since it consists in procuring for oneself or others the availability of means of access necessary to overcome the security safeguards of computer systems.

Penalties applicable to the Entity:

pecuniary penalty of up to four hundred quotas and, in case of conviction, the disqualification penalties provided for in Article 9, paragraph 2, letters b) and e).

- **Possession, dissemination and abusive installation of computer equipment, devices or programs aimed at damaging or interrupting a computer or telematic system (Article 635-quater.1 c.p.)**, which punishes those who, for the purpose of illegally damaging a computer or telematic system or the information, data or programs contained therein or pertaining to it or to facilitate the total or partial interruption or alteration of its operation, illegally obtains, possesses, produces, reproduces, imports, disseminates, communicates, delivers or, however, otherwise makes available to others or installs computer equipment, devices or programs.[70]

  Penalties applicable to the Entity:

  pecuniary penalty of up to four hundred quotas and, in case of conviction, the disqualification penalties provided for in Article 9, paragraph 2, letters b) and e).

Article 24-bis, third paragraph, also penalizes the use of electronic means aimed at undermining the reliability of means used to ensure certainty in relations between the consociates: the computer document and the digital signature, whose regulation is now fully outlined by the Digital Administration Code (Legislative Decree No. 82 of 2005, as amended). In particular:

- **Article 491-bis of the Criminal** Code[71] extends the regulations set forth in the Criminal Code on documentary forgery to the public computer document having evidentiary effect. By virtue of this extension, therefore, the falsification of a computer document will be able to give rise, among other things, to the offences of material and ideological forgery in public deeds, certificates, administrative authorizations, certified copies of public deeds, attestations of the contents of deeds (arts. 476-479 of the Criminal Code), material forgery of the private individual (art. 482 of the Criminal Code), ideological forgery of the private individual in a public act (art. 483 of the Criminal Code), forgery of records and notifications (art. 484 of the Criminal Code), and use of a false act (art. 489 of the Criminal Code).

  Penalties applicable to the Entity:

[69] Article 615-quater of the Criminal Code was amended by Article 19, co. 1, of Law No. 238 of December 23, 2021 bearing "*Provisions for the fulfillment of obligations arising from Italy's membership of the European Union - European Law 2019-2020*." Lastly, Art. 16 of Law No. 90/2024 introduced the following paragraphs 2 and 3: "*The penalty is imprisonment from two years to six years when any of the circumstances referred to in Article 615-ter, second paragraph, number 1, apply. The penalty is imprisonment from three to eight years when the act concerns the computer or telematic systems referred to in Article 615-ter, third paragraph.*"

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

[71] Article as amended by Legislative Decrees Nos. 7 and 8/2016 (also known as the "decriminalization package"), which decriminalized and transformed Article 485 of the Criminal Code (forgery in private writing), in turn referred to by the predicate offense provided for and punished by Article *491-bis* of the Criminal Code, into a civil offense.

except as provided in Article 24 of this Decree for cases of computer fraud to the detriment of the State or other public entity, and the offences referred to in Article 1, Paragraph 11 of Decree-Law No. 105 of September 21, 2019, a fine of up to four hundred quotas and, in case of conviction, disqualification sanctions provided for in Article 9, Paragraph 2, letters c), d) and e).

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

  Penalties applicable to the Entity:

  except as provided in Article 24 of this Decree for cases of computer fraud to the detriment of the State or other public entity, and the offences referred to in Article 1, Paragraph 11 of Decree-Law No. 105 of September 21, 2019, a fine of up to four hundred quotas and, in case of conviction, disqualification sanctions provided for in Article 9, Paragraph 2, letters c), d) and e).

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

The legislation under consideration provides for the definition of a national cybersecurity perimeter aimed at "*ensuring a high level of security of the networks, information systems and IT services of public administrations, entities and public and private operators having a base in the national territory , on which depends the exercise of an essential function of the state, 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*" (Art. 1 para. 1).

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

This article establishes as a criminal offense the provision of untrue information, data or factual elements relevant to the preparation or updating of lists of networks, information systems and computer services used (Art. 1, para. 2, lett. b), or for the purpose of prior communications to the National Evaluation and Certification Center or CVCN (Art. 1, para. 6, lett. a), or for the purpose of carrying out specific inspection and supervisory activities (para. 6, lett. c), or the failure to communicate within the prescribed time limits the aforementioned data, information or factual elements.

All for the purpose of hindering or conditioning - according to the criminalistic scheme of specific intent - the performance of the proceedings, described in the same cited Article 1, for which the obligation of truth is imposed.

Therefore, this is a "blank" criminal case that refers to extra-criminal legislation, both in terms of identifying the active subject of the "proper offense" (although the legislature used the pronoun "anyone"), concerning only those who operate within the "national cybersecurity perimeter," and the precise modalities of the procedures and, therefore, of the illegal conduct.

Subsequently, Presidential Decree No. 131 of July 30, 2020 was published in the Official Gazette No. 261 of Oct. 21, 2020, on "*Regulations on national cybersecurity perimeter, pursuant to Article 1, Paragraph 2, of Decree Law No. 105 of Sept. 21, 2019, converted, with amendments, by Law No. 133 of Nov. 18, 2019*." More specifically, the Regulations are concerned with: defining the characteristics of entities that perform an essential function for the state; identifying the sectors of activity in which entities to be included in the cybersecurity perimeter operate; defining the methods 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.

On the other hand, the penalty for the natural person agent is imprisonment of one to three years, while the entity is subject to a fine of up to 400 quotas and the disqualification penalties provided for in Article 9, paragraph 2 (c), (d) and (e).

Subsequently, the regulatory framework to protect the so-called National Cybersecurity Perimeter was completed with the issuance of the following implementing measures:

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

Lastly, on July 17, Law No. 90/2024reciting "*Provisions on strengthening national cybersecurity and computer offences*" came into force, which is notable for a general tightening of penalties, a broadening of the scope of application of the computer offences already contained in Article 24-bis of the Decree, in the list of which is also included - in Article 1-bis - as a new case that of computer extortion provided for in **Article 629, para. 3, Criminal Code,** as well as for the introduction of some aggravating and mitigating circumstances. More specifically, extortion committed (or threatened) through the offences of abusive access to computer or telematic system interception, obstruction or illegal interruption of computer or telematic communications, falsification, alteration or suppression of the content of computer or telematic communications will now be punished, information, data and computer programs, damaging computer or telematic systems, damaging computer or telematic systems of public utility, or with the threat of carrying out the aforementioned conduct, by anyone who forces someone to do or omit something, procuring for himself or others an unjust profit to the detriment of others.

Strong action is to be taken on so-called "cyber extortion," which is proposed to block or limit the functions of a device until a ransom is paid.
Indeed, the government has moved in this direction "because of the specific severity and frequency of blackmail carried out through the threat or implementation of cyber attacks."
This may be, for example, sensitive information of a company's employees or its customers; confidential data that, if disclosed, could, by way of example, result in financial loss or compromise corporate reputation.
Penalties applicable to the Entity:
pecuniary penalty of three hundred to eight hundred quotas and, in case of conviction, the disqualification penalties provided for in Article 9, paragraph 2, for a term of not less than two years.

ENVIRONMENTAL OFFENCES (ART. 25-UNDECIES OF THE DECREE)

Foreword
Law No. 68 of May 22, 2015, which was published in Official Gazette No. 122 of May 28, 2015 and came into effect on May 29, 2015, titled "*Provisions on offences against the environment*," introduced new environmental offences into the legal system in the form of a felony.
The novella ties in with the requirements of the European Union Directive 2008/99/EC of November 19, 2008 on the Protection of the Environment through Criminal Law, whose Preamble (Art. 5) specifies that "*activities damaging the environment, which generally cause or are likely to cause significant deterioration in the quality of the air, including the stratosphere, soil, water, fauna and flora, including the conservation of species require criminal penalties with increased dissuasiveness*."
In particular, the aforementioned Law introduced into the Penal Code Title VI-bis, dedicated to offences against the environment, providing for new offences and amended (see Art. 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 some predicate offenses already stipulated in Article 25-undecies of Legislative Decree No. 231/01:

- Art. 257, Legislative Decree 152/2006, "*Site Remediation*."
- Article 260, Legislative Decree 152/2006, "*Organized activities for illegal waste trafficking*."

Subsequently, Decree Law No. 135 of Dec. 14, 2018, containing "*Urgent provisions on support and simplification for businesses and public administration*," and converted with amendments by Law No. 12 of Feb. 11, 2019, repealed the electronic waste traceability control system (SISTRI) as of Jan. 1, 2019.
Most recently, the EU Council approved on March 26, 2024 the Directive 2024/1203 on the protection of the environment through criminal law, which will improve investigation and prosecution by tightening penalties and introducing new environmental offences.

The directive, in particular, sets EU-wide minimum rules on the definition of offenses and penalties and repeals Directives 2008/99/EC and 2009/123/EC.
The conduct that will constitute offences will increase under the Directive from nine to 20, and the new environmental offences will include:

- timber trafficking;
- The illegal recycling of polluting ship components;
- Serious violations of chemical legislation.

In addition, the new directive introduces a "qualified offenses" clause, which applies when one of the offenses under the directive is committed intentionally, and causes the destruction of the environment or irreversible or lasting damage to it.
As for sanctions:

- malicious offences that result in a person's death will be punishable by a maximum term of imprisonment of at least 10 years, although member states may decide to provide for even harsher penalties in their national legislation;
- other offenses will result in imprisonment of up to five years;
- Instead, the maximum prison sentence for qualified offences will be at least eight years;
- for companies, fines will amount to at least 5 percent of total worldwide turnover for the most serious offences or, alternatively, 40 million euros;
- for all other offences, the maximum fine will be at least 3 percent of turnover or, alternatively, 24 million euros.

Member states will have to ensure that individuals and businesses can be sanctioned with additional measures, such as requiring the offender to restore the environment or compensate for damage, excluding the offender from access to public funding, or withdrawing permits or authorizations.
From its entry into force, member states will have two years-until May 21, 2026-to adapt national rules to the directive.

Environmental pollution (Article 452-bis of the Criminal Code).
The offense punishes anyone who, in violation of legislative, regulatory or administrative provisions specifically set out to protect the environment and whose failure to comply constitutes an administrative or criminal offense in itself, causes significant impairment or deterioration:

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

Law No. 137 of October 9, 2023 replaced the second paragraph with the following: "*When the pollution is produced in a protected natural area or one subject to landscape, environmental, historical, artistic, architectural or archaeological constraints, or to the detriment of protected animal or plant species, the punishment shall be increased by one-third to one-half. In case 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 punishment shall be increased by one-third to two-thirds*."
Penalties applicable to the Entity:

- Monetary sanctions of two hundred and fifty to six hundred quotas and, in case of conviction, disqualification sanctions for a term not exceeding one year.

Environmental Disaster (Article 452-quater of the Criminal Code).
The offense occurs if abusively:

- you irreversibly alter the balance of an ecosystem;

- the balance of an ecosystem is altered in a way that is reversible but particularly costly and achievable only by exceptional measures;
- public safety is offended because 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 Oct. 9, 2023 No. 137 replaced the second paragraph with the following: "*When the disaster is produced in a protected natural area or one subject to landscape, environmental, historical, artistic, architectural or archaeological constraints, or to the detriment of protected animal or plant species, the punishment is increased by one-third to one-half*."

Penalties applicable to the Entity:

- monetary penalty of four hundred to eight hundred quotas and, in case of conviction, disqualification penalties for a term not exceeding one year.

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

The offense under consideration occurs if the offenses in Articles 452-bis and 452-quater of the Criminal Code are punishable by negligence.

Penalties applicable to the Entity:

- Monetary penalty of two hundred to five hundred quotas**.**

Trafficking and abandonment of highly radioactive material (Article 452-sexies of the Criminal Code).

The offense occurs when anyone who unlawfully disposes of, purchases, receives, transports, imports, exports, procures for others, holds, transfers, abandons or disposes of high-level radioactive material.

Penalties applicable to the Entity:

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

Aggravating circumstances referring to association cases (Article 452-octies of the Criminal Code).

The aggravating factor occurs when:

- a criminal association *under* Article 416 of the Criminal Code is directed, exclusively or concurrently, for the purpose of committing any of the above-mentioned environmental offences (Articles 452-bis, 452-quater, 452-quinquies, 452-sexies of the Criminal Code);
- a mafia-type association *pursuant to* Article *416-bis* of the Criminal Code is aimed at committing any 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 otherwise control of economic activities, concessions, authorizations, contracts or public services in the environmental field;
- of the association under Article 416 or *416-bis* of the Criminal Code are part of public officials or public service officers who perform functions or carry out services in environmental matters.

Penalties applicable to the Entity:

- Monetary penalty of three hundred to one thousand shares.

Killing, destroying, capturing, taking, keeping and trading[72] specimens of protected wild animal or plant species (Article 727-bis of the Criminal Code)

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

Similarly, the offense occurs 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 defined as 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 (art. 733-bis, 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 conservation status.

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

Penalties applicable to the Entity:

- Monetary penalty of one hundred and fifty to two hundred and fifty quotas.

Offences related to the discharge of industrial wastewater (Art. 137 Legislative Decree No. 152/2006, as amended and supplemented)

The offense occurs if:

- new discharges of industrial wastewater 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 made, without authorization, or such discharges continue to be made or maintained after the authorization has been suspended or revoked (Article 137, paragraph 2).
- there is a discharge of industrial wastewater containing the hazardous substances included in the families and groups of substances listed in Tables 5 and 3/A of Annex 5 to Part Three, without complying with the requirements of the permit or other requirements of the competent authority in accordance with Articles 107(1) and 108(4) (Article 137(3)).
- in the performance of a discharge of industrial wastewater, the limit values set out in Table 5 of Annex 5 to Part Three are exceeded in relation to the substances specified in Table 3 or, in the case of discharge to land, in Table 4 of Annex 5 to Part Three, or the more restrictive limits set by the regions or autonomous provinces or the competent authority in accordance with Article 107, paragraph 1, or if the limit values set out for the substances contained in Table 3/A are exceeded (Article 137, paragraph 5).
- the prohibitions on discharges provided for in Articles 103 and 104 of the decree on the soil or in the surface layers, subsoil and groundwater are not observed (Article 137, paragraph 11).

[72] Article 15 of Legislative Decree No. 135 of August 5, 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 marketing set forth in Article 8, paragraph 2, of Presidential Decree No. 357 of September 8, 1997, shall be punished by arrest from two to eight months and a fine of up to 10,000 euros*."

- there is a discharge into the sea by ships and aircraft of substances or materials for which an absolute prohibition of spills is imposed, in accordance with the provisions contained in the relevant international conventions in force and ratified by Italy (Article 137, paragraph 13).

Penalties applicable to the Entity:

- for violation of paragraphs 3, 5, first sentence, and 13, a fine of one hundred and fifty to two hundred and fifty quotas;
- for violation of paragraphs 2, 5, second sentence, and 11, a fine of two hundred to three hundred quotas.

Offenses related to unauthorized waste management (Art. 256 Legislative Decree No. 152/2006)

The offense occurs if:

- activities of collection, transportation, recovery, disposal, trade and intermediation of waste (hazardous and non-hazardous) are carried out, in the absence of the prescribed authorization, registration or communication (Article 256, paragraph 1, letters a), b) or in case of non-compliance with the requirements contained or referred to in the authorizations, as well as in cases of lack of the requirements and conditions required for registrations or communications (Article 256, paragraph 4);
- one realizes or operates an unauthorized landfill of waste (Article 256, paragraph 3) or in case of non-compliance with the requirements contained or referred to in the authorizations, as well as in cases of lack of the requirements and conditions required for registrations or communications (Article 256, paragraph 4). The unlawful conduct of creating and operating an unauthorized landfill exists in the event that the conduct of accumulating a substantial amount of waste in an area is repeated over time and results in the degradation of the area itself;
- unpermitted activities of mixing waste, for example, waste with different hazardous characteristics or hazardous waste with nonhazardous waste are carried out (Article 256, paragraph 5);
- the rules on temporary storage of hazardous medical waste under Presidential Decree 254/2003 (Article 256, paragraph 6, I sentence) are violated.

Penalties applicable to the Entity:

- for violation of paragraphs 1 (a) and 6, first sentence, a fine of up to two hundred and fifty quotas;
- for violation of paragraphs 1(b), 3, first sentence, and 5, a fine of one hundred and fifty to two hundred and fifty quotas;
- For the violation of paragraph 3, second sentence, a fine of two hundred to three hundred quotas.

The aforementioned penalties are reduced by half in the case of the commission of the offense stipulated in Article 256, Paragraph 4.

Offenses related to the remediation of polluted sites (Article 257, paragraphs 1 and 2 of Legislative Decree No. 152/2006, as amended)

The offense occurs if:

- pollution is caused to the soil, subsoil, surface water or groundwater with the exceeding of risk threshold concentrations, by failing to carry out remediation in accordance with the

project approved by the competent authority within the framework of the procedure referred to in Articles 242 et seq. of Legislative Decree 152/2006, as amended.
- the communication referred to in Article 242 of Legislative Decree 152/2006, as amended, is not made.

Penalties applicable to the Entity:
- For the violation of paragraph 1, a fine of up to two hundred and fifty quotas;
- For the violation of paragraph 2, a fine of one hundred and fifty to two hundred and fifty quotas.

Violation of reporting requirements, mandatory record keeping and forms (Article 258, paragraph 4, II sentence, Legislative Decree No. 152/2006)

The offence occurs if a waste analysis certificate is prepared, which gives false information about the nature, composition and chemical and physical characteristics of the waste, and a false certificate is used during transportation.

Penalties applicable to the Entity:
- Monetary penalty of one hundred and fifty to two hundred and fifty quotas.

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

The offense is committed if a transboundary shipment of waste constituting illegal trafficking is carried out in violation of applicable EC Regulations.

Penalties applicable to the Entity:
- Monetary penalty of one hundred and fifty to two hundred and fifty quotas.

Organized activities for illegal waste trafficking (Art. 260 Legislative Decree No. 152/2006)[73]

The offense occurs if:
- in order to achieve an unjust profit, by means of several operations and through the setting up of means and continuous organized activities, sells, receives, transports, exports, imports, or otherwise mismanages large quantities of waste (Article 260, Paragraph 1, Legislative Decree 152/2006);
- the preceding conduct involves high-level radioactive waste (Article 260, paragraph 2, Legislative Decree 152/2006).

Most recently, 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 case does not lose criminal relevance but is regulated within the Criminal Code in Article *452-quaterdecies*.

Penalties applicable to the Entity
- fine of three hundred to five hundred shares in the case provided for in paragraph 1 and four hundred to eight hundred shares in the case provided for in paragraph 2;
- Permanent disqualification from carrying out the activity in the event that the entity or one of its organizational units is permanently used for the sole or predominant purpose of enabling or facilitating the commission of the above offences.

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

Offences related to emissions into the atmosphere (Article 279, co. 5, Legislative Decree No. 152/2006)

The offense is committed if, in the operation of an establishment, the emission limit values or of the requirements established by the permit, Annexes I, II, III or V to Part Five of Legislative Decree 152/2006, the plans and programs or the regulations referred to in Article 271 of the decree or the requirements otherwise imposed by the competent authority are violated, exceeding the air quality limit values established by the regulations in force.

Penalties applicable to the Entity:

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

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

The offense occurs if:

- (Art. 1, para. 1) anyone in violation 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 prescribed certificate or license, or with invalid certificate or license;
  b) fails to observe requirements aimed at 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 authorization or certification orders;
  d) Transports or transits, including 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 established under Article 7(1)(b) of Regulation (EC) No. 338/97 and Regulation (EC) No. 939/97;
  f) holds, uses for profit, purchases, sells, exhibits or holds for sale or commercial purposes, offers for sale or otherwise disposes of specimens without the prescribed documentation;
- (Art. 1, para. 2): with reference to the aforementioned offenses, in case of recidivism, the penalty of imprisonment from 1 to 3 years and a fine from thirty thousand to three hundred thousand euros shall apply. If the aforementioned offence is committed in the exercise of business activities, the conviction is followed by the suspension of the license from a minimum of six months to a maximum of 2 years;
- (Art. 2, para. 1) anyone, in violation 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 prescribed certificate or license;
  b) fails to observe requirements aimed at 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 said specimens in a manner that differs from the requirements contained in the authorization or certification orders issued along with the import permit or certified subsequently;

d) Transports or transits, including for third parties, specimens without the prescribed license or certificate;
e) trades artificially propagated plants contrary to the requirements established under Article 7(1)(b) of Regulation (EC) No. 338/97 and Regulation (EC) No. 939/97;
f) holds, uses for profit, purchases, sells, exhibits or holds for sale or commercial purposes, offers for sale or otherwise disposes of specimens without the prescribed documentation;

- (Art. 2, para. 2): with reference to the aforementioned offences, in case of recidivism, the punishment of imprisonment from 6 months to 18 months and a fine from 20,000 euros to 200,000 euros shall apply. If the aforementioned offence is committed in the exercise of business activities, the conviction is followed by the suspension of the license from a minimum of six months to 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 authorization of the issuing body (Art. 16(1), EC Regulation 338/97, subpara. A);
- anyone who makes a false statement or knowingly false communication of information in order to obtain a license or certificate (Art. 16(1), EC Regulation 338/97(C));
- any person who makes use of a forged, falsified or invalid license or certificate, or one that has been altered without authorization, as a means of obtaining a community license or certificate or for any other purpose relevant under these regulations (Art. 16(1), EC Regulation 338/97 subpara. D);
- Any person who omits or falsifies import notification (Art. 16(1), EC Regulation 338/97 letter E);
- forges or alters any license or certificate issued in accordance with the regulation (Art. 16(1), EC Regulation 338/97 lett. L).

Penalties applicable to the Entity:

- For violation of Articles 1, paragraph 1 and 2, paragraphs 1 and 2, a fine of up to two hundred and fifty quotas;
- For violation of Article 1, Paragraph 2, a fine of one hundred and fifty to two hundred and fifty quotas;
- for offenses of the Criminal Code referred to in Article 3-bis, Paragraph 1 of the same Law No. 150 of 1992 (Article 16, Paragraph 1, EC Regulation 338/97), respectively:
  1) the fine of up to two hundred and fifty quotas, in the case of commission of offences for which the punishment is no more than one year's imprisonment in maximum;
  2) the monetary penalty of one hundred and fifty to two hundred and fifty quotas, in the case of commission of offences for which the punishment is no more than a maximum of two years' imprisonment;
  3) a fine of two hundred to three hundred quotas, in the case of committing offences for which a penalty of not more than a maximum of three years' imprisonment is prescribed;
  4) a fine of three hundred to five hundred quotas, in the case of committing offences for which a penalty of more than three years' imprisonment is prescribed in the maximum.

Offenses related to stratospheric ozone and environmental protection (Law No. 549 of December 28, 1993)

The offense occurs if the provisions on production, consumption, import, export, possession and marketing of the offending substances set forth in the current (EC) regulations are violated.

Penalties applicable to the Entity:

- For the offence of violating the provisions on the cessation and reduction of the use of ozone-depleting substances stipulated in Article 3, Paragraph 6 of Law 549/1993, a fine of one hundred and fifty to two hundred and fifty quotas.

Pollution caused by ships (Articles 8 and 9 Legislative Decree No. 202/2007)

The offense occurs in the case of:

- Maliciously pouring pollutants into the sea or causing them to be spilled (Art. 8 Paragraph 1).
- Negligent pouring of pollutants into the sea or caused spillage of pollutants (Article 9 paragraph 1).
- Malicious pouring of pollutants into the sea or causing spillage of pollutants that has caused permanent or otherwise particularly serious damage, to the quality of water, animal or plant species or parts thereof (Art. 8 paragraph 2).
- culpable pouring of pollutants into the sea or causing spillage of pollutants that has caused permanent or otherwise particularly serious damage, to the quality of water, animal or plant species or parts thereof (Art. 9 paragraph 2).

Penalties applicable to the Entity:

- For the offences of negligent or intentional spillage of pollutants into the sea provided for in Articles 9, paragraph 1, and 8, paragraph 1, of Legislative Decree No. 202/2007 and negligent spillage of such substances that have caused serious or permanent damage to the quality of water, animal or plant species or parts thereof, provided for in Article 9, paragraph 2, of Legislative Decree No. 202/2007, a fine of up to two hundred and fifty quotas, for the offence of malicious spillage of pollutants into the sea that caused serious or permanent damage to the quality of water, animal or plant species or parts thereof, provided for in Article 8, paragraph 2 of Legislative Decree No. 202/2007, a fine of two hundred to three hundred quotas. If the Entity or one of its organizational units is permanently used for the sole or prevalent purpose of enabling or facilitating the commission of the offence set forth in Article 8, paragraph 2 of Legislative Decree No. 202/2007, the sanction of permanent disqualification from carrying out the activity pursuant to Article 16, paragraph 3 of Legislative Decree No. 231/2001 shall apply.

TRANSNATIONAL OFFENCES REFERRED TO IN LAW NO. 146 OF MARCH 16, 2006

Law No. 146 of March 16, 2006 ratified and implemented the United Nations Convention and Protocols against Transnational Organized Offence, adopted by the General Assembly on November 15, 2000 and May 31, 2001 (hereinafter "*Convention*").

The purpose of the Convention is to promote cooperation to prevent and combat transnational organized offence more effectively, and therefore requires each state party to it to take the necessary

measures, in accordance with its legal principles, to determine the liability of entities and companies for the acts of offence specified therein.
More specifically, Art. 10 of the law in question provides for the extension of the Decree's regulations with reference to certain offences, where the conditions of Art. 3 are met, that is, where the offence can be considered transnational.
According to Article 3 of Law No. 146/06, a transnational offence is "*the offence punishable by imprisonment of not less than a maximum of four years, if an organized 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 organized criminal group engaged in criminal activities in more than one state is involved in it;
d) or is committed in one state but has substantial effects in another state."

"*Organized 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 offences or offenses established by the Convention, in order to obtain, directly or indirectly, a financial or other material advantage*."
With reference to the predicate offenses for the administrative liability of the entity, Article 10 of Law No. 146/06 lists the following cases:

Criminal conspiracy (Article 416 of the Criminal Code).
The offence under consideration punishes those who promote, establish or organize the association for the purpose of committing multiple offences. Even the mere fact of participating in the association constitutes a offence. The criminal relevance of the conduct described by the norm appears to be conditional on the actual establishment of the criminal association. In fact, even before referring to the individual conducts of promotion, establishment, direction, organization or mere participation, the rule makes their punishability conditional on the moment when "three or more persons" have actually associated to commit multiple offences. The offence of criminal association is thus characterized by the autonomy of the incrimination with respect to any offences subsequently committed in implementation of the *pactum sceleris*. Such possible offences, in fact, concur with that of criminal association and, if not perpetrated, leave the offence under Article 416 of the Criminal Code in place. The penalty is increased if the number of associates is ten or more. If the conspiracy is aimed at committing any of the offences set forth in Articles 600 (enslavement), 601 (trafficking in persons), 601-bis (trafficking in organs taken from a living person) and 602 (purchase and sale of slaves) of the Criminal Code, to Article 12, co. 3-bis, of Legislative Decree No. 286/1998 (offenses concerning violations of the provisions on illegal immigration and regulations on the status of foreigners), as well as Articles 22, paragraphs 3 and 4, and 22-bis, co. 1 (penalties regarding 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 shall be applied in the cases provided for in the first paragraph and from four to nine years in the cases provided for in the second paragraph. If the conspiracy is aimed at committing any of the offences set forth 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 the exploitation of child prostitution), 609-bis (sexual violence),

when the act is committed against a minor under eighteen years of age, 609-quater (sexual acts with a minor), 609-quinquies (bribery of a minor), 609-octies (group sexual violence), when the act is committed against a minor under eighteen years of age, 609-undecies (solicitation of minors) c.p., imprisonment from four to eight years shall be applied in the cases provided for in the first paragraph and from two to six years in the cases provided for in the second paragraph.

Penalties applicable to the Entity:

- Fine: 400 to 1,000 quotas;
- disqualifying sanctions (for a duration of not less than 1 year): disqualification from carrying out the activity; suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense; 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.

Mafia-type associations, including foreign ones (Article 416-bis of the Criminal Code).

Anyone who is a member of a mafia-type association consisting of three or more persons shall be punished by imprisonment of ten to fifteen years. The article punishes those who promote or establish or organize the association with imprisonment of twelve to eighteen years. The association is of the mafia type when those who are part of it make use of the intimidating force of the associative bond and the condition of subjugation and code of silence deriving therefrom to commit offences, to acquire directly or indirectly the management or control of economic activities, concessions, authorizations, contracts and public services or to realize unjust profits or advantages for themselves or others or in order to prevent or hinder the free exercise of voting or to procure votes for themselves or others on the occasion of electoral consultations. If the association is armed, the punishment of imprisonment from twelve to twenty years shall apply in the cases provided for in the first paragraph and from fifteen to twenty-six years in the cases provided for in the second paragraph. The association is considered armed when the participants have 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: 400 to 1,000 quotas;
- disqualifying sanctions (for a duration of not less than 1 year): disqualification from conducting business; suspension or revocation of authorizations, licenses 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.

Criminal association for the purpose of smuggling tobacco products (Art. 86 Legislative Decree No. 141/2024)

When three or more persons associate for the purpose of committing several offences among those provided for in Article 84 or Article 40-bis of the Consolidated Text of the legislative provisions concerning taxes on production and consumption and related criminal and administrative sanctions, referred to in Legislative Decree No. 504 of October 26, 1995, including with reference to the products referred to in Articles 62-quater, 62-quater.1 62-quater.2 and 62-quinquies referred to in the aforementioned Consolidated Text, those who promote, constitute, direct, organize or finance the

association shall be punished, for that alone, by imprisonment of three to eight years. Penalties applicable to the Entity:

- Fine: 400 to 1,000 quotas;
- disqualifying sanctions (for a duration of not less than 1 year): disqualification from conducting business; suspension or revocation of authorizations, licenses 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.

Association for the purpose of illicit trafficking in narcotic drugs and psychotropic substances (art. 74 Presidential Decree 309/90)

An association is for the purpose of illicit trafficking in narcotic or psychotropic substances when three or more persons associate for the purpose of committing more than one of the offences set forth in Article 73 of Presidential Decree No. 309/90 (illicit production, trafficking and possession of narcotic or psychotropic substances). Whoever promotes, constitutes, directs, organizes or finances the association is punished for that alone with imprisonment of not less than twenty years.

Penalties applicable to the Entity:

- Fine: 400 to 1,000 quotas;
- disqualifying sanctions (for a duration of not less than 1 year): disqualification from conducting business; suspension or revocation of authorizations, licenses 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.

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

Article 12 of the Consolidated Text referred to in Legislative Decree No. 286/98 provides in Paragraph 1 for the incriminating case, known as aiding and abetting illegal immigration, consisting of the act of anyone who "*in violation of the provisions of this Consolidated Text ... performs acts aimed at procuring the entry of a foreigner into the territory of the State*." Article 12, co. 3, on the other hand, provides the following aggravating circumstances

- "*the act concerns the illegal entry or stay in the territory of the State of five or more persons;*
- *to procure the illegal entry or stay the person was exposed to danger to his life or safety*;
- *to procure the illegal entry or stay the person was subjected to inhuman or degrading treatment;*
- *the act is committed by three or more persons in complicity with each other or by using international transportation services or documents that are forged or altered or otherwise illegally obtained*."
- *the perpetrators have the availability of weapons or explosive materials*."

Paragraphs 3-bis and 3-ter of Article 12 stipulate, respectively, that the punishments are also increased "*if the acts referred to in paragraph 3 are committed by recurring to two or more of the hypotheses referred to in letters a), b), c), d) and e) of the same paragraph"* and "*the punishment of imprisonment is increased by one third to one half and a fine of 25.000 euros for each person if the acts referred to in paragraphs 1 and 3: a) are committed for the purpose of recruiting persons to be destined to*

prostitution or otherwise to sexual or labor exploitation or concern the entry of minors to be employed in illegal activities in order to facilitate their exploitation; b) are committed for the purpose of plme profit, even indirectly.

The fifth paragraph of Article 12 provides for a further criminal offense, known as aiding and abetting illegal stay, consisting of the act of those who "*in order to gain an unfair profit from the illegal condition of the foreigner or within the scope of the activities punishable under this article, aid and abet the permanence of the foreigner 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;
- disqualifying sanctions (for a duration of not more than 2 years): disqualification from carrying out the activity; suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense; 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.

Inducement not to make statements or to make false statements to judicial authorities (Article 377-bis of the Criminal Code)

For a description of the offense, please refer to the section on offences against the Public Administration.

Penalties applicable to the Entity:

- Fine: up to 500 quotas.

Aiding and abetting (art. 378, Criminal Code)

Article 378 of the Criminal Code represses the conduct of anyone who, after a offence has been committed for which the law establishes life imprisonment or imprisonment, and outside the cases of aiding and abetting the same, aids someone to evade the investigations of the Authority or to evade its searches. The provisions of this article shall also apply when the person aided is not chargeable or it appears that he did not commit the offence. It is necessary, for the consummation of the offence, that the aiding conduct engaged in by the aider is at least potentially detrimental to the investigation 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.

ORGANIZED OFFENCE OFFENSES (ART. 24-TER OF THE DECREE)

Law No. 94 of July 15, 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 offenses dependent on organized offence offences committed in the territory of the State even though they lack the requirement of transnationality.

The article includes the following offenses:

Criminal conspiracy (Article 416 of the Criminal Code).
For a description of this offense, please refer to the previous section.
Penalties applicable to the Entity:

- Fine: 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 not less than 1 year): disqualification from carrying out the activity; suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense; 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.

Mafia-type associations, including foreign ones (Article 416-bis of the Criminal Code).
For a description of this offense, please refer to the previous section.
Penalties applicable to the Entity:

- Fine: 400 to 1,000 quotas;
- disqualifying sanctions (for a duration of not less than 1 year): disqualification from carrying out the activity; suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense; 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.

Political-mafia election exchange (Article 416-ter of the Criminal Code) [74]
The incriminating provision under consideration 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 a person who promises, directly or through intermediaries, to procure votes in the cases referred to in the first paragraph. If the person who has accepted the promise of votes, as a result of the agreement referred to in the first paragraph, has been elected in the relevant election, the punishment provided for in the first paragraph of Article 416-bis increased by half shall apply.
Penalties applicable to the Entity:

- Fine: 400 to 1,000 quotas;
- disqualifying sanctions (for a duration of not less than 1 year): disqualification from conducting business; suspension or revocation of authorizations, licenses 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

[74] The incriminating provision under consideration was amended by Law No. 43 of May 21, 2019.

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 (art. 630, 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 person kidnapped, the offender shall be punished by imprisonment of thirty years. If the offender causes the death of the kidnapped person, the punishment of life imprisonment shall apply. To the contestant who, disassociating himself from the others, endeavors in such a way that the passive subject regains his freedom, without such result being a consequence of the price of release, the punishments provided for in Article 605 shall apply. If, however, the taxable person dies, as a result of the seizure, after release, the punishment shall be imprisonment for six to fifteen years. With respect to the accomplice who, disassociating himself from the others, takes steps, outside the case provided for in the preceding paragraph, to prevent the criminal activity from being carried to further consequences or concretely assists the police or judicial authority in the collection of decisive evidence for the identification or capture of the accomplices, the penalty of life imprisonment shall be replaced by that of imprisonment for twelve to twenty years, and the other penalties shall be decreased by one-third to two-thirds.

Penalties applicable to the Entity:

- Fine: 400 to 1,000 quotas;
- disqualifying sanctions (for a duration of not less than 1 year): disqualification from conducting business; suspension or revocation of authorizations, licenses 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.

Association for the purpose of illicit trafficking in narcotic drugs and psychotropic substances (art. 74 Presidential Decree No. 309/90)

For a description of this offense, please refer to the previous section.

Penalties applicable to the Entity:

- Fine: 400 to 1,000 quotas;
- disqualifying sanctions (for a duration of not less than 1 year): disqualification from carrying out the activity; suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense; 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.

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 war-like weapons or parts thereof, explosives, clandestine weapons as well as more common firearms (art. 407, para. 2 (a) (5), Criminal Code)

Article 24 ter of the Decree also recalls as predicate offenses the offences of 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 war-like weapons or parts of them, explosives, clandestine weapons as well as more common firing weapons excluding those provided for in Article 2, co. 3, of Law No. 110 of April 18, 1975.

Penalties applicable to the Entity:

- Fine: 300 to 800 quotas;
- disqualifying sanctions (for a duration of not less than 1 year): disqualification from carrying out the activity; suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense; 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.

THE OFFENCES OF COUNTERFEITING COINS, PUBLIC CREDIT CARDS, REVENUE STAMPS AND INSTRUMENTS OR SIGNS OF RECOGNITION (ARTICLE 25-BIS, LEGISLATIVE DECREE NO. 231/2001)

Article 6 of Decree Law No. 350 of September 25, 2001, converted into law, with amendments, by Law No. 409 of November 23, 2001, included the following offences in Article 25-bis of Legislative Decree No. 231/2001.

Counterfeiting of money, spending and introduction into the state, in concert, of counterfeit money (Art. 453 Penal Code)

The rule punishes counterfeiting, i.e., altering of coins (domestic or foreign), introduction of altered or counterfeit coins into the state, purchase of counterfeit or altered coins for the purpose of putting them into circulation, and undue manufacture of quantities of coins in excess of the requirements .[75]

Penalties applicable to the Entity

- Fine: 300 to 800 quotas;
- Disqualifying 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.

Alteration of coins (art. 454 Penal Code).

The provision punishes anyone who alters coins by diminishing their value in any way, or, with respect to the coins so altered, commits any of the acts specified in the preceding article.

Penalties applicable to the Entity

- Fine: up to 500 quotas;

[75] 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 authorized to produce, improperly manufactures, abusing the instruments or materials in his possession, 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 that are not yet legal tender and the initial term thereof is determined*."

- Disqualifying 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 coins for the purpose of spending them or otherwise putting them into circulation.

Penalties applicable to the Entity

- Monetary penalty: the monetary penalties stipulated for Articles 453 and 454 of the Criminal Code, reduced by one-third to one-half;
- Disqualification sanctions: prohibition of 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 of advertising goods or services.

Spending of counterfeit money received in good faith (Article 457 of the Criminal Code)

The provision punishes those who spend or otherwise put into circulation counterfeit or altered coins received in good faith.

Penalties applicable to the Entity

- Fine: up to 200 quotas.

Forgery of revenue stamps, introduction into the state, purchase, possession or putting into circulation of forged revenue stamps (Art. 459 Penal Code)

The provision also punishes the behaviors stipulated in Articles 453, 455 and 457 of the Criminal Code 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 penalty: the monetary penalties stipulated for Articles 453, 455, 457 and 464, par. 2, of the Criminal Code, reduced by one-third;
- Disqualification sanctions: prohibition of 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 of advertising goods or services.

Counterfeiting watermarked paper in use for the manufacture of public credit cards or revenue stamps (Article 460 of the Criminal Code)

The provision punishes the counterfeiting of watermarked paper used in the manufacture of public credit cards or stamps, as well as the purchase, possession and disposal of such counterfeit paper.

Penalties applicable to the Entity

- Fine: up to 500 quotas;
- Disqualification sanctions: prohibition of 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 of advertising 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)[76]

The provision punishes the manufacture, purchase, possession, or disposal of watermarks, computer instruments, or instruments intended solely for the counterfeiting or alteration of coins, revenue stamps, or watermarked paper, as well as holograms or other coin components intended for protection against counterfeiting or alteration.

Penalties applicable to the Entity

- Fine: up to 500 quotas;
- Disqualifying 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 forged or altered revenue stamps (Article 464 of the Criminal Code).

The provision punishes the use of counterfeit or altered stamps, even if received in good faith.

Penalties applicable to the Entity

- Fine: up to 200 quotas.

Law No. 99/2009, setting forth "*Provisions for the development and internationalization of enterprises, as well as on energy matters*," amended the heading of Article 25-bis of the Decree, adding a reference to forgery of instruments or signs of recognition, and inserting in the same the offenses set forth in Articles 473 and 474 of the Criminal Code below.

Counterfeiting, alteration or use of trademarks or distinctive signs or of patents, models and designs (art. 473 Penal Code)

The provision punishes the counterfeiting or alteration of trademarks or distinctive signs, domestic 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 counterfeited or altered patents, designs or models.

The offences provided for in the first and second paragraphs are punishable provided that the rules of domestic laws, EU regulations and international conventions on the protection of intellectual or industrial property have been observed.

The offence under Article 473 of the Criminal Code is configured as a offence of concrete danger, since the integration of the objective element of the offence does not require the actual injury to public faith, but rather requires the specific offensive attitude of the conduct, that is, the actual risk of

[76] Legislative Decree No. 125/2016 amended Article 461, Paragraph 1 of the Criminal Code to this effect: *"1) after the word: 'programs' the following shall be inserted: 'and data'; 2) the word: 'exclusively' shall be deleted."*

confusion for the generality of consumers. Registration of the trademark/patent, according to domestic, EU and international regulations, is an essential element for the integration of the offense.
Penalties applicable to the Entity

- Fine: up to 500 quotas;
- Disqualifying 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, outside the cases of complicity in the offences provided for in Article 473, the introduction into the territory of the state, in order to make profit, of industrial products with counterfeit or altered trademarks or other distinctive signs, domestic or foreign.
The provision also punishes, outside the cases of conspiracy to counterfeit, the alteration, introduction into the territory of the state, holding for sale, offering for sale or otherwise putting into circulation, for the purpose of making profit, of products referred to in the first paragraph.
The offences provided for in the first and second paragraphs are punishable provided that the rules of domestic laws, EU regulations and international conventions on the protection of intellectual or industrial property have been observed.
The case under 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 can be liable for the introduction into the state or putting on the market. For the purposes of punishability there must be a specific intent represented by profit, and a generic intent relating to awareness of the counterfeiting of another's trademark.
Penalties applicable to the Entity

- Fine: up to 500 quotas;
- Disqualifying sanctions: prohibition to contract with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted; prohibition to advertise goods or services.

OFFENCES AGAINST INDUSTRY AND TRADE (ART. 25-BIS.1 OF LEGISLATIVE DECREE NO. 231/2001)

Art. 15 of Law July 23, 2009 No. 99 amended Art. 25-bis and inserted the following Art. 25-bis.1 into Legislative Decree No. 231/2001, which extends the criminal liability of legal persons to the offenses stipulated in the articles described below.

Disturbing freedom of industry and commerce (Art. 513 Penal 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 enterprise or trade. The offense alternately involves the use of violence against property or fraudulent means to prevent or disrupt the operation of an industry or trade. The conduct must be aimed at hindering or disturbing an industry or trade; therefore, the offence is one of anticipatory consummation, since it is not necessary for its perfection that the hindering or disturbance be realized in the facts, as long as 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 norm punishes those who, in the exercise of a commercial, industrial or productive activity, carry out acts of competition with violence or threats. The legal asset protected by the norm consists of the proper functioning of the entire economic system, in order to prevent that through violent or intimidating behavior the very prerequisites of fair competition are endangered.

Penalties applicable to the Entity

- Fine: up to 800 quotas;
- Disqualifying 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, in domestic or foreign markets, industrial products with counterfeit or altered names, trademarks or distinctive signs, which cause damage to domestic industry. This case aims to protect the economic order and, more specifically, domestic production. The harm to domestic industry may take the form of any form of injury, whether in the form of loss of profit or consequential damage (i.e., diminution 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;
- Disqualifying 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 course of business or in a store open to the public, delivers to the purchaser a movable thing for another, or a movable thing by origin, provenance, quality or quantity different from that stated or agreed upon, unless such conduct constitutes a more serious offence.

The offence, therefore, concerns the so-called delivery of *aliud pro alio*, that is, of one thing for another. The protected good is embodied in the fairness of trade.
The offence under consideration is perfected by the delivery of the movable thing, delivery being understood to mean not only the *traditio* of the thing but also the mere giving of the document representing it (waybill, 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 standard is again good faith in trade. The term "genuineness" means, on the one hand, the conformity of the product to the legal requirements of the relevant regulations, and on the other hand, the integrity and non-alteration of the substantial characteristics of the good.
Awareness of the non-genuine nature of the substance and a willingness to present it as genuine is required for the offense to be perfected.
Penalties applicable to the Entity

- Fine: up to 500 quotas.

Sale of products with false signs (Article 517 of the Criminal Code).
The provision punishes the conduct of possessing for sale[77] , offering for sale or otherwise circulating intellectual works or industrial products with distinctive domestic or foreign names, trademarks or signs designed to mislead the buyer as to the origin, source or quality of the work or product.
This rule differs from the previous cases under Articles 473 and 474 of the Criminal Code, in that it punishes conduct involving trademarks/distinctive signs that, while not imitating other trademarks/distinctive signs registered, are nevertheless likely to mislead consumers. Therefore, the protected interest is not trademark protection but consumer protection.
For the purposes of integrating the extremes of the offence under consideration, the deceptive attitude of the imitated product must exist, that is, the product must be able to mislead the consumer of average diligence, and the realization of concrete damage to the consumer is not relevant (case of concrete danger).
Penalties applicable to the Entity

- Fine: up to 500 quotas.

Manufacture and trade of goods made by usurping industrial property rights (Article 517-ter of the Criminal Code)
The provision punishes the person who, being able to know of the existence of the industrial property title, manufactures or industrially uses objects or other goods made, usurping an industrial property title or in violation of the same 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 occurrence of the cases referred to in Articles 473 and 474 of the Criminal Code is excluded. The legal asset protected by the

[77] 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*."

provision pertains to the right to exploit industrial property rights, i.e. trademarks and other distinctive signs, geographical indications, appellations of origin, designs and models, inventions, utility models, topographies of semiconductor products, and confidential business information. The conduct of "usurpation" occurs when the agent does not own any right to the thing and manufactures/markets the good anyway; on the other hand, there is "infringement of title" when the rules on the existence, scope and exercise of industrial property rights set forth in Chapter II of the Industrial Property Code (Legislative Decree Feb. 10, 2005 No. 30, as amended and supplemented) 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 appellations of origin of agri-food products; that is, the introduction into the territory of the State, holding for sale, offering for sale with a direct offer to consumers and otherwise putting into circulation, for the purpose of profit, products with the counterfeit indications or appellations. The offences under consideration 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 observed.
Penalties applicable to the Entity

- Fine: up to 500 quotas.

COPYRIGHT VIOLATION OFFENCES (ARTICLE 25-NOVIES OF LEGISLATIVE DECREE NO. 231/2001)

Law No. 99 of July 23, 2009, setting forth "*Provisions for the development and internationalization of enterprises as well as on energy matters," so-called Development-Energy Law*," in force as of August 15, 2009, made a further addition to the legislative *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: art. 171, paragraph 1, letter a-bis) and paragraph 3, L. 633/1941); art. 171-bis L. 633/1941; art. 171-ter L. 633/1941; art. 171-septies L. 633/1941; and art. 171-octies L. 633/1941.

Article 171, paragraph 1 (a-bis) and paragraph 3 (L. No. 633/1941)
The rule punishes the conduct of making available to the public, through the entry of a system of telematic networks and through connections of any kind, a protected intellectual work or part of it as well as if the aforementioned offense is committed over a work of others not intended for publicity, or with usurpation of the authorship of the work, or with deformation, mutilation or other modification of the work itself, if it results in offense to the honor or reputation of the author. This rule protects the patrimonial interest of the author of the work, who may see his or her expectations of profit frustrated in the event of free circulation of his or her work on the Web.
Penalties applicable to the Entity

- Fine: up to 500 quotas;

- Disqualification sanctions: disqualification from carrying out the activity; suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense; 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 (for a period not exceeding one year).

Article 171-bis (L. No. 633/1941).

The provision punishes anyone who unlawfully duplicates, for the purpose of making profit, computer programs or for the same purposes imports, distributes, sells, holds for commercial or business purposes or leases programs contained on media not marked in accordance with this Law; or who, for the purpose of profiting, on media not marked in accordance with this Law[78] 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 leases a database.

This provision is placed for the criminal protection of software and databases. By "software," we mean computer programs, in any form expressed, provided they are original, as the result of the author's intellectual creation; while 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 500 quotas;
- Disqualifying sanctions: disqualification from carrying out the activity; suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense; 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 (for a period not exceeding one year).

Article 171-ter (L. No. 633/1941).

This rule is aimed at the protection of a numerous series of intellectual works, both those intended for the radio, television and film circuit, as well as 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 July 14, 2023 on "*Provisions for the prevention and suppression of the unlawful dissemination of copyrighted content through electronic communication networks*" amended co. 1 of Article 171-ter of Law No. 633/1941, introducing subparagraph h-bis), which punishes anyone who "*unlawfully, including in the manner specified in paragraph 1 of Article 85-bis of the Consolidated Text of Public Security Laws, referred to in Royal Decree No. 773 of June 18,*

[78] Law No. 166 of Nov. 14, 2024, "*Conversion, with amendments, of Decree Law No. 131 of Sept. 16, 2024, containing urgent provisions for the implementation of obligations arising from acts of the European Union and from pending infringement and pre-infringement proceedings against the Italian state*" replaced the phrases "*by the Italian Society of Authors and Publishers (SIAE)*" and "*SIAE*" with the phrase "*pursuant to this law*."

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."[79]

Penalties applicable to the Entity

- Fine: up to 500 quotas;

Disqualification sanctions: disqualification from carrying out the activity; suspension or revocation of authorizations, licenses 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 (for a period not exceeding one year).**Art. 171-septies (L. no. 633/1941**[80]

The provision punishes, unless the act constitutes a more serious offence, anyone who falsely declares that the obligations set forth in Article 181-bis, paragraph 2, of this law have been fulfilled.

This provision is intended to protect the control functions of the SIAE, other collective management organizations and independent management entities that verify the correctness of the applicant's attestation regarding the fulfillment of obligations under the copyright and related rights legislation.

Penalties applicable to the Entity

- Fine: up to 500 quotas;

Disqualification sanctions: disqualification from carrying out the activity; suspension or revocation of authorizations, licenses 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 (for a period not exceeding one year).

Art. 171-octies (L. No. 633/1941)

The provision punishes those who, for fraudulent purposes, manufacture, offer for sale, import, promote, install, modify, or use for public and private use apparatus or parts of apparatus suitable for decoding audiovisual transmissions with conditional access made over the air, by satellite, by cable, in both analog and digital form. Conditional access is understood to mean all audiovisual signals transmitted by Italian or foreign broadcasters in such a form as to make the same visible exclusively to closed groups of users selected by the subject making the signal broadcast, regardless of the imposition of a fee for the use of such service.

Penalties applicable to the Entity

- Fine: up to 500 quotas;
- Disqualifying sanctions: disqualification from carrying out the activity; suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense; prohibition from contracting with the Public Administration, except to obtain the performance of a public service; exclusion from facilitations, financing, contributions or

[79] The aforementioned Law No. 166 of November 14, 2024, replaced the phrase "*pursuant to this law, affixing of marking by the Italian Society of Authors and Publishers (SIAE)*" with the phrase "*the affixing of marking pursuant to this law*."

[80] The aforementioned Law No. 166 of November 14, 2024 repealed subparagraph (a) of Article *171-septies*, which provided as follows: "*to the producers or importers of the media not subject to the marking referred to in Article 181-bis, who fail to communicate to the SIAE within thirty days from the date of placing on the national market or importing the data necessary for the unambiguous identification of such media;*"

subsidies and possible revocation of those already granted; prohibition from advertising goods or services (for a period not exceeding one year).

TRIBUTARY OFFENCES (ART. 25-QUINQUIESDECIES OF THE DECREE)

Law No. 157 of Dec. 19, 2019, converting with amendments Decree Law No. 124/2019 on "*Urgent provisions on fiscal matters and for unavoidable needs*," published in Official Gazette No. 301 of Dec. 24, 2019, provides for, among various "*amendments to the criminal regulations and administrative liability of entities*," the introduction of the following incriminating cases into the catalog of predicate offenses of Legislative Decree No. 231/2001:

- "*fraudulent declaration through the use of invoices or other documents for non-existent transactions*" (Art. 2, co. 1 and 2-bis, Legislative Decree No. 74/2000);
- "*fraudulent declaration by means of other artifices*" (Art. 3 Legislative Decree No. 74/2000);
- "*issuance of invoices or other documents for non-existent transactions*" (Art. 8, co. 1 and 2-bis, Legislative Decree No. 74/2000);
- "*concealment or destruction of accounting documents*" (Article 10 of Legislative Decree No. 74/2000);
- "*fraudulent evasion of tax payments*" (Art. 11 Legislative Decree No. 74/2000).

More specifically, the aforementioned law inserts Article *25-quinquiesdecies* under the heading "*Tax offences*" into Decree 231.

Subsequently, on July 15, 2020, Legislative Decree No. 75 of July 14, 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 Gazette (No. 177), which entered into force on July 30, 2020.

The main changes introduced with the issuance of the said Decree, for what is relevant here, concern:

- the amendment of Article 6 of Legislative Decree No. 74/2000, which in the new version also punishes by way of attempt the tax offences set forth in Articles 2 ("*Fraudulent declaration through the use of invoices or other documents for non-existent transactions*"), 3 ("*Fraudulent declaration through other artifices*") and 4 ("*Unfaithful declaration*"), if carried out even in the territory of another member state of the European Union, in order to evade value added tax for a total value of not less than ten million euros;
- the inclusion in Article *25-quinquiesdecies* of Legislative Decree No. 231/2001 of the offences provided for and punished by Articles 4 ("*Unfaithful Declaration*"), 5 ("*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 not less than ten million euros.

Legislative Decree No. 156 of October 4, 2022, on "*Corrective and supplementary provisions of Legislative Decree No. 75 of July 14, 2020, implementing Directive (EU) 2017/1371 on the fight against fraud affecting the financial interests of the Union by means of criminal law*," then amended the regulations of Article 6 ("Attempt") of Legislative Decree No. 74/2000 and Article 25-quinquiesdecies of Legislative Decree No. 231/2001 ("Tax offences").

Lastly, Legislative Decree No. 87 of June 14, 2024, was published in the Official Gazette, introducing a revision of the tax and criminal-tax penalty system for the purpose of implementing Delegated Law

No. 111/2023 through greater integration between the different penalties, in compliance with the principle of *ne bis in idem*.[81]
More specifically, the legislature redesigns the structure of so-called spillover offences, introduces a specific definition of nonexistent credits and credits that are not due in the criminal sphere, and significantly affects some provisions common to tax offences by providing new causes of non-punishability as well as new mitigating circumstances (amendments to Article 13-bis) and reforming the provisions pertaining to seizure and confiscation (amendments to Article 12-bis).
It should be premised, in general terms, that the violation of the obligation to truthfully disclose the income situation and taxable bases is at the basis, in particular, of three types of offence provided for by Legislative Decree No. 74/2000, constituting the infrastructure of the repressive system: fraudulent declaration through the use of invoices or other documents for non-existent transactions (Art. 2) or by means of other artifices (Art. 3), hypotheses relating to declarations that are not only mendacious but also characterized by a particular coefficient of "insidiousness"; the unfaithful declaration (Art. 4) and, finally, the omitted declaration (Art. 5).
These offenses are flanked by three "collateral" figures, of equally relevant detrimental attitude, intended to target the issuance of invoices or other documents for nonexistent transactions in order to allow third parties to evade (Art. 8), the concealment or destruction of accounting documents so as not to allow the reconstruction of income or turnover (Art. 10) and, finally, the evasion of forced tax collection by performing fraudulent acts on one's own or others' property (Art. 11).
With a view to curbing the use of criminal sanctions, the indicated offenses remain subject-except for those of fraudulent declaration through the use of invoices or other documents for non-existent transactions, issuance of such documents and concealment or destruction of records accounting-to punishability thresholds suitable for limiting punitive intervention to only offenses of significant economic importance.

Fraudulent declaration through the use of invoices or other documents for nonexistent transactions

This offence is provided for and punished by Article 2 of Legislative Decree No. 74/2000. [82]
This provision is aimed at punishing anyone who, in order to evade income tax or value-added tax, using invoices or other documents for nonexistent transactions, indicates fictitious taxable items in one of the returns for these taxes.
The case under consideration was introduced by the criminal-tax reform of 2000 and implements a real inversion of the previous legislation, assuming, as a strategic objective, that of limiting criminal repression only to facts directly related, both on the objective and subjective sides, to the injury of tax interests, with correlated renunciation of the criminalization of merely "formal" and "preparatory" violations.
As with the other criminal cases under Legislative Decree No. 74/2000, the legal asset protected by the case under consideration coincides with the interest of the Treasury in the collection of taxes,

[81] On the last point at issue, please refer to the new provisions on coordination between criminal and administrative proceedings (Art. 19-21b Legislative Decree No. 74/2000).
[82] "*1. Punishable by imprisonment for a term of four to eight years shall be 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 said taxes. 2. The act 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 compulsory accounting records, or are held for evidence against the tax authorities. 2-bis If the amount of the fictitious passive elements is less than one hundred thousand euros, imprisonment from one year and six months to six years shall apply.*"

unlike the provisions of the former 1982 law, which primarily protected the interest of the IRS in the proper conduct of tax assessment action.
Active subject of the offence can only be the one who is a taxpayer for the purposes of direct taxes and VAT, or is a director, liquidator or representative of companies, entities or individuals, or a tax substitute, in the cases provided for by law (Art. 1, paragraph 1(c), Legislative Decree No. 74/2000).
Art. 2 of Legislative Decree No. 74/2000 also configures a offence of danger or mere conduct, the legislature having intended to strengthen the protection of the protected legal asset, anticipating it at the time of the commission of the typical conduct (Cass. Pen., SS.UU., Jan. 19, 2011, Judgment No. 1235).
Having specific regard, on the other hand, to the subjective element, the offence is punishable by specific intent since it is characterized by the purpose of evading income or value-added taxes.
Therefore, the offence occurs both in the case where with the declaration the tax concurrently paid is diminished (or reset to zero) and in the case where with the declaration it is intended to justify a credit position with the Treasury.
The untrue statement must be supported by the full knowledge of the non-existence of the passive transactions taken into account in determining the final result shown in it as well as the intention to use it instrumentally in representing that false declared result as responding to impeccable accounting.
Moreover, the offence under consideration is instantaneous consummation and takes place at the time of filing the tax return (Cass. Pen., Sec. II, Nov. 2, 2010, No. 42111).
Indeed, the preparation and recording of documents attesting to nonexistent transactions are merely preparatory conduct and are not usually punishable as attempts, by express provision of the legislature: "*the offences provided for in Articles 2, 3 and 4 are not punishable as attempts, except as provided in paragraph 1-bis*" (Art. 6, Legislative Decree No. 74/2000).[83]
On the point at issue, it should be reiterated that in the new version of Article 6 of Legislative Decree No. 74/2000, instead, the tax offences set forth in Articles. 2 ("*Fraudulent declaration through the use of invoices or other documents for non-existent transactions*"), 3 ("*Fraudulent declaration by means of other artifices*") and 4 ("*Unfaithful declaration*"), if committed as part 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 euros or more.[84]
On the other hand, with regard to the definition of invoice or document issued for nonexistent transactions, the same is provided by subparagraph (a) of Art. 1 of Legislative Decree No. 74/2000, according to which "invoices *or other documents for nonexistent transactions are invoices or other documents having similar evidentiary significance under tax regulations, 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 parties other than the actual parties*."

[83] On the point at issue in Judgment No. 21025 filed on May 21, 2015, the Supreme Court ruled that the mere performance of preparatory and prodromal acts with respect to the submission of the tax return (such as the preparation of accounting records and the annotation in them of false invoices), even if functional to the commission of the offence proper, cannot be equated with typical conduct. On the contrary, the very general approach of the criminal tax legislation, as referred to above, requires that such conduct, considered in itself, cannot have criminal relevance. With respect to such a offence (of mere conduct, instantaneous in nature and damaging), it is configurable, nonetheless, the concurrence in the head of a person who, while being an outsider and not holding office in the company to which the declaration refers, has in any way instigated or determined the person, required to submit the same, to carry out the typical action. Therefore, the person who simply holds the invoices for fictitious transactions issued by others or records them in the accounts without transferring the findings to the declaration cannot be held criminally liable even as an attempt.
[84] Article 4 of Legislative Decree No. 156/2022 introduced a change to the rules of attempt. For a commentary on the aforementioned conditions, please refer to the section on the examination of the offence of misrepresentation.

As for the subsidiarity 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 evidentiary effectiveness of invoices or other documents for non-existent transactions used for fraudulent declaration, in the presence of which the offence under Article 2 rather than that *under* Article 3 is configured (Cass., Sec. III, Dec. 19, 2011 No. 46785 and March 23, 2007 No. 12284).

It is further believed, also based on the considerations set forth in Report No. III/05/2015 dated October 28, 2015 of the Supreme Court's Office of the Supreme Court, that the criterion for the attractiveness of the fraudulent transaction to the scope of either offense lies in the type of fictitious documentation used.

The very literal wording of Art. 3-whose incipit reads "*Outside the cases pervised by Art. 2*"-depicts, in fact, in favor of a logical path that implies first the verification of whether the identified transaction is related to the typified case of Art. 2, on the basis of the existence or not of "*invoices or other documents having similar probative value*," and then, if not, to that of Art. 3.

In light of the above normative definition, therefore, it emerges that:

- other tax-relevant documents (receipts, notes, accounts, bills, contracts, transport documents, debit and credit notes) in addition to invoices may also constitute the offense;
- falsity[85] of the above-mentioned documents is relevant on both an objective and subjective level.

An invoice is objectively false when it documents transactions that were not actually carried out in whole or in part.

More specifically, an objectively nonexistent transaction occurs in two cases:

- when the invoices document a transaction that was never fully realized (so-called absolute or total objective nonexistence);
- when the invoices document a transaction that was never carried out only in part, i.e., in different and smaller quantitative terms than those represented securitized (relative or partial objective non-existence).

In the hypotheses already mentioned, the transaction, although totally or partially nonexistent on a material level, allows the user to gain 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 will minimize his income.

A subjectively nonexistent invoice[86] , on the other hand, occurs when the documented transactions occurred between parties other than those formally shown as parties to the relationship.

This is because even the false indication of the issuer and/or recipient of the invoice goes to undermine the veracity of the documentary attestation of the transaction, allowing the user to deduct costs

[85] 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 attesting to transactions that were not actually carried out, regardless of whether the falsity is ideological or material. (See to this effect Cass. Pen., ruling no. 6360, Feb. 11, 2019)

[86] Falling within the scope of subjective nonexistence is the case of "interposition," both "fictitious" and "real." The former figure occurs when the transaction has actually taken place, but between parties other than those declared, and all the parties to it want the effects of the transaction to be produced with respect to a person other than the one who appears in the deed. Fictitious interposition exists, therefore, when the parties have actually set up a transaction, but the latter has been the subject of what, in civil law terms, is called relative subjective simulation (which occurs when a factual agreement other than the one resulting *ex contractu* has taken place between the parties, so as to disguise the actual contracting party). Real interposition, on the other hand, occurs when the effects of the sale actually occur in the hands of the buyer and, therefore, a simulative agreement is lacking. Therefore, in order for there to be criminally relevant tax effects, it is necessary for a third person to put in place a subsequent transfer transaction in favor of another person. In real interposition, it is, therefore, the interposed person who is the taxable person of the tax obligation, which arises from the "fact-presumed" which in turn originated from the completion of the legal transaction with the third party; on the other hand, in fictitious interposition, it is the interponent who is the taxable person of the relevant tax obligation.

actually incurred or to deduct VAT on transactions that were never carried out and, nevertheless, undocumented or cannot be officially documented for various reasons.
This circumstance occurs most recurrently in the case of VAT fraud, in the context of which entities are included that operate only on a "cartular" level, having no economic function.[87]
The second paragraph of Article 2 also intervenes to delimit the contours of the incriminated conduct, with the obvious aim of avoiding interpretative doubts related mainly to the fact that there is no obligation to attach the supporting documentation for the fictitious elements to the declaration, specifying that the act is considered committed, using invoices or other documents for nonexistent transactions, when such invoices or documents are recorded in mandatory accounting records or held for evidence against the tax authorities.[88]
Finally, it is necessary to analyze a further distinguishing feature 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 whatever the amount of tax evaded.
The Constitutional Court recently ruled on the issue in question in Judgment No. 95 of 2019.
In particular, the judge *a quo* 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, and the other to the total amount of assets evaded from taxation, or fictitious credits and deductions from tax.
The Court declared the question of constitutional legitimacy unfounded on the basis of the following arguments: first, it premised that the configuration of criminal cases and the determination of punishment constitute matters entrusted to the discretion of the legislature, whose choices are censurable, in the review of constitutional legitimacy, only when they border 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 to the interests of the Treasury: this is precisely false invoicing intended to substantiate transactions that have not been carried out in whole or in part-absolutely, 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 intent to rigorously counter the phenomenon is manifested, in the Court's view, in the failure to provide punishment thresholds for the offence.
This also applies to direct taxes, moreover, since the invoice (or the equivalent document) fulfills an important role, constituting the typical instrument through which the taxpayer certifies his or her right to deduct expense items from his or her tax base or to make deductions from the tax, in accordance with the provisions of tax legislation or to take advantage of any tax credits.
The Constitutional Court therefore did not consider arbitrary the legislative choice of reserving to the case a distinct and stricter treatment than that foreshadowed in relation to the generality of the other artifices covered by Article 3 of Legislative Decree No. 74 of 2000.
Penalties applicable to the Entity

- Monetary penalty: up to 500 quotas for co. 1 and up to 400 quotas for co. 2-bis; however, if the Entity has made a significant profit, the monetary penalty is increased by one third;

[87] See to this effect the "*Operational Manual on Countering Tax Evasion and Fraud*" No. 1/2018, Volume I, p. 10, of the GdF.
[88] See to this effect the "*Operational Manual on Countering Tax Evasion and Fraud*" No. 1/2018, Volume I, p. 152, of the GdF.

- disqualifying sanctions: a ban on 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; and a ban on advertising goods or services.

Fraudulent declaration by other artifices

The offence in question is provided for and punished by Article 3, Legislative Decree No. 74/2000.[89] It is a residual offence compared to the offence under Article 2[90] , which the 2015 reform intended to expand by means of the elimination of the former requirement of "*false representation in* compulsory *accounting records*"[91] , with a now biphasic structure :[92]

- performance of "*objectively or* subjectively *simulated*" transactions[93] or use of false documents or other fraudulent means capable of hindering the assessment and misleading the tax authorities (requirements to be considered alternative, the occurrence of only one of them being sufficient for the purpose of configuring the offence);
- Submission of an untrue return for income tax or VAT purposes as vitiated by assets or liabilities not corresponding to reality or by fictitious credits and deductions.

Therefore, for the realization of the "fraudulent means" it is necessary the existence of a *quid pluris* that, flanking the false representation offered in the declaration, allows the objective element to be given a value of insidiousness, resulting from the use of artifices suitable to allow tax evasion by preventing its assessment (see in this sense Cass. pen., Sec. III, judgment of January 16, 2013 No. 2292). [94]

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[89] "*1. Outside the cases provided for in Article 2, a term of imprisonment of three to eight years shall be punished by imprisonment for anyone who, for the purpose of evading income tax or value-added tax, by carrying out objectively or subjectively simulated transactions or by making use of false documents or other fraudulent means capable of hindering the assessment and misleading the tax authorities, indicates in one of the returns relating to said taxes assets in an amount lower than the actual amount or fictitious liabilities or fictitious credits and deductions, when, jointly*
(a) the tax evaded exceeds, with reference to any of the individual taxes, thirty thousand euros;
(b) the total amount of the assets withheld from taxation, including through the indication of fictitious passive items, is more than five percent of the total amount of the assets indicated in the tax return, or in any case, is more than one million five hundred thousand euros, or if the total amount of fictitious credits and deductions from tax, is more than five percent of the amount of the tax, or in any case, is more than thirty thousand euros.
2. The act shall be deemed committed by using false documents when such documents are recorded in mandatory accounting records or are held for evidence against the tax authorities.
3. For the purpose of the application of the provision of paragraph 1, mere violation of the obligations to invoice and record assets in accounting records or mere indication in invoices or records of less than actual assets do not constitute fraudulent means."

[90] However, the concurrence between the provisions of Articles 2, 3 and 4 of Legislative Decree no. 74/2000 in the hypothesis in which distinct fraudulent conducts coexist that can be traced, at the same time, to one and the other normative provisions, converged in the presentation of the same declaration (for example, indication of fictitious passive elements documented by invoices for nonexistent transactions and further elements, assets or liabilities, with recourse to the use of other fraudulent means; use of false invoices and simultaneous under-invoicing of revenues, such as to integrate the thresholds of punishability set forth in Article 4, etc.). On the specific profile, the Supreme Court found that the conclusion of the trial judges regarding the existence of both Art. 2 and Art. 3, on the basis of the use in the tax returns of the company administered by the defendant of self or hetero-produced invoices, relating to partially nonexistent transactions, as well as of "*multiple and fraudulent behaviors of the defendant (consisting, as is evident 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 substitution of the sales documents originally issued, with others reporting lower amounts; in the indication in the ledger of fictitious costs in the unfaithful or omitted recording of multiple sales and purchase invoices, so as to reduce revenues and increase costs; in the imputation of depreciation not resulting from the accounting records), additional to the mere use of invoices for nonexistent 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, the fraudulent conduct additional to the use of invoices relating to totally or partially nonexistent transactions having been amply described*" (Cass. pen, Sec. III, ruling July 18, 2017, No. 35156).

[91] The offence was transformed from a offence proper (taxpayers required to keep accounting records) to a offence attributable to any person required to file income tax or VAT returns.

[92] In the former formulation, the offense was characterized by the following three-phase structure:

- Preparation of a false representation of compulsory accounting records;
- Use of fraudulent means suitable for hindering its detection;
- Disclosure of asset items in an amount less than actual or fictitious liability items.

[93] By "*objectively or subjectively simulated transactions*," the letter *g-bis* introduced by Legislative Decree No. 158/2015, clarifies that such should be understood as apparent transactions, other than those covered by the abuse of right regulations, put in place with the intention of not realizing them in whole or in part or those referring to fictitiously interposed parties.

[94] On the point at issue, moreover, it is worth recalling the principles developed by the jurisprudence of legitimacy, according to which the suitability of the conduct to hinder the assessment must be assessed *ex ante*, regardless of the contingent difficulties encountered by the verifiers in reconstructing the tax base (Criminal Cassation, Sec. III, Judgment April 18, 2002, No. 20785).

Regarding, on the other hand, the notion of fraudulent means, Article 1(*g-ter*) identifies them as "*active as well as omissive artificial conducts carried out in violation of a specific legal obligation, which result in a false representation of reality*."
Thus, a broad and general definition is provided to the interpreter, without typifying the concrete behaviors that may be relevant under Article 3, which does not make it easy to identify artificial omissive conduct carried out in violation 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"[95] , deemed to exist in the cases of:

- use of forged or altered documents, other than invoices or other documents for nonexistent transactions subject to both ideological and material falsity, for which the provision of Article 2 applies, such as, for example: the charging of expenses related to nonexistent investments supported by the preparation of ideologically false contracts (Criminal Cassation, Sec. III, April 18, 2002, No. 14616);
- simulated contracts (i.e., notarized deeds certifying real estate purchases and sales) showing a sales price much lower than the real one (Criminal Cassation, Sec. III, Nov. 5, 1996, No. 9414);
- maintenance of double accounting, in itself not sufficient to integrate the criminal hypothesis, which can be detected, 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 creation of specific codes and access procedures suitable for presenting fraudulently altered data to third parties during possible inspections (Criminal Cassation, Sec. III, April 10, 2002, no. 13641);
- discovery by the supervisory bodies of "black" accounts in a place other than the one indicated by the taxpayer for the custody of the records (Criminal Cassation, Sec. III, Oct. 12, 2005, No. 1402);
- fictitious heading of financial reports to which to credit assets intended to be unaccounted for (Cass. penale, Sec. VI, March 25, 2009, no. 13098);
- systematic issuance of credit instruments without indication of the beneficiary in order to conceal payments (Criminal Cassation, Sec. III, Oct. 12, 2005, No. 36977).

The third paragraph of Article 3 makes it clear that mere violations of the obligations to invoice and record receipts in accounting records or the mere indication in invoices or records of less than actual assets do not constitute fraudulent means.
In fact, the principle has been codified according to which conduct of a merely omissive nature does not assume criminal relevance, but conduct of a commissive nature whose fraudulence must materialize in manifestations objectively distinct from the less complex accounting infidelities (failure to certify consideration - under-invoicing) aimed at attributing credibility to the declaration and, therefore, characterized by its suitability to deceive the inspecting bodies. With regard to the concept of false documents, Paragraph 2 of the provision under review states that the act is considered committed by making use of such documents when they are recorded in compulsory accounting records or held for evidence against the tax authorities. [96]

[95] See to this effect the "*Operational Manual on Countering Tax Evasion and Fraud*" No. 1/2018, Volume I, p. 165, of the GdF.
[96] See to this effect the "*Operational Manual on Countering Tax Evasion and Fraud*" No. 1/2018, Volume I, p. 164, of the GdF.

Both ideological and material falsity is drawn into the orbit of application of Article 3 in the case of documents, other than those indicated in Article 2, of direct or indirect tax relevance, other than accounting records.

In addition, unlike the offence in Article 2, the offence under consideration can be committed if a double punishment threshold is jointly exceeded[97] :

- 30,000 euros of evaded tax, having regard to some of the individual taxes (income - VAT). For the purposes of the criminally relevant fact, it is sufficient that the amount is exceeded with reference to a single tax area;
- amount of assets subtracted from taxation (including through the indication of fictitious passive elements) exceeding five percent of the total assets declared or, in any case, 1,500,000 euros or amount of fictitious credits and deductions exceeding five percent of the tax (in reduction of which they affect) or, in any case, the amount of 30,000 euros.

Finally, by explicit exclusion made by Art. 6, para. 1, of Legislative Decree No. 74/2000, the offence is not punishable as an attempt[98] , except as provided in paragraph 1-bis.

In fact, with the introduction of the aforementioned paragraph, the tax offence referred to in Article 3 is punished, even as an attempt, if it is committed as part of cross-border fraudulent schemes, connected to the territory of at least one other member state of the European Union, for the purpose of evading value-added tax with a total value of ten million euros or more.[99]

Penalties applicable to the Entity

- Monetary penalty: up to 500 quotas; however, if the Entity has made a significant profit, the monetary penalty is increased by one third;
- disqualifying sanctions: a ban on 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; and a ban on advertising goods or services.

Unfaithful declaration

Article 4 of Legislative Decree No. 74/2000[100] punishes mere "false declaration" without the connotations of fraud. This is a criminal hypothesis conceived by the legislator as residual with

[97] More generally, the punishability thresholds provided 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. From this it follows that these thresholds must be "invested" with intent, so that if the defendant is not aware that he has exceeded them, he cannot be convicted. (See to this effect, Cass. pen. sec. III, Oct. 18, 2013, no. 42868)

[98] Law No. 157/2019 also amended Paragraph 2 of Article 13 of Legislative Decree No. 74/2000 under the heading "*Cause of non-punishability. Payment of the tax debt*," to add - among the offenses that are extinguished with the full payment of the tax debt, provided that the industrious repentance or the omitted submission by the deadline for the submission of the return for the next tax period, occurred before the offender had formal knowledge of accesses, inspections, audits or the start of any administrative assessment activity or criminal proceedings - the offenses provided for and punished by Articles 2 and 3 of the aforementioned decree. Lastly, Legislative Decree no. 87/2024 introduced the following paragraph 3-ter: "*For the purpose of non-punishability due to particular tenuousness of the act, referred to in Article 131-bis of the Criminal Code, the judge shall evaluate, in a prevailing manner, one or more of the following indices: (a) the magnitude of the deviation of the evaded tax from the threshold value established for the purposes of punishability; (b) except as provided in paragraph 1, the full fulfillment of the obligation to pay in accordance with the installment plan agreed with the tax authorities; (c) the extent of the remaining tax debt when it is being discharged by installment plan; (d) the crisis situation pursuant to Article 2(1)(a) of the Business Crisis and Insolvency Code, referred to in Legislative Decree No. 12 of January 12, 2019, no. 14*."

[99] Article 4 of Legislative Decree No. 156/2022 introduced a change to the rules of attempt. For a commentary on the aforementioned conditions, please refer to the section on the examination of the offence of misrepresentation.

[100] 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 from two years to four years and six months shall be imposed on anyone who, in order to evade income tax or value-added tax, indicates in one of the annual returns relating to said taxes assets in an amount less than the actual amount or non-existent passive elements, when, jointly:*

a) the tax evaded is more than, with reference to some of the individual taxes, one hundred thousand euros;

b) the total amount of assets withheld from taxation, including through the indication of non-existent passive elements, is more than ten percent of the total amount of assets indicated in the declaration, or, in any case, is more than two million euros.

1-bis. For the purpose of application of the provision of paragraph 1, account shall not be taken of incorrect classification, valuation of objectively existing assets or liabilities, with respect to which the criteria concretely applied were nevertheless indicated in the financial statements or other

respect to the case of fraudulent declaration, centered on the mere highlighting of untrue information (display of assets to an extent less than the actual or nonexistent passive elements).
More specifically, misrepresentation occurs when a taxpayer's conduct is found to have indicated revenues in an amount lower than the actual amount or nonexistent costs, without the taxpayer having made use of the artifices typified in Articles 2 and 3 of Legislative Decree No. 74/2000.
Due to the more restrained criminal disvalue, a less afflictive punishment and higher punishability thresholds are provided : the tax evaded must be higher, with reference to one of the taxes, than 100,000 euros; the total amount of the assets evaded from taxation, including through the indication of inexistent passive elements, must be higher than ten percent of the total assets indicated in the declaration or, in any case, 2,000,000 euros.
The material object of the offence is annual income or value-added tax returns. It is ultimately a commissive offense of ideological falsification of the declaration.
Article 4 of Legislative Decree No. 158/2015 also inserted two new paragraphs (1-bis and 1-ter) that amend the former criminal law regulation of misrepresentation.
Paragraph 1-bis stipulates that, for the sole purpose of the configurability of the offence under consideration, the incorrect classification, the valuation of objectively existing assets or liabilities, with respect to which the criteria concretely applied were in any case indicated in the financial statements or in other documentation relevant for tax purposes, the violation of the criteria for determining the accrual year, the non-inherence, and the non-deductibility of real passive elements should not be taken into account. Furthermore, it is no longer required, as was the case in the repealed Article 7, for the purpose of exemption from punishment, that the error be made on the basis of consistent 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, outside the cases referred to in the previous paragraph, assessments that, taken together, differ by less than ten percent from the correct assessments do not give rise to punishable acts.
In any case, there is an exclusion of punishability with respect to operations of an evaluative order carried out by adopting criteria made cognizable to the tax authorities, either through financial statements or through other documentation having value in the tax compartment.
Circumstances that may give rise to the indication of assets in an amount lower than the actual amount of interest for the purposes of the configurability of the case of false declaration are essentially to be traced back to the under-invoicing of revenue or remuneration, by express stipulation of Article 3, paragraph 3 of Legislative Decree No. 74/2000.
As anticipated earlier, the false disclosure can cover both "asset items," which are underreported, and "liability items," which must be nonexistent.
The criminal case under comment thus invokes a conception of passive elements geared toward an actual and naturalistic interpretation of them, following the replacement of the term "fictitious" with "nonexistent."
Therefore, for the purposes of the offence of misrepresentation, "nonexistent" corresponds to "not corresponding to reality" and no longer to "incorrectly determined" on the basis of tax rules.

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documentation relevant for tax purposes, violation of the criteria for determining the accrual year, non-inherence, non-deductibility of real passive elements.
1-ter. Outside the cases referred to in paragraph 1-bis, assessments that taken together, differ by less than 10 percent from the correct assessments do not give rise to punishable acts. The amounts included in this percentage shall not be taken into account in the verification of the exceeding of the punishability thresholds provided for in paragraph 1 (a) and (b)."

Thus, the criminal interest for this offense falls solely on cases of material nonexistence of negative components.
As a result of the foregoing, no cost actually incurred, even if nondeductible, can contribute to determining the evaded tax as declined by Legislative Decree No. 74/2000.
Classic examples can be found in entertainment expenses, advertising expenses, and the purchase of goods disputed as not inherent by the tax authorities.
Likewise, any question regarding purchase values assessed by the tax authorities to be higher than the normal value, as understood under Article 9, third paragraph, of Presidential Decree no. 917/1986 (e.g., in the case of disputes on the basis of the "uneconomicity" of the transactions), is irrelevant for the purposes of the configurability of the criminal-tax case of unfaithful declaration, since these are costs related to prices actually practiced and paid, even though they are non-deductible because they are not correctly estimated from a tax point of view.[101]
Therefore, residual hypotheses remain attractive to the criminal case in question, such as, for example, the indication in the declaration of completely nonexistent passive elements, in no way supported by passive invoices or other documents of similar probative value (or bearing, the latter, lower amounts of consideration than the values reported in the declaration).
The offence under consideration, like Articles 2 and 3, is not, as a rule, punishable as an attempt under Paragraph 1 of Article 6 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 as part of cross-border fraudulent schemes, connected to the territory of at least one other member state of the European Union, from which it results or may result in a total damage equal to or exceeding 10,000,000 euros, the offence provided for in Article 4 is punishable as an attempt. Outside the cases of complicity in the offence provided for in Article 8, the offences provided for in Articles 2 and 3 are punishable as attempts, when the same conditions as in the first sentence are met*[102]
The aforementioned new provision thus operates under four conditions:

a) the evasion must be for a qualified amount;
b) must be concerned with the evasion of value-added tax only;
c) must be transnational facts, involving more than one EU state;
d) the contested act should not constitute the offence stipulated in Article 8 of Legislative Decree No. 74/2000.

The condition in (d) allows us to consider that the legislator intended to exclude that the person who issues a false invoice, a offence precisely punished by Art. 8, can also be liable for attempting the offence of using the same invoice: therefore, the principle in Art. 9(a), right, whereby the issuer of invoices or other documents for non-existent transactions and those who concur with the same are not punishable as accessories to the offence of fraudulent misrepresentation through the use of such invoices. However, according to the jurisprudence of legitimacy, the discipline in derogation of the aiding and abetting of persons in the offence provided by the aforementioned Article 9 does not apply where the person issuing the invoices for non-existent transactions coincides with the user of the same (Cass. pen, sec. III, judgment no. 5434/2017: this principle was affirmed in the case in question in

[101] See to this effect the GdF's "*Operational Handbook on Countering Tax Evasion and Fraud*," No. 1/2018, Volume I, pp. 167-168.
[102] The regulatory amendment under consideration was necessary to ensure the correct identification of the EU transnationality profile for the purpose of integrating 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 to the financial interests of the member states concerned and to the Union, excluding interest and penalties.

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 be operative even when the offence referred to in Article 2 is not consummated but only attempted.
As for the circumstance that the acts must be committed within more than one EU member state, the legislature requires that the conduct must be materially carried out in more than one EU state, 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.
Finally, Art. 5 of Legislative Decree No. 75/2020 provided for the inclusion of the offence of misrepresentation, if committed "*as part of cross-border fraudulent schemes and for the purpose of evading value-added tax for a total amount of not less than ten million euros*," in Art. 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.
Most recently, Article 5 of Legislative Decree No. 156/2022 replaced the aforementioned condition with the following: "*when they are committed for the purpose of evading value-added tax within the framework of cross-border fraudulent schemes connected to the territory of at least one other member state of the European Union, from which a total damage of ten million euros or more results or may result*."[103]
Regarding the concept of "*cross-border fraudulent schemes*," the PIF Directive encompasses three types of unlawful conduct, referred to earlier in Paragraph 1, which are summarized here:

- use or submission of false, inaccurate or incomplete VAT declarations or documents, resulting in the decrease of resources of the Union budget;
- Failure to report a VAT-related information in violation of a specific obligation, to which the same effect follows;
- submission of accurate VAT returns to fraudulently conceal non-payment or illicit establishment of VAT refund claims.

Additional characteristics of the aforementioned conducts should be causing a total loss of at least 10 million euros in evaded VAT and committing the act at least in another EU member state.
Penalties applicable to the Entity

- Monetary penalty: up to 300 quotas; however, if the Entity has made a significant profit, the monetary penalty is increased by one-third;
- disqualifying sanctions: a ban on 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; and a ban on advertising 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 said taxes, when the evaded tax is higher, with reference to any of the individual taxes than fifty thousand euros*.[104]

[103] See previous note on the *rationale* for the regulatory change.
[104] Pursuant to para. 1-bis, the same punishment applies to anyone who fails to submit, being obligated to do so, the withholding tax return, when the amount of unpaid withholding taxes exceeds fifty thousand euros. For criminal purposes, as specified in para. 2, a declaration submitted within ninety days of the deadline or not signed or not made on a printout conforming to the prescribed model is not considered omitted.

The offence in question is an instantaneous offense, which is consummated 90 days after the deadline for submission of the declaration and relates to annual declarations concerning income taxes, VAT and withholding taxes made by withholding agents.
According to well-established jurisprudence, the ninety-day extension period granted to the taxpayer to submit the tax return after the expiration of the ordinary deadline does not qualify as a cause for non-punishment, but constitutes an additional time limit for fulfilling the declaratory obligation. (cf. Cass. pen, sec. III, judgment no. 8340 of March 2, 2020, which reiterated the following principles of law regarding the offence of omitted declaration: "*the dilatory term of ninety days, granted to the taxpayer - pursuant to art. 5, paragraph 2, Legislative Decree no. 74 of March 10, 2000 (and, previously, art. 7 Presidential Decree no. 322 of 1998) - to submit the income declaration after the expiration of the ordinary deadline is not configured as a cause of non-punishability, but constitutes an additional deadline for fulfilling the declarative obligation, and for identifying the consummative moment of the offence of omitted declaration provided for in the first paragraph of the aforementioned art. 5*"; "*since it is a proper omissive offence having an instantaneous character, the offence referred to in Article 5, paragraph 1 of Legislative Decree No. 74 of 2000 is consummated at the expiration of the ninety-day period starting from the final time established, for tax purposes, for the submission of the annual declaration; since the agent can fulfill after the expiration of the deadline established for tax purposes, but before the further period of ninety days, it is therefore necessary to provide evidence that, at the expiration of the latter deadline, the agent has failed to submit the declaration*").
In ruling No. 37532/2019, however, the Supreme Court ruled that the specific intent of evasion referred to in the offence of failure to declare cannot be inferred from the mere material fact of failure to fulfill the declarative obligation or from *culpa in vigilando* of the external professional appointed for the purpose.
Indeed, it is necessary to discern the objective profile from the subjective profile of the tort.
Otherwise, opining otherwise would end up transforming the reproach for the antidover attitude of willfulness of the offence under Article 5 of Legislative Decree No. 74/2000 from wilful to culpable.
Specifically, it is necessary to establish, on the basis of specific factual evidence, that the taxpayer has knowingly preordained the omitted declaration to evade tax in amounts exceeding the threshold of punishability of criminal relevance, outside of undue automatism.
Moreover, entrusting a professional with the task of preparing and filing 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 reporting obligations.
The following is a brief description of the more complex cases in which the criminal case under consideration may exist when the punishment threshold therein is exceeded :[105]

- hypotheses characterized 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, that is, the fictitious localization 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 favorable tax regime. Mirroring the case of esterovestizione is the configurability in the territory of the state of a concealed material or personal permanent establishment of a nonresident enterprise;

[105] See to this effect the "*Operational Manual on Countering Tax Evasion and Fraud*" No. 1/2018, Volume I, pp. 170-173, of the GdF .

- Failure to declare proceeds of unlawful source: this refers to proceeds derived from facts, acts 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 under Article 6 of the TUIR;
- "Total evaders" not falling into the above two categories: these are those who, for the purposes of direct taxes and VAT, outside 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, Art. 5 of Legislative Decree No. 75/2020 provided for the inclusion of the offence of omitted declaration, if committed "*as part of cross-border fraudulent schemes and for the purpose of evading value tax for a total amount of not less than ten million euros*," in Art. 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.

Most recently, Article 5 of Legislative Decree No. 156/2022 replaced the aforementioned condition with the following: "*when they are committed for the purpose of evading value-added tax within the framework of cross-border fraudulent schemes connected to the territory of at least one other member state of the European Union, from which a total damage of ten million euros or more results or may result*."

Please refer to the previous paragraph for an examination of the above conditions.

Penalties applicable to the Entity

- Monetary penalty: up to 400 quotas; however, if the Entity has made a significant profit, the monetary penalty is increased by one third;
- disqualifying sanctions: a ban on 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; and a ban on advertising goods or services.

Issuance of invoices or other documents for nonexistent transactions

The offense in question is provided for and punished by Article 8 of Legislative Decree No. 74/2000.[106]

The rule, in order for the offence to occur, requires the issuance or issuance of invoices or other documents for nonexistent transactions in order to enable third parties to evade income or value-added taxes, 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 for the purpose of integrating this offense, as there is no threshold of punishability.

The offence under Article 8 is a offence of abstract danger, which is consummated by the mere issuance or issuance of false invoices; this is regardless of whether the invoices were actually used

[106] *A term of imprisonment of 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 nonexistent transactions.*
2. For the purpose of applying the provision provided for in paragraph 1, the issuance or issuance of multiple invoices or documents for nonexistent transactions during the same tax period shall be considered as one offense.
2-bis. If the untrue amount stated in the invoices or documents, per tax period, is less than one hundred thousand euros, imprisonment from one year and six months to six years shall apply.
In order to avoid unequal treatment between the issuer and the user of invoices for nonexistent transactions--who, even if using multiple such documents, remains subject to a single penalty, as the submission of the declaration is still required--it is expressly stipulated in Paragraph 2 of the article under review that the issuance or issuance of multiple invoices or documents relating to nonexistent transactions during the same tax period constitutes a single offense.

by the beneficiary of the issuance and, therefore, regardless of whether actual tax evasion resulted from the issuance.[107]

In this regard, moreover, the Supreme Court has clarified that in the case of multiple issues during the same tax period, the time of consummation of the offense coincides with the issuance of the last invoice. [108]

Lastly, with regard to the psychological element, the specific intent to further the tax evasion of others is required[109] : the agent must therefore be aware of issuing false invoices aimed at the tax evasion of others, regardless of whether the fale invoices issued are then actually used.

In this regard, the Supreme Court has repeatedly affirmed that tax evasion is not a constitutive element of the incriminating case, but an element of the specific intent normatively required for the agent's punishability.[110]

The art. 8 in question is also not included among those for which art. 6 of Legislative Decree No. 74/2000 excludes the configurability of attempt: consequently, if the person responsible carries out suitable acts directed unambiguously to the issuance of invoices or other documents for non-existent transactions, the same may be punishable under art. 56 of the Criminal Code.[111]

Finally, it seems opportune to outline a summary of the most insidious fraudulent contexts where the conducts referred to in Articles 2 and 8 of Legislative Decree No. 74/2000 find their place, often also integrating the cases referred to in Articles 5 and 10 of the aforementioned decree: we are referring to frauds, of which the so-called "carousel" frauds are a particularly insidious type.

In a type of fraud system, based on the issuance and use of invoices for subjectively nonexistent transactions, confined to the national territory, tax documents are issued by fictitious enterprises (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 made by additional, truly operating enterprises, which are concealed from the IRS.

Recurring characteristics of "paper mills" are:

- formal representation attributed to "front men" or "blockheads," individuals generally lacking managerial experience and, in most cases, with no criminal or police record;
- A time-limited operation;
- exponential growth in business volume;
- 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 organizational structures and business means;
- Failure to fulfill accounting, reporting and payment obligations.

In the mechanism described above, the tax liability remains with the "paper mill," which does not file a tax return and does not fulfill its payment obligations, while the real supplier operates "in the black," not issuing any tax documents, and the transferee of the good 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 significant advantages both from a fiscal point of view - being able to deduct

[107] See Cass. pen. judgment no. 6842, Dec. 19, 2014, and Cass. pen. judgment no. 3918, Jan. 28, 2015.
[108] See Cass. pen. judgment no. 37074, Sept. 26, 2012; Cass. pen. judgment no. 37930, July 19, 2012; Cass. pen. judgment no. 3918, Jan. 28, 2015.
[109] See Cass. pen. judgment No. 19116, May 9, 2014; Cass. pen. judgment No. 50847, Dec. 3, 2014.
[110] *See, ex multis*, Cass. Pen. decision No. 44665, Oct. 15, 2013.
[111] Moreover, there are no particular doubts as to the possibility of configuring the concurrence between the offence in question and the offence of failure to submit the declaration, in the mind of Article 5 of Legislative Decree No. 74/2000 (see Criminal Cassation, Sec. III, Judgment No. 35858 of October 4, 2011). This is in relation to the fact that, based on tax regulations, the VAT shown on issued invoices, even if fictitious, is always due and, as such, must be declared.

the cost and deduct the VAT indicated on the invoice - and from a commercial point of view, being able to buy (from the real supplier) and resell (often to parties unrelated to the fraud) at prices lower than market prices, with distorting effects on competition.
Additional economic entities (so-called "filter" or "buffer" companies) are, oftentimes, included in the mechanism with the function of hindering possible investigations and the identification of those responsible.
As for, on the other hand, tax fraud carried out within the European Union, which illicitly exploits the intra-EU VAT discipline of nontaxability 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 outlined below:

- a domestic person makes non-taxable supplies of goods to a "paper mill" based 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 to another member state), because they are actually destined for other domestic persons, who purchase them at competitive prices;
- the foreign "paper mill" securitizes the same goods to an additional Italian "shell company," which resells the goods to the real domestic buyers without fulfilling tax obligations.

The domestic "paper mill" takes upon itself the tax liability that arises at the time of the domestic supply, but fails to pay the VAT to the Treasury and in a short time ceases operations, while the transferee has the advantage of deducting the tax on the purchase and at the same time having the "paper mill" retrocede the VAT paid on the invoice.
Therefore, it is believed that Article 8 may be configurable against the first domestic supplier, who makes a non-taxable VAT supply, as the third party to whom he allows evasion can be identified as the ultimate (domestic) beneficiary of the carousel fraud.
According to the same interpretative criterion, the additional interposed parties (missing traders and domestic buffers) are also liable, in turn, under Art. 2 and 8 of Legislative Decree No. 74/2000 and, if the elements are met, the associative offence under Art. 416 of the Criminal Code, aggravated by the transnationality referred to in Law No. 146 of March 16, 2006, may also be conceivable[112]
Penalties applicable to the Entity

- Monetary penalty: up to 500 quotas for co. 1 and up to 400 quotas for co. 2-bis; however, if the Entity has made a significant profit, the monetary penalty is increased by one third;
- disqualifying sanctions: a ban on 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; and a ban on advertising goods or services.

Concealment or destruction of accounting documents
The offence in question is provided for and punished by Article 10 of Legislative Decree No. 74/2000[113] and punishes the conduct consisting of the concealment or destruction of accounting

[112] See to this effect the "*Operational Manual on Countering Tax Evasion and Fraud*" No. 1/2018, Volume I, pp. 156-157, of the GdF.
[113] "*Unless the act constitutes a more serious offence, it shall be punishable by imprisonment for a term of three to seven years. anyone who, in order to evade income or value-added taxes, or to enable third parties to evade them, conceals or destroys all or part of the accounting records or documents required to be kept, so that income or turnover cannot be reconstructed*."

records or documents whose preservation is mandatory, when it results in the impossibility of reconstruction of income and business volume. [114]

In fact, an orderly accounting system (in compliance with the provisions of Article 2214 of the Civil Code) makes it possible to first and foremost understand the performance of the business activity and also has the instrumental function of protecting creditors, including the Treasury.

This offense aims, therefore, to safeguard the tax administration's own assessment function by bringing forward the threshold of criminal relevance to conduct prodromal to tax evasion that constitutes potential damage to the state's tax claim.

This is a common offence in that, from the literal datum of the rule, we can see the legislator's intention to highlight how the same cannot be referred only to the person obligated to conservation, as it can also be configured to allow evasion to third parties.

More specifically, concealment consists of materially hiding the records; refusal to hand over the records, where it does not result, however, as is often the case, in their failure to be found, remains punishable only administratively.

Nor, by the same token, is the storage of records in a place other than the one indicated to the Administration (Art. 35 of Presidential Decree No. 633/72), unless the records are taken to places that preclude their discovery, essentially resulting in their concealment.

Destruction, on the other hand, is the physical elimination of all or part of the writing, or making it illegible and therefore unfit for use by abrasion, erasure or otherwise.

The material object of the offense conduct is the accounting records and documents whose preservation is mandatory according to tax or civil law (Art. 2214 Civil Code), which distinguishes between absolutely mandatory books (journal book, inventory book, originals of telegram letters and invoices received as well as copies of telegram letters of invoices sent) and relatively mandatory records, such as those that are required by the size of the enterprise.[115]

The offence is completed when as a result of destruction or concealment it becomes impossible to reconstruct income or business volume.

It is therefore necessary that the conduct described, is followed by the impossibility of reconstruction of income or business volume. Such consequences are considered an event of the offence.

Destruction gives rise to an instant offense while concealment gives rise to a permanent offense, and thus the statute of limitations, in the latter case, will begin to run from the time of the cessation of permanence, which is deemed consequent to the tax assessment. [116]

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[114] Mere failure to keep accounting records does not constitute a criminal tax offense; rather, it only integrates the administrative offense under Article 9 of Legislative Decree No. 471/1997. Unlike the omission, pre-existing bookkeeping records are required in order for the offence under Article 10 of Legislative Decree No. 74/2000 to occur. In this case, in fact, the concealment or destruction of pre-existing accounting records, or of the documents whose preservation is mandatory, are punishable conducts when the same results in the impossibility of reconstructing income and turnover. On the point at issue, according to the Supreme Court's guidance, mere omissive behavior, i.e. the omission of accounting records, which objectively makes the reconstruction of the accounting situation more difficult, but not impossible, is not sufficient, but a "*quid pluris*" with commissive content consisting in the concealment or destruction of accounting documents whose establishment and maintenance is mandatory by law is required (Cass. pen., Sec. III, ruling no. 19106 of 02/03/2016).

[115] 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 offense can also be charged in relation to accounting records kept by digital means.

[116] The Supreme Court has made it clear that, unlike destruction, which realizes an instantaneous offence, the consummative moment of which coincides with the suppression of the documentation, concealment-which consists of the temporary or permanent unavailability of the documentation by the verifying bodies-constitutes a permanent offence that is consummated at the time when the assessment is carried out, that is, until the moment when the agents have an interest in examining said documentation. (See in this sense, Cass. pen., Sec. III, judgments No. 14461/2017 and No. 13716/2006). Thus, in order for the offence in question to be said to have been committed, no relevance should be attributed to the time when the tax return was filed for the tax year to which the documentation not found during the tax audit was relevant. The fact that the destroyed or concealed documentation relates to only one 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 only one or to several tax years, since the completion of the offence occurs with the performance of the conduct described by the legislature as prohibited.

The impossibility of reconstructing income, precisely because it is provided for "*in whole or in part*," is to be understood in terms of even relative impossibility, that is, when the reconstruction of income or business volume is considerably difficult or otherwise requires special diligence, e.g. make cross-checks necessary. [117]

If, on the other hand, subsequent to the commission of acts of destruction or concealment, it was the taxpayer himself who made the documentation available in the course of the assessment, so that in substance it would still be possible to arrive at the reconstruction of income or business movement, this would result in the harmlessness of the act and in any case the lack of a constitutive element of the offence, and in any case the subjective element.

On the last point at issue, this is a specific intent offence, because it is characterized by the purpose to which the agent's will must tend, the purpose of evading or enabling evasion by a third party.

Since this is an event offence and the exclusion in Article 6 of Legislative Decree No. 74/2000 does not operate, attempt is abstractly punishable, for example, in the event that 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, which are necessary for the reconstruction of income or turnover.

Penalties applicable to the Entity

- Monetary penalty: up to 400 shares; however, if the Entity has made a significant profit, the monetary penalty is increased by one third;
- disqualifying sanctions: a ban on 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; and a ban on advertising goods or services.

Undue compensation (Article 10-quater of Legislative Decree No. 74/2000)

The offence under consideration punishes in the first paragraph "*with imprisonment from six months to two years anyone who fails to pay the sums due, using in compensation, pursuant to Article 17 of Legislative Decree No. 241 of July 9, 1997, credits not due, for an annual amount exceeding fifty thousand euros.*" and in the second paragraph, "*with imprisonment from one year and six months to six years anyone who fails to pay the amounts due, using in compensation, pursuant to Article 17 of Legislative Decree No. 241 of July 9, 1997, nonexistent credits for an annual amount exceeding fifty thousand euros*."

In order to delineate the credits on which undue compensation can be exercised, Legislative Decree No. 87/2024 has most recently introduced *ex novo* a definition of nonexistent credits and credits that are not due in the criminal context.

More specifically, the amended Article 1, paragraph 1, letters *g-quater* and *g-quinquies* of Legislative Decree No. 74/2000 ("*Definitions"*) provides as follows

"non-existent credits" means: 1) credits for which the objective or subjective requirements specifically set forth in the relevant regulatory framework are missing in whole or in part; 2) credits

[117] In this regard, the jurisprudence of legitimacy (see, *ex multis*, Cass. pen. sec. III, judgment no. 39711 of Oct. 12, 2009 and Cass. pen, Sec. III, judgment no. 5791 of Feb. 6, 2008) clarified that the impossibility of such reconstruction should be understood in terms not absolute but "relative" - having to be read, therefore, more properly, as "reconstructive difficulty" - well being able to subsist the offence in question where the Tax Administration succeeds in redetermining the tax obligation through the use of its investigative powers (e.g., financial investigations, sending questionnaires, etc.). The offence in question also concurs with the declaration offences 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, as there is no relationship of specialty, because the destruction of accounts or invoices, for example, may well be linked to the purpose of tax evasion pursued by issuing false invoices, and even in the case of issuing false invoices, it does not negate the obligation to keep them or to make VAT payments.

for which the objective and subjective requirements referred to in number 1) are the subject of fraudulent representations, implemented by materially or ideologically false documents, simulations or artifices;
"Undue credits" means: 1) credits utilized in violation of the procedures for utilization provided for by the laws in force or, for the relative excess, those utilized in excess of the amount established by the reference norms; 2) credits that, although in the presence of the subjective and objective requirements specifically indicated in the reference regulatory framework, are based on facts not covered by the credit attributing discipline due to the lack of additional elements or particular qualities required for the recognition of the credit; 3) credits utilized in defect of the prescribed administrative fulfillments expressly provided for under penalty of forfeiture.".
In addition, the legislature with Article 1, co. 1 letter d) of Legislative Decree No. 87/2024, without affecting the criminally relevant conduct, introduced a new cause of non-punishability, inserting paragraph 2-bis, pursuant to which: "*The punishability of the agent for the offence referred to in paragraph 1 is excluded when, also due to the technical nature of the evaluations, there are conditions of objective uncertainty regarding the specific elements or particular qualities that ground the entitlement of the credit*."[118]
As is well known, the institution of offsetting represents a way of extinguishing the tax obligation, consisting of the use of credits owed to the Treasury.
Two types of compensation are distinguished: "vertical" and "horizontal."
Vertical offsetting, provided for in individual tax laws, consists of the carryover of a credit to a later period in order to reduce, by deduction, a debt that has arisen or will arise in the same period. Such offsetting concerns credits and debits relating to the same type of tax and can be carried out without limit.
Horizontal offsetting, governed by Art. 17 of Legislative Decree No. 241/97, operates in relation to credits and debts relating to various taxes, contributions, penalties and all other payments executable by F24 form. Under the Decree of the Minister of Finance of March 31, 2000, it was also extended to amounts, including penalties, due under Legislative Decree No. 218/97.[119]
The offence under Article 10-quater of Legislative Decree No. 74/2000 is consummated at the time of submission of the F24 form for the year concerned and not at the time of the subsequent tax return.

[118] The cause of non-punishability in question operates with exclusive reference to the criminal hypothesis of undue compensation by means of undue credits, excluding from the benefit the "more serious" conduct of undue compensation by means of non-existent credits. Moreover, it exists only where it is possible to recognize conditions of objective uncertainty about the specific elements or to the particular qualities that ground the entitlement of the credit, including due to the technical nature of the assessments. It is clear that the reference to "conditions of objective uncertainty" is a reference to the cause of non-punishability under Article 15 of Legislative Decree No. 74/2000. However, the two exemptions do not coincide since the revised cause of non-punishability seems to have a broader scope than the previous Art. 15, being able to embrace also hypotheses of error on the fact (thus rather referable to the exemption in Art. 47 of the Criminal Code) and not only regarding regulatory uncertainties.
[119] Regarding the distinction in question, the Supreme Court in its ruling No. 8705 of February 28, 2019 ruled that: "*The offence of undue offsetting of undue or nonexistent credits referred to in Legislative Decree No. 74 of 2000, Art. 10-quater is configurable 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 D.Legislative Decree No. 241, Art. 17, July 9, 1997, referred to by the criminal case, has expanded the cases of offsetting already provided for by tax regulations, extending the right of offsetting also to credits and debts of a different nature as well as to amounts due to social security institutions*." In this sense, the Supreme Court of Cassation intended to provide a further specification: "*As clarified by doctrine, the applicability of the criminal sanction provided by the provision under consideration is not conditioned by the vertical or horizontal nature of the offsetting, but rather by the circumstance, considered decisive, that it is opposed in the single form, i.e. in the so-called F24 form, which is submitted on the occasion of the single declaration for the purposes of income tax, VAT and IRAP, and this is because it is with this form that the "sums due" are paid pursuant to the aforementioned Legislative Decree.Decree No. 241 of 1997, Art. 17, referred to in Art. 10-quater, with the consequence that the nature of non-existent or non-deserving credit makes the imputation made by the taxpayer in the declaration to operate the undue compensation irrelevant, since the rule generically refers to the use in compensation of "non-due or non-existent credits," without any specification as to the homogeneity or non-homogeneity of the compensation. The disvalue of the act, the cited doctrine always observes, is given by the omission of the payment of the amounts due, committed by means of false compensation, and not by the nature of the compensation used to evade the payment of what is due*."

It is not sufficient in itself, therefore, for the offence to be said to be integrated, that there has been a failure to make a payment, requiring that the same be formally justified by a set-off between sums owed 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 this offense and a case of simple failure to pay.
On the basis of this assumption, the Supreme Court, in ruling No. 44737 of Nov. 5, 2019, stressed that the undue compensation must be evidenced by the F24 form through which it was made.
In the case examined, the integration of the charged offense was inferred from the journal entries, VAT returns and tax payments made, but there was no acknowledgement of the necessary realization of the offsets deemed undue in the F24 forms, forms which, in the present case, were not even acquired.
In the absence of this finding, it must be concluded that there is a lack of evidence as to whether the offsetting was carried out as a necessary prerequisite for the failure to pay.
Ultimately, the offense in question is consummated when an additional amount of undue or nonexistent credits is offset in the same tax period that, when added to the amounts being offset, exceeds 50,000 euros, and is perfected when the F24 form is sent or submitted to the contracted credit institution to which the irrevocable proxy has been given.
Finally, Art. 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 euros*," in Art. 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.
Most recently, Article 5 of Legislative Decree No. 156/2022 replaced the aforementioned condition with the following: "*when they are committed for the purpose of evading value-added tax within the framework of cross-border fraudulent schemes connected to the territory of at least one other member state of the European Union, from which a total damage of ten million euros or more results or may result*."
Please refer to the previous paragraph for an examination of the above conditions.
Penalties applicable to the Entity

- Monetary penalty: up to 400 shares; however, if the Entity has made a significant profit, the monetary penalty is increased by one third;
- disqualifying sanctions: a ban on 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; and a ban on advertising goods or services.

Fraudulent evasion of tax payment
The offence in question is provided for and punished by Article 11 of Legislative Decree No. 74/2000[120] and falls within the range of instruments aimed at combating delinquency in the payment

[120] "*1. 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 interest or administrative penalties relating to said taxes in a total amount exceeding fifty thousand euros, simulously alienates or performs other fraudulent acts on his own or others' property suitable for rendering the compulsory collection procedure ineffective in whole or in part. If the amount of taxes, penalties and interest exceeds two hundred thousand euros, imprisonment from one year to six years shall apply.*
2. A punishment of imprisonment from six months to four years shall be imposed on anyone who, in order to obtain for himself or others a partial payment of taxes and related accessories, indicates in the documentation submitted for the purposes of the tax settlement procedure assets in an amount

of taxes levied by registration, sanctioning, in Paragraph 1, the material conduct of the taxpayer who simulously alienates or performs fraudulent acts on his own property and the property of others, in order to render all or part of the relevant tax collection enforcement ineffective to protect the tax claim.

Two preconditions are fulfilled in this offence:

- The performance of acts with the purpose of evading the payment of income tax or VAT, related interest and administrative penalties;
- exceeding the punishment threshold of 50,000 euros, calculated on the amount of taxes due, plus interest and administrative penalties imposed.

In spite of the expression "*anyone*" by which the rule indicates the person who can be liable for the offense, the offence in question can be committed only by the taxpayer (active subject) already qualified as a tax debtor for income or value-added tax purposes, against whom a tax claim of more than 50,000 euros can be made by the Treasury.

The offence is consummated when the taxpayer, aware that he or she has not paid the taxes due, engages in conduct aimed at diverting his or her own or others' property subject to subsequent coercive collection action.

Compared with its legislative antecedent[121] , in view of the identity of both the subjective element, constituted by the purpose of evasion and integrating the specific intent, and the material conduct, represented by the fraudulent activity, the case under Art. 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 assessment or entries on the docket 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 an event. (Cass. pen., Sec. III, Judgment No. 13233, April 1, 2016).

In fact, the legal object of the offence does not relate to the right of credit claimed by the IRS but rather to the generic guarantee given by the obligor's assets, as a result of which the configurability of the same subsists even when, after the fraudulent acts are carried out, the payment of the tax and its accessories is initiated (Criminal Cassation, Sec. III, Judgment No. 36290 of May 18, 2011).

Unlike the previous rule, therefore, on the one hand the presupposition of conduct is lacking, on the other hand the material event envisaged is transformed from "damage" to "danger," manifesting the clear interest of the state not only in the effective collection of taxes, but also in the preservation of the patrimonial guarantees that guard the tax credit (Criminal Cassation, Sec. III, Judgment No. 14720 of April 9, 2008).

It is, therefore, a offence of (concrete) danger, with respect to which the criminally relevant conduct may consist of any act abstractly capable of prejudicing the executive procedure, and whose aptitude must be verified on a case-by-case basis, based on a judgment of injurious potential to be made *ex ante*.

Consequently, the legal asset protected by the rule should be identified in the generic patrimonial guarantee offered to the IRS by the obligor's assets, taking into account that the debtor, pursuant to

lower than the actual amount or fictitious liabilities in a total amount exceeding fifty thousand euros. If the amount referred to in the previous period exceeds two hundred thousand euros, imprisonment from one year to six years shall be applied."

[121] The rule in question replaces the provision of Art. 97, sixth paragraph, of Presidential Decree No. 602/73 (so-called tax fraud), as amended by Art. 15 of Law 413/91, with appreciable elements of discontinuity.

Article 2740 of the Civil Code, is liable for the performance of his obligations with all his present and future assets.

The "tightness" also constitutional (in particular, from the standpoint of the principle of offensiveness) of the configurability in terms of danger of the offense is guaranteed by the need for the conduct aimed at the misappropriation of the property to be characterized by the simulated nature of the alienation of the property or by the fraudulent nature of the acts performed on one's own or others' property.

In other words, only an act of disposition of assets that is characterized by such modalities, which are strictly typified by the rule, can be capable of vulnerability to the legitimate expectations of the Treasury given that, otherwise, any possible conduct of disposition of assets, contrary to the constitutionally guaranteed right to property, would be sanctioned.

It is abundantly clear that conduct characterized by the simulative[122] or fraudulent modalities is not necessarily, *ipso iure*, apt to "*render ineffective in whole or in part the procedure of compulsory collection*." the fact that the legislature expressly added this requirement as a constitutive element of the offence, even in the presence of deceptive conduct of the type recalled, makes it clear that suitability is not an equivalent concept to the realization 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 Treasury, which are well likely to be equally secured even in the presence of the realization of similar acts.

This consideration takes on even greater relevance where one considers the following number of case law cases, given as examples only, in which fraudulent evasion of tax payments has been assumed:

- establishment of a *trust*, whereby the defendant had transferred to himself, as *trustee*, the entire assets of the company of which he was liquidator (Cass. pen., sec. III, ruling no. 15449/2015);
- plurality of transfers of real estate in rapid succession (Criminal Cass., sec. III, Judgment No. 19524/2013);
- Establishment of an estate fund (Criminal Cass., sec. III, Judgment No. 23986/2011);
- transactions involving the sale of companies and corporate demergers, aimed at conferring real estate to the new legal entities (Criminal Cass., sec. III, ruling 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 the relationship limited to the debtor member occurs (Criminal Cass., sec. III, Judgment No. 20678/2012);
- simulated transfer of commercial goodwill (Criminal Cass., Sec. III, Judgment No. 37389, Sept. 12, 2013);
- corporate reorganization operations (Criminal Cass., Sec. III, Ruling No. 45730, Nov. 22, 2012);
- alienation of assets by entering into an apparent "*sale and lease back*" contract (Supreme Criminal Cassation, Sec. III, Judgment No. 14720, April 9, 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.

[122] This is the first conduct expressly provided for in the rule and can 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 tend toward 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 involves only one or more contractual elements; and total simulation, when it involves all the contractual elements.

A simulated alienation must, therefore, be understood to mean any legal transaction of fictitious transfer of ownership, whether for consideration or free of charge, that is, any alienation characterized by a preordained divergence between the stated intention and the actual intention.
The offence under consideration is also characterized by the specific intent, which occurs when the simulated alienation or the performance of other fraudulent acts, suitable for rendering the procedure of compulsory collection ineffective, are aimed at evading "*the payment of income or value-added taxes or of interest or administrative penalties related to said taxes*."
On the point at issue, the Supreme Court ruled out that the psychological element was configurable with reference to the simulated sale of an asset whose consideration was used to settle a tax debt, subject to the eventuality, the assessment of which was referred to the referring court, that the consideration paid was lower than the actual value of the asset bought and sold (see Criminal Cassation, sec. III, ruling no. 27143 of 04/22/2015).
In contrast, the formula used by the legislature for the definition of the second conduct envisaged by the rule ("*performs other fraudulent acts*") includes any act, legal or material, which, although formally lawful, is characterized by a component of artifice or deception, aimed at rendering ineffective the compulsory collection.
Regarding the concept of fraudulent act, jurisprudence circumscribes its meaning to the realization of any act of asset disposition, not simulated, in which the taxpayer's artificial stratagem is identifiable (Criminal Cassation, Sec. III, Judgment No. 40561 of Oct. 16, 2012).
It is abundantly clear that all those behaviors, formally lawful, that present profiles of artificiality and deception will be incorporated into the regulatory provision.
Precisely for this reason, for the purposes of integrating the case under consideration, the majority jurisprudential orientation requires a careful review of the evidence collected, with a view to assessing the suitability of the same to prejudice the tax collection.[123]
Indeed, the vagueness and breadth of this normative formulation often pose the issue of assessing, in concrete terms, whether or not the transactions entered into by the taxpayer, even in their concatenation, can be inscribed within the conduct outlined by the legislature.
Criminally relevant conduct, in fact, can be constituted, according to case law, by "*any*" fraudulent act or deed, intentionally aimed at reducing the patrimonial capacity of the taxpayer himself. Such asset *deminutio* must be such, both quantitatively and qualitatively, as to frustrate in whole or in part, or in any case make more difficult, any enforcement procedure (see Cass. pen., sec. III, judgment no. 39079/2013; Cass. pen., sec. III, judgment no. 29243/2017).
In this regard, a number of criteria symptomatic of the transaction's suitability to jeopardize the procedure for the compulsory collection of tax debt have been identified, which are given here for illustrative purposes only:

[123] Precisely with reference to the proof of the fraudulent nature of the transactions, it should be noted how the claim to recognize this characteristic in the mere suitability of the acts to jeopardize the recovery of the debt by the Treasury would in fact determine the impossibility for the taxpayer to freely dispose of his or her 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 or her assets, a faculty 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 Supreme Court in its ruling No. 273 of July 2, 2018, appears timely. In fact, the Supreme Court recognizes that "*the logical sequence of the dispositive acts performed by the defendant depon[e] for a destination of the bargaining behaviors to the progressive emptying of his assets, in the perspective of the now imminent enforcement actions of the Treasury*." Nonetheless, it is recognized that the mere suitability of the acts cannot alone be sufficient to recognize the deceptive or artificial nature of the acts, as instead sustained by a legitimacy orientation formed mostly in the precautionary phase (Cass. pen., judgment no. 40561/2012; Cass. pen., judgment no. 23986/2011; Cass. pen., 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 dutiful scrutiny of all the elements of typicality of the case, correctly the rule of judgment of beyond a reasonable doubt could only impose the annulment of the judgment, on pain of the loss of certainty about the boundaries of lawfulness of one's conduct and, given the "*sedes materiae*," an impairment of the relations between taxpayer and financial administration.

- The lack of economic justification underlying the transaction entered into;
- the failure to collect the sale consideration, such as, for example, in the case of "spoliation" of the assets of companies with tax debts, implemented through company sales and transfer of the real estate, for no consideration or increase in assets (Criminal Cassation, sec. III, ruling no. 19595 of May 18, 2011);
- the time of realization of the fraudulent dispositive act 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 purpose of the tax settlement procedure, i.e., when therein are stated assets in an amount lower than the actual amount or fictitious liability items.
Even with reference to this case, the classification of the offense 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 be jeopardized. This is always a offence of its own, which can be committed only by the taxpayer (active party) already qualified as a tax debtor for income or value-added tax purposes, who submits the proposed tax settlement by indicating false information.
A prerequisite of the offense is in fact the successful establishment of a tax settlement procedure, which provides that the taxpayer in a state of financial difficulty may, as part of a debt restructuring plan, propose the partial or even deferred payment of taxes and related accessories, as well as contributions administered by the mandatory social security and welfare institutions and related accessories, limited to the portion of debt having an unsecured nature even if not registered on the tax rolls.
The offense in question provides for a punishability threshold of 50,000 euros, qualifying as a constituent element of the offence, which must be met both with reference to the active elements and with regard to the mendaciously indicated passive elements.
The offense is instantaneous in nature, taking place with the submission of the false documentation.
Penalties applicable to the Entity

- Monetary penalty: up to 400 shares; however, if the Entity has made a significant profit, the monetary penalty is increased by one third;
- disqualifying sanctions: a ban on 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; and a ban on advertising goods or services.

SMUGGLING (ART. 25-SEXIESDECIES)

Legislative Decree No. 141 of Sept. 26, 2024, was published in the Official Gazette No. 232 of Oct. 3, 2024, which, in implementation of the Proxy Law for Tax Reform (Law No. 111/2023), introduces the "*Revision of the Customs Regulations and the Penalty System on Excise and Other Indirect Taxes on Production and Consumption*."
The objectives of the Legislative Decree are:

- The reordering of domestic customs regulations in accordance with the provisions of the European Union;
- The updating of the discipline governing the profession of customs agents;

- The revision of the penalty system in customs, excise and tobacco;
- The extension of the liability of entities for administrative offenses dependent on offence under Legislative Decree No. 231/2001 to include offenses under the Consolidated Law on Excise Taxes;
- interventions on the VAT regulations on import transactions (the express qualification of VAT and any other consumption tax payable in favor of the state upon importation as a border duty).

With regard to the customs sector (Art. 11), the government, in exercising the enabling act, intended to move along 5 key directives:

- "*(a) to carry out the reorganization of the customs regulatory framework by updating or repealing the provisions currently in force, in accordance with European Union customs law;*
- *(b) to complete the telematization of customs procedures and institutions in order to increase and improve the provision of services for users;*
- *(c) to increase the quality of customs controls by improving coordination among the customs authorities referred to in number 1) of Article 5 of Regulation (EU) No. 952/ 2013 of the European Parliament and of the Council of October 9, 2013, establishing the Union Customs Code, and to simplify the verifications inherent in customs procedures, including through increased coordination among the administrations involved, by strengthening the Single Customs and Control Window;*
- *(d) reorganize the procedures for settlement, assessment, review of assessment and collection under Legislative Decree No. 374 of November 8, 1990;*
- *(e) revise the institution of the customs dispute provided for in Title II, Chapter IV, of the Consolidated Text of the Legislative Provisions on Customs Matters, referred to in Presidential Decree No. 43 of January 23, 1973*."

More specifically, Article 1 of Legislative Decree No. 141/2024 stipulates that "*the provisions contained in Annex 1, which forms an integral part of this decree, are approved*," so "*as of the effective date of this decree*," i.e., the day after its publication in the Official Gazette (Art. 10), Annex 1 replaces the Consolidated Text of Customs Laws (hereinafter "TULD"), which is repealed (Art. 8, paragraph 1, letter f).

The TULD, which consisted of 352 articles, is amended and reduced to 122 articles, containing national provisions supplementary to the Union Customs Code.

Thus, the rules in Annex 1 are applied "*to the extent not expressly provided for*" by the regulations of the Union Customs Code (Instituting Regulation No. 952/2013 and Implementing and Executive Regulations No. 2015/2446 and No. 2015/2447), which are directly applicable, including by way of derogation from national legislation.

The reform also modifies the customs penalty apparatus, providing for both criminal penalties (Art. 78-95), including smuggling offenses for failure to declare or for false declaration, and administrative penalties (Art. 96-103).

On the other hand, with regard to the reorganization of the system of sanctions in the field of excise duties and other indirect taxes on production and consumption provided for in the Consolidated Act referred to in Legislative Decree No. 504/1995, the Government, in the exercise of the Delegated Law (Art. 20, para. 2), has declined, among others, the following specific principles and guiding criteria:

- *"(a) rationalization of the administrative and criminal penalty systems to simplify them and make them more consistent with the principles expressed in the case law of the Court of Justice of the European Union, including, in particular, those of predetermination and proportionality to the seriousness of conduct; ...*
- *(e) the integration of Legislative Decree No. 231 of June 8, 2001, with the offences provided for in the aforementioned Consolidated Text, providing for the application of effective, proportionate and dissuasive administrative sanctions." (Articles 40 et seq. of Legislative Decree No. 504/1995)*

Having specific regard then to the impacts on Legislative Decree No. 231/2001, Article 4 of the Decree under review amends Article *25-sexiesdecies* ("Contraband"), which now reads:

"*1. In connection with the commission of the offenses provided for in the national provisions supplementary to the Union Customs Code, referred to in the legislative decree issued pursuant to Articles 11 and 20, paragraphs 2 and 3, of Law No. 111 of August 9, 2023, and in the Consolidated Text of Legislative Provisions on Production and Consumption Taxes and Related Criminal and Administrative Sanctions, referred to in Legislative Decree No. 504 of October 26, 1995, the pecuniary penalty of up to two hundred quotas shall be applied to the entity.*

2. When the taxes or border fees due exceed one hundred thousand euros, a fine of up to four hundred shares shall be imposed on the entity.

3. In the cases provided for in paragraphs 1 and 2, the disqualification sanctions provided for in Article 9, paragraph 2, letters c), d) and e) and, in the only case provided for in paragraph 2, also the disqualification sanctions provided for in Article 9, paragraph 2, letters a) and b) are applied to the entity."

A first major novelty of the Decree under review, with inevitable repercussions on the criminal side as well, is the express qualification of import VAT as a border tax (and not already as a domestic tax), except for the cases referred to in paragraph 3 of Article 27 of Annex 1; therefore, the failure to pay value-added tax will also be able to integrate the smuggling case for misrepresentation provided for in the new Article 79.

In this direction and to complete a panorama that had not taken into account the critical issues represented by the import/export activities that qualify the widest audience of domestic companies, already with Legislative Decree No. 75/2020 had been implemented Directive (EU) No. 1371/2017 of the European Parliament and of the Council of July 5, 2017, "*on the fight against fraud affecting the financial interests of the Union by means of criminal law*," counting among the predicate offenses of the 231 system the offences concerning income tax and VAT of D.Decree No. 74 of March 10, 2000 (if committed as part of cross-border fraudulent schemes and for the purpose of evading value-added tax for a total amount of not less than ten million euros) and the offence of smuggling, which, under Article 34 of the TULD (now subject to repeal) punished - in general terms - anyone who introduces into the territory of the State, in violation of customs provisions, goods that are subject to border duties.

The aforementioned provision stipulated in the first paragraph that "*All those duties which the customs is obliged to collect by virtue of a law, in connection with customs operations, shall be considered as customs duties*," and stipulated in the second paragraph that "*Among customs duties, the following shall constitute border duties: Import duties and export duties, levies and other import or export impositions provided for by Community regulations and their implementing rules, and also, in respect of import goods, monopoly duties, border surtaxes and any other tax or consumption surtax in favor of the State*."

Thus, it is already clear from the literal wording of the repealed Article 34 of the TULD that excise taxes-as consumption taxes-must fall under the broader category of "border duties."
Assessment, this, confirmed by the Constitutional Court, which, in its ruling No. 233 of December 7, 2018, clarified that border duties "*as described by Article 34 of the TULD include not only duties (the Union's own resource) but also excise duties on consumption*."
The choice made today by the Legislature, therefore, is in line with both the prevailing jurisprudential guidance[124] and European legislation, and fills an obvious gap in protection relating to all those cases in which the willful conduct of the offender has resulted in the removal of goods from the excise assessment.
After all, if the potential risk of incurring customs smuggling looms - by traditional definition - for all companies that have business dealings with entities residing in third countries, smuggling referring to products governed by the TUA regulations can also manifest itself in intra-Union transactions, which - for the purposes of assessing excise duty - always represent sensitive transactions.
In other words, due to the fact that the chargeability of excise duty arises at the crossing of any EU border, tracing the emergence of the tax obligation back to the member state where the actual release for consumption occurs, every single transfer of product that meets the harmonized (and non-harmonized, as is the case with lubricating oils) rules represents a potential risk.
Ultimately, with regard to the perimeter of reference of Legislative Decree 231/2001, the relevance of the typical case of smuggling hitherto entrusted only to international transactions-between the EU and third countries-is now extended to phenomena of true "domestic smuggling," qualifying as relevant also the irregularities expressed by the TUA for evasion of ascertainable product in domestic and intra-Union transfers, for which there is no formal control channel as for imports.
Moreover, the risk of withholding product from detection does not derive exclusively from the handling of only excisable products handled as they are, since the criminally relevant case may also be established in cases where such products are structurally concealed in machinery or components that contain them due to technical construction requirements, thus remaining hidden from detection by operators, such as, among others, energy products.
Turning, on the other hand, to an examination of the individual provisions of interest here, with the aforementioned Legislative Decree no. 141/2024 a considerable activity of "*reorganization and simplification of the sanctioning regulatory framework*" was carried out (see in this sense Circulars of the Customs and Monopolies Agency no. 20 and 22/2024, also for an examination in detail of the new regulations), providing for only two types of offenses, criminal and administrative, and making the relevant distinction through the exclusive use of a merely objective basic criterion determined by the amount of border duties due, set at 10,000 euros.
Thus, several cases were reorganized into those of: i) smuggling by failure to declare (Art. 78); and ii) smuggling by misrepresentation (Art. 79):

- the former encompasses within it all cases of wilful omission to fulfill the declarative obligation in relation to customs procedures not specifically regulated by the particular rules; the latter is realized, on the other hand, in all cases in which, despite the fact that the party has

[124] See Court of Cassation, Judgment No. 24847 de June 15, 2016 according to which: "*the notion of smuggling, therefore, pertains both to forms of evasion (of violation of financial laws imposing duties on foreign goods) that access foreign customs smuggling and to forms of evasion of atri taxes provided for by non-customs financial laws, such as manufacturing taxes, tax monopolies, municipal consumption taxes, which are substantiated by fraudulent conduct relating to internal consumption duties as well as state monopolies, the so-called internal smuggling.*"

submitted the due declaration, a difference is detected, maliciously intended, with regard to the quality, quantity, origin and value of the goods or any other element necessary for the application of the tariff and the settlement of the duties due

Legislative Decree No. 141/2024, as anticipated, also includes in Art. *25-sexiesdecies* of Legislative Decree 231/2001 the offenses provided for in the so-called Consolidated Law on Excise Duty (Legislative Decree 504/995), which is being amended at the same time.

Excise tax is the indirect taxation on the production or consumption of energy products, ethyl alcohol and alcoholic beverages, electricity, and manufactured tobacco products (different from other indirect taxes under Title III of the Unified Text). The following are the offenses provided for in the Consolidated Act:

- Article 40 (Subtraction from assessment or payment of excise duty on energy products);
- Article 40-bis. (Subtraction from assessment or payment of excise duty on tobacco products);
- Article 40-quinquies (Sale of tobacco products without authorization or purchase from persons not authorized to sell);
- Article 41 (Clandestine manufacture of alcohol and alcoholic beverages);
- Article 42 (Association for the purpose of clandestine manufacture of alcohol and alcoholic beverages);
- Article 43 (Subtraction from assessment and payment of excise duty on alcohol and alcoholic beverages);
- Article 46 (Alteration of devices, imprints and markings);
- Article 47 (Deficiencies and surpluses in the storage and circulation of excisable products);
- Article 48 (Irregularities in the operation of processing and storage facilities for excisable products);
- Article 49 (Traffic irregularities);
- Article 50 (Failure to comply with requirements and regulations).

OFFENCES AGAINST CULTURAL HERITAGE (ARTICLES 25-SEPTIESDECIES AND 25-DUODEVICES)

Law No. 22 of March 9, 2022, on "*Provisions on offences against* cultural *heritage*,"[125] , was published in the Official Gazette (No. 68/2022) and came into effect on March 23, 2022.

The text reforms the criminal provisions for the protection of cultural heritage-currently contained mainly in the Cultural Heritage Code (Legislative Decree No. 42 of 2004)-and inserts them into the Criminal Code, with the aim of carrying out a profound 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 offenses currently also provided for in the Cultural Heritage Code exclusively in the Criminal Code;

[125] As a reminder, according to Article 2 of the Cultural Heritage Code (Legislative Decree No. 42/2004), cultural heritage consists of cultural property and landscape property. Cultural heritage includes 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 or under the law as evidence having civilizational value. Landscape properties are the properties and areas indicated in Article 134, constituting expressions of the historical, cultural, natural, morphological and aesthetic values of the territory, and other property identified by or under the law.

ii) introduces new criminal offenses and raises existing sentences, giving effect to constitutional principles under which cultural and scenic heritage requires additional protection beyond that afforded to private property;
iii) Introduces aggravating factors when the object of common offences is cultural property;
iv) intervenes on Article 240-bis of the Criminal Code by expanding the catalog of offences in relation to which so-called expanded confiscation is allowed;
v) Extends the application of undercover operation regulations to certain offences;
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 for their benefit;
vii) Amends paragraph 3 of Article 30 Law No. 394 of 1991 on protected areas.

Regarding, more specifically, the amendments to Legislative Decree No. 231/2001, the following are inserted after Article *25-sexiesdecies*:

- **Art. 25-septiesdecies "*Offences against cultural heritage*"**
  "*1. In connection with the commission of the offence provided for in Article 518-novies of the Criminal Code, a fine of one hundred to four hundred quotas shall be imposed on the entity.*
  2. In connection with the commission of the offences stipulated in Articles 518-ter, 518-decies and 518-undecies of the Criminal Code, a fine of two hundred to five hundred quotas shall be imposed on the entity.
  3. In relation to the commission of the offences stipulated in Articles 518-duodecies and 518-quaterdecies of the Criminal Code, a fine of three hundred to seven hundred quotas shall be imposed on the entity.
  4. In relation to the commission of the offences stipulated in Articles 518-bis, 518-quater and 518-octies of the Criminal Code, a fine of four hundred to nine hundred quotas shall be imposed on the entity.
  5. In the case of conviction for the offences referred to in paragraphs 1 to 4, the disqualification penalties provided for in Article 9, paragraph 2, are applied to the entity for a period not exceeding two years."
- **Art. 25-duodevicies "*Laundering of cultural property and devastation and looting of cultural and scenic property*"**
  "*1. In connection with the commission of the offences stipulated in Articles 518-sexies and 518-terdecies of the Criminal Code, a fine of five hundred to one thousand quotas shall be imposed on the entity.*
  2. *If the entity or one of its organizational units is permanently used for the sole or prevalent purpose of enabling or facilitating the commission of the offences indicated in paragraph 1, the penalty of permanent disqualification from carrying out the activity pursuant to Article 16, paragraph 3, shall apply*."

The individual incriminating cases included in the catalog of predicate offenses are listed below:

- **518-bis (Theft of cultural property)**
  Whoever takes possession of another person's movable cultural property, by removing it from its owner, in order to gain profit for himself or others, or takes possession of cultural property belonging to the State, as it is found underground or on the seabed, shall be punished by imprisonment from two to six years and a fine from 927 euros to 1,500 euros. The punishment shall be imprisonment for a term of four to ten years and a fine from 927 euros to 2,000 euros

if the offence is aggravated by one or more of the circumstances provided for in the first paragraph of Article 625 or if the theft of cultural property belonging to the State is committed by a person who has obtained a search concession provided for by law.

- **518-ter (Misappropriation of cultural property)**
  Whoever, in order to procure for himself or others an unjust profit, appropriates another person's cultural property of which he has, in any capacity, possession, shall be punished by imprisonment from one to four years and a fine from 516 euros to 1,500 euros. If the act is committed on things possessed by way of necessary deposit, the punishment shall be increased.
- **518-quater (Receiving cultural property)**
  Outside the cases of complicity in the offence, anyone who, in order to procure a profit for himself or others, purchases, receives or conceals cultural property from any offence, or otherwise meddles in having it purchased, received or concealed, shall be punished by imprisonment of four to ten years and a fine of 1,032 to 15,000 euros.
  The punishment is increased when the act involves cultural property from the offences of aggravated robbery under Article 628, third paragraph, and aggravated extortion under Article 629, second paragraph.
  The provisions of this article also apply when the perpetrator of the offence from which the cultural property originates cannot be charged or is not punishable or when a condition of prosecution referring to that offence is missing.
- **518-sexies (Laundering of cultural property)**
  Outside the cases of complicity in the offence, anyone who replaces or transfers cultural property from a non-culpable offense, or carries out other transactions in connection with it, so as to hinder the identification of its criminal origin, shall be punished by imprisonment for a term of five to fourteen years and a fine of 6,000 to 30,000 euros.
  The punishment is decreased if the cultural property comes from a offence for which the punishment of imprisonment of less than a maximum of five years is established.
- **518-octies (Forgery in private writing relating to cultural property)**
  Any person who forms, in whole or in part, a false private writing or, in whole or in part, alters, destroys, suppresses or conceals a true private writing, in relation to movable cultural property, in order to make it appear lawful, shall be punished by imprisonment from one to four years.
  Whoever makes use of the private writing referred to in the first paragraph, without having participated in its formation or alteration, shall be punished by imprisonment for a term of eight months to two years and eight months.
- **518-novies (Violations regarding the alienation of cultural property)**
  The following shall be punished by imprisonment from six months to two years and a fine from 2,000 to 80,000 euros: 1) anyone who, without the prescribed authorization, alienates or places cultural property on the market; 2) anyone who, being obliged to do so, fails to submit within the period of thirty days the report of the acts of transfer of ownership or possession of cultural property; 3) the alienator of a cultural property subject to pre-emption who makes the delivery of the thing pending the period of sixty days from the date of receipt of the report of transfer.
- **518-decies (Illegal importation of cultural property)**

Anyone who, outside the cases of complicity in the offenses provided for in Articles 518-quater, 518-quinquies, 518-sexies and 518-septies, imports cultural property originating from a offence or found as a result of searches carried out without authorization, where provided for by the law of the state in which the finding took place, or exported from another state in violation of the law on the protection of the cultural heritage of that state, shall be punished by imprisonment of two to six years and a fine of 258 to 5,165 euros.

- **518-undecies (Illicit exit or export of cultural property)**
  Anyone who transfers cultural property, things of artistic, historical, archaeological, ethno-anthropological, bibliographic, documentary or archival interest or other things subject to specific protection provisions under the regulations on cultural property abroad, without a certificate of free movement or export license, shall be punished by imprisonment of two to eight years and a fine of up to 80,000 euros.
  The punishment provided for in the first paragraph shall also be applied against anyone who fails to return to the national territory, upon the expiration of the term, cultural property, things of artistic, historical, archaeological, ethno-anthropological, bibliographic, documentary or archival interest or other things subject to specific protection provisions under the regulations on cultural property, for which temporary exit or export has been authorized, as well as against any person who makes false statements for the purpose of proving to the competent export office, in accordance with the law, that things of cultural interest are not subject to authorization for exit from the national territory.
- **518-duodecies (Destruction, dispersal, deterioration, defacement, defacement, and illegal use of cultural or scenic property)**
  Any person who destroys, disperses, deteriorates or renders all or part of cultural or landscape property owned by him or others useless or, where applicable,[126] useless shall be punished by imprisonment of two to five years and a fine of 2,500 to 15,000 euros.
  Any person who, outside the cases referred to in the first paragraph, defaces or defaces cultural or scenic property belonging to himself or others, or assigns cultural property to a use 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 from 1,500 to 10,000 euros.
  The suspended sentence shall be 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 community service for a specified time, however, not exceeding the duration of the suspended sentence, in the manner specified by the judge in the judgment of conviction.
- **518-terdecies (Devastation and looting of cultural and scenic property)**
  Anyone who, outside the cases provided for in Article 285, commits acts of devastation or looting involving cultural or scenic property or cultural institutions and places shall be punished by imprisonment of ten to sixteen years.
- **518-quaterdecies (Counterfeiting of works of art)**
  It is punishable by imprisonment for a term of one to five years and a fine of 3,000 to 10 euros.000: 1) anyone who, for the purpose of making profit, counterfeits, alters or reproduces a work of painting, sculpture or graphics or an object of antiquity or of historical or

[126] The phrase "*where provided for*" was inserted by Article 2 of Law No. 6 of January 22, 2024.

archaeological interest; 2) anyone who, even without having participated in the counterfeiting, alteration or reproduction, places on the market, holds for the purpose of doing so, introduces into the territory of the State or otherwise 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, knowing their falsity, authenticates works or objects indicated in Nos. 1) and 2) counterfeited, altered or reproduced; 4) anyone who, by means of other statements, expert opinions, publications, affixing stamps or labels or by any other means, accredits or helps to accredit, knowing their falsity, as authentic works or objects indicated in Nos. 1) and 2) counterfeited, altered or reproduced.

The confiscation of counterfeit, altered or reproduced specimens of the works or objects indicated in the first paragraph shall always be ordered, unless they are things belonging to persons unrelated to the offence. Of the confiscated things, the sale in the auctions of the bodies of offence shall be prohibited without time limit.

ANNEX 2

HISTORY OF REVISIONS MADE TO THE MODEL

The Model, which was initially adopted on July 11, 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) as well as by Law no. 262/05 (so-called Savings Law), ASPI updated the Model in 2007, so that it would take into account the risks related 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 Entities' liability were analyzed in relation to the offences of homicide and culpable injury in violation of occupational health and safety regulations, the offences of receiving stolen goods, money laundering and use of money, goods or utilities of illicit origin computer offences and unlawful data processing, organized offence offenses, offences against industry and commerce, copyright infringement offences, 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 range of predicate offenses was analyzed in relation to environmental offences, employment of third-country nationals whose stay is irregular, undue inducement to give or promise benefits, and bribery among private individuals;
- in 2016, the Model was updated to the regulatory additions made to the catalog of predicate offenses with reference to the following offenses: self-money laundering, referred to in Law No. 186/2014; eco-offenses, referred to in Law No. 68/2015; and provisions on offences against public administration, mafia-type association and false accounting, referred to in Law No. 69/2015;

- in 2017, the amendments and/or additions to the administrative liability of entities were analyzed in relation : to computer offences by Legislative Decree Nos. 7 and 8/2016[127] ; to the new EU provisions aimed at homogenizing market abuse regulations within the European Union impacting art. 25-sexies of the Decree; to the predicate offenses referred to in Art. 25-bis of Legislative Decree No. 231/2001, headed "*Forgery of money, public credit cards, revenue stamps and instruments or signs of recognition*" by Legislative Decree No. 125/2016[128] ; to the offence of "*Illegal intermediation and exploitation of labor*" provided for in Art. 603-bis of the Criminal Code, as amended by Law No. 199/2016; to the offence of bribery among private individuals referred to in Art. 2635 c.c.; and to the inclusion of the new case of "incitement to bribery" referred to in Art. 2635-bis c.c. by means of a special provision of Legislative Decree No. 38/2017;
- In 2020, the following new legislation was analyzed:
    - Law Dec. 19, 2019, No. 157 of conversion with amendments of Decree Law No. 124/2019 on "*Urgent provisions on tax matters and for unavoidable needs*," which introduced tax offences into the Decree with Article 25-quinquiesdecies;
    - Law No. 133 of Nov. 18, 2019, which converted Decree Law No. 105 of 2019 on "*urgent provisions on the national cybersecurity perimeter and the regulation of special powers in sectors of strategic importance*." The legislation under consideration provides for the definition of a national cybersecurity perimeter aimed at "*ensuring a high level of security of the networks, information systems and IT services of public administrations, entities and public and private 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 malfunction, interruption, even partial, or improper use, harm to national security may result*" (Art. 1 para. 1);
    - Law No. 43 of May 21, 2019, which amended Article 416-ter of the Criminal Code on political-mafia exchange voting;
    - Law No. 39 of May 3, 2019, which introduced Article 25-quaterdecies of the Decree headed "*Fraud in sports competitions, abusive gaming or betting and gambling exercised by means of prohibited devices*."
    - Law No. 3 of January 9, 2019 on "*Measures for combating offences against the public administration, as well as on the statute of limitations of the offence and on the transparency of political parties and movements*," which, for the part of interest here, had to do with the tightening of the penalty treatment related to offences against the Public Administration, the introduction of trafficking in unlawful influence (art. 346-bis c.p.) in Article 25 of the Decree, the modification of the duration and methods of application of disqualification penalties for offences against the P.A. (Articles 13 and 25 of the Decree) and precautionary measures

[127] C.d. "decriminalization package," which, among other interventionsrepealed Article 485 of the Criminal Code "*forgery in private writing*" with the concomitant transformation into a civil offence, an article referred to in turn by the predicate offense *under* Article 491-bis of the Criminal Code (Article 24-bis D.Legislative Decree No. 231/2001), which has therefore been amended to the following effect: "*If any of the falsehoods provided for in this chapter concern a public computer document having evidentiary effect, the provisions of the same chapter concerning public acts shall apply...*"

[128] 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 punishment shall apply to anyone who, legally authorized to produce, unduly manufactures, abusing the instruments or materials in his possession, 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 that are not yet legal tender and the initial term thereof is determined; ii) in Article 461, first paragraph: 1) after the word: "programs" the following shall be inserted: "and data"; 2) the word: "exclusively" shall be deleted*."

(Article 51 of the Decree), and the reform of the conditions of prosecution of the offences of bribery among private individuals and incitement to bribery among private individuals;

- Decree-Law No. 135 of Dec. 14, 2018, containing "*Urgent provisions on support and simplification for businesses and public administration*" and converted with amendments by Law No. 12 of Feb. 11, 2019, which repealed the electronic waste traceability control system (SISTRI) as of Jan. 1, 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 organized for the illegal trafficking of waste*"). Following the amendment, the repealed case does not lose criminal relevance but is regulated within the Criminal Code in Article 452-quaterdecies;
- Legislative Decree No. 107 of August 10, 2018, which reformed the rules on market abuse, adapting domestic law, specifically Legislative Decree No. 58/1998, the so-called T.U.F., to Regulation (EU) No. 596/2014;
- Law No. 179 of November 30, 2017 on "*Provisions for the protection of the authors of reports of offences or irregularities they have become aware of within a public or private employment relationship*," which amended Article 6 of Legislative Decree No. 231/2001;
- Law Nov. 20, 2017, on "*Provisions for the fulfillment of obligations arising from Italy's membership in the European Union - European Law 2017*," which introduced Article 25-terdecies of the Decree headed "*Racism and Xenophobia.*"
- Law No. 161 of October 17, 2017, which inserted two additional paragraphs into Article 25-duodecies of the Decree regarding the employment of third-country nationals whose stay is irregular;

- in 2021, the new legislation introduced with Legislative Decree No. 75 of July 14, 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 analyzed, which came into force on July 30, 2020.
  More specifically, the main changes 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, para. 2, no. 1, Criminal Code) if the act offends the financial interests of the EU ;[129]
  - the amendment of Article 6 of Legislative Decree No. 74/2000, which in the new version also punishes by way of attempt the tax offences set forth in Articles 2 ("*Fraudulent declaration through the use of invoices or other documents for non-existent transactions*"), 3 ("*Fraudulent declaration through other artifices*") and 4 ("*Unfaithful declaration*"), if carried out even in the territory of another member state of the European Union, in order to evade value added tax for a total value of not less than ten million euros;
  - the inclusion in Art. 24 of Legislative Decree No. 231/2001 of the offence of fraud in public supplies, provided for and punished by Art. 356 of the Criminal Code and

[129] Article 1 of the Decree also integrates the above criminal offenses to the commission of acts that harm the financial interests of the EU, with damage or profit exceeding 100.000.00, increasing the maximum sentences, extending the punishability of the offence provided for and punished by Article 322-bis of the Criminal Code also to P.U. or P.I.s that do not belong to EU states, and finally adding the mention of the EU in Article 640, co. 2, no. 1), Criminal Code.

the offence provided for and punished by Art. 2 of Law No. 898 of December 23, 1986 regarding aid, 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 Art. 25 of Legislative Decree No. 231/2001 of the offences provided for and punished by Articles 314, para. 1 ("*Embezzlement*"), 316 ("*Embezzlement by profiting from the error of others*") and 323 ("*Abuse of office*") of the Criminal Code, when the act offends the financial interests of the European Union;
- the inclusion in Article *25-quinquiesdecies* of Legislative Decree No. 231/2001 of the offences provided for and punished by Articles 4 ("*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 not less than ten million euros;
- the insertion, of Article *25-sexiesdecies* of Legislative Decree No. 231/2001 headed "*Contraband*," which covers the contraband offences set forth in Presidential Decree No. 43 of 1973 ;

- In 2022, the regulatory changes introduced were analyzed:
  - by Law No. 238 of December 23, 2021 on "*Provisions for the fulfillment of obligations arising from Italy's membership in the European Union - European Law 2019-2020*," which came into force on February 1, 2022, and introduced changes to computer offences and Market Abuse;
  - by Legislative Decree No. 184 of November 8, 2021, which entered into force on December 14, 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 Dec. 14, 2021, and expanded the scope of the predicate offenses under Articles 648, 648-bis, 648-ter and 648-ter.1 of the Criminal Code, as known contained in Article 25-octies of the "231" catalog;
  - by Decree-Law No. 13 of Feb. 25, 2022, on "*Urgent measures to combat fraud and safety in the workplace in the field of construction, as well as on electricity produced by plants from renewable sources*" (the so-called Fraud Decree), which introduced amendments, of an amplifying sign, to the heading and/or text of Articles 316-bis (now headed "Misappropriation of public disbursements"), 316-ter (now headed "Misappropriation of public disbursements") and 640-bis of the Criminal Code;
  - by Law No. 22 of March 9, 2022, containing "*Provisions on offences against cultural heritage*," which introduced offences against cultural heritage (Art. 25-septiesdecies Legislative Decree No. 231/2001) and laundering of cultural property and devastation and looting of cultural and scenic property (Art. 25-duodevicies Legislative Decree No. 231/2001) into the catalog of predicate offenses;
  - by Legislative Decree No. 156 of October 4, 2022, containing "*Corrective and supplementary provisions to Legislative Decree No. 75 of July 14, 2020, implementing Directive (EU) 2017/1371 on the fight against 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 Art. 2 of Law No. 898 of Dec. 23, 1986 on 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; amended Art. 6 ("*Attempt*") of Legislative Decree No. 74/2000 and Art. 25-quinquiesdecies of Legislative Decree No. 231/2001 ("*Tax offences*");

- by Legislative Decree No. 150 of Oct. 10, 2022, on "*Implementation of Law No. 134 of Sept. 27, 2021, delegating to the government for the efficiency of the criminal process, as well as on restorative justice and provisions for the speedy settlement 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 consideration by the Council of Ministers held on December 9, 2022 and submitted for parliamentary opinion, "*implementing Directive (EU) 2019/1937 on the protection of persons who report violations of Union law and laying down provisions concerning the protection of persons who report violations of national laws*" (implementing Articles 1 and 13 of Law No. 127 of August 4, 2022);

- In 2023, the regulatory changes introduced were analyzed:
  - by Legislative Decree No. 24 of March 10, 2023 on "*Implementation of Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23, 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 March 2, 2023, on "*Implementation of Directive (EU) 2019/2121 of the European Parliament and of the Council of November 27, 2019, amending Directive (EU) 2017/1132 as regards cross-border transformations, mergers and divisions*," which introduced among the corporate offenses under Article 25-ter of the Decree, that of false or omitted declarations for the issuance of the preliminary certificate (Articles 54 and 55);
  - by Law No. 93 of July 14, 2023 on "*Provisions for the prevention and suppression of the unlawful dissemination of copyrighted content through electronic communication networks*" which amended co. 1 of Art. 171-ter of Law No. 633/1941, an offense already included in the 231 catalog
  - by Law No. 137 of Oct. 9, 2023, headlined "*Conversion into law, with amendments, of Decree-Law No. 105 of Aug. 10, 2023, containing urgent provisions on criminal trial, civil trial, combating forest fires, recovery from drug addiction, health and culture, as well as on 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 the procedure for choosing a contractor (Article 353-bis of the Criminal Code) and 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) already included in the 231 catalog of predicate offenses;
  - 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;
- In 2024, the regulatory changes introduced were analyzed:

- by Decree Law No. 19 of March 2, 2024, containing "*Further Urgent Provisions for the Implementation of the National Recovery and Resilience Plan (PNRR),*" converted with amendments by Law No. 56 of April 29, 2024, which inserted the second paragraph to Article 512-bis of the Criminal Code, an offense already contained in Article 25-octies.1 of the Decree;
- by Directive No. 1203 approved by the Council on March 26, 2024 on the protection of the environment through criminal law, which will improve investigation and prosecution, tightening penalties and introducing new environmental offences. From its entry into force, member states will have two years - until May 21, 2026 - to adapt national rules to the directive;
- by Legislative Decree No. 87 of June 14, 2024, which introduces a revision of the tax and criminal-tax penalty system for the purpose of implementing Delegated Law No. 111/2023 through greater integration between the different penalties, in compliance with the principle of ne bis in idem. More specifically, the legislature has redesigned the structure of the so-called payment offenses, introduced a specific definition of nonexistent credits and credits not due in the criminal sphere as well as significantly affected some provisions common to tax offences, providing new causes of non-punishability and new mitigating circumstances (amendments to Article 13-bis of Legislative Decree No. 74/2000) and reforming the provisions inherent to seizure and confiscation (amendments to Article 12-bis of Legislative Decree No. 74/2000);
- by Law No. 90 of July 17, 2024, bearing "*Provisions on the strengthening of national cybersecurity and computer offences,*" which introduces a general tightening of penalties, a broadening of the scope of the computer offences already contained in Article 24-bis of the Decree, in the list of which is also included - in Article 1-bis - as a new case that of computer extortion provided for in Article 629, para. 3, Criminal Code, as well as for the introduction of some aggravating and mitigating circumstances;
- by Law No. 112 of August 8, 2024, which converted, with amendments, Decree-Law No. 92 of July 4, 2024, on "*urgent measures on penitentiary, civil and criminal justice and Ministry of Justice personnel,*" and introduced the new offence against the public administration of misappropriation of money or movable property (Article 314-bis of the Criminal Code), which in turn was included in the catalog of predicate offenses provided for in Article 25 of Legislative Decree No. Lgs. 231/2001;
- by Law No. 114/2024 of August 9, entitled "*Amendments to the Criminal Code, the Code of Criminal Procedure, the Judicial System and the Code of Military Order,*" which repealed the offence of abuse of office under Article 323 of the Criminal Code, introducing further amendments aimed at coordinating other provisions of the Criminal Code with the aforementioned repeal as well as reformed the offence of trafficking in unlawful influence under Article 346-bis of the Criminal Code in order to narrow its scope;
- by Legislative Decree No. 141 of September 26, 2024, in implementation of the Delegated Law for Tax Reform No. 111/2023, on "*National provisions complementary to the Union Customs Code and revision of the sanctions system in the field of excise duties and other indirect taxes on production and consumption,*" which removed from Art. *25-sexiesdecies* the reference to Presidential Decree

43/1973 (repealed) and inserted the "new" offenses of smuggling and in the field of excise duties *under* Legislative Decree No. 504/1995 as predicate offenses;

- by Legislative Decree No. 145 of Oct. 11, 2024, converted, with amendments, by Law No. 187 of Dec. 9, 2024, which deleted the phrase "*particularly exploitative*" contained in paragraph 12-bis, letter c) of Article 22 of Legislative Decree No. 286/1998 and introduced the new residence permit referred to in Article 18-ter of the same Consolidated Act on Immigration;
- by the two directives and the regulation, published in the Official Journal of the European Union on Nov. 14, 2024, which make up the so-called "Listing Act," a regulatory package aimed at making EU capital markets more attractive to companies and facilitating access to capital for SMEs. The Listing Act, Regulation (EU) 2024/2809 and Directive (EU) 2024/2811 are to be transposed by June 5, 2026; Directive (EU) 2024/2810 by December 5, 2026. The aforementioned amendments will impact the offenses contained in Article *25-sexies* of the Decree;
- by Law No. 166 of November 14, 2024, of "*Conversion, with amendments, of Decree-Law No. 131 of September 16, 2024, containing urgent provisions for the implementation of obligations arising from acts of the European Union and from pending infringement and pre-infringement proceedings against the Italian State*," which amended the regulations of Articles *171-bis*, *171-ter* and *171-septies* of the Copyright Law, previously included in Article 25-novies of the Decree.