ORGANISATION, MANAGEMENT AND CONTROL MODEL

PURSUANT TO ITALIAN LEGISLATIVE DECREE NO. 231/2001

Endura S.p.A.

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GENERAL SECTION

I. ITALIAN LEGISLATIVE DECREE NO. 231/2001

1.1. The regulatory framework

Italian Legislative Decree no. 231 of 8 June 2001 introduced, for the first time in our legal system, the liability of entities in criminal proceedings in addition to that of the natural person who materially committed the offence.

This choice of legal policy responds to the need to encourage the gradual dissemination of a “corporate culture of legality” and to find common ground with the rules in many European countries that admit the criminal liability of corporations.

It was in this context that the OECD Convention of 17/9/1997 was enacted, ratified in Italy by Law 300/2000 on combating corruption of foreign public officials in international business transactions, to which the liability of legal persons and entities without legal personality was added. The same law also ratified the Convention on the protection of the European Community's financial interests signed in Brussels in 1995.
Prior to the introduction of Italian Legislative Decree no. 231/2001, Article 27 of the Constitution, which states that “criminal liability is personal”, precluded attributing the commission of offences to legal persons. To overcome the doubts of constitutional compatibility the theory of “being one and the same” was developed, according to which the company represents a real subject with rights on a par with the natural person. In fact, its representatives cannot be distinguished from it but instead are the means for expressing the will of the entity of which they are the organs. The same theory also helps to understand the exclusion of liability of the entity if the offence is not committed in its interest or to its benefit. The nature of the liability lies somewhere between the criminal and the administrative offence, sharing with the former the stigma and the seriousness of the punitive consequences, and with the latter the name and certain regulatory profiles.
Therefore, after the enactment of Italian Legislative Decree 231 of 2001, organisations can be held liable and consequently penalised for offences committed in their interest or to their benefit by persons in a senior position or by persons subject to their direction or supervision.

1.2. Type of offences covered

Section III of Italian Legislative Decree 231/2001, formerly entitled “Administrative liability for offences under the Criminal Code”, amended in 2002 with “Administrative liability for offences”, originally only provided for Articles 24 and 25, which referred to the offences that could constitute the administrative liability of entities.

Currently, as a result of the subsequent multiple amendments to Italian Legislative Decree no. 231/2001, the offences for which the organisation is also liable are the following:

- **Article 24 – Misappropriation of funds, fraud to the detriment of the State or a public body or the European Union or for the purpose of obtaining public funds and computer fraud to the detriment of the State or a public body and fraud in public supply**

Article 316-bis of the Italian Criminal Code Embezzlement of public funds

This offence is committed if, after receiving funding or contributions from the Italian State or the European Union, the sums received are not used for the purposes for which they were intended, even if such diversion concerns only part of the sum disbursed, and the planned activity actually took place.

It differs from aggravated fraud in that with embezzlement the benefit is legitimately obtained but its use is distorted. With fraud, on the other hand, the artifices and deception are functional to obtaining the benefit, thus rendering that obtaining illegitimate.

The purpose of the regulation is to stop fraud following the receipt of public benefits by diverting them from the purpose identified by the precept authorising the provision.

A prerequisite of the conduct is that the public benefit take the form of non-repayable pecuniary allocations (subsidies or grants) or of negotiated acts with mitigated onerousness (financing).

The commission of the offence and performance of the criminal conduct coincide, so the offence may also occur in relation to financing or facilities obtained in the past and not used for the intended purpose. Since this is an offence of pure omission, the moment of commission is identified in the expiry of the term within which the financing must be used for the purpose for which it was received.

Article 316-ter of the Italian Criminal Code Undue receipt of public funds

This offence occurs when contributions, financing, subsidised loans or other disbursements from the State, other public bodies or the European Union are obtained without right and by using or submitting false declarations or documents or by omitting due information.

The agent's conduct must be part of an administrative procedure aimed at obtaining funds from the State and may take place through actions (submission of false declarations or documents or certifying things that are not true) or through a failure to act (failure to fulfil one’s duty).

For example, the following constitute undue receipt of funds: submitting invoices indicating an increased price for the purchase of goods with public grants; obtaining financing by means of statements certifying a taxable income that does not correspond to the real income; obtaining welfare benefits for one's own employees by submitting untrue or incomplete personal and accounting data; the certification by an employee of untrue circumstances, but in compliance with the Public Administration's request, which leads to the company obtaining public financing.

Article 353 of the Italian Criminal Code Disruption of public tenders

The legal asset to be protected is the interest of the public administration in the free and orderly conduct of public and private tenders. The multi-offensive nature of the offence also underscores the protection of free competition. Notwithstanding the broad description of the ways in which the offence may be committed, the phrase “other fraudulent means” leads one to believe that this is a free-form offence, the legislature having intended to include all means concretely capable of disrupting the freedom of tenders, altering their regular operation and the free participation of the bidders in the tender. Given its nature as a dangerous offence, it is committed irrespective of the outcome of the competition, it being sufficient that its regular course be diverted. The precondition for the offence is the publication of the notice, as there can be no commission, even in an attempted form, before that moment. The intent is generic, and consists in the intention to prevent

or disrupt the tender or to turn away bidders in the manner set out in the regulation.

Article 353-bis of the Italian Criminal Code Disruption of the procedure for choosing a contractor
The provision in question punishes conduct that is preparatory to the performance of actions capable of disrupting the public administration's freedom to choose a contractor, by disrupting the administrative procedure aimed at establishing the content of the call for tenders or other equivalent act.

This provision represents the case of a dangerous offence that is committed irrespective of the actual achievement of the result, and for the conclusion of which it is therefore necessary that the proper nature of the procedure for the preparation of the call for tenders be concretely jeopardised, but not also that the content of the act of calling the tenders be actually amended in such a way as to interfere with the identification of the successful bidder.
In fact the article incriminates the same conduct envisaged in Article 353, with the difference that punishability occurs already at the stage of preparing the call for tenders and therefore at the time when the administration acts with regard to the manner in which the contractor is chosen.

Article 356 of the Italian Criminal Code Fraud in public procurement
This regulation protects the proper performance of public administration, and more specifically the smooth operation of public services and public establishments.

This offence can only be committed by those who are contractually bound to the State, a public body or an undertaking performing a service of public necessity, and thus by the supplier, subcontractor, broker or representative.
The supply contract is a precondition of the offence, though not a specific type of contract but more generally any contractual instrument intended to supply the Public Administration with things or services deemed necessary. The subjective element of the offence is general intent, consisting of the awareness and intention to deliver things other than those agreed to. Specific deception or concealed defects in the thing supplied are therefore not required, but bad faith in the performance of the contract is sufficient. In fact, the offence in question may be concurrent with aggravated fraud to the detriment of the State (Article 640), if, in addition to the bad faith referred to above, there is also the use of artifice or deception.

Article 640, paragraph 2, no. 1 of the Italian Criminal Code Fraud against the State, other public body or the European Union
The commission of the offence consists in using artifice or deception to mislead or cause damage to the State, another public body, or the European Union in order to obtain an undue benefit.
The artifice or deception may consist of any simulation or concealment put in place to mislead, including silence with intent to deceive.
For example, the following constitute criminal conduct: the issuing of bills of exchange signed with false personal details; the giving of a cheque accompanied by assurances as to its coverage and solvency; the submission for reimbursement of undue expense reports; the alteration of time sheets in order to receive higher salaries; the preparation of documents or information for participation in tender procedures containing untrue information in order to obtain the award of the tender, if the Public Administration proceeds to award the tender to the company; failure to notify the public body of circumstances that one is obliged to

disclose (e.g. loss of conditions legitimising a deed/permit/authorisation of the Public Administration); conduct constituting contractual fraud to the detriment of public bodies (e.g. conduct of the company that, in entering into/executing contracts with local health authorities, municipalities, regions and other public bodies, conceals circumstances which, if known to the same bodies, would have led to the failure to sign or termination of such contracts); the alteration of registers and documents that the company must periodically

submit to insurance and social security institutions; the illicit offsetting of tax credits in the F24 Form.

Article 640-bis *of the Italian Criminal Code Aggravated fraud for obtaining public funds*

In this case, the fraud is carried out in order to unduly obtain public funds. Compared to aggravated fraud (Article 640, paragraph 2, number 1, of the Italian Criminal Code), the specialising element is the material object, that is:

- Grants and subsidies: non-repayable grants.
- Loans: assignments of credit on favourable terms for specific uses.
- Subsidised loans: advantageous assignments of credit with long repayment periods.
- Other disbursements of the same type: open category capable of encompassing any other subsidised economic award granted by the State, other public bodies or the European Community.

In order for this offence to be committed, it is necessary for the falsehood to be accompanied by a specific fraudulent activity (artifice and deception to mislead) that goes well beyond the mere presentation of false information, so as to frustrate or make less easy the controls required by the competent authorities: e.g. preparation of documents or information for participation in calls for tenders for the disbursement of public funding with the inclusion of information supported by falsified documentation; submission of false or inflated invoices in order to obtain reimbursement of the relevant sums from the public body; submission of false declarations, concealing or representing a distorted reality; falsification of accounting data in order to obtain loans or other subsidised state funding; false declarations to obtain undue economic benefits from INPS for involuntary unemployment, maternity benefits, subsidies for socially useful work; artifices and deception to obtain EU grants in the agricultural sector; submission of false declarations for the receipt of public grants for the organisation of professional courses.

The difference between the offence in question and the offence envisaged and punished by Article 316-ter of the Italian Criminal Code (undue receipt of public funds) consists precisely in the inclusion among the constituent elements of the first offence of the induction of the injured party into error. Therefore, if the perpetrator does not merely make false declarations but also sets up a series of devices capable of misleading the public party, the offence of aggravated fraud pursuant to Article 640-bis of the Italian Criminal Code will be committed.

Article 2 of Italian Law no. 898/1986 - Fraud against the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development

The article provides for the application of a fine of up to 500 quotas in the event of fraud against the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development (Article 2 of Italian Law 898/1986).

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

This offence occurs when, by altering the operation of a computer or online system, or by manipulating the data contained therein, an undue benefit is obtained causing damage to the State or other public bodies.

The structure and constituent elements of the offence are the same as those of fraud (Article 640 of the Italian Criminal Code), however the agent's fraudulent activity does not directly affect the injured public party, but rather the computer system pertaining thereto, through the manipulation of said system.

Example include compulsory information flows to the Public Administration, such as tax forms to the Revenue Agency (Unico Form, 770 Form, VAT declarations, F24s, etc.), and communications to the Chamber of Commerce, the sending of social security reports and figures to INAIL and INPS (e.g. DM10). Other examples include companies that, in participating in public procedures, or in the performance of contracts with public entities, must submit electronic communications to the entities themselves or enter data in public electronic registers (e.g. entry in the computer system of an amount relating to public financing exceeding the amount legitimately obtained).

Article 2 of Italian Law no. 898/1986 Community fraud

This provision, on the subject of the fulfilment of obligations arising from membership in the European Community, coordinates the provision with Article 640-bis of the Italian Criminal Code by means of the reservation clause determined “where the act does not constitute the more serious offence envisaged in Article 640-bis”.

Article 2 of Italian Law no. 898/1986 applies in cases where the conduct was manifested by means of false declarations or the presentation of false documents and the fact is not attributable to a complex activity of artifice and deception and was committed with reference to contributions from the European Agricultural Fund.

A relationship of reciprocal speciality exists between the two offences due to the addition and specification of constituent elements. Again in Article 2 – as in Article 316-ter of the Italian Criminal Code – the provision of false data or information is of a lesser gravity since it is a less insidious means than “artifice and deception”. The latter consist of fraudulent factors of greater severity than the former.

The material object of Article 2 is “qualified” by the payments from the European Agricultural Guidance and Guarantee Fund (EAGGF), which is a “specific” element with respect to the *genus* of “contributions, financing, subsidised loans or other disbursements” referred to in aggravated fraud and misappropriation. Both in the provision in question and in that of Article 316-ter of the Italian Criminal Code, the undue profit of Article 640-bis is replaced by that of "undue receipt" of aid. Lastly, the damage, which in fraud is an event of the offence, degrades in the other two cases to an event-condition, the occurrence of which in terms of a certain amount determines the transition from administrative offence to criminal offence.

The offence referred to in Article 2 of Italian Law no. 898/1986 is in a relationship of bilateral speciality with the provision referred to in Article 640-bis of the Italian Criminal Code, with a different description (by subtraction) of the provision resulting in a milder penalty. The offence is punishable by way of general intent.

Among the distinguishing elements that contribute to defining the independent criminal offence outlined in Article 2 of Italian Law no. 898/1986 there could be a negative element consisting of the absence of deceptive elements or methods other than and beyond the mere false declaration. The presence of these

latter elements would lead to the existence of the more serious offence alone. And certainly the less fraudulent nature of the means used constitutes a suitable consideration providing a not unreasonable justification for a mitigated penalty compared to the normal punishment. At the same time, however, the criminal offence in Article 2 provides for an additional component with respect to the aggravated fraud referred to in Article 640-bis of the Italian Criminal Code, consisting of the material object of the unlawful conduct. Therefore, while, as stated by the United Chambers of the Court of Cassation, Article 316-ter stands as a subsidiary provision with respect to aggravated fraud, a similar conclusion cannot be reached with respect to the provision in Article 2.

- **Article 24-bis – Computer crimes and unlawful processing of data**

Article 491-bis of the Italian Criminal Code Forgery of a public or evidentiary electronic document.
The offence in question punishes the conduct of forgery referred to in Articles 476-493 of the Italian Criminal Code concerning public or private electronic documents having an evidentiary effect.

The provision punishes both so-called material falsehood and ideological falsehood. In the first case, reference is made to the case of a document forged in the indication of the sender or the signature, as well as to the case of subsequent alteration of the content. Ideological falsehood, on the other hand, relates to the untruthfulness of the statements contained in the document itself.

Article 615-ter of the Italian Criminal Code Unauthorised access to a computer or online system
This offence provides for and punishes anyone who illegally accesses or remains in a protected computer or online system.
It is not necessary to establish the specific purpose of profit or damage to the system.
Two types of conduct are punishable:

a) Unauthorised access (i.e. without the consent of the owner) to a computer or online system equipped with security systems.
b) Remaining connected with such system, continuing to use its services or to access the information contained therein notwithstanding the owner's dissent, tacit or otherwise.

This offence is prosecutable on complaint by the offended party, unless the aggravating circumstances set out in paragraph 2 apply (damage/destruction of data, programs or system; total or partial interruption of system operation; abuse of the function of public official, investigator, system operator; use of violence; access to systems of public interest). The article was amended with the introduction of Italian Law no. 90/2024 by which the penalties for committing this offence were made more severe.

Article 615-quater of the Italian Criminal Code Unauthorised possession, dissemination or installation of equipment, codes or other means of accessing computer or online systems.
The offence in question punishes the conduct of procuring, possessing, producing, reproducing, disseminating, importing, communicating, handing over, making available to others, installing devices, tools, parts of devices or tools, codes, keywords or other means of accessing a computer or online system protected by security measures, with the aim of procuring a benefit for oneself or causing damage to others.
The offence is automatically prosecutable and the criminal conduct may be limited to the mere possession of means or devices suitable for illicit access (viruses, spyware), irrespective of the actual carrying out of

such access or damage. The unauthorised possession or distribution of pics-cards, i.e. computer cards that allow the viewing of encrypted television programmes, or the unauthorised obtaining of serial numbers of other people's mobile telephones in order to clone them and make an unlawful connection to a protected telephone network, may also constitute an offence.

Article 617-quater of the Italian Criminal Code Unlawful interception, obstruction or interruption of computer or online communications
The conduct consists in the fraudulent interception, obstruction or interruption of communications relating to a computer system, as well as the external disclosure of the communications thus collected.
This offence is prosecutable on complaint by the offended party, unless the aggravating circumstances set out in paragraph 4 (damage to a public system; abuse or violation of the duties of a public official, or of the quality of system operator) apply.
The typical means used for committing this offence are normally spyware, the introduction of viruses, but also, for example, the installation of software that is not authorised by the company or not instrumental to the performance of one's duties and which has the effect of slowing online communications. Material conduct is also constituted by the use of a counterfeit credit card through one's own POS terminal, or by the unauthorised intrusion into another person's mailbox protected by a password.

Article 617- quinquies of the Italian Criminal Code Unauthorised possession, dissemination and installation of equipment and other means of intercepting, impeding or interrupting computer or online communications.
This offence, which is automatically prosecutable, punishes anyone who, in order to intercept communications relating to a computer or online system or between multiple systems, or to prevent or interrupt them, procures, possesses, produces, reproduces, disseminates, imports, communicates, delivers, otherwise makes available to others or installs equipment, programs, codes, passwords or other means designed to intercept, prevent or interrupt communications relating to a computer or online system or between multiple systems. It is therefore irrespective of whether the interception was actually executed.
The unauthorised installation of a video camera to capture the access codes of users of an online or computer system, as well as the use of equipment capable of copying the access codes of users of a computer system, constitutes an offence under Article 617-quinquies of the Italian Criminal Code.

Article 629 of the Italian Criminal Code Extortion (computer-related)
This offence was introduced by Italian Law 90/2024 on “Provisions on the strengthening of national cybersecurity and cybercrimes” (or more concisely “Cybersecurity Law”), which aims to introduce and harmonise a very wide and varied range of cybersecurity issues in order to strengthen the national cybersecurity safeguards.
The crime of cyber extortion punishes those who procure for themselves or others an undue benefit to the detriment of others by means of violence or threats, forcing another person to do or not do something.
It is therefore an offence characterised by the cooperation of the victim, who is taken advantage of by the agent through violence or threats.
Cyber extortion is a common offence since the party committing the crime can be anyone. However, if the offence in question is committed by a public official or a person in charge of a public service, abusing their position or function, they will be punishable for the offence of extortion under Article 317 of the Italian

Criminal Code.
With the introduction of this offence, the legislature, through the combined provisions of paragraph 3 of Article 629 of the Italian Criminal Code and paragraph 1-bis of Article 24-bis of Italian Legislative Decree no. 231/2001, attempted to limit the wave of extortions resulting primarily from ransomware-type cyber attacks, while also attempting to curb the spread of ransom payments demanded by criminal organisations.

Article 635-bis of the Italian Criminal Code Damage to information, data and computer programs
The punishable conduct takes the form of the destruction, deterioration, deletion, alteration, suppression of information, data or computer programs of others.

Insofar as such conduct actually benefits the company (e.g. by destroying data prior to checks/inspections by the authorities, or by eliminating information that provides evidence of payments due to any suppliers, etc.), the latter may be held liable pursuant to Article 635-bis of the Italian Criminal Code.
The offence is prosecutable on complaint by the offended party, unless one of the aggravating circumstances envisaged in the regulation (violence or threat against persons or abuse of the capacity of system operator) applies.

Article 635-ter of the Italian Criminal Code Damage to information, data and computer programs used by the State or other public body or otherwise of public utility.
The offence punishes the commission of the destruction, deterioration, deletion, alteration or suppression of computer information, data or programs used by the State, or by another public body, or in any case of public utility.
The offence is always automatically prosecutable, and for it to be committed it is sufficient to perform “direct actions” to bring about the damaging events envisaged, irrespective of their actual occurrence. There is an aggravating circumstance where the act is committed with violence or threats against persons or with abuse of the capacity of system operator.

Article 635-quater of the Italian Criminal Code Damage to computer or online systems
The offence in question punishes the conduct referred to in Article 635-bis of the Italian Criminal Code that causes damage to computer or online systems.
The introduction or transmission of data, information or programs causing the destruction, damage, unusability or serious malfunction of computer or online systems is also punished. It is necessary for the damaging event to actually occur. There is an aggravating circumstance where the act is committed with violence or threats against persons or with abuse of the capacity of system operator.

Article 635-quater.1 Illegal possession, dissemination and installation of computer equipment, devices or programs intended to damage or interrupt a computer or online system
The offence punishes the procurement, possession, production, reproduction, importation, dissemination, communication, delivery, installation or making available in any way of computer equipment, programs or devices aimed at damaging computer or online systems, or data and programs contained therein, or otherwise aimed at altering their operation.
Typical examples include the introduction of viruses, worms, programs containing so-called logic bombs, etc. Therefore, the company may be held liable if such conduct is carried out, for instance, with a view to

destroying the data, documents or evidence of hypothetically unlawful activities in view of a control/inspection by the competent authorities.
Compared to the previous offence, this offence requires active conduct capable of causing damage.
Italian Law 90/2024, amending Italian Legislative Decree no. 231/2001, stiffened the penalties for an entity that commits this offence, raising them from 300 to 400 quotas.

Article 635- quinquies of the Italian Criminal Code Damage to computer or online systems of public utility

The same conduct as referred to in Article 635-bis of the Italian Criminal Code that causes damage to computer or online systems of public utility.
There is an aggravating circumstance where the act is committed with violence or threats against persons or with abuse of the capacity of system operator.

Article 640- quinquies of the Italian Criminal Code Computer fraud by the party providing electronic signature certification services.
This is a specific offence that can be committed by the party providing electronic signature certification services. The criminal conduct takes the form of the generic violation of legal obligations to issue a qualified certificate, with the specific intent to procure a benefit for oneself or damage to others.

Article 1, paragraph 11, of Italian Decree-Law no. 105 of 21 September 2019
Italian Decree-Law no. 105 of 21 September 2019, converted with amendments by Italian Law no. 133 of 18 November 2019, on “urgent provisions on the perimeter of national cybersecurity and the regulation of special powers in sectors of strategic importance”, provided (with Article 1, paragraph 11-bis) for the amendment of Article 24-bis, paragraph 3, and now the entity is also held liable for the offences referred to in Article 1, paragraph 11, of Italian Decree-Law 105 of 2019. With this Decree-Law, the legislature established the so-called cybernetic national security perimeter “in order to ensure a high level of security of the networks, information systems and computer services of public administrations, bodies and national operators, both public and private, 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 whose malfunctioning, interruption, partial or otherwise, or improper use may result in damage to national security” (Article 1 of Italian Decree-Law no. 105/2019).

- **Article 24-ter – Offences of organised crime**

Art. 416 of the Italian Criminal Code Criminal conspiracy

Article 416 of the Italian Criminal Code punishes those who promote, constitute or organise a conspiracy for the purpose of committing multiple offences. Mere participation also constitutes an offence and may also be of secondary importance provided that the contribution is appreciable, concrete and stable. The crime of criminal conspiracy is characterised by the separate nature of the offence with respect to any crimes subsequently committed in implementation of the criminal conspiracy, which, if committed, are in fact concurrent with the offence referred to in Article 416 of the Italian Criminal Code, and if not perpetrated leave the crime of criminal conspiracy in place. The fact that conspiracy offences constitute predicate offences means that the liability of the entity pursuant to Italian Legislative Decree no. 231/2001 extends to an unspecified series of offences committed for the purpose of carrying out the criminal pact that are not

necessarily included in the list of predicate offences. Consider, for example, unlawful competition with violence or threats under Article 513-bis of the Italian Criminal Code, disruption of public tenders under Article 353 of the Italian Criminal Code, or breach of public supply contracts under Article 355 of the Italian Criminal Code, or even fraud in public supply under Article 356 of the Italian Criminal Code. The offence of criminal conspiracy could also occur in connection with the offence of organised activity for the illegal trafficking of waste under Article 260 of the Italian Environmental Code.

Article 416, paragraphs 6 and 7, of the Italian Criminal Code Criminal conspiracy

Paragraph 6 of Article 416 of the Italian Criminal Code punishes criminal conspiracy aimed at enslaving or maintaining individuals in slavery, human trafficking, the purchase and sale of slaves and crimes related to violations of provisions on illegal immigration as set out in Article 12 of Italian Legislative Decree no. 286/1998.

Paragraph 7 instead provides for the punishment of conspiracies aimed at committing the crimes of child prostitution (Article 600-bis of the Italian Criminal Code), child pornography (Article 600-ter of the Italian Criminal Code), possession of pornographic material (Article 600-quater of the Italian Criminal Code), virtual pornography (Article 600-quater.1 of the Italian Criminal Code), tourism aimed at the exploitation of child prostitution (Article 600-quinquies of the Italian Criminal Code), sexual violence (Article 609-bis of the Italian Criminal Code), sexual acts on minors (Article 609-quater of the Italian Criminal Code), corruption of minors (Article 609-quinquies of the Italian Criminal Code), group sexual violence (Article 609-octies of the Italian Criminal Code), solicitation of minors (Article 609-undecies of the Italian Criminal Code).

Article 416-bis of the Italian Criminal Code Mafia-type association, including foreign associations

An association is of a mafia type when those who are part of it in one of the ways set forth in Article 416 of the Italian Criminal Code make use of the intimidating force of the association and of the resulting condition of subjugation and code of silence to commit offences, to directly or indirectly acquire the management or control of economic activities, concessions, authorisations, contracts or public services, or to obtain undue profits or benefits for themselves or others, or in order to prevent, hinder or influence the free exercise of voting or to procure votes for themselves or others during elections.

Finally, it is emphasised that Article 24-ter of Italian Legislative Decree no. 231/2001 provides for the liability of the entity when crimes are committed by taking advantage of the conditions provided by Article 416-bis or with the aim of facilitating mafia-type associations. This provision, at the limit of respecting the principle of legality, effectively expands the number of crimes punishable under Italian Legislative Decree no. 231/2001 almost indefinitely.

Article 416-ter of the Italian Criminal Code Political-mafia electoral exchange

The regulatory provision of Article 416-ter has undergone a number of amendments over the years. The latest reform was enacted with Italian Law no. 43 of 21 May 2019 entitled “Amendment to Article 416-ter of the Italian Criminal Code on political-mafia exchange voting”, which came into force on 11 June 2019 and made substantial changes to the previous regulation, both with regard to the criminally relevant conduct and the penalties.

With regard to the parties committing the offence, the range of possible perpetrators of the offence is extended: for both the promisor and the promisee, it is specified that an intermediary may also be a party

to the agreement; for the vote procurer, it is specified that it may also be a member of the associations referred to in Article 416-bis of the Italian Criminal Code, as well as anyone who undertakes to procure votes by resorting to the mafia method.
With regard to the promisor's conduct, it is specified that such person is punished not only in cases of giving or promising money or other benefits (already contemplated in the pre-reform text), but also if they merely make themself available to satisfy the interests or needs of the mafia association.
With regard to the punishment for both parties to the mafia-political electoral exchange, the reformed law has reintroduced the punitive equivalence with the crime of participation in a mafia association (pursuant to article 416-bis, first paragraph) and the contracting parties involved in the unlawful exchange (pursuant to article 416-ter, first and second paragraphs), establishing that the penalties envisaged in the first paragraph of Article 416-*bis* (imprisonment from 10 to 15 years) also apply to the latter.

Paragraphs 3 and 4 of Article 416-ter of the Italian Criminal Code (as replaced by Article 1 of Italian Law no. 43 of 21 May 2019), introduced by the new legislation, envisage a special-effect aggravating circumstance that provides for a fixed increase of one half of the basic penalty if the electoral candidate is elected as a result of a mafia-related electoral promise (the penalty range saw a sharp increase, up to imprisonment of between a minimum of 15 years and a maximum of 22 years and 6 months). In this way, the legislature controversially transforms the political-mafia electoral exchange into an “event crime”.
Finally, the newly introduced paragraph 4 adds the accessory penalty of perpetual disqualification from public office in the event of conviction of the protagonists of the political-mafia agreement.

Article 630 of the Italian Criminal Code Kidnapping for the purpose of extortion
Kidnapping pursuant to Article 630 of the Italian Criminal Code occurs when the personal freedom of a person is restricted in any form and for any duration in order to obtain an undue benefit.
This is a complex offence characterised by the specific intent of the commodification of the person.
It may be considered that the occurrence of this offence appears difficult to foresee, given the need to ascertain in each case the interest or benefit gained by the entity from the commission of the offence.

Article 74 of Italian Presidential Decree no. 309 of 9 October 1990, Conspiracy for the illegal trafficking of narcotic or psychotropic substances
The conduct is as described in Article 416 of the Italian Criminal Code, with the specific aim of implementing or participating in trafficking in narcotic or psychotropic substances.

Article 407, paragraph 2, letter a), number 5, of the Italian Criminal Code Illegal manufacture, introduction into the State, offering for sale, transfer, possession and carrying in a public place or place open to the public of weapons of war or war-like weapons or parts thereof, explosives, clandestine weapons as well as several common firing weapons, excluding those envisaged in Article 2, paragraph 3, of Italian Law no. 110 of 18 April 1975.

- **Article 25 - Embezzlement, extortion, undue inducement to give or promise benefits and bribery and abuse of office**

Article 314 paragraph 1 of the Italian Criminal Code Embezzlement

Some considerations regarding the introduction of embezzlement:

- There have been complaints about an excessive expansion of the list of predicate offences compared to the criteria set out in the 2018 European Delegation Act. In fact, referring to the PIF Directive, this Act gives the government the possibility of supplementing Articles 24 et seq. of Italian Legislative Decree no. 231/2001 with exclusive reference to offences that "harm the financial interests of the Union".
- It is envisaged that the perpetrator is a public official or a person in charge of a public service who appropriates money or public property in their possession or availability by reason of their office. Since liability under Italian Legislative Decree no. 231/2001 should be excluded for the State and other public bodies, it is not clear how such offences can be committed by a person reporting to the organisation of a private body, in its interest or to its benefit.

Embezzlement is essentially the crime of misappropriation committed by a public official or a person in charge of a public service.

It is a multi-offence, in the sense that the conduct harms not only the proper and efficient functioning of the Public Administration, but also and especially the financial interests of both the public administration and private individuals, resulting in behaviour that is entirely incompatible with the title under which the asset is held, leading to a total exclusion of the asset from the rightful owner's property.

It is now accepted in case law to equate the conduct of misappropriation (i.e. imparting to the thing a use different from what was intended) and embezzlement, since the latter also encompasses misappropriation, since the fact of improperly allocating a thing to a different use means exercising powers over it that are typically those of the owner.
Embezzlement is in fact behaviour taking the form of actions incompatible with the title under which the asset is held, thereby creating a true reversal of possession, and thus unlawfully interrupting the functional relationship between the thing and its legitimate owner
A precondition of the conduct is therefore first and foremost the possession or availability of the thing, whereby the latter term makes embezzlement possible even in cases of mediated possession, whereby the agent disposes of the thing by means of the possession of others, so that the agent can return to possession at any time. Another prerequisite is the existence of a functional relationship between the thing and the agent, with the specification that, if the thing is at the disposal of the office and not directly and exclusively of the agent, the aggravating circumstance of abuse of office relationships will apply.

Article 316 of the Italian Criminal Code Embezzlement by profiting from the error of others
Possession of another party's property is not required for the offence to take place, and is therefore radically different from the regulation set out in Article 314, which in fact requires the possession or holding of another party's property or money as a precondition for the offence.

Conversely, it has also been ruled out that this is a special form of extortion (Article 317), since the requirement of inducing the person subject to the offence to make a mistake is lacking here. The offence may only be committed by the public official or the person in charge of a public service, in the performance of their duties or service. Typical occurrences under the rule are receipt (undue acceptance) and retention

(of what was delivered by mistake). The money or other benefits must be held for oneself or for a third party (however, the Public Administration does not fall within the notion of third party). A further and essential prerequisite of the offence is that the third party is mistakenly convinced that they must deliver money or other benefits into the hands of the public official or the person in charge of a public service, who accepts or keeps it, exploiting the mistake.
The offence is punishable by way of general intent, i.e. awareness of another's mistake and intent to receive or retain the thing.
The same considerations made for Article 314, paragraph 1, of the Italian Criminal Code concerning the perplexity of the introduction in Article 24 of Italian Legislative Decree no. 231/2001 of the offence of embezzlement among the predicate offences by the draft legislative decree containing rules for the implementation of Directive (EU) 2017/1371 also apply to this offence.

Article 317 of the Italian Criminal Code Extortion
Extortion occurs when a public official or a person in charge of a public service, abusing their position, compels someone to give or promise to them or others money or other undue benefits.
The perpetrator of the offence may therefore be either a public official or a person in charge of a public service.

The abuse can take two forms: as an abuse of public powers (use of powers pertaining to the functions exercised for purposes other than those envisaged by law, violation of the principles of good conduct and impartiality) or as an abuse of quality (exploitation of the position of public authority held by the individual, regardless of their specific duties).
The person who undergoes the coercion is not an accomplice but a victim, as they are faced with the stark choice of either enduring the harm threatened or avoiding it by giving or promising the unlawful benefit. Therefore, this scenario may involve the company indirectly, either in the form of the participation of an extraneous party between a senior or subordinate figure within the company and the public official or public service officer (provided there is an interest/benefit for the company), or in those cases where the company manages activities with a public relevance.
In fact, both the legislature and the prevailing case law hold that the members of corporate entities of a private nature but entrusted with the performance of a public service are absolutely equated with public officials or persons in charge of a public service (e.g. persons who can represent externally the will of the Public Administration or its authoritative, deliberative or certifying powers irrespective of formal investments; top management of hospital bodies or companies providing healthcare services covered by agreements with the National Health Service; operators of credit institutions; persons belonging to companies with public shareholdings or concessionaires of public services; operators of companies managing security guards; operators of companies entrusted with the management, organisation and provision of education and professional training governed by law; builders in the context of subsidised building projects, etc.).

Article 318 of the Italian Criminal Code Bribery for the exercise of office
This is the case when a public official unduly receives or accepts from a private individual the promise of money or other benefits for themself or a third party for the exercise of their functions or powers (so-called indirect bribery). Prior to the 2012 reform that significantly changed the text, the rule was headed differently,

i.e. “Corruption for an official act”, and included among the punishable conduct engaged in by the public official was that of “performing an act of their office”, as well as providing for the punishability of the public official who received remuneration for an official act they had already performed. By removing the reference to the performance of "acts" and focusing on the exercise of the "functions or powers" of the public official, the legislative action of 2012 resulted in an extension of the scope of punishability, as the amended article establishes a comprehensive definition of public functions (general activity, general powers, and general functions granted to the qualified individual), and therefore no longer requires the completion, omission, or delay of a specific act. This therefore includes all conduct, whether acting or failing to act, that violates the duties of loyalty, impartiality and honesty that must be strictly observed by those exercising a public function. The offence in question is punishable only if committed by a public official, to whom, however, Article 320 of the criminal code also equates the person in charge of a public service who has the quality of a public employee, establishing a penalty reduced by up to one third. Unlike in the case of extortion, the parties are on an equal footing and therefore both are punishable. In fact, it is a multi-party offence, or one of necessary complicity, and both the bribe-giver and the bribe-receiver are liable. In this regard, a distinction is made between active and passive bribery, depending on whether one looks at it from the point of view of the conduct of the private individual or the public official or the person in charge of a public service pursuant to Article 320 of the Italian Criminal Code.

Italian Law no. 3 of 9 January 2019 provided (in Article 1, paragraph 1, letter n)) for the amendment of Article 318, strengthening its penalties.

A*rticle 319 of the Italian Criminal Code Bribery for an act contrary to official duties*
This is the case when a public official, or a person in charge of a public service within the meaning of Article 320 of the Italian Criminal Code, receives money or other benefits for themself or for others or accepts a promise thereof in order to omit or delay or to have omitted or delayed an act of their office or to perform or to have performed an act contrary to the duties of their office benefiting the bribe-giver (so-called “direct bribery”).
The anti-corruption reforms introduced by Italian Law no. 69 of 2015 have resulted in a significant strengthening of penalties for the conduct in question in an attempt to reinforce the state's reaction to an increasingly widespread phenomenon.
This offence occurs whenever the activity carried out by the public official/person in charge of a public service is contrary to the latter's duties (e.g. acceptance of money to ensure the award of a tender).

Article 319-bis *of the Italian Criminal Code Aggravating circumstances*
The punishment is increased if the offence referred to in Article 319 of the Italian Criminal Code relates to the granting of public employment or salaries or pensions or to the conclusion of contracts involving the administration the public official belongs to, or to the payment or reimbursement of taxes.

Article 319-ter *of the Italian Criminal Code Bribery in judicial proceedings*
This offence was introduced by Article 9 of Italian Law 86/1990. Initially, in fact, the case considered constituted an aggravating circumstance of the direct bribery referred to in Article 319 of the Italian Criminal Code. Today, with the provision of an autonomous offence that does not distinguish between direct and indirect bribery, all corrupt conduct remains penalised. The offence may be committed by any person in the

capacity of public official, and the main provision relates to acts of corruption committed to favour or damage a party in civil, criminal or administrative proceedings.

Article 319-quater *of the Italian Criminal Code Undue inducement to give or promise benefits*
According to this offence, undue inducement occurs when a public official or a person in charge of a public service, abusing their position, induces someone to procure for themself or for others undue money or other benefits.
This offence was introduced by the legislature in order to restrict the scope of the offence of extortion under Article 317 of the Criminal Italian Code. In fact, before the reform the conduct took the two forms of inducement and coercion. The splitting of the original offence introduced Article 319-quater, in line with international recommendations, particularly from the "Phase 3 Report on the application of the OECD Anti-Corruption Convention in Italy", and is characterised by a suggestive and persuasive conduct with a less significant impact on the recipient's freedom of self-determination compared to the victim of extortion. The perpetrator of this offence has greater decision-making leeway but ends up acquiescing in the demand for the undue service because they are motivated by the prospect of obtaining undue personal gain, which is why punishment is envisaged. It is therefore the difference between these two behaviours, previously included in the wording of the Article prior to the amendment, which marks the line between the case of extortion (coercion) and inducement under Article 319-quater of the Italian Criminal Code.

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

Article 321 of the Italian Criminal Code Penalties for the bribe-giver
The regulation in question extends the penalties established for the bribe-receiver to the bribe-giver. This is therefore the main provision through which entities may be held liable – together with the public official/person in charge of a public service – for the offences referred to in Articles 318, 319, 319-bis, 319-ter, 319-quater, 320 of the Italian Criminal Code.

Article 322 of the Italian Criminal Code Incitement to bribery
The conduct of the offence is as set out in Articles 318-319 of the Italian Criminal Code, but in this case the public official refuses the offer unlawfully made to them.
Incitement to bribery occurs by means of the same conduct as in the offences of direct or indirect bribery, with the specific circumstance of the non-acceptance of the promise/offer by the private party.

Article 322-bis *of the Italian Criminal Code Embezzlement, extortion, undue inducement to give or promise benefits, bribery and incitement to bribery of members of international courts or bodies of the European Community or of international parliamentary assemblies or international organisations or officials of the European Community or of foreign States*
The article in question was introduced by Article 3, paragraph 1, of Italian Law no. 300 of 29 September 2000, as amended by Italian Law no. 116/2009, Italian Law no. 190/2012, Italian Law no. 237/2012, Italian Law no. 161/2017 and finally Italian Law no. 3/2019.
This provision extends the provisions of Articles 314, 316, 317, 317-bis, 318, 319, 319-bis, 319-ter, 319-quater, 320 and 322, paragraphs 3 and 4 of the Italian Criminal Code to acts committed by the persons

referred to in the article in questions (members of international courts or bodies of the European Community or of international parliamentary assemblies or international organisations or officials of the European Community or foreign states). It also provided that the provisions of Articles 319 quater, paragraph 2, 321 and 322, paragraphs 1 and 2, shall also apply if the money or other benefit is given, offered or promised – in addition to the persons mentioned above – to persons exercising activities or functions corresponding to those of public officials and persons in charge of a public service within other foreign States or international public organisations, if the act is committed to procure for oneself or others an undue benefit in international economic transactions or in order to obtain or maintain an economic or financial activity.

Article 323 of the Italian Criminal Code Abuse of office

The legal asset protected is not only the good performance of the Public Administration, but also the assets of the third party damaged by the abuse of the public official. It is an offence in its own right, as the perpetrators of the offence are the public official or the person in charge of a public service in the performance of their duties or service. Abuse of office is an event crime, the crime being perpetrated at the time of the actual production of an undue pecuniary benefit or harm to others.

The undue benefit can only be financial and constitutes a favourable situation for all the subjective financial rights of the public party, regardless of an actual economic increase.

Damage to the third party may consist of any undue aggression against the personal or financial sphere of the victim. The so-called double injustice of the damage is required, meaning that both the conduct and the financial benefit gained must be unjust.

The abusiveness of the conduct must consist of:

- The breach of statutory or regulatory provisions, which, it is held, also includes mere procedural rules if they are likely to procure an undue pecuniary benefit or undue damage. Excessive power in discretionary measures, on the other hand, does not fall within the scope of this case.
- The breach of the duty to abstain where there is a legal obligation to abstain in the presence of a conflict of interest.

The offence requires generic intent.

The same considerations made for the crime of embezzlement also apply here.

Article 346-bis of the Italian Criminal Code *Illicit influence peddling*

This offence was introduced by Article 1 of Italian Law no. 190 of 6 November 2012 **"**Provisions for the prevention of corruption and illegality in the public administration".

With Italian Law no. 3/2019 (so-called Anti-Corruption Law), the offence of illicit influence peddling became part of the list of offences in relation to which an administrative offence may be committed against the entity. Article 346-bis of the Italian Criminal Code made it a crime when actions – while not constituting corruption for the exercise of functions, acts contrary to official duties, or judicial acts – are carried out by a person who seeks to act as an intermediary in an illicit transaction between a private individual and a public official, a provider of a public service, or one of the individuals referred to in Article 322-bis of the Italian Criminal Code in exchange for money or other benefits for themself or others as payment for the activity carried out. Compared to bribery, the offence in question is committed earlier and the law is aimed at punishing the intermediary before the corrupt agreement between the private party and the Public

Administration can be finalised, and cannot therefore be committed when an equal or unequal relationship already exists between the Public Official and the private party.

The legal asset subject to criminal protection is the impartiality and good performance of the Public Administration, since this rule is intended to shield the public agent, even before they are subjected to pressure from outside.

The objective element is the criminal conspiracy between private individual and mediator, through which the giving of a pecuniary benefit is agreed in order for the mediator to exert an influence on the public agent aimed at steering administrative decisions in favour of the initial instigator.

Article 346-bis of the Italian Criminal Code provides for two types of unlawful influence:

- In the first case, the principal gives or promises the mediator money or other pecuniary benefit in order to remunerate the public agent for the performance of an act contrary to their official duties or the omission or delay of an act of office.
- The second case concerns the situation in which the principal remunerates the mediator so that the latter unlawfully influences the public agent. In this case, the money or financial benefit given or promised by the principal to the mediator represents the reward for the influence the latter undertakes to exert on the public agent.

This is a common offence since neither the principal nor the mediator need possess any particular subjective qualification.

However, the penalty is aggravated if the mediator is a public official or a person in charge of a public service.

In addition to providing for the punishability of the mediator, the regulation also provides for the punishability of the principal of the mediation. It is therefore a necessarily multi-party crime.

The relationship that the mediator undertakes to enforce with the public official, or with the person in charge of a public service, must actually exist and must constitute the reason for the giving or promising of the financial benefit by the principal. This offence therefore stands in an alternative relationship with the offence of fraudulent representation in which the relationships must be falsely represented.

The intent is specific and is represented by the willingness to enter into a pact with the main purpose of remunerating the public agent for performing an act contrary to their official duties, or for omitting or delaying an act of their office, or for the purpose of unlawfully influencing them.

The offence is committed when the pact between the principal and the mediator is perfected. It is not essential that the mediation take place or that that person actually has the possibility of completing the task undertaken, only the undue promise being sufficient.

Attempted commission of the offence is abstractly conceivable, although it entails an excessive anticipation of the protection, where the mediator solicits the giving of money or a pecuniary benefit from another person with a view to exercising an unlawful influence on the public agent without actually succeeding in doing so.

The legal provision also includes a special mitigating circumstance based on the particular triviality of the offence, providing for a reduction of the sentence by half.

- **Article 25-bis – Forgery of money, legal tender, revenue stamps and instruments or identifying marks**

Article 453 of the Italian Criminal Code Counterfeiting of coins, spending, and the introduction into the State of counterfeit coins with prior agreement Through this provision, the legislature aims to ensure the certainty

and reliability of monetary transactions, which are essential prerequisites for the regular circulation of currency. The offence in question is committed by means of a multiplicity of actions: counterfeiting (manufacture of currency by unauthorised entities) or altering of currency (changing the value of genuine currency); introduction into the State of counterfeit currency; possession, spending or putting into circulation counterfeit or altered currency; purchase or receipt of counterfeit or altered currency for the purpose of putting it into circulation; all in concert with the counterfeiter.

Article 454 of the Italian Criminal Code Alteration of money

This provision protects the certainty and reliability of money circulation and punishes anyone who alters money of the quality referred to in the preceding Article, or who, with respect to the money thus altered, holds it, spends it or puts it into circulation, acquires it or otherwise receives it for the purpose of putting it into circulation.

Article 455 of the Italian Criminal Code Spending and introduction into the State of counterfeit money without prior agreement

The offence punishes the introduction, purchase or possession of counterfeit money for the purpose of putting it into circulation, without prior agreement with the counterfeiter or the person who altered it.

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

This is the putting into circulation of counterfeit money received in good faith. In this case, knowledge of the counterfeit money is subsequent to its receipt, whereas in the criminal case of Article 455 of the Italian Criminal Code, the offender must be aware of the counterfeit nature of the money at the time of receipt.

Article 459 of the Italian Criminal Code Counterfeiting of revenue stamps, introduction into the State, purchasing and holding or circulating counterfeit revenue stamps

The offences are those referred to in Articles 453, 455, 457 of the Italian Criminal Code, but have as their material object counterfeit revenue stamps. Pursuant to the second paragraph of this Article, the offence relates to revenue stamps, postage stamps and other values equated to them by special laws.

Article 460 of the Italian Criminal Code Counterfeiting watermarked paper used for the manufacture of legal tender or revenue stamps

The punishable conduct is any of counterfeiting or the purchase, possession or sale of the legal tender in question. The rationale of this regulation is to criminalise activities preparatory to counterfeiting in order to meet the need to strengthen the protection of interests protected by the regulations on the counterfeiting of revenue stamps.

Article 461 of the Italian Criminal Code Manufacture or possession of watermarks or instruments intended for the counterfeiting of money, revenue stamps or watermarked paper

The offence in question punishes the manufacture, purchase, possession or disposal of watermarks or instruments intended exclusively for the counterfeiting of currency, revenue stamps or watermarked paper.

Article 464 of the Italian Criminal Code Use of counterfeit or altered revenue stamps

The offence punishes the mere use of counterfeit or altered revenue stamps. The penalty is reduced if the

stamps were received in good faith.

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

This article, as replaced by Article 15, paragraph 1, letter a), of Italian Law 99/2009, punishes the counterfeiting, alteration or use of trademarks or distinctive marks or of patents, models or designs.

This offence is committed by anyone who, being aware of the existence of an industrial property right, counterfeits or alters domestic or foreign trademarks or distinctive marks of industrial products, or anyone who, without having participated in the counterfeiting or alteration, makes use of such counterfeited or altered trademarks or marks. Paragraph 2 provides for the punishment of anyone who counterfeits or alters domestic or foreign patents, designs or industrial models or, without being an accomplice to the counterfeiting or alteration, makes use of such counterfeited or altered patents, designs or models. The prerequisite for prosecution is that domestic laws, EU regulations and international conventions on the protection of intellectual or industrial property have been complied with.

Article 474 of the Italian Criminal Code Introduction into the State and trade of products with false marks

This regulation, apart from cases of complicity in the offences envisaged in the previous article, punishes the introduction into the Italian State of products with false marks and trade in such products.

- **Article 25-bis.1 – Offences against industry and trade**

Article 513 of the Italian Criminal Code Disruption of industry or trade

An essential element of the offence is the use of violence against property, or fraudulent means to disrupt the operation of an industry or trade. The regulation was introduced in order to ensure the normal exercise of industrial or commercial activities by private individuals.

Article 513-bis of the Italian Criminal Code Unlawful competition by threat or violence

The provision aims to penalise those who, in the exercise of a commercial, industrial or in any case productive activity, engage in acts of competition with violence or threats, i.e. using forms of intimidation that in the milieu of mafia organised crime tend to control commercial, industrial or productive activities, or in any case to influence them, affecting the fundamental law of the market that seeks free, lawful competition. However, it is not necessary that the offence take place in organised crime circles or that the perpetrator belong to such circles. The perpetrator of the offence may be anyone, since qualification as a businessperson is not required, the exercise of one of the aforementioned activities being sufficient, even occasionally or temporarily.

Article 514 of the Italian Criminal Code Fraud against domestic industries

This Article punishes anyone who causes harm to a domestic industry by offering for sale or otherwise putting into circulation industrial products with counterfeit or altered names, trademarks or distinctive marks on foreign domestic markets.

Article 515 of the Italian Criminal Code Fraud in the exercise of trade

The material conduct consists in the delivery in the exercise of a commercial activity of a movable thing not conforming to the agreed one in essence, origin, source, quality, quantity. Fraud in trade thus takes the form of an unfair performance of a lawful and effective, albeit voidable, contract.

Article 516 of the Italian Criminal Code Sale of non-genuine substances as genuine

The punishable conduct may take the form of any operation in any case aimed at the exchange and sale of non-genuine food and drink. It is therefore sufficient to carry out acts clearly revealing the purpose of selling or marketing: public display, indication in offers to the public, presence of the non-genuine product in the seller's warehouse or store, etc.

Article 517 of the Italian Criminal Code Sale of industrial products with false marks

The offence is committed through the generic putting into circulation of goods with names, trademarks or distinctive marks that, although not counterfeit, are likely to mislead consumers.

Article 517-ter of the Italian Criminal Code Manufacture of and trade in goods made by usurping industrial property rights

The punishable conduct is the manufacture or industrial use of objects or other goods made by usurping or infringing a known industrial property right.

The same provision punishes the introduction into the State, the holding for sale, the offering to consumers or the general circulation of the aforementioned goods in order to make a profit.

Article 517-quater of the Italian Criminal Code Counterfeiting of geographical indications or designations of origin for agri-food products

Article 517-quater of the criminal code punishes the counterfeiting or alteration of geographical indications or indications of origin of agri-food products. The same provision punishes the introduction into the State, the holding for sale, the offering to consumers or the general circulation of agri-food products with the aforementioned counterfeit indications in order to make a profit. Under the fourth paragraph of this article, the offences provided for in the first and second paragraphs are punishable provided that the provisions of domestic laws, Community regulations and national conventions on the protection of geographical indications and designations of origin for agri-food products have been complied with.

- **Article 25-ter – Corporate offences**

Art. 2621 of the Italian Civil Code False corporate communications

"Except for the cases envisaged in Article 2622, directors, general managers, financial reporting officers, auditors and liquidators, who, in order to obtain an undue benefit for themselves or for others, in financial statements, reports or other corporate communications addressed to shareholders or the public as provided for by law knowingly present material facts that do not correspond to the truth or omit material facts whose disclosure is required by law on the economic, equity or financial situation of the company or of the group it belongs to in a manner concretely likely to mislead others, shall be punished with imprisonment from one to five years.

The same penalty also applies if the falsehoods or omissions relate to assets owned or administered by

the company on behalf of third parties".
For this type of offence, envisaged in paragraph 1, letter a), of Italian Legislative Decree no. 231/2001, the Company shall be subject to a pecuniary sanction ranging from 200 to 400 quotas.
The unlawful conduct in the new Article 2621 of the Italian Civil Code consists in knowingly stating material facts that are untrue or knowingly omitting material facts when disclosure of the same is required by law concerning the economic, equity or financial situation of the company or of the group it belongs to in a manner that is concretely likely to mislead others. Except in cases where the offence is minor, the offence is prosecuted automatically.
The first new element of the new offence of false accounting referred to in Article 2621 of the Italian Civil Code is the change from a misdemeanour to a felony. The other main elements can be summarised as follows: the non-criminal thresholds have disappeared (as envisaged in the third and fourth paragraphs of Article 2621); as regards intent, the aim of obtaining an undue benefit for oneself or others remains, but the “intention to deceive shareholders or the public” has been eliminated and the reference to awareness of the falsehoods published has been expressly introduced into the text; the reference to the omission of “information” has been replaced by a reference to the omission of “material facts” about the economic, equity or financial situation of the company or the group it belongs to, whose disclosure is required by law; the additional objective element of “concrete” ability of the action or omission to mislead others was introduced. The reference to the methods of the misrepresentation, which must be "concretely capable of misleading others" (Article 2621 of the Italian Civil Code), appears to be linked both to the disappearance of the punishability thresholds and to the provision of cases of minor and particular triviality, as outlined in the new Articles 2621-bis and 2621-ter of the Italian Civil Code.

Article 2621-bis of the Italian Civil Code Minor incidents
"Unless they constitute a more serious offence, a penalty of six months to three years' imprisonment shall be imposed if the actions referred to in Article 2621 are of minor importance, taking into account the nature and size of the company and the manner or effects of the conduct. Unless they constitute a more serious offence, the same penalty as in the preceding paragraph applies when the actions referred to in Article 2621 concern companies that do not exceed the limits indicated in the second paragraph of Article 1 of Royal Decree no. 267 of 16 March 1942. In such a case, the offence is prosecutable on complaint by the company, the shareholders, the creditors or other recipients of the corporate communication”.
For the purposes of non-punishability due to the particularly minor nature of the offence, referred to in Article 131-bis of the Italian Criminal Code, reference should be made to Article 2621-ter of the Italian Civil Code, according to which “the court shall assess, in a preponderant manner, the extent of any damage caused to the company, shareholders or creditors as a result of the facts referred to in Articles 2621 and 2621-bis”.

Art. 2622 of the Italian Civil Code False corporate communications by listed companies
The offence of misrepresentation in the financial statements of listed companies consists in knowingly presenting untrue material facts or omitting material facts whose disclosure is required by law on the economic, equity or financial situation of the company or group it belongs to in a way that is concretely likely to mislead others as to the company’s economic situation. The main new elements of the new crime of false accounting of listed companies, set out in Article 2622, paragraph 1, of the Italian Civil Code, which partially

coincide with those of Article 2621, are as follows: the offence is classified as a crime of danger rather than of damage, since there is no longer any reference to the financial damage caused to the company; the penalties are tougher, since the punishment is increased from one to four years' imprisonment to three to eight years; the thresholds for non-punishability, as with false accounting for non-listed companies, have been eliminated, as previously outlined in paragraphs 4 and following of the old Article 2622; also in this case, the reference to intent has changed as the purpose of obtaining an undue benefit for oneself or others remains, however the “intention to deceive the shareholders or the public” has disappeared, while the reference to the awareness of the falsehoods published is explicitly introduced in the article in question; the reference to the omission of “information” has been replaced with a reference to the omission of “material facts” the disclosure of which is required by law concerning the economic, equity or financial situation of the company or the group it belongs to; the additional objective element of the “concrete” ability of the action or omission to mislead others has been introduced, as in Article 2621.

(Article 2624 of the Italian Civil Code False statements in reports or communications of the auditing firm
Italian Legislative Decree no. 39/2010 – Implementation of Directive 2006/43/EC on the statutory audits of annual accounts and consolidated accounts – introduced the 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 Italian Civil Code.

Since Article 25-ter of Italian Legislative Decree no. 231/2001 expressly refers to Article 2624 of the Italian Civil Code as a precondition for the administrative offence, the repeal of the provision of the Italian Civil Code not accompanied by the updating of Article 25-ter with the reference to the new case of Article 27 of Italian Legislative Decree no. 39/2010 should as a consequence determine the non-applicability of the administrative sanction pursuant to Italian Legislative Decree no. 231/2001 for the new offence of false statements or communications of the persons responsible for the statutory audit.

Art. 2625 of the Italian Civil Code Impeded control
The criminal conduct takes the form of concealing documents or using other means to prevent or hinder the performance of controls attributed to companies or other corporate bodies by law. Given the explicit reference in Italian Legislative Decree no. 231/2001 only to the second paragraph of Article 2625 of the Italian Civil Code, the offence may be imputed to the company only if the obstruction or mere hindrance created by the directors to the controls envisaged in Article 2625 of the Italian Civil Code caused damage to the shareholders.
Initially, the article in question also provided for audits in addition to controls. Article 37, paragraph 35, letter a), of Italian Legislative Decree no. 39/2010 deleted the words "or auditing" from this provision, and the activities of hindering auditors from controlling, since they are no longer governed by Article 2625 of the Italian Civil Code, which is expressly included among the predicate offences pursuant to Italian Legislative Decree no. 231, are no longer to be considered relevant for the purposes of the administrative liability of entities for criminal offences. In fact, the new case of impeded control of audit firms is currently governed by Article 29 of Italian Legislative Decree no. 39/2010, which is not expressly referred to in Italian Legislative Decree no. 231/2001.
However, as a matter of prudence this should also be taken into account.

The offence referred to in the second paragraph must be classified as an offence against property, since the damage described by the regulation represents the moment of commission of the offence. The requirement of damage, therefore, makes it possible to clearly distinguish this offence from the administrative offence referred to in the first paragraph, in which the causation of damage is not envisaged and the object of protection is the control activity itself.

Art. 2626 of the Italian Civil Code Wrongful restitution of contributions

This type of offence is envisaged to protect the effectiveness and integrity of the share capital, to guarantee the rights of creditors and third parties, and occurs when directors return – even in a simulated manner, outside the cases of legitimate reduction of the share capital – contributions to shareholders or release them from the obligation to make them.

The regulation's explicit reference only to the directors excludes the punishability of shareholders who are beneficiaries or released from the contribution obligation pursuant to Article 2626 of the Italian Civil Code.

Art. 2627 of the Italian Civil Code Illegal distribution of profits or reserves

This criminal conduct consists in distributing profits or advances on profits not actually earned or allocated by law to reserves, or distributing reserves, even if not established with profits, that by law may not be distributed. With regard to the distribution of profits, a distinction must be made between so-called fictitious and real profits. They must be considered fictitious and therefore not distributable when the distribution affects the share capital, thus resulting in an unlawful reimbursement to shareholders of contributions made by them. They are deemed real when they result from completed transactions and settled legal situations and can thus be said to be actually earned. The other case is when reserves are distributed even if not formed from profits, which by law may not be distributed. The regulation also provides that if the profits are returned or the reserves reconstituted before the deadline for the approval of the financial statements, the offence is nullified. This Article establishes a violation sanctioned with a milder penalty than the previous regulation, which regarded the offence as a crime punishable with the same penalty as false corporate communications.

Art. 2628 of the Italian Civil Code Illegal transactions involving shares or quotas in the company or its parent company

This offence is committed by the directors' purchase or subscription of own shares or quotas or those of the parent company outside the cases permitted by law that causes damage to the integrity of the company's capital or of the reserves that by law cannot be distributed. The reconstitution of the company's capital and reserves before the deadline for the approval of the financial statements for the financial year in which the conduct took place nullifies the offence. The provision thus takes into account two criminal cases, already envisaged in the past law, but describes them more strictly and precisely, typifying the offence in accordance with the general principles of criminal law and abandoning the technique of mere reference to civil law provisions.

Art. 2629 of the Italian Civil Code Operations to the detriment of creditors

The operations referred to in this offence consist of reductions in share capital, mergers with another company or demergers, which, carried out in breach of the rules protecting creditors, cause damage to

those creditors.

For the offence to exist, it is necessary that such operations cause damage to creditors. The offence is nullified if the damaged creditors are compensated before trial. This regulation is therefore aimed at protecting creditors rather than the integrity of the share capital.

Article 2629-bis of the Italian Civil Code Failure to disclose conflict of interest

This offence is committed when a member of the board of directors or management board of a company – with securities listed on regulated markets in Italy or in another Member State of the European Union or widely distributed among the public within the meaning of Article 116 of the consolidated law on financial intermediation referred to in Italian Legislative Decree no. 58 of 24 February 1998, or a party subject to supervision within the meaning of the consolidated law on banking and credit referred to in Italian Legislative Decree no. 385 of 10 September 1993, referred to in the aforementioned Italian Legislative Decree no. 58 of 24 February 1998, of Italian Law no. 576 of 12 August 1982, or of Italian Legislative Decree no. 124 of 21 April 1993 – causes damage to the same or to third parties, in breach of the regulations on directors' interests set out in the Italian Civil Code. The offence exists only if the violation caused damage to the company or third parties that is deemed to be pecuniary in nature. Thus, the interest protected by the regulation is the assets of the company or third parties, in keeping with the guiding principles of the new corporate criminal law system.

Moreover, the regulation in question, introduced by Italian Law 262/2005, refers to Article 2391, paragraph 1, of the Italian Civil Code, which requires the members of the board of directors to disclose, both to the other members of the board and to the statutory auditors, any interest that the members of the board have in a certain transaction of the company on their own account or on behalf of third parties, specifying its nature, terms, origin and scope.

A managing director who has an interest in a certain transaction of the company must abstain from it, referring it to the determination of the entire board.

In both cases, the resolution of the board of directors must adequately justify the reasons and benefits of the transaction.

Art. 2632 of the Italian Civil Code Fictitious capital formation

There are three types of conduct ascribable to directors and contributing shareholders: fictitious formation or increase of the company's capital by allocating shares or quotas for an amount lower than their nominal value; reciprocal subscription of shares or quotas; significant overvaluation of contributions in kind, receivables, or of the company's assets in the case of transformation. In order to protect creditors, the provision sanctions conduct that undermines the integrity of the share capital when being formed and increased, preventing it’s so-called “dilution” or the establishment of companies without adequate capital.

Art. 2633 of the Italian Civil Code Improper distribution of company assets by liquidators

This is an offence committed by liquidators who cause damage to creditors by distributing the company's assets among the shareholders or by failing to set aside the sums necessary to satisfy them before the creditors have been satisfied.

The offence exists only if the conduct described results in damage to creditors, and is nullified if the

damage suffered by creditors is compensated before the trial.

Article 2635, *paragraph 3*, *of the Italian Civil Code Bribery between private individuals*

This offence was recently amended by Italian Legislative Decree no. 38 of 15/03/2017. The offence was previously one of damage, punishing the criminal conduct of directors, general managers, financial reporting officers, statutory auditors and liquidators who, as a result of giving or promising money or other benefits for themselves or others, performed or failed to perform actions in breach of the obligations inherent in their office or the obligations of loyalty, causing damage to the company. The new offence is instead constructed in terms of an offence of mere conduct. Such conduct currently consists in soliciting or receiving, including through an intermediary, undue money or other benefits for oneself or for others or accepting a promise thereof in order to perform or fail to perform an action in breach of the obligations inherent in the office of director, general manager, financial reporting officer, statutory auditor or liquidator or in breach of the obligations of loyalty arising from holding the aforementioned offices. Such acts committed by a person who performs management functions within the organisational framework of the company or private body other than those of the aforementioned persons are also punishable. The penalty is reduced if the offence is committed by a person subject to the direction or supervision of one of the aforementioned persons. With Italian Law no. 3/2019 the offence in question has become automatically prosecutable, and accordingly a complaint/report is sufficient to trigger criminal proceedings, possibly also under Italian Legislative Decree no. 231/2001.

Article 2635-bis of the Italian Civil Code Incitement to bribery between private individuals

The article in question was introduced by Italian Legislative Decree no. 38/2017 and provides for an offence in two scenarios. The first consists in the offer or promise of undue money or other benefits to senior persons (directors, general managers, financial reporting officers, statutory auditors; liquidators) or persons with management functions in companies or private entities aimed at the performance or omission of an act in breach of the obligations inherent in the office or of loyalty obligations, when the offer or promise is not accepted. The second scenario provides that directors, general managers, financial reporting officers, statutory auditors and liquidators of companies or private entities, as well as those who work for them and perform management functions, solicit for themselves or for others, including through third parties, a promise or donation of money or other benefits in order to perform or not perform an act in breach of the obligations inherent in their office or the obligations of loyalty, if the solicitation is not accepted.

In both cases, the penalties for bribery between private individuals apply, but reduced by one third. Italian Law no. 3 of 9 January 2019 (the so-called Anti-corruption Law) amended this article by eliminating the lawsuit as a condition for prosecution.

Art. 2636 of the Italian Civil Code Illicit influence on the shareholders' meeting

Influence is the determination by simulated or fraudulent acts of the majority in a shareholders' meeting in order to obtain an undue benefit for oneself or others. The use of the word “determine” emphasises that the conduct consists in a causal contribution to the formation of the majority, ruling out the possibility of mere influence.

Art. 2637 of the Italian Civil Code Agiotage

This offence envisages the dissemination of false information or the carrying out of simulated transactions or other artifices that are concretely likely to cause a significant alteration in the price of unlisted financial instruments or for which no application for admission to trading on a regulated market has been submitted, or to have a significant effect on the public's confidence in the financial stability of banks or banking groups. This is a common offence for which the 2002 reform unified a multiplicity of aspects in order to make the offence more definite. The protected legal assets are the general interests of the public economy and the smooth operation of the market.

Article 2638, paragraphs 1 and 2 of the Italian Civil Code Obstructing the exercise of the functions of public supervisory authorities

The offence in question may occur in two different scenarios. In the first, directors, general managers, financial reporting officers, statutory auditors and liquidators of companies or entities and other persons subject by law to public supervisory authorities or bound by obligations towards them, who, in communications to the aforementioned authorities required by law, in order to hinder the exercise of their supervisory functions state material facts not corresponding to the truth, even if subject to assessment, concerning the economic, equity or financial situation of the parties subject to supervision, or for the same purpose use other fraudulent means to wholly or partially conceal facts that they should have disclosed concerning such situation.

The second scenario, on the other hand, occurs irrespective of the purpose pursued by such persons, but only if the activity of the public supervisory authority is actually obstructed by their conduct of whatever nature, even by failing to take action.

Note also that Italian Legislative Decree no. 180 of 2015 added paragraph 3-*bis*, according to which "for the purposes of criminal law, the resolving authorities and functions referred to in the decree transposing Directive 2014/59/EU are equated to supervisory authorities and functions".

Pursuant to the transposing decree, i.e. Italian Legislative Decree no. 254 of 30 December 2016, the authority vested with resolving powers is the Bank of Italy. Moreover, resolving powers are understood to be those conferred on that authority to be able to initiate a restructuring process in the event of a bank crisis in order to avoid the interruption of services offered and the liquidation of the bank.

- **Article 25-quater – Crimes for the purpose of terrorism or subversion of the democratic order**

Article 25-quater is an open regulation that punishes offences with the purpose of terrorism or subversion of the democratic order as envisaged in the Italian Criminal Code, in special laws or in violation of the New York International Convention of 9 December 1999.

The cited regulation does not refer to specific types of crimes, thus showing some deficiencies in terms of definiteness. The category of offences refers to a multiplicity of crimes, which can be committed in a variety of ways.

More specifically, the range of offences covered by Articles 270-bis and 270-sexies of the Italian Criminal Code includes a series of actions ranging from the promotion, establishment, organisation or financing of

associations intended to carry out violent acts with terrorist and/or subversive aims, to assisting associated persons for the purposes of terrorism, recruiting individuals for the commission of acts of violence and/or sabotage linked to terrorist objectives, training and preparing these individuals in the use of weapons and offensive tools, and even to the general actions defined in a catch-all provision as having "terrorist purposes" (Article 270-sexies of the Italian Criminal Code).
In any case, beyond the individual offences, Article 25-quater of Italian Legislative Decree no. 231/2001 makes a general "open" reference to all current and future cases of terrorist and subversive crimes.
In the corporate sphere, the risk cannot be excluded a priori, especially if one considers that the New York Convention also considers indirect (but still malicious) economic support for national or international terrorist organisations or groups to be a criminal offence.
In fact, criminal liability (and therefore the possible administrative liability of the company for the offence) arises not only against the person who carries out the conduct described in the individual offence, but also against the person who contributes to the offence by making a material or moral contribution to its commission.

- **Article 25-quater.1 – Female genital mutilation**

Article 583-bis of the Italian Criminal Code Female genital mutilation

In order to outlaw female genital mutilation (the provision specifies that clitoridectomy, excision and infibulation and any other practice causing the same effects are to be considered as such), Italian Law no. 7 of 2006 introduced Article 583-bis into the Italian Criminal Code, which punishes “anyone who, in the absence of therapeutic needs, causes mutilation of the female genitals” with imprisonment from four to twelve years.
The rationale of the regulation is to sanction entities and facilities (such as health facilities, voluntary organisations, etc.) that are responsible for performing prohibited mutilations. The offence in question essentially relates to those companies whose typical corporate purpose is the provision of health, welfare, voluntary etc. services (with particular attention to establishments in which gynaecological-obstetric surgery is performed).

- **Article 25-quinquies – Crimes against the individual**

Article 600 of the Italian Criminal Code Enslavement or maintenance in slavery or servitude.

The offence consists in the exercise of a power of ownership or continuous subjection over a person in order to compel them to perform labour or sexual services or otherwise to exploit them.

*Article 600-*bis *of the Italian Criminal Code Child prostitution*

Paragraph 1 of this article makes it a criminal offence for anyone to recruit or induce into prostitution a person under 18 years of age, or to promote, exploit, manage, organise or control the prostitution of a person under 18 years of age, or to profit from it. Paragraph 2 also provides for the punishment on a subsidiary basis of anyone who engages in sexual acts with a child between 14 and 18 years of age in exchange for a consideration of money or other benefit, even if only promised.

Article 600-ter of the Italian Criminal Code Child pornography

This provision penalises a range of actions such as the organisation of pornographic performances or shows or the production of pornographic material using minors under the age of 18, or recruiting or inducing minors to participate in pornographic performances or shows, or otherwise profiting from the aforementioned performances, or selling the aforementioned pornographic material.

Apart from these cases, the same provision also penalises anyone who distributes, disseminates or publicises the aforementioned pornographic material by any means, including online, or who distributes or disseminates news or information aimed at the solicitation or sexual exploitation of minors, as well as anyone who offers or transfers the pornographic material in question to others, even free of charge. Finally, there is also a penalty for those who attend performances or shows involving minors.

Article 600-quater of the Italian Criminal Code Possession of pornographic material
This refers to those who dispose of or procure child pornography.

Article 600-quater.1 of the Italian Criminal Code Virtual pornography
The offence establishes the punishability of conduct relating to the production, trade, dissemination, transfer and purchase of pornographic material made with the use of minors under the age of 18, even if the conduct in question relates to virtual images.

In the last paragraph, the legislature specifies the notion of virtual images: they must be realised by means of graphic processing techniques that are not associated in whole or in part with real situations, whose quality of representation makes non-real situations appear to be real.

Article 600-quinquies of the Italian Criminal Code Tourism aimed at the exploitation of child prostitution
This offence punishes the conduct of those who organise or promote trips for the purpose of enjoying child prostitution.

Article 601 of the Italian Criminal Code Human trafficking
This provision punishes anyone who “recruits, brings into the territory of the State, transfers out of it, transports, transfers authority over, harbours one or more persons in the conditions set out in Article 600, or engages in the same conduct with respect to one or more persons by means of deceit, violence, threats, abuse of authority or by taking advantage of a situation of vulnerability, physical or mental inferiority or need, or by promising or giving money or other benefits to the person having authority over them with a view to inducing or coercing them to work, to engage in sexual or begging activities or in any case to engage in unlawful activities involving their exploitation or to submit to the removal of organs”, or engages in such conduct against minors.

Italian Legislative Decree no. 24/2014, "Implementation of Directive 2011/36/EU on the prevention of trafficking in human beings and the protection of victims" which transposed Directive 2011/36/EU, introduced significant changes to the article in question, which was completely rewritten. It specifically outlined how human trafficking occurs, and removed the aggravating circumstance with special effects, which under the previous wording applied when the victims of crimes (under Article 601 of the Penal Code) were minors under the age of 18 and the crimes were aimed at exploiting prostitution and organ trafficking.

For the offence referred to in Article 601 of the Italian Criminal Code, the punishment of imprisonment is 8 to 20 years, even where the victim is a minor. In fact, the last paragraph of said Article does not provide for any aggravation of the punishment where the victim is under 18 years of age, adding also that this punishment applies even outside the methods referred to in the first paragraph. It is clear from the amended Article 601 of the Italian Criminal Code how the legislature wished to comply with the provisions of Article 2, paragraph 1, of Directive 36/2011/EU, not only by broadening the concept of the crime of trafficking, but also by specifying the different ways in which it is carried out.
Furthermore, in order to further curb the phenomenon of human trafficking, Italian Legislative Decree no. 21 of 1 March 2018 provided (in Article 2, paragraph 1, letter f)) for the introduction of two new paragraphs after the second of Article 601 that punish the commander or officer of the ship carrying the persons referred to in the provision with a specific aggravating circumstance.

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

Article 603-bis of the Italian Criminal Code Illegal intermediation and exploitation of labour
Italian Law no. 199/2016 containing “Provisions on combating the phenomena of undocumented work, exploitation of labour in agriculture and wage realignment in the agricultural sector”, which came into force on 4 November 2016, amended the offence of “Illegal intermediation and exploitation of labour” envisaged in Article 603-bis of the Italian Criminal Code and included it in the list of offences in Italian Legislative Decree no. 231/2001.

Compared to the previous text, which aimed to punish the conduct of those engaged in "an organised activity of mediation, recruiting labour or organising their work characterised by exploitation, through violence, threat, or intimidation, taking advantage of the workers' state of need or necessity", the new provision is certainly broader. In fact, the case in question is currently not subject to the requirement of carrying out “an organised activity of intermediation”, as it affects not only those who “recruit labour for the purpose of assigning it to work for third parties in exploitative conditions”, but also those who “use, hire or employ labour, including through the intermediation referred to in number 1), subjecting workers to exploitative conditions and taking advantage of their state of need”. It should also be added that, compared to the previous case, the use of violence, threats or intimidation are now aggravating circumstances and no longer constituent elements of the offence.

The “exploitation indices” referred to in Article 603-bis of the Italian Criminal Code also assume a broader meaning since some of them are now parametrised, no longer to systematic conduct of underpayment and violation of the rules on working hours, rest, leave and holidays, but to such conduct even if only “repeated”.

Of particular importance is the exploitation index relating to the “existence of violations of occupational safety and hygiene regulations”, which today, unlike before, is also relevant where it is not such as to expose the worker to danger to health, safety or personal safety.

Article 609-undecies of the Italian Criminal Code Solicitation of minors
This crime, introduced by Italian Law no. 172/2012 (ratification of the Lanzarote Convention for the protection

of minors),

applies to anyone who, with the intent to commit the crimes referred to in Articles 600, 600-bis, 600-ter, and 600-quater, even if related to the pornographic material mentioned in Article 600-quater.1, 600-quinquies, 609-bis, 609-quater, 609-quinquies, and 609-octies, solicits a minor under the age of sixteen, unless the act constitutes a more serious crime. In order to avoid questions as to interpretation, the 2012 legislature sought to expressly typify the conduct of solicitation, meaning any action aimed at gaining the trust of a minor through artifice, flattery or threats carried out even through the use of the Internet or other networks or means of communication.

- **Article 25-sexies – Market abuses**

Article 184 Italian Legislative Decree no. 58/1998. Crime of Insider trading

This crime may be committed by two types of persons: persons having inside information by reason of their membership of administrative, management or supervisory bodies of the issuer, their participation in the issuer's capital, or the exercise of a job, profession or function, including public, or office; and persons having inside information by reason of their preparation or execution of criminal activities. The relevant conduct may take place in several ways: buying, selling, or carrying out other transactions in financial instruments, or inducing others to carry out such actions, or communicating inside information to others.

Article 185 Italian Legislative Decree no. 58/1998. Crime of Market manipulation

The offence is committed by disseminating false information or executing simulated transactions or other devices capable of causing a significant alteration in the price of financial instruments.

Article 187-bis of Italian Legislative Decree no. 58/1998. Administrative offence of Insider trading

Article 187-bis of the Consolidated Law on Finance punishes with an administrative sanction both the conduct of primary insiders, already punishable as a criminal offence under Article 184 of the Consolidated Law on Finance, and the conduct of secondary insiders, i.e. those persons who have bought, sold or executed transactions involving listed financial instruments based on inside information they obtained from an “insider”, whereas the corresponding criminal offence only applies to the conduct of primary insiders.

The only difference lies in the fact that conduct by secondary insiders is punishable both on the grounds of intent and if committed negligently.

Article 187-ter of Italian Legislative Decree no. 58/1998. Administrative offence of Market manipulation

This provision broadens the relevant conduct for the purposes of the applicability of the administrative sanctions with respect to those prosecuted for the corresponding criminal offence set out in the preceding Article 185, and punishes anyone who, using any medium, disseminates information, rumours or false or misleading news that provide or "are likely to provide false or misleading indications concerning financial instruments", regardless of the effects and without therefore requiring, for the purposes of punishability, that the false information be of a concrete nature to alter prices, as envisaged by Article 185.

- **Article 25-septies – Manslaughter or grievous or very grievous bodily harm committed in**

breach of occupational health and safety regulations

Article 589 of the Italian Criminal Code Manslaughter committed in violation of the regulations on accident prevention and health and safety at work

Article 25-septies of Italian Legislative Decree no. 231/2001 outlines two types of offence committed by the entity in relation to the crime of manslaughter referred to in Article 589 of the Italian Criminal Code, sanctioned with different penalties in terms of the prescribed limits and proportionate to the seriousness of the act, each of which relates to the commission of two distinct criminal offences. The first consists of the crime referred to in Article 589 of the Italian Criminal Code committed in breach of Article 55, paragraph 2, of Italian Legislative Decree no. 81/2008. The second relates to the same offence committed in breach of the regulations on the protection of health and safety at work. For these offences, both manslaughter and grievous and very grievous bodily harm dealt with below, committed in breach of the regulations on the protection of health and safety at work, the criterion of "benefit" as referred to in Article 5 of Italian Legislative Decree no. 231/2001 for the entity is represented by the saving of the expenses necessary to implement the precautionary regulations laid down by law for the prevention of accidents in the workplace.

Article 590 of the Italian Criminal Code Serious or grievous bodily harm committed in breach of the rules on accident prevention and health and safety at work

The Article in question punishes anyone who, in violation of the regulations for the prevention of accidents at work, causes serious injury (life-threatening or illness lasting more than 40 days) or very serious injury (incurable illness, loss of a sense, limb or organ, deformation or disfigurement of the face) to others.

- **Article 25-octies – Receipt of stolen goods, money laundering and use of money, goods or other benefits of unlawful origin, and self-laundering**

Italian Legislative Decree no. 195 of 8 November 2021 transposed Directive (EU) 2018/1673 on combating money laundering by means of criminal law into Italian law.

Several broad changes were thus made (i.e. the offences of receiving stolen goods, money laundering, use of money, goods or utilities of unlawful origin and self-laundering set out respectively in Articles 648, 648-bis, 648-ter and 648-ter.1 of the Italian Criminal Code), extending the range of predicate offences to include violations (provided that they are punished with a prison term of no more than one year or a minimum of six months) and including negligent offences as predicate offences for money laundering and self-laundering.

The expansion of the scope of criminal relevance of the offences of receiving stolen goods, money laundering, use of money, goods or benefits of unlawful origin, and self-laundering corresponds to a parallel expansion of the scope of relevance of the respective administrative offences dependent on crime referred to in Article 25-octies of Italian Decree no. 231/2001, and consequently of the scope of the punitive risk that entities are called upon to govern.

Article 648 of the Italian Criminal Code Receiving stolen goods

This offence punishes any person who, in order to procure a benefit for themself or others, acquires,

receives or conceals money or goods resulting from an offence, or who interferes to have them acquired, received or concealed.

Article 648-bis of the Italian Criminal Code Money laundering
Money laundering is the activity of anyone who replaces or transfers money, goods or other benefits originating from an offence committed with criminal intent, or in any case carries out other transactions aimed at obstructing the identification of their origin. Paragraph 2 of the article in question provides for a specific aggravating circumstance if the act is committed in the exercise of a professional activity, i.e. an activity carried out on a stable basis and for which financial compensation is provided.

Article 648-ter of the Italian Criminal Code Use of money, goods or benefits of unlawful origin
This is a secondary scenario with respect to the preceding cases and takes the form of the use of money, goods or other benefits derived from crime in economic or financial activities.

Article 648-ter.1 of the Italian Criminal Code Self-laundering
Italian Law no. 186 of 15 December 2014 resulted in the inclusion of Article 648-ter.1 in the Italian Criminal Code, immediately after the offences of money laundering and use of money, goods or benefits of unlawful origin. The provision provides for the punishment of anyone who has committed or conspired to commit an offence with criminal intent and subsequently used, replaced or transferred the proceeds (money, goods or other benefits) of the commission of the aforementioned offence in economic, financial, entrepreneurial or speculative activities in such a way as to concretely hinder the identification of their criminal origin. However, conduct whereby such goods or other benefits are intended for mere use or personal enjoyment is not punishable. An aggravating circumstance is the occurrence of such conduct in the exercise of a banking, financial or any other professional activity. The penalty is instead reduced by up to half for those who have made effective efforts to prevent the conduct from leading to further consequences, or to secure evidence of the crime and the identification of goods, money and benefits derived from the offence.

- **Article 25 octies.1 – Crimes relating to non-cash payment instruments and fraudulent transfer of valuables**

On 29.11.2021, Italian Legislative Decree no. 184 of 8 November 2021 on “Implementation of Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA” was published in the Official Journal.
This update introduced Article 25-octies.1 into Italian Legislative Decree no. 231/2001, extending the administrative liability of entities to include the following offences:

Article 493-ter of the Italian Criminal Code Misuse and falsification of credit and payment cards
This offence punishes the conduct of undue use, falsification and alteration not only of "credit or payment cards, or any other similar document enabling the withdrawal of cash or the purchase of goods or the provision of services”, but also of “any other non-cash means of payment”.
The object of the conduct, therefore, which until today was represented by “material” payment instruments, was extended as a result of the amendments made to that article by Italian Legislative

Decree no. 184/2021 to all non-cash payment instruments, which may also include intangible instruments.

Article 493-quater of the Italian Criminal Code Possession and distribution of computer equipment, devices or programs aimed at committing offences involving non-cash payment instruments

This new offence punishes with a term of imprisonment of up to two years and a fine of up to €1,000 (unless the act constitutes a more serious offence) anyone who manufactures, imports, exports, sells, transports, distributes, makes available or in any way procures for themself or others equipment, devices or computer programs that, by virtue of their technical characteristics or design, are primarily intended to commit offences involving non-cash means of payment, or are specifically adapted for the same purpose.

This is a common offence, punishable with specific intent, since the aforementioned conduct becomes a criminal offence when it is carried out with the specific aim of making use of the instruments indicated or of enabling others to use them in the commission of offences involving non-cash payment instruments.

Article 512-bis of the Italian Criminal Code Fraudulent transfer of valuables

With the inclusion of this provision, the legislature intended to criminalise the conduct of anyone who fraudulently transfers money or other assets to others for the purpose of avoiding the application of confiscation (Article 240) and other means of asset protection, or for the purpose of facilitating the commission of the offences of receiving stolen goods, money laundering and self-laundering.

This is clearly a sweep-up provision, accompanied moreover by an express subsidiarity clause ("unless the act constitutes a more serious offence") intended to cover the conduct of those who do not actually transfer the ownership of the goods or money but do so fictitiously, thus continuing to have their material availability and thus continuing to enjoy them. Since the fictitious holder is not punished by the provision, it is inferred that it constitutes a case of improper multi-person offence, since the collaboration of a third party is required for the offence to be committed but by legislative choice such third party is not punished. Case law has attempted to fill the gap by providing for the punishability of false owner under Article 110 of the Italian Criminal Code, but has not been confirmed by legal theory, since the legislature's intention was to specifically omit the provision. Of course, the false owner could still be punished under Article 648-bis, but with a much harsher punishment than that of the false seller, with obvious unequal treatment for conduct placed on a level playing field.
On this point, Italian Decree-Law no. 19 of 2 March 2024 (in force since 02/03/24) introduced the following specification to this Article: *"the same penalty set out in the first paragraph shall apply to anyone who, in order to evade the provisions on anti-mafia documentation, fictitiously attributes to others the ownership of businesses, company quotas or shares or of corporate offices if the business owner or company participates in procedures for the award or execution of contracts or concessions".*

Article 640-ter of the Italian Criminal Code Computer fraud (in cases aggravated by the transfer of money, instrument with monetary value or virtual currency)

With Italian Legislative Decree no. 184/2021, the legislature took action on the crime of computer fraud under Article 640-ter of the Italian Criminal Code by introducing a new aggravating circumstance in paragraph 2, in cases where the alteration of the computer system results in the transfer of money, instruments of monetary value or virtual currency.

- **Article 25-novies Copyright infringement**

Article 171, paragraph 1, letter a-bis) of Italian Law no. 633 of 22 April 1941: Making available of a protected intellectual work or part thereof to the public via electronic networks by means of connections of any kind

The punishable conduct consists in making protected intellectual works or parts thereof available to the public by placing them on an electronic network with any connection. This regulation protects the financial interest of the work's author, who could see their profit expectations frustrated in the event of free circulation of their work on the internet.

Article 171, paragraph 3, of Italian Law no. 633 of 22 April 1941: Offences referred to in the preceding paragraph committed in respect of works of others not intended for publication where their honour or reputation is offended

The punishable conduct consists in making works of others not intended for publication available to the public by placing them on an electronic network with any connection, or usurping the authorship of such work, or deforming, mutilating or otherwise modifying the work, provided that such conduct offends the honour and reputation of the author.

Article 171-bis, paragraph 1, of Italian Law no. 633 of 22 April 1941: Unauthorised duplication, for profit, of computer programs; import, distribution, sale or possession for commercial or business purposes or rental of programs contained on media not marked by the SIAE; preparation of means to remove or circumvent protection devices of computer programs

Article 171-bis, paragraph 2, of Italian Law no. 633 of 22 April 1941: Reproduction, transfer to another medium, distribution, communication, presentation or demonstration in public of the contents of a database; extraction or re-use of the database; distribution, sale or lease of databases

The provision punishes two types of conduct: a) the unauthorised duplication, for profit, of computer programs, or the import, distribution, sale, possession for commercial or entrepreneurial purposes or rental of programs contained on media not marked by the SIAE; b) the reproduction on media not marked by the SIAE, the transfer to another medium, the distribution, communication, presentation or demonstration in public of the contents of a database in breach of the provisions of Articles 64-quinquies and 64-sexies; or the performance, extraction or reuse of the database in breach of the provisions of Articles 102-bis and 102-ter, or the distribution, sale or rental of a database.

Article 171-ter of Italian Law no. 633 of 22 April 1941: Unauthorised full or partial duplication, reproduction, transmission or dissemination in public by any process of intellectual works intended for television, cinema, sale or rental of records, tapes or similar media or any other medium containing phonograms or videograms of musical, cinematographic or similar audiovisual works or sequences of moving images; literary, dramatic, scientific or educational, musical or dramatic-musical, multimedia works, even if included in collective or composite works or databases; unauthorised reproduction, duplication, transmission or dissemination, sale or trade, transfer for any reason whatsoever or unauthorised importation of more than 50 copies or specimens of works protected by copyright and related rights; placement in a system of electronic networks with any connection of an original work protected by copyright or part thereof

The offence exists if the conduct described is carried out for non-personal use.

Article 171-septies of Italian Law no. 633 of 22 April 1941: Failure to notify the SIAE of the identification details of unmarked media or false declaration

This regulation punishes: a) producers or importers of media not subject to the marking referred to in Article 181-bis who do not communicate the data necessary for the unambiguous identification of the media to the SIAE within 30 days from the date of placement on the market in Italy or of importation; b) anyone who falsely declares the fulfilment of the obligations referred to in Article 181-bis, paragraph 2.

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

- **Article 25-decies Inducement not to make statements or to make false statements to judicial authorities**

Article 377-bis of the Italian Criminal Code Inducement not to make statements or to make false statements to the judicial authority The article in question punishes the actions of anyone who through violence, threat or offering money or other benefits induces a person called to testify before the judicial authority to withhold their statements or make false statements when the person has the right not to answer, unless the act constitutes a more serious crime. The rationale of the regulation is to protect the public interest in the proper conduct of judicial proceedings, avoiding interference aimed at disrupting the search for truth in court.

- **Article 25-undecies Environmental** c**rimes**

OFFENCES UNDER THE ITALIAN CRIMINAL CODE

Article 452-bis of the Italian Criminal Code Environmental pollution (Article introduced as a predicate offence by Italian Law no. 68/2015 "Ecocrimes Law")

The regulation provides for punishment for anyone who unlawfully causes significant and measurable impairment (injurious conduct characterised by the production of at least potentially irreversible damage) or deterioration (remediable conduct that nonetheless causes non-irrelevant damage):

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

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

Article 452--quater of the Italian Criminal Code Environmental disaster (Article introduced as a predicate offence by Italian Law no. 68/2015 "Ecocrimes Law")

Apart from the cases envisaged in Article 434 of the Italian Criminal Code (which penalises the collapse of buildings or other malicious disasters), anyone who illegally causes an environmental disaster is liable under criminal law. The regulation provides the following precise definitions of the concept of an

environmental disaster under criminal law:

- Irreversible alteration of the balance of an ecosystem.
- Alteration of the balance of an ecosystem whose elimination is particularly costly and can only be achieved by exceptional measures.
- The offence to public safety by reason of the significance of the act in terms of the extent of the impairment or its damaging effects or the number of persons offended or exposed to danger.

Here again, an aggravating factor with common effect is envisaged in the event that the "disaster occurs in a protected natural area or an area subject to landscape, environmental, historical, artistic, architectural or archaeological constraints, or to the detriment of protected animal or plant species".

Article 452- quinquies of the Italian Criminal Code Negligent offences against the environment (Article introduced as a predicate offence by Italian Law no. 68/2015 "Ecocrimes Law")

"If any of the acts referred to in Articles 452-bis and 452-quater is committed as a result of negligence, the penalties envisaged in those Articles shall be reduced by between one- and two-thirds. If the commission of the acts referred to in the preceding paragraph results in the danger of environmental pollution or environmental disaster, the penalties shall be further reduced by one-third."

Article 452-sexies of the Italian Criminal Code Trafficking and abandonment of highly radioactive material (Article introduced as a predicate offence by Italian Law no. 68/2015 "Ecocrimes Law")

Unless the act constitutes a more serious offence, criminal liability shall be imposed on "any person who unlawfully disposes of, acquires, receives, transports, imports, exports, procures for others, holds, transfers, abandons or disposes of highly radioactive material". The penalty shall be increased if such conduct results in a danger compromising or deteriorating the water or air, or large or significant portions of the soil or subsoil or an ecosystem, biodiversity, including agricultural biodiversity, flora or fauna. Conduct causing danger to life or limb is a further aggravating factor.

Article 452-octies of the Italian Criminal Code Aggravating circumstances (Article introduced as a predicate offence by Italian Law no. 68/2015

"Ecocrimes Law")

This provision provides for an increase in penalties in the event of:

- A criminal conspiracy pursuant to Article 416 of the Italian Criminal Code is exclusively or concurrently directed towards committing one of the environmental offences referred to above.
- A mafia-type association within the meaning of Article 416-bis of the Italian Criminal Code is aimed at committing one of the new environmental offences or at acquiring the management or control of economic activities, concessions, authorisations, contracts or public services in the environmental field.
- The conspiracy pursuant to Article 416 or 416-bis of the criminal code includes public officials or persons in charge of a public service who perform functions or services in the environmental field.

Article 727-bis of the Italian Criminal Code Killing, destroying, capturing, taking or keeping specimens of

protected animal or plant species.

Killing, capturing or keeping specimens belonging to a protected wild animal species (unless in negligible quantities and there is a negligible impact on the species' conservation status).

Article 733-bis of the Italian Criminal Code Destruction or deterioration of habitats within a protected site

Destruction, taking or keeping specimens belonging to a protected wild plant species (unless in negligible quantities and there is a negligible impact on the species' conservation status).

OFFENCES UNDER ITALIAN LEGISLATIVE DECREE NO. 152 OF 3 APRIL 2006 - ENVIRONMENTAL REGULATIONS WATER

Article 137 - Discharges of industrial waste water containing hazardous substances; discharges to soil, subsoil and groundwater; discharges to seawater from ships or aircraft.

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

WASTE

Italian Legislative Decree no. 152/06, Article 256 - Unauthorised waste management.

- *Article 256, paragraph 1, letter a)*: non-hazardous waste management (collection, transport, disposal, sale, brokering) in the absence of authorisation, registration or communication.
- *Article 256, paragraph 1, letter b)*: hazardous waste management (collection, transport, disposal, sale, brokering) in the absence of authorisation, registration or communication.
- *Article 256, paragraph 3,* first sentence: construction or operation of a waste landfill without authorisation.
- *Article 256, paragraph 3*, second sentence: creation or management of a waste landfill, including

partly hazardous waste, without authorisation.

- *Article 256, paragraph 4*: failure to comply with the requirements contained in or referred to in authorisations or failure to meet the requirements and conditions for registrations or communications.
- *Article 256, paragraph 5*: mixing of waste without authorisation.
- *Article 256, paragraph 6*, first sentence: temporary storage of hazardous medical waste at the place of production in breach of the provisions of Italian Presidential Decree no. 254 of 15 July 2003.

RECLAMATION OF SITES

- Article 257, paragraph 1: Failure to carry out reclamation operations in the event of pollution of the soil, subsoil, surface water or groundwater, with risk threshold concentrations (RTCs) being exceeded. Failure to notify the competent authorities of the occurrence of an event potentially liable to contaminate a site.
- Article 257, paragraph 2: failure to carry out reclamation operations in the event of pollution of the soil, subsoil, surface water or groundwater caused by hazardous substances, with risk threshold concentrations (RTCs) being exceeded.

BREACH OF REPORTING OBLIGATIONS, MANDATORY RECORD KEEPING AND FORMS

- Article 258, paragraph 4, second sentence: preparation of a waste analysis certificate with false information on the nature, composition and chemical and physical characteristics of the waste or use of a false certificate during the transport of waste.

ILLEGAL TRAFFICKING OF WASTE

- *Article 259, paragraph 1:* "Whoever carries out a shipment of waste constituting illegal traffic pursuant to Article 26 of Regulation (EEC) no. 259/93 of 1 February 1993, or carries out a shipment of waste listed in Annex II of said Regulation in violation of Article 1, paragraph 3, letters a), b), c) and d) 87 of said Regulation, shall be punished by a fine ranging from €1,550 to €26,000 and imprisonment of up to two years. The penalty is increased in the case of the shipment of hazardous waste".

ACTIVITIES ORGANISED FOR THE ILLEGAL TRAFFICKING OF WASTE.

- *Article 260, paragraph 1, 2*: "Whoever, in order to obtain an undue benefit, with several operations and through the setting up of means and continuous organised activities, sells, receives, transports, exports, imports or in any case illegally handles large quantities of waste shall be punished by imprisonment from one to six years. If high-level radioactive waste is involved, the penalty is imprisonment of three to eight years".

COMPUTERISED WASTE TRACKING CONTROL SYSTEM

- *Article* 260-bis, paragraphs 6 and 7, second and third sentences, and 8, first and second

sentences: "The penalty laid down in Article 483 of the Italian Criminal Code shall apply to any person who, in the preparation of a waste analysis certificate used within the framework of the waste traceability control system, provides false information on the nature, composition and chemical/physical characteristics of the waste, and to any person who enters a false certificate in the data to be submitted for waste traceability purposes.... The penalty of Article 483 of the Italian Criminal Code shall apply in the case of transport of hazardous waste. The latter penalty also applies to anyone who during transport uses a waste analysis certificate containing false information on the nature, composition and chemical and physical characteristics of the waste transported. A transporter who accompanies the transport of waste with a paper copy of the SISTRI - AREA Movement form that has been fraudulently altered is liable to the penalty envisaged in Articles 477 and 482 of the Italian Criminal Code. The penalty is increased by up to three times in the case of hazardous waste".

The criminal conduct concerned the fraudulent management of the waste traceability control system introduced into our legal system in 2009 (called Sistri, which provides for a series of procedures aimed at ensuring the digital tracking of waste, from the moment of its production to the moment of its disposal or final recovery).

There are three alternative offences:

a) Falsification of the waste analysis certificate concerning the nature, composition and chemical and physical characteristics of the waste transported. Its entry in Sistri.
b) Transport of waste with a waste analysis certificate containing false information on the nature, composition and chemical and physical characteristics of the waste transported.
c) Transport of waste with a fraudulently altered Sistri card.

However, it is specified that the penalties referred to in Articles 260-*bis* and 260-*ter* of Italian Legislative Decree no. 152 of 2006 (i.e. the sanctions relating to SISTRI) are no longer applicable as from 1 January 2019. However, administrative liability remains for offences committed before that date, since the principle of *non-retroactivity* of the regulation (even if more favourable) applies to the *system of administrative sanctions*.

With the conversion law of the simplification decree – i.e. Italian Law no. 12 of 11 February 2019 – new measures were in fact adopted on the traceability of environmental data concerning the production and transport of waste.

SISTRI (*Sistema di controllo della Tracciabilità dei Rifiuti*, or Waste Tracking Control System) was officially discontinued with effect from 1 January 2019, with the consequence that the relevant contributions are not due for any reason.

In place of the discontinued SISTRI, the aforementioned law introduced a new electronic tracking system called the National Electronic Waste Tracking Register, whose operating procedures and deadlines for the registration of required or voluntarily participants will be established by a subsequent interministerial decree.

Now, according to the new provisions, those obliged to participate in the new electronic tracking system are:

1. Entities and companies that treat waste.
2. Producers of hazardous waste.
3. Entities and undertakings that collect or transport hazardous waste on a professional basis.

4. Entities and undertakings acting as traders and brokers of hazardous waste.
5. Consortia set up for the recovery and recycling of particular types of waste.
6. Persons referred to in Article 189, paragraph 3, of the Consolidated Environmental Act, with reference to *non-hazardous waste*, namely:

- In addition to all the subjects mentioned above.
- Producers of non-hazardous waste carrying out artisanal, industrial and water treatment operations with more than ten employees.

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

AIR PROTECTION SANCTIONS

Article 279, paragraph 5 - Emissions into the atmosphere: Emissions into the atmosphere in violation of the emission limit values, with simultaneous exceeding of the air quality limit values stipulated by current law.

OFFENCES UNDER ITALIAN LAW NO. 150 OF 7 FEBRUARY 1992 - INTERNATIONAL TRADE IN ENDANGERED ANIMAL AND PLANT SPECIES

Article 1, paragraph 1:

- Import, export or re-export of specimens belonging to species listed in Annex A of Regulation (EC) no. 338/97 without the required certificate or permit or with an invalid certificate or permit.
- Non-compliance with the requirements for the safety of the specimens specified in the permit or certificate.
- Use of the aforementioned specimens in a manner contrary to the requirements contained in the authorisations or certificates issued together with the permit or certificate.
- Transport of such specimens without the prescribed permit or certificate.
- Trade in artificially propagated plants (among those listed in Annex A to Regulation (EC) no. 338/97) contrary to the requirements laid down in Article 7, paragraph 1, letter b) of Regulation (EC) no. 338/97 and Regulation (EC) no. 939/97.
- Possession, use for profit, purchase, sale, display or possession for sale or commercial purposes, offer for sale or transfer of specimens without the required documentation.

Article 1, paragraph 2:

Recidivism with respect to the conduct specifically referred to in Article 1,

paragraph 1. *Article 2, paragraph 1:*

- Import, export or re-export of specimens belonging to species listed in Annexes B and C of Regulation (EC) no. 338/97 without the required certificate or permit or with an invalid certificate or permit.
- Non-compliance with the requirements for the safety of the specimens referred to above and specified in the permit or certificate.
- Use of the aforementioned specimens in a manner contrary to the requirements contained in the authorisations or certificates issued together with the permit or certificate.

- Transport of such specimens without the prescribed permit or certificate.
- Trade in artificially propagated plants (among those listed in Annexes B and C to Regulation (EC) no. 338/97) contrary to the requirements laid down in Article 7, paragraph 1, letter b) of Regulation (EC) no. 338/97 and Regulation (EC) no. 939/97.
- Possession, use for profit, purchase, sale, display or possession for sale or commercial purposes, offer for sale or transfer of specimens without the required documentation, limited to the species listed in Annex B of Regulation (EC) no. 338/97.

Article 2, paragraph 2.

Recidivism with respect to the conduct specifically referred to in Article 2,

paragraph 1. *Article 6, paragraph 4.*

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

Article 3-bis, paragraph 1.

- Forgery or alteration of certificates or permits.
- False statements or communication of information in order to acquire a certificate or permit.
- Use of a forged, falsified or invalid certificate or permit or one that has been altered without authorisation.
- Failure to notify the importer or false notification.

OFFENCES UNDER ITALIAN LAW NO. 549 OF 28 DECEMBER 1993 - MEASURES TO PROTECT THE STRATOSPHERIC OZONE AND THE ENVIRONMENT

Article 3, paragraph 6.

Authorisation of systems involving the use of the substances listed in Table A annexed to Italian Law 549/1993, subject to the provisions of Reg. EC no. 3093/94.

OFFENCES UNDER ITALIAN LEGISLATIVE DECREE NO. 202 OF 6 NOVEMBER 2007 - IMPLEMENTATION OF DIRECTIVE 2005/35/EC ON POLLUTION FROM SHIPS

Article 8, paragraphs 1 and 2 - Intentional pollution of the seas.

Deliberate discharge into the sea of the polluting substances referred to in Annexes I and II of Marpol Convention 73/78. Aggravating circumstance in the event of permanent or in any event particularly serious damage to water quality, animal or plant species or parts thereof.

Article 9, paragraphs 1 and 2 - Negligent pollution of the seas.

Negligent discharge into the sea of the pollutants listed in Annexes I and II of Marpol Convention 73/78. Aggravating circumstance in the event of permanent or in any event particularly serious damage to water quality, animal or plant species or parts thereof.

- **Article 25-duodecies - Employment of undocumented third-country nationals**

Article 22, paragraph 12-bis of Italian Legislative Decree no. 286/1998

Paragraph 12 of Article 22 of Italian Legislative Decree no. 286/1998 establishes a penalty for employers who employ foreign workers without a residence permit, or whose permit has expired and whose renewal, revocation or cancellation has not been requested within the legal deadlines.

Article 12-bis, expressly referred to in Article 25-duodecies of Italian Legislative Decree no. 231/2001, provides that the penalties set out in paragraph 12 are increased by between one-third and one-half:
a) If the number of workers employed exceeds three.
b) If the workers employed are minors of non-working age.
c) If the employed workers are subjected to other particularly exploitative working conditions as referred to in the third paragraph of Article 603-bis of the Italian Criminal Code.
The Entity can thus only be liable when the offence in question is aggravated by the number of persons employed or by the minor age of those persons, or finally by the performance of work in conditions of serious danger.

Article 12, paragraphs 3, 3-bis, 3-ter and 5 of Italian Legislative Decree no. 286/1998, as amended
Italian Law no. 161/2017 amended Article 25-duodecies of Italian Legislative Decree no. 231/2001 by inserting paragraphs 1-bis, 1-ter and 1-quater, which provide for the punishment of entities in whose interest or benefit the transport of foreigners into the territory of the State is promoted, directed, organised, financed or carried out, or other acts aimed at illegally procuring their entry into the territory of the Italian State or of another State the person is not a citizen of or does not have the right of permanent residence for (Article 12, paragraphs, 3, 3-bis and 3-ter of Italian Legislative Decree 286/1998).

However, as with natural persons, the criminal liability of the entity only arises where one of the further conditions of seriousness set out in Article 12, paragraph 3, of Italian Legislative Decree no. 286/1998 is met: the fact concerns the illegal entry or stay in the territory of the State of five or more persons; the person transported has been exposed to danger to their life or safety in order to procure their illegal entry or stay; the person transported has been subjected to inhuman or degrading treatment in order to procure their illegal entry or stay; the offence is committed by three or more persons acting in complicity with each other or using international transport services or documents that have been forged or altered or in any case illegally obtained; the perpetrators of the offence have weapons or explosive materials at their disposal. The penalty is increased if two or more of the above conditions are met (paragraph 3-bis). Pursuant to Article 12, paragraph 3-ter, the penalty is further increased if the acts are committed for the purpose of recruiting persons for prostitution or in any case for sexual or labour exploitation, or if they concern the entry of minors to be employed in unlawful activities in order to favour their exploitation, or if they are committed for the purpose of profiting from them, even indirectly. A reduced penalty is envisaged if the permanence of illegal immigrants in the territory of the State is facilitated in order to gain an undue benefit from the illegal status of the foreigner or within the scope of the activities described above (Article 12, paragraph 5 of Italian Legislative Decree no. 286/1998).

- **Article 25-terdecies - Racism and Xenophobia**

Article 3, paragraph 3-bis, of Italian Law no. 654 of 13 October 1975 "Ratification and execution of the international convention on the elimination of all forms of racial discrimination, opened for signature in New York on 7 March 1966".
On 12 December 2017, Italian Law no. 167 of 20 November 2017 came into force with "Provisions for the fulfilment of obligations arising from Italy's membership of the European Union - European Law 2017", which introduced new offences as a basis for the administrative liability of entities with the aim of adapting our

regulations to those of the European Union.

Article 5 of the aforementioned European Law introduced into Italian Legislative Decree no. 231/2001 Article 25-terdecies, entitled "Racism and Xenophobia", which provides for the punishability of the entity with respect to the commission of the offence referred to in Article 3, paragraph 3-bis, of Italian Law no. 654/1975.

The article in question punishes participants in organisations, associations, movements or groups whose aims include incitement to discrimination or violence on racial, ethnic, national or religious grounds, as well as propaganda or instigation and incitement, committed in such a way as to give rise to a real danger of dissemination based in whole or in part on the denial, gross trivialisation or condoning – added by European Law 2017 – of the Shoah or crimes of genocide, crimes against humanity and war crimes.
However, it is necessary to specify that the recent Italian Legislative Decree 21/2018, which came into force on 6 April 2018, provided – in Article 7, paragraph 1, letter c) – for the repeal of Article 3 of Italian Law no. 654 of 13 October 1975, as a regulation replaced by Article 604-bis of the Italian Criminal Code, and specifically by paragraph 3, which reproduces the repealed paragraph 3-bis in its entirety without however intervening on Article 25-terdecies of Italian Legislative Decree 231/2001, with an obvious lack of coordination between the two regulations with respect to the offence under consideration.
While bearing in mind the principle of legality set out in Article 2 of Italian Legislative Decree no. 231/2001, which would seem to be in favour of the new 604-bis of the Italian Criminal Code being irrelevant for the purposes of 231, from a prudential point of view the lack of case law precedents in this respect nevertheless leads us to take this case into account.
In concrete terms, it is therefore recommended that:

- The Code of Ethics contain a specific provision for the recipients prohibiting conduct or acts in the exercise of the company's operations that can be construed as a relevant offence for the purposes of the aforementioned 604-bis, paragraph 3.
- Procedures be adopted for the proper management of human resources.
- For companies that use forms of external communication and advertising, special preventive control protocols be introduced to avoid messages that may constitute violations of the aforementioned criminal law.

- **Article 25-quaterdecies Fraud in sporting competitions, unlawful gaming or betting and gambling by means of prohibited devices**

Italian Law no. 39 of 3 May 2019, which came into force on 17/5/2019, provided – in Article 5, paragraph 1 – for the introduction of Article 25-quaterdecies, which provides as follows: "*1. With regard to the commission of the offences referred to in Articles 1 and 4 of Italian Law no. 401 of 13 December 1989, the following fines apply to the entity:*
a) for offences, a fine of up to 500 quotas;
b) for infractions, a fine of up to 260 quotas.
2. In the event of conviction for one of the offences referred to in paragraph 1, letter a), of this Article, the disqualification sanctions envisaged in Article 9, paragraph 2, shall apply for a period of no less than one year".
Article 1 of Italian Law no. 401/1989, to which the aforementioned Article 25-quaterdecies refers, punishes

the offence of fraud in sporting competitions. Article 4, on the other hand, concerns the abusive exercise of gambling or betting.

It is possible to apply disqualifying sanctions only for serious crimes, with a minimum duration of one year.

The offence of sporting fraud punishes *anyone who offers or promises money or other benefits or advantages to any of the participants in a sporting competition organised by the recognised federations in order to achieve a result other than the fair and proper conduct of the competition, or commits other fraudulent acts aimed at the same end; it punishes with the same penalties the participant in the competition who accepts the money or other benefits or advantages, or accepts the promise thereof.*

Article 4 covers numerous crimes and infractions. It provides for punishability for:

- Anyone who unlawfully organises lotteries or betting or betting competitions which the law reserves to the State or to another concessionaire.
- Any person who organises bets or betting contests on sporting activities run by CONI, its dependent organisations or UNIRE.
- The illicit organisation of public betting on other competitions of persons or animals and games of skill.
- Those who sell lottery tickets or similar lottery events of foreign states on national territory without any authorisation from the Customs and Monopolies Agency.
- Those who participate in such operations through the collection of betting bookings and the crediting of the relevant winnings, and promotion and advertising by any means of dissemination.
- Anyone who organises, operates and remotely collects any game established or regulated by the Customs and Monopolies Agency without the prescribed licence.
- Any person who, even if holding the prescribed concession, organises, exercises and remotely collects any game established or regulated by the Customs and Monopolies Agency using methods and techniques other than those envisaged by law.
- Anyone, when it comes to contests, games or bets, in any way advertising their operation.
- Anyone in Italy who advertises games, bets and lotteries in any way whatsoever, accepted by anyone abroad.
- Anyone who participates in contests, games or bets managed illegally.
- Anyone who, without a concession, authorisation or licence within the meaning of Article 88 of the Consolidated Law on Public Security, carries out in Italy any activity organised for the purpose of accepting or collecting or in any way facilitating the acceptance or collection, including by phone or online, of bets of any kind whatsoever accepted by anyone in Italy or abroad.
- Whoever collects or books lotto bets, lotteries or betting transactions by phone or online without a specific authorisation from the Ministry of Economy and Finance - Customs and Monopolies Agency to use such means.

 Article 25-quinquiesdecies - Tax offences

Italian Decree-Law no. 124 of 26 October 2019 introduced the provision of administrative criminal liability

of entities in the event of the commission of tax crimes for their own benefit, however limiting the provision to the crime of tax fraud under Article 2 of Italian Legislative Decree no. 74/2000.

Article 1, paragraph 1, of Italian Law no. 157 of 19 December 2019 provided for the conversion, with amendments, of the aforementioned Decree extending the administrative liability of legal persons also to those who use other fraudulent means in their declarations (Article 3 of Italian Legislative Decree no. 74/2000), issue invoices for non-existent transactions (Article 8), conceal or destroy bookkeeping entries in order to evade taxes (Article 10) or fraudulently obtain or commit other fraudulent acts liable to render even partially ineffective the procedure for compulsory collection by the tax authority (Article 11).

With the publication in Official Gazette no. 177 of 15 July 2020 of Italian Legislative Decree no. 75 of 14 July 2020 concerning the implementation of the so-called PIF Directive (EU Directive 2017/1371 on the fight against fraud affecting the financial interests of the Union by means of criminal law), amendments were made to both the Italian Criminal Code and Italian Legislative Decree no. 231 of 8 June 2001.
Among other things, Article 5, paragraph 1, letter c), of Italian Legislative Decree no. 75 of 2020 adds to Art. 25-quinquiesdecies of Italian Legislative Decree no. 231/2001, introduced by Italian Law no. 157/2019, a new paragraph 1-bis by which it extends the list of tax offences that may give rise to the administrative liability of the entity pursuant to Italian Legislative Decree no. 231/2001, introducing the offences of: false tax returns (Article 4, Italian Legislative Decree no. 74/2000); failure to submit a tax return (Article 5, Italian Legislative Decree no. 74/2000); undue offset (Article 10-quater of Italian Legislative Decree no. 74/2000). These offences are relevant for the purposes of Italian Legislative Decree no. 231/2001 only if committed "even in part within the territory of another Member State, for the purpose of evading value added tax for a total amount of no less than ten million euro".

Below is an examination of the articles of Italian Legislative Decree no. 74/2000 referred to in Article 25-quinquiesdecies of Italian Legislative Decree no. 25.

Article 2, paragraphs 1 and 2-bis of Italian Legislative Decree no. 74/2000
This article was amended by Article 39, paragraph 1, letters a) and b) of Italian Decree-Law 124/2019. This provision punishes 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 returns relating to those taxes.

No threshold of punishability is required to be exceeded for the offence to be committed, and it therefore applies irrespective of the amount of tax evaded.
In addition to being untrue, the return is also fraudulent because it is supported by false documentation, which is capable of hindering an audit or supporting the untrue presentation of the data indicated therein. The material object of the offence consists of invoices and other documents equivalent to an invoice (note, bill, receipt and the like) or other documents – such as, for example, receipts, credit and debit notes, delivery notes, fuel cards – to which tax regulations attribute evidential status. The non-existence of such documentation may be objective (if it wholly or partially relates to transactions that never actually took place) or subjective (if the documented transaction actually took place between persons other than those named

on the invoice itself). This is a commission of an offence that takes place in two separate instances: the use of invoices or other documents for non-existent transactions as an instrumental and preparatory conduct with respect to the action typical of the offence, which consists in subsequently referring to them in a declaration for the purposes of income tax or VAT.
The offence is completed with the submission of the return, and pursuant to Article 6 of Italian Legislative Decree no. 74/2000 is not punishable as an attempt. The subjective element is constituted by the specific intent, represented by the aim of evading income or value added tax, which must be added to the will to carry out the event typical of the offence (the submission of the return). According to current case law (See Court of Cassation, Section 3, ruling no. 52411 of 19/6/2018), this subjective element is compatible with indirect intent, which can be found in the acceptance of the risk that the act of submitting the return, which also includes invoices or other documents for non-existent transactions, could result in the evasion targeted by the regulation.

Article 39, paragraph 1, letter b), of Italian Decree-Law 124/2019, converted into Italian Law no. 157/2019, included Article 2-bis in the regulation in question, which provides for a lower penalty when the amount of the taxable items indicated is less than €100,000. Above this threshold, the offence is therefore considered to be of greater seriousness and for this reason it appears to be a mitigating circumstance. However, the autonomous nature could be argued from the distinction in Article 25-quinquiesdecies of Italian Legislative Decree no. 231/2001 between the two cases as if they were different offences, leading to different penalties. It should be noted that Article 39, paragraph 1, letter q), provides for the application of confiscation for the offence in question "in special cases" pursuant to Article 240-bis of the Italian Criminal Code when the amount of the false taxable items exceeds €200,000.

Article 3 Italian Legislative Decree no. 74/2000 Fraudulent tax return by other means
This is a less frequent offence with respect to the crime of “fraudulent tax return by use of invoices or other documents for non-existent transactions”. The conduct constituting the offence in question, as amended by Article 3 of Italian Legislative Decree no. 158/2015, has a structure divided into two phases, in that the offence is completed with the submission of a false tax return (first phase), supported by the commission of objectively or subjectively simulated transactions, or alternatively the use of false documentation or other fraudulent means (second phase). In this case, the fraudulent means must be other than false invoices and can include the use of simulated contracts, the registration of assets or bank accounts with front men, etc. If the preparatory deceptive activity is carried out by others, the agent must have been aware of it at the time of filing the return. According to a recent ruling of the Court of Cassation (see Sec. 3, ruling no. 19672/2019), where a qualified professional issued a false compliance endorsement (pursuant to Article 35 of Italian Legislative Decree no. 241/1997) or a false tax certification (pursuant to Article 35 of the aforementioned decree) for the purposes of sector studies, this constitutes a fraudulent means capable of hindering assessment and misleading the tax authorities so as to constitute the professional's complicity in the offence of fraudulent tax return by means of other artifices.
The offence is attributable to any person required to file an income tax return or a value added tax form.
The specific intent represented by the purpose of evading taxes or obtaining an undue refund or recognition of a non-existent tax credit is required. The offence is completed with the submission of the return and is not punishable as an attempt.

Extended confiscation is also envisaged by this offence when the tax evaded exceeds €100,000.

Article 4 Italian Legislative Decree no. 74/2000 False tax returns

This regulation applies on a limited basis with respect to the case of false tax returns using invoices or other documents for non-existent transactions pursuant to Article 2 of Italian Legislative Decree no. 74/2000 and the case of false tax returns by means of other devices pursuant to Article 3 of Italian Legislative Decree 74/2000.

The concurrence with the offence under Article 2 of said Legislative Decree is excluded when the material conduct relates to the same tax return, whereas it does not apply where the conduct is different (omission of assets; declaration of non-existent liabilities).

The regulation punishes anyone who indicates in one of the annual income tax or value added tax returns assets for an amount lower than the actual amount or non-existent liabilities, when two thresholds of punishability are jointly met:

1) Evaded tax, with reference to any of the individual taxes, exceeding €100,000.
2) Assets removed from taxation amounting to more than 10% of the total amount of the assets indicated in the return, or in any case more than €2,000,000.

The offence, which is committed at the time of submitting the return relating to income tax or value added tax, is punishable by specific intent, consisting in the aim of evading income tax or value added tax, which is added to the will and intent to carry out the typical act (declaration of fictitious assets or non-existent liabilities). If the tax debts, including penalties and interest, have been discharged by full payment of the amounts due following a voluntary correction or the submission of the return, provided that this took place before the offender had formal knowledge of the inspections, audits or the commencement of any administrative assessment or criminal proceedings; if the assessments taken as a whole differ by less than 10% from the correct values.

Italian Law no. 157/2019 raised the sentencing range of the regulation: the tax decree provided for a change from imprisonment of one to three years to imprisonment of two to five years, while the conversion law adjusted the range from a minimum of two years to a maximum of four years and six months.

Article 5 Italian Legislative Decree no. 74/2000 Failure to submit a return

This regulation punishes taxpayers and withholding agents who fail to submit one of the forms relating to income tax or value added tax, being obliged to do so, if the punishment threshold is exceeded. The offence is punishable on the basis of specific intent, consisting in the purpose of evading income or value-added taxes, which is added to the will and intent to commit the typical act (failure to submit a tax return). The offence is committed upon expiry of the 90-day extension period granted to the taxpayer to submit the return after the expiry of the ordinary deadline.

If the tax debts, including penalties and interest, have been discharged by full payment of the amounts due following a voluntary correction or the submission of the return, provided that this took place before the offender had formal knowledge of the inspections, audits or the commencement of any administrative

assessment or criminal proceedings. Imprisonment of two to give years is envisaged.

Article 8 Italian Legislative Decree no. 74/2000 paragraphs 1 and 2-bis Issuance of invoices or other documents for non-existent transactions

Under this article, the active subject of the offence may be anyone who issues invoices or other documents for non-existent transactions that can be used by third parties for tax evasion. The offence exists even if the result of the tax evasion is not achieved, as it is sufficient that it constitute the purpose of the misrepresentation. Issuing invoices for non-existent transactions is one of the so-called "non-return" offences. It represents the mirror case to the fraudulent return through the use of invoices or other documents referred to in Article 2 of Italian Legislative Decree 74/2000, which punishes the perpetrator who receives and uses the document in order to evade direct tax or value added tax. In fact, Article 8 punishes the conduct of the person who, upstream, issues the invoice or the document – for non-existent transactions – intended for another person in order to enable them to evade income taxes or value added taxes. The moment the offence is committed coincides with the issuance of the invoice or non-existent document to the user, since it is not required to reach the recipient or to be used thereby. If there are several instances in a single tax period, it is committed at the moment of the issuance of the last invoice or non-existent document.

In general, "other documents for non-existent transactions" can be considered to be those documents that attest to the existence of a service and thus to the justification of a deduction: bill, tax receipt, credit or debit note, customs bill, so-called self-invoice, fuel card.

Paragraph 2-bis, added by Italian Decree-Law 124/2019, provides for a mitigating circumstance that sets a lower penalty when the amount relating to non-existent transactions indicated in the invoices or documents is less than €100,000 for the tax period in question.

Article 10 Italian Legislative Decree no. 74/2000 Concealment or destruction of accounting documents

The regulation in question is designed to protect the proper exercise of the tax authorities' assessment activities.

This offence is applied on a secondary basis where there is no more serious offence. This is a common offence that can be committed by anyone to facilitate the tax evasion of others. The conduct consists in the whole or partial concealment or destruction of accounting records and documents whose retention is mandatory so as not to allow the determination of income or turnover. Accounting records include the journal, VAT purchase registers, receipts, issued invoices, inventory book, register of depreciable assets, etc. Among the documents that must be kept for tax purposes are issued invoices, purchase invoices, receipts, delivery notes. The specific intent is recognisable in the aim to evade taxes or allow a third party to evade taxes. Since this is a result-based crime and the specific offence is not referred to in Article 6 of Italian Legislative Decree 74/2000, an attempt is punishable when, despite the concealment or destruction of the accounting documents, the tax administration can still reconstruct the details of the income or turnover based on other elements.

Article 10-quater Italian Legislative Decree no. 74/2000 Undue offset

The criminal offence punishes anyone who fails to pay sums due by using undue or non-existent tax credits as an offset, if the punishable threshold of an annual amount exceeding €50,000 is exceeded.

The offence is punishable by general intent, consisting in the will and intent not to pay the sums due by using undue or non-existent tax credits as an offset. The offence is committed when the undue offset is submitted. If, prior to the declaration of the opening of the first instance hearing, the tax debts, including administrative sanctions and interest, have been discharged by full payment of the amounts due, also following the special conciliatory procedures and acceptance of the assessment envisaged by tax regulations, as well as voluntary correction. Imprisonment from six months to two years is envisaged in the case of offsetting with undue credits, and imprisonment from one year and six months to six years in the case of offsetting with non-existent credits.

On the subject of tax offences, the use of a VAT credit resulting from a return not filed as an offset constitutes the offence of undue offsetting of non-existent credits. This was affirmed by the Court of Cassation, which ruled on the case of a legal representative of a cooperative convicted for failure to submit a return and undue offsetting of non-existent VAT credits pursuant to Articles 5 and 10-quater of Italian Legislative Decree no. 74/2000 for having failed to pay taxes using a VAT credit reported on the return of the previous year that had not been submitted. Specifically, through a very strict interpretation of the regulation, the Court stated that only VAT credits resulting from forms and periodic returns may be used for offsetting purposes (among others, Criminal Cassation, sec. 3, 21/06/2018, ruling no. 43627).

Article 11 Italian Legislative Decree no. 74/2000 Fraudulent evasion of taxes

This Article punishes the conduct of a person who fraudulently sells or performs other fraudulent acts on their own property or on the property of another person, such as to prevent the total or partial satisfaction of a tax debt claimed by the tax authority. The protected legal asset consists in the proper operation of the compulsory collection procedure in relation to the State's claim.

The conduct may consist in the simulated sale of or performing other fraudulent acts with regard to one's own assets or those of others (material misappropriation of assets), or it may consist in indicating assets or liabilities other than the real ones in the documentation submitted for the purposes of the tax transaction (falsification of assets).

In the first case, the crime is committed in the moment when one simulates a sale or performs other fraudulent acts on one's own or another person's property. In the second case referred to in the second paragraph, the crime is committed in the moment when one submits documentation for the purposes of the tax settlement procedure that declares assets or liabilities other than real ones.

With regard to the first scenario, an attempt could be made if the taxpayer attempts to sell their assets under false pretences, but then, for reasons external to them, the transaction is not completed. In the second case, on the other hand, it does not appear to be possible since, until the moment when the documentation is submitted for the tax settlement procedure (the moment in which the offence is committed), it would only be a matter of mere intent.

Despite the fact that the law refers to “anyone”, it is an offence in its own right, since the active parties to the offence are those who already qualify as tax debtors.

The subjective element is specific intent since the purpose of the conduct is to render wholly or partially ineffective the compulsory collection procedure or to obtain payment of the sums due for oneself or others.

Through the real or fictitious impoverishment of their assets, the tax debtor thus pursues the aim of prejudicing the tax claim.
The rule also identifies a threshold of punishability below which the offence does not qualify. It is therefore necessary that the total amount of the debts – understood in the aggregate amount of the principal, related administrative sanctions and legal interest – not be less than €50,000.
Extended confiscation is envisaged when the false amount reported in the invoices exceeds €100,000 or when the amount of the fictitious assets or liabilities exceeds the actual amount by more than €200,000.

- **Art. 25-sexiesdecies Smuggling**

Article 5, letter d), of the Italian Legislative Decree of 14 July 2020 implementing the PIF Directive introduces into Italian Legislative Decree no. 231/2001 the new Article 25-sexiesdecies, extending the criminal liability of entities to the offences of smuggling set out in Italian Presidential Decree no. 43 of 23 January 1973.
The penalties imposed are both pecuniary in nature, adjusted according to the value of the border duties owed, and disqualifying in nature, with the application of Article 9, paragraph 2, letters c), d) and e), which respectively provide for the prohibition of tendering offers to the public administration, the exclusion from benefits, loans, contributions or subsidies and the possible revocation of those already granted and the prohibition of advertising goods or services.

The new provision refers to the “offences” of the Customs Code, therefore to:

- The offences under Title VII, Chapter I, the acts referred to therein being understood as such, but only if they exceed €10,000 in evaded border duties (not for those involving imprisonment):
- Article 282 (Smuggling in the movement of goods across land borders and customs areas)
- Article 283 (Smuggling in the movement of goods across border lakes)
- Article 284 (Smuggling in the maritime movement of goods)
- Article 285 (Smuggling in the movement of goods by air)
- Article 286 (Smuggling in non-customs zones)
- Article 287 (Smuggling by undue use of goods imported with customs facilities)
- Article 288 (Smuggling in customs warehouses)
- Article 289 (Smuggling in cabotage and circulation)
- Article 290 (Smuggling in the export of goods eligible for duty drawback)
- Article 291 (Smuggling on temporary imports or exports)
- Article 291-bis (Smuggling of foreign tobacco products)
- Article 291-ter (Aggravating circumstances of the offence of smuggling foreign tobacco products)
- Article 291-quater (Criminal conspiracy for the purpose of smuggling foreign tobacco products)
- Article 292 (Other cases of smuggling)
- Article 294 (Penalty for smuggling in the case of failure to detect or incomplete detection of the object of the offence)
- Offences under Title VII, Chapter II, i.e. the offences envisaged therein, but only if they exceed €10,000 in evaded border duties (Articles 302 et seq.).

A relevant aspect also for the purposes of prior compliance will be the relationship with the customs clearance agent, who carries out all customs formalities in international trade in the name and on behalf of the owner of the goods (exercising representation).

By virtue of this provision, the relationship between the liability of the entity and its civil liability for smuggling offences under the Consolidated Customs Act (Article 329) will also have to be examined: "When the offence of smuggling is committed on ships, aircraft, vehicles of any kind, in railway stations, trains, industrial and commercial establishments, public establishments or other places open to the public, the captain, commander, carrier, stationmaster, train conductor, the body or person on whom the service or establishment depends, the operator or the owner, shall respectively be liable to pay a sum equal to the amount of the fine imposed if the offender is a person employed by them or subject to their authority, direction or supervision and is insolvent. Moreover, the aforementioned persons and entities are jointly and severally liable with the convicted persons for the payment of the fees due". Of particular concern will be the issue of the consequences of the entity's liability in relation to the termination of smuggling offences punishable only by a fine (Article 334): "For smuggling offences punishable only by a fine, the customs administration may allow the offender to pay, in addition to the tax due, an amount no less than double and no more than ten times the tax itself, to be determined by the administration.

The payment of the aforementioned sum and of the tax terminates the offence". Pursuant to Article 8 of Italian Legislative Decree 231, the termination of the offence does not exclude the liability of the entity, even if the payment in question is made by it.

- **Article 25 septiesdecies – Crimes against cultural heritage**

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

Article 518-bis of the Italian Criminal Code - Theft of cultural assets

This criminal offence punishes anyone who takes possession of another person's movable cultural property, removing it from its owner in order to benefit oneself or others, or who takes possession of cultural property belonging to the State, as found underground or on the seabed.

Article 518-ter of the Italian Criminal Code - Misappropriation of cultural property

This provision punishes anyone who appropriates another person's cultural property in their possession for any reason whatsoever in order to obtain an undue benefit for themselves or others.

Article 518-quater of the Italian Criminal Code - Receiving cultural assets

This offence is punishable by those who, except in cases of complicity in the offence, in order to procure for themselves or for others a benefit, purchase, receive or conceal cultural assets resulting from any offence, or in any case participate in having them purchased, received or concealed.

Article 518-octies of the Italian Criminal Code - Forgery of a private agreement relating to cultural goods

The offence envisaged by Article 518-octies of the Italian Criminal Code punishes the conduct of a person who fully or partially draws up a false private agreement or fully or partially alters, destroys, suppresses or conceals a true private agreement related to movable cultural assets in order to make their origin appear lawful.

A lesser penalty is envisaged for those who use such agreements without having participated in its formation or alteration.

Article 518-novies of the Italian Criminal Code - Infraction related to the sale of cultural assets

This regulation punishes the following conduct:

- That of a person who, without the prescribed authorisation, sells or places cultural assets on the market.
- That of a person who, being required to do so, does not submit a report on the transfer of ownership or possession of cultural assets within the 30-day term.
- That of the transferor of a cultural asset subject to pre-emption who delivers the asset during the period of 60 days from the date of receipt of the transfer notice.

Article 518-decies of the Italian Criminal Code - Illegal import of cultural assets

Article 518-decies of the Italian Criminal Code punishes anyone who, apart from cases of complicity in the offences envisaged in Articles 518-quater, 518-quinquies, 518-sexies and 518-septies, imports cultural assets resulting from a crime or which have been obtained as a result of of searches carried out without authorisation, if envisaged by the law of the State where the find took place, or exported from another State in violation of the law on the protection of the cultural heritage of that State.

Article 518-undecies of the Italian Criminal Code - Illegal exit or export of cultural assets

This offence punishes: (i) whoever transfers abroad cultural goods, things of artistic, historical, archaeological, ethno-anthropological, bibliographical, documentary or archival interest or other things subject to specific protection provisions under the law on cultural assets, without a certificate of free circulation or export licence; (ii) any person who fails to return to the national territory, at the expiry of the term, cultural assets, things of artistic, historical, archaeological, ethno-anthropological, bibliographical, documentary or archival interest or other things subject to specific provisions of protection under the law on cultural assets, for which temporary exit or export has been authorised, as well as iii) those who make false declarations in order to prove to the competent export office, in accordance with the law, that the things of cultural interest are not subject to exit authorisation.

Article 518-duodecies of the Italian Criminal Code Destruction, dispersal, deterioration, defacement, fouling and unlawful use of cultural or landscape assets

Article 518-duodecies of the Italian Criminal Code states: “Whoever destroys, disperses, deteriorates or renders wholly or partly inoperable *where envisaged,* or not usable cultural or landscape assets belonging to them or to others shall be punished by imprisonment of two to five years and a fine of between €2,500 and €15,000.

Anyone who, other than in the cases referred to in the first paragraph, defaces cultural property or

landscape belonging to them or to others, or who uses cultural property for a purpose that is incompatible with its historical or artistic character or detrimental to its preservation or integrity, shall be punished by imprisonment from six months to three years and a fine ranging from €1,500 to €10,000.
The conditional suspension of the sentence is subject to the restoration of the state of the place or the elimination of the harmful or dangerous consequences of the offence or the performance of unpaid activity in favour of the community for a specified time, in any case not exceeding the duration of the suspended sentence, in accordance with the methods indicated by the judge in the conviction".

Article 518-quaterdecies of the Italian Criminal Code Counterfeiting of works of art

Article 518-quaterdecies of the Italian Criminal Code punishes the following conduct:

1) That of anyone who, in order to make a profit, counterfeits, alters or reproduces a work of painting, sculpture or graphics or an object of antiquity or of historical or archaeological interest.
2) That of a person who, even without having taken part in the counterfeiting, alteration or reproduction, places on the market, holds for trade, introduces into the territory of the State for that purpose or otherwise puts into circulation counterfeit, altered or reproduced specimens of works of painting, sculpture or graphics, objects of antiquity or objects of historical or archaeological interest as if they were authentic.
3) That of a person who, knowing them to be false, authenticates counterfeited, altered or reproduced works or objects referred to in numbers 1) and 2).
4) That of a person who, by means of other declarations, expert opinions, publications, affixing of stamps or labels or by any other means, accredits or helps to accredit as authentic the works or objects referred to in points 1) and 2) that have been counterfeited, altered or reproduced, knowing them to be false.

- **Article 25-duodevicies Laundering of cultural property and devastation and looting of cultural and landscape assets**

Article 3 of Italian Law no. 22/2022 also introduces into Italian Legislative Decree no. 231/2001 the new Article 25-duodevicies "Laundering of cultural assets and devastation and looting of cultural and landscape heritage", extending the administrative liability of entities to the following offences:

Article 518-sexies of the Italian Criminal Code - Laundering of cultural assets

Article 518-sexies of the Italian Criminal Code punishes anyone who, apart from cases of complicity in the offence, replaces or transfers cultural goods resulting from a offence committed with criminal intent, or carries out other transactions in relation to them, so as to hinder the identification of their criminal origin.

Article 518-terdecies of the Italian Criminal Code - Devastation and looting of cultural and landscape heritage

This offence punishes anyone who, other than in the cases envisaged in Article 285, commits acts of devastation or looting affecting cultural or landscape heritage or cultural establishments and places.

- **Transnational crimes (Italian Law no. 146 of 16 March 2006)**

Italian Law no. 146 of 16 March 2006 implemented the Convention and the additional protocols of the United Nations against transnational organised crime, adopted by the General Assembly on 15 November 2000 and 31 May 2001, and broadened the catalogue of offences relevant to the administrative liability of entities pursuant to Italian Legislative Decree no. 231/2001.

The regulatory technique used by the legislature was different from the method used for the introduction of the other offences. In fact, instead of updating the decree in the part related to predicate offences, it was decided to regulate the new offences directly and to refer to Italian Legislative Decree no. 231/2001 for the regulation of the general requirements for imputing liability to the entity.

To this end, the legislature first of all offered a definition of a transnational offence as an offence punishable by a maximum term of imprisonment of no less than four years, where an organised criminal group is involved, as well as: a) being committed in more than one State; b) or being committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; c) or being committed in one State but an organised criminal group engaged in criminal activities in more than one State is involved in it; d) or being committed in one State but having substantial effects in another.

The predicate offences are as follows:

- Criminal conspiracy under Article 416 of the Italian Criminal Code and mafia-type association under Article 416-bis of the Italian Criminal Code (see above)
- Conspiracy for the purpose of illicit trafficking in narcotic drugs or psychotropic substances within the meaning of Article 74 of Italian Presidential Decree no. 309/90 (see above).
- Conspiracy for the purpose of smuggling foreign tobacco products.
- Inducement not to make statements or to make false statements to the judicial authorities, as referred to in Article 377-bis of the Italian Criminal Code (see above).
- Personal aiding and abetting.
- Smuggling of migrants referred to in Article 12, paragraphs 3, 3-bis, 3-ter and 5 of Italian legislative Decree no. 286 of 25 July 1998 Provisions against illegal immigration (see above).

Article 292-quater Italian Presidential Decree no. 43 of 23 January 1973 Conspiracy to smuggle foreign tobacco products

The offence is committed when the conspiracy referred to in Article 416 of the Italian Criminal Code is aimed at committing several offences among those referred to in Article 291-bis of Italian Presidential Decree no. 43 of 23 January 1973. For the offence of smuggling, the event is summed up in the exposure to danger of the protected legal asset – the right of the State to receive the tax – as a result of an activity voluntarily carried out by the agent with the wilful intention of evading payment thereof.

Article 378 of the Italian Criminal Code Personal aiding and abetting

The offence of aiding and abetting is committed by anyone who, after a crime has been committed for which the law establishes a penalty of life imprisonment or time in prison, and apart from cases of aiding and abetting therein, “helps someone to elude the investigations of the authorities or to evade their searches”.

The subject of the criminal law protection is the interest of the administration of justice in the orderly conduct of criminal proceedings that are disrupted by facts that are intended to mislead or hinder the detection and prosecution of offences.

1.3. Perpetrators

Under Article 5 of the Decree, the Entity is liable for offences committed in its interest or to its benefit:

- By persons vested with functions of representation, administration or management of the Entity, or of one of its organisational units with financial and functional autonomy, as well as by persons exercising even de facto management and control thereof.
- By persons subject to the direction or supervision of one of the persons in a senior position indicated above (so-called persons subject to the direction of others).

Conversely, the Entity is not liable if the persons indicated have acted exclusively in their own interest or in the interest of third parties (Article 5, paragraph 2, of the Decree).
The first category includes persons who are in a so-called "top management" position within the Entity, i.e. those persons who, due to the relationship of organic identification, represent the will of the Entity in all its external relations. These are the legal representatives, managing directors and general managers, and in the case of organisational units with financial and functional autonomy, also executives who perform their functions with decision-making autonomy and are not subject to substantial control. It also includes persons who perform de facto management and control of the Entity, among whom is conceivable the figure of the de facto director, i.e. the sovereign or all-powerful shareholder who, being the holder of almost all the shares or quotas, would be able to direct corporate policy and impose the execution of certain transactions.
The second category of persons, on the other hand, is represented by those subject to the direction or control of the persons placed in a “top management” position. This extension avoids leaving broad, unjustified spaces of impunity, with preordained “downward discharge” of said responsibility.

1.4. The Organisational Model as a possible exempting condition for administrative liability and perpetrators

Article 6 of Italian Legislative Decree no. 231/01 provides for a form of exemption from administrative liability for offences committed by persons in a management position if the entity provides evidence that:

- Prior to the commission of the offence it had adopted and effectively implemented “organisation and management models” capable of preventing offences of the kind committed.

- It had entrusted a body of the entity endowed with autonomous powers of initiative and control (Supervisory Body, hereinafter referred to as the SB) with the task of supervising the operation of and compliance with the models, as well as ensuring that they are kept up to date.
- That the offence was committed by persons who acted by fraudulently circumventing the

aforementioned organisation, management and control models.
Article 7 of the Decree provides for exemption from administrative liability for offences committed by persons subject to the direction of others if the unlawful conduct was made possible by failure to comply with management or supervisory obligations, or if, before the offence was committed, the entity adopted and effectively implemented an organisational model to prevent offences of the kind that occurred. In this case the burden of proof will be on the prosecution.
The administrative liability of the Entity also exists when the perpetrator of the offence has not been identified or cannot be charged, or the offence has been terminated for a reason other than amnesty. Moreover, for Entities with their head office in Italy, the Entity's administrative liability also covers offences committed abroad by persons functionally linked to the Entity, provided that the State in which the offence was committed does not prosecute them.
Conversely, the organisation is not liable if the persons indicated have acted solely in their own interest or in the interest of third parties. The organisation, management and control model, again pursuant to Article 6 of Italian Legislative Decree no. 231/200, must meet the following requirements:

- Identify within which activities offences may be committed.
- Provide for specific procedures concerning the formation and implementation of the entity's decisions with respect to the offences to be prevented.
- Establish how financial resources are managed in order to prevent the commission of unlawful conduct.
- Put in place reporting obligations vis-à-vis the Supervisory Body.
- Put in place a disciplinary system to sanction non-compliance with the measures set out in the model.

Italian Law 179/2017 "Provisions for the protection of the authors of reports of crimes or irregularities they have become aware of in the context of a public or private employment relationship", which came into force on 29 December 2017, supplemented the compliance requirements for Organisational Models. Article 2 of the aforementioned law led to the insertion in Article 6 of Italian Legislative Decree no. 231/2001 – after paragraph 2 – of paragraphs 2-bis, 2-ter and 2-quater.

Recently, Italian Legislative Decree no. 24 of 10 March 2023 on Whistleblowing, implementing Directive EU 2019/1937, fully replaced paragraph 2-bis of Article 6 of Italian Legislative Decree 231/2001 and requires organisational models to provide for internal reporting channels pursuant to the aforementioned Directive, the prohibition of retaliation and the disciplinary system.

Among the main changes introduced by the Whistleblowing Directive is, first of all, the broadening of the concept of whistleblower, no longer limited to directors, executives and employees, but extended to all persons connected in a broad sense to the organisation in which the violation occurred, and who might fear retaliation in view of the vulnerable economic situation they find themselves in.
Moreover, in addition to what is already envisaged by existing national laws, whistleblower reports may cover breaches of EU law affecting the public interest or falling within the following areas, among others: public procurement; services, products and financial markets and the prevention of money laundering and terrorist financing; product safety and compliance; transport safety; environmental protection; radiation

protection and nuclear safety; food and feed safety and animal health and welfare; public health; consumer protection; privacy and personal data protection; and network and information system security.

1.5. Sanctions and attempted crimes

The sanctioning system envisaged by the Decree is characterised by the application to the Entity of a pecuniary sanction, measured in quotas. The court determines the number of quotas with respect to the seriousness of the offence and assigns an economic value to each quota.
In addition to the pecuniary sanction, disqualifying sanctions may be applied in the most serious cases, such as: disqualification from exercising the business, suspension or revocation of authorisations, licences or concessions functional to the commission of the offence, prohibition from contracting with the Public Administration, exclusion from facilitations, financing, contributions or subsidies and possible revocation of those already granted, and prohibition against advertising goods or services.
Disqualification measures may also be applied at the request of the Public Prosecutor as a precautionary measure during the investigation phase.
The catalogue of sanctions closes with the publication of the conviction, which may be ordered when the grounds for the application of an administrative sanction are met, and the confiscation – including for equivalent value – envisaged as an automatic consequence of the establishment of the Entity's liability.
In the event of the commission of the offences set out in Chapter I of Decree 231 in the form of an attempt, the pecuniary penalties (in terms of amount) and disqualification sanctions (in terms of duration) are reduced by between one-third and one-half, while the imposition of penalties is excluded in cases where the Entity voluntarily prevents the action from being carried out or the event from taking place (Article 26 of Decree 231).

II. THE ORGANISATION, MANAGEMENT AND CONTROL MODEL OF ENDURA S.P.A.

2.1. Adoption of the Model

Endura S.p.A. (hereinafter also referred to as “Endura” or the “Company”) is a medium-sized company operating in the Fine and Speciality Chemicals sector with its registered office in Viale Pietramellara 5, 40121 Bologna, and a production plant in Via Baiona 107/111, 48100 Ravenna.

The company was founded in 1980 by Antonio Tozzi, based on previous business experience that began in the early 1960s.
Since its foundation, Endura entrusted the production of its main products (Piperonyl Butoxide and Tetramethrin) to a third company through a tolling agreement. Production was therefore carried out by a third company at the plant in Pontecchio Marconi, Bologna, while Endura handled the sales of these products.
In 2002 the company started manufacturing its own products at its new plant in Ravenna. At the same time, the company also began the testing and production of other fine chemicals and intermediates. The plant is situated in the Ravenna chemical sector (former Enichem) and the company is also a member of the Consorzio Ravenna Servizi Industriali S.c.p.a. for the joint management of services in the sector.

Subsequently, other active ingredients – insecticides and repellents – were added to the company's portfolio, which distributes them on the market through agreements with leading manufacturers in the sector.
Commercially, the company sells its products on the domestic market and, to a greater extent, exports them to numerous countries around the world.
Endura also has a research and development centre located at the Ravenna plant, through which, also thanks to the collaboration of various university institutes and external laboratories, it conducts research that has led to numerous patented inventions in the field of insecticides and fine chemicals in general.
Endura owns several equity investments in industrial and/or commercial companies in Italy and abroad.
The company holds the following quality certifications:

- UNI EN ISO 9001:2015
- UNI EN ISO 14001:2015
- UNI EN ISO 50001:2011
- UNI EN ISO 45001:2018

It also participates in Federchimica's Responsible Care programme.
The industrial operations of the Endura plant in Ravenna are governed by Directive 2012/18/EU (so-called “Seveso III”) on the control of major accident hazards involving dangerous substances and is subject to the relevant controls by the competent authorities.
Today, Endura manufactures, imports, buys and sells chemical intermediates, chemical, plant protection and pharmaceutical products, and both basic raw materials and processed products. The Company is also engaged in research, patenting, development and analysis of industrial products and processes, as well as the provision of technical and registration support and consultancy services (“regulatory”) on behalf of third parties for active ingredients and formulated products in the chemical, phytosanitary and pharmaceutical fields.

The corporate bodies are the Shareholders' Meeting, the Governing Body and the Board of Statutory Auditors. The statutory audit of the Company's accounts is performed by a statutory auditing firm registered in the special register pursuant to Article 2409-bis of the Italian Civil Code. As from the 2017 financial year, the Endura financial statements are certified by the auditing firm PricewaterhouseCoopers S.p.A.

Currently, the BoD has delegated the ordinary management of the Company according to an articulated system of proxies and powers of attorney that guarantee the segregation of management powers, with a view to business continuity, transparency and prevention of possible conflicts of interest. Endura's organisational structure is available to the public and can be viewed by acquiring the relevant chamber of commerce report.

2.2. Introduction to the Endura S.p.A. organisational model

With the adoption of this Organisation, Management and Control Model (hereinafter referred to as the "Model"), approved in its most recent version by the Company's Board of Directors on 27 May 2020 and last updated on 10 December 2024, Endura S.p.A. intends to set up an efficient system for the prevention

of offences in the performance of its business.
Note that Endura S.p.A. had organisational and control tools formalised in specific documents (rules of conduct, organisational procedures, work instructions, controls by the Board of Statutory Auditors and the Auditing Company, etc.) in place before the adoption of the Model, however in order to fully implement the Decree these tools have been supplemented by this Model, which is more extensive in scope. In any case, it is necessary to specify that the Model adopted by the Company refers in many cases to a variety of sources and internal company references (e.g. procedures, manuals, forms, schemes and workflows, etc.), the text of which will not be reproduced here for obvious reasons of brevity and clarity. These sources and references are in any case assumed to be an integral part of the organisation and management system relevant for the purposes of the Decree, inasmuch as they are useful for compliance with the requirements and the pursuit of the purposes set out in Article 6 of the Decree. The complete list of company documentation relevant to this Model is contained in the Special section. These sources and references can also be found and made available to the recipients, if necessary.
This Model was prepared based on the provisions of the Decree and taking into account the Guidelines drawn up by Confindustria. The task of updating the Models where necessary as well as supervising their operation and observance is the responsibility of the Supervisory Body (hereinafter also referred to as the "**SB**"), appointed on 27 May 2020.

2.3. Objectives and general characteristics of the Model

Endura's Organisation, Management and Control Model pursuant to Italian Legislative Decree no. 231/01:

- Provides guidance on the contents of the legislative decree, which introduced a liability of companies and entities into our legal system for offences committed in their interest or to their benefit by their representatives or employees.
- Outlines the organisational model aimed at providing information on the contents of the law, directing the company's activities in a manner consistent with the model and supervising the functioning and observance of the model.

Specifically, it proposes to:

- Make all those who work in the name and on behalf of the Company aware that in the event of violation of the provisions of the law they may incur an offence liable to sanctions against themselves and against the Company (if the latter has benefited from the commission of the offence, or in any case if it has been committed in its interest).
- Reiterate that unlawful conduct is condemned by the Company as being contrary to the provisions of the law and the principles the Company intends to follow in the performance of its corporate mission.
- Set out these principles and explain the organisation, management and control model in use.
- Enable internal monitoring and control actions focused in particular at the company areas most exposed to Italian Legislative Decree no. 231/2001, in order to prevent and combat the commission of offences.

This document covers:

a) The contents of Italian Legislative Decree no. 231/2001, the identification of offences and the persons

concerned.

- The identification and assessment of the areas of activity most exposed to the legal consequences of the decree.
- The organisation and management model protecting the Entity.
- The principles and requirements of the control system.
- The Supervisory and Control Body.
- Communication and training methods.
- The disciplinary system.

To this end, the document takes due account of the contents of the Articles of Association, the principles of management and administration and the corporate organisational structure, and refers to the internal control system in place. The Model was drafted in compliance with the requirements of Article 6, paragraphs 2 and 3, of Italian Legislative Decree no. 231/2001. More specifically, it:

- Identifies and isolates the activities within which the offences relevant to Italian Legislative Decree no. 231/2001 may be committed.
- Provides for specific procedures aimed at managing personnel training and designed to implement the entity's decisions in order to prevent the predicate offences.
- Introduced specific protocols for managing the various company activities, especially financial activities, in order to limit the possibility of committing specific offences.

The risk assessment was carried out through meetings with the various Process Owners identified as well as through a mapping of the company's macro-processes by means of an audit of the organisational structure, the company's practices and internal documentation, consisting of:

- Articles of Association
- Company organisation chart
- Formalised powers of attorney and proxies
- Chamber of commerce report
- Company Management System and related company procedures
- Documents relating to the management of information systems and personal data
- RAD and other documents relating to the occupational safety management system
- List of environmental authorisations and environmental management documentation

The company sectors and the Process Owners involved in the management of the aforementioned processes found to be at risk as indicated in the document "231 Risk Analysis" (Annex III to the Model) were as follows:

- Board of Directors
- Managing Directors
- Administration, Finance and Control area
- Human Resources area
- Information Technology area
- Procurement
- Regulatory Affairs

- Research and Development
- Global Sales
- Plant

For each sensitive process, one or more managers have been identified, especially those with contacts with the public administration, and in some cases spending power.
The map of top management positions (Appendix I) identifies those persons within the Company who, by virtue of the relationship of organic identification, represent the will of the Company in all its external dealings: legal representatives, Chair, Directors, Board members and General Manager, Area Managers.
By virtue of the role they play, these persons, together with those who exercise even only de facto management and control of the Company, are in fact the most exposed to the risks/offences that the organisational model proposes to prevent.
In this regard, see Annex III to the Model (231 Risk Analysis) in order to more closely examine the areas analysed, the level of risk found and the actions taken.
Moreover, by means of this system of internal procedures and rules, also referred to by the Model and the Code of Ethics, the Company can raise awareness and disseminate the rules of conduct and the procedures established for their exact and regular fulfilment at all levels of the company, thus raising the awareness of all those who work in the name and on behalf of the Company in the “areas at risk” that in the event of a violation of the provisions set out in the Model an offence is committed that is liable to penalties.

2.4. Structure of the Model

This Model consists of a first general section containing the regulatory aspects of the Decree, the essential components of the Model, including the disciplinary system for cases of non-compliance with the provisions of the Model and the periodic checks thereof (hereinafter the “General Section”) and a special section.

The following documents are an integral part of the model:

- Annex I List of Process Owners
- Annex II Code of Ethics and Conduct
- Annex III Risk Analysis
- Annex IV Sanctioning System
- Annex V Procedure for Communication with the SB
- Annex VI SB Rules
- Annex VII Whistleblowing procedure

- Other manuals and related procedures (Quality Manual, RAD, Workplace Health and Safety Management procedures pursuant to Italian Consolidated Law 81/2008, environmental procedures, etc.) and internal rules introduced over time and designed to maintain full regulatory compliance and full application of the code of conduct.

The decision to include the most operative parts in the form of annexes to the Model was made to

facilitate their dissemination and possible revision over time.

2.5. Modifications and additions to the Model

Since this Model is issued by the Board of Directors (in compliance with the provisions of Article 6, paragraph 1, letter a), of the Decree), its adoption, as well as its subsequent amendments and additions, fall under the purview of the Company's Board of Directors, upon written guidance of the SB, with the exception of the Rules of the Supervisory Body. In fact, these rules are approved and amended by the SB itself, which has the power to independently define its own operations and organisation. Once approved by the Body, the SB rules become an integral part of the Model and are brought to the attention of the BoD when amendments and/or additions are made.

III. THE SUPERVISORY BODY AND ITS INTERNAL RULES

Article 6 of Italian Legislative Decree no. 231/2001 entrusts the task of supervising the operation of and compliance with the organisational models and ensuring that they are kept up to date to a body of the entity endowed with autonomous powers of initiative and control (Article 6, letter b, Italian Legislative Decree no. 231/2001).
The existence of such a body is a necessary condition – together with the effective adoption and application of the Organisational Model – for the entity to enjoy exemption from liability resulting from the commission of the offences referred to in the Decree.
Note that this body should not be understood as a new corporate body (like the Governing Body or the Board of Statutory Auditors), but rather as an integral part of the company's internal control system.
For the performance of its activities, the Supervisory Body has adopted its own rules in accordance with the provisions of Italian Legislative Decree no. 231/2001. These rules, which define the powers, functions, composition, requirements to be met by members, the criteria for ineligibility, disqualification, resignation and revocation, as well as the rules on information flows and management, constitute Annex VI to this Model, to which reference should be made.

3.1. Requirements of the Supervisory Body

According to the provisions of the Decree, the characteristics and requirements of the Supervisory Body are: (i) autonomy, (ii) independence, (iii) professionalism and (iv) continuity of action.
Autonomy and independence can be achieved by ensuring the highest possible hierarchical independence for the SB, and by providing for reporting to top management.
Its members must not perform operational tasks in the company or be directly involved in the company's management, which will then be monitored by the SB.
Moreover, the SB must be composed of professionals with specific technical and professional (investigative and inspection) skills appropriate to the functions that this body is called upon to perform.
Lastly, with regard to continuity of action, the SB must work constantly on the supervision of the Model, with the necessary powers of investigation and take care of the implementation of the Model, ensuring that it is appropriately updated. After appointment by the Board of Directors, the SB remains in office at the very

least until the expiry of the term of office of the Board of Directors that appointed it and thereafter if no other SB is appointed, until revocation or new appointment of another SB. In any case, the SB is always renewable.
The termination of office of one of the members of the SB does not require the disqualification of the entire SB and will only entail the appointment of the member to be replaced.
Taking into account the specific nature of the SB's powers and professional expertise, the SB may avail itself of the collaboration of other management functions of the Company as may be necessary from time to time as well as of external professionals within the framework of the availability envisaged and approved by the budget.
The SB and its members are provided with insurance cover for civil liability, for damages both to the Company and to third parties, and for legal expenses, including legal defence costs, with the same limits as those envisaged for the Company's directors and excluding the right of recourse, at the Company's own expense.

3.2. Ineligibility

Causes of ineligibility and/or disqualification of the Supervisory Body are: (i) the conviction with a final judgement for having committed one of the offences set out in the Decree; (ii) sentencing with a final judgement of a penalty that entails even temporary disqualification from public offices, or the temporary disqualification from the executive offices of legal persons and companies. In the event of particular seriousness, even before the judgement, the Board of Directors of the Company may order – after hearing the opinion of the Board of Statutory Auditors – the suspension of the powers of the SB and the appointment of an interim Supervisory Body.
Without prejudice to the case of a review of the role and positioning of the Supervisory Body based on experience in the implementation of the Model, any revocation of the specific powers of the SB may only take place for just cause, subject to a resolution of the Company's Board of Directors after hearing the opinion of the Board of Statutory Auditors.
In view of the fact that the requirements of the Decree are met, at its meeting of 27/05/2020 the Company's Board of Directors resolved to entrust this task to a body set up specifically for the purpose and with a mixed composition, i.e. with members internal and external to Endura.

3.3. Functions and powers of the SB

On a general level, the SB is entrusted with the task of supervising: compliance with the provisions of the Model by the recipients, specifically identified in the “Special Section” relating to the various types of offences covered by the Decree; the actual effectiveness and actual capacity of the Model, in relation to the company’s structure, to prevent the commission of the offences referred to in the Decree; the necessity to update the Model where the need to adapt it to changed corporate and/or regulatory conditions is identified. To this end, the SB has the following tasks, among others:

- Put in place control procedures, bearing in mind that primary responsibility for the control of operations, including those relating to areas at risk, remains with operational management and

forms an integral part of the company's processes.

- Examine the company's activities for the purpose of an up-to-date "mapping" of areas of activity at risk within the company.
- Periodically carry out targeted checks on specific transactions or acts performed within the areas of activity at risk.
- Promote appropriate initiatives for the dissemination of knowledge and understanding of the Model and prepare internal organisational documentation necessary for the purpose of the Model containing instructions, clarifications or updates.
- Collect, process and store information relevant to compliance with the Model, as well as update the list of information that must be submitted to the SB or kept at its disposal.

Coordinate with other company functions, including through special meetings, to improve the monitoring of activities in risk areas. To this end, the SB is kept constantly informed of the development of activities in the aforementioned risk areas, and has free access to all relevant company documentation.

The SB must also be notified by management of any situations in the company's operations that may expose the company to the risk of offences.

Check that the required documentation is in place, present and properly maintained in accordance with the operating procedures that form part of the Model. Specifically, the SB must be provided with all possible information in order to enable it to perform its checks.

Conduct internal investigations to ascertain alleged violations of the provisions of this Model; manage whistleblowing reports, the related verification of their merits and the protection of the whistleblowers; provide evidence of the verification to the company's management according to a specific procedure.

Make use of the assistance of one or more secretaries selected from internal staff or professionals external to the Company with the task of: convening the SB meetings, drafting the minutes to be submitted to the SB for approval, collecting, processing and storing relevant information with regard to compliance with the Model, assisting the SB in all activities necessary for the best performance of its functions.

Check that the elements envisaged by the Model (adoption of standard clauses, completion of procedures, etc.) are in any case adequate and meet the requirements of compliance with the provisions of the Decree, providing for an update of such elements if this is not the case.

Coordinate with the heads of the other company functions for the various aspects relating to the implementation of the Model (definition of standard clauses, personnel training, disciplinary measures, etc.).

With regard to the above, two lines of reporting are assigned to the SB: the first on an ongoing basis, directly with the Company Management; the second, on a periodic basis, to the Board of Directors and the Board of Statutory Auditors, within which it prepares a report on the activity performed (the specific checks and controls carried out and their outcome, any updates to the mapping of sensitive processes, etc.), as well as any legislative changes on the subject of the administrative liability of Entities.

The SB may be convened at any time by the aforementioned bodies and their respective chairs, or may itself submit a request to that effect, to report on the functioning of the Model or on specific situations.

Every year, the SB submits a written report to the Board of Directors on the implementation of the Model at the Company.

3.4. Information flows to the SB

The Supervisory Body must be informed by the persons required to comply with the Model of events that could give rise to liability of the Company pursuant to the 231 Decree.

The following general requirements apply in this regard:

- Any reports relating to the violation of the Model, the Code of Ethics and so-called whistleblowing reports or in any case reports resulting from conduct not consistent with the rules of conduct adopted by the Company must be sent to the SB by the Whistleblowing Function in accordance with the provisions set out in the special section of the Model and in the communication flows to the SB. In this regard, a dedicated internal channel has been set up by means of a special procedure pursuant to Italian Legislative Decree 24/2023 through which each recipient of the Code of Ethics and the Organisational Model contributes to the identification and prevention of risks and situations detrimental to the company. The procedures for submitting reports are set out in the Whistleblowing Procedure attached to the Endura Organisational Model and published on the company's website, in the "About Us" section.

An indicative list of disclosures to be made to the SB and the channels that can be used for this purpose is described in detail in a separate disclosure procedure.
The information provided to the SB must be collected and stored in a special archive to which only the members of the SB and the Board of Directors have access, if required.

Disclosure obligations relating to official acts

In addition to the above-mentioned reports, disclosures must be made to the SB concerning:

- Measures and/or information from criminal investigators or any other authority from which it can be inferred that investigations are being carried out – including for offences unrelated to the 231 Decree – against employees, directors, contractors, partners of the Company, or even unknown persons.
- Requests for legal assistance made by executives and/or employees in the event of legal proceedings being initiated for offences under the 231 Decree.
- Reports prepared by managers of other company functions during their controls from which facts, actions, events or omissions may emerge with critical aspects concerning compliance with the provisions of the 231 Decree and the related Model adopted by the Company.
- Information on the actual implementation of the Model at all levels of the company, with evidence of disciplinary proceedings carried out and any sanctions imposed (including measures taken against employees) or measures or dismissals of such proceedings with the relevant reasons.

Reporting obligations relating to the system of proxies/powers of attorney

Lastly, the Supervisory Body must be informed of the system of proxies/powers of attorney adopted by the Company and of any changes thereto.

An indicative list of disclosures to be made to the SB and the channels that can be used for this purpose is described in detail in a separate disclosure procedure to which reference should be made.

IV. STAFF TRAINING AND DISSEMINATION OF THE MODEL

4.1. Training and information to stakeholders

Using information/training and IT support, the Company promotes the knowledge of the Model, its internal rules and protocols and any updates thereof among all employees who are therefore required to know its contents, observe them and contribute to their implementation.
For the purposes of implementing the Model, the Human Resources Office, the HSE Office and the Governance, Risk & Compliance Office work with the SB to manage the training of personnel as well as to inform suppliers, shareholders and partners about the contents of the 231 Model and any revisions made.

V. DISCIPLINARY SYSTEM

5.1. General principles

An essential aspect for the effectiveness of the Model is the provision of an adequate system of sanctions for the violation of the rules of conduct imposed for the purpose of preventing the offences referred to in the Decree and generally of the internal procedures laid down by the Model itself.

In this regard, reference is made to Annex IV to this Model (Sanctioning system).

In this regard, Article 6, paragraph 2, letter e) of the Decree provides that organisational and management models must *"introduce a disciplinary system that sanctions non-compliance with the measures indicated in the Model".* Article 7, paragraph 4, letter b), also states that the effective implementation of the Model also requires "*a disciplinary system capable of penalising non-compliance with the measures set out in the Model".*
The application of disciplinary sanctions is irrespective of the outcome of any criminal proceedings, since the rules of conduct imposed by the Model are assumed by the Company in full autonomy and regardless of the type of offence that violations of the Model may cause.
The Disciplinary System is also triggered in the event of violation of certain company procedures which, while not constituting criminal offences pursuant to Italian Legislative Decree 231/2001, are to be considered relevant for the company's technical, organisational, legal, economic or reputational repercussions, such as whistleblowing reports. The violation of the principles set out in the Code of Ethics and in the procedures envisaged by the internal protocols set out in the 231 Model compromises the relationship of trust between the Company and its directors, shareholders, employees, consultants, contractors in various capacities, suppliers, commercial and financial partners.
Such violations shall therefore be pursued by the Company incisively, promptly and immediately through the disciplinary measures envisaged in the 231 Model, publicised on the company website, in an appropriate and proportionate manner, regardless of the possible criminal relevance of such conduct and the institution of criminal proceedings in cases where they constitute offences.
The effects of violating the Code of Ethics and the internal protocols set out in the 231 Model must be taken seriously by all those who have dealings with the Company in any capacity. To this end, the Company disseminates the Code of Ethics and Conduct and the internal protocols and makes known the sanctions

envisaged in the event of violation and the methods and procedures for imposing them.

VI. PERIODIC AUDITS

This Model is subject to the following periodic audits:

- Verification of consistency between the concrete conduct of the recipients of the Model and the Model itself.

  This check takes place through the establishment of a system of periodic declarations by the recipients of the Model confirming that no actions have been taken that are not consistent with the Model, and more specifically that the guidelines and contents of this Model have been complied with and that the powers of attorney and signature limits have been respected.
- Verification of existing procedures: the effective functioning of this Model will be periodically checked in the manner established by the Supervisory Body. Moreover, a review will be undertaken of all the reports received during the year, of the actions taken by the Supervisory Body and the other parties concerned, of the events considered risky, and of the awareness of personnel with respect to the possible offences envisaged in the Decree, by means of sample interviews.

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