Organization and management model pursuant to Legislative Decree 231/2001

GENERAL PART

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Summary

1. DESCRIPTION OF THE REGULATORY FRAMEWORK

1.1. Introduction

With the Legislative Decree 8 June 2001 n. 231 (hereinafter, the "Leg. Decr. n. 231/2001" or the "Decree"), in implementation of the delegation conferred on the Government with art. 11 of Law no. 300 of 29 September 2000 has been laid down on the discipline of the "*liability of entities for administrative offenses dependent on crime*".

In particular, these rules apply to entities with legal personality and to companies and associations, whether or not having legal personality.

The Leg. Decr. n. 231/2001 finds its primary genesis in some international and community conventions ratified by Italy which require to provide for forms of liability of collective bodies for certain types of crime.

According to the discipline introduced by the Decree, in fact, companies can be held "responsible" for some crimes committed or attempted, also in the interest or to the advantage of the companies themselves, by members of the top management (the so-called subjects "in top position" or simply "apex") and by those who are subject to the direction or supervision of the latter (art. 5, Paragraph 1, of Legislative Decree. No 231/2001).

The administrative liability of companies is independent of the criminal liability of the natural person who committed the crime and joins the latter.

This extension of responsibility essentially aims to involve in the punishment of certain crimes the assets of the companies and, ultimately, the economic interests of the shareholders, who, until the entry into force of the Decree in question, did not suffer direct consequences from the commission of crimes committed, in the interest or to the advantage of their company, by directors and / or employees.

The Leg. Decr. n. 231/2001 innovates the Italian legal system as companies are now applicable, directly and autonomously, sanctions of both pecuniary and disqualification in relation to crimes ascribed to subjects functionally linked to the company pursuant to art. 5 of the decree.

The administrative liability of the company is, however, excluded if the company has, inter alia, adopted and effectively implemented, before the commission of the crimes, models of organization, management and control suitable for preventing the crimes themselves; these models can be adopted on the basis of codes of conduct (guidelines) drawn up by associations representing companies, including Confindustria, and communicated to the Ministry of Justice.

The administrative liability of the company is, in any case, excluded if the top management and / or their subordinates have acted in their own interest or in the interests of third parties.

1.2. Nature of liability

With reference to the nature of administrative liability *pursuant* to Legislative Decree no. 231/2001, the Explanatory Report to the decree underlines the "*birth of a* tertium genus *that combines the essential features of the penal and administrative systems in an attempt to reconcile the reasons of preventive effectiveness with those, even more inescapable, of the maximum guarantee*".

The Leg. Decr. n. 231/2001 has, in fact, introduced into our legal system a form of liability of companies of an "administrative" type – in accordance with the provisions of art. 27, first paragraph of our Constitution – but with numerous points of contact with a "criminal" responsibility.

In this sense, see – among the most significant – Articles. 2, 8 and 34 of Legislative Decree. n. 231/2001 where the first reaffirms the principle of legality typical of criminal law; the second affirms the autonomy of the responsibility of the entity with respect to ascertaining the responsibility of the natural person responsible for the criminal conduct; the third provides that that liability, which depends on the commission of a criminal offence, is established in the context of criminal proceedings and is, therefore, assisted by the guarantees specific to criminal proceedings. Consider also the afflictive nature of the sanctions applicable to society.

1.3. Offenders: subjects in top positions and subjects subject to the direction of others

As mentioned above, according to Leg. Decr. n. 231/2001, the company is responsible for crimes committed in its interest or for its benefit:

- by "persons who hold functions of representation, administration or management of the entity or of one of its organizational units with financial and functional autonomy as well as by persons who exercise, even de facto, the management and control of the entity itself" (the above defined subjects "in top management" or "apical position"; art. 5, paragraph 1, letter a), of Legislative Decree. No 231/2001);

- by persons subject to the direction or supervision of one of the top management (the so-called subjects subject to the direction of others; Article 5, paragraph 1, letter b), of Legislative Decree. No 231/2001).

It should also be reiterated that the company is not liable, by express legislative provision (Article 5, paragraph 2, of Legislative Decree no. 231/2001), if the persons indicated above have acted in the exclusive interest of themselves or third parties.

1.4. Offence

According to Leg. Decr. n. 231/2001, the entity can be held responsible only for the crimes expressly referred to in Legislative Decree. n. 231/2001, if committed in his interest or to his advantage by qualified persons *pursuant* to art. 5, paragraph 1, of the Decree itself or in the case of specific legal provisions that refer to the Decree, as in the case of art. 10 of Law no. 146/2006.

The cases can be included, for ease of presentation, in the following categories:

- **crimes against the Public Administration**. This is the first group of crimes originally identified by Leg. Decr. No 231/2001 (Articles 24 and 25) [1];

- falsity in coins, in public credit cards, in stamp values and in instruments or signs of recognition, such as falsity in coins, public credit cards and stamp values, provided for by art. 25-bis of the Decree and introduced by Law no. 409 of 23 November 2001, containing "*Urgent provisions in view of the introduction of the Euro*" [2];

- **corporate crimes**. The Leg. Decr.11 April 2002, no. 61, as part of the reform of company law, provided for the extension of the administrative liability regime of entities also to certain corporate crimes (such as false corporate communications, illicit influence on the shareholders' meeting, referred to in art. 25-ter of Legislative Decree no. 231/2001) [3];

- **crimes concerning terrorism and subversion of the democratic order** (referred to in Article 25-quarter of Legislative Decree no. 231/2001, introduced by Article 3 of Law no. 7 of 14 January 2003). These are "*crimes with the purpose of terrorism or subversion of the democratic order, provided for by the penal code and special laws*", as well as crimes, other than those indicated above, "*which have in any case been committed in violation of the provisions of Article 2 of the International Convention for the Suppression of the Financing of Terrorism made in New York on December 9, 1999*") [4];

- **market abuse**, referred to in art. 25-sexies of the Decree, as introduced by art. 9 of Law no. 62 of 18 April 2005 ("Community Law 2004") [5];

- **crimes against the individual personality**, provided for by art. 25-quinquies, introduced in the Decree by art. 5 of Law no. 228 of 11 August 2003, such as child prostitution, child pornography, trafficking in persons and enslavement and maintenance [6];

- **transnational crimes**. Art. 10 of Law no. 146 of 16 March 2006 provides for the administrative liability of the company also with reference to the crimes specified by the same law that present the characteristic of transnationality [7];

- **crimes against life and individual safety**. Art. 25-quarter.1 of the Decree provides among the crimes with reference to which the administrative responsibility of the company is attributable to the practices of mutilation of the female genital organs;

- **crimes relating to health and safety**. Art. Article 25-septies [8] provides for the administrative liability of the company in relation to the crimes referred to in articles 589 and 590, third paragraph of the penal code (Manslaughter and serious or very serious culpable injuries), committed with violation of accident prevention regulations and on the protection of hygiene and health at work;

- **crimes of receiving stolen goods, money laundering and use of money, goods or benefits of illicit origin, as well as self-laundering**. Art. 25-octies [9] of the Decree establishes the extension of the entity's liability also with reference to the crimes provided for in articles 648, 648-bis, 648-ter and 648 – *ter* 1 of the Criminal Code;

- **computer crimes and unlawful processing of data**. Art. 24-bis of the *Decree* provides for the administrative liability of the company in relation to the crimes referred to in articles 615-ter, 617-quarter, 617-quinquies, 635-bis, 635-ter, 635-quarter and 635-quinquies of the Criminal Code;

- **crimes of organized crime**. Art. Article 24-ter of the Decree establishes the extension of the entity's liability also with reference to the crimes provided for in Articles 416, sixth paragraph, 416-bis, 416-ter and 630 of the Criminal Code and the crimes provided for in Article 74 of the Consolidated Law referred to in Decree of the President of the Republic 9 October 1990, n. 309;

- **crimes against industry and commerce**. Art. 25-bis-1 of the *Decree* provides for the administrative liability of the company in relation to the crimes referred to in articles 513, 513-bis, 514, 515, 516, 517, 517-ter and 517-quarter of the Criminal Code;

- **crimes concerning copyright infringement**. Art. Article 25-novies of the *Decree* provides for the administrative liability of the company in relation to the crimes referred to in Articles 171, first paragraph, letter a-bis), and third paragraph, 171-bis, 171-ter and 171-septies, 171-octies of Law no. 633 of 22 April 1941;

- **inducement not to make declarations or to make false statements to the Judicial Authority** (art. 377-bis criminal code), referred to in art.25-decies of the Decree [10];

- **environmental crimes.** Article 25-undecies of the Decree provides for the administrative liability of the company in relation to the crimes referred to in articles 452-bis, 452-quarter, 452-quinquies, 452-sexies, 452-octies, 727-bis and 733-bis of the penal code (these are in particular relevant environmental crimes including pollution and environmental disaster), some articles provided for by Legislative Decree no. 152/2006 (Consolidated Environmental Act), some articles of Law no. 150/1992 for the protection of endangered animal and plant species and dangerous animals, art. 3, co. 6, of Law no. 549/1993 on the protection of stratospheric ozone and the environment and some articles of Legislative Decree. No 202/2007 on ship-source pollution [11];

- **offences for the employment of illegally staying third-country nationals**. Art. Article *25-duodecies* of the Decree provides for the administrative liability of the company in relation to the crimes of Article 2, paragraph 1 of Legislative Decree no. 109 of 16 July 2012 in the event that foreign workers without a residence permit or even expired are used;

- **crimes of corruption between private individuals**. Art. 25-ter *1, letter s-bis* of the Decree provides for the administrative liability of the company in relation to the crimes of art. 2635 of the Civil Code;

- **offences of solicitation of minors**. Article 25-quinquies, *paragraph 1 letter c* of the Decree provides for the administrative liability of the company in relation to Article 3 of Legislative Decree 04.03.2014, n.39 of the new case referred to in Article 609 *undecies* of the Criminal Code;

- **crimes of racism and xenophobia.** Art. 25-terdecies provides for the administrative liability of the company in relation to the crimes of art. 604-bis Criminal Code (Propaganda and incitement to crime for reasons of racial, ethnic and religious discrimination) [12];

- **crimes for entities operating in the supply chain of virgin olive oils**. Art. 12, Law no. 9/2013 has made the following crimes applicable to those who work in the supply chain of virgin olive oils: use of adulteration and counterfeiting of food substances (Article 440 of the Criminal Code), trade in counterfeit or adulterated food substances (Article 442 of the Criminal Code), trade in harmful food substances (Article 444 of the Criminal Code); counterfeiting, alteration or use of distinctive signs of intellectual works or industrial products (Article 473 of the Criminal Code); introduction into the State and trade in products with false signs (Article 474 of the Criminal Code); fraud in the exercise of trade (art. 515 Criminal Code); sale of non-genuine food substances as genuine (art. 516 Criminal Code); sale of industrial products with false signs (art. 517 Criminal Code); counterfeiting of geographical indications designations of origin of agri-food products (Article 517-quarter of the Criminal Code);

- **fraud in sports competitions, abusive exercise of gambling or betting and games of chance carried out by means of prohibited devices** [13]. Art. Article *25-quaterdecies* provides for the administrative liability of the company in relation to the following crimes: sports fraud (art.1, L. 401/1989) and crimes and contraventions related to the exercise, organization, sale of gaming and betting activities in violation of authorizations or administrative concessions (art.4, L. 401/1989);

- **tax crimes**, referred to in art. 25-quinquiesdecies, including various cases of Legislative Decree 74/2000, such as: fraudulent declaration through the use of invoices or other documents for non-existent operations, fraudulent declaration through other artifices, unfaithful declaration, issue of invoices or other documents for non-existent transactions, Undue compensation, concealment or destruction of accounting documents, failure to declare, fraudulent subtraction from the payment of taxes;

- **fraud** and falsification of non-cash means of payment, art. 25-octies.1, entitled "Crimes concerning non-cash means of payment", provides for the administrative liability of the company in relation to the crimes of improper use and falsification of credit and payment cards (Article 493-ter of the Criminal Code), possession and dissemination of equipment, devices or computer programs aimed at committing crimes concerning payment instruments other than cash (art. 493-quarter Criminal Code), computer fraud (art. 640-ter Criminal Code) and the commission of any other crime against public faith, against property or that in any case offends the assets provided for by the Criminal Code, when it concerns payment instruments other than cash (art. 25-octies.1, paragraph 2);

- crimes against cultural heritage, Law no. 22 of 9 March 2022, "Provisions on crimes against cultural heritage", introduced art. 25-septiesdecies entitled "crimes against cultural heritage", including the following crimes of the Criminal Code: misappropriation of cultural property (art. 518-ter), illicit import of cultural goods (art. 518-decies), illicit exit or export of cultural goods (art. 518-undecies), destruction, dispersion, deterioration, disfigurement, soiling and illicit use of cultural or landscape goods (art. 518-duodecies), counterfeiting of works of art (art. 518-quaterdecies), theft of cultural property (art. 518-bis), receiving of cultural goods (art. 518-quarter), falsification in private writing relating to cultural goods (art. 518-octies);

- recycling of cultural heritage and devastation, Law no. 22 of 9 March 2022, "Provisions on crimes against cultural heritage", introduced art. 25-duodevicies entitled "Recycling of cultural property and devastation and looting of cultural and landscape heritage", including the following crimes of the Criminal Code: recycling of cultural property (art. 518-sexies), devastation and looting of cultural and landscape heritage (art. 518-terdecies):

The categories listed above are destined to increase further, shortly, also due to the legislative tendency to expand the scope of operation of the Decree, also in adaptation to international and community obligations.

1.5. Sanctioning system

Arts. 9-23 of Legislative Decree. n. 231/2001 provide for the following penalties against the company, as a result of the commission or attempted commission of the crimes mentioned above:

– financial penalty (and precautionary attachment);

– disqualification sanctions (also applicable as a precautionary measure) lasting not less than three months and not more than two years (with the clarification that, pursuant to Article 14, paragraph 1, Legislative Decree no. 231/2001, "*Disqualification sanctions concern the specific activity to which the entity's offense refers*") which, in turn, may consist of:

· disqualification from carrying out the activity;

· suspension or revocation of authorizations, licences or concessions functional to the commission of the offence;

· prohibition to contract with the public administration, except to obtain the performance of a public service;

· exclusion from benefits, loans, contributions or subsidies and the possible revocation of those granted;

· prohibition of advertising goods or services;

· confiscation (and preventive seizure in precautionary proceedings);

· publication of the judgment (in case of application of a disqualification sanction).

The pecuniary sanction is determined by the criminal judge through a system based on "quotas" in a number of not less than one hundred and not more than one thousand and of a variable amount between a minimum of Euro 258.22 to a maximum of Euro 1549.37. In determining the financial penalty, the court shall determine:

– the number of shares, taking into account the seriousness of the act, the degree of liability of the company and the activity carried out to eliminate or mitigate the consequences of the act and to prevent the commission of further infringements;

– the amount of the individual share, based on the economic and financial conditions of the company.

The disqualification sanctions apply only to crimes for which they are expressly provided for (i.e. crimes against the public administration, certain crimes against public faith - such as counterfeiting coins - crimes relating to terrorism and subversion of the democratic order, crimes against the individual personality, practices of mutilation of female genital organs, transnational crimes, crimes relating to health and safety as well as crimes of receiving stolen goods, money laundering and use of money, goods or benefits of illicit origin, computer crimes and unlawful processing of data, crimes of organized crime, crimes against industry and commerce, crimes relating to copyright infringement, certain environmental crimes, offences relating to the employment of illegally staying third-country nationals, undue inducement to give or promise benefits, tax and smuggling offences, offences relating to instrumentalities other than payment in cash, offences against cultural heritage and money laundering of cultural property, and the devastation and looting of cultural and landscape goods) and provided that at least one of the following conditions is met:

· the company has derived a significant profit from the consummation of the crime and the crime has been committed by subjects in top positions or by subjects subject to the direction of others when, in the latter case, the commission of the crime has been determined or facilitated by serious organizational deficiencies;

· in case of repetition of offences [14].

The judge determines the type and duration of the disqualification sanction taking into account the suitability of the individual sanctions to prevent offenses of the type committed and, if necessary, can apply them jointly (Article 14, paragraph 1 and paragraph 3, Legislative Decree no. 231/2001).

The sanctions of disqualification from carrying out the activity, the prohibition to contract with the public administration and the prohibition to advertise goods or services can be applied - in the most serious cases - definitively [15]. It should also be noted the possible continuation of the company's activity (instead of the imposition of the sanction) by a commissioner appointed by the judge pursuant to and under the conditions of art. 15 of Legislative Decree. No 231/2001 [16].

1.6. Attempt

In the hypotheses of commission, in the forms of the attempt, of the crimes sanctioned on the basis of Leg. Decr. No 231/2001, financial penalties (in terms of amount) and disqualification sanctions (in terms of duration) are reduced from one third to half.

The imposition of sanctions is excluded in cases where the entity voluntarily prevents the completion of the action or the realization of the event (Article 26 of Legislative Decree no. 231/2001).

1.7. Changes in the entity

The Leg. Decr. n. 231/2001 regulates the regime of the financial liability of the entity also in relation to the modification of the same such as the transformation, merger, demerger and sale of the company.

According to art. 27, paragraph 1, of Legislative Decree. n. 231/2001, the institution with its assets or with the common fund is liable for the obligation for the payment of the pecuniary sanction, whereas the concept of assets must refer to companies and entities with legal personality, while the notion of "common fund" concerns non-recognized associations [17].

Arts. 28-33 of Legislative Decree. n. 231/2001 regulate the impact on the liability of the entity of the modification events related to transformation, merger, demerger and sale of companies. The Legislature has taken into account two opposing requirements:

– first, to prevent such transactions from constituting a means of easily circumventing the administrative liability of the institution;

– on the other hand, do not penalize reorganization interventions without elusive intent.

The Explanatory Report to Leg. Decr. n. 231/2001 states "*The general criterion in this regard followed was to regulate the fate of the pecuniary sanctions in accordance with the principles dictated by the Civil Code with regard to the generality of the other debts of the original entity, maintaining, conversely, the link of the disqualification sanctions with the branch of activity in which the crime was committed*".

In case of transformation, art. 28 of Legislative Decree. n. 231/2001 provides (in line with the nature of this institution which implies a simple change in the type of company, without determining the extinction of the original legal entity) that the liability of the entity for crimes committed before the date on which the transformation took effect remains unchanged.

In the event of a merger, the entity resulting from the merger (including by incorporation) is liable for the crimes for which the entities involved in the merger were responsible (Article 29 of Legislative Decree no. 231/2001).

Art. 30 of Legislative Decree. No. 231/2001 provides that, in the event of a partial division, the company being divided remains liable for crimes committed before the date on which the division took effect.

The entities benefiting from the division (both total and partial) are jointly and severally liable to pay the financial penalties due by the divided entity for the offences committed before the date on which the division took effect, up to the limit of the actual value of the net assets transferred to the individual institution.

This limit does not apply to beneficiary companies, to which the branch of activity in which the crime was committed is devolved, even if only partially.

Disqualification sanctions relating to offences committed before the date on which the division took effect apply to entities to which the branch of activity in which the offence was committed remained or has been transferred, even in part.

Art. Article 31 of the Decree provides for provisions common to mergers and demergers, concerning the determination of sanctions in the event that such extraordinary transactions took place before the conclusion of the proceedings. In particular, the principle that the judge must measure the financial penalty is clarified, according to the criteria provided for by art. 11, paragraph 2[18], of the Decree, referring in any case to the economic and patrimonial conditions of the entity originally responsible, and not to those of the entity to which the sanction should be attributed following the merger or demerger.

In the event of a disqualification sanction, the entity that will be responsible as a result of the merger or demerger may ask the judge for the conversion of the disqualification sanction into a pecuniary sanction, provided that: (i) the organizational fault that made the commission of the crime possible has been eliminated, and (ii) the entity has compensated the damage and made available (for confiscation) the part of any profit obtained. Art. 32 of Legislative Decree. n. 231/2001 allows the judge to take into account the sentences already imposed on the entities involved in the merger or the entity divided in order to configure the reiteration, pursuant to art. 20 of Legislative Decree. n. 231/2001, in relation to the illicit activities of the entity resulting from the merger or beneficiary of the demerger, relating to crimes subsequently committed [19]. For the cases of transfer and transfer of a company, a unitary discipline is provided (Article 33 of Legislative Decree no. 231/2001) [20]; the transferee, in the case of transfer of the company in whose activity the crime was committed, is jointly and severally obliged to pay the pecuniary sanction imposed on the transferor, with the following limitations:

– the benefit of prior enforcement by the assignor is reserved;

– the liability of the transferee is limited to the value of the company sold and to the pecuniary penalties that result from the mandatory accounting books or due for administrative offenses of which he was, in any case, aware.

On the contrary, the disqualification sanctions imposed on the assignor do not extend to the assignee.

1.8. Offences committed abroad.

According to art. 4 of Legislative Decree. n. 231/2001, the entity may be called to answer in Italy in relation to crimes - contemplated by the same Leg. Decr. n. 231/2001 - clerks abroad [21]. The Explanatory Report to Leg. Decr. n. 231/2001 underlines the need not to leave a frequently occurring criminological situation without sanction, also in order to avoid easy circumvention of the entire regulatory framework in question.

The conditions on which the liability of the entity for crimes committed abroad is based are:

– the crime must be committed by a person functionally linked to the entity, pursuant to art. 5, paragraph 1, of Legislative Decree. No 231/2001;

– the entity must have its head office in the territory of the Italian State;

– the entity can respond only in the cases and conditions provided for by Articles. 7, 8, 9, 10 c.p. (in cases where the law provides that the culprit - a natural person - is punished at the request of the Minister of Justice, proceedings are taken against the entity only if the request is also formulated against the entity itself) [22] and, also in accordance with the principle of legality referred to in art. 2 of Legislative Decree no. 231/2001, only in the case of offences for which its responsibility is provided for by an *ad hoc* legislative provision;

if the cases and conditions referred to in the aforementioned articles of the Criminal Code are met, the State of the place where the act was committed does not proceed against the entity.

1.9. Procedure for establishing the offence.

Liability for administrative offences arising from a criminal offence is established in criminal proceedings. In this regard, art. 36 of Legislative Decree. n. 231/2001 provides *"The competence to know the administrative offenses of the entity belongs to the competent criminal judge for the crimes on which they depend. For the procedure for establishing the administrative offence of the entity, the provisions on the composition of the court and the related procedural provisions relating to the offences on which the administrative offence depends shall be observed".*

Another rule, inspired by reasons of effectiveness, homogeneity and procedural economy, is that of the mandatory consolidation of proceedings: the trial against the entity must remain joined, as far as possible, to the criminal trial established against the natural person who is the offender of the predicate crime of the responsibility of the entity (Article 38 of Legislative Decree no. 231/2001). This rule finds a balance in the dictate of the same art. 38 which, in paragraph 2, regulates the cases in which the administrative offense is proceeded separately [23].

The entity participates in criminal proceedings with its legal representative, unless the latter is charged with the offence on which the administrative offence depends; When the legal representative does not appear, the constituted entity is represented by the defender (Article 39, paragraphs 1 and 4, of Legislative Decree no. 231/2001).

1.10. Exemption value of Organization, Management and Control Models

Fundamental aspect of Leg. Decr. n. 231/2001 is the attribution of an exemption value to the organization, management and control models of the company.

In the event that the crime was committed by a person in a top position, in fact, the company is not liable if it proves that (Article 6, paragraph 1, Legislative Decree no. 231/2001):

– the governing body has adopted and effectively implemented, before the commission of the fact, models of organization and management suitable for preventing crimes of the kind that occurred;

– the task of supervising the functioning and observance of the models and ensuring their updating has been entrusted to a body of the company endowed with autonomous powers of initiative and control;

– the persons committed the crime by fraudulently circumventing organizational and management models;

– there has been no omission or insufficient supervision by the supervisory body.

In the case of a crime committed by top management, there is, therefore, on the part of the company a presumption of responsibility due to the fact that these subjects express and represent the policy and, therefore, the will of the entity itself. This presumption, however, can be overcome if the company is able to demonstrate its extraneousness to the facts alleged against the apical subject by proving the existence of the above-mentioned competing requirements and, consequently, the fact that the commission of the crime does not derive from its own "organizational fault" [24].

On the other hand, in the case of a crime committed by persons subject to the direction or supervision of others, the company is liable if the commission of the crime was made possible by the violation of the obligations of management or supervision to which the company is bound [25].

In any case, the violation of management or supervisory obligations is excluded if the company, before the commission of the crime, has adopted and effectively implemented a model of organization, management and control suitable to prevent crimes of the kind that occurred.

In the case of a crime committed by a person subject to the direction or supervision of a top executive, there is a reversal of the burden of proof. The accusation must, in the hypothesis provided for by the aforementioned art. 7, prove the failure to adopt and effectively implement a model of organization, management and control suitable for preventing crimes of the kind that occurred.

The Leg. Decr. n. 231/2001 outlines the content of the organizational and management models providing that the same, in relation to the extension of delegated powers and the risk of committing crimes, as specified by art. 6, paragraph 2, must:

– identify the activities in which offences may be committed;

– provide for specific protocols aimed at planning the formation and implementation of the company's decisions in relation to the crimes to be prevented;

– identify ways of managing financial resources to prevent the commission of crimes;

– provide for information obligations vis-à-vis the body responsible for monitoring the functioning and compliance with the models;

– introduce a disciplinary system suitable for sanctioning non-compliance with the measures indicated in the model.

Art. 7, paragraph 4, of Legislative Decree. n. 231/2001 also defines the requirements for the effective implementation of organizational models:

– periodic verification and possible modification of the model when significant violations of the requirements are discovered or when changes occur in organization and activity;

– a disciplinary system suitable for sanctioning non-compliance with the measures indicated in the model.

1.11. Codes of conduct (guidelines)

Art. 6, paragraph 3, of Legislative Decree. 231/2001 provides that "The models of *organization and management can be adopted, guaranteeing the requirements referred to in paragraph 2, on the basis of codes of conduct drawn up by the associations representing the entities, communicated to the Ministry of Justice which, in agreement with the competent Ministries, may formulate, within thirty days, observations on the suitability of the models to prevent crimes".*

Confindustria, in implementation of the provisions of the aforementioned article, has defined the Guidelines[26] for the construction of organization, management and control models (hereinafter, "Confindustria Guidelines") providing, among other things, methodological indications for the identification of risk areas (sector/activity in which crimes may be committed), the design of a control system (the so-called protocols for the planning of training and implementation of decisions of the institution) and the contents of the organization, management and control model.

In particular, the Confindustria Guidelines suggest to member companies to use risk *assessment* and *risk management* processes and provide for the following phases for the definition of the model:

- identification of risks and protocols,
- adoption of some general instruments, among which the main ones are a Code of Conduct and Business Ethics with reference to crimes *pursuant* to Legislative Decree 231/2001 and a disciplinary system,
- identification of the criteria for the choice of the Supervisory Body, indication of its requirements, tasks and powers and information obligations.

The Confindustria Guidelines were transmitted, before their dissemination, to the Ministry of Justice, pursuant to art. 6, paragraph 3, of Legislative Decree. n. 231/2001, so that the latter could express its observations within thirty days, as required by art. 6, paragraph 3, of Legislative Decree. No 231/2001, referred to above.

The latest version was published in June 2021 (with approval by the Ministry of Justice on 8 June 2021).

The Company has adopted its own model of organization, management and control on the basis of the Guidelines developed by the main trade associations and, in particular, the Confindustria Guidelines.

1.12. Suitability union

The ascertainment of the company's liability, attributed to the criminal court, takes place by:

– verification of the existence of the offence presupposed for the company's liability;

– the suitability union on the organizational models adopted.

The judge's review of the abstract suitability of the organizational model to prevent the crimes referred to in Leg. Decr. n. 231/2001 is conducted according to the criterion of the so-called "posthumous prognosis".

The judgment of suitability must be formulated according to a substantially *ex ante* criterion for which the judge is placed, ideally, in the company reality at the time when the offense occurred to test the congruence of the model adopted. In other words, the organizational model that, before the commission of the crime, could and should be considered such as to eliminate or, at least, minimize, with reasonable certainty, the risk of the commission of the crime that subsequently occurred must be judged "suitable for preventing crimes".

2. DESCRIPTION OF THE COMPANY REALITY – ELEMENTS OF THE GOVERNANCE MODEL AND THE GENERAL ORGANIZATIONAL STRUCTURE OF THE COMPANY

2.1. Objects of the company

The Company carries out its activities in the transport and shipment of goods by land, sea, air and river. The company is registered with the Chamber of Commerce, Industry, Crafts and Agriculture of Reggio Emilia n. REA RE-122068 for the Ateco code 49.41.

In particular, the company has as its object:

- Operation on behalf of third parties of transport and shipments both normal and exceptional of things in general, by land, sea and air and also by water;
- Exercise of the activity of handling and lifting with mobile cranes and of the activity of industrial assembly;
- Exercise of the activity of freight forwarder and freight transport commission agency;
- Exercise of logistics and fiduciary warehouses and storage and custody in own premises or those of third parties, of goods and products in general;
- Buy, sell, take and lease, rent and loan vehicles, vehicles, vehicles in general, containers and other special equipment to be mounted on third-party vehicles;
- Purchase and manage fuel distribution systems;
- The exercise of the activity of workshop, repair and maintenance of vehicles and goods, movable and immovable, own and also those owned by companies directly or indirectly invested;
- Provision of all services, on its own or on behalf of third parties, related to activities related to the sectors of ecology and environmental protection;
- Provision of services in organizational, IT, technical and business matters in general;
- Recruitment of representatives and agencies of companies or entities operating in the same sector.

Secondarily and not principally, the company may

- carry out, occasionally and for the sole purpose of achieving the main corporate purpose indicated above, all securities, real estate, industrial and commercial transactions that will be deemed useful or necessary for this purpose, including financing transactions, also in the form of a guarantee and guarantee of the companies or entities in which it participates;

- assume both directly and indirectly, but not for placement purposes, interests and participations in other companies or enterprises, having similar object, similar or connected to its own.

In any case, "protected" professional activities are expressly excluded from this corporate purpose as they are reserved for members of professional registers, the investment services referred to in Leg. Decr. 58/1998, the collection of savings among the public as well as the exercise towards the public of the financial activities referred to in Title V of Legislative Decree. 385/1993.

The company has been involved in freight and waste transport since 2003.

In particular, the sectors in which it has organized are:

1. Food (transport of liquid products in tanks by road);

2. Road and intermodal ecology (consisting mainly of special waste transport);

3. Container (intermodal maritime transport).

In relation to waste, transport concerns both municipal waste and special, hazardous waste (with ADR transport) and non-hazardous waste; in addition to transport, the company is registered with Cat. 8 National Register of Environmental Managers for intermediation without detention.

2.2. Governance model

The legal representation of the Company is attributed to several subjects and in particular to:

- Chairman of the Board of Directors

- Managing Directors

In particular, at the time of adoption of this Model, 2 (two) Chief Executive Officers were appointed, one without limits related to the transactions of interest and the other with a limit per single transaction of € 500,000 (five hundred thousand/00) and, with the joint signature of the Chairman or the other CEO, for transactions with a unit value exceeding this amount. For the details of the proxies, please refer to them and to what is published consistently in the Chamber of Commerce certificate.

In addition to the aforementioned figures, it should be noted that the company has also proceeded with the identification and appointment of person in charge of technical management pursuant to art. 7 of Law No 122/1992.

With specific reference to the protection of health and safety in the workplace, the company has also availed itself of the right to appoint a delegate pursuant to art. 16 Leg. Decr. 81/08, endowed with spending powers within a maximum amount of € 25,000,000 (twenty-five thousand/00) for each operation. The same figure also plays the role of RSPP.

The company is required to ensure the consistency of the delegation system, preventing and regulating any situations of conflict of interest, as well as to give adequate publicity regarding the distribution of tasks and functions assigned to company figures, starting with top management.

The Board of Statutory Auditors supervises compliance with the law and the Articles of Association, compliance with the principles of correct administration and the adequacy of the organizational, administrative and accounting structure adopted by the Company and its concrete functioning. The Board of Statutory Auditors meets at least once a year and is validly constituted with the presence of most of the auditors and resolves with the favorable vote of most of the auditors.

The control of the correctness and regularity of the financial statements is also entrusted to regularly appointed auditing firms.

2.3. Organization model

The company has the following organizational model as per the organizational chart attached to this Model and is an integral part of it.

2.4. Code of Ethics

The Code of Ethics, adopted and distributed to all employees at the time of recruitment under the title of Code of Ethics and Conduct, aims to provide the ethical framework on which every decision is based, both individually and as members of the global organization.

The Code of Ethics contains the guiding principles that should be applied by all employees in order to guide their behavior in the different areas of activity:

Compliance with the rules of the Code of Ethics and Business Conduct is a specific fulfillment deriving from the employment relationship.

3. ORGANIZATION, MANAGEMENT AND CONTROL MODEL AND METHODOLOGY FOLLOWED FOR ITS PREPARATION

3.1. Preamble

The adoption of an organization, management and control model pursuant to Leg. Decr. 231/2001, in addition to representing a reason for exemption from the Company's liability with reference to the commission of the types of crime included in the Decree, is an act of social responsibility on the part of the Company from which benefits derive for all *stakeholders*: shareholders, managers, employees, creditors and all other subjects whose interests are linked to the fate of the company.

The introduction of a system of control of entrepreneurial action, together with the establishment and dissemination of ethical principles, improving the already high standards of conduct adopted by the Company perform a regulatory function as they regulate the conduct and decisions of those who are daily called to work in favor of the Company in accordance with the aforementioned ethical principles and *standards* of conduct.

The Company has therefore intended to launch a series of activities (hereinafter, the "Project") aimed at making its organizational model compliant with the requirements of Leg. Decr. n. 231/2001 and consistent both with the principles already rooted in its *governance* culture and with the indications contained in the Confindustria Guidelines.

3.2. The Project for the definition of its organization, management and control model pursuant to Leg. Decr. No 231/2001

The methodology chosen to carry out the Project, in terms of organization, definition of operating methods, structuring in phases, assignment of responsibilities between the various company functions, has been developed in order to guarantee the quality and authoritativeness of the results.

The Project is divided into four phases summarized in the following table.

- *Phase 1 - Initiation of the Project and identification of the processes and activities in which the crimes referred to in Legislative Decree no. 231/2001 can be committed.*
- *Presentation of the Project in its complexity, collection and analysis of documentation, and preliminary identification of the processes / activities in which the crimes referred to in Leg. Decr. can be committed abstractly. n. 231/2001 (so-called "sensitive" processes/activities).*
- *Phase 2 - Analysis of sensitive processes and activities.*
- *Identification and analysis of sensitive processes and activities and control mechanisms in place, with particular attention to preventive controls and other compliance elements/activities.*

- *Phase 3 - Gap analysis and Action Plan*.
- *Identification of the organizational requirements characterizing a suitable model of organization, management and control pursuant to Leg. Decr. n. 231/2001 and actions to "strengthen" the current control system (processes and procedures).*
- *Step 4 - Definition of the organization, management and control model*.
- *Definition of the organization, management and control model pursuant to Leg. Decr. n. 231/2001 divided into all its components and operating rules and consistent with the Confindustria Guidelines.*

Below will be exposed the methodologies followed and the criteria adopted in the various phases of the Project.

3.3. Initiation of the Project and identification of the processes and activities in which the crimes referred to in Leg. Decr. No 231/2001

Art. 6, paragraph 2, lett. a) of Legislative Decree. n. 231/2001 indicates, among the requirements of the model, the identification of the processes and activities in which the crimes expressly referred to in the Decree can be committed. In other words, these are those activities and business processes that are commonly defined as "sensitive" (hereinafter, "sensitive processes" and "sensitive activities").

The purpose of Phase 1 was precisely the identification of the business areas covered by the intervention and the preliminary identification of sensitive processes and activities.

In particular, following the presentation of the Project, a work team was created consisting of external professionals and internal resources of the Company with assignment of their respective tasks and operational roles.

Preparatory to the identification of sensitive activities was the analysis, mainly documentary, of the corporate and organizational structure of the Company, carried out in order to better understand the Company's activities and to identify the business areas covered by the intervention.

The collection of relevant documentation and its analysis from both a technical-organizational and legal point of view allowed a first identification of sensitive processes/activities and a preliminary identification of the functions responsible for these processes/activities.

At the end of Phase 1, a detailed work plan of the subsequent phases was prepared, subject to revision according to the results achieved and the considerations that emerged during the Project.

Below are the activities carried out in Phase 1, concluded with the sharing of the sensitive processes/activities identified with the Work Team:

– *collection of documentation relating to the corporate and organizational structure (for example: organization charts, main organizational procedures, main task sheets, powers of attorney, etc.),*

– *analysis of the documentation collected to understand the Company's business model,*

– *detection of the business areas of activity and related functional responsibilities,*

– *preliminary identification of sensitive processes/activities pursuant to Legislative Decree no. 231/2001,*

preliminary identification of the directorates/functions responsible for the identified sensitive processes.

3.4. Analysis of sensitive processes and activities

The objective of Phase 2 was to analyze and formalize for each sensitive process/activity identified in Phase 1: i) its main phases, ii) the functions and roles/responsibilities of the internal and external subjects involved, iii) the existing control elements, to verify in which areas/sectors of activity the types of crime referred to in Legislative Decree could be abstractly realized. No 231/2001.

In this phase, therefore, a map of the activities was created which, in consideration of the specific contents, could be exposed to the potential commission of the crimes referred to by Leg. Decr. No 231/2001.

In the survey of the existing control system, the following control principles were taken as a reference:

– existence of formalized procedures,

– *traceability and ex post* verifiability, of activities and decisions through adequate documentary/information supports,

– segregation of tasks,

– existence of formalized proxies/powers of attorney consistent with the organizational responsibilities assigned.

3.5. Gap Analysis and Action Plan

The purpose of Phase 3 was to identify i) the organizational requirements characterizing an organizational model suitable for preventing the crimes referred to in Legislative Decree. n. 231/2001 and ii) actions to improve the existing organizational model.

In order to detect and analyze in detail the existing control model to monitor the risks found and highlighted in the *risk assessment* activity described above and to assess the compliance of the model with the provisions of Legislative Decree no. 231/2001, a comparative analysis (the so-called "gap analysis") was carried out between the existing organizational and control model ("*as is* ") and an abstract reference model evaluated on the basis of the content of the discipline referred to in Legislative Decree. No 231/2001 ("*to be*").

Through the comparison carried out with the *gap analysis*, it was possible to deduce areas for improvement of the existing internal control system and, on the basis of what emerged, an implementation plan was prepared aimed at identifying the organizational requirements characterizing an organization, management and control model in compliance with the provisions of Legislative Decree no. 231/2001 and the actions to improve the internal control system.

Below are the activities carried out in this Phase 4, which ended after the sharing of the *gap analysis* document and the implementation plan (so called *Action Plan*) with the Work Team and Top Management:

– *gap analysis: comparative analysis between the existing organizational model ("as is") and a model of organization, management and control "to tend" in compliance with the provisions of Legislative Decree no. 231/2001 ("to be") with particular reference, in terms of compatibility, to the system of delegations and powers, to the Code of Business Conduct and Ethics, to the system of company procedures, the characteristics of the body to which the task of supervising the functioning and observance of the model is to be entrusted;*

– preparation of an *implementation plan for the identification of the organizational requirements characterizing an organization, management and control model pursuant to Legislative Decree no. 231/2001 and actions to improve the current control system (processes and procedures).*

3.6. Definition of the organization, management and control model

The purpose of Phase 4 was to prepare the organization, management and control model of the Company, divided into all its components, according to the provisions of Leg. Decr. n. 231/2001 and the indications provided by the Confindustria Guidelines.

The implementation of Phase 4 was supported both by the results of the previous phases and by the choices of direction of the Company's decision-making bodies.

3.7. The organization, management and control model

The construction by the Company of its own organization, management and control model *pursuant* to Legislative Decree no. 231/2001 (hereinafter, the "Model") therefore involved an *assessment* of the existing organizational model in order to make it consistent with the control principles introduced by Legislative Decree no. 231/2001 and, consequently, suitable for preventing the commission of the crimes referred to in the Decree itself.

The Leg. Decr. n. 231/2001, in fact, attributes, together with the occurrence of the other circumstances provided for by Articles. 6 and 7 of the Decree, a discriminating value for the adoption and effective implementation of models of organization, management, and control to the extent that the latter are suitable to prevent, with reasonable certainty, the commission, or the attempted commission, of the crimes referred to in the Decree.

In particular, pursuant to paragraph 2 of art. 6 of Legislative Decree. n. 231/2001 An organization, management and control model must meet the following requirements:

– identify the activities in which offences may be committed,

– provide for specific control protocols aimed at planning the formation and implementation of the decisions of the institution in relation to the crimes to be prevented,

– identify ways of managing financial resources to prevent the commission of crimes,

– provide for information obligations vis-à-vis the body responsible for monitoring the functioning and compliance with the models,

– introduce a disciplinary system suitable for sanctioning non-compliance with the measures indicated in the model.

In light of the above considerations, the Company intended to prepare a Model that, on the basis of the indications provided by the Confindustria Guidelines, would take into account its particular business reality, in line with its *governance* system and able to enhance existing controls and bodies.

The adoption of the Model, pursuant to the Decree, does not constitute an obligation. The Company has, however, considered this adoption to comply with its corporate policies in order to:

– establish and/or strengthen controls that allow the Company to prevent or react promptly to prevent the commission of crimes by top management and persons subject to the direction or supervision of the former that involve the administrative liability of the Company,

– raise awareness, with the same purposes, all the subjects who collaborate, in various ways, with the Company (external collaborators, suppliers, etc.), requiring them, within the limits of the activities carried out in the interest of the Company, to adapt to conduct such as not to involve the risk of committing crimes,

– guarantee its integrity, adopting the obligations expressly provided for by art. 6 of the Decree,

– improve the effectiveness and transparency in the management of business activities,

– determine a full awareness in the potential offender of committing an offense (the commission of which is strongly condemned and contrary to the interests of the Company even when apparently it could benefit from it).

The Model, therefore, represents a coherent set of principles, procedures and provisions that: i) affect the internal functioning of the Company and the ways in which it relates to the outside world and ii) regulate the diligent management of a system of control of sensitive activities, aimed at preventing the commission, or attempted commission, of the crimes referred to in Legislative Decree. No 231/2001.

The Model, as approved by the Board of Directors of the Company, includes the following constituent elements:

– process of identification of company activities in which the crimes referred to in Legislative Decree may be committed. No 231/2001,

– provision of *control protocols (or standards)* in relation to the sensitive activities identified,

– process of identifying how to manage financial resources to prevent the commission of crimes,

– supervisory body,

– information flows to and from the supervisory body and specific information obligations towards the supervisory body,

– disciplinary system to sanction the violation of the provisions contained in the Model,

– training and communication plan for employees and other subjects who interact with the Company

– criteria for updating and adapting the Model,

– Code of Conduct and Business Ethics

The above-mentioned constituent elements are represented in the following documents:

– Model of organization, management and control *pursuant to* Legislative Decree 231/01 (consisting of this document);

– Code of Conduct and Business Ethics.

The document "Model of organization, management and control *pursuant to* Leg. Decr. 231/01" contains:

(i) in the General Part, a description of:

· the regulatory framework of reference;

· the Company's corporate reality, *governance* system and organizational structure;

· the characteristics of the Company's supervisory body, with specification of powers, tasks and information flows concerning it;

· the function of the disciplinary system and its sanctioning apparatus;

· the training and communication plan to be adopted in order to ensure knowledge of the measures and provisions of the Model;

· the criteria for updating and adapting the Model.

(ii) in the Special Part, a description of:

· To the types of crime referred to by Legislative Decree. n. 231/2001 that the Company has decided to take into consideration due to the characteristics of its activity;

· sensitive processes/activities and related control *standards* .

The document provides as an integral part of the Model and an essential element of the control system the Code of Business Conduct and Ethics, approved by resolution of the Board of Directors.

The Code of Business Conduct and Ethics collects the ethical principles and values that form the corporate culture and that must inspire the conduct and behavior of those who work in the interest of the Company both inside and outside the company organization, in order to prevent the commission of crimes that are prerequisite for the administrative liability of entities.

The approval of the Code of Business Conduct and Ethics creates a coherent and effective body of internal regulations, with the aim of preventing incorrect behavior or not in line with the Company's directives and is fully integrated with the Organizational, Management and Control Model.

4. THE SUPERVISORY BODY PURSUANT TO LEG. DECR. No 231/2001

4.1. The supervisory body

According to the provisions of Leg. Decr. n. 231/2001 – art. 6, paragraph 1, lett. a) and b) – the entity may be exempted from liability resulting from the commission of crimes by qualified persons *pursuant* to art. 5 of Legislative Decree no. 231/2001, if the governing body has, among other things:

– adopted and effectively implemented a model of organization, management and control suitable for preventing the crimes considered;

– entrusted the task of supervising the functioning and compliance with the model and of updating it [27] to a body of the entity with autonomous powers of initiative and control.

The task of continuously monitoring the widespread and effective implementation of the Model, compliance with it by the recipients, as well as proposing its updating in order to improve its efficiency in preventing crimes and offenses, is entrusted to this body established by the company internally.

The assignment of the aforementioned tasks to a body with autonomous powers of initiative and control, together with the correct and effective performance of the same, represents, therefore, an indispensable prerequisite for the exemption from liability provided for by Leg. Decr. No 231/2001.

The Confindustria Guidelines [28] suggest that it is a body characterized by the following requirements:

(i) autonomy and independence;

(ii) professionalism;

(iii) continuity of action.

The requirements of autonomy and independence would require the absence of operational tasks on the part of the supervisory body which, by involving it in decisions and activities that are precisely operational, would jeopardize its objectivity of judgment, the provision of reports of the supervisory body to the highest management and the forecasting, as part of the annual *budgeting* process. , financial resources allocated to the operation of the supervisory body.

Moreover, the Confindustria Guidelines provide that "in the *case of mixed composition or with internal subjects of the Body, since total independence from the body cannot be required by the components of internal origin, the degree of independence of the Body must be assessed in its entirety*".

The requirement of professionalism must be understood as the wealth of theoretical and practical knowledge of a technical-specialized nature necessary to effectively perform the functions of a supervisory body, i.e. the specialized techniques typical of those who carry out inspection and consultancy activities.

The requirement of continuity of action makes it necessary to have an internal structure in the supervisory body dedicated continuously to the supervision of the Model.

The Leg. Decr. No 231/2001 does not provide any indication of the composition of the supervisory body [29].

In the absence of such indications, the Company opted for a solution that, taking into account the purposes pursued by law, was able to ensure, in relation to its size and organizational complexity, the effectiveness of the controls to which the supervisory body is responsible, in compliance with the requirements also of autonomy and independence previously highlighted.

In this context, the Supervisory Body (hereinafter "Supervisory Body" or "SB") of the Company is a collegial body identified by virtue of the professional skills acquired and personal characteristics, such as a strong capacity for control, independence of judgment and moral integrity.

4.2. General principles on the establishment, appointment and replacement of the Supervisory Body

The Company's Supervisory Body is established by resolution of the Board of Directors and remains in office for the period established at the time of appointment and in any case as long as the Board of Directors that appointed him remains in office and can be re-elected.

The appointment as a member of the Supervisory Body is subject to the presence of the subjective eligibility requirements [30].

In the choice of the member, the only relevant criteria are those relating to the specific professionalism and competence required for the performance of the functions of the Body, to the integrity and absolute autonomy and independence with respect to the same; the Board of Directors, when appointed, must acknowledge the existence of the requisites of independence, autonomy, integrity and professionalism [31].

In particular, following the approval of the Model or, in the case of new appointments, at the time of assignment, the person appointed to hold the position of member of the Supervisory Body must issue a declaration certifying the absence of the following reasons for ineligibility:

- conflicts of interest, including potential ones, with the Company such as to affect the independence required by the role and tasks of the Supervisory Body;

- ownership, directly or indirectly, of shareholdings of such a size as to allow it to exercise considerable influence over the Company;

- administrative functions – in the three years prior to the appointment as a member of the Supervisory Body or the establishment of the consultancy/collaboration relationship with the same Body – of companies subject to bankruptcy, compulsory administrative liquidation or other insolvency proceedings;

- sentence of conviction, even if not final judgment, or sentence of application of the penalty on request (the so-called plea bargain), in Italy or abroad, for the crimes referred to by Leg. Decr. n. 231/2001 or other crimes in any case incident on professional morality and good repute;

- condemnation, by judgment, even if not final judgment, to a penalty that involves interdiction, even temporary, from public office, or temporary interdiction from the management offices of legal persons and companies;

- pendency of a procedure for the application of a preventive measure referred to in Law No 1423 of 27 December 1956 and Law No 575 of 31 May 1965 or decision of the seizure decree *pursuant* to Article 2 *bis* of Law No 575/1965 or decree applying a preventive measure, whether personal or real;

- lack of the subjective requirements of integrity provided for by Ministerial Decree no. 162 of 30 March 2000 for members of the Board of Statutory Auditors of listed companies, adopted pursuant to art. 148 paragraph 4 of the TUF.

Should any of the aforementioned reasons for ineligibility arise against an appointed person, ascertained by a resolution of the Board of Directors, he will automatically lose his office.

The Supervisory Body may benefit – under its direct supervision and responsibility – in carrying out the tasks entrusted to it, from the collaboration of all the functions and structures of the Company or external consultants, making use of their respective skills and professionalism. This faculty allows the Supervisory Body to ensure a high level of professionalism and the necessary continuity of action.

The aforementioned reasons for ineligibility must also be considered with reference to any external consultants involved in the activity and performance of the tasks of the Supervisory Body.

In particular, at the time of assignment, the external consultant must issue a specific declaration in which he certifies:

- the absence of the reasons listed above for ineligibility or reasons preventing the assumption of office (for example: conflicts of interest, family relations with members of the Board of Directors, top management in general, auditors of the Company and auditors appointed by the independent auditors, etc.);

- the circumstance of having been adequately informed of the provisions and rules of conduct provided for by the Model.

The revocation of the powers of the Supervisory Body and the attribution of these powers to another subject can only take place for just cause (also linked to organizational restructuring of the Company) through a specific resolution of the Board of Directors and with the approval of the Board of Statutory Auditors.

In this regard, "just cause" of revocation of the powers connected with the office of member of the Supervisory Body means, by way of example but not limited to:

- serious negligence in the performance of tasks related to the assignment such as: failure to draw up the half-yearly information report or the annual summary report on the activity carried out to which the Body is required; failure to draw up the supervisory program;

- the "omitted or insufficient supervision" by the Supervisory Body - in accordance with the provisions of art. 6, paragraph 1, letter d), Leg. Decr. n. 231/2001 – resulting from a sentence of conviction, even if not final, issued against the Company pursuant to Legislative Decree. n. 231/2001 or by sentence of application of the penalty on request (the so-called plea bargain);

- in the case of an internal member, the assignment of operational functions and responsibilities within the company organization incompatible with the requirements of "autonomy and independence" and "continuity of action" of the Supervisory Body. In any case, any provision of an organizational nature concerning him (e.g. termination of employment, transfer to another office, dismissal, disciplinary measures, appointment of a new manager) must be brought to the acknowledgment of the Board of Directors;

- in the case of an external member, serious and established reasons for incompatibility which nullify its independence and autonomy,

- the failure of even one of the eligibility requirements.

Any decision concerning the Supervisory Body relating to revocation, replacement or suspension is the sole responsibility of the Board of Directors, having heard the opinion of the Board of Statutory Auditors.

4.3. Functions and powers of the Supervisory Body

The activities carried out by the Supervisory Body cannot be reviewed by any other body or function of the Company. The verification and control activities carried out by the Body are, in fact, strictly functional to the objectives of effective implementation of the Model and cannot replace or replace the institutional control functions of the Company.

The Supervisory Body is given the powers of initiative and control necessary to ensure effective and efficient supervision of the functioning and compliance with the Model in accordance with the provisions of art. 6 of Legislative Decree. No 231/2001.

The Body has autonomous powers of initiative, intervention and control, which extend to all sectors and functions of the Company, powers that must be exercised in order to effectively and promptly perform the functions envisaged in the Model and in the rules implementing it.

In particular, the Supervisory Body is entrusted, for the performance and exercise of its functions, with the following tasks and powers [32]:

- regulate its operation also through the introduction of a regulation of its activities that provides: the scheduling of activities, the determination of the temporal cadences of the controls, the identification of the criteria and procedures of analysis, the discipline of information flows coming from the company structures;

- supervise the functioning of the Model and with respect to the prevention of the commission of the crimes referred to in Legislative Decree. n. 231/2001 both with reference to the ability to bring out the materialization of any illegal behavior;

- carry out periodic inspections and control activities, of an ongoing nature - with a temporal frequency and method predetermined by the Program of supervisory activities - and surprise checks, in consideration of the various sectors of intervention or types of activities and their critical points in order to verify the efficiency and effectiveness of the Model;

- freely access any management and unit of the Company – without the need for any prior consent – to request and acquire information, documentation and data, deemed necessary for the performance of the tasks provided for by Legislative Decree. n. 231/2001, by all employees and managers. In the event that a reasoned refusal to access the documents is opposed, the Body prepares, if it does not agree with the opposite motivation, a report to be sent to the Board of Directors;

- request relevant information or the exhibition of documents, including IT documents, pertinent to risk activities, directors, control bodies, auditing firms, collaborators, consultants and in general to all subjects required to comply with the Model. The obligation of the latter to comply with the request of the Body must be included in the individual contracts;

take care of, develop and promote the constant updating of the Model, formulating, where necessary, to the governing body proposals for any updates and adjustments to be made through the changes and / or additions that may become necessary as a result of: i) significant violations of the provisions of the Model; ii) significant changes in the internal structure of the Company and/or in the methods of carrying out business activities; (iii) regulatory changes;

- verify compliance with the procedures envisaged by the Model and detect any behavioral deviations that may emerge from the analysis of information flows and reports to which the heads of the various functions are required and proceed in accordance with the provisions of the Model;

- ensure the periodic updating of the system for identifying sensitive areas, mapping and classifying sensitive activities;

- maintain relations and ensure the flow of information for which it is responsible for the Board of Directors and the Board of Statutory Auditors;

- promote communication and training interventions on the contents of Legislative Decree. n. 231/2001 and of the Model, on the impacts of the legislation on the company's activity and on the rules of conduct, also establishing controls on frequency. In this regard, it will be necessary to differentiate the program by paying particular attention to those who work in the various sensitive activities,

- verify the preparation of an effective internal communication system to allow the transmission of news relevant to the purposes of Legislative Decree. n. 231/2001 guaranteeing the protection and confidentiality of the whistleblower;

- ensure knowledge of the conduct that must be reported and the methods of making reports;

- provide clarifications regarding the meaning and application of the provisions contained in the Model;

- formulate and submit to the approval of the governing body the expenditure forecast necessary for the proper performance of the tasks assigned, with absolute independence. This expenditure estimate, which must guarantee

the full and correct performance of its activities, must be approved by the Board of Directors. The Body may autonomously commit resources that exceed its spending powers, if the use of such resources is necessary to deal with exceptional and urgent situations. In such cases, the Body must inform the Board of Directors at the next meeting;

- promptly report to the management body, for appropriate measures, the ascertained violations of the Model that may give rise to liability on the part of the Company;

- verify and evaluate the suitability of the disciplinary system pursuant to and for the purposes of Legislative Decree. No 231/2001;

In carrying out its activities, the Body may avail itself of the functions present in the Company by virtue of the relative competences, also through the establishment of a Technical Secretariat.

4.4. Information obligations towards the Supervisory Body – Information flows

The Supervisory Body must be promptly informed, through a specific internal communication system, about those acts, behaviors or events from which a situation emerges that may determine a potential violation of the Model or that, more generally, may be relevant for the purposes of Leg. Decr. 231/2001.

The Supervisory Body has the task of monitoring potentially sensitive transactions and setting up an effective internal communication system to allow the transmission and collection of relevant information pursuant to Legislative Decree 231/2001, which provides, in Article 6, paragraph 2, letter d), in order to facilitate the correct performance of the tasks assigned to it, the obligation to inform the SB by the Recipients of the Model.

Reports to the SB may concern all violations of the Model, even if only presumed, and facts, ordinary and extraordinary, relevant for the implementation and effectiveness of the same.

In particular, information must be transmitted to the Supervisory Body concerning:

· the pendency of criminal proceedings against employees and reports or requests for legal assistance forwarded by staff in the event of the initiation of judicial proceedings for one of the crimes provided for by Legislative Decree 231/2001;

· the reports prepared by the managers of other company departments and/or operating units as part of their control activities from which news may emerge relating to the effective implementation of the Model, as well as facts, acts, events or omissions with critical profiles with respect to compliance with the rules of Legislative Decree 231/2001;

· the news relating to the disciplinary proceedings carried out and any sanctions imposed, in relation to cases provided for by Legislative Decree 231/2001, or to the dismissal measures of such proceedings with the related reasons.

This obligation also weighs on all subjects (directors, statutory auditors, employees, collaborators, external consultants, suppliers, etc.) who, in carrying out their activities, become aware of the aforementioned violations.

Reports can be sent to the Supervisory Body either by using the appropriate box located at the entrance of the headquarters), or by contacting the Body directly at the following addresses:

1. Direct email: valeria.bortolotti@studiovblex.it
2. Certified e-mail: valeria.bortolotti@ordineavvmodena.it
3. by post writing to:

   Supervisory Body Trasporti Vecchi-Zironi S.r.l.

   c/o Valeria Bortolotti

   Piazzale Paolo Teggia n. 9 int. S

   41049 Sassuolo (MO)

4. using the mailbox at the headquarters.

The whistleblower is required to provide all the elements known to him, useful to verify, with the necessary verifications, the facts reported. In particular, the alert must contain the following essential elements:

· Subject: A clear description of the facts to be reported is necessary, with an indication (if known) of the circumstances of time and place in which the facts were committed/omitted.

· Reported: the whistleblower must indicate personal details or other elements (such as the company function / role) that allow easy identification of the alleged perpetrator of the illegal behavior.

· In addition, the whistleblower may indicate the following additional elements: (i) his/her personal details, in the event that he/she does not intend to avail himself of the right to keep his/her identity confidential; (ii) the indication of any other subjects who may report on the facts narrated; (iii) an indication of any documents which may confirm the validity of those facts.

· If the report is clearly unfounded and/or made with willful misconduct or gross negligence and/or with the aim of harming the reported person, the Company and the reported person are legitimate, respectively, to act for the protection of the correctness of conduct in the company and their reputation.

The adoption of discriminatory measures against the subjects who make the reports can be reported to the National Labor Inspectorate, for the measures within its competence, as well as by the whistleblower, also by the trade union organization indicated by the same.

The retaliatory or discriminatory dismissal of the reporting agent shall be null and void. The change of duties pursuant to Article 2103 of the Civil Code, as well as any other retaliatory or discriminatory measure adopted against the whistleblower, are also null and void.

It is the employer's responsibility, in the event of disputes related to the imposition of disciplinary sanctions, or to demotions, dismissals, transfers, or submission of the whistleblower to other organizational measures having negative effects, direct or indirect, on working conditions, subsequent to the submission of the report, to demonstrate that these measures are based on reasons unrelated to the report itself.

Reports, even when anonymous, must always have a relevant content pursuant to the Decree or Code of Ethics. Anonymity cannot in any way represent the tool to give vent to disagreements or contrasts between employees. The protection of the identity of the whistleblower is lost, in the case of reports that should be manifestly unfounded and deliberately preordained with the aim of damaging the reported or the company. In this case, such behavior constitutes a serious disciplinary violation and will be sanctioned according to the procedures provided for in chapter 5 of this Model just like the performance of retaliatory acts against the author of the report in good faith.

It is also prohibited:

· the use of abusive expressions;

· the forwarding of reports with purely defamatory or slanderous purposes;

· the forwarding of reports that relate exclusively to aspects of private life, without any direct or indirect connection with the company's activity. These reports will be considered even more serious when referring to sexual, religious, political and philosophical habits and orientations.

In a nutshell, each report must have as its sole purpose the protection of the integrity of the company or the prevention and / or repression of illegal conduct as defined in the Model.

The Supervisory Body must promptly evaluate the reports received and any measures that may be necessary. Any decision not to proceed with internal investigations must be motivated, documented and kept the acts of the Body itself. The reports received will be kept in the records registered as attachments to the minutes of the SB.

The task of the Supervisory Body is to guarantee whistleblowers against any form of retaliation, discrimination or penalization, also ensuring the confidentiality of the identity of the whistleblower, without prejudice to legal obligations and the protection of the rights of the company or of persons wrongly accused and / or in bad faith; failure to comply with this obligation represents a serious violation of the Model.

4.5. Information Collection and Storage

All information, reports, reports and reports provided for in the Model are kept by the Supervisory Body in a special archive (computer or paper) for a period of at least 10 years.

4.6. Reporting of the Supervisory Body to corporate bodies

The Supervisory Body reports on the implementation of the Model, the emergence of any critical aspects, the need for modifications. Separate reporting lines are provided by the Supervisory Body:

- on an ongoing basis, reports to the Board of Directors.

- on a periodic basis at least annually, presents a report to the Board of Directors.

The meetings with the corporate bodies to which the Supervisory Body reports must be documented. The Supervisory Body takes care of the archiving of the relative documentation.

The Supervisory Body prepares:

– at least annually, an information report on the activities carried out, to be presented to the Board of Directors and the Board of Statutory Auditors;

– on an ongoing basis, written reports concerning specific and specific aspects of its activities, considered of particular importance and significance in the context of prevention and control activities to be presented to the Board of Directors;

– immediately, a communication relating to the occurrence of extraordinary situations (for example: significant violations of the principles contained in the Model, legislative innovations regarding the administrative liability of entities, significant changes in the Company's organizational structure, etc.) and, in the case of reports received that are of an urgent nature, to be submitted to the Board of Directors.

The periodic reports prepared by the Supervisory Body are also drawn up in order to allow the Board of Directors the assessments necessary to make any updates to the Model and must at least contain:

– any problems that have arisen regarding the methods of implementation of the procedures envisaged by the Model or adopted in implementation or in the light of the Model;

– the report of reports received from internal and external parties regarding the Model;

– disciplinary procedures and sanctions that may be applied by the Company, with exclusive reference to risky activities;

an overall assessment of the functioning of the Model with any indications for additions, corrections or modifications.

5. DISCIPLINARY SYSTEM

5.1. Function of the disciplinary system

Art. 6, paragraph 2, lett. e) and art. 7, paragraph 4, letter b) of Legislative Decree. n. 231/2001 indicate, as a condition for an effective implementation of the organization, management and control model, the introduction of a disciplinary system suitable for sanctioning non-compliance with the measures indicated in the model itself.

Therefore, the definition of an adequate disciplinary system is an essential prerequisite for the discriminating value of the model with respect to the administrative liability of entities.

The adoption of disciplinary measures in the event of violations of the provisions contained in the Model is independent of the commission of a crime and the conduct and outcome of any criminal proceedings instituted by the judicial authority [33].

Compliance with the requirements contained in the Model adopted by the Company must be considered an essential part of the contractual obligations of the "Recipients" defined below.

The violation of the rules of the same damages the relationship of trust established with the Company and may lead to disciplinary, legal or criminal actions. In the most serious cases, the violation may result in the termination of the employment relationship, if carried out by an employee, or the interruption of the relationship, if carried out by a third party.

For this reason, it is required that each Recipient knows the rules contained in the Company Model, in addition to the reference rules governing the activity carried out within the scope of their function.

This sanctioning system adopted pursuant to art. 6, second paragraph, lett. e) Leg. Decr. n. 231/2001 must be considered complementary and not alternative to the disciplinary system established by the same C.C.N.L. in force and applicable to the various categories of employees in force at the Company.

The imposition of disciplinary sanctions for violations of the Model is independent of the possible establishment of criminal proceedings for the commission of one of the crimes provided for by the Decree.

The sanctioning system and its applications are constantly monitored by the Supervisory Body.

No disciplinary proceedings may be dismissed, nor any disciplinary sanction may be imposed, for violation of the Model, without prior information and opinion of the Supervisory Body. However, it should be noted that, in any case, the power to apply disciplinary sanctions lies with the competent corporate bodies in accordance with the provisions of the disciplinary system code 231 itself, which supplements, and does not replace, the system of disciplinary liability that always exists in relations between employer and employee, in compliance with labor law legislation [34].

5.2. Sanctions and disciplinary measures

5.2.1. Sanctions against Employees

The Code of Business Conduct and Ethics and the Model constitute a set of rules to which the employees of a company must comply also pursuant to the provisions of Articles. 2104 and 2106 of the Italian Civil Code and by the National Collective Labour Agreements (CCNL) on rules of conduct and disciplinary sanctions. Therefore, all conduct by employees in violation of the provisions of the Code of Conduct and Business Ethics, the Model and its implementation procedures, constitute a breach of the primary obligations of the employment relationship and, consequently, infringements, involving the possibility of establishing disciplinary proceedings and the consequent application of the related sanctions.

With regard to employees with the status of worker, employee and middle manager, in this case, are applicable – in compliance with the procedures provided for by art. 7 of Law no. 300 of 20 May 1970 (Workers' Statute) – the provisions provided for in Articles. 50, 51 and 52 of the CCNL for employees of the chemical industries.

Disciplinary offences may be punished, depending on the seriousness of the deficiencies, with the following measures:

1) verbal reminder;

2) written warning;

3) fine;

4) suspension;

5) dismissal.

For disciplinary measures more serious than the recall or verbal reprimand, a written complaint must be made to the worker with the specific indication of the facts constituting the infringement.

The measure cannot be issued until eight days have elapsed from this dispute, during which the worker can present his justifications. If the measure is not issued within the following eight days, these justifications will be considered accepted.

In the event that the alleged infringement is of such gravity as to result in dismissal, the worker may be suspended as a precautionary measure from the work presentation until the time of the imposition of the measure, which must be motivated and communicated in writing.

5.2.2. Sanctions against Managers

The managerial relationship is characterized by an eminently fiduciary nature. The behavior of the Manager, in addition to being reflected within the Company, constituting a model and example for all those who work there, also affects the external image of the same. Therefore, compliance by the Company's managers with the requirements of the Code of Business Conduct and Ethics, the Model and the related implementation procedures is an essential element of the managerial employment relationship.

With regard to Managers who have committed a violation of the Code of Business Conduct and Ethics, the Model or the procedures established in implementation thereof, the function holding disciplinary power initiates the competent procedures to make the related disputes and apply the most appropriate sanctioning measures, in accordance with the provisions of the CCNL Executives and, where necessary, with the observance of the procedures referred to in art. 7 of Law no. 300 of 30 May 1970.

The penalties must be applied in compliance with the principles of gradualness and proportionality with regard to the seriousness of the act and the fault or possible intent. Among other things, with the dispute, the revocation of any powers of attorney entrusted to the interested party may be ordered as a precautionary measure, until the possible termination of the relationship in the presence of violations so serious as to make the fiduciary relationship with the Company disappear.

5.2.3. Sanctions against Directors

In the event of violations of the provisions contained in the Model by one or more Directors, the Board of Directors and the Board of Statutory Auditors will be informed so that appropriate measures are taken in accordance with the regulations or the requirements adopted by the Company. Please note that pursuant to art. 2392 of the Italian Civil Code, the directors are liable to the company for not having fulfilled the duties imposed by law with due diligence. Therefore, in relation to the damage caused by specific prejudicial events strictly attributable to the failure to exercise due diligence, the exercise of a social responsibility action pursuant to art. 2393 c.c. and following in the opinion of the Assembly.

In order to ensure the full exercise of the rights of defence, a period must be provided within which the person concerned can submit justifications and/or defensive writings and be heard.

5.2.4. Sanctions against Statutory Auditors

Upon notice of violation of the provisions and rules of conduct of the Model by one or more Auditors[35], the Supervisory Body must promptly inform the entire Board of Statutory Auditors and the Board of Directors of the incident.

The recipients of the information of the Supervisory Body may take, in accordance with the provisions of the Articles of Association, the appropriate measures including, for example, the convocation of the Shareholders' Meeting, in order to adopt the measures deemed most appropriate.

In order to ensure the full exercise of the rights of defence, a period must be provided within which the person concerned can submit justifications and/or defensive writings and be heard.

5.2.5. Sanctions against collaborators and external parties operating on behalf of the Company

With regard to collaborators or external subjects operating on behalf of the Company, the sanctioning measures and the methods of application for violations of the Code of Conduct and Business Ethics, the Model and the related implementation procedures are first determined.

These measures may provide, for violations of greater gravity, and in any case when they are such as to damage the trust of the Company towards the person responsible for the violations, the termination of the relationship. If a violation occurs by these subjects, the person responsible for the contract informs, with a written report, the legal representative.

5.2.6. Measures against the Supervisory Body

In the event of negligence and/or inexperience on the part of the Supervisory Body in supervising the correct application of the Model and their compliance and in failing to identify cases of violation of the Model and to eliminate them, the Board of Directors will take, in agreement with the Board of Statutory Auditors, the appropriate measures in accordance with the procedures provided for by current legislation, including the revocation of the assignment and without prejudice to the claim for compensation.

In order to ensure the full exercise of the rights of defence, a period must be provided within which the person concerned can submit justifications and/or defensive writings and be heard.

In the event of alleged unlawful conduct by members of the Supervisory Body, the Board of Directors, once it has received the report, investigates the actual offense and then determines the relative sanction to be applied.

6. TRAINING AND COMMUNICATION PLAN

6.1. Employees

Each employee is required to: i) become aware of the principles and contents of the Model and the Code of Conduct and Business Ethics; ii) know the operating methods with which its activity must be carried out; iii) actively contribute, in relation to its role and responsibilities, to the effective implementation of the Model, pointing out any shortcomings found in it.

In order to ensure effective and rational communication activities, the Company promotes knowledge of the contents and principles of the Model and of the implementation procedures within the organization applicable to them, with a degree of diversified depth depending on the position and role covered.

Employees and new hires are given an extract of the Model and the Code of Conduct and Business Ethics or are guaranteed the opportunity to consult them directly on the company *Intranet* in a dedicated area; and they are made to sign a declaration of knowledge and compliance with the principles of the Model and the Code of Conduct and Business Ethics described therein.

In any case, for employees who do not have access to the *Intranet*, this documentation must be made available to them by alternative means such as attachment to the pay slip or by posting on company bulletin boards.

Communication and training on the principles and contents of the Model and the Code of Conduct and Business Ethics are guaranteed by the managers of the individual functions who, as indicated and planned by the Supervisory Body, identify the best way to use these services.

Training initiatives can also take place remotely through the use of computer systems (e.g. video conferencing, e-learning, staff meetings, etc.).

At the end of the training event, participants will have to fill out a questionnaire, certifying, thus, the receipt and attendance of the course.

The completion and sending of the questionnaire will be valid as a declaration of knowledge and observance of the contents of the Model.

Suitable communication tools will be adopted to update the recipients of this paragraph about any changes made to the Model, as well as any significant procedural, regulatory or organizational changes.

6.2. Members of the corporate bodies and persons with representative functions of the Company

A paper copy of the Model is made available to the members of the corporate bodies and to the persons with representative functions of the Company at the time of acceptance of the office conferred on them and will be made to sign a declaration of compliance with the principles of the Model itself and the Code of Business Conduct and Ethics.

Appropriate communication and training tools will be adopted to update them on any changes made to the Model, as well as any significant procedural, regulatory or organizational changes.

6.3. Supervisory Body

Specific training or information (for example regarding any organizational and/or business changes of the Company) is intended for the members of the Supervisory Body and/or the subjects it uses in the performance of its functions.

6.4. Other recipients

The communication of the contents and principles of the Model must also be addressed to third parties who maintain contractually regulated collaboration relationships with the Company (for example: suppliers, consultants and other independent collaborators) with particular reference to those who operate in the context of activities considered sensitive pursuant to Leg. Decr. No 231/2001.

To this end, the Company will provide third parties with an extract of the Reference Principles of the Model and the Code of Conduct and Business Ethics and will evaluate the opportunity to organize ad hoc training sessions if it deems it necessary.

Training initiatives can also take place remotely through the use of computer systems (e.g. video conferencing, e-learning).

6.5. Preamble

The Company, in order to effectively implement the Model, intends to ensure a correct dissemination of its contents and principles inside and outside its organization.

In particular, the Company's objective is to communicate the contents and principles of the Model not only to its employees but also to persons who, although not formally employed, work – even occasionally – to achieve the Company's objectives by virtue of contractual relationships. In fact, the recipients of the Model are both persons who hold functions of representation, administration or management in the Company, and persons subject to the direction or supervision of one of the aforementioned subjects (pursuant to Article 5 of Legislative Decree no. 231/2001), but also, more generally, all those who work to achieve the purpose and objectives of the Company. The recipients of the Model therefore include the members of the corporate bodies, the subjects involved in the functions of the Supervisory Body, employees, collaborators, external consultants, suppliers, etc.

The Company, in fact, intends to:

– determine, in all those who work in its name and on its behalf in the "sensitive areas", the awareness of being able, in the event of violation of the provisions contained therein, to incur an offense liable to sanctions;

– inform all those who operate in any capacity in his name, on his behalf or in any case in his interest that the violation of the provisions contained in the Model will result in the application of appropriate sanctions or the termination of the contractual relationship;

– reiterate that the Company does not tolerate unlawful conduct, of any kind and regardless of any purpose, as such conduct (even if the Company was apparently in a position to take advantage of it) is in any case contrary to the ethical principles to which the Company intends to comply.

The communication and training activity is diversified according to the recipients to whom it is addressed, but is, in any case, based on principles of completeness, clarity, accessibility and continuity in order to allow the various recipients full awareness of those company provisions that they are required to comply with and of the ethical rules that must inspire their behavior.

These recipients are required to comply promptly with all the provisions of the Model, also in fulfillment of the duties of loyalty, correctness and diligence that arise from the legal relationships established by the Company.

The communication and training activities are supervised by the Supervisory Body, which is assigned, among others, the tasks of "promoting and defining initiatives for the dissemination of knowledge and understanding of the Model, as well as for staff training and awareness of the same to comply with the principles contained in the Model" and to "promote and develop communication and training interventions on the contents of Leg. Decr. n. 231/2001, on the impacts of the legislation on the company's activities and on the rules of conduct".

7. ADOPTION OF THE MODEL – CRITERIA FOR MONITORING, UPDATING AND ADAPTING THE MODEL

7.1. Checks and controls on the Model

The Supervisory Body must draw up an annual supervisory program through which it plans, in principle, its activities, providing a calendar of activities to be carried out during the year, the determination of the time cadences of the controls, the identification of the criteria and analysis procedures, the possibility of carrying out unscheduled checks and controls.

In carrying out its activities, the Supervisory Body may avail itself of the support of internal functions and structures of the Company with specific skills in the corporate sectors subject to control from time to time and, with reference to the execution of the technical operations necessary for the performance of the control function, of external consultants. In this case, the consultants must always report the results of their work to the Supervisory Body.

The Supervisory Body is granted, during audits and inspections, the widest powers in order to effectively carry out the tasks entrusted to it.

7.2. Updating and adaptation

The Board of Directors resolves on the updating of the Model and its adaptation in relation to changes and/or additions that may become necessary as a result of:

– significant violations of the provisions of the Model;

– changes in the internal structure of the Company and/or in the methods of carrying out business activities;

– regulatory changes;

– results of the checks.

Once approved, the changes and instructions for their immediate application are communicated to the Supervisory Body, which will, without delay, make the same changes operational and take care of the correct communication of the contents inside and outside the Company.

The Supervisory Body preserves, in any case, precise tasks and powers regarding the care, development and promotion of the constant updating of the Model. To this end, it formulates observations and proposals, relating to the organization and the control system, to the company structures in charge of this or, in cases of particular importance, to the Board of Directors.

In particular, in order to ensure that changes to the Model are made with the necessary timeliness and effectiveness, without at the same time incurring any lack of coordination between the operating processes, the requirements contained in the Model and the dissemination of the same, the Company periodically makes, where necessary, changes to the Model that relate to descriptive aspects. It should be noted that the expression "descriptive aspects" refers to elements and information deriving from acts approved by the Board of Directors (such as, for example, the redefinition of the organizational chart) or from company functions with specific delegation (e.g. new company procedures).

On the occasion of the presentation of the annual summary report, the Supervisory Body submits to the Board of Directors a specific information note on the changes made in implementation of the proxy received in order to make it the subject of a resolution of ratification by the Board of Directors.

In any case, the Board of Directors remains the sole responsibility of the Board of Directors to decide on updates and/or adjustments to the Model due to the following factors:

- intervention of regulatory changes on the administrative liability of entities;

- identification of new sensitive activities, or changes in those previously identified, also possibly related to the start of new business activities;

- formulation of observations by the Ministry of Justice on the Guidelines pursuant to art. 6 of Legislative Decree. n. 231/2001 and art. 5 et seq. of Ministerial Decree no. 201 of 26 June 2003;

- commission of the crimes referred to by Leg. Decr. n. 231/2001 by the recipients of the provisions of the Model or, more generally, of significant violations of the Model;

- finding of deficiencies and/or gaps in the forecasts of the Model following checks on its effectiveness.

In any case, the Model will be subject to a periodic review procedure every three years to be arranged by resolution of the Board of Directors.

8. NOTES

[1] These are the following crimes: embezzlement to the detriment of the State or the European Union (art. 316-bis Criminal Code), undue receipt of disbursements to the detriment of the State (art. 316-ter Criminal Code), fraud to the detriment of the State or other public body (art. 640 paragraph 2, n. 1 Criminal Code), aggravated fraud for the achievement of public disbursements (art. 640-bis Criminal Code), computer fraud to the detriment of the State and other public bodies (art. 640-ter Criminal Code), extortion (art. 317 Criminal Code), corruption for the exercise of the function and corruption for an act contrary to official duties (articles 318, 319 and 319-bis of the Criminal Code), corruption in judicial acts (art. 319-ter of the Criminal Code), undue inducement to give or promise benefits (art. 319-quarter of the Criminal Code), corruption of a person in charge of a public service (art. 320 of the Criminal Code) , crimes of the corruptor (art. 321 Criminal Code), incitement to corruption (art. 322 Criminal Code), extortion, corruption and incitement to corruption of members of the bodies of the European Communities and officials of the European Communities and foreign States (art. 322-bis Criminal Code).

[2] Art. *25-bis* was introduced in Legislative Decree no. 231/2001 by art. 6 of Legislative Decree 350/2001, converted into law, with amendments, by art. 1 of Law 409/2001. These are the crimes of counterfeiting of coins, spending and introduction into the State, after concert, of counterfeit coins (Article 453 of the Criminal Code), alteration of coins (Article 454 of the Criminal Code), spent and introduction into the State, without concert, of counterfeit coins (Article 455 of the Criminal Code), spent on counterfeit coins received in good faith (Article 457 of the Criminal Code), falsification of stamp values, introduction into the State, purchase, possession or putting into circulation of falsified stamp values (Article 459 of the Criminal Code), counterfeiting of watermarked paper used for the manufacture of public credit cards or stamp values (Article 460 of the Criminal Code), manufacture or possession of watermarks or instruments intended for the falsification of coins, stamp values or watermarked paper (Article 461 of the Criminal Code), use of counterfeit or altered stamp values (art. 464 Criminal Code). The law of 23 July, n. 99 containing “Provisions for the development and internationalization of companies, as well as on energy” art. 15 paragraph 7, amended art. 25-bis which now also punishes the counterfeiting and alteration of trademarks or distinctive signs (Article 473 of the Criminal Code) as well as the introduction into the State of products with false signs (Article 474 of the Criminal Code).

[3] Article *25-ter* was introduced in Legislative Decree 231/2001 by art. 3 of Legislative Decree 61/2002 and subsequently supplemented and amended, most recently by Law no. 69 of 27 May 2015. These are the crimes of false corporate communications (art. 2621 Civil Code), including minor facts (art. 2621-bis of the Italian Civil Code), false corporate communications of listed companies (art. 2622 of the Italian Civil Code), falsehood in the reports or communications of auditing firms (art. 2624 of the Civil Code; art. 35 of Law no. 262 of 28 December 2005 prefaced Article 175 of the consolidated text referred to in Legislative Decree of 24 February 1998, n. 58, as amended, in Part V, Title I, Chapter III, art. 174-bis and 174-ter*),* prevented control (art. 2625, second paragraph, Civil Code), fictitious formation of capital (art. 2632 Civil Code), undue restitution of contributions (art. 2626 Civil Code), illegal distribution of profits and reserves (art. 2627 Civil Code), illicit transactions on shares or shares or of the parent company (art. 2628 Civil Code), operations to the detriment of creditors (art. 2629 Civil Code), failure to communicate the conflict of interest (art. 2629-bis of the Italian Civil Code) of art. 25-ter of Legislative Decree no. 231/2001), undue distribution of corporate assets by liquidators (Article 2633 of the Civil Code), corruption between private individuals (Article 2635 of the Civil Code), illicit influence on the shareholders’ meeting (Article 2636 of the Civil Code), rigging (Article 2637 of the Civil Code), obstacle to the exercise of the functions of public supervisory authorities (Article 2638 of the Civil Code). The Leg. Decr. n. 39/2010, which implements Directive 2006/43 / EC on the statutory audit of accounts, in repealing Article 2624 of the Civil Code and amending Article 2625 of the Civil Code, has not carried out the coordination with Article 25-ter of Legislative Decree. 231.

[4] Article *25-quarter* was introduced in Legislative Decree no. 231/2001 by art. 3 of Law no. 7 of 14 January 2003. These are “*crimes with the purpose of terrorism or subversion of the democratic order, provided for by the penal*

code and special laws", as well as crimes, other than those indicated above, "*which have in any case been committed in violation of the provisions of Article 2 of the International Convention for the Suppression of the Financing of Terrorism done in New York on December 9, 1999* ". This Convention punishes anyone who, illegally and maliciously, provides or collects funds knowing that they will be, even partially, used to perform: (i) acts aimed at causing the death - or serious injury - of civilians, when the action is aimed at intimidating a population, or coercing a government or an international organization; (ii) acts constituting an offence under the Conventions on: safety of flight and navigation, protection of nuclear material, protection of diplomatic agents, repression of attacks by the use of explosives. The category of "*crimes with the purpose of terrorism or subversion of the democratic order, provided for by the penal code and special laws" is* mentioned by the Legislator in a generic way, without indicating the specific rules whose violation would entail the application of this article. In any case, it is possible to identify as the main offenses the art. *270-bis* Criminal Code (*Associations with the purpose of terrorism, including international terrorism or subversion of the democratic order*) which punishes those who promote, constitute, organize, direct or finance associations that propose to carry out violent acts with terrorist or subversive purposes, and art. 270-ter Criminal Code (*Assistance to members*) which punishes those who give shelter or provide food, hospitality, means of transport, means of communication to some of the persons who participate in associations with terrorist or subversive purposes.

[5] The rule provides that the company may be held liable for the crimes of insider dealing (art. 184 TUF) and market manipulation (art. 185 TUF). According to art. *187-quinquies* of the TUF, the entity may also be held responsible for the payment of a sum equal to the amount of the administrative fine imposed for administrative offenses of insider dealing (art. 187-bis TUF) and market manipulation (art. 187-ter TUF), if committed, in its interest or to its advantage, by persons attributable to the categories of "top management" and "personal subjects" to the direction or supervision of others".

[6] Art. *25-quinquies* was introduced in Legislative Decree no. 231/2001 by art. 5 of Law no. 228 of 11 August 2003. These are the crimes of reduction or maintenance in slavery or servitude (art. 600 Criminal Code), trafficking in persons (art. 601 Criminal Code), purchase and alienation of slaves (art. 602 Criminal Code), crimes related to child prostitution and exploitation of the same (art. 600-bis Criminal Code), child pornography and exploitation of the same (art. 600-ter Criminal Code), possession of pornographic material produced through the sexual exploitation of minors (art. 600-quarter Criminal Code), tourist initiatives aimed at the exploitation of child prostitution (art. 600-quinquies Criminal Code).

[7] The crimes indicated by art. 10 of Law no. 146 of 16 March 2006 (criminal association, mafia-type association, criminal association aimed at smuggling foreign manufactured tobacco, association aimed at illicit trafficking of narcotic or psychotropic substances, illegal immigration, inducement not to make declarations or to make false declarations to the judicial authority, personal aid) are considered **transnational** when the offence has been committed in more than one State, or, if committed in one State, a substantial part of the preparation and planning of the offence has taken place in another State, or if an organized criminal group engaged in criminal activities in several States is involved in that State.

In this case, no further provisions have been included in the body of Leg. Decr. No 231/2001. The responsibility derives from an autonomous provision contained in the art. 10 of Law no. 146/2006, which establishes the specific administrative sanctions applicable to the crimes listed above, providing - by way of recall - in the last paragraph that "*the provisions of Legislative Decree apply to the administrative offenses provided for in this article. 8 June 2001, n. 231*". The Leg. Decr. n. 231/2007 repealed the rules contained in Law no. 146/2006 with reference to articles 648-bis and 648-ter of the Criminal Code (money laundering and use of money, goods or benefits of illicit origin), which have become punishable, for the purposes of Legislative Decree no. 231/2001, regardless of the characteristic of transnationality.

[8] Article added by art. 9, Law no. 123 of 3 August 2007.

[9] Art. 63, paragraph 3, of Legislative Decree 21 November 2007, n. 231, published in the Official Gazette 14 December 2007 n. 290, S.O. n. 268, implementing Directive 2005/60 / EC of 26 October 2005 and concerning the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, as well as Directive n. 2006/70/EC, which lays down implementing measures, introduced the new article in Legislative Decree no. 231 of 8 June 2001, which provides for the administrative liability of the entity also in the case of crimes of receiving stolen goods, money laundering and use of money, goods or benefits of illicit origin. Art. 3, paragraph 5, Law 15 December 2014, n. 186 has, last, amended art. 25 *octies*, Legislative Decree 231/2001 extending the administrative liability of entities also to the new crime of self-laundering provided for by art. 648 *ter.1*, Criminal Code.

[11] Art. *25-novies* was added by Article 4 of Law 116/09.

[12] In this regard, Law no. 68 of 22 May 2015 was introduced, which aims to severely combat all illegal activities that have been carried out by the many criminal organizations and that concern the irregular management of waste and hazardous products in general.

[13] The article was added by Law no. 167/2017 and amended by Legislative Decree no. 21/2018.

[14] The article was added by Law no. 39/19.

[15] Art. 13, paragraph 1, letters a) and b) Leg. Decr. No 231/2001. In this regard, see also art. 20 Leg. Decr. n. 231/2001, according to which "*There is repetition when the institution, already convicted definitively at least once for an offense dependent on crime, commits another in the five years following the final conviction".*

[16] See, in this regard, art. 16 Leg. Decr. No 231/2001, according to which: "1. A definitive ban from carrying out the activity *may be ordered if the institution has derived a significant profit from the crime and has already been sentenced, at least three times in the last seven years, to a temporary ban from carrying out the activity. 2. The court may definitively impose on the institution the sanction of a ban on contracting with the public administration or a prohibition on advertising goods or services where it has already been sentenced to the same sanction at least three times in the last seven years. 3. If the entity or an organizational unit of the entity is permanently used for the sole or predominant purpose of enabling or facilitating the commission of offences for which it is liable, a definitive ban from carrying out its activity shall always be ordered, and the provisions laid down in Article 17 shall not apply"*.

[17] See art. 15 of Legislative Decree. n. 231/2001: "Judicial Commissioner – If the conditions for the application of a disqualification sanction that determines the interruption of the activity of the entity exist, the judge, instead of the application of the *sanction, orders the continuation of the activity of the entity by a commissioner for a period equal to the duration of the disqualification sentence that would have been applied, when at least one of the following conditions is met: (a) the entity performs a public service or a service of public necessity, the interruption of which may cause serious harm to the community; (b) the interruption of the institution's activities may, having regard to its size and the economic conditions of the territory in which it is situated, have significant repercussions on employment. With the sentence ordering the continuation of the activity, the judge indicates the tasks and powers of the commissioner, taking into account the specific activity in which the offense was carried out by the institution. Within the scope of the tasks and powers indicated by the judge, the Commissioner shall ensure the adoption and effective implementation of models of organization and control suitable for preventing offences of the kind that have occurred. He may not perform acts of extraordinary administration without the authorization of the judge. The profit from the continuation of the activity is confiscated. The continuation of the activity by the commissioner cannot be ordered when the interruption of the activity follows the definitive application of a disqualification sanction*".

[18] The provision in question makes explicit the will of the Legislator to identify a responsibility of the autonomous entity with respect not only to that of the offender (see, in this regard, art. 8 of Legislative Decree no. 231/2001) but also with respect to the individual members of the corporate structure. Art. 8 "*Autonomy of the responsibility of the entity*" of Leg. Decr. No 231/2001 provides "*1. the liability of the institution also exists where: (a) the offender has not been identified or is not imputable; (b) the offence is extinguished for a reason other than amnesty. 2. Unless otherwise provided by law, no action shall be taken against the institution where amnesty is granted for an offence for which it is responsible and the accused has waived its application. 3. The institution may waive the amnesty"*.

[19] Art. 11 of Leg. Decr. n. 231/2001: "Criteria for commensurating the financial penalty - *1. When determining the financial penalty, the court determines the number of shares taking into account the seriousness of the fact, the degree of responsibility of the institution and the activity carried out to eliminate or mitigate the consequences of the act and to prevent the commission of further offences. 2. The amount of the unit shall be fixed on the basis of the economic and capital conditions of the institution in order to ensure the effectiveness of the penalty.* (...)".

[20] Art. 32 Leg. Decr. No 231/2001: "Relevance of merger or division for repetition - *1. In cases of liability of the institution resulting from the merger or beneficiary of the division for offences committed after the date from which the merger or division took effect, the court may also consider the repetition, in accordance with Article 20, in relation to convictions handed down against the merging entities or the entity being divided for offences committed before that date. 2. To that end, the court shall take into account the nature of the infringements and the activity in which they were committed and the characteristics of the merger or division. 3. With respect to the entities benefiting from the division, repetition may be considered, pursuant to paragraphs 1 and 2, only if the branch of activity in which the offence for which conviction was pronounced against the divided entity has been transferred to them, even in part".* The Explanatory Report to Leg. Decr. n. 231/2001 clarifies that "*The repetition, in this case, does not operate automatically, but is the subject of discretionary assessment by the judge, in relation to the concrete circumstances. In the case of the entities benefiting from the division, it can also be identified only in the case of an entity to which the branch of activity in which the previous offence was committed has been transferred, even in part*".

[21] Art. 33 of Leg. Decr. n. 231/2001: "Sale of company. - *1. In the case of transfer of the company in whose activity the crime was committed, the transferee is jointly and severally obliged, except for the benefit of the prior enforcement of the transferring entity and within the limits of the value of the company, to pay the financial penalty. 2. The transferee's obligation shall be limited to financial penalties resulting from the compulsory accounting books, or due for administrative offences of which he was otherwise aware. 3. The provisions of this article shall also apply in the case of a transfer of a business*". On this point, the explanatory report to Leg. Decr. n. 231/2001 clarifies: "*It is understood that even these operations are likely to lend themselves to evasive maneuvers of responsibility: and, nevertheless, the opposing needs of protection of the trust and security of legal traffic are more meaningful than them, being in the presence of hypotheses of succession on a particular basis that leave the identity (and responsibility) of the transferor or transferor unchanged*".

[22] Art. 4 of Legislative Decree. n. 231/2001 provides as follows: "*1. In the cases and under the conditions provided for in Articles 7, 8, 9 and 10 of the Criminal Code, entities whose head office is in the territory of the State are also liable in relation to crimes committed abroad, provided that the State of the place where the act was committed does not proceed against them. 2. In cases where the law provides that the offender is punished at the request of the Minister of Justice, proceedings shall be taken against the entity only if the request is also made against the latter".*

[23] Art. 7 Criminal Code: "Crimes committed abroad - The *citizen or foreigner who commits in foreign territory any of the following crimes is punished according to Italian law: 1) crimes against the personality of the Italian State; (2) offences of counterfeiting the seal of the State and using such a counterfeit seal; 3) crimes of falsity in currencies having legal tender in the territory of the State, or in stamp values or in Italian public credit cards; 4) crimes committed by public officials in the service of the State, abusing powers or violating the duties inherent in their functions; 5) any other offence for which special provisions of law or international conventions establish the applicability of Italian criminal law*". Art. 8 Criminal Code: "Political crime committed abroad - *The citizen or foreigner, who commits in foreign territory a political crime not included among those indicated in number 1 of the previous article, is punished according to Italian law, at the request of the Minister of Justice. If it is a crime punishable on complaint by the injured person, it is necessary, in addition to this request, also the complaint. For the purposes of criminal law, any crime that offends a political interest of the State, or a political right of the citizen, is a political crime. A common crime determined in whole or in part by political motives is also considered a political crime".* Art. 9 Criminal Code: "Common crime of the citizen abroad - *The citizen, who, except in the cases indicated in the two previous articles, commits in foreign territory a crime for which Italian law establishes life imprisonment, or imprisonment of not less than three years, is punished according to the law itself, provided that he is in the territory of the State. In the case of a crime for which a shorter penalty is restricted to personal liberty, the offender is punished at the request of the Minister of Justice or at the request or complaint of the injured party. In the cases provided for in the foregoing provisions, in the case of an offence committed to the detriment of the European Communities, a foreign State or a foreign national, the offender shall be punished at the request of the Minister for Justice, provided that his extradition has not been granted or has not been accepted by the Government of the State in which he committed the offence".* Art. 10 Criminal Code: "Common crime of the foreigner abroad – *The foreigner, who, except in the cases indicated in articles 7 and 8, commits in foreign territory, to the detriment of the State or a citizen, a crime for which Italian law establishes life imprisonment, or imprisonment of not less than a minimum of one year, is punished according to the law itself, provided that it is in the territory of the State, and there is a request from the Minister of Justice, or request or complaint of the injured person. If the crime is committed to the detriment of the European Communities of a foreign State or a foreigner, the offender is punished according to Italian law, at the request of the Minister of Justice, provided that: 1) he is in the territory of the State; (2) it is a crime for which the penalty of life imprisonment or imprisonment of at least three years is established; (3) his extradition has not been granted, or has not been accepted by the Government of the State in which he committed the crime, or by that of the State to which he belongs".*

[24] Art. 38, paragraph 2, Leg. Decr. n. 231/2001: "*The administrative offense of the entity is proceeded separately only when: a) the suspension of proceedings has been ordered pursuant to Article 71 of the Code of Criminal Procedure* [suspension of proceedings due to the incapacity of the accused, Editor's note] *(b) the proceedings have been settled by shortened judgment or by the application of the penalty pursuant to Article 444 of the Code of Criminal Procedure. , i.e. the penalty order of conviction has been issued; c) compliance with the procedural provisions makes it necessary".* For the sake of completeness, reference is also made to art. 37 of Legislative Decree. n. 231/2001, according to which "*The administrative offense of the entity is not ascertained when the criminal prosecution cannot be initiated or continued against the offender due to the lack of a condition of admissibility*" (i.e. those provided for by Title III of Book V Code of Criminal Procedure: complaint, request for proceedings, request for proceedings or authorization to proceed, of which, respectively, in Articles. 336, 341, 342, 343 Code of Criminal Procedure).

[25] The Explanatory Report to Leg. Decr. n. 231/2001 is expressed, in this regard, in these terms: "*For the purposes of the liability of the entity it will be necessary, therefore, not only that the crime is objectively linked to it (the conditions under which this occurs, as we have seen, are governed by Article 5); Moreover, the crime must also constitute an expression of company policy or at least derive from an organizational fault*". And again: "*we start from the presumption (empirically founded) that, in the case of a crime committed by a top, the "subjective" requirement of responsibility of the entity [ie the so-called "subjective" requirement of responsibility of the entity [ie the so-called "Subjective"* "organizational fault" of the institution*] is satisfied, since the top management expresses and represents the policy of the institution; If this does not happen, it will be the company that proves its extraneousness, and this can only be done by proving the existence of a series of competing requirements".*

[26] Art. 7, paragraph 1, of Legislative Decree. n. 231/2001: "Subjects under the direction of others and models of organization of the entity – *In the case provided for in Article 5, paragraph 1, letter b), the entity is responsible if the commission of the crime has been made possible by failure to comply with management or supervisory obligations*".

[27] It should be noted that the reference to the Guidelines of this trade association is made due to the registration of the Company, and / or secondary offices of the same, both to Confcommercio and to Confindustria. However, since the Confindustria Guidelines present a more complete and organic treatment of the topics related to the transposition of Leg. Decr. 231/2001 with respect to the more restricted "Code of Ethics" issued by Confcommercio (and moreover largely inspired in its contents by the Confindustria Guidelines whose first version is prior to that of the aforementioned Code of Ethics), it was considered preferable to use as a primary reference in this document the reference to the provisions of the Confindustria Guidelines, without prejudice to the constant verification of the compatibility of the references made with the corresponding principles expressed by the Code of Ethics of Confcommercio.

[28] The Explanatory Report to Leg. Decr. No 231/2001 states, in that regard: "*The entity* (...) it *will also have to monitor the effective operation of the models, and therefore the observance of the same: to this end, to ensure the maximum effectiveness of the system, it is arranged that the company uses a structure that must be established internally (in order to avoid easy maneuvers aimed at pre-establishing a license of legitimacy to the company's work through the use of compliant bodies, and above all to establish a real fault of the entity), endowed with autonomous powers and specifically responsible for these tasks* (...) *Of particular importance is the provision of an information burden towards the aforementioned internal control body, functional to guarantee its own operational capacity* (...)".

[29] Confindustria Guidelines: ".. the *requirements necessary to fulfill the mandate and be, therefore, identified in the Body desired by Legislative Decree no. 231/2001 can be summarized in:*

· ***Autonomy and independence:*** *these qualities are obtained with the inclusion of the Body in question as a staff unit in a hierarchical position as high as possible and providing for the "reporting" to the maximum top management or to the Board of Directors as a whole.*

· ***Professionalism:*** *This connotation refers to the wealth of tools and techniques that the Body must possess in order to effectively carry out the assigned activity. These are specialized techniques typical of those who carry out "inspection" activities, but also consultancy analysis of control systems and legal and, more specifically, criminal. As for the inspection and analysis of the control system, the reference - by way of example - to statistical sampling is evident; risk analysis and assessment techniques; measures for their containment (authorization procedures; mechanisms for opposing tasks, etc.);* flow-charting of *procedures and processes for identifying weaknesses; interview techniques and questionnaire processing; elements of psychology; methodologies for detecting fraud; etc. These are techniques that can be used* a <u>posteriori</u>, to *ascertain how a crime of the species in question could have occurred and who committed it (inspection* approach); or preventively, *to adopt - at the time of drawing up the Model and subsequent amendments - the most suitable measures to prevent, with reasonable certainty, the commission of the crimes themselves (advisory approach); or, again, <u>currently</u> to verify that daily behaviors actually respect those coded.*

· ***Continuity of action****: in order to guarantee the effective and constant implementation of such an articulated and complex model as the one outlined, especially in large and medium-sized companies, it is necessary to have a structure dedicated exclusively and full-time to the supervision of the Model without, as mentioned, operational tasks that could lead it to take decisions with economic and financial effects".*

[30] The Confindustria Guidelines specify that the discipline dictated by Leg. Decr. n. 231/2001 "*does not provide information about the composition of the Supervisory Body (SB). This allows you to opt for both mono and plurisubjective composition. In the multi-subjective composition, internal and external components of the entity may be called upon to be part of the SB ... . Although in principle the composition seems indifferent to the legislator,*

however, the choice between one or the other solution must take into account the purposes pursued by the law and, therefore, must ensure the profile of effectiveness of the controls in relation to the size and organizational complexity of the entity". Confindustria, *Guidelines*, *June 2021*.

[31] *"This applies, in particular, when opting for a multi-subjective composition of the Supervisory Body and all the different professional skills that contribute to the control of social management in the traditional corporate governance model are concentrated in it (e.g. a non-executive or independent director member of the internal control committee; a member of the Board of Statutory Auditors; the person in charge of internal control). In these cases, the existence of the requisites referred to is already ensured, even in the absence of further indications, by the personal and professional characteristics required by the legal system for independent directors, statutory auditors and the person in charge of internal controls*". Confindustria, *Guidelines*, June 2021.

[32] In the sense of the need for the Board of Directors, at the time of appointment "*to acknowledge the existence of the requisites of independence, autonomy, integrity and professionalism of its members*", Ordinance 26 June 2007 Trib. Naples, Office of the Judge for Preliminary Investigations, Sec. XXXIII.

[33] *In detail, the activities that the Body is called to perform, also on the basis of the indications contained in articles 6 and 7 of Legislative Decree no. 231/2001, can be summarized as follows:*

· *supervision* of the ***effectiveness*** *of the model, which is embodied in verifying the consistency between the concrete behaviors and the model established;*

· *examination of the* ***adequacy*** *of the model, i.e. its real (and not merely formal) ability to prevent, in principle, unwanted behavior;*

· *analysis* of the ***maintenance*** *over time of the solidity and functionality requirements of the model;*

· *care* of the necessary ***dynamic updating*** *of the model, in the event that the analyzes carried out make it necessary to make corrections and adjustments. This care, as a rule, is carried out in two distinct and integrated moments;*

· *presentation of* ***proposals for adapting*** the *model towards the corporate bodies/functions able to give them concrete implementation in the corporate fabric.*

· ***follow-up****, i.e. verification of the implementation and effective functionality of the proposed solutions.* Confindustria, Guidelines, June 2021.

[34] "The disciplinary assessment of the *conduct carried out by employers, except, of course, the subsequent possible control by the labor judge, must not, in fact, necessarily coincide with the assessment of the judge in criminal proceedings, given the autonomy of the violation of the Code of Ethics and internal procedures with respect to the violation of the law that involves the commission of a crime. The employer is therefore not required, before acting, to wait for the end of any criminal proceedings in progress. The principles of timeliness and immediacy of the sanction make it not only unnecessary, but also inadvisable to delay the imposition of the disciplinary sanction pending the outcome of any judgment established before the criminal court*". Confindustria, *Guidelines*, *cit*., June 2021.

[35] Although the Statutory Auditors cannot be considered - in principle - subjects in a top position, as stated by the same Explanatory Report of Leg. Decr. n. 231/2001 (p. 7), however it is abstractly conceivable the involvement, even indirectly, of the same mayors in the commission of the crimes referred to in Legislative Decree. n. 231/2001 (possibly by way of competition with subjects in top positions).