RAI - Radiotelevisione italiana Spa

Organizational, Management and Control Model pursuant to Legislative Decree 231/01

CONTENTS

1. Introduction

The structure of this Organizational Model takes the form of a "General Section" – regarding the corporate organization as a whole, the project for the realization of the Model, the Supervisory Committee, the disciplinary system, the means of training and communication – and the "Special Sections", which concern the detailed application of the principles mentioned in the "General Section" with reference to the types of crime mentioned by Legislative Decree no. 231/2001 which the Company has decided to take into consideration due to the nature of its business.

The "Special Sections" which follow analyze respectively:

- Special Section "A" – Crimes in the sphere of relations with the Public Administration and bribery between private parties

- Special Section "B" – Counterfeiting of legal tender, duty stamps and identification instruments and distinctive signs, industrial and trade offenses

- Special Section "C" – Corporate crimes and market abuse

- Special Section "D" – Crimes of terrorism, crimes against the person, transnational crimes, receiving stolen goods or money, money laundering or the use of money, property or benefits of illegal provenance, crimes involving organized crime, inducing others to refrain from making statements or to make false statements to the judicial authorities, employment of foreign nationals who are illegal immigrants

- Special Section "E" – Crimes committed with breach of regulations governing health and safety in the workplace

- Special Section "F" – Cybercrimes and misuse of data

- Special Section "G" – Crimes involving copyright violations

- Special Section "H" – Environmental crimes

In consideration of the analysis of the corporate situation, the business undertaken by the Company and the areas potentially subject to risk of crime, only the offences covered by the individual Special Sections, to which reference should be made for their precise identification, have been considered as relevant and therefore specifically examined in the Model.
With reference to the other "predicate crimes" giving rise to administrative liability of the entities pursuant to the Decree (crimes against public trust pursuant to Article 25-bis of Legislative Decree 231/011 and crimes against life and personal safety pursuant to

[1]Specifically it refers to the following crimes: acting in concert with others for the production, spending and/or introduction into the State of Italy of counterfeit legal tender (Art. 453 of the Criminal Code); the counterfeiting of currency (Art. 454 of the Criminal Code); spending and introduction into the State of Italy of counterfeit money, acting alone and not in concert (Art. 455 of the Criminal Code); the spending of counterfeit money received in good faith (Art. 457 of the Criminal Code); the production of counterfeit revenue stamps and/or the introduction into the State, purchase, possession or introduction into circulation counterfeit revenue stamps (Art. 459 of the Criminal Code); the forgery of watermarked paper for use in the production of legal tender or revenue stamps (Art. 460 of the Criminal Code); the manufacture or possession of thread marks/watermarks or other instruments used in the production of counterfeit money, revenue stamps or watermarked paper (Art. 461 of the Criminal Code); the use of forged or altered revenue stamps (Art. 464 of the Criminal Code).

Article 25-quater.1 of Legislative Decree 231/012), the Company has assessed that the risk is only abstract and not really imaginable and that, in any case, the control instruments prepared to prevent the aforementioned crimes, on the basis of the analysis undertaken, can represent, together with compliance with the Code of Ethics and the legislative provisions, a form of control for the prevention of such crimes.

Each Special Section consists of the following paragraphs:

- the first is dedicated to the description of the "Types of crimes";
- a second paragraph aimed at the "Identification of sensitive areas and activities": in light of the "risk analysis" work undertaken in conformity with Article 6, Paragraph 2 Letter a) of Legislative Decree 231/2001, it has been possible to highlight the company structures involved in processes which are in theory exposed to the risk of committing actions which are relevant pursuant to the Decree. The Model also indicates the sensitive activities, in order to clarify the business areas in which there is the highest risk of committing each group of crimes. For a more detailed list of the individual at-risk organizational structures, please refer to "risk analysis" document;
- a third paragraph contains indications relating to the "General rules of conduct and implementation of decision-making processes": the former, i.e. the "General rules of conduct", recall the need to comply with the Code of Ethics, as well as specifying the rules of conduct which must underpin the conduct of the recipients of the Model in order to prevent the commission of the individual groups of crimes.

The part relating to the "Principles of implementation of decision-making processes", on the other hand, aims to set out the "specific protocols for planning the processes of decision-making and for implementing the corporate entity's decisions with regard to the crimes to be prevented", in conformity with the provisions set out in Article 6, Paragraph 2 Letter b) of the Decree.

2. Aims

The structure of the Model, including "Special Sections", enables the identification, in each of the macro-areas prepared with reference to the groups of crime which are envisaged by Legislative Decree no. 231/2001, of the sensitive activities to which the control instruments adopted for the prevention and timely update of the Model are subsequently associated, through any opportune addition, where lawmakers intended further relevant criminal categories.

The "Special Sections" must be related to the rules of conduct contained in the company procedures and in the Code of Ethics which direct the conduct of its recipients in the various operational areas, with the aim of preventing improper conduct or conduct which is not in line with the Company's directives.

The control instruments identified below are binding for recipients of the Model and take the form of positive obligations (compliance with procedures, notifications to control bodies) and negative obligations (compliance with any bans), which must be expressly acknowledged.

Compliance with these obligations, as already stated in the "General Section" and as it is intended to restate here, has a precise legal value; should these obligations be violated, the Company will react by applying the

[2] Specifically it refers to the crime of the Mutilation of female genital organs (Article 583-bis Criminal Code).

disciplinary and sanction system described in the same "General Section". Specifically, the Special Section of the Model aims to:

- indicate the procedures which members of the Corporate bodies, Employees, and External Collaborators are required to comply with for the purposes of the correct application of the Model;

- provide the Supervisory Committee and the managers of other company divisions which cooperate with it with instruments to exercise control, monitoring and verification.

Generally, all the company representatives must adopt, for the issues for which they are responsible, conduct that conforms to the contents of the following documents:

- the Model;

- the Code of Ethics;

- Guidelines/procedures/regulations;

- proxies, delegated powers and organizational arrangements;

- any other document which regulates activities that fall within the scope of application of the Decree.

In addition, it is expressly forbidden to act in a way contrary the contents of the legal provisions in force.

3. The control system

The control system, which was completed by the Company also on the basis of the indications provided by the Confindustria Guidelines, as well as on "best practice", envisages with reference to the Areas and to the Sensitive activities identified:

- "general" control standards, applicable to all the Sensitive activities;

- "specific" control standards, applicable to particular Sensitive activities and set out in the individual Special Sections.

3.1 General control standards

The general control standards to be considered and applied with reference to all Sensitive activities are the following:

- *segregation of functions/activities*: compliance with the principle of the separation of functions among those authorizing, those executing and those auditing;

- *regulations/circulars*: in the company there must be formalized corporate provisions and procedures that can provide general rules of conduct, ways of operating in order to undertake all sensitive activities as well as means of archiving relevant documentation;

- *powers of authorization and signature*: powers of authorization and signature must: (a) be coherent with the assigned organizational and operational responsibilities, including, where required, an indication of the approval thresholds for expenses; (b) be clearly defined and known within the Company;

- *traceability*: every operation relating to the sensitive activity must, where possible, be adequately registered and archived. The process to decide, authorize and undertake the sensitive activity must be verifiable *ex post*, also through specific supporting documentation and, in any case, there must be express inclusion of the ban on cancelling or destroying the entries made or, depending on the cases, the possibility must be specifically regulated of cancelling or destroying such entries.

3.2 Specific control standards

On the basis of the aforementioned general control standards, the specific control standards, which refer to the former, are prepared so that:

a) all the operations, formation and implementation of the decisions of the Company meet the principles and prescriptions contained in the legal provisions, the articles of association, the Code of Ethics and the company procedures;

b) corporate provisions are defined and adequately communicated that can provide general rules of conduct, ways of operating to undertake sensitive activities as well as means of archiving the relevant documentation;

c) for all operations:

- the responsibilities for management, coordination and control are formalized within the company, as well as reporting levels and the description of the related responsibilities;

- it is always possible to document and reconstruct the stages in taking action and the authorization levels for taking such action, to ensure the transparency of the choices made;

- the Company adopts instruments to communicate the powers of signature conferred and a system of delegated powers and proxies;

- the allocation and exercise of powers as part of the decision-making process is congruent with the position held and with the relevance and/or problems of the underlying economic operations;

- there is no subjective identity between those who take or implement decisions, those who must provide accounting records for the operations decided on and those who are required to carry out the controls envisaged by the law and by the procedures contemplated by the internal control system on these operations;

- access to and processing of the Company's data is allowed solely to people who are authorized in conformity with Legislative Decree 196/2003 and subsequent amendments and additions, including by regulations;

- confidentiality is guaranteed in the transmission of information;

- documents concerning the taking of decisions and the implementation of such decisions are archived and kept, by the competent department, in such a way as to not allow their subsequent modification, unless specifically evidenced.

With reference to sensitive activities which are very complex and specific, in preparing the control systems account is taken of the key laws and international standards in order to implement certified management systems.

4. SPECIAL SECTION A- Public Administration and Bribery between private parties

4.1 Types of crimes (Articles 24, 25, 25-ter of Legislative Decree 231/2001)

This Special Section refers to crimes which can be imagined in the scope of dealings between RAI and the P.A., also in consideration of the legal status of RAI as a public law body and the consequent standing of its employees and External Collaborators as public officials, and between RAI and private individuals. Here below is a brief description of the individual types contemplated in Legislative Decree 231/2001 in Articles 24, 25, 25-ter Letter s)-bis.

Below are also the regulatory references for the types of crimes and a summary of some important aspects for each of the predicate crimes of Legislative Decree 231/01.

4.1.1 Crimes of corruption

Corruption in the performance of public service and scope of application (Articles 318 and 320 of the Criminal Code)

The crime as set out in Article 318 of the Criminal Code is committed should a public official, in exercising their functions or powers, unduly receive, for themselves or for a third party, money or other benefit or accept a promise of such.

The punishment envisaged for anyone committing the aforementioned types of crime is imprisonment from one to five years.

Pursuant to Article 320 of the Criminal Code, the provisions as set out in Article 318 of the Criminal Code apply also to people in charge of a public service: in these cases, however, the punishments envisaged by lawmakers are reduced by up to a third compared to the types of crime which see a public official involved.

Corruption for an act contrary to the duties of office, aggravating circumstances and scope of application (Articles 319, 319-bis and 320 of the Criminal Code)

The crime as set out in Article 319 of the Criminal Code is committed should the public official, for omitting or delaying or for having omitted or delayed an act of their office, or for undertaking or for having undertaken an act contrary to the duties of their office, receive, for themselves or for a third party, money or other benefit, or accept a promise of such.

For the purposes of the possible commission of this crime in relation to the undertaking of an act contrary to the duties of their office, it is necessary to consider both illegitimate or illicit acts (banned that is by binding regulations or which contrast with such regulations in terms of their validity and effectiveness) and those acts which, albeit proper in formal terms, have been undertaken by the public official in violation of the duty of impartiality or by submitting their function to private interests or in any case interests which are extraneous to those of the Public Administration.

The punishment envisaged for anyone committing the aforementioned types of crime is imprisonment from four to eight

years.

For this type of crime the punishment can be increased pursuant to Article 319-bis of the Criminal Code should the act contrary to the duties of office regard the conferment of public employment positions, salaries or pensions or the stipulation of contracts involving the administration to which the public official belongs.

Pursuant to Article 320 of the Criminal Code, the provisions of Article 319 of the Criminal Code apply also to the manager of a public service: in these cases, however, the punishments envisaged by lawmakers are reduced by up to a third compared to the types of crime which see a public official involved.

Pursuant to Article 321 of the Criminal Code the punishments envisaged by Articles 318 and 319 of the Criminal Code apply also to anyone giving or promising the public official or the manager of a public service money or other benefit.

Finally, it should be noted that the crimes as set out in Articles 318 and 319 of the Criminal Code differ from extortion since between the corrupting and corrupted parties there is an agreement aimed at achieving reciprocal gain, while in the case of extortion the private person is a victim of the conduct of the public official.

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

This crime is committed should, in order to favour or harm a party in judicial proceedings, a public official is corrupted, and thus a magistrate, a clerk to the court or other official of the judicial authority.

It is important to stress that the crime may be the responsibility of the Company regardless of whether or not it is party to the proceedings.

The punishment envisaged for anyone committing the aforementioned types of crime is imprisonment from four to twenty years, depending on whether an unjust sentence results from it and the type of unjust sentence imposed.

Incitement to corruption (Article 322 Criminal Code)

This crime is committed should money or other benefit be offered or promised to a public official or manager of a public service (in exercising their functions or powers, to omit or delay an act of their office, or to commit an act contrary to their duties) and this offer or promise is not accepted.

The punishment envisaged for anyone committing the aforementioned types of crime is that for the types of crime as set out in Article 318 of the Criminal Code, reduced by a third, should the offer or promise be made in order to induce a public official or a manager of a public service to undertake an act in exercise their functions or their powers; should, on the other hand, the offer or promise be made in order to induce a public official or a manager of a public service to omit or delay an act of their office, the punishment is that envisaged for the types of crime as set out in Article 319 of the Criminal Code, reduced by a third.

Bribery between private parties (Article 2635 Italian Civil Code)

The crime in question is committed when directors, director generals, managers responsible for financial reporting, auditors and liquidators or whoever is subject to management and supervision of one of the subjects indicated previously, following the giving or promise of money or other benefit, for themselves or for others, undertake or omit acts, in violation of the obligations regarding their office or the obligations of loyalty, thus causing harm to the Company. The punishment envisaged is imprisonment from one to three years for the subjects indicated in the first paragraph and up to one year and six months if the act is committed by someone subject to their management or supervision.

In addition, the crime is committed should someone give or promise money or other benefit to the aforementioned persons. This situation is the only one relevant for the purposes of giving rise to the company's administrative liability since it is expressly mentioned by Article 25-ter of Legislative Decree 231/01.

The punishments are doubled if the company involved has securities listed on regulated markets in Italy or other States of the European Union or publicly available in significant quantities pursuant to art. 116 of the TUF.

4.1.2 Extortion

Extortion (Article 317 Criminal Code)

The crime is committed should the public official, by abusing their position or their powers, force someone to give or promise unduly, to the official or a third-party, money or other benefit.

Extortion, similar to corruption, is a joint crime since it requires the two distinct subjects to act, i.e. the extorting and the extorted parties.

However, unlike corruption, only the extorting party is subject to punishment, since the extorted party is the victim of the crime: therefore, due to the private nature of the business undertaken by the Company, its representatives could not commit the crime themselves since they do not have the necessary public status; they could at most be involved in a crime of extortion committed by a public official pursuant to Article 110 of the Criminal Code.

In addition, it is in theory possible for an employee of the Company to have a public function, outside of their work. In this case, the person involved, in undertaking their office or service, must abstain from acting in such a way that, in violation of their official duties and/or in abuse of their functions, may create some advantage for the Company.

The punishment envisaged for anyone committing the aforementioned types of crime is imprisonment from six to twelve years.

Undue inducement to give or promise benefits (Article 319-quater Criminal Code)

This crime is committed should the public official or the manager of a public service, by abusing their position or their powers, induce someone to give or promise unduly, to them or to a third-party, money or other benefit.

The punishment envisaged for the public official or the manager of a public service is imprisonment from three to eight years; the punishment for anyone giving or promising money or other benefit to the public official or to the manager of a public service is imprisonment of up to three years.

4.1.3 Fraud

Fraud to the harm of the State or other public body (Article 640, Paragraph 2, no. 1 Criminal Code)

This crime is committed should, in order to realize an unjust profit, artifice or trickery is adopted (where this definition also includes any omission of information which, if it had been known, would have certainly caused a different decision to be taken by the State, other public entity or entity of the European Union) such as to mislead or cause (financial) harm to such entities.

. The punishment envisaged for anyone committing the aforementioned types of crime is imprisonment from one to five years and a fine from 309 to 1,549 euro.

Aggravated fraud in order to obtain government grants (Article 640-bis Criminal Code)

The crime in question occurs when actions as set out in Article 640 of the Criminal Code above concern obtaining contributions, loans or other grants from the State, other public entities or from the European Union.

The punishment envisaged for anyone committing the aforementioned types of crime is imprisonment from one to six years.

Computer fraud (Article 640-ter Criminal Code)

The crime of computer fraud is committed when, in order to procure an unjust profit for themselves or for another party, the operation of an IT system is altered, or unauthorized action is taken on data, information or programs contained in an IT system.

The punishment envisaged for anyone committing the aforementioned types of crime is imprisonment from six months to five years.

4.1.4 Misappropriation and undue collection of grants

Misappropriation to the detriment of the State (Article 316-bis Criminal Code)

This crime is committed by anyone who, having obtained from the State, other public entity or the European Union, contributions, grants or loans to be used for initiatives for the realization of works or the undertaking of activities in the public interest, does not use them for these ends.

In order to commit the crime it is sufficient that even only a part of the grants received has been used for purposes other than those envisaged, it making no difference that the planned activity has in any case been carried out. The ends which the perpetrator of the crime wished to pursue are also irrelevant, since the subjective element of the crime itself consists of the desire to subtract resources which were destined to a predetermined purpose.

The punishment envisaged for anyone committing the aforementioned types of crime is imprisonment from six months to four years.

Undue collection of grants to the detriment of the State (Article 316-ter Criminal Code)

This crime is committed when - through the use or presentation of statements or documents which are false or which bear witness to untruthful facts or through the omission of due information – contributions, loans, subsidized mortgages or other grants of the same type, however they may be called, granted or supplied by the State, other public entities or the European Union, are obtained without having the right to them.

In this case, unlike the situation in the previous crime, the use which is made of the grants is irrelevant, since the crime is committed on obtaining the financing.

The punishment envisaged for anyone committing the aforementioned types of crime is imprisonment from six months to three years and, in less serious cases, an administrative fine of between 5,164 and 25,822 euro.

Finally, it should be noted that this crime is residual compared to the types of crime as set out in Article 640-bis of the Criminal Code (aggravated fraud in order to obtain government grants), in the sense that it is committed only in the cases where the conduct does not qualify as the crime set out in the latter provision.

The dividing line between undue collection of grants to the detriment of the State (ex Article 316-ter Criminal Code) and aggravated fraud in order to obtain government grants (ex Article 640-bis Criminal Code) rests on the type of criminal conduct of the offender who, in the first case, merely presents false documents or omits due information; while in the second case they adopt artifice or trickery which mislead the Public Administration.

4.2 Identification of sensitive areas and activities in the scope of crimes in the sphere of relations with the Public Administration and the crime of bribery between private parties

In relation to the crimes which have as their precursor the establishment of direct or indirect dealings with the Public Administration, all those corporate areas which envisage the establishment of dealings with the public administration have been identified as sensitive activities.

1. *Negotiation/signing and/or execution of contracts (including the invoicing stage)/ special arrangements with public subjects, arranged through negotiated procedures (direct concession or private negotiation) - including service contracts.*
2. *Negotiation/signing and/or execution of contracts (including the invoicing stage)/ special arrangements with public subjects arranged through public (open or restricted) procedures.*
3. *Management of judicial or arbitration proceedings (including any judicial and extra-judicial disputes relating to the execution of contracts / special arrangements on concessions signed with public subjects relating to the aforementioned activities at 1 and 2).*
4. *Negotiation/signing and/or execution of contracts arranged through private negotiations, as the commissioning body.*

5. *Negotiation/signing and/or execution of contracts arranged through open or restricted procedures, as the commissioning body.*

6. *Management of dealings with public subjects to obtain authorizations and licences for the exercise of corporate activities and to request occasional/ad hoc administrative orders needed to undertake activities which are instrumental to typical corporate activities.*

7. *Dealings with Public subjects:*

- *for the handling of obligations, checks and inspections, should the undertaking of corporate activities entail the production of solid, liquid or gaseous waste, or smoke-emission or the production of acoustic/electromagnetic pollution which are subject to controls by public subjects;*

- *for the aspects regarding health and safety in the workplace (Legislative Decree no. 81/2008) and compliance with the precautions envisaged by laws and regulations for the use of employees responsible for particular tasks;*

- *relating to the hiring of personnel also with reference to protected categories or whose hiring is facilitated;*

- *for the management of staff social security treatment and/or management of the related checks/inspections;*

- *for the preparation of income tax or withholding tax returns or of other returns on the payments of taxes generally and the related inspections;*

- *for cinematographic and audio-visual production in particular territories, with "Film Commissions";*

- *for on-going investigations involving the Judicial Authority, the Magistracy, Carabinieri, Police and Guardia di Finanza and other police bodies;*

8. *Management of dealings with Supervisory Authorities, Administrative Authorities and other responsible Authorities (including Parliamentary Supervisory Committee, AVCP, AGCOM, Corecom, Corte dei Conti, AGCM; Ministry of Economic Development) relating to the undertaking of activities regulated by law.*

9. *Management of the application / acquisition and/or management of contributions, grants, loans, insurance or guarantees conceded by public subjects.*

10. *Requirements with public subjects (Ministries, Universities, etc.) and communication aimed at cultural service, community development and education.*

11. *Activities which envisage the installation, maintenance, updating or management of software of public subjects or which is provided by third parties on behalf of public subjects.*

12. *Identification and selection of the news items.*

13. *Prize competitions.*

The following processes have also been identified as to be considered "instrumental" to the aforementioned activities since, albeit not characterized by the existence of direct dealings with the Public Administration, they may represent support and precursors (financial and operational) for the commission of crimes in dealings with the P.A.; and as "sensitive" activities with reference to the crime of bribery between private parties since they are characterized by the existence of direct dealings with private individuals:

a. Procurement of goods and services;

b. Hiring of personnel;

c. Gifts and benefits;

d. Sponsorships of RAI programs and initiatives;

e. Institutional advertising;

f. Management of advertising on the following platforms (Digital, Satellite, Internet and Radio);

g. Entertainment expenses;

h. Donations;

i. Management of financial transactions (also infragroup);

j. Sales;

k. Selection of partners;

l. Selection of agents/brokers;

m. Travel expenses and advances.

4.3 General rules of conduct and implementation of decision-making processes

4.3.1 General rules of conduct

This Special Section envisages an express ban on Corporate bodies, Employees - directly – and External Collaborators – limited respectively to the obligations contemplated in the specific procedures and codes of conduct and in the specific clauses included in contracts:

- to put in place, collaborate in or give rise to the realization of forms of conduct such that – considered individually or collectively – they represent, directly or indirectly, the types of crime falling under those considered above (Articles 24, 25, 25-ter, Letter s)-bis of Legislative Decree 231/2001);

- to violate the principles and the company procedures envisaged in this Special Section.

This Special Section entails, consequently, the obligation on the aforementioned subjects to scrupulously respect all the laws in force and in particular:

- not to accept or solicit gifts, favours, such as presents or hospitality, or other benefit except of modest value and such as to be considered usual in relation to the occasion and not to be interpreted, to an impartial observer, as aimed at gaining undue advantages. It is not allowed to offer, promise, or give gifts, favours, such as presents or hospitality, or other benefit except of modest value, as indicated in the Code of Ethics. In any case, these expenses must always be authorized, documented and in compliance with budget limits.

- during business negotiations, commercial requests or dealings with the Public Administration or with a private subject must not undertake (directly or indirectly) the following actions:

    - examine or propose employment and/or commercial opportunities that may favour employees of the Public Administration personally or private individuals;

    - solicit or obtain confidential information that may compromise the integrity or the reputation of both parties;

- as part of non-commercial dealings established between RAI and the Public Administration, public officials, subjects managing a public service and private individuals are required to abstain from:

    - offering, promising, or giving, also through a third party, money or other benefit, which may also take the form of work or commercial opportunities, to the public official involved or the private subject, their respective relatives3 or subjects in any way connected to the them;

    - accepting requests or solicitations, also through a third party, for money or other benefit, which may also take the form of work or commercial opportunities, from the public official involved, relatives of the subjects indicated above and subjects in any way connected to them;

    - seeking or illicitly establishing personal relations based on favours, influence and interference, which can directly or indirectly affect the outcome of the relationship;

[3] Relative means: the husband of wife of the Public Subject; grandparents, parents, brothers and sisters, children, nephews and nieces, aunts and uncles and first cousins of the Public Subject and of their husband or wife; the husband or wife of each of these people; and any other person who shares the home with the same; the husband or wife of the private individual; grandparents, parents, brothers and sisters, children, nephews and nieces, aunts and uncles and first cousins of the private individual and of their husband or wife; the husband or wife of each of these people; and any other person who shares the home with the same.

- must not abuse their position or their powers to force or induce someone to give or promise, unduly, to themselves or a third party also on behalf of RAI, money, gifts or other benefit from subjects who have benefitted or may benefit from activities or decisions regarding the work undertaken;

- not to make "facilitation payments", i.e. unofficial payments of modest value made in order to speed up, favour or ensure the undertaking of a routine activity or in any case which is envisaged as part of the duties of the public or private subjects with which RAI has dealings;

- not to ask for services from consultants which are not adequately justified in the context of the relationship established with them;

- not to provide, in any form, untrue or incomplete information to the national or foreign Public Administration;

- not to use the sums received from national or EU public entities by way of grants, contributions or loans for purposes other than those for which they were intended;

- not to condition in any way and with any means the freedom to decide of subjects who, for whatever reason, are required to make statements before the judicial authority;

- not to promise or follow up on hiring requests in favour of representatives/exponents of the Public Administration or subjects indicated by them, in order to influence the independence of judgment or induce them to guarantee any advantage to RAI;

- not to undertake or instigate others to put in place corrupt practices of any kind.

4.3.2 Principles of implementation of decision-making processes

Here below are listed the control standards identified for the individual sensitive activities recorded.

1. *Negotiation/signing and/or execution of contracts (including the invoicing stage)/ special arrangements on concessions with public subjects, arranged through negotiated procedures (direct concession or private negotiation) - including service contracts*

2. *Negotiation/signing and/or execution of contracts (including the invoicing stage)/ special arrangements on concessions with public subjects arranged through public (open or restricted) procedures*

The regulation of the activity envisages:

- roles and duties of the Sections responsible for the handling of initial dealings with the Public Subject4, envisaging specific control instruments (for example, the calling of dedicated meetings, the recording of the main rulings) in order to guarantee compliance with the standards of integrity, transparency and correctness of the process;

- specific information flows, between the Sections involved in the process, with the aims of reciprocal checking and coordination;

- the person responsible for representing the Company in regard to the P.A., on whom to confer a due delegated power and proxy;

- the separation of the Sections responsible for preparing offers and presenting offers, envisaging specific forms to check the congruity of the offer, graduated on the basis of the type and extent of the contractual activity;

- during definition of the offer, a check to avoid the risk of giving the P.A. incomplete or inexact documents which testify, untruthfully, to the existence of the conditions or requirements essential to be given the engagement;

- the transmission of data and information to the Section responsible for the contract through a system (also computerized) which enables the tracking of individual transfers and the identification of the subjects who input the data in the system;

- the separation of the work to complete the contract, to inform the application for invoicing, verification of payment and charges;

- the means and terms of handling challenges by the counterparty, identifying the Sections responsible for receiving challenges, verifying the effective existence of the source of the challenge, undertaking cancellations and checking them;

- the separation of the Sections responsible for negotiating with customers variations to contracts, recalculating/adjusting prices, and related checks on the amount to be invoiced to the counterparty;

- the subject who has dealings or negotiates with the Public Administration cannot by themselves and freely:

[4] Public Subject: anyone exercising a public legislative, judicial or administrative function;
- anyone acting in an official capacity in the interests or on behalf of (i) a national, regional or local Public Administration, (ii) an agency, office or body of the European Union or of a Public Administration, whether Italian or foreign, national, regional or local, (iii) a company owned, controlled or invested in by an Italian or foreign public Administration, (iv) an international public organization, such as the European Bank for Reconstruction and Development, the International Bank for Reconstruction and Development, the International Monetary Fund, the World Bank, the United Nations or the World Trade Organization, or
(v) a political party, a member of a political party or a candidate to political office, whether Italian or foreign;
- any manager of a public service, in other words those who, for any reason, perform a public service, where public service means an activity which is regulated in the same forms of the public function, but characterized by the lack of powers typical of the latter. The undertaking of simple routine duties and merely material work are excluded.

- sign contracts that they have negotiated;
- access financial resources and/or authorize payment orders;
- confer appointments for consulting services/professional services;
- grant any benefit;
- proceed with the hiring of personnel.

3. Management of judicial or arbitration proceedings (including any judicial and extra-judicial disputes relating to the execution of contracts / special arrangements on concessions signed with public subjects relating to the aforementioned activities 1 and 2)

The regulation of the activity envisages:

- the identification and separation of the Sections responsible for receiving and making challenges, verifying the effective existence of the subject of the challenge, managing the dispute in the out of court stage and managing the dispute in the judicial stage;
- the means and terms for rapid transmission of the challenge to the Legal and Corporate Affairs Department, together with a report setting out the circumstances on which the challenge is based;
- specific information flows, between the Sections involved in the process, with aim of reciprocal checking and coordination;
- specific periodic reporting lines from the Legal and Corporate Affairs Department to the Chairman and Director General on the status of disputes and on the possibilities and on the timeframes for out of court settlement or judicial reconciliation of the disputes;
- that the challenge is based on objective parameters and that any agreement and/or conciliation is conducted by a person who holds a specific proxy and ad litem delegation, which contemplates the power to reconcile or settle the dispute;
- indication of the selection criteria for external professionals (for example, experience, subjective requirements of professional and personal standing, good references, etc.) and the means of managing and controlling the work of these professionals (referring in this regard to the control standards for the sensitive activity of managing consulting and professional services);
- allocation of supervision of the dispute and approval of the invoices issued by the consultant also with reference to the congruity of fees billed in relation to the tariff applied;
- means of tracing the internal process;

- that the dealings with the Judicial authority and with the Public Administration as part of the in court and out of court dispute must be characterized by the principles of correctness, transparency and traceability, also when managed through an external legal adviser;

- that the process must be managed in such a way as to avoid cases of inducing people not to make statements or to make false statements to the Judicial authority.

4. *Negotiation/signing and/or execution of contracts arranged through private negotiations, as the commissioning body*

Refer to the above section on the sensitive activity "Procurement of goods and services".

5. *Negotiation/signing and/or execution of contracts arranged through open or restricted procedures, as the commissioning body*

Refer to the above section on the sensitive activity "Procurement of goods and services".

6. *Management of the dealings with public subjects to obtain authorizations and licences for the exercise of the corporate activities and request of occasional/ad hoc administrative orders needed to undertake activities which are instrumental to typical corporate activities*

The undertaking of the activity envisages:

- the separation of the Sections responsible for making contact with the Public Subject to request information, prepare the application, present the application and handle the concession and/or authorization, envisaging specific control systems (for example the calling of dedicated meetings, the recording of the main rulings) in order to guarantee compliance with the standards of integrity, transparency and correctness of the process;

- specific protocols to control and check the truthfulness and correctness of the documents, production of which is necessary in order to obtain the concession and/or authorization (for example joint check by the person responsible for presenting the application and the person responsible for checking the handling of the concession and/or authorization);

- specific information flows, between the Sections involved in the process, with the aim of reciprocal checking and coordination;

- identification of the person responsible for representing the Company before the granting P.A., on whom to confer a specific delegated power and proxy;

- definition of the roles and duties of the Section responsible for controlling the stages in obtaining and handling concessions and/or authorizations, with particular regard to the de facto and legal prerequisites for presentation of the related application.

7. Dealings with Public subjects

Contact with the Public Subject refers, in particular, to the activities:

a) which entail the production of solid, liquid or gaseous waste, or smoke-emission or the production of acoustic/electromagnetic pollution which is subject to controls by public subjects;

b) relating to aspects regarding health and safety in the workplace (Legislative Decree 81/08) and compliance with the precautions envisaged by laws and regulations for the use of employees responsible for particular tasks;

c) regarding the hiring of personnel also with reference to protected categories or whose hiring is facilitated;

d) regarding staff social security treatment;

e) for the preparation of income tax or withholding tax returns or of other returns on the payments of taxes generally.

f) regarding on-going investigations;

g) cinematographic and audio-visual production in particular territories.

Besides the requirements and obligations imposed by the law, the regulation of the activity envisages:

- the means and the sections responsible for managing relevant inspections and checks;

- the conferment of a special power of attorney or delegated power on the subjects who may be involved in inspections and/or checks, in order to equip them with the power to represent the Company before the public authority in the case of an inspection and/or check;

- the preparation by lawyers/aforementioned proxies of a report on the work undertaken during the inspection, containing, among other things, the names of officials met, the documents requested and/or handed over, the subjects involved and a summary of the verbal information requested and/or supplied;

- when and how to involve any further Sections or, in the case of urgent need, inform the Chairman and the Director General;

- the separation of the Sections responsible for making contact with the Public Subject to request information, prepare the models and/or documents, present the models and/or documents and handle dealings with public subjects;

- specific control systems (for example the calling of specific meetings, the recording of the main rulings) in order to guarantee compliance with the standards of integrity, transparency and correctness of the process;

- specific protocols to control and check the truthfulness and correctness of the documents intended for the P.A. (for example joint check by the person responsible for presenting the application and the person responsible for handling dealings with the P.A.);

- specific information flows, between the Sections involved in the process, with the aim of reciprocal checking and coordination;

8. Management of dealings with Supervisory Authorities, Administrative Authorities and other responsible Authorities (including Parliamentary Supervisory Committee, AVCP, AGCOM, Corecom, Corte dei Conti, AGCM; Ministry of Economic Development) relating to the undertaking of activities regulated by law.

The regulation of the activity envisages:

- the formalization of directives which introduce the obligation for utmost collaboration and transparency in dealings with the supervisory authority and with the other control bodies;

- the identification of a person responsible for handling dealings with the Supervisory authority and the other control bodies, specifically delegated by the company's top management;

- identification of the person responsible for receiving, consolidating and transmitting, validating and reviewing the data, information and documents requested;

- specific formalized information flows between the Sections involved in the process and the documentation and traceability of the individual stages;

- that the archiving and conservation of the data, information and documents requested is guaranteed.

9. Management of applications / acquisition and/or management of contributions, grants, loans, insurance or guarantees granted by public subjects

The regulation of the activity envisages:

- the separation of the Sections responsible for monitoring the chance to access contributions and/or loans provided by the State or by the European Union, making contact with the Public Subject to request information, prepare the application, present the application, and handle the contribution and/or loan supplied, envisaging specific control instruments (for example, the calling of specific meetings, the recording of the main rulings) in order to guarantee compliance with the standards of integrity, transparency and correctness of the process;

- specific checks on the truthfulness and correctness of the documents, production of which is necessary to access the contribution and/or loan (for example, joint check by the person responsible for presenting the application and the person responsible for checking the handling of the contribution and/or loan);

- specific information flows, between the Sections involved in the process, with the aim of reciprocal checking and coordination;

- identification of the person responsible for representing the Company in regard to the national or foreign P.A. providing the loan, on which to confer a specific delegated power and proxy;

- definition of roles and duties of the Section responsible for checking the exact correspondence between the actual use of the contribution and/or of the loan supplied and the purpose for which it was obtained.

10. Requirements with public subjects (Ministries, Universities, etc.) and communication aimed at cultural service, community development and education

The regulation of the activity envisages:

- the separation of the Sections responsible for making contact with the Public Subject to request information, prepare the application, present the application, envisaging specific control systems (for example the calling of specific meetings, the recording of the main rulings) in order to guarantee compliance with the standards of integrity, transparency and correctness of the process;

- specific protocols to control and check the truthfulness and correctness of the documents, production of which is necessary to fulfil the obligation and for communication;

- specific information flows, between the Sections involved in the process, with the aim of reciprocal checking and coordination;

- identification of the person responsible for representing the Company in regard to the granting P.A., on whom to confer a specific delegated power and proxy.

11. Activities which envisage the installation, maintenance, updating or management of software of public subjects or which is provided by third parties on behalf of public subjects

The regulation of the activity envisages:

- adequate security measures for the IT processing of data, also by extending the security measures already envisaged by Legislative Decree 196/03 to all processing of data with electronic tools;

- with reference to the organization of security for internal users, the roles and responsibilities in managing the means of access for users in the company and their obligations in using the IT systems;

- with reference to the organization of the security for external users, the roles and responsibilities in managing the means of access for users from outside the company and the obligations of the same in using the IT systems, as well as in handling dealings with third parties in the case of access, management, communication, supply of products/services for the processing of data and information by the third party themselves;

- with reference to physical and environmental security, the adoption of controls in order to prevent unauthorized access, damage and interference to the premises and to the goods contained in them by securing the areas and equipment;

- the monitoring of IT-online channels to the Public Administration.

12. Identification and selection of news items

The regulation of the activity envisages:

- formalization of the running-order for the services/contents of programmes which will be broadcast;

- segregation between the person proposing the news item, the person controlling it and the person authorizing it;

- compliance with the provisions of the Code of Practice issued by the Professional Order of Journalists;

- real and effective supervision of information contents by expressly identified managers, through formalized controls;

- the means of implementing the aforementioned controls (preventative, *a posteriori* and sample-based) regarding observance and compliance with the relevant corporate law.

13. **Prize competitions**

The regulation of the activity envisages:

- the segregation of sections between the person requesting the prize-based competition, the person who authorizes it and the person who prepares the related documentation;

- the formalization of the criteria for participation and selection of the subjects who take part in the competition and means of providing the prize;

- specific information flows, between the Sections involved in the process, with the aim of reciprocal checking and coordination;

- identification of the person responsible for representing the Company in regard to national or foreign P.A., on whom to confer a specific delegated power and proxy;

- rules and responsibilities for the conservation and archiving of documentation referring to the various stages of processes undertaken and to the controls to check compliance with the procedure.

a) Procurement of goods and services;

b) Hiring of personnel;

c) Gifts and benefits;

d) Sponsorships of RAI programs and initiatives;

e) Institutional advertising;

f) Management of advertising on platforms (Digital, Satellite, Internet and Radio);

g) Entertainment expenses;

h) Donations;

i) Management of financial transactions (also infragroup);

j) Sales;

k) Selection of partners;

l) Selection of agents/brokers;

m) Travel expenses and advances.

n) Procurement of goods and services

As envisaged in the document "Internal instructions for procedures to award contracts for works, services and supplies", RAI arranges to satisfy its procurement needs for works, services and supplies in the sectors other than those closely linked to the radio and televisual sector, through the use of the procedures envisaged by Legislative Decree no. 163 of 12 April 2006 (Code of public contracts relating to works, services and supplies in implementation of the directives 2004/17/EC and 2004/18/EC and subsequent changes and additions) acting, in the dealings indicated herein, as a "Entity governed by public law".

The regulation of the activity envisages:

- transparent, impartial and objective rules of conduct in each stage of the process of supply/consultancy/service and professional service aimed at ensuring the best possible configuration in terms of cost, quality and time;

- roles, responsibilities and means and operations for the stage of asking for, assessing and approving requests for supply/consultancy/service and professional service.

See in particular the following provisions referring to specific stages of the process:

Activation of the process to request supply/consultancy/service and professional service

- the formalization of requests for supply/consultancy/service and professional service, which must contain:
    - the subject of the request, in other words the precise description of the good, the work or service which it is intended to acquire;
    - the category of the good, service, or work to be procured;
    - the value of the request;
    - the technical specification or the technical requirements for the good, work or service which it is intended to acquire, in other words the description of the respective characteristics, specifying their quality, technical attributes and conformity to the legal provisions with particular reference to safety in the workplace, health and protection of the environment;
    - the motivation, which justifies any need to use direct negotiation with a single operator;
    - the Department which will act as “manager of the contract”;
    - other particular information envisaged for the good, work or service which it is intended to procure, when necessary;
    - the approval of the request from the procuring section;
    - should the applicant departments coincide with the department responsible for the purchase, the guarantee that the principle of the segregation of activities is respected, keeping separate the person handling the purchase from who is asking for it and will use it, should the latter be part of the same department.

o) Selection of the suppliers/consultants and approval process:

- rules and criteria to enable verification and monitoring of the technical and operational ability, ethical, economic and financial reliability of a supplier/consultant on the basis of objective and predetermined elements; the supplier/consultant selected must be able to guarantee:
    - safeguarding and protection of the environment;

- promotion of healthy and safe working conditions;
- compliance with the conditions for health and safety in the workplace;
- ban on forced labour and the exploitation of minors;
- freedom of association and collective bargaining;

- the evaluation of the suppliers/consultants must respect the principles of transparency, fair treatment and the Code of Ethics;

- the inclusion of a register/list of suppliers, specifying:
  - the means relating to the admittance request, analysis and evaluation of the request, approval and its effects, the means of managing and updating the list;
  - the items expressly removed from the obligation to register in the company register/list;
- the inclusion of a period of validity for the approved status of the supplier/consultant which must be adequate to guarantee its checking and periodic updating, also following feedback, inspections or systematic collection of information.

Process of procurement:

- the formalization of the process starting from definition of the need up to the authorization and issue of a purchase request, indicating the means of management and the authorization levels;
- identification of the contents of the purchase order, checking of the correspondence with the authorized purchase request, the means for authorization and execution;
- the means to receive and state acceptance of the good/service acquired;
- verification that the requests for supply/consultancy/service and professional service come from authorized subjects;
- that the use of direct negotiation with a sole operator is restricted to the cases envisaged by law and by jurisprudence and clearly identified, adequately justified and documented, as well as subject to suitable control systems and authorization systems;
- criteria for rotating people involved in the process of procurement;

- that the person who handles dealings or negotiates with the Public Administration cannot by themselves and freely sign the contracts which they have negotiated;

- segregation in the main activities (in particular between the person taking the decision to start the procedures, the person deciding the requirements to take part in the tender/selection, the person deciding the choice of contractor, the person signing, the person deciding any changes/additions, the person verifying compliance with the contractual conditions, the person handling dealings with third parties contractors in the stage of checks and final tests or on delivery, and the person handling any transactions);

- checking, before signing the contract, that the counterparty is not present in or not part of organizations present in the reference lists relating to the suppression of financing of terrorism (published by the Financial Information Unit set up at the Bank of Italy);

- should the outcome of the aforementioned check be positive, the preparation and archiving of a report sent to the Director General, which is detailed and contains justifications for each individual operation undertaken with the people indicated in the Reference Lists or who are part of the organizations present in the same;

Contracts:

- drafting of the contract in writing for the supply/consultancy/service and professional service, in accordance with the principles and guidelines established by the competent departments;

- segregation of the duties between the person managing operations during the process to request the supply/consultancy/service and professional service and the person approving the contract;

- drafting of contractual conditions to take account of:

    - costs;

    - safety conditions;

    - procurement timeframes;

    - any other aspects relevant to undertaking the activity;

    - means of remuneration for the good, work or the service requested (amounts per unit, one-off price, repayable amount, etc.), in compliance with the company regulations on payments;

    - duration of the contracts;

- that the contracts for supply/consultancy/service and professional service contain the following clauses:

1. specific clauses with which third parties agree not to behave in such a way, not to commit any act or omission and not to give rise to anything from which responsibility may arise pursuant to Legislative Decree no. 231/01 and state that they know and agree to respect the principles contained in the Code of Ethics and in the Model adopted by RAI as well as clauses which envisage the application of sanctions in the case of violation of these obligations;
2. specific anti-corruption clauses such as:

   - the statement by the supplier that the amount paid is solely the fee for the service envisaged in the contract and that these amounts will never be sent to a Public or Private Subject or to one of their Relatives for corrupt ends or transferred, directly or indirectly, to the members of the corporate bodies, directors or employees of the Company;

   - the ban on the supplier transferring directly or indirectly the fee to directors, executives, members of the corporate bodies or employees of the Company or to their Relatives;

3. indication of those subject to the obligation for whom the supplier/consultant guarantees compliance with the applicable laws, and in particular the anti-corruption laws5 and the Code of Ethics;
4. regulation of the subcontract;
5. the application of sanctions in the case of violation by the supplier/consultant of the obligations, statements and guarantees set out above, or in the case of violation of the anti-corruption laws;

- for tender contracts the existence of standard contractual clauses regarding safety costs and compliance with the relevant laws and specific clauses with which contractors state that they know and agree to comply with the labour laws in force (e.g. payment of contributions, safety requirements), safeguarding of the work of minors and women, hygienic and health and safety conditions, union rights or in any case the right of association and representation required by the law of the country where they operate, and financial traceability;

[5] Anti-corruption laws: a) the Italian Criminal Code, the 231 Decree and the other applicable provisions (Law no. 190 of 6 November 2012 setting out "Provisions for the prevention and repression of corruption and illegality in the Public Administration"), the FCPA (the Foreign Corrupt Practices Act issued in the United States), the Bribery Act 2010 (issued in the United Kingdom), other public and commercial laws against corruption in force in the world and international anti-corruption treaties such as the OECD Convention on combating bribery of foreign public officials in international business transactions and the United Nations Convention against corruption; b) the internal anti-corruption provisions adopted by the Company to prevent risks relating to corruption.

- that the management of the Supply/Consultancy Contract is assigned to a Contract Manager, indicating the role and duties attributed to them, acceptance by the same Contract Manager of the role and duties assigned, envisaging authorization by a higher qualified position which is different from the Contract Manager in the case of changes / additions and/or renewals of the contract. The Contract Manager will receive adequate training not only on the principles and the rules of conduct of the Company, on the Code of Ethics, on the 231 Model, but also specifically on anti-corruption laws. The Contract Manager is responsible for:

    - monitoring and confirming the correct execution of the Contract;

    - checking and guaranteeing that the counterparty always operates in conformity with the criteria of utmost diligence, honesty, transparency, integrity and in compliance with the Anti-Corruption laws, the 231 Model and the Code of Ethics of the Company;

    - highlighting any possible problems that may be found in the execution of the contract in the activities undertaken by the Supplier/Consultant and immediately alerting the competent department;

- rules and responsibilities for the conservation and archiving of documentation in reference to the various stages of the processes put in place and to the controls to check compliance with the procedure.

b. Hiring of personnel

The regulation of the activity envisages:

- roles, responsibilities and means and operations for the stage of requesting, evaluating and approving requests to find personnel;

- that the selection/finding of personnel must be undertaken in coherence with the hiring needs identified by the Company;

- the existence of an annual budget for the hiring of personnel which is approved and monitored over time and of a person responsible for checking compliance with the spending limit established in the budget;

- the existence of formalized procedures that can provide: (i) objective and transparent selection criteria for candidates (e.g. degree/high-school diploma, knowledge of foreign languages, previous professional experience, etc.); ii) the traceability of the sources for curricula vitae; iii) a bonus system to include preset and measureable objectives, as well as the intervention of a number of departments in defining incentive plans and in selecting the related beneficiaries;

- the inclusion of the ban of recruiting people indicated in reference lists relating to the suppression of financing of terrorism (published by the Financial Information Unit set up at the Bank of Italy), unless there is formal authorization of the Chairman and Director General in relation to the powers assigned;

- that for personnel considered suitable for hiring, the competent departments undertake anti-corruption checks, such as checks on the previous professional experience indicated by the candidate and information is requested, where possible, any previous or on-going criminal proceedings;

- that the results of such checks must be assessed in relation to the role and duties which the candidate will go on to perform;

- rules and responsibilities for the conservation and archiving of documentation referring to the various stages of the processes put in place and to the controls to check compliance with the procedure.

c. Gifts and benefits

The regulation of the activity envisages:

- roles, responsibilities, means and operations for the stage of requesting, evaluating and approving gifts;

- that any gift must have all the following characteristics. It must:

    - not consist of a payment in cash;

    - be made in relation to legitimate business ends and in good faith;

    - not be motivated by the wish to exercise illicit influence or by the expectation of reciprocity;

    - be reasonable in accordance with the circumstances;

    - be of good taste and conform to the generally accepted standards of professional courtesy;

    - respect local laws and regulations applicable to the Public Subject or to the private individual6;

- that any gift made for a relative or a person indicated by a private individual, by Business Partner7 or by a Public Subject, which has been proposed at the request of the same, or, in the absence of a proposal, can be connected to the relationship which connects the same to the beneficiary, must be considered as a benefit provided directly to the same private individuals, Business Partner or Public Subject and is therefore subject to the limitations envisaged by the procedure;

[6] Applicable only in the case of activity undertaken abroad.
[7] Each independent third party who receives or supplies products or services from/to the Company or from/to third parties acting on behalf of the Company (e.g. consultants, intermediaries, concessionaires , agents,etc.).

- that the expenses for institutional gift-giving and gift-giving relating to specific projects must be recorded accurately and transparently in the financial information of the Company and in sufficient detail and must be backed by documentation to identify the name and job title of each beneficiary[8] as well as the purpose of the gift, and the economic or other benefit,

- the inclusion of the ban on giving benefits to people indicated in the reference lists relating to the suppression of financing of terrorism (published by the Financial Information Unit set up at the Bank of Italy), unless there is formal authorization by the Chairman and the Director General in relation to the powers assigned;

- a summary (for example every six months) of the objects supplied, for each type of gift, in the reference period containing:

    - the purpose,

    - the beneficiary,

    - the description of the object,

    - the purchase value,

    - the request received indicating the related authorization,

    - the quantity supplied,

    - the date of supply.

- that the specific needs for institutional gifts of the Chairman/Director General, in line with the approved budgets, are managed in agreement with the respective secretarial offices;

- the conservation and archiving of the documentation referring to the gifts, offered to or received by personnel and to gifts made and to controls to check compliance with the relevant legal procedure, so as to enable the reconstruction of the various stages of the processes put in place;

- that the management of presents must be assigned to a Gift Manager. The Gift Manager will receive adequate training both on the principles and rules of conduct of the Company, on the Code of Ethics and on the 231 Model, and specifically on the Anti-Corruption laws:

- The Gift Manager is responsible for:

[8] This does not apply to presents of limited value (e.g. diaries, umbrellas, calendars, pens, etc.)

- monitoring and confirming the correct execution of the process of distributing gifts;

- monitoring the conservation of the goods to be used as gifts.

c.1 Gifts, economic advantages offered to, or received by, personnel

Besides the provisions at point c., the regulation of the activity envisages:

- that any gift, economic advantage or other benefit offered to, or received by, personnel must be, objectively, reasonable and in good faith.

- the gift or economic advantage offered to, or received by, personnel must be communicated to the line manager, should its real or estimated value exceed (or probably exceed):

    - individually, the “individual threshold” set at 150 euro9;

    - cumulatively, when received by or offered by the same person or entity in one year, the “accumulated threshold” (corresponding to four times the "individual threshold"), even if individually each gift or benefit does not exceed the “individual threshold” indicated at the previous point;

- the precise and transparent registration (even if refused) in a specific register, kept by the competent department containing the following information:

    - name of the person to whom the gift or economic advantage was offered or who received it (beneficiary);

    - name of the Company and of the person who made the offer or provided the gift or economic advantage;

    - date the gift was offered to personnel;

    - current or estimated value;

    - indication of any acceptance or refusal and the related reasons.

[9] The reference value indicated for “modest value” was identified in consideration of the Government Circular of 8 February 2012 which established "instructions, for all the structures reporting to the Ministry of the Economy and Finance and the Prime Minister’s Office, in order to guarantee efficiency and effectiveness in administrative action".

c.2 Presents given to third parties

Besides the provisions in point c., the regulation of the activity envisages:

- that the gift is reasonable and in good faith when it is directly connected:
    - to the promotion, demonstration or illustration of products or services;
    - to the development and maintenance of friendly business relations.

c.3 Sponsorships of RAI programs and initiatives

The regulation of the activity envisages:

- roles, responsibilities, means and operations for the stage of requesting and evaluating sponsorship;
- all the sponsorship activities must be undertaken in line with the approved budget;
- that the requests contain at least the following information:
    - promoter;
    - motivation;
    - cost;
    - any other sponsors present.
- that the evaluations of requests are undertaken by a team, the outcomes of which are formalized in a specific document;
- the identification of people allowed to authorize sponsorship;
- the formalization of the reason for any non-authorization;
- checks on the promoter in order to verify that the promoter is a person who is known to and recognized by the market as reliable;
- that the sponsorship contract must be prepared in writing;

- the ban on having dealings, negotiating and/or signing and/or executing contracts or acts with people indicated in the Reference lists relating to the suppression of financing of terrorism (published by the Financial Information Unit set up at the Bank of Italy), unless there is formal authorization by the Chairman and the Director General in relation to the powers assigned;

- the statement of the promoter that the amount paid is solely the fee for the service envisaged in the sponsorship contract (also in the form of the exchange of commercial letters) and that these amounts will never be transmitted to a Public Subject or a private individual for corrupt ends or transferred, directly or indirectly, to the members of the corporate bodies or employees of the Company;

- the communication obligation on the promoter, on signing the sponsorship contract, or also during execution of the same, should the promoter themselves, or in the case of a company, the people connected to its corporate organization (e.g. directors, employees, majority shareholders), be considered Public Subjects;

- that the sponsorship contracts must include the following information:

    - the description of the event/initiative,

    - the benefits which the Company will receive,

    - the total fee envisaged and the means of payment;

- the currency and the amount to be paid pursuant to the Sponsorship contract;

- the invoicing terms (or methods of payment) and the conditions of payment, taking into account that these payments can be made solely in favour of the promoter and in the country where the promoter is established, solely on the promoter's registered account as indicated in the Sponsorship contract and never on encrypted accounts or in cash;

- the commitment of the promoter to respect the applicable laws and to record correctly and transparently in its books and records the amount received;

- the right of the Company to terminate the contract, interrupt payments and receive the compensation for damage in the case of violation by the promoter of the obligations, statements and guarantees as reported above, or in the case of violation of the applicable laws;

- the right of the Company to carry out checks on the promoter should there be a reasonable suspicion that the promoter may have violated the provisions of the Sponsorship contract;

- that the management of the contract is assigned to a Contract Manager indicating the role and duties attributed to them, the acceptance by the same Contract Manager of the role and duties assigned, envisaging the authorization by a higher qualified position which is different from the Contract Manager in the case of changes / additions and/or renewals of the contract.

The Contract Manager will receive adequate training not only on the principles and the rules of conduct of the Company, on the Code of Ethics, on the 231 Model, but specifically on the anti-corruption laws:

- The Contract Manager is responsible for:
    - monitoring and confirming the correct execution of the Contract;
    - confirming and guaranteeing that the counterparty always operates in conformity with the criteria of utmost diligence, honesty, transparency, integrity and in compliance with the Anti-Corruption laws, the 231 Model and the Code of Ethics of the Company;
- rules and responsibilities for the conservation and archiving of the documentation referring to the various stages of the processes put in place and to the controls to check compliance with the procedure.

d. Institutional advertising

The regulation of the activity envisages:

- the formalization of principles, rules and activities as part of the institutional communication processes with particular reference:
    - to the identification of the responsibilities and rules of conduct to be adopted;
    - to the identification of roles, duties and responsibilities in determining, approving and disseminating institutional communication;
    - to the characteristics of the advertising, which must be open, truthful and correct; transparent and recognizable as such (with a ban, above all, on subliminal advertising) so that the person who receives the advertising does not accept it passively; must not praise non-existent qualities or effects; fair, with particular regard to competitors;
    - to the identification of a person responsible for handling the relevant regulatory and judicial updating.

e. Management of advertising on platforms (Digital, Satellite, Internet and Radio)

The regulation of the activity envisages:

- the formalization of principles, rules and activities in the communication processes on RAI platforms with particular reference:
    - to the identification of the responsibilities and of the rules of conduct to be adopted;
    - to the identification of roles, duties and responsibilities in determining, approving, and disseminating commercial communications;

- to the characteristics of the advertising which must be open, truthful and correct; transparent and recognizable as such (with a ban, above all, on subliminal advertising) so that the person who receives the advertising does not accept it passively; must not praise non-existent qualities or effects; fair, with particular regard to competitors;

- to the identification of the managers who must guarantee real and effective editorial supervision, through preventative and *a posteriori* controls;

- to the means of preventative, *a posteriori* and sample-based control, to monitor planning, in relation to the observance and compliance with the relevant company law;

- to the publishing and editorial choices which must be characterized by criteria of transparency, professionalism, public interest and objectivity;

- to the traceability of the publishing and editorial choices made and the control activities undertaken to monitor planning;

- to the means of control by RAI regarding the communication initiatives on the RAI platforms managed by Sipra S.p.A.;

- to the existence of contractual clauses by which Sipra S.p.A. agrees: to adopt all necessary precautions, also by acquiring from the user/producer statements in which they state the legitimacy of the brand to be advertised; to comply with the provisions of the Organizational, Management and Control Model and the rules of conduct adopted by RAI;

- to the identification of a person responsible for handling the relevant regulatory and judicial update.

f. Entertainment expenses

The regulation of the activity envisages:

- roles, responsibilities, means and operations for the stage of requesting, evaluating and approving entertainment expenses;

- that entertainment expenses for third parties be incurred within the limits envisaged in the related budget;

- that entertainment expenses are allowed since they are reasonable expenses incurred in good faith, within the limits envisaged by the Code of Ethics. In particular, “reasonable expenses incurred in good faith” is expense which is directly connected:

  - to the promotion, demonstration or illustration of products or services;
  - to the execution or fulfillment of a contract;
  - to the development and maintenance of friendly business relations.
- any reasonable expense incurred in good faith must have all the following characteristics:
  - not consist of a payment in cash;
  - be made in relation to legitimate business purposes;
  - not be motivated by the desire to exercise illicit influence or by the expectation of reciprocity;
  - be reasonable in accordance with the circumstances;
  - be of good taste and conform to generally accepted standards of professional courtesy;
  - respect local laws and regulations applicable to the Public Subject and to the private individual10;
  - the inclusion of the ban on conceding benefits to people indicated in the reference lists relating to the suppression of financing of terrorism (published by the Financial Information Unit set up at the Bank of Italy), unless there is formal authorization by the Chairman and the Director General in relation to the powers assigned;
- any entertainment expenses made for a Relative or a person indicated by a private individual, Business Partner or Public Subject, which has been proposed at the request of the same, or, in the absence of a proposal, can be connected to the relationship which links the same to the beneficiary, must be considered as a benefit supplied directly to the private individuals themselves, Business Partner or Public Subject and is therefore subject to the limitations envisaged by the procedure;
- the compilation and the signing of a specific form setting out the name/role of the persons/companies in favour of which it is intended to incur the expenses and putting the form for authorization by a qualified position;
- the compilation and signing of the accounting form specifying the name and job title of the recipient, the name and job title of each beneficiary of the expense and the purpose of the expense itself, attaching the supporting documentation for the expenses incurred and, except for the cases envisaged due to reasons of urgency or operational impracticality, the original authorized copy of the “Authorization request for entertainment expenses for third parties”;

[10] Applicable only in the case of activity undertaken abroad.

- rules and responsibilities for the conservation and archiving of the documentation referring to the various stages of the processes put in place and to the controls to check compliance with the procedure.

g. Donations

The regulation of the activity envisages:

- roles, responsibilities, means and operations for the stage of requesting, evaluating and approving contributions;
- that all the contributions must be made in line with the approved budget;
- that the contributions must be made only in favour of entities which have not been recently set up, are well-known, reliable and have an excellent reputation in terms of honesty and correct commercial practices;
- that the entity which is the beneficiary shows that it has all the due certifications and that it has satisfied all the requirements in order to operate in conformity with the applicable laws;
- presentation of budget proposals which must contain the total forecast spending for the following year, the indication of the type/nature of the expense envisaged and, where possible, a breakdown of the initiatives already established, the proposals must be approved by the competent departments;
- documented and adequate check on the reputation of the benefitting entity and check on the legitimacy of the contribution on the basis of the applicable laws;
- an adequate description regarding the nature and the purpose of the contribution;
- a system to monitor the destination of the funds supplied;
- that the contributions must not be supplied before signing the contract;
- the inclusion of the ban on conceding benefits to people indicated in the reference lists relating to the suppression of financing of terrorism (published by the Financial Information Unit set up at the Bank of Italy), unless there is formal authorization by the Chairman and the Director General in relation to the powers assigned;
- the ban on making payments for amounts higher that the values indicated in the relevant documentation (e.g. contract, invoice);
- that the benefitting entity must agree to register appropriately and transparently the contributions received in its books and records;
- in the case of non-budgeted initiatives, the provision that the sections making the proposal must send the proposal to the Competent department which handles its processing and authorization;

- rules and responsibilities for the conservation and archiving of the documentation referring to the various stages of the processes put in place and to the controls to check compliance with the procedure.

h. Management of financial transactions (also infragroup)

The regulation of the activity envisages:

- separation between the Sections responsible for planning, management and control of financial resources;
- with reference to payments:
    - certificate of execution of the service;
    - controls and means of registering the invoices received;
    - procedure for the preparation and authorization of the proposed payment;
    - means for making payments;
    - formalizing the reconciliation of bank current accounts with payments; any reconciliation items are justified and traced with supporting documentation;
- with reference to receipts, the means for recording and accounting for receipts;
- the ban of the use of cash or other bearer instruments, for any transaction involving collection, payment, transfer of funds, investment or other use of financial resources, as well as the ban on the use of current accounts or savings books in an anonymous form or with a false name. Exceptions to the use of cash or of other bearer instruments are allowed for small amounts and are regulated with a specific procedure (e.g. petty cash procedure);
- the ban on having dealings, negotiating and/or signing and/or executing contracts or acts with people indicated in the Reference lists relating to the suppression of financing of terrorism (published by the Financial Information Unit set up at the Bank of Italy), unless there is formal authorization by the Chairman and the Director General in relation to the powers assigned;
- the ban on accepting and executing payment orders from subjects who cannot be identified, are not in the company records and for whom the payment cannot be traced (amount, name/company name, address and current account number) or should there be no guarantee, after the carrying out of controls on opening/changing the details of suppliers/customers on the system, of the full correspondence between the name of the supplier/customer and the heading of the account to which to send/from which to accept the payment;

- means for the use of company credit cards;

- that the payments to the beneficiary must be made solely on the account in its own name; it is not allowed to make payments on encrypted accounts or in cash, or to a person other than the beneficiary or in a country other than that of the beneficiary or other than that where the service was provided;

- payments are made: (a) subject to written authorization of the Contract Manager who will certify to the service provided and/or the occurrence of the conditions envisaged in the Contract in relation to the payment of the fee, (b) only against invoices or written requests for payment from the counterparty and in accordance with the provisions in the Contract;

i. *Sales* [11]

The regulation of the activity envisages:

- the definition of the roles and responsibilities of the sections which are occasionally involved in the preparation of the documentation needed to define the agreement;

- that the principle of the traceability of the process adopted to define the contract is respected;

- that the formalized procedure in which the main stages into which the activity in question is broken down are defined, includes, among other things:

    - the obligation to use solely contract models prepared by the competent department and to subject to the approval of the same department any significant changes compared to the aforementioned models;

    - the obligation to formalize and sign contracts before the start of the service and the limitation to exceptional cases, specifically motivated in writing, of the possibility of concluding contracts following start of the service;

- the ban on having dealings, negotiating and/or signing and/or executing contracts or acts with people indicated in the Reference lists relating to the suppression of financing of terrorism (published by the Financial Information Unit set up at the Bank of Italy), unless there is formal authorization by the Chairman and the Director General in relation to the powers assigned.

See in particular the following provisions in reference to specific stages of the process:

Identification of the counterparty

[11] Purchases and sales are excluded in which the characteristics of the service do not entail the obligation to identify the counterparty, such as for example the purchases and sales in which the price and the other conditions of the supply are not negotiated with the counterparty.

- the ban on having dealings of a contractual nature with customers who do not have the ethical and professional prerequisites established by the Company;

- the request to the customer to produce a self-declaration in which they set out the shareholding structure (including minority shareholders) and chain of control (including the presence of trustees for whom it is necessary to declare the beneficiaries), as well as a statement of compliance of the whole shareholding structure and of the chain of control in regard to the Company's ethical and professional standards. It is possible to waive this principle by activating a process of risk analysis and evaluation and only after obtaining a formal authorization from company representatives of a suitable level;

- the verification by the commercial department of the information collected; the ban on signing contracts with subjects included in the black list. The inclusion in the black list is handled by the administrative department, on the occurrence of the following conditions:

    - start of out of court recovery action through specialist agencies;

    - start of judicial or arbitration action;

    - state of insolvency or start of bankruptcy procedures;

    - write-off of outstanding receivables;

    - evidence of fraudulent conduct in regard to the Company;

    - other cases identified by the competent administrative department on the basis of specific situations;

    - that inclusion in the black list of a counterparty entails the blocking of existing supplies and the withdrawal of the appointment made;

    - that the Director General authorizes any maintenance of commercial dealings with customers included in the black list, motivated by specific business reasons;

Price lists/Tariffs

- Any changes in the structure of the price elements and in the criteria to determine them must be motivated and approved by the head of the competent department;

- it is necessary to guarantee the correct, complete and prompt inputting of price lists/contractual prices into the company IT system to support sales;

- it is necessary to guarantee that the price on the invoice is approved by the Competent departments and is not higher than the approved price-list/contractual price;

- it is necessary to guarantee that the transfer of the data relating to prices on the system (records, order and invoice) is done accurately, promptly and in full.

Contractual standards

- the contracts must be defined in coordination with the competent departments, in particular the Legal and Corporate Affairs Department which guarantees compliance with the law in force, including the law on antitrust, administrative liability and anti-corruption;

- contracts must be concluded in writing, except for the cases expressly indicated in the company procedures and using contractual standards.

- should it be necessary, ad hoc clauses can be used or, if necessary, ad hoc contracts or the customer's contractual standards, provided they are approved by the competent departments;

- that the management of the contract is assigned to a Contract Manager indicating the role and duties attributed to them, the acceptance by the same Contract Manager of the role and duties assigned, envisaging authorization by a higher qualified position which is different from the Contract Manager in the case of changes / additions and/or renewals of the contract.

The Contract Manager will receive adequate training not only on the principles and the rules of conduct of the Company, on the Code of Ethics, on the 231 Model, but also specifically on the anti-corruption laws:

- The Contract Manager is responsible for:

    - monitoring and confirming the correct execution of the Contract;

    - confirming and guaranteeing that the counterparty always operates in conformity with the criteria of utmost diligence, honesty, transparency, integrity and in compliance with the Anti-Corruption laws, the 231 Model and the Code of Ethics of the Company;

    - highlighting any possible problems that may be found in executing the relationship and in the activities undertaken by the counterparty and immediately alert the competent department.

j. Selection of partners

The regulation of the activity envisages:

- that the partners must be only well-known, reliable entities with an excellent reputation in terms of honesty and correct commercial practices;

- that each partner is approved;

- the formalization of the decision-making process and the motivation which led to the choice of the Partner;

- the definition of the minimum requirements of reliability/good-standing/creditworthiness of the Partner on the basis of some key indices (e.g. prejudicial data on public databases – credit challenges, bankruptcy procedures - or acquisition of commercial information on the company, on the shareholders and on the directors through specialist companies and/or through obtaining specific self-certification from the counterparty and/or through the presentation of the Criminal Records Certificate;

- the ban on having dealings, negotiating and/or signing and/or executing contracts or acts with people indicated in the reference lists relating to the suppression of financing of terrorism (published by the Financial Information Unit set up at the Bank of Italy), unless there is formal authorization by the Chairman and the Director General in relation to the powers assigned;

- the traceability of the relevant documentation, the level of formalization and means/timeframes of archiving;

- specific clauses with which third parties agree not to behave in such a way, not to commit any act or omission and not to give rise to anything from which responsibility may arise pursuant to Legislative Decree no. 231/01 and state that they know and agree to respect the principles contained in the Code of Ethics and in the Model adopted by RAI as well as clauses which envisage the application of sanctions in the case of violation of these obligations; specific anti-corruption clauses such as:

    - the agent's statement that the amount paid is solely the fee for the service envisaged in the contract and that these amounts will never be transmitted to a Public Subject or a private individual or to one of their Relatives for corrupt ends or transferred, directly or indirectly, to the members of the corporate bodies, directors or employees of the Company;

    - the ban for the agent on transferring directly or indirectly the fee to directors, executives, members of the corporate bodies or employees of the Company or to their Relatives;

    - sanctions in the case of violation by the agent of the obligations, statements and guarantees as reported above, or in the case of violation of the anti-corruption laws;

    - the right of the Company to undertake controls on the Partner should it have a reasonable suspicion that the Partner may have violated the provisions of the contract as set out in the previous points;

- the existence of anomaly indicators on the occurrence of which a further control procedure is activated (e.g. if the Partner undertakes its commercial activities in a country or in an industrial sector known for bribes and corruption).

k. Selection of agents/brokers

The regulation of the activity envisages:

- the formalization of the decision-making process and the motivation which led to the choice of the agent/broker;

- the definition of the minimum requirements of reliability/good-standing/creditworthiness of the agent/broker on the basis of some key indices (e.g. prejudicial data on public databases – credit challenges, bankruptcy procedures - or acquisition of commercial information on the company, on the shareholders and on the directors through specialist companies and/or through obtaining specific self-certification from the counterparty and/or through the presentation of the Criminal Records Certificate;

- the ban on having dealings, negotiating and/or signing and/or executing contracts or acts with people indicated in the reference lists relating to the suppression of financing of terrorism (published by the Financial Information Unit set up at the Bank of Italy), unless there is formal authorization by the Chairman and the Director General in relation to the powers assigned;

- segregation between the sections which select the agents//brokers, sign the contract, calculate the fees due and arrange execution of the payment and authorize the payment of the fees;

- traceability of the relevant documentation, the level of formalization and means/timeframes of archiving;

- the definition of fees linked to preset parameters;

- specific clauses with which third parties agree not to behave in such a way, not to commit any act or omission and not to give rise to anything from which responsibility may arise pursuant to Legislative Decree no. 231/01 and state that they know and agree to respect the principles contained in the Code of Ethics and in the Model adopted by RAI as well as clauses which envisage the application of sanctions in the case of violation of these obligations;

- specific anti-corruption clauses such as:
-
    - the statement of the agent/broker that the amount paid is solely the fee for the service envisaged in the contract and that these amounts will never be transmitted to a Public Subject or a private individual or to one of their Relatives for corrupt ends or transferred, directly or indirectly, to the members of the corporate bodies, directors or employees of the Company;

  - the ban for the agent/broker on transferring directly or indirectly the fee to directors, executives, members of the corporate bodies or employees of the Company or to their Relatives;

  - sanctions in the case of violation by the agent/broker of the obligations, statements and guarantees as reported above, or in the case of violation of the anti-corruption laws;

  - the right of the Company to undertake controls on the agent/broker should it have a reasonable suspicion that they may have violated the provisions of the contract as set out in the previous points;

- the existence of anomaly indicators on the occurrence of which a further control procedure is activated(e.g. if the agent/broker undertakes their commercial activities in a country or in an industrial sector known for bribes and corruption);

- specific cases and criteria for the ordinary or extraordinary updating and/or revision of the initial evaluation of the agent/broker (e.g. if it requires an increase in the fee, or a discount, for issues not related to changes in the conditions of the contract during the negotiations);

- that the management of the Agency Contract is assigned to a Contract Manager indicating the role and duties attributed to them, the acceptance by the same Contract Manager of the role and duties assigned, envisaging as well as the authorization by a higher qualified position which is different from the Contract Manager in the case of changes / additions and/or renewals of the contract. The Contract Manager will receive adequate training not only on the principles and the rules of conduct of the Company, on the Code of Ethics, on the 231 Model, but specifically on the anti-corruption laws. The Contract Manager is responsible for:

  - monitoring and confirming the correct execution of the Contract;

  - confirming and guaranteeing that the counterparty always operates in conformity with the criteria of utmost diligence, honesty, transparency, integrity and in compliance with the Anti-Corruption laws, the 231 Model and the Code of Ethics of the Company;

  - highlight any possible problems found in executing the relationship in the activities undertaken by the Supplier/Consultant and immediately alert the competent department;

- rules and responsibilities for the conservation and archiving of the documentation referring to the various stages of the processes put in place and to the controls to check compliance with the procedure.

l. Travel expenses and advances

The regulation of the activity envisages:

- that the positions qualified to authorize business travel and off-site services are responsible for the application of the key procedures, and guarantee their implementation in compliance with the criteria of cost-effectiveness and the approved budget. In particular, these positions assess:

    - when authorizing the business travel:
        - the need for the travel and congruity of the related duration, authorizing any particular conditions;
        - the need for and amount of any advance.

    - when authorizing the accounting, the motivation relating to:
        - congruity of the expenses incurred;
        - use of taxis in cases other than those allowed;
        - use of vehicles in particular cases or to reach unplanned destinations;

- the description of the means of reimbursement and preparation of the accounting records for the travel expenses;

- the indication to limit as far as possible the use of cash advances for travel expenses;

- the definition of the types of expenses allowed for reimbursement with suitable documentation;

- controls relating to the correct implementation of the authorization procedure and to the presence of the supporting documentation to back the reimbursement request with reference to the expenses incurred for business travel and off-site services;

- the conservation and archiving of the documentation referring to the stages of requesting, authorizing, signing and managing activities and controls, so as to enable the reconstruction of the various stages of the processes put in place.

5. SPECIAL SECTION B- FORGERY Identification instruments and distinctive signs and Industrial and Trade Offences

5.1 Types of crimes of the forgery of identification instruments and distinctive signs (Article 25-bis of Legislative Decree 231/2001) and industrial and trade offenses (Article 25-bis no.1 of Legislative Decree 231/01)

Law no. 99 of 23 July 2009, setting out "Provisions for the development and internationalization of firms, with particular reference to energy", in Article 15 Paragraph 7, made changes to Legislative Decree 231 of 2001.

The provision, besides having changed Article 25-bis (which punishes the forgery and alteration of brand names or distinctive signs as well as the introduction into the State of products bearing false signs) and having introduced Article 25- novies "Copyright crimes" (envisaged in Special Section G), changed the group of predicate crimes giving rise to administrative liability with the introduction of Article 25-bis.1, entitled "Crimes to the detriment of industry and trade", which punishes, among other things, fraud in undertaking trade, "food fraud", the counterfeiting of geographical indications or denominations of origin.

In particular Law no. 99 of 2009 expanded the catalogue of predicate crimes pursuant to Legislative Decree 231/01 by including in Article 25-bis the crimes of counterfeiting, alteration and trading of products with false markings (Articles 473 and 474 of the Criminal Code); these change in the law consequently caused the reformulation of the list at Article 25-bis to include the types of crime in order to safeguard instruments and recognizable signs.

The rationale of the aforementioned legal provision is that of making firms responsible, in order to better safeguard the trust which the mass of public consumers places in the collection of distinctive signs for industrial products.

Here below are the regulatory references for the types of crimes and a summary of some important aspects for each of the predicate crimes in Legislative Decree 231/01.

The new predicate crimes as set out in Article 25-bis are:

Counterfeiting, alteration or use of brand names or distinctive signs or of patents, models and designs (Article 473 Criminal Code)

The crime punishes anyone who, being able to know of the existence of the industrial property right, counterfeits or alters national or foreign brand names or distinctive signs of industrial products or anyone who, without being involved in the counterfeiting or alteration, uses these counterfeit or altered brand names or signs, is punished with imprisonment from six months to three years and with a fine from 2,500 to 25,000 euro.

Anyone who counterfeits or alters patents, national or foreign industrial designs or models, or, without taking part in the counterfeiting or alteration, makes use of such counterfeit or altered patents, designs of models is subject to the punishment of imprisonment from one to four years and the fine from 3,500 to 35,000 euro.

The crimes envisaged by the first and second paragraphs can be punished provided that the provisions of internal laws, EU regulations and international agreements on the safeguarding of intellectual or industrial property have been respected.

In the first paragraph the safeguarding is of brand names, distinctive signs of creative works or industrial projects.

The brand name is an emblematic signal or name used by the entrepreneur to distinguish a product or good.

Patent must be understood as the certification that a new invention or industrial discovery can be referred to a particular person, on whom the State confers the right to exclusive exploitation of the invention itself.

Patents therefore take the form of public documents which may be safeguarded also by the general laws on false documentation, but which lawmakers intended to protect by including them in the laws on forgery of symbols, given the specific importance of patents in this issue.

The words “designs” and “models” must, on the other hand, be understood, for the purposes of Article 473 of the Criminal Code, as patents for designs and models, in the sense of concession certificates for patents for industrial models and patents for ornamental designs and models.

In terms of punishable conduct, Article 473 of the Criminal Code addresses above all the act of counterfeiting or alteration.

Counterfeiting must be understood as conduct aimed at giving the falsified brand name qualities such as to cause confusion on the real provenance of the product, with possible misleading of consumers.

Alteration, on the other hand, involves the partial modification of a real brand name.

The punishable conduct must in any case relate to the distinctive sign which has been registered and to the instruments (centre punch, mould, cliché, etc.) needed to reproduce the sign by eliminating or adding marginal base elements.

Introduction into the State and trading of products bearing false signs (Article 474 Criminal Code)

The crime punishes, outside of cases of involvement in the crimes envisaged by Article 473, anyone who introduces into the State, in order to profit from them, industrial products with national or foreign brand names or other distinctive signs, which are counterfeited or altered. They are punished with imprisonment from one to four years and a fine from 3,500 to 35,000 euro.

Outside of the cases of taking part in the counterfeiting, alteration, and introduction into the State, anyone who holds for sale, puts on sale or otherwise puts into circulation, in order to draw profit from them, the products as set out in the first paragraph, is punished with imprisonment up to two years and with a fine of up to 20,000 euro.

The crimes envisaged by the first and second paragraphs can be punished provided that the provisions of internal laws, EU regulations and international agreements on the safeguarding of the intellectual or industrial property have been respected.

In the light of the observations made so far, the risk profile of the types of crime regarding identification tools or marks as set out in Articles 473 and 474 of the Criminal Code, which can be imagined in the company context, is that connected to forms of advertising of industrial products on the RAI platforms.

In this regard, it is necessary to stress that the crimes as set out in Articles 473 and 474 of the Criminal Code respectively punish, among the various forms of conduct, that of "making use of" and that of "otherwise putting into circulation" products with false marks.

These wordings seem to refer to a very wide range of activities, in short covering all the cases of use of the brand name (provided that of course it is commercial or industrial, and not merely personal, use).

According to the experts, in particular "putting into circulation" is a form of conduct which describes each possible form of putting the good into contact with consumers: it can reasonably be imagined that advertising is a form of putting into contact – albeit indirectly – of the type mentioned. Think of the case in which advertising space is entrusted (in the knowledge of the deceitful nature of the brand name and the desire to publicize it) to a company to promote a product or a service using a brand name that can mislead or cause confusion among the public due to its similarity with another brand name of a related product.

The new predicate crimes as set out in Article 25-bis. 1 on industrial and trade offenses are:

Sale of industrial products with false marks (Article 517 Criminal Code).

The crime punishes anyone who puts on sale or otherwise puts into circulation creative works or industrial products, with national or foreign names, brand names or distinctive signs, in order to mislead the buyer as to the origin, provenance or quality of the work or product.

The charge is subsidiary since it is punished only if the fact is not envisaged as a crime by another legal provision.

The good safeguarded by the provision is good faith and commercial correctness, violation of which is considered dangerous for the interests of most consumers.

On the concepts of "putting on sale" or "putting into circulation", see the comment on the previous provision.

The putting on sale or into circulation of creative works or products must take place with national or foreign names, brand names or distinctive signs, in order to mislead the buyer as to the origin, provenance or quality of the work or product.

"National or foreign brand names or distinctive signs" means signs or names used by the entrepreneur to distinguish a product or a good. It is not necessary, however, that the brand names are

recorded since Article 517 of the Criminal Code, unlike Article 474 of the Criminal Code, does not prescribe the prior observance of industrial property rules. The brand name may also be of a group, since it indicates the provenance of the products from all the associate companies.

"Names" means names which characterize the product as part of one kind.

All the Italian and foreign marks must be capable of misleading the buyer: this aspect must be assessed in relation to the habits of the average consumer in making their purchases.

The deception must regard the origin, provenance or quality of the work or product, for which reference should be made to the description provided in reference to Article 515 of the Criminal Code.

The manufacture of goods by encroaching on industrial property rights and trade in said goods (Article 517-ter Criminal Code)

The law condemns, without prejudice to the application of Articles 473 and 474 of the Criminal Code, anyone who, while they are in a position to know of the existence of the industrial property right, makes or uses industrially objects or other goods by encroaching on an industrial property right or in violation of the same, as well as anyone who, in order to profit from it, introduces into the State, holds for sale, puts on sale with a direct offer to consumers or in any case puts into circulation the aforementioned goods

Disturbing the freedom of industry or trade (Article 513 Criminal Code)

The crime punishes anyone who uses violence against objects or fraudulent means to prevent or disrupt the exercise of an industry or trade. This safeguards the regular exercise of industrial or commercial activity undertaken by private individuals.

"Violence against objects" refers to the notion contained in Article 392, second paragraph, of the Criminal Code, by which "for the purposes of criminal law, there is violence against objects when the object is damaged or transformed or its use is changed".

Therefore, it must refer to any act to change the physical state of objects, with or without damaging the same.

In particular, the object is damaged when it is destroyed, lost or deteriorated; it is transformed when it is materially modified also as an improvement; the use is changed when there is a change in subjective use in regard to the person who had the availability or use of the object.

"Fraudulent means" must be understood as those means which can mislead, such as artifice, trickery, simulation, and lies. Therefore, the frequent possibility of realizing the crime as part of commercial competition has led part of the legal doctrine to identify fraudulent means with the facts described in Article 2598 of the Italian Civil Code.

The crime may also be seen in unfair competition, given that disrupting another's business can derive from conduct using deception and illicit artifice in order to damage the business itself and provided that the use of fraudulent means is not directed at guaranteeing a profit.

The conduct must be oriented to preventing or disturbing industry or trade.

"Preventing" means not letting the activity go ahead, both by obstructing its start and by paralyzing its operation when it is already underway.

"Disturbing" means altering the regular undertaking of the business which may happen at the start of or during operations.

The charge is subsidiary since it is applied should the fact not represent a more serious event. Due to the presence of the subsidiarity clause, the crime is complementary and subsidiary to that contained in Article 513-bis of the Criminal Code, relating to more heavily sanctioned conduct.

Finally, it is opportune to specify that "trade" means the exchange of goods or services, including banking, insurance, transport and navigation

Unlawful competition with threats or violence (Article 513-bis Criminal Code)

The charge, which was introduced into the Criminal Code by Article 8 of Law no. 646 of 1982, punishes anyone who, in exercising a commercial, industrial or in any case productive activity, undertakes competition with violence or threats. The punishment is increased if the competition concerns an activity financed in whole or in part and in any way by the State or by other public entities.

The aforementioned law refers to that conduct which, since it is adopted with violence or threats, represents unfair competition which takes the form of intimidation, which aims to control commercial, industrial or productive activities, or in any case to influence them.

In fact, the crime was introduced by lawmakers to punish competition using organized crime methods; therefore, in accordance with the desire of the law, it is characterized by the typical forms of intimidation of organized crime which, with violent or threatening methods, affects the fundamental law of market competition which aims to guarantee the good functioning of the economic system and, consequently, the freedom of people to establish themselves in the sector.

However, there is no special relationship between the crimes as set out in Article 513-bis of the Criminal Code and the criminal conspiracy pursuant to Article 416 of the Criminal Code and of mafia association pursuant to Article 416-bis of the Criminal Code, given the episodic nature of the first crime and conspiratorial nature of the second: it follows that they can be committed jointly.

The crime can be committed by anyone operating a commercial, industrial or, in any case, productive activity.

"Commercial" is any activity involving transacting in the circulation of goods, "industrial" is any activity that aims to produce goods or services and "productive" is any activity which is economically oriented to preparing and offering products or services on a certain market.

The punishment is increased should the competition concern activities financed with public money. The rationale for the aggravating circumstance is in the need to strengthen the safeguarding of activities

financed with public money, which present a significant social benefit. In addition, the increase in the punishment is justified by the fact that criminal organizations, when they enter commercial or productive activities, favour sectors supported by public financing and tend to take a monopoly position in absorbing public money.

Finally, the offence in question covers those crimes of private violence, damage and physical aggression. Finally, the relationship with the crimes as set out in Article 513 of the Criminal Code is resolved by the prevalent nature of Article 513-bis, given the subsidiary nature of the offence as set out in Article 513 of the Criminal Code

Fraud to the detriment of national industries (Article 514 Criminal Code)

The law punishes the sale or otherwise putting into circulation, on national or foreign markets, of industrial products, with counterfeit or altered names, brand names or distinctive signs, such as to harm the national industry.

The act of putting on sale and inputting into distribution circuits relates to the activity of marketing, production and distribution, as a necessary appendix to manufacture.

Alongside the inclusion of brand names and distinctive signs, the law also lists the “names” which can be identified such as indications of company names, signs, emblems, signatures, etc. included to identify products but which are not part of the brand name.

The harm to the national industry, which is an essential element of Article 514, can take the form of any harm caused to the national industry, such as for example the reduction in business in Italy or abroad, the failure to increase business, damaging the good name of the Company in relation to the product in question or to commercial correctness.

The offence is considered committed when and where the harm occurs. Therefore, the consummation of the crime is located in Italy, even if the trade is made on foreign markets, given that the effects impact on and harm the national economic potential.

Fraud in trading (Article 515 Criminal Code)

The crime punishes anyone who, in exercising a commercial activity, or in an outlet open to the public gives the purchaser an item in place of another or an item which in terms of origin, provenance, quality or quantity is different from that declared or agreed.

This offence attacks the economic interests of an indeterminate group of people and reflects harm to the personal wealth of the private individual in a more general context. The good safeguarded by the law is honesty and correctness in commercial dealings. The charge is subsidiary since it applies only should the event not be something more serious.

Fraud in trade presupposes the existence of a contract: since the law refers to the purchaser and not the buyer, it can be any contract which produces the obligation to deliver an item (e.g. sale or return contract, staff leasing, an exchange) and not only buying and selling, which

is in any case the form of trading in which the crime most frequently occurs. However, the law in question, although operating in a purely bilateral relationship, does not refer to the financial interests of the parties but rather to good faith in commercial exchanges, safeguarding both the public of consumers and of producers and retailers. In the individual dishonest trade, the interest of all the community must be safeguarded so that honesty, loyalty and correctness are respected in undertaking the trade.

The offence is committed with delivery of the item, i.e. with receipt of the item by the purchaser. The delivery occurs not only when the purchaser materially receives the good, but also when an equivalent document is accepted (consignment note, bill of lading, etc.).

The item delivered must be different from that declared or agreed: this difference is identified in relation to the contents of the statement or agreement.

Difference “by origin” concerns the geographic location of production of items which are particularly appreciated by consumers for being produced in a particular area or region.

Difference by “provenance” largely concerns two cases; the first involves distinguishing, with an indication of its origin, a product other than the original, while the second case involves using, in packaging a product, the work of a company different from that which characterizes the product.

Difference “by quality” occurs when an item of the same kind or type as that declared or agreed is delivered, but of lower price or potential use given a different composition or differing taste.

Difference “by quantity” regards the weight, measurement, or also the number.

The section of Article 515 of the Criminal Code also envisages a special aggravating circumstance, which concerns fraud involving precious objects, by which is meant all these items which due to their rarity, artistic or historic worth or age have a commercial value which is higher than the ordinary value.

The laws apply jointly in considering the charge in question and Article 517 of the Criminal Code “Sale of industrial products with false marks”, with the prevalence of the offence as set out in Article 515 of the Criminal Code since it can affect the truth of the marks.

There is also joint application of the laws between the aforementioned charge and Article 516 of the Criminal Code “sale of non-genuine foods as genuine” given the structural difference between the two offences.

Finally, it is worth noting the relationship between the offence of fraud in trade and the idea of unfair competition as set out in Article 2598, no. 3 of the Italian Civil Code. Jurisprudence has constantly stated that fraud in trade, corresponding to that envisaged by Article 515 of the Criminal Code, does not in itself represent unfair competition pursuant to Article 2598, no. 3 of the Italian Civil Code, since it is not necessary for the action to potentially generate the risk of damage for the immediate or possible repercussions in the sphere of a competing firm.

Under the provision of Article 518 of the Criminal Code, the charge entails the publication of the sentence.

Sale of non-genuine foods as genuine (Article 516 Criminal Code)

The crime punishes anyone who puts on sale or otherwise trades as genuine foods which are not genuine.

This crime seeks to safeguard a supra-individual interest such as good faith in commercial dealings, the violation of which is presumed to harm the economic order.

“Putting on sale” means offering a particular food item for sale.

“Putting into circulation” means, on the other hand, any form of putting the good into contact with the public, including at no charge.

The object of the action is non-genuine food.

The wording “foods” can cover both products that come directly or indirectly from the ground (by cultivation or husbandry) and processed and transformed products and so which come from industry, whatever their physical state (solid, liquid or gas).

Their genuine nature is the essential characteristic of food products and can be understood in the natural and formal sense; natural genuine food means being in a condition which has not undergone processes to alter its normal biochemical composition; the formal concept of being genuine (so-called legal genuineness) reflects, on the other hand, the conformity of the composition of a product to the requirements which are formalized in a specific law. Therefore, it is necessary to consider as non-genuine both products which have been altered in their essence and composition by mixing extraneous substances or subtracting nutritional elements compared to those prescribed.

Due to the impact of the provision of Article 518 of the Criminal Code, the condemnation leads to publication of the sentence.

Forging of geographic indications or denominations of origin for food and agricultural products (Article 517-quater Criminal Code)

The law punishes anyone who forges or, in any case, alters geographical indications or denominations of origin of food and agricultural products as well as those who, in order to profit from it, introduces into the State, holds for sale, puts on sale with a direct offer to consumers or in any case puts into circulation the same products with counterfeit indications or names.

Fraud in trading, sale of foods and counterfeiting of geographical indications or denominations of origin of food and agricultural products (respectively set out in Articles 515, 516 and 517-quater of the Criminal Code), are crimes which appear extraneous to the corporate business of RAI.

5.2 Identification of sensitive areas and activities as part of the forgery of identification instruments and distinctive signs and industrial and trade offenses

The analysis of the corporate processes, undertaken during the Project12, enabled the identification of the activities in the scope of which

12 See in this regard paragraph 3.1 of the General Section.

the crimes mentioned in Article 25-bis and 25-bis no. 1 of Legislative Decree 231/2001 could be committed.

Below is a list of the processes examined in relation to Article 25-bis:

1. ***Management of advertising on platforms (Digital, Satellite, Internet and Radio)***

Here below is a list of the processes examined in relation to Article 25-bis no. 1:

1. ***Management of activities regarding the dissemination of news regarding a competitor as part of publishing and editorial activities***
2. ***Advertising on the platforms (Digital, Satellite, Internet and Radio)***
3. ***Management of the request, acquisition and handling of public loans for the production of goods/services***

5.3 General rules of conduct and of implementation of decision-making processes

5.3.1 General rules of conduct

This Special Section envisages an express ban on Corporate bodies, Employees - directly – and External Collaborators – limited respectively to the obligations contemplated in the specific procedures and codes of conduct and in the specific clauses included in contracts in implementation of the following principles of:

- putting in place, collaborating in or giving rise to the realization of forms of conduct such that – considered individually or collectively – they represent, directly or indirectly, the types of crime falling under those considered above (Article 25-bis and 25-bis no. 1 of Legislative Decree 231/2001);

- violating the company principles and procedures envisaged in this Special Section.

As part of the aforementioned conduct, it is in fact in particular forbidden to:

1. counterfeit or alter brand names or distinctive signs of industrial products;
2. put into circulation on national or foreign markets industrial products with counterfeit or altered names, brand names or distinctive signs;
3. put on sale or put in circulation - also through advertising and TV promotions - industrial projects, with national or foreign names, brand names or distinctive signs aiming to mislead the buyer on the origin, provenance or quality of the product;
4. transmit untrue information to the detriment of potential third party competitors;
5. realize any form of intimidation or restriction in regard to competitors.

5.3.2 Principles of implementation of decision-making processes

Here below is a list of the control standards identified for the individual sensitive activities recorded.

1. ***Management of advertising on platforms (Digital, Satellite, Internet and Radio)***

The activity is undertaken in compliance with the control standards envisaged by the process "Management of advertising on platforms (Digital, Satellite, Internet and Radio)" set out in "Special Section A - Crimes in the sphere of relations with the Public Administration and Bribery between private parties" to which reference should be made.

2. ***Management of activities regarding the dissemination of news regarding a competitor as part of editorial and publishing activities***

The activity is carried out in compliance with the control standards envisaged for the processes "Management of advertising on platforms (Digital, Satellite, Internet and Radio)" and "Institutional advertising" set out in "Special Section A - Crimes in the sphere of relations with the Public Administration and Bribery between private parties" to which reference should be made.

3. ***Management of the work to request, acquire and manage public loans for the production of goods/services***

The activity is carried out in compliance with the control standards envisaged for the process "Management of the request / acquisition and/or management of contributions, grants, loans, insurance or guarantees conceded by public subjects" set out in "Special Section A - Crimes in the sphere of relations with the Public Administration and Bribery between private parties" to which reference should be made.

6. SPECIAL SECTION C- CORPORATE CRIMES AND MARKET ABUSE

6.1 Types of corporate crimes and crimes and offences of market abuse (Article 25-ter *and* 25 s*exies* of Legislative Decree 231/2001)

Here below are the regulatory references for the types of crimes, as set out in Article 25-ter (so-called corporate crimes) and Article 25-sexies (so-called crimes and offences of market abuse), and a summary of some important aspects for each of the predicate crimes of Legislative Decree 231/01.

Corporate crimes
False corporate communications (Articles 2621 and 2622 Italian Civil Code)

This crime occurs through the inclusion in financial statements, reports or other corporate communication envisaged by the law for shareholders or the public, of material facts which do not correspond to the truth, since they can be measured, on the income, equity or financial situation of the Company or group to which it belongs, with the intention of misleading the shareholders or public; or through the omission, with the same intention, of information on the same situation, the communication of which is required by the law.

It should be noted that:

- perpetrators of the crime can be directors, director generals, auditors and liquidators (in which case it is the so-called "crime under the colour of authority"), as well as those who in accordance with Article 110 of the Criminal Code assist in the crime committed by the latter13;

- the conduct must aim to make an unjust profit for the person directly or for others;

- the conduct must be such as to mislead the recipients of the communication;

- the liability occurs also in the case in which the information regards assets held or administered by the Company on behalf of third parties;

- the possibility of punishment is excluded if the falsehoods or omissions do not significantly alter the representation of the income, equity or financial situation of the Company or group to which it belongs. The possibility of punishment is in any case excluded if the falsehoods or omissions cause a change in the profit or loss for the period, gross of taxes, of no more than 5% or a change in the net equity of no more than 1%;

- in any case the action cannot be punished if it is the result of estimates which, taken individually, differ by no more than 10% from the actual situation;

[13] This observation (related to the so-called involvement of extraneous parties) applies basically to all crimes under the colour of authority.

- in particular, the crime as set out in Article 2622 of the Italian Civil Code:
    - involves the further element of financial damage caused to the shareholders or creditors;
    - it can be punished upon a complaint by the injured party, unless it involves listed companies.

Fraudulent statements in a prospectus (Article 2623 Italian Civil Code)

Such criminal conduct involves the setting out, either in the prospectuses required to attract investment or for admission to listing on regulated markets or in the documents to be published for public takeover offers or swaps, false information which may mislead or conceal data or news with the same intention.

It should be noted that:

- there must be awareness of the falsehoods and the intention to mislead the recipients of the prospectus;
- the conduct must be such to mislead the recipients of the prospectus;
- the conduct must aim to make an unjust profit for the person directly or for others;
- the sanction is increased if the criminal conduct has caused financial damage to the recipients of the prospectus.

Art. 34, Paragraph 2, of Law no. 262/2005 abrogated Article 2623 of the Italian Civil Code, which punished the crime in question14 and the crime – previously sanctioned pursuant to the abrogated provision – is now envisaged and sanctioned by Article 173-bis of the TUF.

It should be noted, with reference to the predicate crimes giving rise to administrative liability, that Article 25-ter of the aforementioned Decree currently recalls the abrogated Civil Code provision, while it does not make any reference to the crime introduced by Law no. 262/2005. The legislative changes would seem, therefore, to mean the ending of the administrative liability of the Company pursuant to Article 25-ter of the Decree with reference to the crime of fraudulent statements in a prospectus.

Art. 27 of Legislative Decree no. 39 of 27 January 2010 – Falsehoods in reports and communications by the audit manager

[14] The abrogated Article 2623 of the Italian Civil Code, which was in force before the change made by Law no. 262/2005, was as follows: "Fraudulent statements in a prospectus – *Anyone who, in order to make for themselves or for others an unjust profit, in the prospectuses required for the purposes of soliciting investment or for the admission to listing on regulated markets, or in documents to be published in public tender offers or swaps, in full knowledge of the falsehoods and with the intention to mislead the recipients of the prospectus, sets out false information or conceals data or news in such a way as to mislead the aforementioned recipients, is punished, if their conduct has not caused financial damage, with arrest of up to one year. If the conduct as set out in the first paragraph has caused financial damage to the recipients of the prospectus, the punishment is imprisonment from one to three years*".

The crime punishes those audit managers who, in order to make, for themselves or for others, an unjust profit, in their reports or other communications, in full knowledge of the falsehoods and with the intention to mislead the recipients of the communication, make false statements or conceal information regarding the income, equity or financial situation of the Company, entity or person subject to audit, so as to mislead the recipients of the communication on the aforementioned situation. If the conduct has not caused the latter financial damage, the punishment is arrest of up to one year.

If the aforementioned conduct has caused financial damage to the recipients of the communication, the punishment is imprisonment from one to four years.

The third and the fourth paragraphs establish an increase in the punishment in the case of the legal audit of public entities, when the action in committed by the audit manager of a public entity for money or other benefit or promises of such, or together with the directors, director generals or auditors of the Company being audited.

Art. 37, Paragraphs 34 and 35, of Legislative Decree no. 39 of 27 January 2010, which implements Directive 2006/43/EC on the legal audit of accounts, abrogated Article 2624 of the Italian Civil Code15, is not coordinated with Article 25-ter of Legislative Decree 231/01: in light of the fact that the principle of "sufficient certainty" applies in the sphere of Italian criminal law, the aforesaid types of crime affected by the recent legislative actions should therefore no longer be included in the catalogue of predicate crimes giving rise to corporate liability of the entity. Likewise it is considered prudent to, in any case, take account of the provisions of Article 2623 of the Italian Civil Code in preparing this Model.

Obstruction of control activities (Article 2625 Italian Civil Code)

The first paragraph of Article 2625 of the Italian Civil Code envisages an administrative offence for directors, which involves obstructing the control functions attributed to the shareholders or to the corporate bodies. The administrative offence does not cause the direct liability of the Entity, which, on the other hand, is envisaged for the crime, contemplated by the second Paragraph of the same Article 2625 of the Italian Civil Code, which occurs when the obstruction causes damage to the shareholders. Having stated that the third Paragraph establishes an increase in the punishment if the action regards listed companies, it should be recalled that the punishable conduct consists of concealing documentation, or in the realization of other artifice that cause the two events which form the crime (obstruction of control activities or obstruction of the audit). It should also be noted that the law includes among the forms of such illegal conduct also simple obstruction, which extends the ban also to mere obstructionism.

It should be noted, with regard to the aforementioned crimes, that Article 37, Paragraphs 34 and 35, of Legislative Decree no. 39 of 27 January 2010, which implements Directive 2006/43/EC relating to the legal audit of the accounts, in changing Article 262516 of the Italian Civil Code, did not

[15] The abrogated Article 2624 of the Italian Civil Code, which was in force before the change made by Legislative Decree no. 39 of 27 January 2010 was as follows: Falsehoods in the reports or in the communication of the independent auditors- *"Audit managers who, in order to make for themselves or for others an unjust profit, in the reports or in other communication, in full knowledge of the falsehoods and with the intention to mislead the recipients of the communication, make false statements or conceal information regarding the income, equity or financial situation of the Company, entity or person subject to audit, in such a way as to mislead the recipients of the communication on the aforementioned situation, are punished, if the conduct has not caused financial damage, with arrest of up to one year. If the conduct as set out in the first paragraph has caused financial damage to the recipients of the communication, the punishment is imprisonment from one to four years."*

[16] Article 2625 of the Italian Civil Code, which was in force before the change made by Legislative Decree no. 39 of 27 January 2010 was the following: Obstruction of control activities "*Directors who, by concealing documents or with other artifice, hinder or*

coordinate with Article 25-ter of Legislative Decree 231/01; in fact, Article 25-ter recalls Article 2625 of the Italian Civil Code, which in the new version no longer includes obstruction of control activities of the auditors, which is moved to Legislative Decree 39/2010, in Article 29, which is not mentioned by Article 25-ter and envisages two new types (in the form of administrative and criminal offenses) of obstruction of control activities relating to the same audit.

In particular, the first Paragraph of Article 29 of Legislative Decree 39/2010 punishes directors, who, by concealing documents or with other artifice, prevent or in any case hinder the undertaking of the legal audit.

The second Paragraph envisages the crime when the obstruction causes damage to shareholders. The third Paragraph establishes an increase in the punishment in the case of the legal audit of public entities.

In light of the fact that the principle of "sufficient certainty" applies in the sphere of criminal law, the aforesaid types of crime affected by the recent legislative actions should therefore no longer be included in the catalogue of predicate crimes giving rise to corporate liability of the entity. Moreover it is considered prudent to, in any case, take account of them in preparing this Model

Fictitiously paid-up capital stock (Article 2632 Italian Civil Code)

This crime can occur when: the Company's share capital is fictitiously formed or increased through the attribution of shares or stakes to an extent higher than the amount of the share capital; shares or stakes are reciprocally underwritten; transfers of goods in kind, receivables or equity of the Company, in the case of transformation, are significantly overvalued.

It should be noted that the perpetrators are the directors and the transferring shareholders.

Wrongful distribution of capital (Article 2626 Italian Civil Code)

"Typical conduct" envisages, outside the cases of legitimate reduction of the share capital, the restitution, including simulated restitution, of the transfers to shareholders or the freeing of the latter from the obligation to make such transfers.

It should be noted that the perpetrators are the directors.

Illegal allocation of profits and reserves (Article 2627 Italian Civil Code)

This criminal conduct consists of the division of profits or advances on profits which have not really been earned or which are destined by law to a reserve, or the division of reserves, including those not consisting of profits, which by law cannot be distributed.

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in any case prevent the undertaking of the control activities or audit legally attributed to the shareholders, other corporate bodies or to the independent auditors, are punished with an administrative fine of up to 10,329 euro.
If the conduct has caused damage to the shareholders, imprisonment is applied of up to one year and the procedure is through a complaint filed by the injured party.
The punishment is doubled if it is a company with shares listed on regulated markets in Italy or in other States of the European Union or if the shares are significantly available among the public pursuant to Article 116 of the Consolidated Act as set out in Legislative Decree no. 58 of 24

February 1998."

It should be noted that:

- the perpetrators are the directors;

- a means of cancelling the crime is the restitution of the profits or the reconstitution of the reserves before the deadline envisaged for approval of the financial statements.

Unlawful transactions on the shares or on the quotas of the company or its controlling company (Article 2628 Italian Civil Code)

This crime occurs with the purchase or underwriting, outside of the cases allowed by law, of shares or stakes or of the Parent company which harms the integrity of the share capital or of the reserves which cannot be distributed by law.

It should be noted that:

- the perpetrators are the directors;

- a means of cancelling the crime is the reconstitution of the share capital or the reserves before the deadline envisaged for approval of the financial statements, in relation to the period in which such conduct was adopted.

Transactions prejudicial to the creditors (Article 2629 Italian Civil Code)

This crime occurs with the undertaking, in violation of the legal provisions to safeguard creditors, of reductions in the share capital or mergers with another company or spin-offs, which damage creditors.

It should be noted that:

- the perpetrators are the directors;

- a means of cancelling the crime is the compensation for damage to creditors before the judgment is made.

Fraudulent allocation of company assets by liquidators (Article 2633 Italian Civil Code)

The crime occurs with the division of company assets between shareholders before payment of the company creditors or of the allocation of the amounts necessary to pay them, to the harm of creditors.

It should be noted that:

- the perpetrators are the liquidators;

- a means of cancelling the crime is the compensation for damage paid to creditors before the judgment is made.

Unlawful influence over the shareholders' meetings (Article 2636 Italian Civil Code)

"Typical conduct" envisages that the majority at the shareholders' meeting is determined by using simulated acts or fraud, with the aim of making, for themselves or for others, an unjust profit.

Market rigging or manipulation (Article 2637 Italian Civil Code)

The realization of this type of crime envisages that false news is disseminated or simulated operations are put in place or other forms of artifice are used which can effectively cause a marked change in the price of listed or unlisted financial instruments, or impact significantly on the public trust in the stability of banks or banking groups.

The crime of market rigging or manipulation deserves greater attention, given that it could be committed as part of the information-giving activity typically undertaken by RAI.

Obstructing public authorities in the execution of their surveillance activities (Article 2638 Italian Civil Code)

The criminal conduct takes place through setting out in the communication to the supervisory authority envisaged by the law, in order to hinder their operations, material facts which are not true, even if subject to valuation, on the income, equity or financial situation of the subjects being supervised; or through the concealing, with other fraudulent means, in whole or in part, of facts which should have been communicated, regarding the same situation.

The criminal conduct also occurs when the functions of the supervisory authority are, in any way, also through the omission of due communications, intentionally hindered.

It should be noted that:

- the perpetrators are the directors, director generals, auditors and liquidators of companies or entities and the other subjects subject by law to the public supervisory authorities, or under obligation in their regard;

- the liability also arises in the case in which the information regards goods held or administered by the Company on behalf of third parties.

The direct liability of the entity is generated both by the crimes of abuse of privileged information and manipulation of the market envisaged by Articles 184 and 185 of Legislative Decree 58/98, and by the same administrative offences envisaged by Articles 187-bis and 187-ter of Leg. Decree 58/98.

Crimes and offences of market abuse

Unlawful misuse of insider information (Article 184 of Legislative Decree 58/98)

The offence as set out in Article 184, Paragraph 1, of Legislative Decree 58/98 contemplates three distinct crimes:

- a ban on buying, selling or undertaking other operations, directly or indirectly, on their own behalf or on behalf of third parties, using insider information;

- ban on communicating insider information to third parties, unless the communication occurs as part of routine work, profession, function or office (so-called tipping);

- ban on recommending or inducing, on the basis of inside information, another to undertake a purchase, sale or other operation (so-called pipping).

The second Paragraph of Article 184 envisages a charge which punishes: anyone committing one of the forms of conduct indicated at a), b) or c) «since they have insider information for the purpose of preparing or executing crimes».

Administrative offences involving the misuse of insider information (Article 187-bis of Legislative Decree 58/98)

The administrative offences envisaged in Article 187-bis, Paragraphs 1 and 2 envisage identical crimes to those contemplated as crimes by the first and second Paragraphs of Article 184: it is the same form of conduct which gives rise at the same time to both a criminal and an administrative offence when they are committed with the same psychological attitude (malice: that is the representation and volition of the act described by the law). As a first approximation, it may be considered that the sanctions envisaged by the two crimes may be accumulated, giving rise to combined penalties.

In accordance with the general principles of administrative wrongdoing, the possibility of sanctioning administrative offences occurs also when the fact is committed due to negligence (therefore also without representation and volition of the act itself). Negligence in our legal system consists essentially in a regulatory judgment, which measures any gap between the conduct effectively adopted by the agent and what the so-called model agent would have done (in this sense the references to negligence, imprudence, and lack of experience are valid and are the essential reference parameters to assess negligence). While it may not be easy to imagine purchases, sales, or undertaking other operations due to negligence, imprudence or lack of experience, it is much easier to imagine a negligent case of tipping (consider providing third parties with insider information arising from a badly handled phone call) or pipping (think of advice given unwisely).

A complete independent administrative offence (which has no equivalent in a similar penal crime) now involves the provision of Article 187-bis, Paragraph. 4. Punishment is inflicted on anyone who «when holding insider information, and knowing or being able to know through due diligence, the privileged nature of such information» adopts

one of the forms of banned conduct for purchasing, selling or the undertaking of other transactions; of communication to another of insider information outside the normal routine of work, profession, function or office; recommending or inducing a third party to undertake an operation on the basis of insider information.

Market manipulation (Article 185 of Legislative Decree 58/98)

The offence envisaged by Article 185 of Legislative Decree 58/98 contemplates two distinct types of market manipulation:

- dissemination of false news that can effectively cause a marked change in the price of financial instruments (so-called market rigging or manipulation of information);

- undertaking of simulated transactions or other artifice that can effectively cause a marked change in the price of financial instruments (so-called market rigging or manipulation).

The punishable acts can be undertaken by anyone. It is not necessary for the perpetrator to seek a marked change in the price of financial instruments as the end result of their conduct. The requirement of marked change must be assessed *ex ante* (i.e. when one of the forbidden forms of conduct is adopted: it is therefore irrelevant whether the alteration takes place or not). The judgment regarding the possibility of causing marked change is based on a forward-looking assessment, therefore largely based on probability, which must in addition necessarily take account of the quantitative profile represented by the "marked" nature of the alteration.

Specifically, it is also necessary to note:

a) dissemination means any communication to an unspecified number of people (or also to just one person, when the recipient is a person who, by profession, trade or in concrete terms, communicates with the public: for example a journalist) by any means;
§ 2) "false" news item means a news item which does not conform to the truth regarding an act, or a series of circumstances which have occurred or will occur in the future;
b) 'undertaking of simulated transactions' refers to the undertaking of transactions of any kind of a simulated nature: according to the interpretation given by jurisprudence, the term 'simulated' includes any type of simulation (absolute or relative: consideration must be given both to transactions which the parties did not want at all, and transactions which are apparently different from those which the parties wanted, or transactions in which the appearance of a legal transaction conceals a different economic situation). Although numerous reasons exist in the sense that the simulation must also feature extreme artifice, jurisprudence does not take this element into account; 'other forms of artifice' is a closed formula and includes acts or conduct which is characterized by a misleading element or by fraud, which can be deduced from the means of realizing them, or from their intrinsic nature. In this regard it should be recalled that the artifice does not relate to the outcome, but to the means, since the 'forms of artifice', which are mentioned in the provision, are operative expedients different from the dissemination of false news, i.e. means of inducing others to act on the market.

Administrative offences involving market manipulation (Article 187-ter of Legislative Decree 58/98)

Article 187-ter punishes with administrative sanctions distinct cases of market manipulation:

- dissemination of rumours or false or misleading news which provide or are capable of providing false or misleading indications regarding financial instruments (administrative offence of market rigging or so-called manipulation of information);

- (administrative offence of market rigging or so-called manipulation) leading to:

  a. purchase and sale transactions or orders which provide or can provide false or misleading indications regarding the offer of, demand for or price of financial instruments;
  b. purchase and sale transactions or orders which enable, through the action of one or more people acting together, the market price of one or more financial instruments to be fixed at an anomalous or artificial level;
  c. purchase and sale transactions or orders which use artifice or other forms of deception or expediency;
  d. other forms of artifice which can provide false or misleading indications regarding the offer of, demand for or price of financial instruments.

In accordance with the general principles of administrative wrongdoing, the possibility of sanctioning the aforementioned forms of conduct occurs also when the fact is committed due to negligence (therefore also without representation and volition of the act itself). Negligence in our legal system consists essentially in a regulatory judgment, which measures any gap between the conduct effectively adopted by the agent and what the so-called model agent would have done (in this sense the references to negligence, imprudence, and lack of experience are valid and are the essential reference parameters to assess negligence).

The second Paragraph of Article 187-ter envisages a particular regulation should the fact of dissemination be committed by journalists in undertaking their profession and notes that the term “misleading” (which appears in distinct descriptions of conduct of this type) marks those items of news, rumours or indications characterized by the aptitude to provide the recipient of the same with information that can alter the judgment or evaluation of it. It is not a case of something ‘not conforming with the truth’ (i.e.. which corresponds to ‘false’), but rather an altered representation of the reality, in which some features are distorted qualitatively or quantitatively: in other words the distortion regards qualitative or quantitative extremes.

Unlike the provisions for criminal crimes, in Article 187-ter there is no reference to the “marked” nature: the absence of such a quantitative reference could induce the idea that the scope of the administrative offence also includes situations in which there is minimal potential impact of the banned conduct in regard to the evaluation of financial instruments, in terms of the demand, the offer or price of the same. By way of interpretation, on the other hand, it could limit the extent of the provision only to price sensitive conduct, on the grounds that the formula “provide or can provide false or misleading indications regarding the financial instruments” – alluding alternatively to an effect which has already occurred or which could occur – implies that the significant conduct is only that

which can effectively direct a sensible investor to one choice rather than another, in accordance with the general scheme set out in Article 181, Paragraph 4.

It should also be noted that in the definition of what conduct represents market manipulation the CONSOB regulation will make a decisive contribution on the application side: Article 187-ter, Paragraph 6, requires CONSOB to make known "the elements and circumstances to be considered in order to evaluate conduct that can represent market manipulation".

Specifically, it is also necessary to note:

Article 187-ter, paragraph 4, contemplates a justification which is expressly limited to the offences set out at points 2.a and 2.b., which consists of the fact "of having acted for legitimate reasons and in conformity with the market practices allowed in the market concerned". The justification – the existence of which must be proven by the accused – involves two distinct elements: having acted for legitimate reasons and having respected allowed market practices.

As regards the requirement of the legitimacy of the grounds for action, albeit in the general situation of the legislative formula, it may be considered that this creates situations in which the impact on the market follows an operation or a series of transactions characterized by a legitimate economic importance and which are united by motivations which are coherent with the economic importance of the transactions themselves.

As for the extreme end of the allowed market practices, the definition of these is entrusted under Paragraph 6 of Article 187-ter to CONSOB, which will make arrangements with its own regulation.

6.2 Identification of the sensitive areas and activities as part of the corporate crimes and of the crimes and offences of market abuse

The analysis of the company processes, which was undertaken during the Project17, enabled the identification of the activities within which the crimes mentioned in Article 25-ter of Legislative Decree 231/2001 could theoretically occur. Here below is a list of the processes examined:

1. ***Preparation of financial statements, reports or other corporate communication envisaged by the law aimed at shareholders or the public***
2. ***Management of the dealings with shareholders, the Board of Statutory Auditors and with the Independent auditors***
3. ***Dealings with the Supervisory authority***
4. ***Transactions involving equity and destination of profits***
5. ***Communicating, holding and recording of Shareholders' meetings***
6. ***Information and dissemination of news on unlisted financial instruments***
7. ***Transactions on unlisted financial instruments***

[17] See in this regard paragraph 3.1 of the General Section

The analysis of the company processes, which was undertaken during Project18, enabled the identification of the activities within which the crimes mentioned in Article 25-sexies of Legislative Decree 231/2001 could theoretically occur. Here below is a list of the processes examined:

1. ***Information and dissemination of news on listed financial instruments***
2. ***Transactions on listed financial instruments***

6.3 General rules of conduct and of implementation of decision-making processes

6.3.1 General rules of conduct

This Special Section envisages an express ban on Corporate bodies, Employees - directly – and External Collaborators – limited respectively to the obligations contemplated in the specific procedures and codes of conduct and in the specific clauses included in contracts in implementation of the following principles:

- to put in place, collaborate in or give rise to the realization of forms of conduct such that – considered individually or collectively – they represent, directly or indirectly, the types of crime falling under those considered above (Articles 25-ter, of Legislative Decree 231/2001);

- to put in place, collaborate in or give rise to the realization of forms of conduct such that – considered individually or collectively – they represent, directly or indirectly, the types of crime and administrative offence falling under those considered above (Articles 25-sexies of Legislative Decree 231/2001);

- violate the principles and the company procedures envisaged in this Special Section.

This Special Section entails, consequently, the obligation on the aforementioned subjects to scrupulously respect all the laws in force and in particular:

1. to act correctly, transparently and cooperatively, in compliance with the laws and company procedures, in all the activities aimed at preparing the financial statements and other corporate communication, in order to provide shareholders and third parties with true and correct information on the income, equity and financial situation of the Company;
2. rigorously observe all the rules imposed by the law to safeguard the integrity and actual existence of the share capital, in order not to harm the guarantees of the creditors and third parties generally;
3. guarantee the regular functioning of the Company and the Corporate bodies, guaranteeing and facilitating all forms of internal control on the corporate management envisaged by the law as well as the free and correct formation of the will of the shareholders' meeting;
4. avoid putting into place simulated transactions or disseminating false news on the Company;
5. undertake, in any form and for whatever reason, purchases, sales or other transactions, on financial instruments, using insider information which they have come into knowledge of due to their

[18] See in this regard paragraph 3.1 of the General Section.

position as a member of the administration, executive or control bodies of the issuer, or stake in the share capital of the issuer;
6. undertake the same transactions using insider information which they have become aware of through their work, profession, function or office;
7. communicate this information to third parties – unless this occurs as part of routine work, profession, function or office;
8. recommend or induce third parties to undertake transactions *de quibus*, on the basis of the same information;
9. disseminate false news that can cause an alteration of the prices of financial instruments;
10. undertake simulated transactions or other forms of artifice which can cause an alteration in the price of financial instruments.

As part of the aforementioned conduct, it is in particular forbidden to:

a) represent or transmit for processing and representation in financial statements or other company communication, false or partial data or data which in any case does not correspond to the reality, on the income, equity and financial situation of the Company;

b) represent or transmit for processing and representation in the separate accounts false or partial data or data which in any case does not correspond to the reality;

c) omit data and information required by the law on the income, equity and financial situation of the Company, also for the purposes of the separate accounts;

d) return transfers to the shareholders or free them from the obligation to carry them out, outside of the cases of legitimate reduction in the share capital;

e) share profits or advances on profits which have not actually been realized or are destined by law to a reserve;

f) buy or underwrite treasury shares outside of the cases envisaged by the law, with harm to the integrity of the share capital;

g) make reductions to the share capital, mergers or spin-offs, in violation of the legal provisions to safeguard creditors, causing damage to them;

h) arrange for the formation or fictitious increase in the share capital, assigning shares for a value below their par value;

i) act in a way that materially prevents, through concealing documents or the use of other fraudulent means, the undertaking of the control activities by the shareholders and of the Board of Statutory Auditors;

j) determine or influence illicitly the taking of resolutions at shareholders' meetings, undertaking to this end simulated or fraudulent acts which aim to artificially alter the normal and correct proceedings of forming the wishes of the shareholders' meeting;

k) publish or disseminate false news, or undertake simulated transactions or other fraudulent or misleading conduct, regarding the income, equity and financial situation of the Company;

l) set out in the aforementioned communication and transmissions facts that do not correspond to the truth, or conceal important facts relating to the income, equity or financial condition of the Company;

m) disseminate, help to disseminate, in any way, information, news or false data or undertake fraudulent or in any case misleading transactions in such ways that may potentially cause an alteration in the price of financial instruments;

n) comply with the rules which govern the formation of the price of the financial instruments, rigorously avoiding any conduct that may lead to their marked alteration, taking account of the concrete market situation;

o) observe the legal provisions, as well as those of a secondary and ethical nature, which guarantee the correctness of the information provided by journalists.

6.3.2 Principles of implementation of decision-making processes

Here below is a list of the control standards identified for the individual Sensitive activities recorded.

1. Preparation of the financial statements, reports or of other company communication envisaged by the law and aimed at shareholders or the public

The undertaking of the activity envisages:

- the definition of the main stages in which the activity in question is broken down, such as
  - management of general accounting;
  - evaluation and estimate of entries;
  - preparation of the statutory financial statements and of the interim reports;
  - preparation of the consolidated financial statements;
  - management of the separate accounting pursuant to Article 47 of the Consolidated Act on media, audiovisual and radio services;

- the definition and the dissemination to the personnel involved in work to prepare the financial statements, of group rules which clearly define the accounting standards to be adopted in order to define the items on the statutory and consolidated financial statements and the ways of operating for their accounting. These rules must be promptly integrated/updated with the indications provided by the competent office on the basis of the innovation in terms of civil law and disseminated to the aforementioned recipients;

- the definition of rules and responsibilities for the checks on carrying values with specific reference to control activities on financial disclosure;

- the definition of instructions for Sections (or for subsidiaries for the consolidation) with which to establish that such data and news must be supplied to the Administration, Finance and Control Department in relation to the annual and mid-year closures (for the statutory and consolidated financial statements) and to the Planning and Control Department (for separate accounting), with the means and the related timeframes envisaged;

- that RAI acquires from subsidiaries the letter declaring the truthfulness and completeness of the information provided for the purposes of preparing the consolidated financial statements and that the same certification system is adopted for the statutory financial statements of RAI;

- the undertaking of one or more meetings between the Independent auditors, the Board of Statutory Auditors, the Head of Administration, Finance and Control and the Supervisory Committee, before the meeting of the Board of Directors for approval of the financial statements, regarding the evaluation of any problems that emerged in undertaking the audit;

- that each change to the accounting data of a section can be made only by the section which generated them. In addition, it is necessary to give adequate justification, documentation and archiving of any changes made to the draft of financial statements/interim reports;

- the undertaking, as well as for the sections involved in the preparation of the financial statements and the related documents, of basic training (regarding the main notions and legal and accounting issues in the financial statements) for the sections involved in the definition of the estimated items in the financial statements;

- the use of a system (also an IT system) for the transmission of data and information to the section responsible with specific procedures for the management of access, with procedures which enable the traceability of individual movements, the identification of the subjects who input data into the system and the recording of unauthorized access;

- the attribution of roles and responsibility, in relation to keeping, conserving and updating the file of financial statements and the other accounting documents (including the related certificates) from the drafting and approval of the draft financial statements by the Board of Directors to the deposit and publication (including electronic) of the same, following approval by the Shareholders' meeting, and the related archiving.

2. Management of the dealings with shareholders, Board of Statutory Auditors and with the Independent auditors

The undertaking of the activity envisages:

- the obligation for utmost collaboration and transparency in dealings with the Independent auditors, the Board of Statutory Auditors and in handling requests from shareholders;

- the obligation of transmission to the Independent auditors and to the Board of Statutory Auditors – in good time – of all the documents relating to the items on the agenda for shareholders' meetings or the Board of Directors on which they must express an opinion pursuant to law;

- that the manager of the relevant department guarantees the completeness, relevance and correctness of the information and documents supplied to the Independent auditors, the Board of Statutory Auditors or shareholders and makes available to them the information and/or documents requested by them and/or necessary to undertake the control activities delegated to them, guaranteeing compliance with the relevant law;

- the attribution of roles and responsibility regarding the collection of all the requests that have been formally received and of all the information / data / documents handed over or made available to the Independent auditors, the Board of Statutory Auditors and the shareholders as a consequence of such requests;

- the regulation of the stages of selection of the Independent auditors and the rules to maintain the independence of such auditors in the period of their mandate;

- that the Supervisory Committee is informed of any engagement, or which it is intended to confer, to the Independent auditors or companies associated with them, other than that regarding the audit of the financial statements;

3. Dealings with Supervisory authority

The undertaking of the activity envisages:

- directives which ratify the obligation for utmost collaboration and transparency in dealings with the Supervisory authority;

- the identification of a person responsible for handling dealings with the Supervisory authority in the case of inspections, specifically delegated by the company's top management;

- the identification of the person responsible for receiving, checking, consolidating and transmitting, validating and reviewing data, information and documents requested;

- the means of archiving and conserving the information supplied, as well as the obligation for the initial notification and report on the ending of the activity.

4. Transactions on the share capital and use of the profits

The undertaking of the activity envisages:

- internal rules for purchases and sales of treasury shares approved and authorized by the shareholders' meeting;

- formalized rules aimed at the departments involved in the preparation of documents for resolutions of the Board of Directors on payments on account on dividends, transfers, mergers and spin-offs, with which the responsibilities are established and the means of preparing the supporting documentation;

- the preparation of a report for the Board of Directors to justify the distribution of profits and reserves in compliance with the provisions of the law;

- that the main stages of the sensitive activity in question are duly documented and archived at the competent structures.

5. Communication, holding and recording of Shareholders' meetings

The undertaking of the activity envisages:

- the preparation of documents necessary for the undertaking of the meetings of the Board of Directors and the shareholders' meeting and recording of meetings of corporate bodies;

- that the relevant documentation, the agenda, the calls, the resolutions, the minutes must be recorded, archived and kept (in print and/or digital form) at the competent structures.

6. Information and dissemination of news on unlisted and listed financial instruments

The regulation of the activity envisages:

- the definition for the implementation of opportune initiatives (e.g. internal communication plans, information-giving or training) to guarantee the understanding of the law in question by journalists, as well as other information operators;

- compliance with the laws on conduct which govern the exercise of the profession as a journalist, and the effective check of the source from which the news on listed financial instruments of third parties comes;

- the identification of the person responsible for checking compliance with the laws as set out above.

7. Transactions on unlisted and listed financial instruments

The regulation of the activity envisages:

- the formalization of operating rules regarding the undertaking of transactions on unlisted financial instruments or for which an admittance request to trading on a regulated market or on listed financial instruments has been presented, differentiating, where necessary, the rules on the basis of the financial instrument and the reason for the operation;

- the identification of the unlisted financial instruments or for which an admittance request to trading on a regulated market or on listed financial instruments has been presented, which can be the object of transactions by the Company, the related authorization and approval levels and the identification of the counterparties with which such transactions can normally be undertaken and the limits set for the management of the investments and related risks;

- the definition of the competent subjects to decide the transactions, implement them and undertaken control activities and supervision over them.

7. SPECIAL SECTION D - ORGANISED CRIME, CRIMES OF TERRORISM, CRIMES AGAINST INDIVIDUALS, CRIMES OF RECEIVING, LAUNDERING, OR USING ILL-GOTTEN MONEY, GOODS, OR OTHER BENEFITS, CRIMES OF INDUCING OTHERS TO REFRAIN FROM MAKING STATEMENTS OR TO MAKE FALSE STATEMENTS TO JUDICIAL AUTHORITIES, CRIMES OF EMPLOYING FOREIGN NATIONALS WHO ARE ILLEGAL IMMIGRANTS, TRANSNATIONAL CRIMES

7.1 Types of crimes (Art. 24-ter, Art. 25-quater, Art. 25-quinquies, Art. 25-octies, Art. 25-decies, Art. 25-duodecies of Legislative Decree No. 231/2001, Articles 3 and 10 of Law No. 146 of 16 March 2006)

Regulatory references for the relevant types of crimes and a brief description of a number of important aspects of each of the predicate crimes specified in L.D. 231/01 are given below.

7.1.1 Types of organised crime, as specified in Art. 24-ter of L.D. 231/01, crimes of inducing others to refrain from making statements or to make false statements to Judicial Authorities, as specified in Art. 25-decies of L.D. 231/01, and transnational crimes, as specified in Articles 3 and 10 of Law No. 146 of 16 March 2006

Art. 2, Paragraph 29 of Law No. 94 of 15 July 15 2009 extended administrative liability to entities through the introduction of Art. 24-ter, in relation to the following offences of criminal association:

- criminal conspiracy (Art. 416, Criminal Code);

- criminal conspiracy for the purposes of enslavement or servitude, human trafficking,

purchasing or selling slaves, and crimes concerning violations of the regulations on illegal immigration, as per Art. 12 of Legislative Decree 286/1998 (Art. 416, Paragraph 6, Criminal Code)

- mafia-like criminal conspiracy (Art. 416-bis, Criminal Code);
- crimes committed by way of the conditions laid down in Art. 416-bis, Criminal Code, concerning mafia-like criminal conspiracies or for the purpose of facilitating the activities of these conspiracies;
- political-mafia electoral fraud (Art. 416-ter, Criminal Code);
- kidnapping for the purpose of extortion (Art. 630, Criminal Code);
- conspiracy for the purpose of illicit trafficking in narcotic drugs or psychotropic substances (Art. 74, Italian Presidential Decree No. 309, of 9 October 1990);
- illegally manufacturing, introducing into the State, offering for sale, transferring, possessing, or carrying in a public place or in a place open to the public weapons of war or war-like weapons or parts of the same, explosives, or illegal arms, as well as the more common firearms, excluding those provided for in Art. 2, Paragraph 3, of Law No. 110 of 18 April 1975;

Art. 10 of Law No. 146 of 26 March 2006, had previously extended administrative liability to entities for the following crimes committed in a transnational way[19] :

- criminal conspiracy (Art. 416, Criminal Code);
- mafia-like criminal conspiracy (Art. 416-bis, Criminal Code);
- conspiracy for the purpose of illicit trafficking in narcotic drugs or psychotropic substances (Art. 74, Italian Presidential Decree No. 309, of 9 October 1990);
- criminal conspiracy for the purpose of smuggling foreign tobacco products (Art. 291-quater, Italian Presidential Decree No. 43, of 23 January 1973);
- trafficking of migrants, for the crimes referred to under Art. 12, Paragraphs 3, 3-bis, 3-ter and 5, of the consolidation act as per Legislative Decree No. 286 of 25 July 1998;

[19] In this regard, it should be remembered that a transnational crime is a crime punished with the penalty of imprisonment for a term of no less than four years, in the case that an organized criminal group is involved, and that:

a) it is committed in more than one State;
b) or it is committed in one State, but a substantial part of its preparation, planning, direction, or management takes place in another State;
c) or it is committed in one State, but an organized criminal group involved in criminal activities in more than one State is implicated in it;
d) or it is committed in one State but has significant effects in another State.

- inducing others to refrain from making statements or to make false statements to judicial authorities (Art. 377-bis, Criminal Code);

- personal aiding and abetting (Art. 378, Criminal Code).

Criminal conspiracy (Art. 416, Criminal Code)

These types of crimes are committed when three or more people conspire for the purpose of committing multiple crimes. Art. 416 of the Criminal Code punishes those who promote or institute or organize the conspiracy. The sole fact of participating in a conspiracy constitutes a criminal offence. The leaders are subject to the same punishment established for the organizers. The penalty is increased if the number of conspirators amounts to ten or more.

Even prior to referring to individual actions of promotion, establishment, management, organization, or simple participation, Art. 416, Paragraph 1 of the Criminal Code defines criminality as being the moment in which ("when") "three or more persons" "conspire", for all intents and purposes, to commit multiple crimes.

Mafia-like criminal conspiracy (Art. 416-bis, Criminal Code)

A conspiracy is defined as mafia-like when those participating in it employ the force of intimidation on the basis of their criminal association, or conditions of subjugation or a code of silence in order to commit crimes, for the purposes of acquiring either directly or indirectly the management or control of economic activities, concessions, authorisations, contracts, or public services, or to make profits or gain unfair advantages for themselves or for others, or to impede or obstruct the right to vote freely or to procure votes for themselves or others during elections.

Criminal conspiracy for the purpose of smuggling foreign tobacco products (Art. 291-quater, Italian Presidential Decree No. 43/73)

A criminal conspiracy for the purpose of smuggling foreign tobacco products occurs when three or more people conspire for the purpose of committing multiple crimes among those established under Art. 291-bis, Criminal Code (which punishes those who introduce, sell, transport, purchase, or possess more than ten conventional kilograms of contraband foreign tobacco products in the territory of the State). For this alone, those who promote, institute, direct, organize, or finance the conspiracy shall be punished by a term of imprisonment of between three and eight years.

Conspiracy for the purpose of illicit trafficking in narcotic drugs or psychotropic substances (Art. 74, Italian Presidential Decree No. 309 of 9 October 1990)

A conspiracy for the purpose of illicit trafficking in narcotic drugs or psychotropic substances occurs when three or more people conspire for the purpose of committing multiple crimes among those established under Art. 73 of the same Italian Presidential Decree No. 309/90 (illegal production, trafficking, and possession of narcotic drugs or psychotropic substances). For this alone, those who promote, institute, direct, organize, or finance the conspiracy shall be punished by a term of imprisonment of no less than twenty years.

Crimes of criminal conspiracy, in particular those referred to under Articles 416 and 416-bis of the Criminal Code, are characterized by the long-term, continuous nature of the criminal agreement existing between those who institute, participate in, promote, or organize the conspiracy.

To this end, a conspiracy requires a minimal degree of steady organization, suitable for accomplishing its criminal objectives and designed to last even beyond the accomplishment – however merely hypothetical – of concretely planned crimes. The conspiracy – which must be made up of at least three people – is also defined by the vagueness of the criminal plan pursued by its members, which therefore does not need to have the achievement of a fixed, well-defined number of offences set as its goal.

The responsibility of the entity is established, first and foremost, in relation to the general role of the criminal conspiracy, which is defined by the mere purpose of its conspirators to commit multiple crimes: in this regard, it should be emphasized that the criminal purposes of the conspiracy may include any crime, such as, for example, fraud, tax crimes, environmental crimes, laundering, corruption, corporate crimes, etc. Today, the punishability of the entity is also specifically extended to associations that pursue the specific purposes of illegally trafficking narcotic drugs or psychotropic substances, as well as illegally manufacturing, introducing into the State, offering for sale, transferring, possessing, or carrying in a public place or in a place open to the public weapons of war or war-like weapons or parts of them, explosives, or illegal arms as well as the more common firearms, or transnationally smuggling foreign tobacco products, or trafficking in migrants.

Due to the distinctive form of the crimes in question, it should be emphasized that – in order to avoid improper extensions of the scope of application of the Decree and in accordance with the principle of legality set forth in Art. 2 – the criteria of the profit or advantage must relate to the crime of criminal conspiracy and not to the criminal purposes of the association.

In addition, as previously mentioned, with regards to the existence of the offence, it is not necessary for said offences to actually be committed, as it is sufficient for them to be simply included among the purposes of the association.

The punishability of the entity is also stipulated for crimes of mafia-like conspiracy that, pursuant to Art. 416-bis, Paragraph 3, occur when those participating in the conspiracy employ the so-called mafia method, which involves use of the force of intimidation on the basis of their criminal association, or conditions of subjugation or a code of silence in order to commit crimes, for the purposes of acquiring either directly or indirectly the management or control of economic activities, concessions, authorisations, contracts, or public services, or to make profits or gain unfair advantages for themselves or others, or to impede or obstruct the right to vote freely or to procure votes for themselves or others during elections.

In this regard, it should be emphasized that the punishability of the entity can result not only from the participation of its senior subjects or employees in the conspiracy, as organizers, promoters, members, or directors of the same, but also from the possibility of so-called external involvement, that is, when a physical person, despite not actually participating in the conspiracy and not having supported the vague, illegal purposes it pursues, provides support to the association or to specific activities or interests of the same.

It is also important to recognize, for the purpose of correctly identifying the risk profiles related to the crimes in question, that only in extreme and truly peculiar circumstances may the entity itself be considered a true criminal association aimed at committing a plurality of crimes, a circumstance which would entail, in accordance with Art. 14, Paragraph 4, its permanent disqualification from carrying out its activities. In this regard, the Report on the Decree and Art. 10, Paragraph 4, of Law no. 146/2006 provide important basics of interpretation: this identification is, in fact, only possible in the event that "the entity or one of its organizational units is consistently used for the sole or predominant purpose of

permitting or facilitating the commission of the indicated crimes."

Kidnapping (Art. 630, Criminal Code)

This occurs when a person is kidnapped for the purpose of pursuing, for oneself or for others, an unfair gain as the price of the victim's release. The crime is aggravated in the event that the kidnapping results in the unintended death of the victim.

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

Art. 12 of the Consolidation Act established by Legislative Decree No. 286/98 sets forth, first and foremost, the crime known as aiding and abetting illegal immigration, involving those who "in violation of the provisions of this consolidation act carry out activities aimed at gaining entry for a foreigner into the territory of the State." The second type of crime, included in Art. 12 and known as aiding and abetting illegal emigration, involves those who "carry out (…) activities aimed at gaining illegal entry into another State in which the person is not a citizen or has not been granted the right to permanent residence."

The legislature shall call for a heavier penalty when the acts of aiding and abetting illegal immigration or aiding and abetting illegal emigration are carried out "for the purpose of gaining a profit, even indirectly."

Paragraph 3-bis of Art. 12 calls for an increase in the penalties referred to in the first and third paragraphs, if:

- "the act concerns the entry or illegal residence of five or more persons in the territory of the State;
- to gain entry or illegal residence, the life or safety of the person concerned was put in danger;
- to gain entry or illegal residence, the person concerned was subjected to inhuman or degrading treatment;
- the act is committed by three or more people acting together or using international transportation services or counterfeit, forged, or in any case, illegally obtained documents."

Paragraph 3-ter of Art. 12 stipulates that the sentences shall also be increased "if the acts referred to in Paragraph 3 are carried out in order to recruit people for prostitution or for sexual exploitation of any type or if they concern the entry of minors to be used in illegal activities in order to promote their exploitation."

Paragraph 5 of Art. 12 sets forth an additional circumstance of criminal offence known as aiding and abetting illegal residency, involving those who "in order to obtain an unfair profit from the illegal status of a foreigner or within the scope of the activities punished by the provisions of this article, facilitate the residence of said foreigners within the territory of the State in violation of the provisions of this consolidation act."

Personal aiding and abetting (Art. 378, Criminal Code)

Art. 378 of the Criminal Code punishes the actions of anyone who, after committing a crime for

which the law prescribes life imprisonment or imprisonment, apart from cases of complicity in the same, assists anyone in evading the investigations or eluding the searches of the Authorities. The provisions of this article shall also apply when the person assisted is not imputable or is not found guilty of having committed the crime.

For the execution of the crime, the aiding and abetting carried out by the accessory must be at least potentially detrimental to the investigations of the authorities.

Inducing others to refrain from making statements or to make false statements to judicial authorities (Art. 377-bis, Criminal Code)

Art. 377-bis of the Criminal Code punishes acts carried out by anyone who, by employing violent or threatening means, or by "offering or promising money or other benefits," induces anyone who is summoned before judicial authorities to make statements that may be used in a criminal proceeding, either to refrain from making statements or to make false statements, in the event that they have the right to remain silent[20].

Acts of inducement identifiable in the context of the crime set forth in Art. 377-bis of the Criminal Code include violence, threats, or offers or promises of money or other benefits.·

It should be noted that this type of crime, now also established as a predicate offence on the basis of Art. 25-decies of the decree, previously sanctioned the administrative liability of the entity - pursuant to Art. 10 of Law No. 146/2006 - only if characterized by transnationality.

7.1.2. Types of crimes committed for the purposes of terrorism or the subversion of democracy as established under Art. 25-quater of Legislative Decree 231/2001 and crimes of receiving, laundering, or using ill-gotten money, goods, or other benefits as established under Art. 25-octies of L.D. 231/2001

The vagueness of the provisions set forth by art. 25-quater creates a number of problems concerning the precise identification of the types of crimes that may require the application of the regulations set forth by Legislative Decree 231/2001. Nevertheless, it is possible to identify the following types of crimes as major predicate offences giving rise to administrative liability pursuant to L.D. 231/2001, in reference to the category of "*crimes committed for the purposes of terrorism or the subversion of democracy, as established by the criminal code and by emergency laws*":

A. with regards to crimes established by the criminal code:

Associations for the purposes of terrorism, including international terrorism, or the subversion of democracy (Art. 270-bis, Criminal Code): "Anyone who promotes, institutes, organizes, directs, or finances associations with the aim of committing acts of violence for the purposes of terrorism or of subverting democracy shall be punished by a term of imprisonment of between seven and fifteen years. Anyone who participates in these associations shall be punished by a term of imprisonment of between five and ten years. For the purposes of the Criminal Code, acts of violence directed against a foreign State, or an international institution or organization are also fall under acts carried out for the purposes of terrorism. When dealing with individuals convicted of terrorist acts the law is obliged to confiscate any item that was used or was intended to be used to commit the crimes or any item that represents the price, product, profit, or use thereof.

Assisting conspirators (Art. 270-ter, Criminal Code): "Anyone who, apart from cases of complicity in the crime or aiding and abetting, provides shelter, food, hospitality, means of transport, or communication tools to any of the people indicated in Articles 270 and 270-bis shall be punished by a term of imprisonment of up to four years."

[20] The crime in question was introduced in the criminal code, and in particular in the context of crimes against the administration of justice, by Art. 20 of Law No. 63 of 2001.

Recruitment for the purpose of terrorism, including international terrorism (Art. 270-quater, Criminal Code): "Anyone who, apart from the cases set forth in Art. 270-bis, recruits one or more persons to carry out acts of violence or to sabotage essential public services for the purposes of terrorism, even when directed against a foreign State, or an international institution or organization, shall be punished by a term of imprisonment of between seven and fifteen years."

Training activities for the purpose of terrorism, including international terrorism (Art. 270-quinquies, Criminal Code): "Anyone who, apart from the cases set forth under Art. 270-bis, provides training or instructions on how to prepare or use explosive materials, firearms or other weapons, or harmful or hazardous chemical or bacteriological substances, or any other technique or method to commit acts of violence or to sabotage essential public services for the purposes of terrorism, even if directed against a foreign State, or an international institution or organization, shall be punished by a term of imprisonment of between five and ten years. The same punishment shall apply to the person who has been trained."

Acts for the purpose of terrorism (Art. 270-sexies, Criminal Code): "Acts for the purpose of terrorism are defined as acts that, by their nature or due to their context, can cause serious harm to a country or an international organization, and are committed in order to intimidate people or to coerce public authorities or an international organization to perform, or to refrain from performing, any act, or to destabilize or destroy the fundamental political, constitutional, economic, and social structures of a country or an international organization, as well as other types of acts defined as terrorist or carried out for terrorist purposes as established by conventions or other international laws by which Italy is bound."

Terrorist or subversive attacks (Art. 280, Criminal Code): "Anyone who for the purposes of terrorism or the subversion of democracy makes an attempt on the life of or attacks the safety of a person shall be punished, in the first case, by a term of imprisonment of no less than twenty years and, in the second case, by a term of imprisonment of no less than six years. If the attack on the safety of a person results in a very serious injury, the prison sentence shall be no less than eighteen years; if it results in a serious injury, the prison sentence shall be no less than twelve years. If the acts set forth in the preceding paragraphs are directed against people who exercise judicial or penitentiary functions or against people who perform public safety functions, during the performance of or as a result of their functions, the penalties shall be increased by one-third. If the acts set forth in the preceding paragraphs result in the death of the targeted person, in the case of an assassination attempt, the penalty shall be life imprisonment and, in the case of an attack on the safety of the person, the penalty shall be a term of imprisonment of thirty years. Extenuating circumstances, other than those set forth in Articles 98 and 114, concurrent with the aggravating circumstances referred to in paragraphs 2 and 4, may not be considered equivalent or prevailing with respect to the latter, and decreases to the penalties shall be made based on the amount of penalty deriving from the increases resulting from the aforementioned aggravating circumstances."

Acts of terrorism involving explosive or lethal devices (Art. 280-bis, Criminal Code): "Except in the case that the act constitutes a more serious crime, anyone who, for the purpose of terrorism, carries out any act aimed at damaging another's personal or real property, through the use of explosive or lethal devices, shall be punished by a term of imprisonment of between two and five years. For the purposes of this article, explosive or lethal devices are to be considered arms and their related materials as indicated under Art. 585 and suitable for causing considerable damage to property. If the act is directed against the office of the President of the Republic, the Legislative Assemblies, the Constitutional Court, government bodies, or any other bodies established in the Constitution or by constitutional

laws, the penalty shall be increased by up to one half. If the act endangers public safety or causes serious damage to the national economy, the penalty shall be a term of imprisonment of between five and ten years. Extenuating circumstances, other than those set forth in Articles 98 and 114, concurrent with the aggravating circumstances referred to in paragraphs 3 and 4, may not be considered equivalent or prevailing with respect to the latter, and decreases to the penalties shall be made based on the amount of penalty deriving from the increases resulting from the aforementioned aggravating circumstances."

Kidnapping for the purposes of terrorism or subversion, (Art. 289-bis, Criminal Code): "Anyone who, for the purposes of terrorism or the subversion of democracy, kidnaps a person shall be punished by a term of imprisonment of between twenty-five and thirty years. If, however, the kidnapping results in the death of the victim, as a consequence not intended by the offender, the guilty party shall be punished by a term of imprisonment of thirty years. If the guilty party intentionally causes the death of the victim, the penalty of life imprisonment shall be applied. Accomplices who, dissociating themselves from the others, work to ensure that the victim regains their freedom shall be punished by a term of imprisonment of between two and eight years; if the victim dies as a result of the kidnapping, following their release, the penalty shall be a term of imprisonment of between eight and eighteen years. When there is an extenuating circumstance, the punishment prescribed by Paragraph 2 shall be replaced with a term of imprisonment of between twenty and twenty-four years; the punishment prescribed by Paragraph 3 shall be replaced with a term of imprisonment of between twenty and thirty years. If multiple extenuating circumstances are involved, the penalty to be applied as a result of the reductions may be no less than ten years in the circumstances set forth in Paragraph 2, and fifteen years in the circumstances set forth in Paragraph 3."

Incitement to commit any of the crimes set forth under the first and second chapters (Art. 302, Criminal Code): "Anyone who induces another person to commit one of the crimes with criminal intent set forth under the first and second chapters of this title, for which the law has established the death penalty or life imprisonment or imprisonment, shall be punished, if the incitement is not successful, or if the incitement is successful but the crime is not committed, by a term of imprisonment of between one and eight years. Nevertheless, the penalty to be applied shall always be less than half of the penalty established for the crime to which the incitement relates."

Assisting those participating in a conspiracy or an armed gang (Art. 307, Criminal Code): "Anyone who, apart from cases of complicity in the crime or aiding and abetting, provides shelter, food, hospitality, means of transport, or communication tools to any person belonging to a conspiracy or an armed gang as set forth in the two preceding articles [i.e. political conspiracy through association; armed gang] shall be punished by a term of imprisonment of up to two years."

B. with regards to crimes established by emergency laws:

- **Art. 1 of Law No. 15/1980** establishes an aggravating circumstance that applies to any crime committed for the purposes of terrorism or the subversion of democracy;

- **Law No. 342/1976** punishes crimes against the safety of air navigation;

- **Law No. 422/1989** punishes crimes against the safety of maritime navigation and crimes against the safety of fixed installations on the intercontinental platform.

Activities of promotion, institution, organization, or direction of criminal conspiracies may also be carried out through the use of the internet, a tool that guarantees anonymity and the ability to circulate any type of criminal message to numerous recipients. It should be emphasized that Art. 270-bis of the Criminal Code also specifically punishes the activities of financing conspiracies aimed at committing acts of terrorism or at subverting democracy.

In the end, all programs of the "distribution process" involve a risk profile in relation to the activities of those who "…provide…communication tools to any person belonging to the conspiracies indicated in Articles 270 and 270-bis, Criminal Code", as referred to in Art. 270-ter, Criminal Code. In implementing Directive 2005/60/EC of the European Parliament and the Council of Europe concerning the prevention of the use of the financial system for the purpose of money-laundering, Legislative Decree No. 231 of 2007 has brought about a complete reorganisation of the anti-money-laundering legislation found in Italy's legal system. Art. 63, Paragraph 3, of L.D. 231 extended the list of predicate crimes giving rise to administrative liability to include Art. 25-octies, prescribing financial penalties and prohibitory sanctions at the expense of the entity with regards to crimes of receiving, laundering, or using ill-gotten money, goods, or other benefits (crimes indicated under Articles 648, 648-bis, and 648-ter of the Criminal Code).

Art. 64, Paragraph 1, Letter f), of the same regulation also repealed Paragraphs 5 and 6 of Art. 10 of Law No. 146/2006, in contrast with transnational organized crime, which already prescribed liability and sanctions at the expense of the entity, as per L.D. 231 of 2001 for the crimes of laundering or using ill-gotten money, goods, or other benefits (Articles 648-bis and 648-ter, Criminal Code), if characterized by aspects of transnationality, according to the definition contained in Art. 3 of the same Law No. 146/2006.

It follows that, in accordance with Art. 25-octies of L.D. 231 of 2001, the entity is now punishable for the crimes of receiving, laundering, or using illegal capital, even if committed in a purely "national" context, whenever they are carried out in the interest or to the advantage of the entity.

To this end, a description of the crimes indicated under Art. 25-octies of L.D. 231/2001 is given below.

Receiving stolen goods (Art. 648, Criminal Code)

Art. 648 of the Criminal Code incriminates anyone who "apart from cases of complicity in committing the crime, procures, receives, or conceals money or goods deriving from any crime, or is otherwise involved in procuring, receiving, or concealing the same."

The term "procure" is to be understood as the act resulting from negotiations, carried out free of charge or subject to payment, by which an agent gains possession of the goods.

The term "receive" indicates any form of gaining possession of goods deriving from crime, even if only temporarily or due to mere compliance.

The term "conceal" is to be understood as the act of hiding goods deriving from crime, after having received them.

The act of receiving can also take place by means of interfering in procuring, receiving, or concealing the goods. Such conduct comprehends any activity of mediation, not to be understood in the civil sense (as specified by the law), between the principal offender and the third party acquirer.

The last paragraph of Art. 648 of the Criminal Code extends liability for punishment "even when the perpetrator from whom the money or goods derive is not imputable or punishable, or when a condition for prosecution related to the crime is lacking."

The purpose of incriminating the act of receiving stolen goods is to prevent the perpetration of damages to property interests which initiate with the execution of the main crime. A further objective of this incrimination is to prevent the commission of the main crimes by placing limitations on the movement of goods deriving from the crimes themselves.

Laundering (Art. 648-bis, Criminal Code)

This crime concerns anyone who "apart from cases of complicity in committing the crime, replaces or transfers money, goods, or other benefits deriving from a crime committed with criminal intent; or performs other actions in relation to these, in order to prevent the identification of their criminal origins." The crime in question occurs even when the perpetrator from whom the money or goods derive is not imputable or punishable, or when a condition for prosecution related to the crime is lacking. Prior to this, a crime must have been committed with criminal intent in which, however, the launderer did not participate as an accomplice.

The penalty is increased when the act is committed in the context of practising a professional activity, and it is reduced if the money, goods, or other benefits derive from crimes for which a term of imprisonment of no more than five years is sanctioned.

This provision applies even when the perpetrator from whom the money or goods derive is not imputable or punishable, or when a condition for prosecution related to the crime is lacking. The acts of those who impede the identification of the above mentioned goods after they have been replaced or transferred are also relevant.

Using ill-gotten money, goods, or other benefits (Art. 648-ter, Criminal Code)

This crime is committed by "anyone who, apart from cases of complicity in the crime and the cases set forth in Art. 648, Criminal Code, (Receiving stolen goods) and Art. 648-bis, Criminal Code, (Laundering), makes use of money or goods or other benefits derived from crime in economic or financial activities."

For this type of crime, too, the aggravating circumstance of practising a professional activity is prescribed, and it is extended to the subjects of the last paragraph of Art. 648, but the penalty is reduced if the crime is particularly petty.

The specific application of the term "use" should be understood as "use in any way", entailing a broader meaning than "invest" which assumes use aimed at particular goals. The reference to the concept of "activities" to indicate the investment area (economy or finance) allows for excluding uses of money or other benefits that are occasional or sporadic in nature.

The peculiarity of this crime with respect to that of laundering lies in its purpose of covering the tracks of the illegal origins of money, goods, or other benefits, by using said resources in economic or financial activities.

The legislature intends to punish mediating activities that, unlike with laundering, do not immediately replace goods derived from crime, but that however contribute to "cleaning up" illegal capital.

7.1.3. Crimes against individuals as established under Art. 25-quinquies of Legislative Decree 231/2001

Art. 25-quinquies (Crimes against individuals) of the Decree establishes:

"In relation to the commission of crimes set forth by section I of Chapter III of Title

XII of Book II of the criminal code, the following financial penalties shall be

applied to the entity:

a) for the crimes set forth in Articles 600, 601, and 602, the financial penalty shall be of between four hundred and one thousand shares;

b) for the crimes set forth in Articles 600-bis, Paragraph 1, and 600-ter, Paragraphs 1 and 2, and also in relation to the pornographic material referred to in Articles 600-quater.1, and 600-quinquies, the financial penalty shall be of between three hundred and eight hundred shares;

c) for the crimes set forth in Articles 600-bis, Paragraph 2, and 600-ter, Paragraphs 3 and 4, also in relation to the pornographic material referred to in Art. 600-quater.1, the financial penalty shall be of between two hundred and six hundred shares.

In the event of conviction for any of the crimes indicated in Paragraph 1, Letters a) and b), the prohibitory sanctions established under Article 9, Paragraph 2, shall be applied for a period of no less than one year.

If the entity or one of its organizational units is consistently used for the sole or predominant purpose of permitting or facilitating the commission of the crimes indicated in Paragraph 1, the sanction of permanent disqualification from carrying out its activities in accordance with Art. 16, Paragraph 3 shall be applied."

The crimes indicated in Art. 25-quinquies are given below:

Enslavement or servitude (Art. 600, Criminal Code),

"Anyone who exerts powers over a person corresponding to property rights or anyone who enslaves or keeps a person in a state of continued servitude, forcing him or her to perform work or sexual services, or to beg, or to perform services that involve exploitation, shall be punished by a term of imprisonment of between eight and twenty years.
Enslavement or continued servitude occurs when the act is realized by means of violence, threats, deceit, or abuse of authority, or by exploiting a circumstance of physical or mental inferiority or a situation of need, or by promising or giving amounts of money or other benefits to those who have authority over the person.
The penalty shall be increased by one third to one half if the acts set forth in Paragraph 1 are committed against minors under the age of eighteen or are aimed at exploitation for prostitution or at subjecting the victims to the removal of their organs."

Child prostitution (Art. 600-bis, Criminal Code)

This crime consists of inducing a person under the age of eighteen to engage in prostitution, or of aiding and abetting or exploiting the prostitution of such persons.

Child pornography (Art. 600-ter, Criminal Code)

This crime is committed by:
a) anyone who uses minors under the age of eighteen to produce pornographic

performances or pornographic material, or induces minors under the age of eighteen to participate in pornographic performances;
b) anyone who trades in the pornographic material indicated in point a);
c) apart from the cases indicated in point a) and point b), anyone who uses any means, including online means, to distribute, disseminate, spread, or publicize the pornographic material indicated in point a), or distributes or disseminates news or information in order to solicit or to sexually exploit minors under the age of eighteen;
d) apart from the cases indicated in point a), point b), and point c), anyone who offers or transfers to others, for a price or free of charge, the pornographic material indicated in point a).

Possession of pornographic material produced by means of the sexual exploitation of minors (Art. 600-quater, Criminal Code)

This crime is committed by anyone who, outside of the cases indicated in Art. 600-ter of the Criminal Code, knowingly procures or possesses pornographic material made using minors under the age of eighteen.

Virtual pornography (Art. 600-quater.1, Criminal Code)

"The provisions referred to in Articles 600-ter and 600-quater also apply when the pornographic material depicts virtual images created using images or parts of images of minors under the age of eighteen, however, the penalty is reduced by one third.

"Virtual images" are intended to mean images created using graphic design techniques that are not entirely or partly associated with real situations, but whose rendering quality makes unreal situations appear to be true."

Tourism aimed at the exploitation of child prostitution (Art. 600-quinquies, Criminal Code)

This crime is committed by anyone who organizes or promotes travel aimed at exploiting prostitution activities to the detriment of minors or including said activities in any way.

Human trafficking (Art. 601, Criminal Code)

"Anyone who commits the crime of trading in persons in the conditions set forth in Art. 600 or, in order to commit the crimes referred to in Paragraph 1 of that article, induces those persons through deceit or forces them by means of violence, threats, or abuse of authority, or by exploiting a circumstance of physical or mental inferiority or a situation of need, or by promising or giving amounts of money or other benefits to those who have authority over said persons, to enter or stay in or leave the territory of the State or to move into the territory, shall be punished by a term of imprisonment of between eight and twenty years.

The penalty shall be increased by one third to one half if the crimes set forth in this article are committed against minors under the age of eighteen or are aimed at exploitation for prostitution or at subjecting the victims to the removal of their organs."

Purchase and sale of slaves (Art. 602, Criminal Code)

"Apart from the cases referred to in Art. 601, anyone who purchases or transfers or sells a person in one of the conditions set forth in Art. 600 shall be punished by a term of imprisonment of between eight and twenty years.

The penalty shall be increased by one third to one half if the victim is a minor under the age of eighteen or if the acts set forth in Paragraph 1 are aimed at exploitation for prostitution or at subjecting the victims to the removal of their organs."

In the majority of the cases, the risk of committing the crimes set out above is not tied to the specific activities carried out by the company, but lies in their methods of implementation and in the very existence of workplaces (offices, newsrooms, recording studios, etc.) in which these crimes could be committed.

In addition, in the context of the "production and distribution process", specific types of programs may in theory facilitate the perpetration of one of these crimes. Furthermore, use of the internet in the context of the "online distribution" process could facilitate the commission of crimes against individuals.

7.1.4. Crimes of employing foreign nationals who are illegal immigrants as established under Art. 25-duodecies of Legislative Decree 231/2001

On 9 August 2012, Legislative Decree No. 109/2012 (published in the Official Gazette No. 172 of 25 July 2012) entered into force, introducing Art. 25-duodecies "Employment of foreign nationals who are illegal immigrants" into L.D. 231/01.

In summary, any entity that employs foreign workers who do not have residence permits, or whose permits have expired and the renewal of which was not requested within the time limits established by the law, or whose permits have been revoked or cancelled, shall be subject to a financial penalty of between 100 and 200 shares, for a maximum of €150,000, if:

- the number of employed workers exceeds three; or,
- the employed workers are minors below the legal work age; or,
- the employed workers are exposed to situations of serious danger in relation to the work to be performed or to the working conditions.

7.2 Identifying sensitive processes and company departments at risk of engaging in organised crime or of committing crimes of terrorism, crimes against individuals, crimes of receiving, laundering, or using ill-gotten money, goods, or other benefits, crimes of inducing others to refrain from making statements or to make false statements to judicial authorities, crimes of employing foreign nationals who are illegal immigrants, or transnational crimes

An analysis of RAI's company processes, carried out during the course of the Project[21], has made it possible to identify the activities during which the following types of crimes could hypothetically occur:

A. the types of organised crime as specified in Art. 24-ter of L.D. 231/01, crimes of inducing others to refrain from making statements or to make false statements to Judicial Authorities as specified in Art. 25-decies of L.D. 231/01, and transnational crimes as specified in Articles 3 and 10 of Law No. 146 of 16 March 2006. The processes subjected to analysis are listed below:

1. **Procurement of goods and services**
2. **Personnel recruitment and hiring**
3. **Gifts and benefits**
4. **Sponsorships of RAI programs and initiatives**
5. **Entertainment expenses**
6. **Donations**
7. **Management of financial transactions (including intragroup)**
8. **Sales**
9. **Selection of partners**
10. **Selection of agents/brokers**
11. **Relations with subjects involved in judicial proceedings**

B. the types of crimes committed for the purposes of terrorism or the subversion of democracy as specified in Art. 25-quater of L.D. 231/2001 and the crimes of receiving, laundering, or using illegal capital as specified in Art. 25-octies of L.D. 231/01:

1. **Procurement of goods and services**
2. **Personnel recruitment and hiring**
3. **Gifts and benefits**
4. **Sponsorships of RAI programs and initiatives**

[21] For more on this topic, see section 3.1 of the General Section.

5. **Entertainment expenses**
6. **Donations**
7. **Management of financial transactions (including intragroup)**
8. **Sales**
9. **Selection of partners**
10. **Selection of agents/brokers**
11. **Publishing and broadcasting activities on the following platforms: a. Digital, b. Satellite, c. Internet, d. Radio**
12. **Management of the company's server or internet sites**

C. the types of crimes against individuals as specified in Art. 25-quinquies of L.D. 231/2001:

1. **Activities that entail direct or indirect labour (e.g. assignments of contracts)**
2. **Activities directly involving minors, for educational, sports, or recreational purposes (e.g. the use of minors in television broadcasting and programs)**
3. **Publishing and broadcasting activities on the following platforms: a. Digital, b. Satellite, c. Internet, d. Radio.**
4. **Gifts and benefits**
5. **Sponsorships of RAI programs and initiatives**
6. **Entertainment expenses**
7. **Donations**
8. **Activities of procurement/rental of audiovisual/photography materials**
9. **Management of the company's server or internet sites**

D. the types of crimes of employing foreign nationals who are illegal immigrants as specified in Art. 25-duodecies of L.D. 231/2001:

1. **Employment of foreign workers**

7.3 Rules of conduct and principles governing the implementation of decision-making processes

7.3.1 Rules of conduct

Pursuant to this Special Section, it is expressly forbidden for Company Bodies and employees (directly) and external contractors (to an extent limited by the obligations provided for in the specific procedures and codes of conduct and the specific clauses inserted into their contracts) in implementing the following rules to:

- engage in, collaborate in, or give rise to the commission of acts that – considered individually or collectively – directly or indirectly involve the types of crimes referred to above (Articles 24-ter, 25-quater, 25-quinquies, 25-octies, 25-decies, and 25-duodecies of Legislative Decree 231/2001, and Articles 3 and 10 of Law No. 146 of 16 March 2006);

- violate the company principles and procedures set forth in this Special Section.

Consequently, this Special Section prohibits the subjects indicated above from:

- committing or engaging in any act, including those that may constitute or be linked to transnational crimes, that involves criminal conspiracy, including mafia-like associations, inducing others to refrain from making statements or to make false statements to judicial authorities, personal aiding and abetting, as well as criminal conspiracy for the purposes of smuggling foreign tobacco products or illegally trafficking narcotic drugs or psychotropic substances, or that involves any possible violations of the provisions against illegal immigration; such as:

    - conspiring for the purposes of committing multiple crimes including, in particular, smuggling foreign tobacco products or illegally trafficking narcotic drugs or psychotropic substances;

    - belonging, in whatever capacity, to mafia-like, racketeering, or in any way illegal associations;

    - carrying out activities aimed at procuring the entry of a foreigner into the territory of the State in violation of the provisions of the law, or activities aimed at procuring the illegal entry of a foreigner into another State of which the person is not a citizen or has not been granted the right to permanent residence;

    - carrying out the same activities referred to in the previous point for the purposes of recruiting people for prostitution or sexual exploitation of any type, or to procure the entry of minors to be used in illegal activities in order to facilitate their exploitation;

  - facilitating the residency of a foreigner in the territory of the State in order to obtain an unfair gain from the illegal status of the same;

  - inducing, in any way, a person summoned before judicial authorities to make statements that may be used in a criminal proceeding, either to refrain from making statements or to make false statements, when the person has the right to remain silent;

  - assisting anyone in evading investigations or eluding the searches of the Authorities;

- maintaining relations, negotiating, and/or drawing up agreements, and/or implementing contracts or acts with people indicated on the Reference Lists or belonging to organizations found on the same;

- granting benefits to people indicated on the Reference Lists or belonging to organizations found on the same;

- employing people indicated on the Reference Lists or belonging to organizations found on the same;

- promoting, instituting, organizing, or directing the finances of, even in an indirect way, associations aimed at committing acts of violence against people or things for the purpose of terrorism, abroad or to the detriment of a foreign State or an international institution or organization in any way;

- providing shelter, hospitality, means of transportation, or communication tools to people who participate in subversive associations or associations aimed at terrorism or at the subversion of the public order;

- committing or engaging in acts that entail consciously accepting the risk that crimes may be committed against individuals, such as:

  - subjecting a person to enslavement or to comparable conditions;

  - trafficking or trading in slaves or people in conditions comparable to slavery;

  - transferring or purchasing even a single person subjected to slavery;

  - persuading a minor to perform sexual acts in exchange for sums of money (child prostitution); adopting measures that facilitate the practice of child prostitution or that involve the exploitation of those who sell their body to receive some of the profits;

  - exploiting minors to produce pornographic performances or material, or also trading, selling, distributing, or broadcasting, for a price or free of charge, said material or pornographic material depicting virtual images created using images or parts of images of minors;

- procuring or possessing pornographic material produced by means of the sexual exploitation of minors;

- organizing or promoting travel that is aimed, even if not exclusively, at exploiting prostitution activities to the detriment of minors;

- replacing or transferring money, goods, or other benefits deriving from a crime committed with criminal intent, or performing other acts in relation to said goods, in order to prevent the identification of their criminal origins;

- using money, goods, or other benefits deriving from crime in economic or financial activities;

- employing foreign workers who do not have residence permits of any kind, or whose permits have expired and the renewal of which was not requested within the time limits established by the law, or whose permits have been revoked or cancelled.

7.3.2 Principles governing the implementation of decision-making processes

That which follows is a list of *standards* of control determined for each individual Sensitive Process identified.

1. Procurement of goods and services/Activities that entail direct or indirect labour (e.g. assignments of contracts)

These activities shall be carried out in accordance with the standards of control established for the "Procurement of goods and services" process and set forth in "Special Section A - Crimes in the sphere of relations with the Public Administration and Bribery between private parties", which should be used as reference for matters associated with this topic.

2. Personnel recruitment and hiring/Employment of foreign workers

These activities shall be carried out in accordance with the standards of control established for the "Personnel recruitment and hiring" process and set forth in "Special Section A - Crimes in the sphere of relations with the Public Administration and Bribery between private parties", which should be used as reference for matters associated with this topic.

In addition, the performance of the activities calls for:

- the obligation of formalizing the reasons for the decision to permit/request the entry of a person into the territory of a State;

- assigning the task of verifying:

  - that the entry of the person takes place in concordance with the reasons provided;

  - that the immigration laws in force in the territory of the destination State are respected;

- identifying the people for whom the Company procures entry into the territory of a State with indications of the exit dates of the same, where applicable;

- formalizing the employment of a non-EU citizen residing abroad by means of a specific request form to be sent to the prefecture;

- the obligation of guaranteeing the foreign worker the compensation and insurance policies prescribed by the laws in force and by the applicable national collective labour agreements, and of completing mandatory communications relating to the employment relationship within the time limits established by the law;

- storing on file in the employee's folder their residency contract and the clearance issued by the delegated entity;

- verifying, on the part of the competent Directors, the worker's possession of the receipt issued by the Italian postal service for their application for a residence permit, prior to initiating the employment relationship.

3. Gifts and benefits

These activities shall be carried out in accordance with the standards of control established for the "Gifts and benefits" process and set forth in "Special Section A - Crimes in the sphere of relations with the Public Administration and Bribery between private parties", which should be used as reference for matters associated with this topic.

4. Sponsorships of RAI programs and initiatives

These activities shall be carried out in accordance with the standards of control established for the "Sponsorships of RAI programs and initiatives" process and set forth in "Special Section A - Crimes in the sphere of relations with the Public Administration and Bribery between private parties", which should be used as reference for matters associated with this topic.

5. Entertainment expenses

These activities shall be carried out in accordance with the standards of control established for the "Entertainment expenses" process and set forth in "Special Section A - Crimes in the sphere of relations with the Public Administration and Bribery between private parties", which should be used as reference for matters associated with this topic.

6. Donations

These activities shall be carried out in accordance with the standards of control established for the "Donations" process and set forth in "Special Section A - Crimes in the sphere of relations with the Public Administration and Bribery between private parties", which should be used as reference for matters associated with this topic.

7. Management of financial transactions (including intragroup)

These activities shall be carried out in accordance with the standards of control established for the "Management of financial transactions (including intragroup)" process and set forth in "Special Section A - Crimes in the sphere of relations with the Public Administration and

Bribery between private parties", which should be used as reference for matters associated with this topic.

8. Sales

These activities shall be carried out in accordance with the standards of control established for the "Sales" process and set forth in "Special Section A - Crimes in the sphere of relations with the Public Administration and Bribery between private parties", which should be used as reference for matters associated with this topic.

9. Selection of partners

These activities shall be carried out in accordance with the standards of control established for the "Selection of partners" process and set forth in "Special Section A - Crimes in the sphere of relations with the Public Administration and Bribery between private parties", which should be used as reference for matters associated with this topic.

10. Selection of agents/brokers

These activities shall be carried out in accordance with the standards of control established for the "Selection of agents/brokers" process and set forth in "Special Section A - Crimes in the sphere of relations with the Public Administration and Bribery between private parties", which should be used as reference for matters associated with this topic.

11. Relations with subjects involved in judicial proceedings

These activities shall be carried out in accordance with the standards of control established for the "Management of judicial or arbitration proceedings" process and set forth in "Special Section A - Crimes in the sphere of relations with the Public Administration and Bribery between private parties", which should be used as reference for matters associated with this topic.

12. Publishing and broadcasting activities on the following platforms: a. Digital, b. Satellite, c. Internet, d. Radio.

These activities shall be carried out in accordance with the standards of control established for the "Publishing and broadcasting activities on the following platforms: a. Digital, b. Satellite, c. Internet, d. Radio" process and set forth in "Special Section G - Crimes associated with copyright infringement", which should be used as reference for matters associated with this topic.

In addition, the performance of the activities calls for:

- formalizing the involvement of the competent Directors with regards to the transmissibility of television and/or radio programs/services or of materials distributed on other platforms;

- defining the roles and responsibilities of the formalized verification activities with regards to the contents to be broadcast or to be published online;

- tracking the above mentioned verification activities;

- formalizing the conditions and precautions on the part of specific subjects called on by RAI to participate in the broadcasts;

- defining operating modes to protect the identity and image of the subjects participating in broadcasts, also with regards to distribution via the internet or other means;

- defining the roles, responsibilities, and operating modes for monitoring the broadcasts.

13. Management of the company's server or internet sites

These activities shall be carried out in accordance with the standards of control set forth in "Special Section F - Cybercrime and misuse of data", which should be used as reference for matters associated with this topic.

14. Activities directly involving minors, for educational, sports, or recreational purposes, and the use of minors in television broadcasting and programs

These activities shall be carried out in accordance with the standards of control referred to above for the "Publishing and broadcasting activities on the following platforms: a. Digital, b. Satellite, c. Internet, d. Radio" process**.**

In addition, the performance of the activities calls for:

- prohibiting the independent organization of "Company Activities": individuals responsible for organizing "Company Activities" cannot alone or of their own accord assign tasks or draw up contracts of this kind.

15. Activities of procurement/rental of audiovisual/photography materials

These activities shall be carried out in accordance with the standards of control established for the "Procurement of goods and services" process and set forth in "Special Section A - Crimes in the sphere of relations with the Public Administration and Bribery between private parties", which should be used as reference for matters associated with this topic.

In addition, the performance of the activities calls for:

- defining the roles and responsibilities of the formalized verification activities with regards to procured materials both from a technical standpoint and from an editorial standpoint;

- tracking the above mentioned verification activities.

8. SPECIAL SECTION E - Crimes committed in violation of regulations protecting health and safety in the workplace

8.1 Relevant types of crimes committed in violation of regulations created for the protection of health and safety in the workplace

Art. 9 of Law 123/2007 introduced Art. 25-septies into the body of L.D. 231/2001. This article extends corporate liability to include the crimes of involuntary manslaughter (Art. 589, Paragraph 2, of the Italian Criminal Code, hereinafter "Criminal Code") and negligent serious personal injury or grievous bodily harm (Art. 590, Paragraph 3, of the Criminal Code), committed in violation of accident-prevention regulations and in breach of regulations for the protection of hygiene and health in the workplace (such as, for instance, those included in L.D. 81 of 9 April 2008, the "Consolidated law on health and safety in the workplace" and its subsequent additions and amendments).

Regulatory references for the relevant types of crimes and a brief description of a number of important aspects of each of the predicate crimes specified in L.D. 231/01 are given below.

Involuntary manslaughter (Art. 589 of the Criminal Code)

Anyone who causes by negligence the death of a person is punishable with imprisonment from six months to five years.

If the act is committed as the result of a violation of road traffic laws or regulations for the prevention of accidents in the workplace, the penalty is imprisonment from one to five years. In the case of multiple deaths, or the death of one or more persons and injuries to one or more persons, the penalty applicable for the most serious violation, multiplied by three, is applied, but the resulting penalty may not exceed twelve years.

Negligent personal injury and bodily harm (Art. 590 of the Italian Criminal Code)

Anyone who causes by negligence the injury of another person is punished with imprisonment for up to three months or a fine of up to 309 euros. If the injury is serious, the penalty is imprisonment from one to six months or a fine from 123 euros to 619 euros. If the harm is grievous, the penalty is imprisonment from three months to two years or a fine from 309 euros to 1,239 euros.

The unique nature of this sphere of offences has to do with the fact that it revolves around the development of measures for risk reduction. Unlike voluntary crimes, which are usually the result of decisions, the crimes in this section are unintentional, committed, as a rule, during the course of production activities. Taking this into account, this "Special Section" evinces a structure which is, at least in part, different from the one adopted to punish the previous forms of risk. The difference is imposed by the fact that the area in question is largely self-regulated, meaning it is distinguished by the presence of a dense web of regulatory requirements covering everything from mechanisms for identifying company roles for safety assurance to the contents of precautionary prevention measures. The "special nature" – both regulatory and criminal – of the "context" therefore make it necessary to construct an autonomously "structured" prevention system.

With regard to the *objective criteria for liability* on the part of the corporate entity, we must turn to Art. 5 of L.D. 231/01, which states that a corporate entity can be held liable for predicate crimes only when these are committed (whether by parties in senior positions or not) in the company's interest and to its advantage. The attribution of this criterion to involuntary crimes, established by means of *ex post* evaluation, hinges upon so-called economy in expenditure on the part of the entity: the advantage lies in having not spent the financial resources that would have been required in order to bring company activities into compliance, both in terms of not having appointed warrantors and of not having adopted or adapted precautionary measures, making it possible for the company to economize not only in financial terms, but in terms of time and activity as well.

With regard to the *subjective criteria for liability,* the adoption of an Organization, Management and Control Model plays a decisive role in exempting the entity from liability, mainly for the reason that, in the case of crimes committed by a senior party, it would not even be necessary, from a doctrinal standpoint, to require proof of fraudulent evasion because it would be sufficient – for the purposes of exempting the entity from liability – to demonstrate that it had adopted the Model, demonstrate its suitability as a preventive instrument and, lastly, demonstrate that the offence was not the result of poor control or monitoring.

With regard to the crimes that can give rise to administrative liability on the part of the company, L.D. 81 of 9 April 2008, containing the Consolidated Law on Workplace Health and Safety, specifies, in Art. 30 (Organizational and Management Models) that an organizational and management model capable of exempting the company of administrative liability, adopted and effectively implemented, must guarantee the existence of a company system to fulfil all legal obligations laid down in relevant applicable regulations, providing for:

a) compliance with technical and structural standards under the law with regard to equipment, systems, work sites and chemical, physical and biological agents;
b) risk assessment activities and the consequent implementation of prevention and protection measures;
c) activities of an organizational nature, i.e. emergencies, first aid, contract management, periodic safety meetings, consultations with workers' representatives in matters of safety;
d) health monitoring activities;
e) activities to keep workers informed and provide them with educational training;
f) monitoring activities related to ensuring workers' compliance with safety-related procedures and job instructions;
g) acquiring the documentation and certifications required by law;
h) periodic checks to ensure implementation and effectiveness of the procedures adopted.

Pursuant to the aforesaid L.D. 81/2008, such an Organizational and Management model must:

- also include systems for recording when the aforesaid activities are carried out;

- include, in any event and as required by the nature and size of the organization and the type of activities carried out, a description of functions that will ensure the technical skills and the powers necessary for risk checking, assessment, management and control, as well as a disciplinary system designed to punish any non-compliance with the measures laid down in the model;

- Must also include a system designed to monitor the implementation of the model itself. This system must take into account changes which could affect the suitability of measures included in the model over time. The organisational model must be reviewed and, if necessary, amended, in the event that significant violations of the regulations governing accident prevention and hygiene in the workplace are discovered or, otherwise, in the event of changes within the organization and its activities as a result of scientific and technological advances.

The same Art. 30 states that:

- upon their initial adoption, company organizational models drawn up in accordance with the UNI-INAIL guidelines, established on 28 September 2001, for a workplace health and safety system or in accordance with the British Standard OHSAS 18001:2007, shall be presumed to be in compliance with the requirements of the two previous Paragraphs, in their corresponding parts (Paragraph 5);

- the Standing Advisory Committee for Health and Safety in the Workplace has developed simplified procedures for adopting and effectively implementing safety organization and management models within the contexts of small and medium-sized businesses. These procedures were formally adopted by Decree of the Ministry of Labour, Health and Social Policies (Paragraph 5-bis).

8.2 RAI and the Workplace Health and Safety Management System

In 2004, RAI began the BS OHSAS 18001:2007 workplace health and safety standards certification process; this process is now approaching completion, as the company extends the scope of its certification to cover all of its company sites and activities.

In order to ensure that the fulfilment of the applicable workplace health and safety requirements is managed in a coordinated and integrated fashion, and that the responsibility for the fulfilment of said requirements is designated to specific company departments, the company has created the *"Regulations Governing Safety and Health and Environmental Protection"*:

- improving workers' level of protection;

- the rationalization of the organization of activities related to safety at work, taking into account company structure;

- identifying a single party to represent the figure of the Employer;

- the clear distribution of tasks and responsibilities, both through the contents of the Regulations document itself, once issued, and through the assignment of responsibilities;

- developing the roles of Designated Directors / Designated Managers in order to ensure their suitable participation in information and decision-making processes in their local offices.

Within the "*Regulations Governing Safety and Health and Environmental Protection*", RAI defined the following company figures:

- *Representative of the Directors (RD) for the Workplace Health and Safety Management System:* a Representative of the Directors for the Workplace Health and Safety Management System has been identified for every company office. The responsibilities associated with this role include the task of defining, in concert with the Designated Directors for matters pertaining to health and safety, the "Health and Safety Improvement Plan".

The figures identified to fill the role of Representative of the Directors are:

- in the General Administrative Offices in Rome and Turin, the General Facilities Manager;
- in TV Production Centres, the Head of each Production Centre;
- in the Radio Production Centre, the Director of Radio;
- in Regional offices, the Local Office Directors.

The Representative of the Directors is responsible for the proper management, implementation and maintenance over time of activities associated with the BS OHSAS 18001 Management System, as well as:

- coordinating the safety management system;
- making available, in concert with the Designated Directors for matters pertaining to health and safety, the resources for implementing, maintaining and improving the safety management system;
- defining Policy, objectives and the Improvement Plan, in concert with the Designated Directors for matters pertaining to health and safety.

When carrying out his duties, the Representative of the Directors relies upon Local Heads of the Workplace Health and Safety System, as well as upon a Central Head of said System, to achieve health- and safety-related objectives.

- *Head of the Workplace Health and Safety Management System (Translator's note: known in Italian by the acronym "RSGS"):* this figure is responsible for coordinating activities having to do with the workplace health and safety management system on a national level; he is responsible for appointing, in concert with the Representative of the Directors, the Local Heads of the Workplace Health and Safety Management System.
- *Local Head of the Workplace Health and Safety Management System (Translator's note: known in Italian by the acronym of "RSGSL"):* this figure provides support for the Representative of the Directors by performing the following tasks:
    - checking for compliance with operational procedures by means of internal audits;

- checking that safety policy is being implemented in the departments for which he is responsible, ensuring said policy has been disseminated and is readily available;

- checking that the one-year educational training plan is being implemented;

- overseeing the issuing and distribution of approved documents;

- updating documents pertaining to the health and safety management system;

- periodically reporting to his own supervisor on the operation of the health and safety management system;

- contributing to improving safety standards and to improving risk prevention and reduction;

- monitoring the implementation of the safety improvement programme and the operation of the management system by means of internal audits.

The company prevention system is composed of all of the roles whose associated, delegated responsibilities and competencies are related to prevention and workers' safety.

In addition to the figures listed above, the principal human components of the company's prevention and management system are identified in the following company figures:

- the *Employer*: the figure described in Art. 2, Letter b) of L.D. 81/08 who, in the case of the RAI, corresponds to the figure of the Director General;

- the *Designated Directors:* the Employer has, through appointments, delegated tasks and their related responsibilities, with the exception of those which cannot be delegated, to company personnel. In particular, as is also specified in the "*Regulations Governing Safety and Health and Environmental Protection*", "*without prejudice to the obligations placed upon all Managers under law, the Directors ensure, within the sphere of their designated competences and within the limits of their powers, compliance with regulations governing workers' health and safety. They shall work together with the Administrative Supervisor of Prevention and Protection Services to assess risks related to safety, hygiene and health of workers, in accordance with regulations in force, to choose work equipment, substances or products to be used, and to determine the set-up of work sites. They also issue, as needed, specific instructions or orders, and they have the power to halt work activities in the event that the situation could pose a serious and imminent danger to personal health and safety."*

- The Regulations provide specific tasks for the Directors in the context of company organization and in relation to the workers under their direction and the spheres of activity in which they operate.

- *the Head of Prevention and Protection Services (Translator's note: known in Italian by the acronym "RSPP"):* a person appointed by the Employer to coordinate operations in the sphere of risk Prevention and Protection Services; this person possesses the capabilities and professional requirements listed under Art. 32 (Art. 2, Letter f) of L.D. 81/08). The RAI Prevention and Protection Service is arranged as follows: the Central Office is located in the Human Resources and Organization Department and has local sections located in the General Administrative Offices in Rome and Turin, at the TV and Radio Production Centres and in each Regional Office.

  Every local section is required to have a local Administrative Supervisor of Prevention and Protection Services (*Translator's note: known in Italian by the acronym "CSPP"*) and, in some cases, one or more local Prevention and Protection Service personnel.

  The Head of Prevention and Protection Services is responsible for coordinating the operations of the company's various local Prevention and Protection Service sections; in addition, he is also expected to provide local Administrative Supervisors of Prevention and Protection Services with guidelines and methods for managing various aspects of workplace health and safety, which are expected to be applied promptly.

- the *Managers:* persons who, for reasons of their professional competencies and the powers allotted to them, both in terms of company hierarchy and operations, which are suitable for the nature of the tasks they have been awarded, execute Employer directives, organizing and monitoring work activities" (Art. 2, Letter d) of L.D. 81/08). In its "*Regulations Governing Safety and Health and Environmental Protection*" (as updated on 1 April 2013), Art. 4 (*Managers' Tasks*), RAI lists the tasks assigned to Managers under regulations, based upon their competencies and their aforesaid powers. Moreover, as described in Art. 2 of said Regulations, Managers must, "*comply with and ensure compliance with safety procedures, propose specific solutions, organize work activities and report any risks or problems, properly managing personnel through the use of the suitability assessments prepared for each employee such as, for instance, by preventing pregnant women from carrying out dangerous, tiring or unhealthy tasks."*

- the *Supervisors:* persons who, for reasons of their professional competencies and the powers allotted to them, both in terms of company hierarchy and operations, which are suitable for the nature of the tasks they have been awarded, supervise work activities and ensure that instructions received are implemented, checking that they are carried out properly by workers and exercising their own operational powers of initiative (Art. 2, Letter e) of L.D. 81/08). Art. 5 of the "*Regulations Governing Safety and Health and Environmental Protection*" lists the procedures for identifying said figures and the tasks which they should, under the Regulations, be assigned, based upon their competencies and their aforesaid powers.

- the *Company Physician*: a physician in possession of one of the educational and professional titles or requirements specified in L.D. 81/08, who collaborates with the Employer for the purpose of risk assessment and is appointed by the Employer to carry out health monitoring and all other tasks specified in L.D. 81/08. As described in Art. 3 of the aforementioned Regulation, the RAI has established a Company Health Service, organized through a central medical facility located in the Human Resources and Organization Department and separate offices throughout Italy, where outpatient services and occupational healthcare are provided. In the context of this organization, the Director General (the Employer), or his proxy, appoint a Central Company Physician (Head of Company Healthcare Services) who, having been granted powers of delegation by the Employer, in turn appoints the Local Company Physicians, whose activities in the sphere of healthcare monitoring he coordinates and harmonizes.

- *the Workers' Representative in Matters of Safety (Translator's note: known in Italian by the acronym "RLS"):* persons elected by union representatives to represent workers specifically in matters relating to the health and safety of workers at work (Art. 2, Letter i) of L.D. 81/08);

- *First Response Team Personnel (Translator's note: known in Italian by the acronym "SPI")*: on behalf of the Director General, in accordance with Art. 43 of L.D. 81/08, the following figures

  - for the General Administrative Offices in Rome and Turin, the Director of Acquisitions and Services or his proxy
  - for TV Production Centres, the Director of TV Production or his proxy;
  - for the Radio Production Centre, the Director of Radio of his proxy;
  - for each Regional Office; the Director of Coordination between Regional Offices or his proxy;

  are responsible for appointing one or more workers who are given the task of implementing the necessary measures for handling first aid, fire prevention, fire-fighting, worker evacuation and measures to be taken in the case of serious and imminent danger. These workers must be adequately trained and their appointments made official in writing and then communicated to all interested personnel and to the Head of Prevention and Protection Services.

- *Worker:* any person who, regardless of his type of contract, is employed within the Employer's organization, with or without remuneration, including trainees or apprentices (Art. 2, Letter a) of L.D. 81/08).

RAI has, moreover, established the *Committee for the Coordination of Safety and Health Policies;* the Committee assists and advises the Director General and all of the Designated Directors and Managers on all issues related to safety and hygiene at work.

In particular, the Committee:

- develops Company policy lines in matters of safety, health and hygiene in the work environment and workers' quality of life;

- establishes objectives which Departments must achieve in order to safeguard the safety and health of Workers and the public;

- evaluates investment requests, proposed by the Director of Finance and Planning, based on reports received from the various Departments, in accordance with Art. 15 of the Regulation in question and, where necessary, determines the timeframe and manner of their actualization; the Committee also arranges for a budget for these proposals, which is made available once the Director of Finance and Planning has approved the Committee's budget request;

- receives communications and reports from the Designated Directors and suggests or determines measures to be adopted.

The Director General chairs the Committee, which is composed of the following company figures: the Head of Prevention and Protection Services, the Central Company Physician, the Director of Coordination between Regional Offices, the Director of Acquisitions and Services, the Director of TV Production, the Director of Radio, The Director of Human Resources and Organization, the Director of Finance and Planning, the Director of Legal and Corporate Affairs, the Head of Safety Management Systems, the Head of the Environmental Management System.

The Committee is required to meet at least once a year; meetings shall be called by the Director General, who is the Chair.

The Company's current "Organizational Structure – Mission and Responsibilities" lists a number of "safety"-related matters under the responsibilities assigned to the Human Resources and Personnel Organization, Coordination and Policies Department; these include the drafting of Group guidelines for health and safety management and fire prevention, the coordination of relations with inspection bodies, the establishment of training requirements, monitoring, and the rationalization of relevant financial resources.

In addition to the information flows required during Committee meetings for the coordination of safety and health policies, company offices who have already been granted BS OHSAS 18001 certification are required to conduct a Management Review once a year; the local Representative of the Directors, Company Physician, the Administrative Supervisor of Prevention and Protection Services and the Head of the Workplace Health and Safety Management System are all required to participate in these Reviews.

During the Review, the following aspects of the Workplace Health and Safety Management System are examined and assessed:

- the results of audits and of evaluations of conformity with the laws in force and any other applicable requirements the company has agreed to fulfil;

- Non-conformities and Corrective/Preventive Actions;

- changes which have taken place in the organization;

- new legal requirements or other external obligations;

- the state of implementation of procedures and other system documents;

- the results of investigations into incidents or accidents which have occurred;

- the evaluation of the suitability of and, if necessary, the modification of the risk-assessment system;

- the management of emergency situations;

- the state of progress towards objectives in the Plan for the improvement of safety, and the identification of new objectives for improvement;

- maintaining the targets already reached.

8.3 Management System Documentation

The principal documents which comprise the Workplace Health and Safety Management System are:

- the Workplace Health and Safety Policy

- the "*Regulations Governing Safety and Health and Environmental Protection*";

- General Document no. 01 "*Risk Assessment Document, Art. 28 of L.D. 81/08 – General Document on matters of Safety in the Workplace",* whose purpose is to identify and assess risks associated with the job activities carried out by RAI; this document is applicable to all company offices, as are its Annexes (Risk Assessment Methods, Data Sheets for Task-Associated Risks, etc.;

- Local General Documents (*Translator's note: in Italian, "DGL")* regarding local offices, containing descriptions of the operational and organizational structures of the specific local company offices;

- Local risk-assessment document (meaning a document intended to assess risk levels and define consequent relevant prevention, protection and safety measures for each local office); Final risk-assessment document focusing on specific Departments/Facilities/Areas (these contain specific risk analyses pertinent to the different Departments/Facilities/Areas);

- Evacuation plans and emergency plans for local offices;

- Improvement plans;

- procedures/instructions related to workplace health and safety (Safety Management Procedures and Safety Operational Procedures), accompanied by forms;

- The 2012 Safety Information Manual (*Manuale informativo per la Sicurezza_2012*).

The Risk Assessment Document (*Translator's note: in Italian, "Documento di Valutazione dei rischi", or, "DVR*"), (Art. 28, Paragraph 2, L.D. 81/08 and subsequent additions and amendments), is an integral part of this Organizational, Management and Control Model pursuant to L.D. 231/01.

The Risk Assessment Document drawn up by the RAI is composed of two parts:

- a *General Document* (*Translator's note: in Italian, "Documento Generale", or, "DG"):* General Document no. 01, signed by the Employer and prepared with the support of the company Officers, in collaboration with the Head of Prevention and Protection Services and the Central Company Physician, contains all the information of a general nature, applicable to all the Company offices/Production centres; (*DG no. 01*);

- *Local Safety Documents* ("Local General Documents*")* deal with the activities of local Offices and associated pertinent issues. They are drawn up according to the model which is attached as an annex to General Document no. 01, and they are **prepared using the information made available by the Designated Directors and Deputy Appointees,** in collaboration with the Administrative Supervisor of Prevention and Protection Services and the Local Company Physician. As stated above, Rai has also prepared the "Risk Assessment Methods" documents, included as an annex to the aforesaid General Document no. 01, to serve as guidelines governing procedures for **performing assessments of specific risks** (for instance, Fire Risks, Risks associated with work at a height, Risks associated with physical workload, etc.).

In addition to the above-listed documents, Safety Management Manuals are also available for those sites which have already been granted certification in accordance with BS OHSAS 18001 standards; These manuals lay down criteria for managing workers' health and safety, providing specific management procedures, forms to be used and operational procedures.

The "Document Management System" procedure, which is part of General Document no. 01, is applicable in all certified sites; said procedure lays down responsibilities with regard to the management of documents, which are assigned as follows:

- the Prevention and Protection System issues documents in collaboration with the Company Physician and, where necessary, with consultants; it updates the documents it has issued and handles their distribution and filing;

- the Managing Officer, through the proxy of the Managers and the Supervisors, provides support for the Prevention and Protection System while documents are being issued;

- the Employer or Designated Director for Safety and Health and Environmental Protection approves the parts of the documents which have been prepared that fall within his sphere of competence.

8.4 Identifying sensitive processes and company departments at risk of committing crimes associated with violations of established regulations for the protection of health and security in the workplace

An analysis of RAI's company processes, carried out during the course of the Project[22], has made it possible to identify the activities during which the types of crimes listed under Art. 25-septies of L.D. 231/2001 could hypothetically occur:

1. **Planning:** activities having to do with planning and organizing the roles and activities associated with the protection of health and safety in the workplace, which aim to:

   - set objectives consistent with company policy;

   - establish what processes are necessary in order to reach those objectives;

[22] For more on this topic, see section 3.1 of the General Section.

- establish and assign resources.

2. **Implementation and Operation:** activities in the sphere of implementation and operation aim to establish:

   - organizational structures and responsibilities;
   - educational training, consultation and communication procedures;
   - procedures relating to the document management system and to document and data control;
   - procedures for operational control;
   - management of emergency situations.

3. **Control and corrective actions:** activities in the sphere of control and corrective actions aim to establish:

   - measures for monitoring activities;
   - procedures for recording and monitoring accidents, incidents, non-conformities, and corrective and preventive actions;
   - procedures for managing record-keeping;
   - procedures for carrying out periodic audits.

4. **Management Review:** periodic Management Reviews aim to assess whether the health and safety management system is complete and whether it is adequate for implementing company policies and achieving company goals.

8.5 Rules of conduct and principles governing the implementation of decision-making processes

8.5.1 Rules of conduct

Pursuant to this Special Section, it is expressly forbidden for Company Bodies and employees (directly) and external contractors (to an extent limited by the obligations provided for in the specific procedures and codes of conduct and the specific clauses inserted into their contracts) to:

- engage in, collaborate in, or give rise to the commission of acts that – considered individually or collectively – directly or indirectly involve the types of crimes referred to above (Art. 25-septies of L.D. 231/2001);
- violate company principles and procedures set forth in this Special Section.

Accident prevention and the protection of safety in the workplace are obligations of fundamental importance for the protection of the company's human resources and of third parties.

In this context, RAI is also committed to preventing and suppressing conduct and practices which could result in the humiliation of an employee in his professional capacities and expectations, leads to his marginalization in the workplace, or discredit or damage his reputation in the workplace.

In particular, the essential principles and criteria upon the basis of which decisions should be made in matters relating to health and safety are:

- avoiding risks;
- evaluating the risks which cannot be avoided;
- combating the risks at their source;
- adapting the work to the individual, especially as regards the set-up of work sites, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing the effect of these on health;
- adapting to technical progress;
- replacing the dangerous with the non-dangerous or the less dangerous;
- developing a coherent overall prevention policy which covers technology, organization of work, working conditions, social relationships and the influence of factors related to the working environment;
- giving collective protective measures priority over individual protective measures;
- giving appropriate instructions to the workers.

8.5.2 Principles governing the implementation of decision-making processes

That which follows is a list of standards of control determined for each individual Sensitive Process identified.

1. Planning

For planning, the provisions set forth in the regulations are as follows:

Policies and objectives: the existence of an official Policy document which establishes general health and safety targets and objectives which the company wishes to achieve:

- formally approved by the company's Senior Management;

- containing a commitment to respect the health and safety laws in force and any other applicable requirements it has agreed to fulfil;

- containing a commitment to prevent workplace accidents and occupational diseases and to improve the management and operations of the health and safety system;

- is properly communicated to all employees and other interested parties[23];

- is periodically reviewed to ensure that the objectives set out within it are appropriate and suitable with respect to the risks that exist within the organisation (e.g. to bring policies into line with new regulations and laws).

One-year and long-term plans: there is a company workplace health and safety Investment Plan, approved by the Board of Directors, which:

- clearly identifies timetables, responsibilities and availability of the resources (financial, human, logistical, equipment) needed to implement this plan;

- has been sufficiently communicated within the organisation so as to ensure that staff have an adequate understanding of it;

- defines responsibilities in terms of approval, implementation and the reporting of expenses in matters of health, safety and the environment.

Legal requirements and other requirements by which the company is bound: a company procedure exists which lays down criteria and procedures to be adopted for:

- updating with regard to relevant legislation and other applicable requirements in the sphere of health and safety;

- identifying the areas where said requirements apply (company departments) and procedures for disseminating them.

2. Implementation and Operation

The regulations governing these activities provide for:

Regulation and documentation of the system: the existence of company procedures governing roles and responsibilities in the management of documents relevant to the health and safety system (e.g. Manuals, Procedures, Job Instructions), consistent with company Policy and guidelines. In particular, the aforesaid procedures also contain procedures for the management, filing and storage of the documents and records produced (e.g. filing procedures / document registration procedures to ensure a sufficient level of traceability / verifiability).

[23] Interested parties are those individuals or groups who are interested, involved in, or influenced by a company's workplace health and safety activities.

Organization and Responsibilities – Representative of the Directors (RD): organizational regulations exist for identifying the figure appointed by Senior Management and given roles and authority for:

- ensuring that the health and safety system is established, implemented and maintained in conformity with regulatory requirements;

- ensuring that reports on the workplace health and safety management system are presented to Senior Management for review and used as a basis for improving the workplace health and safety system.

Organization and Responsibilities – the Employer: Organizational regulations exist for identifying the figure of the employer; these take into account the Company's organizational structure and the sector in which it operates.

Organization and Responsibilities – the Head of Prevention and Protection Services / Protection and Prevention Services Personnel / Company Physician / Emergency Management Personnel: organizational regulations exist governing the appointment of the Head of Prevention and Protection Services (*Translator's note: known in Italian by the acronym "RSPP"*), the Prevention and Protection Services Personnel (*Translator's note: known in Italian by the acronym "ASPP")*, the Company Physician and the Emergency Management Personnel. These regulations:

- establish these roles' specific requirements, consistent with the applicable law in force;

- provide for the traceability of the evaluations performed to assess whether the appointees fulfil the requirements of relevant applicable regulations;

- require that a personal assessment be performed in order to gain an understanding of appointees' capabilities and availability in terms of time, in relation to their ability to fulfil these specific roles;

- require a formal appointment and assignment of tasks;

- provide for the traceability of the official acceptance of the appointed tasks.

Organization and Responsibilities – Safety on temporary or mobile work sites: the existence of procedures which:

- govern the procedures for identifying the Principal (*Translator's note: under L.D. 81/08, the Principal is identified in the manager of the company business unit that commissioned the work*) and, in cases where L.D. 81/2008 dictates, for identifying the Project Manager;

- govern the procedures for identifying and assigning the role of Health and Security Coordinator, for during both design and actualisation phases of the job in question, taking into account the professional characteristics required by law;

- provide for the traceability of the assessment of the requirements and of the official acceptance of the role of Coordinator on the part of the appointee.

System for delegating operations to appointees: the company has a system for delegating operations which is structured according to the following principles of jurisprudential reasoning:

- effectiveness: the appointee has the power to both make decisions and allocate funds;
- the appointee is technically and professionally suitable and has appropriate experience;
- oversight of the appointee's activities shall be carried out with neither complacency nor interference;
- certainty, specificity and awareness.

The official system for the delegation of operations requires that there be a set of company regulations which:

i) require that the appointee's sphere of operations be clearly identified;
ii) ensure verification of the traceability and duration of appointments and the traceability of the acceptance of appointments on the part of appointees/sub-appointees;
iii) provide explicit indication as to whether or not the appointee is permitted to further delegate operations related to health and safety to sub-appointees;
iv) ensure the traceability of the criteria for determining whether the operations delegated are consistent with the decision-making powers and power to allocate funds accorded to the appointee;
v) establish procedures for checking whether the appointee continues to retain the technical and professional requisites necessary and establish a plan for the appointee's periodic updating and technical-professional development, as well as a system for periodically evaluating his or her technical and professional abilities;
vi) establish a requirement for an official continuous/periodic information flow between appointer and appointee;
vii) lay down the procedural guidelines for an official oversight process.

Risk identification and assessment – Roles and responsibilities: a company procedure exists which establishes roles, responsibilities and procedures for performing, approving and updating a general and documented assessment of all the risks that exist in the company sphere. In particular, this procedure:

- establishes roles, powers, required skills and necessary educational training for personnel responsible for identifying dangers and identifying and controlling risks;
- establishes responsibilities for the verification, approval and updating of the contents of the Risk Assessment Document (*Translator's note: in Italian, Documento di Valutazione dei Rischi [DVR]*);
- establishes procedures and criteria for review, at intervals of planned frequency, of the processes for identifying dangers and assessing risks;
- provides, where necessary, for the traceability of any involvement on the part of the Company Physician in the process of identifying dangers and assessing risks;
- provides for the assessment of different types of sources of risk: ordinary or generic risks, ergonomic risks, specific risks, risks associated with processes and related to organisation, and the identification of homogeneous areas, in terms of danger level, within the company;
- provides for the identification of workers' representative duties;

- provides for the numerical assessment and characterization of the chemical agents, equipment and machinery present;

- provides that the assessment criteria adopted for the different categories of risk are clearly defined in accordance with applicable regulations and provisions.

Presence of a Risk Assessment Document (*Translator's note: in Italian, "Documento di Valutazione dei Rischi" [DVR]*): a Risk Assessment Document, drawn up according to the established provisions, containing, at least, the following information:

- the assessment procedure, with details regarding the criteria adopted;

- a list identifying prevention and protection measures and personal protection equipment, resulting from the assessment;

- a plan listing measures deemed suitable in order to ensure improvement of safety levels over time.

Operational control – delegation of tasks and responsibilities: a company procedure exists for identifying criteria and procedures for the delegation of responsibilities on the part of the Employer. In particular, this procedure:

- establishes the criteria to be applied when delegating responsibilities to employees, on the bases of their abilities and conditions in terms of their own personal health and safety, and on the basis of the results obtained from medical tests performed;

- establishes organisational measures for the involvement of the Company Physician and Head of Prevention and Protection Services in defining roles and responsibilities of employees;

- requires the traceability of assessment activities performed for this purpose (e.g. establishing targeted check lists for critical tasks and/or processes which have an impact on health and safety).

Operational control – Personal Protection Equipment (PPE): a company procedure exists for the management, distribution and maintenance in good working condition of Personal Protection Equipment. In particular, this procedure:

- establishes procedures for verifying that Personal Protection Equipment meets the necessary requirements of resistance, suitability and maintenance in good working condition, as well as of effectiveness;

- requires the traceability of activities involving delivery and operational tests of PPE devices (e.g. targeted checklists such as lists of individual PPE devices to be delivered, to be shared with the Head of Prevention and Protection Services).

Managing emergency situations: a company procedure exists for managing emergency situations, the aim of which is to mitigate the effects of an emergency on the population and on the external environment. In particular, this procedure provides for:

- identifying of measures for controlling at-risk situations in case of an emergency;

- providing instructions for the evacuation of work places or dangerous areas where a serious or imminent danger exists;

- establishing procedures for workers who are designated to implement fire-prevention measures, the evacuation of workers in cases of serious and imminent danger, as well as first aid, to follow;

- identifying measures to prevent risks to the health of the population or deterioration of the external environment;

- providing instructions regarding procedures and scheduling/frequency of emergency drills.

Fire risk management: a company procedure exists which lays down the necessary measures to be taken to prevent fires. In particular, this procedure contains:

- roles and responsibilities for the activities to be carried out for the purpose of application for, and renewal of, the Fire Prevention Certificate, including monitoring activities and fulfilling the requirements of the Fire Department.;

- procedures for informing workers of the rules of conduct to be adopted in case of a fire;

- procedures for maintaining and checking fire-fighting equipment;

- procedures for maintaining a record of fires and keeping it up to date;

Periodic meetings: a company calendar exists which provides for periodic meetings of all the parties responsible for reviewing the situation regarding the management of health and safety issues; the results of said meetings are adequately communicated within the organization, in accordance with the law in force.

Consultation and communication: a company procedure exists governing the communication of health- and safety-related information, so as to ensure that employees at every level of the company are in possession of knowledge useful for identifying, reducing and managing risks in the workplace. In particular, this procedure governs:

- the employer's periodic provision of information to employees;

- the provision of information to the Company Physician, when necessary, regarding processes and risks related to job activities.

Information and educational training: a company procedure exists to regulate the educational training process. In particular, this procedure:

- establishes procedures for providing each worker with educational training regarding: job-related risks, prevention and protection measures, specific risks and safety regulations, the characteristics of hazardous substances (material safety data sheets and regulations governing good operational practices), emergency procedures, the names and responsibilities of the Head of Prevention and Protection Services and the Company Physician and, where applicable, instructions on the use of work equipment and personal protection equipment;

- defines criteria for providing educational training to each worker (e.g. upon recruitment, in the event of a transfer or change of job, in the event of the introduction of new work equipment, new technologies and regarding hazardous substances);

- with regard to the figures involved in the management of matters associated with health and safety, it establishes the definition of the location, content and methods of educational training, on the basis of the role taken on by an employee within the organizational structure (Workers' Representatives in Matters of Safety, Prevention and Protection Services Personnel, Emergency Response and First-aid Teams;

- establishes timetables for providing educational training to workers on the basis of established procedures and criteria (Training Plans may be one-year or long-term).

Practical training: a company procedure exists to regulate practical training activities. In particular, this set of regulations lays down:

- roles and responsibilities in the management of practical training activities;

- timetables for practical training activities, in the interests of prevention and protection;

- context, content and procedures for the practical training of subjects whose work involves the use of equipment, machinery, systems, devices and work procedures.

Relationships with suppliers and contractors – information and coordination: a company procedure exists which establishes:

- procedures for informing external companies of all of the regulations and provisions (which a company which has been awarded a contract must be aware of) and make every effort to ensure its employees adhere to, as well as procedures for establishing the content of the information thus provided;

- roles, responsibilities and procedures for drawing up the Risk Assessment Document; these should indicate the measures to be adopted to eliminate risks created by interference between workers from different companies who are involved working on the same job.

Relationships with suppliers and contractors – qualification: a company procedure exists which establishes procedures for the qualification of suppliers. In particular, this procedure takes into account:

- the results of the evaluation of contractors' technical and professional requirements, as per Article 26, Paragraph 1 and Art. 90, Paragraph 9, of L.D. 81/08;

- the extent to which that which is actually supplied corresponds with, firstly, the specifications at the time of purchase and, secondly, the best possible technology available in terms of health and safety protection.

Relationships with suppliers and contractors – contract clauses: standard contract clauses exist regarding the safety-related costs in staff-leasing contracts, service contracts and subcontracting agreements.

The management of assets: a set of company regulations governs maintenance/inspection activities carried out on company assets, so as to guarantee that the integrity and suitability of said assets is always ensured. These establish:

- roles, responsibilities and procedures for asset management;
- periodic assessments of asset suitability, integrity and compliance with applicable regulatory requirements;
- planning and implementing inspection and maintenance activities on the part of qualified and suitable personnel and checking that said activities have been carried out correctly.

3. Checks and corrective actions

The regulation of work activities provides for:

Measuring and monitoring performance – accidents: A procedure exists which lays out:

- internal roles, responsibilities and procedures for communicating, discovering and investigating accidents;
- internal roles, responsibilities and procedures for communicating, tracing and investigating accidents which have occurred as well as “accidents avoided”;
- procedures by which operational managers can inform the employer and the head of prevention and protection services of accidents/incidents which have occurred;
- roles, responsibilities and procedures for monitoring accidents which have occurred (taking into account any pending litigation/legal disputes regarding accidents which have occurred in the workplace) in order to identify the areas at the highest risk of accidents.

Measuring and monitoring performance – other information (not associated with accidents or incidents): a procedure exists to establish roles, responsibilities and procedures for recording and monitoring (including by means of indicators):

- health monitoring data;

- data on system safety (lifting equipment and lifts, electrical systems, pressurized equipment, underground tanks, laser equipment, machinery);

- data on the hazardous substances and products used in the company (safety data sheets);

- other data not associated with accidents and incidents (taking into account any legal disputes/litigation which has arisen) in order to identify the areas at the highest risk of accidents.

Measuring and monitoring performance – lawsuits/legal disputes: a procedure exists which establishes the roles, responsibilities and procedures for monitoring pending legal disputes/litigation related to accidents which have occurred in the workplace and to identify the areas at the highest risk of accidents.

Audits: a procedure exists which governs roles, responsibilities and operational procedures associated with activities having to do with audits and periodic checks of the efficiency and effectiveness of the health and safety management system. In particular, this procedure establishes:

- a time schedule for the planning of said activities (an official Audit Plan);

- the necessary responsibilities of the personnel involved in audit activities, in order to ensure the impartiality of auditors with respect to the activities they are auditing;

- procedures for keeping records of audits;

- procedures for identifying and applying corrective actions if non-conformities with the requirements of the workplace health and safety management system or with other applicable regulations and provisions occur;

- procedures for verifying the implementation and effectiveness of the aforesaid corrective actions;

- procedures for reporting the results of the audits to the company's Senior Management.

Reporting: a set of company regulations governs the roles, responsibilities and operational procedures associated with reporting to the Supervisory Board and Senior Management. This report must ensure that data associated with the safety management system activities is traceable and readily available; in particular the following information must be transmitted at periodic intervals:

- divergence between the results obtained and planned objectives (including changes in regulations, changes to equipment and systems, processes or company procedures which could make it necessary to update the map and the Model);

- the results of audits (including records of investigations into incidents/accidents, reporting of reviews and any communications/reports received from interested external parties, such as Regulatory Agencies and other third parties).

4. Management Review

With regard to this process, regulations provide for:

Conducting the review process: a procedure exists establishing roles, responsibilities and procedures for conducting the review of the effectiveness and efficiency of the company's workplace health and safety management system on the part of the Senior Management. This procedure calls for the following activities to be performed:

- an analysis of any divergence between results obtained and planned objectives;
- an analysis of the results of the Audits;
- an analysis of the results obtained from monitoring the performance of the health and safety management system (accidents, other data);
- the state of progress of any actions aimed to make improvements, which were put in place as a result of the previous review;
- identifying objectives for improvement, to be implemented before the next review and any necessary modifications that need to be made to elements of the workplace health and safety management system;
- the traceability of all activities performed.

9. SPECIAL SECTION F – Cybercrime and misuses of data

9.1 Relevant types of cybercrime and misuses of data (Art. 24-bis of L.D. 231/2001)

Regulatory references for the relevant types of crimes and a brief description of a number of important aspects of each of the predicate crimes specified in L.D. 231/01 are given below.

Law no. 48 of 18 March 2008: "Ratification and execution of the Council of Europe Convention on Cybercrime, adopted in Budapest on 23 November 2001, and relevant adaptations of national regulations."

The regulations in question are those intended to safeguard ***computer systems*** (meaning any "device or a group of interconnected or related devices, one or more of which, pursuant to a programme, performs automatic processing of data [Art. 1 of the Budapest Convention of 23 November 2001) or ***computer data*** (meaning "any representation of facts, information or concepts in a form suitable for processing in a computer system, including a programme suitable to cause a computer system to function").

It is important to underline the difference between the concept of "computer system" and that of "electronic data transmission system": the former is a group of interconnected or related hardware and software components which make it possible to perform automatic data processing, or, in other words, the device commonly known as a computer, its programmes and the data it requires to function. However, when two or more computer systems are interconnected, an "electronic data transmission system" is created. Such a system is characterized by its ability to exchange data, in other words, to transfer information and process data over distances; the best example of this is the Internet. Basically, the need to apply a "telecommunications" system to the computer sphere gave rise to the electronic data communications system*.

Art. 24-bis was added to the body of L.D. 231/2001 by Art. 7 of Law 48/1008. Said article, "Cybercrimes and misuse of data," lists the following crimes which give rise to administrative liability:

Computer documents (Art. 491-bis of the Italian Criminal Code [hereinafter "Criminal Code])

"If any of the falsifications defined in this chapter regard a public or private computer document, with evidentiary value, the same provisions of this chapter that concern public records or agreements between private parties apply."

The above provision criminalizes falsification offences involving computer documents. The crimes of falsification cited are as follows:

* *Translator's note*: "Electronic data transmission system" is known in Italian as "*sistema telematico*". This is a recently coined compound word born from the marriage of the terms "*telecomunicazione*" (telecommunications) and "*informatica*", a word that broadly refers to computers and their related data, systems, etc., similar to, but not synonymous with, our English term, "Information Technology".

Material falsification committed by a public official in public records (Art. 476, Criminal Code)*:* "A public official who, in the exercise of his duties, composes a false record, in whole or in part, or alters a true record, shall be punished with imprisonment for a term of between one and six years. If the falsification concerns a record or part of a record which has evidentiary value until proven false, the term of imprisonment is from three to ten years".

Material falsification committed by a public official in certificates or administrative authorizations (Art. 477, Criminal Code): "A public official who, in the exercise of his duties, counterfeits or alters certificates or administrative authorizations, or, by counterfeiting or alteration, makes it appear that the conditions required for their validity are fulfilled, shall be punished with imprisonment for a term of between six months and three years".

Material falsification committed by a public official in authentic copies of public records or agreements between private parties and in attestations of the contents of said records or agreements (Art. 478, Criminal Code): "A public official who, supposing a public record or agreement between private parties to be extant, in the exercise of his duties simulates a copy of it and issues the copy in legal form, or issues a copy of a public record or agreement between private parties different from the original, shall be punished with imprisonment for a term of between one and four years. If the falsification concerns a record or agreement or part of a record or agreement which has evidentiary value until proven false, the term of imprisonment is from three to eight years. If the falsification is committed by a public official in an attestation to the contents of records or agreements, public or private, the penalty shall be imprisonment for a term of between one and three years".

Misrepresentation committed by a public official in public records (Art. 479, Criminal Code): "A public official who, when receiving or creating a record during the exercise of his duties, attests falsely that an act has been performed by him or has occurred in his presence, or attests that he has received declarations which have not been made to him, or omits or alters declarations which he has received, or in any way falsely attests to matters of which the record is intended to prove the truth, is liable to the penalties laid down in Article 476".

Misrepresentation committed by a public official in certificates or administrative authorizations (Art. 480, Criminal Code): "A public official who, in the exercise of his duties, falsely attests, in certificates or administrative authorizations, to matters of which the record is intended to prove the truth, shall be punished with imprisonment for a term of between three months and two years".

Misrepresentation in certificates, committed by persons performing an essential public service (Art. 481, Criminal Code): "Whosoever, in the exercise of a healthcare-related or legal profession, or of another essential public service, falsely attests, in a certificate, matters of which the record is intended to prove the truth, shall be punished with imprisonment for a term of up to one year or a fine of between €51.00 and €516.00. These penalties shall apply jointly if the act is committed for gain".

Material falsification committed by a private person (Art. 482, Criminal Code): "If one of the acts envisaged by Articles 476, 477 and 478 is committed by a private person, or by a public official outside the exercise of his duties, the penalties laid down in the respective articles shall apply, reduced by one third".

Misrepresentation committed by a private person in a public record (Art. 483, Criminal Code): "Whosoever falsely attests to a public official, in a public record, matters of which the record is intended to prove the truth, shall be punished with imprisonment for a term of up to two years. If it is a matter of false attestations in a record certifying marital status, the term of imprisonment cannot be less than three months".

Falsification in register entries and notifications (Art. 484, Criminal Code): "Whosoever, being

obliged by law to make register entries which are subject to inspections by the public safety Authority, or to notify said Authority itself about his industrial, commercial or professional operations, writes, or allows to be written, false information, shall be punished with a term of imprisonment of up to six months or a fine of up to €309.00".

Falsification in an agreement between private parties (Art. 485, Criminal Code): "Whoever, for the purpose of procuring an advantage for himself or for others, or to cause detriment to others, composes a false agreement between private parties, in whole or in part, or alters a true private agreement, shall be punished, if he makes use of it or allows another to make use of it, with imprisonment for a term of between six months and three years. Additions falsely made to a true private agreement after it was definitively composed are also deemed to be alterations".

Falsification in a sheet signed in blank. Agreements between private parties (Art. 486, Criminal Code): "Whosoever, for the purpose of procuring an advantage for himself or for others, or to cause detriment to others, and, misusing a sheet signed in blank, of which he has possession for a reason which entails the obligation or the power to complete it, writes on it or arranges to have written on it a private agreement which is productive of legal effects, other than that for which he was obliged or authorized, shall be punished, if he makes use of the sheet or allows another to make use of it, with imprisonment for a term of between six months and three years. A sheet is deemed to be signed in blank if the person who signs it has left blank any space which is intended to be filled"".

Falsification in a sheet signed in blank. Public records (Art. 487, Criminal Code): "A public official who, misusing a sheet signed in blank, of which he has possession for a purpose connected with his office and for a reason which entails the obligation or the power to complete it, writes on it or arranges to have written on it a public record other than that for which he was obliged or authorized, shall be subject to the penalties laid down in Articles 479 and 480".

Other falsifications in a sheet signed in blank. Applicability of the provisions on material falsification (Art. 488, Criminal Code): "For cases of falsification in a sheet signed in blank other than those provided for in the two previous articles, the provisions for material falsification in public records or agreements between private parties shall apply".

Use of a falsified record (Art. 489, Criminal Code): "Whosoever, without being complicit in the falsification, makes use of a falsified record, shall be subject to the penalties laid down in the previous articles, reduced by one third. In the case of falsified agreements between private parties, the person who commits the act is punishable only if he acted for the purpose of procuring an advantage for himself or for others, or to cause detriment to others".

Suppression, destruction and concealment of authentic records and agreements (Art. 490, Criminal Code): "Whosoever wholly or partially destroys, suppresses or conceals an authentic public record or private agreement shall be subject to the penalties laid down respectively in Articles 476, 477, 482 and 485, according to the distinctions contained in them. The provision laid down in the sub-paragraph of the previous article shall apply".

True copies which take the place of missing originals (Art. 492, Criminal Code): "For the purposes of the previous provisions, the designations "public records" and "agreements between private parties" or "private agreements" include the originals and the true copies of these documents, when they lawfully take the place of missing originals".

Falsification committed by public employees charged with a public service (Art. 493, Criminal Code): "The provisions of the previous articles on falsifications committed by public officials apply equally to employees of the Italian State, or of another public body, charged with a public service relating to the records or agreements which they draw up in the exercise of their powers".

Unauthorized access to a computer system or an electronic data transmission system (Art. 615-ter of the Criminal Code)

This crime is committed by whosoever unlawfully accesses a computer or electronic data transmission system protected by security measures or maintains access thereto against the express or tacit wishes of those who have the right to exclude them from such access.

Unauthorised possession or circulation of access codes for computer or electronic data transmission systems (Art. 615-quater of the Italian Criminal Code)

This crime is committed by whosoever, in order to obtain a profit for themselves or cause damage to others, unlawfully obtains, reproduces, circulates, communicates or delivers codes, key words or other means for accessing a computer or electronic data transmission system protected by security measures, or in any case gives indications or instructions for the same purpose.

Distribution of equipment, devices or computer programmes aimed at damaging or disrupting a computer or electronic data transmission system (art. 615-quinquies of the Italian Criminal Code)

This crime is committed by whosoever, in order to unlawfully damage a computer or electronic data transmission system, the information, data or programmes contained therein or pertaining thereto, or in order to facilitate the total or partial disruption or alteration of its functioning, manages to obtain, produce, reproduce, import, circulate, communicate, or make available to others, in any other way, any computer equipment, devices or programmes.

Unlawful interception, prevention or disruption of computer or electronic communications (art. 617-quater of the Italian Criminal Code)

This crime may be committed by whosoever unlawfully intercepts communications involving a computer or electronic data transmission system or between several such systems, or prevents or disrupts such communications.

Except when this represents a more serious offence, the same penalty is applied to anybody who fully or partly discloses the contents of the communications referred to in paragraph 1 to the public through any means of communication.

Installation of devices for intercepting, preventing or disrupting computer or electronic communications (art. 617-quinquies of the Criminal Code.)

This crime is committed by whosoever, other than in the cases where it is permitted by the law, installs devices aimed at intercepting, preventing or disrupting communications on a computer or electronic data transmission system or communications between several such systems.

Damaging computer information, data and programmes (art. 635-bis of the Italian Criminal Code)

Other than when the act represents a more serious crime, this crime consists of the destruction, deterioration, deletion, alteration or suppression of any computer information, data or programmes belonging to others, regardless of who created them.

Damaging of computer information, data and programmes used by the Italian State or by another public entity or, in any case, by an entity which provides a public service (art. 635-ter of the Criminal Code)

This crime may be committed by anyone; other than when the act represents a more serious offence, it consists of the destruction, deterioration, deletion, alteration or suppression of any computer information, data or programmes used by, or pertaining to, the Italian State or any other public entity, or by an entity which provides a public service.

Damaging of computer and electronic data transmission systems (art. 635-quater of the Criminal Code)

Except when the act represents a more serious offence, this crime is committed by anyone who, through any of the acts listed in article 636-bis of the Criminal Code, or through the introduction or transmission of data, information or programmes, destroys, damages, or makes the computer or electronic data transmission systems of others completely or partly unusable, or seriously hampers their functioning.

Damaging of computer and electronic data transmission systems of public interest (art. 635-quinquies of the Criminal Code)

This crime is committed when the act described in art. 635-quater is aimed at destroying, damaging, or making any computer or electronic data transmission system of public interest completely or partly unusable, or seriously hampering the functioning thereof.

Computer fraud by persons providing electronic signature certification services (art. 640-quinquies of the Criminal Code)

This crime is committed by persons providing electronic signature certification services who, in order to obtain an undue profit for themselves or for others, or to cause damage to others, infringes the obligations provided for by the law for the issuance of an official certificate.

9.2 Identifying sensitive processes and company departments at risk of committing cybercrimes and misuses of data

An analysis of RAI's company processes, carried out during the course of the Project[24], has made it possible to identify the activities during which the types of crimes listed under Art. 24-bis of L.D. 231/2001 could hypothetically occur:

1. ***Managing user profiles and the authentication process***
2. ***Managing the process for the creation, handling and storage of electronic documents with evidentiary value***
3. ***Managing and protecting workstations***
4. ***Managing access to and from external systems and sources***
5. ***Managing and protecting the networks***
6. ***Managing outputs of the system and of data storage devices (e.g. USB keys, CDs)***
7. ***Physical security (including security of wiring/cables, network devices, etc.)***
8. ***Publishing and broadcasting activities on the following platforms: a. Digital; b. Satellite; c. Internet; d. Radio***

[24] For more on this topic, see section 3.1 of the General Section.

9.3 Rules of conduct and principles governing the implementation of decision-making processes

9.3.1 Rules of conduct

Pursuant to this Special Section, it is expressly forbidden for Company Bodies and employees (directly) and external contractors (to an extent limited by the obligations provided for in the specific procedures and codes of conduct and the specific clauses inserted into their contracts) to:

- engage in, collaborate in, or give rise to the commission of acts that – considered individually or collectively – directly or indirectly involve the types of crimes referred to above (Art. 24-bis of L.D. 231/2001);

- violate company principles and procedures set forth in this Special Section.

In the interests of remaining in line with international reference standards, by "corporate computer security system" we mean the totality of technical and organisational measures aimed at ensuring the protection of the integrity, availability and confidentiality of automated information and of the resources used for acquiring, storing, processing and communicating this information.

According to this approach, the fundamental objectives of computer security which the Company has set itself are:

- ***Integrity:*** guaranteeing that all company data is, actually and in its entirety – objectively and in no way subject to interpretation – the data originally entered into the system. This goal shall be achieved by adopting appropriate countermeasures to prevent accidental or intentional alterations which could change the original meaning of data or, alternatively, ensure that any said alteration can be detected and that the original data can be restored in its entirety.

- ***Confidentiality***: guaranteeing that a particular set of data is made available for use by the applications and the persons who are authorized to use it;

- ***Availability*****:** guaranteeing that company data can be accessed so as to ensure that company processes continue without disruption and so as to comply with regulations (whether legal or otherwise) which require the storage of historic data or require that specific service levels be maintained.

Consequently, this Special Section provides the following rules of conduct for the parties listed above. The rules forbid:

a) altering electronic documents, public or private, which have evidentiary value;

b) accessing computer or electronic data transmission system, by public or private persons, without authorization;

c) accessing one's own computer or electronic data transmission system for the purpose of altering and/or deleting data and/or information without authorization

d) possessing and using, without authorization, codes, passwords or other means capable of giving access to computer or electronic data transmission systems belonging to competitors, public or private, for the purpose of acquiring confidential information;

e) possessing and using, without authorization, codes, passwords or other means capable of giving access to the one's own computer or electronic data transmission system for the purpose of acquiring confidential information;

f) supplying, and/or producing and/or distributing equipment and/or software for the purpose of damaging a computer or electronic data transmission system belonging to public or private persons, or the information, data or programs contained therein, or encouraging the total or partial disruption or alteration of its operation;

g) fraudulently intercepting, preventing or disrupting communications relating to a computer or electronic data transmission system belonging to public or private persons, for the purpose of acquiring confidential information;

h) installing equipment for intercepting, preventing or disrupting the communications of public or private persons;

i) modifying and/or deleting data, information or programs of public or private persons, or in any way of public utility;

j) damaging another person's computer or electronic transmission information, data or programs;

k) destroying, damaging or rendering unserviceable computer or electronic data transmission systems of public interest;

l) using, taking advantage of, sharing or copying, without authorization, and for any reason and in whatever form, for profit or personal gain, copyright-protected intellectual property of any kind.

The persons listed above must therefore:

1. use information, applications, equipment and devices exclusively for official purposes;

2. not lend or hand over to third parties any computer equipment or device, without prior authorization from the Head of IT Management;

3. promptly inform IT Management and the Manager of their own departments or business units of the theft, damage or loss of said instruments; moreover, if a computer device of any kind is lost or stolen, the interested party or the person who was in possession of it must, within 24 hours of the occurrence, provide the Information Systems Management department with the original report made to Public Law Enforcement;

4. avoid introducing into or keeping on Company premises for whatever reason (in hard copy or electronic format or through the use of Company instruments), any kind of electronic documents and/or material of a confidential nature belonging to third parties, unless acquired with their express consent;

5. avoid transferring and/or transmitting out of the Company files, documents, or any other confidential documentats belonging to the Company itself or to other companies in the Group, except for purposes strictly connected with performing their own duties and, in any event, only with prior authorization from their Managers;

6. avoid leaving their own PCs unattended and/or accessible to others;

7. avoid using the password of other users in the Company, even for accessing protected areas in the name of and on behalf of the other person, without express authorization from the Head of the Information Systems Department;

8. avoid the use of software and/or hardware capable of intercepting, falsifying, altering or suppressing the content of electronic communications and/or computer documents;

9. use the Internet connection only for the purposes and for the time strictly necessary for the performance of the activity which made it necessary to connect;

10. respect the procedures and standards which have been laid down, informing the relevant departments of any irregular use or operation of computer resources;

11. when using Company equipment and devices, use only products officially purchased by the Company itself;

12. refrain from making copies of data and software that are not specifically authorize;

13. refrain from using the available computer equipment and instruments outside the limits of prescribed authorization;

14. observe all other specific rules regarding access to systems and the protection of the Company's data and applications assets;

15. strictly comply with the provisions of Company security policies for the protection and control of the computer systems.

9.3.2 Principles governing the implementation of decision-making processes

That which follows is a list of standards of control established for each individual Sensitive Process identified.

	Provisions for Cyber-security	Organization of security for internal users	Organization of security for external users	Classification and control of assets	Physical and environmental security	Management of communication and operations	Controlling Access	Managing incidents and problems involving cyber-security	Audit	Human Resources and Security	Encryption	Security in the acquisition, development and maintenance of information systems
Managing user profiles and the authentication process												
Managing the process for the creation, handling and storage of electronic documents with evidentiary value												
Managing and protecting workstations												
Managing access												

Managing and protecting the networks	□	□	□	□		□	□	□	□	□	□	□
Managing outputs of the system and of data storage devices (e.g. USB keys,CDs)	□	□		□		□			□	□	□	
Physical security (including security of wiring/cables, network devices, etc.)	□	□	□	□	□			□	□	□		□

Provisions for Cyber-security: the standards call for the existence of a company policy on matters of cyber-security which, among other things, establishes:

a) communication procedures, also to third parties;

b) procedures for reviewing communication procedures, both periodically or following significant changes.

Organization of security for internal users: the standards call for the existence of a set of regulations establishing roles and responsibilities for managing internal company users' access procedures and the obligations of said users when using the computer systems.

Organization of security for external users: the standards call for the existence of a set of regulations establishing roles and responsibilities for managing procedures for accessing computer systems and the obligations of use thereof by users external to the company, as well as in managing relations with third parties in the case of access, management, communication or supply of products/services for data and information processing on the part of the same third parties.

Classification and control of assets: the standards call for the existence of a set of regulations establishing roles and responsibilities for identifying and classifying company assets (including data and information).

Physical and environmental security: the standard calls for the existence of a set of regulations which provides for the adoption of controls aimed at preventing unauthorized access, damage and interference in the premises and to the assets contained therein, by ensuring that the areas and equipment/devices are made and kept secure.

Management of communications and operations: the standards call for the existence of a set of regulations which, through policies and procedures, ensure that the operation of computer systems is carried out in a way that is proper and secure. In particular, this set of regulations must ensure:

a) that computers function in a way that is proper and secure;

b) protection from dangerous software;

c) backup of information and software;

d) that information exchange by means of any type of instrument of communication, including with third parties, is protected;

e) instruments are in place to track activities carried out by applications, and on systems and networks, and the protection of this information against access by unauthorized parties;

f) the review of logs recording the activities of users, exceptions and security-related events;

g) control of any changes to processors and systems;

h) management of portable devices;

Controlling access: the standard calls for the existence of a set of regulations which governs access to information, computer systems, the network, operating systems and applications.

In particular, this set of regulations provides for:

a) individual authentication of users through a user identification code and password or other secure authentication system;

b) checklists of personnel authorized to access the systems and the specific authorizations pertaining to the different users or categories of users;

c) a registration and de-registration procedure for granting and revoking access to all computer systems and services;

d) review of the access rights of users at regular intervals, through a formal process;

e) removal of access rights in case of termination or change of the type of contractual relations on the basis of which such rights were granted;

f) access to network services only by those users who have been specifically authorized, and user restrictions on network connection;

g) segmentation of the network, so as to ensure that the connections and flows of information do not violate the regulations on controlling access to corporate applications;

h) closure of inactive sessions after a predetermined period of time;

i) custody of storage devices (such as, for example, USB keys, CDs, external hard disks, etc.) and

j) the adoption of clear-screen rules for the processors used;

k) plans and operating procedures for teleworking activities.

Managing incidents and problems involving cyber-security: the standards call for the existence of a set of regulations which establish suitable procedures for dealing with incidents and problems related to cyber-security. In particular, this set of regulations provides for:

a) the existence of proper managerial channels for reporting Incidents and Problems;

b) the periodic analysis of all isolated and recurring incidents and the identification of their root cause;

c) the management of problems that have caused one or more incidents, until they are definitively resolved;

d) the analysis of reports on incidents and problems and of trends in same, and the identification of preventive actions;

e) the existence of proper managerial channels for reporting any observed or potential weaknesses in the systems or services themselves;

f) the analysis of available documentation for applications, and the identification of weaknesses that could cause future problems;

g) the use of an information database to support the resolution of Incidents;

h) the maintenance of databases containing information on known and unsolved errors, their workarounds and the definitive solutions identified or implemented;

i) the quantification and monitoring of types, volumes and costs connected to the incidents involving cyber-security.

Audits: the standards call for the existence of a set of regulations establishing the rules, responsibilities and operational procedures associated with periodic audits aimed to evaluate the effectiveness and efficiency of the cyber-security system.

Human resources and security: the standards call for the adoption of a set of regulations which provide for:

a) an evaluation (prior to hiring or executing an agreement) of the experience of the persons intended to perform computer-related activities, with particular reference to information system security, taking into account the applicable standards, ethical principles and the classification of the information to which the aforementioned individuals will have access;

b) specific educational activities, including periodic updates, on the company procedures regarding cyber-security, for all employees and, where relevant, for third parties;

c) the obligation to return the assets provided for performing job-related activities (e.g. PCs, cellular phones, authentication tokens, etc.), applicable to employees and third parties upon the conclusion/termination of their working relations and/or contracts;

d) the revocation, for all employees and third parties, of the right to access information, systems and applications, upon conclusion/termination of their working relations and/or contracts, or in the event of changes to the duties they perform.

Encryption: the standard calls for the adoption of a set of regulations which provide for the implementation and development of the use of encryption controls for the protection of information and of mechanisms for managing encryption keys

Security in the acquisition, development and maintenance of information systems: the standards call for the adoption of a set of regulations which establish:

a) the identification of security requirements during the design phase or during modifications to the existing information systems;

b) the management of any risks of error, loss or unauthorised changes being made to the information processed by the applications;

c) the confidentiality, authenticity and integrity of information;

d) security in the process of developing information systems;

Publishing and broadcasting activities on the following platforms: a. Digital; b. Satellite; c. Internet; d. Radio

These activities shall be carried out in accordance with the standards of control established for the “Publishing and broadcasting activities on the following platforms: a. Digital; b. Satellite; c. Internet; d. Radio” process and set forth in “Special Section G - Crimes associated with copyright infringement”, which should be used as reference for matters associated with this topic.

Moreover, in order to be carried out, these activities require:

- formalizing the involvement of the competent Departments with regards to the transmissibility of television and/or radio programs/services or to materials broadcast on other platforms;

- defining the roles and responsibilities of the formalized verification activities with regards to the contents to be broadcast or to be published online;

- the traceability of the aforesaid verification activities.

10. SPECIAL SECTION G - CRIMES ASSOCIATED WITH COPYRIGHT INFRINGEMENT

10.1 Relevant types of crimes associated with copyright infringement (Art. 25-novies of L.D. 231/2001)

Regulatory references for the relevant types of crimes and a brief description of a number of important aspects of each of the predicate crimes specified in L.D. 231/01 are given below.

Article 25-novies of L.D. 231/01, introduced by Art. 15, Paragraph 7, Letter c), of Law 99 of 23 July 2009, and indexed as "Crimes associated with copyright infringement", states that:

1. In relation to crimes under Article 171, Paragraph 1, Letter a-bis) and Paragraph 3, Articles 171-bis, 171-ter, 171-septies and 171-octies of Law no. 633 of 22 April 1941, n. 633 (hereinafter also "Copyright Law"), financial penalties of up to five-hundred shares shall be imposed upon the corporate entity.

2. In the event of conviction for one of the crimes listed in Paragraph 1, prohibitory sanctions shall be imposed on the corporate entity in accordance with Article 9, Paragraph 2, for a period of no longer than one year, this without prejudice to that which is laid down in Article 174-quinquies of the aforesaid Law no. 633 of 1941.

The regulation in question protects authors' moral rights and their economic rights of use to their own works, specifically:

- works of the intellect of a creative character which belong to literature, music, the figurative arts, architecture, theatre and cinematography, whatever the method or form of expression;

- literary works also include computer programmes under the Berne Convention for the Protection of Literary and Artistic Works, ratified and enacted by Law. 399 of 20 June 1978; compilations of data, by reason of the selection or arrangement of their contents, constitute intellectual creations and shall also be protected as such.
  .

In particular, the protection includes:

1) literary, dramatic, scientific, didactic and religious works, whether in written or oral form;

2) musical works and compositions, with or without words, dramatic-musical works and musical variations which in themselves constitute an original work;

3) choreographic works and entertainments in dumb show (pantomime), the form of which is fixed in writing or in other form;

4) works of sculpture, painting, art, drawing, etching and similar figurative arts, including set design;

5) designs and works of architecture;

6) cinematographic works, both silent and with sound, with the exception of simple protected documentation protected under the fifth Paragraph of the second Title;

7) photographic works and those expressed by a process analogous to that of photography;

8) computer programmes (software), expressed in any form, provided they are original and the result of the author's intellectual creation;

9) compilations of data, meaning "collections of works, data or other independent elements systematically or methodically arranged and individually accessible electronically or by other means". Protections applying to compilations of data do not extend to their content, without prejudice to the existing rights of said content;

10) works of industrial design, on the condition that they are of a creative nature and have artistic value.

Collective works, consisting of different works of intellectual property of parts thereof, as well as creative transformations of pre-existing works, such as translations into another language (e.g. the dubbing of cinematographic works), remakes and adaptations.

Authors' rights (copyright) arise from a creative act that is perceptible from outside the artist himself and which therefore acquires a form of expression. It is not necessary for the creation to be fixed on a support, since even oral communication, for example, can have an expressive form; from this, however, we must exclude the pure idea – for the very reason that it remains unexpressed – from being protected by copyright.

A creation becomes intellectual property when, insofar as it is an expression of the artist's personality, it possesses the characteristics of novelty and originality. These two prerequisites can also exist, as we have seen, within collective works, which consist largely of written works such as encyclopaedias and newspapers – for which the creative activity lies more in the creative contribution of the person who organizes or directs the assembly of the pre-existing works contained therein – and of creative adaptations of another's work of the intellect.

Moral rights are granted to the author of the Work simply by virtue of the fact that he created it. Unlike rights of economic use, moral rights are inalienable and can be asserted at any time, even when the author is no longer in possession of the rights to the economic value of the intellectual property to which the protection applies.

Rights of economic use, like moral rights, are generally granted by mere virtue of authorship; exceptions to this rule are the creation of compilations of data, computer programmes and works of industrial design on the part of employees. In the latter case, while the moral rights of the author-employee remain non-transferable, the rights of use are acquired by the employer, who is considered the original producer of the work in question.

The case of the cinematographic producer is different; he will own only the use rights related to the cinematographic exploitation of the work, with the exception of the moral and economic rights of the four co-authors (author of the concept, author of the screenplay, composer and director) with regard to the cinematographic work (Art. 46 of the copyright law), and with the exception of their exclusive rights of use regarding their individual contributions (the concept, the screenplay, the score, but not, however, the direction) – this, however, without prejudice to the rights of the producer. The meaning of this provision becomes clear when one considers that, without the means for producing the film and the activity of organizing the film, it would be impossible for the creative contributions of the single co-authors to be realized cinematographically, and the contribution of the cinematographic producer is therefore essential. The producer's rights to the use of the film are, in any case, limited to the right to exploit the work; the producer is not permitted to modify or transform the work, if not within the limits of modifications necessary for cinematographic adaption.

Use rights are different from related rights of cinematographic producers. These cannot be categorized as the rights of an author, not even economically speaking, because they fall under a series of situations which the law deems worthy of protection separate from that arising from the creation of an intellectual work.

The related-rights provision has fufilled the need for the prevention of piracy of phonograms and videograms, a phenomenon in conflict with the legitimate expectations of profit on the part of the producers of phonograms and videograms who – independently of the content of the media support produced – have the right to economic exploitation of the works it contains and the copies made from it and, therefore, have the exclusive right to authorize operations such as reproduction, distribution, making available to the public and rental.

Radio and television broadcasters are also the owners of related rights, including the exclusive right to authorize the fixation, reproduction, distribution and making available to the public of their broadcasts.

Then there are the related rights of authors and performers, such as musicians, dancers and singers, who have the exclusive right, not only concerning the fixation or their own work, but are also entitled to remuneration for it. Independently of related rights, producers of phonograms, authors and performers, also have the right to receive remuneration for the use for profit of phonograms (produced by them or on which the fixation of their work was authorised) by their transmission through cinematographic means or by means of radio and television broadcasts, including transmiting them to the public via satellite.

The types of crimes associated with copyright infringement and listed under Article 25-novies of L.D. 231/01 are:

- making available to the public, over an electronic communications transmission system, utilizing any type of connection, a protected original intellectual work or a part thereof, when not in possession of the rights to said work (Art. 171, Paragraph 1, Letter a-bis) of Law 633/1941).

- The crime described in the above point, but involving another's intellectual property not destined for publication, or involving the usurping of authorship, or involving the deformation, mutilation or any other modification to the work itself, in a way that is detrimental to the honour and reputation of the author (Art. 171, Paragraph 3, Law 633/1941).

Art. 171, Paragraph 1, Letter a-bis) punishes whosoever makes available to the public, in any form, on a system of electronic data transmission networks, works protected by intellectual property rights.

It must be specified that, when the same act described above is carried out for profit, it will fall under the provisions listed in Art. 171-ter, Paragraph 2, Letter a-bis).

- unlawful duplication, for profit, of computer programmes; the import, distribution, sale or possession, for commercial or business purposes, or the licensing of programmes embodied in media supports not bearing the SIAE stamp; making available the means to enable or facilitate the unlawful removal of or functional circumvention of protection devices for computer programmes (Art. 171-bis, Paragraph 1, Law 633/1941).

- copying the contents of a compilation of data onto media supports not bearing the SIAE stamp, transferring said contents onto another sort of media, distributing, communicating, presenting or showing said contents in public, for purposes of profit; extraction or re-use of the contents of a compilation of data, in violation of the rights of the compiler or user of a compilation of data; distributing, selling or licensing compilations of data (Art. 171-bis, Paragraph 2, Law 633/1941).

The first paragraph describes the illegal acts using a variety of different expressions ("unlawfully duplicates [...] computer programmes or [...] imports, distributes, sells, possesses for commercial or business purposes or leases"), all of which refer to specific methods of using software which could be used to damage the interests, in terms of property, of the owner of the exploitation rights for the works in question. In brief, rules regarding prohibited conduct are provided by Art. 171-bis, which makes reference to the contents of various rights of economic use of intellectual property.

Concerning the concept of duplication, this type of conduct, when it involves software, consists, firstly, of copying files from a material support – which could be the hard disk of a personal computer, a floppy disk or a compact disk – to another support, of one of the same types as the aforesaid, so that the author of the duplication comes into possession of data "without any modification to the previous situation, to the detriment of the party who possessed it originally."

Nonetheless, the activities listed in the regulations do not necessarily require the existence of a material support, and could thus also be committed by engaging in the unauthorized downloading of a programme.

Violations of software use licenses fall under this group of provisions as well; therefore, those who do not abide by the contractual conditions that govern the relationship between owners of the rights and users of the programme will also be held accountable for unlawful reproduction.

Moreover, in order to have criminal relevance, the duplication must result in the production of an identical copy of the programme, and not of a re-adaptation or of a new software programme which, although similar, has only been "inspired" by the original programme, but has not unlawfully exploited or modified it.

"Back up" copies, which are those reserve copies which the user produces in order to avoid losing the programme, do not fall within the scope of these regulations.

Furthermore, the unauthorised duplication or distribution of the programme must be for purposes of gain. This goes beyond simple profit, and is not limited to making money, but may also be for the purposes of saving money, or leaving one's assets undiminished (e.g. the use of the same programme on multiple workstations).

With regard to the commercial or business purpose which possession of the programme must imply, these purposes relate to the context of the action; therefore the (static) activity will be found to have occurred not only when the programme has been destined for sale, but also when it is intended for mere internal use within a company, or in the event that it is found to be useful or necessary for conducting business activities.

Moreover, the same regulations punish the leasing of programmes not bearing the SIAE stamp[25], in those cases where said stamp is required. The reason for this is clear, if one considers that the rights for economic use are separate from each other and can be transferred individually (e.g. the license to use a certain media support does not grant the right to lease it, just as, similarly, coming into legitimate possession of copyright-protected material does not grant the right to disseminate it in public), and that the stamp affixed to each single support describes the rights it grants (e.g. CDs containing music files or videogames bear the information that it is forbidden to rent them out).

Only supports that have been subjected to the intermediation of SIAE, which is almost always necessary, even when they do not require a stamp, guarantee that the rights for economic use of the intellectual property enclosed therein have been respected.

The second part of the first paragraph of Art. 171-bis punishes the acts of duplicating, distributing, selling, possessing, and leasing, in reference (not to supports containing computer programmes, but) to "any device, component, etc. whose sole purpose is to enable or facilitate the removal or functional circumvention of protection devices affixed to a computer programs".

This regulation constitutes a sort of preventive protection of patrimonial rights which are expected to be infringed, aimed to prevent access and unlawful duplication of software by means of, in point of fact, devices, components, etc. designed to remove or circumvent protection systems, as is shown by the fact that the regulation requires that the "device, component, etc. in question's sole purpose is that of overcoming protection meant to safeguard software".

With regard to the acts listed under Art. 171-bis, Paragraph 2, we find that the acts cannot be designated as criminal if they fall under the ordinary exercise of search activities for personal use, on the part of users who are authorized to perform said activities, and based upon the assumption that compilations of data are being managed normally. The acts become criminal only when one goes beyond the established limits of management

of the collection are or when said acts damage the compiler.

- Crimes committed for profit, for non-personal use and characterized by one of the following types of conduct, as described in Art. 171-ter, Paragraph 1 of Law. 633/1941:

  - the unlawful duplication, reproduction, transmission or public dissemination, by any means, in whole or in part, of intellectual property intended for television or cinema, through sale or rental of discs, tapes or analogous media supports or any other type of media containing phonograms or videograms of comparable musical, cinematographic or audio-visual works or sequences of moving images (Letter a);

  - the unlawful duplication, reproduction, transmission or public dissemination by any means, in whole or in part, of works, or parts of works, of literary, dramatic, scientific, didactic, musical or dramatic-musical nature, as well as multimedia works, even when included in collective or composite works or compilations of data (Letter b);

  - the introduction into the State, the possession for purposes of sale or distribution, the distribution, listing for sale, rental, lease or transfer under whatever title, public showing, broadcast over television, by any means, or radio broadcast, of unauthorized duplications or reproductions, in accordance with Letters a) and b), or committing the same acts without having participated in the duplication and reproduction (Letter c);

  - the possession for purposes of sale or distribution, the listing for sale, sale, rental or transfer under whatever title, public showing, radio or television broadcast, by any means, of video cassettes, music cassettes, any media support containing phonograms or videograms of musical, cinematographic or audio-visual works or sequences of moving images, or other supports which require a SIAE stamp but do not have one, or are marked with a forged or altered SIAE stamp (Letter d);

  - rebroadcast or dissemination, by any means, of an encrypted transmission received by means of devices or parts of devices for the de-encryption of conditional-access transmissions, without permission from the legitimate distributor (Letter e);

  - the introduction into the State, the possession for purposes of sale or distribution, the distribution, sale, rental, leasing or transfer under whatever title, commercial advertising or installation of devices or parts of devices for special de-encryption which make it possible to gain access to an encrypted transmission without paying the required subscription fee (Letter f);

- the manufacture, import, distribution, sale, rental, transfer under whatever title, advertisement for sale or rental of, or possession for commercial purposes of, devices, products or components, or the provision of services whose commercial purpose or principal aim is the circumvention of effective technological protective measures, or which were designed, produced, adapted or performed for the primary purpose of enabling or facilitating the circumvention of technological protective measures;

- unlawful removal or alteration of electronic information on the system governing rights, pursuant to Art. 102-quinquies, or, distribution, importing for the purpose of distribution, broadcasting on radio or television, communicating or making available to the public, works, or other protected materials, from which the electronic information itself has been removed or on which it has been altered (Letter h).

- Crimes characterised by one of the specific types of conduct described in Art. 171-ter, Paragraph 2, Law 633/1941:

  - the unlawful reproduction, duplication, transmission or public dissemination, sale or trade, transfer under whatever title or unlawful importation of over 50 copies or samples of works protected by copyright and other related rights (Letter a);

  - the input, whether whole or in part, for profit, of a intellectual property protected by copyright into an electronic data transmission system, using any sort of connection, in violation of the author's exclusive right to disseminate said property to the public (Letter a-bis);

  - engaging in any of the types of conduct listed under Art. 171-ter, Paragraph 1, of Law 633/1941, on the part of anyone who, as part of business activities, engages in the reproduction, distribution, sale or marketing, or the importation of works protected by copyright and other related rights (Letter B);

  - encouraging or organizing illegal activities pursuant to Art. 171-ter, Paragraph 1, Law 633/1941 (Letter c).

The provisions of Art. 171-ter, Paragraphs 1 and 2, are intended to protect the rights of the producers of phonograms and videograms, and the aim to punish so-called "piracy" of audio and video works.

The reproduction and public dissemination of those works of intellectual property destined for sale to the television or cinematographic markets must be authorized by the party who holds the rights to them, just as the reproduction and dissemination of media supports containing phonograms or videograms of musical, cinematographic or audio-visual works must be authorized.

The reproduction and dissemination of literary, dramatic, musical works, etc., whether whole or in part, is subject to the same authorisation, because those rights belong exclusively to the party which holds the rights for the economic use of the work; when these activities are carried out unlawfully, or are destined for the market (therefore ensuring the act was committed for profit), then the crime in question will have been committed.

The rights of the producers or of whosoever holds the rights to the use of the intellectual property in question will also be considered to have been infringed by those who, although they have not materially reproduced or disseminated the protected works or audio or visual media supports containing a work of intellectual property, have nonetheless shown such a work in public or broadcast it via radio or television, or played it for others in public.

If it is the producer who holds the exclusive right to the use of the work produced for economic purposes, each of the operations listed above, which are therefore aimed at gaining an unlawful profit, thus become an unlawful economic use of the work.

For the same reason, criminal provisions apply in cases in which the operations listed above involve media supports not bearing the SIAE stamp (in those cases where the stamp is obligatory): the lack of said stamp, according to regulations, leads to the assumption that the support is illegal.

Another type of crime comes into play when a party who has, in the past, had use of a work through "conditional access" re-broadcasts or disseminates it at a later date without authorisation.

In the same vein are safeguards punishing the manufacture, distribution, advertising for sale or rental, or possession for commercial reasons, of equipment which enables illegal access to conditional-access transmissions (subject to payment of a subscription fee), as well as the (unlawful) removal of anti-piracy devices, or the radio or television broadcast of protected materials from which the protective devices have been removed. The criminal protection of the economic use right of protected works extends, on the one hand, to cover those activities which threaten to infringe copyright, while it also, on the other, punishes those who take advantage of such "altered" material.

- Failure to communicate to the SIAE the identification data of media for which the SIAE stamp is not required, on the part of the producers or importers thereof, or making false declarations regarding compliance with SIAE stamp requirements (Art. 171-septies, Law 633/1941).

Media supports for which no stamp is required are also subject to the intermediation of the SIAE; accordingly, the producer or importer who intends to market such media supports within Italy is under the obligation to promptly communicate the identification data of the media to the SIAE.

- Fraudulent manufacture, sale, importation, advertising of, installation, modification and use, whether public or private, of devices, or parts of devices, for the decoding of conditional-access audio-visual transmissions, whether over the air, by satellite or by cable, in analogue or digital form (Art. 171-octies, Law 633/1941).

Regulations punish not only those who install and use (for public or private use), for fraudulent purposes, devices for decoding encrypted television broadcasts ("conditional-access transmissions", "without paying a subscription fee"), but also those who produce or distribute such devices.

10.2 Identifying sensitive processes and company departments at risk of committing crimes associated with copyright infringement

An analysis of RAI's company processes, carried out during the course of the Project [26], has made it possible to identify the activities during which the types of crimes listed under Art. 25-novies of L.D. 231/2001 could hypothetically occur:

1. **Publishing and broadcasting on the following platforms: a. Digital; b. Satellite; c. Internet; d. Radio**

[26] For more on this topic, see section 3.1 of the General Section.

2. **Transfer of rights for television material and works of journalism to third parties;**
3. **The purchase of copies or samples of works;**
4. **Installing protected computer programmes (e.g. software and compilations of data).**

10.3 Rules of conduct and principles governing the implementation of decision-making processes

10.3.1 Rules of conduct

Pursuant to this Special Section, it is expressly forbidden for Company Bodies and employees (directly) and external contractors (to an extent limited by the obligations provided for in the specific procedures and codes of conduct and the specific clauses inserted into their contracts) in implementing the following rules to:

- engage in, collaborate in, or give rise to the commission of acts that – considered individually or collectively – directly or indirectly involve the types of crimes referred to above (Art. 25-novies of L.D. 231/2001);

- violate the company principles and procedures set forth in this Special Section.

In the context of the conduct described above, the following actions are specifically prohibited:

- making available to the public, via an electronic communications transmission system, by means of any type of connection, a protected original intellectual work or a part thereof when not in possession of the rights to said work;

- unlawfully duplicating, importing, distributing, selling, possessing, installing or leasing computer programs contained in media supports not bearing the SIAE stamp;

- using devices, components, etc. intended to enable the unlawful removal of or functionally circumvent devices for the protection of the aforesaid programmes;

- unlawfully reproducing, transferring onto another support, distributing, communicating, presenting or showing in public the contents of a compilation of data, or unlawfully extracting or re-using the contents of, distributing, installing, selling or leasing a compilation of data or the data it contains;

- the unlawful duplication, reproduction, transmission or public dissemination, on any type of media support, of a work of intellectual property intended for television or cinema, through sale or rental of discs, tapes or analogous media supports or any other type of media containing phonograms or videograms of comparable musical, cinematographic or audio-visual works or sequences of moving images, of works of literary, dramatic, scientific, didactic, musical or dramatic-musical nature, as well as multimedia works.

- the unlawful introduction into the Italian State, possession for purposes of sale, sale or transfer under whatever title, or the transmission by any means of the aforesaid types of duplicates or reproductions;

- the possession for purposes of sale, sale, transfer under whatever title or transmission by any means of phonograms or videograms of musical, cinematographic or audio-visual works or sequences of moving images on any sort of media support requiring the SIAE stamp, when lacking said stamp or bearing a stamp which has been forged or altered;

- rebroadcast or dissemination, by any means, of an encrypted transmission received by means of devices or parts of devices for the de-encryption of conditional-access transmissions, without permission from the legitimate distributor;

- the introduction into the Italian State, the possession for purposes of sale, sale, transfer under whatever title, commercial advertising of or installation of devices or parts of devices for special de-encryption which make it possible to gain access to an encrypted transmission without paying the required subscription fee;

- the manufacture, import, sale, rental or licensing of any sort, advertisement for sale or rental of, or possession for commercial purposes or use for commercial purposes of devices, products or components whose principal aim is the circumvention of "technological protection measures" created to protect intellectual property rights, and other rights related to the exercise of said rights;

- unlawful removal or alteration of "electronic information" created to protect intellectual property rights and other rights related to the use of a work, or, distribution, importing for the purpose of distribution, dissemination, communication by any means, or in any way making available to the public works or other protected materials from which said electronic information has been removed or altered;

- the production, placing on the market of, import, advertising, installation, modification – whether for public or private use – for fraudulent purposes, of devices or parts of devices for the decoding of conditional-access audio-visual transmissions, whether these are transmitted over the air, by satellite or by cable, in analogue or digital form.

Therefore, the subjects listed above must:

- acquire, create or post online only media content (photographs, video sequences, videos, poems, comments, reviews, articles and other written content, music files in any format) for which they possess a license of use or, in any case, in a manner that is in compliance with the regulations governing intellectual property rights or other rights related to the use of the content in question;

- verify (verification must be carried out by one or more specifically designated parties responsible for performing this activity), in advance, where possible, or by means of specific verification activities, which can also occur at periodic intervals, with the greatest possible accuracy and promptness, that the contents posted online are in compliance with the body of regulations in force governing copyright and other rights related to the use of works protected by intellectual property rights;

- when the media content described above is posted online by third parties or purchased by the Company and posted online, verify that said third parties have expressly assumed responsibility in terms of compliance with regulations governing copyright, and other rights related to the use of works protected by intellectual property rights;

- likewise, verify that the posting online of all aforesaid media content on the part of users is contingent upon the identification (registration or authentication) of said users and the express assumption of responsibility on their part in terms of compliance with regulations governing the posting online of content protected by copyright, and other rights related to the use of the content in question;

- in any case, ensure the traceability of all operations involving uploads, inserting content into blog posts, forums, online communities, etc.; the immediate removal of those instances which do not comply with regulations governing copyright and other rights related to the use of the content in question must also be ensured;

- use only software for which they are in possession of a licence and only within the limits and conditions laid down in the regulations in force and within the terms of the license itself, with the exception of those computer programmes which are available for download and free to use, and, in any event, in accordance with the conditions and limits of the law or those imposed by the owner(s) of the copyright and other rights related to the use of the content in question;

- use only compilations of data for which they are in possession of a license and only within the limits and conditions laid down in the regulations in force and within the terms of the license itself, with the exception of those which are freely accessible and, in any event, in accordance with the conditions and limits of the law or those imposed by the owner(s) of the copyright and other rights related to the use of the compilation of data in question; including with regard to the extraction, processing, reprocessing and publication of the data contained within such compilations.

- use only compilations of data for which they are in possession of a license and only within the limits and conditions laid down in the regulations in force and within the terms of the license itself, with the exception of those which are freely accessible and, in any event, in accordance with the conditions and limits of the law or those imposed by the owner(s) of the copyright and other rights related to the use of the compilation of data in question; including with regard to the extraction, processing, reprocessing and publication of the data contained within such compilations.

10.3.2 Principles governing the implementation of decision-making processes

That which follows is a list of standards of control determined for each individual Sensitive Process identified.

1. Publishing and broadcasting activities on the following platforms: a. Digital, b. Satellite, c. Internet, d. Radio

These activities require:

- compliance with the requirements of regulations governing the protection of authors' moral and patrimonial rights, with specific reference to the use, retention and distribution of texts, music, drawings, images, photographs, computer programmes and compilations of data which are protected by copyright (the "Works"). In particular, it is essential to comply with:

    - the applicable laws in force governing the acquisition, retention, use, reproduction, duplication, processing, dissemination (including by means of electronic data transmission networks) of the Works or any parts thereof;

    - laws protecting the Works' authorship;

- mechanisms for authorizing the use, reproduction, duplication and distribution of Works or any parts thereof;

- an official request to the competent Departments in order to verify that RAI is in possession of the necessary rights for the desired use of a Work and, in particular:

    - the existence of such rights;

    - the geographic scope of such rights (e.g. whether or not the Work can be exploited abroad);

    - the publishing and broadcasting platforms the rights apply to, e.g. whether they are so-called "pay", "free", or apply to other transmission platforms;

    - the term of such rights;

- the period of reference within which such rights may be exercised;

- the adoption of instruments for the protection of Works (e.g. limited access rights) related to their retention and storage, ensuring that they are entered into inventory;

- the obligation to ensure that the data warehouse / company catalogue used by the competent Departments to make determinations regarding rights is complete and up-to-date;

- official verification – when receiving media supports containing computer programmes, compilations of data, phonograms or videograms of musical, cinematographic or audio-visual works and/or sequences of moving images – that said supports have been marked with the required stamp by the Authorities in charge of copyright monitoring, or, otherwise, verification that the supports in question are exempt from this requirement.

2. The transfer of rights for television material and works of journalism to third parties

This activity requires:

- establishing standards for drawing up proposals/offers for sales to counterparties;

- an official verification of the conformity of the characteristics of the rights/services which are the object of the sale, with respect to the contents of the draft proposal/offer for sale;

- the traceability of the aforesaid verification activities;

- an official verification of the existence, availability, ownership and source of the rights/services which are the object of the sale;

- identification of the subject responsible for the sale;

3. The purchase of copies or samples of Works;

This activity requires:

- the involvement of the competent legal departments in the definition, where applicable, of contract clauses containing the counterparty's commitment/ declaration (depending on the case in question):

    - that he is the only legitimate owner of the rights to the economic use of trademarks, patents, distinctive marks, drawings, models or works protected by copyright and which are the object of the transfer, or that he has obtained, from the legitimate owners, the authorization to license said rights for use to third parties;

    - that the rights for the use and/or exploitation of the industrial and/or private property which is the object of the transfer or licensing agreement do not infringe upon any industrial/intellectual property rights belonging to third parties;

    - to indemnify the Company and hold it harmless from any type of a damage or prejudice which might derive from the untruthfulness, inaccuracy or incompleteness of said declaration.

4. The installation of protected computer programmes (e.g. software or compilations of data)

These activities shall be carried out in accordance with the standards of control established in "Special Section

F – Cybercrime and misuse of data," which should be used as reference, and in accordance with the standards of control established for the "Procurement of goods and services" process and set forth in "Special Section A - Crimes in the sphere of relations with the Public Administration and Bribery between private parties", which should also be used as reference.

Furthermore, this activity requires:

- the obligation to comply with the requirements of the laws governing the protection of the authorship of Works, as well as with the limitations placed upon the right to duplicate programmes and to reproduce, transfer, distribute and/or communicate the contents of compilations of data;

- mechanisms for authorizing the use, reproduction, processing, duplication and distribution of the Works or any parts thereof;

- the adoption of instruments for the protection of Works (e.g. limited access rights) related to their retention and storage, ensuring that they are entered into inventory;

- official verification – when receiving media supports containing computer programmes, compilations of data, phonograms or videograms of musical, cinematographic or audio-visual works and/or sequences of moving images – that said supports have been marked with the required stamp by the Authorities in charge of copyright monitoring, or, otherwise, verification that the supports in question are exempt from this requirement.

11. SPECIAL SECTION H – Environmental Crimes

11.1 Relevant types of environmental crimes

Regulatory references for the relevant types of crimes and a brief description of a number of important aspects of each of the predicate crimes specified in L.D. 231/01 are given below.

Crimes under the Italian Criminal Code (hereinafter Criminal Code):

The killing, destruction, capture, removal or possession of specimens of protected wild animal or plant species (Art. 727-bis, Criminal Code).

Except when the offence may be considered a more serious crime, whosoever, except in cases where it is permitted, kills, captures or is in possession of specimens of a protected wild animal species shall be subject to arrest and term of imprisonment of one to six months or subject to a fine of up to 4,000 Euros, unless the offence involves a negligible quantity of specimens and has a negligible impact on the state of conservation of the species.
Whosoever, except in cases where it is permitted, destroys, captures or is in possession of specimens of a protected plant species shall be subject to payment of a fine of up to 4,000 euros, unless the offence involves a negligible quantity of specimens and has a negligible impact on the state of conservation of the species.

For the purpose of the applications of the provisions in question, “protected wild animal and plant species” are to be defined as those listed in Annex IV of Directive 92/43/EC and in Annex I of Directive 2009/147/EC.

Destruction or deterioration of a habitat inside a protected site (Art. 733-bis, Criminal Code)

Whosoever, except in cases where it is permitted, destroys a habitat inside a protected site or, in any case, deteriorates such a habitat, thereby compromising its state of conservation, is subject to arrest and a term of imprisonment of up to eighteen months and payment of a fine of not less than 3,000 euros.

For the purpose of the application of the provisions in question, “habitat inside a protected area” shall be defined as any habitat whatsoever, of any species, for reason of which an area is classified as an area subject to special protection, in accordance with Article 4, paragraphs 1 or 2 of Directive 2009/147/EC, or any natural habitat, or habitat of a species, for which a site is designated as a special conservation area pursuant to Article 4, paragraph 4 of Directive 92/43/EC.

The risk of committing this type of crime could arise, in the event of company activities being carried out inside protected natural areas.

Crimes under the Italian Environmental Code as laid down in L.D. 152 of 3 April 2006

Water pollution (Art. 137)

- Unauthorized discharge (without authorization, or when authorization has been suspended or revoked) of industrial waste waters containing hazardous substances (Paragraph 2)

- Discharge of industrial waste waters containing hazardous substances in violation of the requirements specified in authorizations or by the competent authorities (Paragraph 3)

- Discharge of industrial waste waters containing hazardous substances in excess of the limit values established in the tables, or of the more restrictive limits established by the Regions, Autonomous Provinces or Competent Authorities (Paragraph 5, first and second sub-paragraphs)

- Violations of prohibitions on discharging into the soil, underground waters, or the subsoil (paragraph 11)

- Discharge into the sea, by ships or aircraft, of substances or materials the dumping of which is banned, except in the minimal quantities permitted by the competent authorities (Paragraph 13)

The regulation in question contains 14 categories of criminal offences. In the majority of cases, these are crimes posing a so-called abstract or presumed danger; for such crimes to exist it is not required that there be any specific or concrete potential for harm, nor is it necessary that the behaviour in question placed the protected asset in danger.

The types of crimes in question can be perpetrated by "anyone". However, in reality, taking into account that the criminal legislation hinges upon the industrial nature of the waters, these can be considered crimes related to business or, in any event, to those persons who carry out activities related to manufacturing and production.

Protection governing criminal offences is divided into four principle types of crime:

a) Discharging without authorization, or following the suspension or revocation of authorization;
b) Discharging in excess of the limit values established in the Tables annexed to the Consolidated Law on the Environment, or of the more restrictive limits established by the Regions, Autonomous Provinces or Competent Authorities;
c) Failure to respect the regulations contained in authorizations, or the regulations or provisions issued by local authorities, or other prohibitions issued in the context of State or Regional regulations;
d) Failure to respect obligations requiring data about automatic checks to be kept on file and transmitted, or failure to allow persons charged with conducting checks access to production premises.

Unauthorized waste management (Art. 256)

- Any collection, transport, recovery or disposal of wastes, or trade in wastes, or waste brokerage without the required authorizations, enrolment or communication (Art. 256, Paragraph 1, Letters a) and b);

- Creating or managing an unauthorized dump (Art. 256, Paragraph 3, first period);

- Creating or managing an unauthorized dump destined, even only in part, for the disposal of hazardous wastes (Art. 256, Paragraph 3, second period);

- Unauthorized mixing of wastes (Art. 256, Paragraph 5);

- Temporary deposit of hazardous medical wastes in their place of production (Art. 256, paragraph 6)

Paragraph 1 of Article 256 envisages, among the possible forms of unlawful waste management (whether the waste is of the party's own production or is produced by a third party), the collection, recovery or disposal of wastes, trading in wastes or waste brokerage, in the event that these occur outside of the scope of the prescribed control mechanisms put in place by the Public Authorities and without the prescribed authorization, enrolment or communication.

The crime, due to its contraventional nature, is punishable regardless of whether the misconduct was wilful or unintentional.

It is a crime posing an abstract danger, insofar as legislation punishes activity taking place outside of the scope of the preventive control of the Public Administration, even in the event that such various activities are conducted in such a way that the environment is respected.

Paragraph 3 punishes whosoever creates or manages an unauthorized dump.

A place may be considered a dump when it consists of a certain area destined specifically for the abandonment of wastes; it must be used regularly for this purpose, if not habitually. This is not to be confused with the occasional abandonment of wastes, which falls under the heading of Art. 255, Paragraph 1, and Art. 256, Paragraph 2. A dump is also not to be confused with an uncontrolled waste deposit area, as the dump is characterised by the permanent nature of the disposal taking place therein.

The management of a dump, on the other hand, is separate and subsequent to its creation; these two activities can be carried out by the same party or by different parties. Management consists of setting up an organization of persons and things for the purpose of running the dump itself.

The offence, due to its contraventional nature, is punishable regardless of whether the misconduct was wilful or unintentional, and involves the gravest possible contraventions envisaged in the sphere of waste management.

Under Paragraph 5, violation of the prohibition on the mixing of hazardous wastes is a criminal offence.

This category of crime introduces what could be, in theory, a common offense, given that the prohibition applies to anyone who has access to waste.

Mixing is defined as the act of putting different types of waste together, with the result that separating the different types of mixed waste becomes difficult or even impossible.

This crime is immediate in nature and is considered to have been committed at the precise moment in which the unlawful mixing of wastes occurs.

With regard to Paragraph 6, the category of crime described therein is not likely to be applicable to RAI, due to the scant quantity of medical waste it produces.

Contaminated sites (Art. 257)

- pollution of the soil, the subsoil, the surface waters or underground waters, exceeding the risk threshold concentrations (without providing for reclamation of the same pursuant to the project approved by competent authorities) and failure to inform the competent authorities (Paragraphs 1 and 2). The acts of polluting described in Paragraph 2 are aggravated when they involve the use of hazardous substances.

The provision in question subjects those who cause the pollution of the soil, the subsoil, the surface waters or underground waters, exceeding the risk threshold concentrations, to arrest and imprisonment or payment of a fine – unless the person concerned provides for reclamation pursuant to the project approved by the competent authorities as a part of the administrative procedure by which project approval was granted.

The regulation extends criminal liability to both the author of the potential pollution and any party who, having discovered an act of pollution previously committed by others, fails to inform the competent authorities.

Paragraph 2 envisages aggravating circumstances, punishable by both imprisonment and fine, when the act of polluting involves hazardous substances.

The phrase “hazardous substances” refers to wastes designated as such in Annex D (*Translator’s note: of the Consolidated Law on the Environment*); for substances contained in waste water, the relevant tables are those listed in Art. 137; conversely, Legislative Decree 152/2006 contains no definitions or classifications of airborne hazardous substances.

Providing false information on waste analysis certificates or using false waste analysis certificates (Articles 258 and 260-bis)

- Providing false information on the nature, composition and chemical-physical characteristics of waste when compiling a waste analysis certificate, and use of a false certificate when transporting waste materials (Art. 258, Paragraph 4, second period);

- Using a false certificate when providing data for waste traceability purposes (SISTRI); providing false information when compiling a waste analysis certificate used as part of the waste traceability programme (Art. 260-bis, Paragraph 6);

- Transporting hazardous waste without a hard copy of the *SISTRI – Movement Area* form or a copy of the certificate of waste analysis that identifies the characteristics of the waste; the use of a waste analysis certificate that contains false declarations about the waste being transported in the context of SISTRI (Art. 260-bis, Paragraphs 6 and 7, second and third periods).

- Transporting waste with a hard copy of the *SISTRI – Movement Area* form that has been fraudulently altered (Art. 260-bis, Paragraph 8, first and second period). The conduct described in Paragraph one, second period, is aggravated if it involves hazardous wastes.

The illicit trafficking of wastes (Articles 259 and 260)

- Any transportation of waste that constitutes illicit trafficking (Art. 259, Paragraph 1). This conduct is aggravated if it involves hazardous waste.

- Operations organized for the illicit trafficking of waste, involving a series of operations and the continuous use of vehicles and organized activities (Art. 260). This crime is the result of wilful misconduct for the purpose of unlawful gain, by several operations and the preparation of means and continuous organized activities (selling, receiving, exporting, importing and unauthorized management of large quantities of waste). Penalties are increased in the case of highly radioactive wastes (paragraph 2).

Art. 259 envisages two categories of crime involving the trafficking and cross-border shipment of waste. In accordance with EC Regulation 1013/2006, any cross-border shipment is considered an “illegal shipment” if it is carried out: a) without notification being made to all the relevant competent authorities; b) without the authorization of all the relevant competent authorities; c) with the authorization of the relevant competent authorities having been obtained by means of falsification, false statements or fraud; d) in a way that is not materially specified in the notification or in the transport documents; e) in such a way that the recovery or disposal does not comply with European or international regulations; f) is not in compliance with the Articles of the regulation itself.

The provisions laid down in Art. 260 extend criminal liability to include the most serious forms of unauthorized waste management, when carried out continuously and in an organized fashion and involving large quantities of waste.

The existence of wilful misconduct for the purpose of unlawful gain represents the subjective element of the crime.

This crime is not organized in terms of a conspiracy and can, therefore, be committed by a single individual capable of the unauthorized management of large quantities of waste.

In order for the misconduct to be defined as a crime, however, the operations it involves must have been actualized. This type of crime can also occur in the context of authorized activities, in the event that the methods used or the types of waste being managed are not in compliance with or comply only in part with the requirements contained in the relevant authorizations or with other limits imposed by law.

Atmospheric pollution (Art. 279)

- Breach of the emission limit values or violation of the provisions established within the authorization, by the plans and programmes, by regulations or by the relevant competent authorities during the management of a plant, is a punishable criminal offence in the event that the emissions which exceed the limit values also lead to exceeding the air quality limit values envisaged by the laws in force (Paragraph 5).

Crimes pursuant to Law No. 150 of 7 February 1992, which deals with the international trade of specimens of flora and fauna in danger of extinction and the possession of dangerous animals.

- The import, export, transport and illicit use of animal species (without a valid certificate or license and in violation of the provisions of said documents);

- The possession, use for the purpose of profit, purchase, sale, or display for sale or for commercial purposes of specimens without the required documentation; the illicit trading of plants reproduced artificially (Art. 1, Paragraphs 1 and 2, and Art. 2, Paragraphs 1 and 2). The types of conduct described in Article 1, Paragraph 2 and Art. 2, Paragraph 2, are to be considered aggravated in case of repetition of the offence, or if the crime is committed during the exercise of a company's business activities.

- The falsification or alteration of certificates, licenses, import notifications, declarations and information communications for the purpose of obtaining a license or a certificate; the use of false or altered certificates or licenses for the importation of animals (Art. 3-bis, paragraph 1)

- The possession of live specimens of wild species of mammals and reptiles or of mammals and reptiles bred in captivity which represent a danger to public health and safety (Art. 6, Paragraph 4)

Art. 1 provides a veritable list of various types of illegal conduct.

This regulation, which extends criminal liability to include the offences it describes, is structured in an analytical, case-by-case fashion, and begins with the stipulation, "Unless the fact represents a more serious offence".

The offences described in Art. 1 are the most serious among those offences which fall under the heading of illegal international trade of highly-protected species, as listed in Annex A of EC Regulation No. 338/1997. Acts criminalized pursuant to this article are as follows:

Under letter a): the importing, exporting or re-exporting of specimens without the necessary certificate or license or with a certificate or license that is not valid.

Under Letter b): failure to observe the provisions aimed at protecting specimens contained in an import, export or re-export license or certificate.

Letter c) punishes those who use specimens of species listed in Annex A of Regulation EC No. 228/1997 in a manner that does not comply with the provisions contained in the authorization or certificates issued together with the import license or certificates issued subsequently.

Under letter d): the transportation or arrangement for transit, even on behalf of third parties, of specimens without the required license or certificates.

Letter e) extends criminal liability to an act that was not previously considered to be a crime: trading in specimens of protected species

Letter f) provides a list of different illegal acts whose common denominator is that they are all committed for purposes of financial gain.

The final provision of this Article, contained in paragraph 3, deals with the type of administrative offence that includes the import, export or re-export of personal or household objects derived from specimens of the species listed in paragraph one, in violation of Regulation EC No. 939/1997.

The provisions of Art. 2 deal with crimes involving specimens (animals or plants) of the species listed in Annexes B and C of Regulation EC No. 338/1997.

The facts described in letters a) through f) of Art. 2 are identical to those listed in their counterparts in Art. 1, the only difference being that they involve specimens of species that are in less danger of extinction and therefore in need of a lesser degree of protection. The punishment envisaged for these offences is, in fact, an alternative of either payment of a fine or imprisonment, with the possibility of an out-of-court settlement in the latter case.

Pursuant to Paragraph 2, in case of repetition of the crime, the two alternative punishments described above become cumulative.

Paragraph 4 introduces another category of administrative offence: failure to communicate the rejection of a license or certificate application.

This regulation penalizes an applicant's failure to inform the issuing body to which he is submitting a new application for a license or certificate of a previous rejection.

The particular cases described in Art. 16 of Regulation EC No. 338/1997 which are relevant for the application of paragraph 1 are those dealing with: 1) a false, falsified or invalid permit or certificate or one altered without authorization by the issuing authority [Letter (a)]; 2) making a false declaration or knowingly providing false information in order to obtain a permit or certificate [Letter (c)]; 3) using a false, falsified or invalid permit or certificate or one altered without authorization as a basis for obtaining a Community permit or certificate [Letter (d)]; 4) making no import notification or a false import notification [Letter (e)]; 5) the falsification or alteration of any permit or certificate issued pursuant to the Regulation in question.

These are all cases dealing with false representation, and are punished with relevant sentences pursuant to the Italian Criminal Code.

The reference for Paragraph 2 of the article is Legislative Decree No. 43/1973, known as the Consolidated Law on Customs Matters.

The provisions of Art. 6 prohibit the possession of live specimens of wild mammal and reptile species, as well as live specimens of mammals and reptiles bred in captivity, which represent a danger to public health and safety.

Pursuant to Paragraph 2, lawmakers entrusted the identification of the species referred to in the above paragraph, and the creation of a list of these specimens, to the Ministry of the Environment, in collaboration with the Ministry of the Interior, the Ministry of Health and the Ministry of Agriculture and Forestry.

Pursuant to Paragraph 3, from the date of the publication of the decree (containing the criteria for identifying the species pursuant to Paragraph 1) in the Official Gazette, whosoever was in possession of specimens of species included in the list was required to report this to the competent authorities within ninety days of the decree itself coming into force.

Paragraph 6, on the other hand, lists the subjects to whom the provisions of the previous paragraphs do not apply.

Crimes pursuant to Law. No. 549 of 28 December 1993, in connection with protecting the stratospheric ozone and the environment:

- Violations of regulations which provide for the cessation and reduction of the use of substances harmful to the ozone layer (including the production, use, sale, import and export of said substances) (Art. 3, Paragraph 6).

Crimes pursuant to Legislative Decree No. 202 of 6 November 2007, relative to pollution of the sea caused by ships:

- Unintentional discharge, into the sea, of polluting substances from ships (Art. 9, Paragraphs 1 and 2);
- Intentional discharge, into the sea, of polluting substances from ships (Art. 8, Paragraphs 1 and 2).

The actions described in Article 8, Paragraph 2 and Art. 9, Paragraph 2, are to be considered aggravated in the event that the offence committed causes permanent or serious harm to water quality, to animal or plant species or to any part of these.

These categories of offence are not considered to be applicable in the case of RAI, as RAI does not own ships or manage any maritime activities that could lead to the discharge of hydrocarbons or hazardous liquids.

11.2 RAI and the environment

The company's commitment to environmental protection is described in the company's "Regulations Governing Safety and Health and Environmental Protection", and in its "Management Manual for Safety", devised for those sites requiring certifications having to do with health and safety in the workplace.

These documents recall the company's commitment to respect the laws in force, specifications, national and international standards, and the statutes signed by the company itself. Similarly, they underline the company's commitment towards the Public Authorities and the general public as well as its commitment to educating its employees and ensuring they are well informed and guaranteeing, through oversight, that both RAI employees and Third Parties employed by the company respect these provisions.

The Regulations provide for the forming of a "Committee for the Coordination of Safety, Health and Environmental Policies", providing specifications with regard to its members and its responsibilities, with a particular focus on environmental issues. Its responsibilities include:

- "Developing company policy lines in matters of environmental protection"
- Establishing objectives, which Departments must achieve in order to safeguard the safety and health of employees and the public, as well as to protect the environment.

The Regulations state that the "Director of Human Resources and Organization appoints the RAI (Radiotelevisione Italiana Spa) System of Environmental Management Personnel (*Translator's note: known in Italian by the acronym "ASGA*") as well as the Head of the RAI (Radiotelevisione Italiana Spa) System of Environmental Management (*Translator's note: known in Italian by the acronym "RSGA*")".
Moreover, a Representative of the Directors for matters pertaining to Environmental Management is appointed in every local office, as listed below:

- in the General Administrative Offices in Rome and Turin; the General Facilities Manager;
- in TV Production Centres, the Head of each Production Centre;
- in the Radio Production Centre, the Director of Radio;
- in Regional offices, the Local Office Directors.

The Representative of the Directors for matters pertaining to the Environment, with the agreement of Managing Officers, is responsible for:

- coordinating management of the system for environmental matters;
- implementing, within his home office, the Policies, Objectives, and Plan for Environmental Improvement;
- ensuring that the necessary resources are available for implementing, maintaining and improving the system itself.

This same document makes it clear that Senior Managers, and those whom they appoint, are responsible for "fulfilling, within their sphere of activity, and in accordance with relevant company procedures, any obligations related to proper waste management and other regulations whose purpose is to safeguard the environment."
At company facilities where multiple Managing Officers share responsibility for activities/resources, "in accordance with relevant company procedures, coordination of waste management and environmental protection activities is carried out under the direct responsibility the Local Managing Officer, specifically:

- in the General Administrative Offices in Rome and Turin; with the General Facilities Manager;
- in TV Production Centres, with the Head of each Production Centre;
- in the Radio Production Centre, with the Director of Radio;
- in Regional offices, with the Local Office Directors.

11.3. Identifying sensitive processes and company departments at risk of committing environmental crimes

An analysis of company processes, carried out during the course of the Project[27]', has made it possible to identify the activities during which the types of crimes listed under Art. 25-undecies of L.D. 231/2001 could hypothetically occur. The processes subjected to analysis are listed below:

1. Planning: planning operations are intended to establish objectives consistent with company policy, determine what processes are necessary in order to achieve those objectives, and define and assign resources.
2. Implementation and Operation: operations and actions in the sphere of Implementation and Operation aim to determine:
    - organizational structures and responsibilities;
    - educational training and communication procedures;
    - procedures relating to the document management system, as well as to document and data control;
    - procedures for operational control;
    - management of emergency situations;
    - selection and monitoring of suppliers.

In particular, with regard to operational control, the sensitive processes identified are as follows:

[27] For more on this topic, see section 3.1 of the General Section

- the production of waste, the temporary deposit of waste at its production site and the transfer of wastes to third parties for transport/disposal/recovery;
- the management of facilities which produce emissions in the atmosphere, fulfilling authorization requirements and monitoring emissions;
- the management of facilities which produce waste waters, fulfilling authorization requirements and monitoring discharges;
- the management (storage/handling/use) of chemical and flammable substances which could potentially contaminate the soil, subsoil, surface waters or underground waters;
- informing Authorities if a potentially polluting event should occur;
- the management of environmental characterization/securing/reclamation/remediation procedures
- the purchase/sale of potentially contaminated sites/areas;

  the management of assets containing substances that are harmful to stratospheric ozone;
- new building projects or non-routine maintenance projects in the proximity of natural areas;
- the management of job-related activities involving the use of protected wild animal and plant species.

3. **Control and corrective actions:** activities in the sphere of control and corrective actions are intended to implement procedures and measures for monitoring environmental activities.
4. **Management Review:** periodic Management Reviews aim to assess whether the environmental management system is complete and whether it is adequate for implementing company policies and achieving company goals.

11.4 Rules of conduct and principles governing the implementation of decision-making processes

11.4.1 Rules of conduct

Pursuant to this Special Section, it is expressly forbidden for Company Bodies and employees (directly) and external contractors (to an extent limited by the obligations provided for in the specific procedures and codes of conduct and the specific clauses inserted into their contracts) in implementing the following rules to:

- engage in, collaborate in, or give rise to the commission of acts that – considered individually or collectively – directly or indirectly involve the types of crimes referred to above (Art. 25-undecies of L.D. 231/2001);
- violate the company principles and procedures set forth in this Special Section.

In particular, during the execution of their job activities and other work-related operations, the Recipients must comply with the following rules of conduct:

- any action which could have an impact on the environment must be designed to reduce to a minimum any real or potential harm that could be caused to the environment;

- safeguards must be in place for the protection of the soil and subsoil, the surface waters and underground waters, and to ensure land conservation;

- the discharge of water is strictly prohibited if it has not been previously authorized; the discharge of waters containing substances not included in the specific authorizations or permitted under the law in force or in quantities exceeding those specified in the specific authorizations or permitted under the law in force. Measures aimed to prevent the production of waste and to reduce the harmfulness of waste produced must be adopted.

- materials should be reused or recycled whenever possible, postponing their transformation into waste for as long as possible;

- waste should be sent for recovery as opposed to disposal whenever possible; the amount of waste produced overall should be reduced as much as possible;

- the temporary deposit and subsequent transfer of waste must be carried out safely and in compliance with the law in force;

- no type of waste may be thrown or deposited in places other than those designated for waste collection and transfer; specifically, the Company ensures that the use, pick-up, collection and delivery are always performed in full compliance with the law and with existing applicable authorizations, always and in any case making sure than these substances and materials are not disposed of or discharged into the environment.

- operations and processes having to do with the treatment, transfer and transport of waste, as well as those having to do with waste storage, use and subsequent pick-up and transfer, must only be performed by parties who possess the necessary knowledge to ensure the these processes are carried out properly, guaranteeing that personnel will have access to appropriate initial education, with subsequent opportunities to develop and improve their knowledge of the subject;

- all necessary precautions must be taken to keep air pollution to a minimum; emissions must, in any case, be kept below the limits established by the law and by the applicable specific authorizations;

- procedures must be adopted to prevent environmental emergencies, and to ensure readiness to minimise damage in the event such an emergency should occur;

- the protection of the flora and fauna present in the environments where the Company operates must always be ensured during the course of operations and actions; conduct that could harm or deteriorate the environment or the landscape is forbidden;

- in the event that operations or activities are entrusted to contractors or subcontractors, and those operations or activities are to be conducted, in whole or in part, in areas subject to environmental protection, the Company will, firstly, demand strict adherence to the provisions of Legislative Decree 152/2006 and, naturally, of Legislative Decree 231/2001; secondly, it will ensure that technical staff and other workers involved in the project are aware that the environment must be protected and preserved or, at least, suffer the least possible impact and, thirdly, that all these things be carried out in full compliance with applicable laws and authorizations.

11.4.2 Principles governing the implementation of decision-making processes

That which follows is a list of standards of control established for each individual Sensitive Process identified.

1. **Planning**

For planning, the provisions set forth in the regulations are as follows:

Policies and objectives: the existence of an official Policy document which provides a framework of reference for setting and reviewing environmental objectives and targets the company wishes to achieve and which is:

- appropriate to the nature, scale and environmental impact of its activities;
- includes a commitment to respect the environmental laws in force and to the continual improvement and prevention of pollution;
- is implemented and maintained;
- is properly communicated to all persons working for or on behalf of the organization;
- is available to the public;
- is formally approved by the company's Senior Management.

Identifying and assessing environmental aspects: the existence of a set of company regulations which identify the roles, responsibilities and procedures to be adopted in order to:

- identify the environmental aspects of it activities, products and services that it can influence;
- assess the significance of environmental aspects and consider how to improve environmental activities with regard to these;
- ensure the traceability and updating of the environmental aspect identification and assessment process.

Regulatory provisions and requirements pursuant to authorizations: a set of company regulations which establish the roles, responsibilities and procedures to be adopted, so as to:

- identify regulatory provisions in force and applicable requirements pursuant to authorizations, by means of, among other methods, the preparation of timetables and records of regulations;
- identify company departments in which the requirements and provisions apply and what actions will have to be taken in order to implement them;
- identify the parties responsible for ensuring compliance with the aforesaid requirements and provisions;
- ensure that personnel are informed of and have access to said provisions and requirements;
- carry out periodic checks in order to ensure that regulations are up-to-date.

Objectives and Targets: the company has set objectives and goals for improving its environmental processes and actions and established an official schedule in which they are delineated.

In particular, objectives and targets must be:

- measurable (where possible);

- consistent with the environmental policy and established taking into account the significance of the environment aspects of its processes and activities and the applicable legal requirements, so as to ensure compliance with legal and authorization requirements;

- implemented and maintained through programmes in which responsibility for achieving objectives, targets and time-frame, and the means by which they are to be achieved ,are clearly identified (financial and human)

- adequately communicated on an internal company level

Moreover, procedures and responsibilities have been put in place to monitor progress of programmes, as well as responsibilities related to the approval, expenditure and reporting of expenditure of funds spent on matters of an environmental nature.

2. Implementation and Operation

The regulations governing these activities provide for:

System for delegating operations to appointees: the company has a system for delegating operations which is structured according to the following principles of jurisprudential reasoning:

- effectiveness: the appointee has the power to both make decisions and allocate funds;

- the appointee is technically and professionally suitable and has appropriate experience;

- oversight of the appointee's activities shall be carried out with neither complacency nor interference;

- certainty, specificity and awareness.

The official system for the delegation of operations requires that there be a set of company regulations which:
i) require that the appointee's sphere of operations be clearly identified;
ii) ensure verification of the traceability and duration of appointments and the traceability of the acceptance of appointments on the part of appointees/sub-appointees;
iii) provide explicit indication as to whether or not the appointee is permitted to further delegate operations related to environmental matters to sub-appointees;
iv) ensure the traceability of the criteria for determining whether the operations delegated are consistent with the decision-making powers and power to allocate funds accorded to the appointee;
v) establish procedures for checking whether the appointee continues to retain the technical and professional requisites necessary and establish a plan for the appointee's periodic updating and technical-professional development, as well as a system for periodically evaluating his or her technical and professional abilities;
vi) establish a requirement for an official continuous/periodic information flow between appointer and appointee;
vii) lay down the procedural guidelines for an official oversight process.

Roles and Responsibilities: defining roles and responsibilities for applying, maintaining and improving the Environmental Management System and for the management of environmental matters.

The assignation of responsibility for environmental matters:

- is formally documented;
- communicated internally within the company;
- is consistent with the powers and role held in the organization by the employee(s) in question;
- takes into account the skills necessary in order to carry out the required activities;
- takes into account whether or not the employee(s) in question are in possession of any special prerequisites they are required, under the environmental law in force, to have in order to accept the responsibilities in question.

Competence and training: a set of company regulations governs employees' training in environmental matters. It establishes roles, responsibilities and operational procedures. This set of regulations establishes the following requirements for the organization:

- it will identify all personnel who perform, either for the organization or on behalf of it, perform tasks which have the potential to cause a significant environmental impact;
- it will establish the competence of all aforesaid personnel, on the basis of appropriate education, training or experience, and retain associated records;
- it will identify training needs;
- it will create a "Training Plan", which includes the following topics:
    - the importance of conformity with the Environmental Policy and procedures, and with the requirements of the Environmental Management System;
    - the significant environmental aspects and related actual or potential impacts associated with their work;
    - their roles and responsibilities;
    - the potential consequences of departure from specified procedures;
    - regulatory requirements and the specific procedures designed to ensure compliance with applicable requirements.
- it will retain records associated with the training activities completed.

Communication: establishing the roles, responsibilities and procedures for managing internal and external communications (including communication and reporting to the public regulatory Agencies).

With regard to internal communications, a set of company regulations ensures communication among the various levels and functions of the organization;

With regard to external communications and inspections, the company has procedures which establish roles, responsibilities and procedures to manage any inspections on the part of the Competent Authorities, for the receipt of requests from external interested parties (including the Competent Authorities), to manage claims made by third parties, to record said requests, and ensure the traceability of responses to them, as well as of documents provided by the organization.

Documentation: a set of company regulations governs roles, responsibilities and procedures having to do with the management and filing of documentation relevant to environmental matters.

In particular, these regulations contain procedures for the management (e.g. approval, communication, updating and control) and the keeping on file/filing of said documentation and, in particular:

- the identification of documents relevant to environmental matters;
- establishing responsibilities with regard to the approval, review and, where necessary, updating of said documents;
- establishing procedures implemented to ensure the proper distribution of documents and their proper use (e.g. ensure that documents remain legible and readily identifiable);
- establishing procedures to identify obsolete documents and procedures for preventing obsolete or invalid documents from being unintentionally used.

In particular, the regulations govern the procedures for managing authorization acts, communications sent to/received from Regulatory Agencies and the records which the organization is required to keep.

Operational control: a set of company regulations maintains control over significant environmental aspects associated with Company activities, and especially with those activities which could lead to crimes pursuant to L.D. 231/01 being committed.

Waste production, temporary deposit of waste at its production site and transfer of wastes to third parties for transport/disposal/recovery: a set of company regulations governs the management of waste produced by the organization, in order to guarantee that such management is carried out in compliance with the requirements of applicable authorizations and the law in force. In particular, this set of company regulations establishes roles, responsibilities and operational procedures for:

- identifying all types of waste produced and the assignment of the appropriate CER codes, and the identification of any hazardous characteristics of said wastes, including through the use of laboratory testing and providing procedures for the preparation of samples, as well as designation of responsibility for said activity;
- complying with the requirements for waste producers, as laid down in the applicable authorization acts and the law in force (e.g. enrolment in SISTRI);
- managing the collection and temporary deposit of waste at its site of production in order to ensure compliance with:
    - requirements governing temporary deposit (e.g. time limits and limits on quantity, signage, labelling, containers, technical characteristics of the deposit area [e.g. waterproofing, covering, drainage systems, building standards]);
    - the prohibitions on the mixing of hazardous and non-hazardous wastes and of hazardous wastes that present different types of hazards; mixing includes the dilution of hazardous substances;
- (alternatives to temporary deposit) managing the storage/preliminary deposit of wastes in their place of production in such a way as to ensure compliance with the requirements laid down in the applicable authorization;
- initial and periodic verification that third parties (providing services of waste brokerage/transport/recovery/disposal) to whom the waste produced is transferred are in possession of the authorizations required under law (this includes checking vehicle license plate numbers);
- Cross-border shipment of waste pursuant to Regulation (EC) No. 1013/2006;

- ensuring that the transportation of wastes, when carried out by the waste producer itself, is in compliance with the law (e.g. enrolment in the appropriate trade association);

- preparing and filing administrative documentation dealing with waste management (e.g. forms, loading/unloading registers, Environmental Declaration Forms [*Translator's note: in Italian,* M.U.D. *Modello Unico di Dichiarazione Ambientale*], certificates of analysis, authorizations, enrolments, communications);

- verifying that the fourth copy has been received within the time frame established by law and the action to take in the event it is not received;

- traceability of all activities having to do with waste management.

Managing plants that produce atmospheric emissions, meeting authorization requirements and monitoring emissions: a set of company regulations governs the management of plants and activities that produce atmospheric emissions in order to guarantee that such emissions fall within the applicable emission limits. In particular, this set of company regulations establishes roles, responsibilities and operational procedures for:

- identifying emission points (ducted and diffuse) active during the course of the activities carried out by the organization;

- timely identification of the need to activate new waste water emission points/modify existing emissions in order that any required authorizations can be requested/modified;

- implementing the provisions of applicable authorization acts, with a particular focus on requirements involving timetables and procedures for monitoring emissions and periodic verification of compliance with these same requirements;

- carrying out monitoring of emissions in compliance with the provisions of the applicable authorization acts, including methodology and techniques used in sampling and analytical testing;

- verifying the results obtained through the monitoring of atmospheric emissions, checking said results against applicable emission limits, proper filing of the documentation of said results and recording of internal communications containing them;

- management and maintenance of the plants/activities that generate/treat atmospheric emissions (e.g. managing emission reduction equipment/plants, maintenance schedules, verification of equipment/plant efficiency) for the purpose of preventing malfunctions/break-down/human error that could lead to a failure to comply with warning levels or emission limits;

- where necessary, acquiring data on the air quality in proximity of organization activities (e.g. by means of bibliographic research, requests made to the Authorities, direct monitoring);

- managing and evaluating any complaints about air quality made by nearby parties;

- initiating the necessary procedures in the event that warning thresholds or emission limits are exceeded, in order to ensure that emissions return below limits or warning thresholds as quickly as possible;

- calibration and maintenance of the instruments used for taking measurements;

- traceability of all activities having to do with the management of atmospheric emissions;

- (for diffuse emissions only) controlling activities that can produce diffuse atmospheric emissions and implementing measures to mitigate the dispersal of particulates/fumes/odours.

Managing plants that produce waste water, meeting authorization requirements and monitoring discharges: a set of company regulations governs the management of plants and activities that produce waste waters in order to guarantee that waste water discharges are carried out in compliance with the requirements of applicable authorizations and the law in force. In particular, this set of company regulations establishes roles, responsibilities and operational procedures for:

- identifying waste water discharge points active during the course of the activities conducted by the organization, with a specific focus on industrial waste waters;
- timely identification of the need to activate new waste water discharge points or modify existing discharge points in order that any required authorizations can be requested/modified;
- requesting, modifying and/or renewing authorizations for the discharge of waste waters, with a specific focus on:
    - checking the amount of time needed to obtain said authorizations;
    - checking the expiration date of authorizations;
    - preparation of the documentation required for the authorization procedure;
    - internal communication, to the departments involved, of progress being made in the authorization procedure and of authorization being obtained;
- implementing the provisions of applicable authorization acts, with a particular focus on requirements involving timetables and procedures for monitoring the quality of the industrial waste water discharged (hazardous substances) and periodic verification of compliance with these same requirements;
- carrying out monitoring of the waste waters discharged (hazardous substances) in compliance with the provisions of the applicable authorization acts, including methodology and techniques used in sampling and analytical testing;
- verifying the results obtained through the monitoring of waste waters discharged (hazardous substances), checking said results against applicable limits, proper filing of the documentation of said results and recording of internal communications containing them;
- management and maintenance of the plants/activities that generate/treat waste waters (e.g. the management of water treatment plants/equipment, maintenance schedules, verification of plant/equipment efficiency) for the purpose of preventing malfunctions/break-down/human error that could lead to a failure to comply with warning levels or discharge limits;
- initiating the necessary procedures in the event that warning thresholds or discharge limits are exceeded, in order to ensure that discharges return below limits or warning thresholds as quickly as possible;
- calibration and maintenance of the instruments used for taking measurements;
- traceability of all activities having to do with the management of waste water discharge;

It is prohibited to discharge waste water into the soil or into the surface layers of the subsoil, into underground waters or in any other manner not specified within the authorization acts and the law in force.

Managing (storage/handling/use) of chemical and flammable substances which could potentially contaminate the soil, subsoil, surface waters or underground water: a set of company regulations establishes roles, responsibilities and operational procedures for identifying and managing all company activities which during the

course of which an event which could potentially cause contamination of the soil, subsoil, underground waters and surface waters might occur; the purpose of said regulations is to prevent or, in any case, reduce the risk of such events occurring.

Informing the Authorities if a potentially polluting event should occur: a set of company regulations establishes roles, responsibilities and operational procedures to ensure that the Authorities are promptly informed upon the occurrence of an event that could potentially cause contamination of the soil, subsoil, surface waters of underground waters, or, otherwise, that they are promptly informed upon the discovery of historic contamination which could still pose a risk of aggravating the contamination situation. In particular, this set of company regulations establishes responsibilities and operational procedures for:

- informing the company departments involved of the occurrence of the potentially polluting event and/or of the discovery of historic contamination;

- appropriate communication of the occurrence, in the timeframe and manner established by the law, to the competent Authorities (province, region or autonomous province of the locality in which the harmful event occurred, as well as to the Prefect of the province); said communication must include all the pertinent aspects of the situation (identifying information of the operator, characteristics of the site in question, environmental matrices presumably involved, description of the measures to be taken);

- Documentation for all these activities must be kept on file and the entire process must be traceable.

Managing environmental characterization/securing/reclamation/remediation procedures: a set of company regulations establishes roles, responsibilities and operational procedures for carrying out reclamation projects in accordance with project plans approved by the competent Authorities and in compliance with any provisions and amendments made to same, following pollution of the soil, subsoil, the surface waters or underground waters exceeding the threshold risk concentrations (Threshold Limit Values, TLV). This set of company regulations establishes roles, responsibilities and operational procedures to ensure that the procedures to be implemented in case of potential contamination are conducted in compliancy with the law in force (the implementation of prevention measures, a preliminary investigation to check whether concentrations are within the TLV or have exceeded it, the preparation and presentation to the Authorities of a project for reclaiming/securing the site/area affected). Documentation for all these activities must be kept on file and the entire process must be traceable.

The purchase/sale of sites/areas that are potentially contaminated: a set of company regulations establishes roles, responsibilities and operational procedures for identifying the presence, during the process of purchase/sale of sites/areas, of potential contamination of the soil, subsoil, surface waters or underground waters as a result of to past activity (e.g. conducting environmental due diligence).

Managing assets containing substances hazardous to the stratospheric ozone: a set of company regulations governs the purchase, installation, use, maintenance and/or dismantling/disposing of systems/equipment containing substances hazardous to the stratospheric ozone to ensure that such activities are carried out in compliance with the requirements of the law in force. In particular, this set of company regulations establishes roles, responsibilities and operational procedures for:

- identifying all systems/machinery/equipment/devices which might potentially contain substances hazardous to the ozone layer (e.g. air conditioning and refrigeration equipment, heat pumps, fire protection systems) used in the context of activities carried out by the organization and recording the types and quantities of substances contained in each (e.g. CFCs, halon, HCFCs and HBFCs);

- verifying that the substances present in the aforesaid plants/machinery/equipment/devices are not among those whose use is banned/restricted; dismantling/disposing of any assets containing said substances and/or substitution of the banned substances;

- periodic updating and assessment of the aforesaid assets;

- establishing routine maintenance schedules (e.g. to check for leakage of gases) for the aforesaid assets in compliance with the law in force (checks to be performed yearly or every six months verifying the quantity of gas contained, the use of gas leak detection instruments that comply with requirements);

- traceability of all activities having to do with assets containing substances hazardous to the stratospheric ozone.

Carrying out new building projects/non-routine maintenance in proximity to natural areas: a set of company regulations governs new building products in proximity to natural areas, whose purpose is to ensure the protection of any protected wild plant and animal species which may be present in said areas and to safeguard protected habitats. In particular, this set of company regulations establishes roles, responsibilities and operational procedures for:

- identifying areas and types of activity (e.g. new building projects and the non-routine maintenance of existing property and facilities) which could potentially compromise protected habitats and/or species as well as verification that those carrying out said activities are in possession of valid authorizations/communications required in order to carry out said activities;

- management (direct or through a contractor) of the activities described above in respect of the requirements of, and in compliance with, the provisions contained in the permits issued in authorization of said activities, and with the applicable law in force;

- verification of compliance with the requirements of the law in force and of the permits issued in authorization of the aforesaid activities;

- traceability of all activities having to do with new building projects/non-routine maintenance activities.

The management of job-related activities which involve the use of protected wild and plant species: a set of company regulations governs the management of job-related activities in the presence of protected animal and plant species, created to safeguard and protect said species. In particular, this set of company regulations establishes roles, responsibilities and operational procedures for:

- managing the preparation, issuing and renewal of certificates, licenses, import notifications, declarations and the information communications (engaging in activities of import, export, trade or possession, while holding a valid appropriate certificate/license);

- managing the possession of transport of specimens in compliance with the provisions set forth in licenses or certificates and managing the transport of same while in possession of the appropriate certificate/license;

- managing and controlling the use of specimens in compliance with the provisions laid down in authorizations and certificates;

- managing activities involving the trade of artificially reproduced plants (in compliance with the provisions contained in Reg. 338/97 and in Reg. 939/97);

- managing documentation allowing the carrying out of activities involving the possession, use, purchase, sale, display or transfer of specimens pursuant to Annex B of Reg. 338/97 (issuing, renewing, keeping on file, filing, traceability);

- managing activities involving the possession of specimens of animal species in compliance with prohibitions on the possession of live specimens of wild mammals and reptiles and mammals and reptiles bred in captivity.

Managing environmental emergency situations: a set of company regulations governs the management emergency situations (e.g. spills of dangerous chemicals onto the soil, accidents during the course of operations that may lead to limits for atmospheric emissions or waste water discharge). In particular, these regulations:

- establish procedures for identifying potential emergency situations which could have an adverse impact on the environment;

- identify roles, responsibilities and procedures for responding to actual emergency situations and accidents;

- identify roles, responsibilities and procedures to prevent/mitigate adverse environmental impacts associated with emergency situations;

- identify procedures and establish timetables/determine the frequency of periodic revisions and reviews of company regulations regarding emergency preparedness and response procedures, especially after the occurrence of accidents or emergency situations;

- identify personnel education programmes to prepare staff to deal with possible accidents with adverse environmental impact;

- specify the procedures and establish time-tables/determine the frequency of periodic drills to test preparedness and response in the event of environmental accidents.

Selection of providers: waste management services (pick-up, disposal, brokerage and transport of waste): a set of company regulations governs the selection of waste management service providers (pick-up/disposal/brokerage/transport of waste) to ensure that such providers are in possession of valid enrolments/communications/authorizations required by law in order to conduct waste management activities; this set of regulations must also govern the allocation of contracts. In particular, this set of company regulations establishes roles, responsibilities and procedures for:

- initial approval and periodic renewal of approval of providers of waste management services including pick-up/disposal/brokerage/transport through verification of their compliance with applicable regulatory requirements and of their environmental activities by means of:

    - acquiring a complete copy of enrolments/communications/authorizations and of all documents necessary to demonstrate compliance with requirements of an administrative nature (e.g. acceptance of sureties from the authorized organization, records of dues paid to trade associations) and copies of any certificates attesting to the systems' compliance with international regulations;

    - initial and periodic verification of documentation received (e.g. enrolment in the national association of environmental management services providers, verification of authorized CER codes, verification of vehicle authorization for each waste category);

  - (where necessary) creation of a list/database of qualified waste pick-up, disposal, and transport services providers as well as qualified waste management brokers;

  - keeping track of expiration dates of enrolments/communications/authorizations (e.g. using computer software);

- (in the case of brokers) stipulating contract clauses which require the broker to provide, along with documentation of his qualification and license, additional documentation including the enrolment papers/authorizations for the hauliers he uses and the facilities to which the waste he hauls is transported;

- traceability of all activities having to do with the selection process for providers of waste management services including pick-up/disposal/brokerage/transport, and the subsequent allocation of contracts.

Selection of providers: Analytical testing laboratories: a set of company regulations governs the selection of analytical testing laboratories and the subsequent allocation of contracts in order to ensure that said laboratories are suitable from technical, professional and authorization standpoints and that they are bound by contract to comply with the environmental law in force as well as with the specific requirements laid down by the organization. In particular, this set of company regulations establishes roles, responsibilities and operational procedures for:

- initial approval and periodic renewal of approval of analytical testing laboratories in order to verify their suitability from a technical standpoint, specifically:

  - acquiring documentation which confirms that the laboratories in question are in possession of any necessary accreditation required to perform the analytical testing required;

  - the stipulation of contract clauses requiring analytical testing laboratories to provide either calibration certificates for the instruments used to carry out the chemical analytical testing or self-certification of the same;

- traceability of all activities having to do with the selection process for analytical testing laboratories and the subsequent allocation of contracts.

In the event that the laboratories are also entrusted with the task of collecting samples, then they are required to adopt recognized/validated sampling methodologies that ensure the representivity of the samples collected.

Selection of providers: third parties who carry out activities with environmental relevance: a set of company regulations governs the selection of service providers and the subsequent allocation of contracts in order to ensure that the service providers entrusted with activities with environmental relevance are suitable from technical, professional and authorization standpoints and that they are bound by contract to comply with the environmental law in force as well as with the specific requirements laid down by the organization. In particular, this set of company regulations establishes roles, responsibilities and operational procedures for:

- identification of the types of service providers whose activities have environmental relevance (e.g. excavation, construction, demolition, drainage and clearing of gully gratings, maintenance and other activities within the sphere of which an environmental crime could be committed);

- initial approval, and periodic renewal of approval, of providers, in order to verify their technical suitability, their compliance with applicable regulatory requirements and their environmental activities (through verification of, for example, technical suitability, possession of the required enrolments/authorizations/licenses, contractors' possession of the appropriate equipment/vehicles, the adoption of systems to manage certifications).

- defining specific techniques and stipulating specific contract clauses to address questions of compliance with the applicable environmental protection laws (with particular reference to those connected to crimes pursuant to L.D. 231/01) and the attribution of liability in environmental matters (e.g. liability in matters of waste management and determining the role of the party who produces the waste generated during the course of activities performed by a contractor, obligations in the case of polluting events occurring, the identity of the party who should be in possession of any authorizations that might be necessary in order to perform the activities which have been entrusted by contract);

- determining which information must be given to service providers in relation to the regulations and prohibitions which must be respected during the course of the providers' activities within company departments or on behalf of the company (e.g. hazardous substance management departments and procedures and departments and procedures for the management of any waste produced, as well as environmental emergency procedures);

- traceability of all activities having to do with the process for the selection and allocation to third parties of activities with environmental relevance.

Monitoring the environmental performances of contractors and suppliers: a set of company regulations deals with monitoring the environmental performances of contractors and suppliers in order to ensure their activities are carried out in compliance with environmental laws in force and the specific requirements established by organization. In particular, these regulations establish roles, responsibilities and procedures for:

- monitoring contractors' and suppliers' operations by means of site visits/inspections during the course of activities and at their company offices;

- reporting any divergence/potential divergence from the requirements of the law and those specifically established by the organization;

- establishing corrective actions to ensure that the divergences/potential divergences identified are not repeated;

- ensuring the traceability of all activities associated with the process for monitoring the performances of contractors and suppliers.

3. Checking and corrective action

With regard to these activities, the regulations provide for:

Monitoring and measurement: a set of company regulations establishes:

- roles, responsibilities and procedures to monitor and measure the environmental characteristics of its operations (e.g. atmospheric emissions, waste water discharges, checking the integrity of seals on tanks and cisterns, checking for leaks of gas harmful to the stratospheric ozone);

- procedures for recording and filing information to monitor performance, compliance with regulatory requirements as well as conformity with the organization's own environmental objectives and targets (e.g. certificates of analysis, reporting on continuous analysis, reports of measurements, other reports).

Evaluation of compliance with requirements: a set of company regulations establishes roles, responsibilities and procedures having to do with periodic checking of compliance with the applicable environmental regulations. In particular, these regulations provide for:

- establishing roles/responsibilities for the evaluation of compliance with requirements;

- establishing procedures and timetables for said evaluation;

- establishing roles/responsibilities and procedures for keeping records of the results of the periodic evaluations.

Accidents and non-conformity: a set of company regulations establishes procedures for identifying non-conformity(ies) and environmental crimes, both actual and potential, and for identifying, recording and taking corrective action(s) and preventive actions:

- identifying and correcting non-conformity(ies) and taking action(s) to mitigate their environmental impacts;

- investigating non-conformities, determining their causes(s) and taking actions in order to avoid their recurrence;

- evaluating the need for action(s) to prevent non-conformity(ies) and implementing appropriate actions designed to avoid their occurrence;

- identifying roles and responsibilities for the implementation of these actions and verifying whether or not said actions are suitable for the purpose;

- recording the results of corrective action(s) and preventive actions(s) taken and reviewing their effectiveness;

Control of records: a set of company regulations establishes roles, responsibilities and procedures to check that records of environmental matters are being kept (identification, storage, protection, retrieval, retention and disposal of records). In particular, these regulations provide for:

- establishing the types of records which must be retained (e.g. certificates of analysis, records of checks and maintenance, records having to do with waste management, records of audits and reviews, records of environmental training, etc.);

- establishing responsibilities for the collection and retention of records created;

- establishing procedures and timetables for collection and retention of same;

- procedures for ensuring that records are and remain legible, identifiable and traceable.

Internal audits: a set of company regulations governs roles, responsibilities, operational procedures and activities having to do with the periodic verifications of compliance with requirements in environmental matters (audits). In particular, these regulations establish:

- the frequency of audits and the timetables for the planned arrangements of such activities;

- the necessary responsibilities of the personnel involved in audit activities, in order to ensure the impartiality of auditors with respect to the activities they are auditing;

- procedures for keeping records of audits;

- procedures for identifying and applying corrective actions if non-conformities with regulations and applicable requirements are discovered;

- procedures for reporting the results of the audits to the company's Senior Management.

Reporting: a set of company regulations governs the roles, responsibilities and operational procedures associated with reporting to the Supervisory Board. Reporting procedures must ensure that data associated

with environmental management system activities is traceable and readily available; in particular, the following information must be transmitted at periodic intervals:

- divergence between the results obtained and planned objectives;
- the results of audits (including reporting of reviews and any communications/reports received from interested external parties, such as Regulatory Agencies and other third parties);
- changes which could make it necessary to update the map of sensitive activities and the Model (developments in legal requirements related to environmental aspects applicable to the Company; changes to plants/equipment or processes that make it necessary to seek new authorizations; variations in procedures associated with environmental protection).

4. Management review

With regard to this process, regulations provide for:

Review: a set of company regulations establishes roles, responsibilities and procedures for conducting the review of the company's environmental management system on the part of the Senior Management:

In particular, these regulations must require the following activities to be conducted and provide for the their traceability/documentation:

- evaluations of compliance with legal requirements and with other requirements to which the organization is bound;
- the extent to which objectives and targets have been met and an analysis of any divergence between results obtained and planned objectives;
- an analysis of the results of the Audits;
- an analysis of the results obtained from monitoring environmental performance;
- the status of corrective and preventive actions, as well as the status of follow-up actions from previous management reviews;
- identifying objectives for improvement, to be implemented before the next review (taking into account the organization's commitment to on-going improvement).

RAI - Radiotelevisione Italiana Spa

Organizational, Management and Control Model

Pursuant to Legislative Decree 231/01

Appendix A

12. APPENDIX A

Regulatory Framework of Reference

1.1. Introduction

Legislative Decree No. 231 (hereinafter "L.D. 231/2001" or "the Decree"), issued on of 8 June 2001, in enactment of the proxy contained in Art. 11 of Law no. 300 of 29 September 2000 and known as the legislation "governing the liability of corporate entities for administrative offences arising from crimes", is applicable to juridical persons and to companies and associations with or without legal status[28].

The Decree was primarily created as the result of the ratification, on the part of Italy, of a number of international and EU agreements stipulating the establishment of liability to be borne by collective entities for certain types of crimes. Such entities can, in fact, be held "liable" for certain crimes committed or attempted in their interest or to their advantage by individuals high in the organizational hierarchy (the so-called persons "in positions of seniority" or, simply, "senior parties") and those under their management or supervision, or, in other words, their subordinates (Art. 5, paragraph 1 of L.D. 231/2001)[29].

L.D. 231/2001 thus updates the Italian judicial system insofar as corporate bodies, directly or independently, can now be penalized financially and/or subjected to prohibitive sanctions in relation to crimes charged against persons who are functionally related to the bodies as per Art. 5 of the Decree[30].

The administrative liability of the corporate entity is independent of the criminal liability of the natural person who has committed the crime; it is separate from and in addition to the personal liability borne by the individual who has committed the crime.

This notwithstanding, the corporate entity shall be exempted from said liability if, before the crime has been committed, it has adopted and effectively implemented an organizational, management and control model designed to prevent crimes of that type from being committed. Such models may be adopted on the basis of codes of conduct (guidelines) drawn up by trade/business associations, including Confindustria, and submitted to the Ministry of Justice.

[28] State-owned companies and private corporations which have been allocated contracts to perform a public service fall under the Decree's sphere of applicability, while the Italian State itself and local public agencies, not-for-profit public agencies and agencies which perform functions dictated by the Constitution do not.

[29] Art. 5, Paragraph 1, L.D. 231/2001: "Corporate liability: a corporate entity is liable for crimes committed in its interest or to its advantage: a) by persons having functions of representation, administration or management of the corporate entity or of an organizational unit thereof possessed of financial and functional autonomy, as well as by persons who exercise, even if only *de facto*, management and control thereof; b) by persons subject to the management or under the supervision of one of the persons described in point a) above."

[30] Based on Art. 8 of L.D. 231/2001: "Corporate entities' exemption from liability: 1. The entity is not exempt from liability even when: a) the author of the crime has not been identified or cannot be charged; b) the crime is dismissed for a cause other than amnesty. 2. Unless the law provides otherwise, no prosecution will be brought against the corporate entity when an amnesty has been granted for a crime for which it would be liable and when the criminal defendant has waived his or her claim to application of such an amnesty. 3. The corporate entity may waive its claim to the amnesty.

The corporate entity shall not be held liable on any account in the event that the senior parties in question or their subordinates were acting solely in their own interests or in the interest of third parties[31].

1.2. Nature of the liability

With regard to the nature of administrative liability defined in the Decree, the Explanatory Report to L.D. 231/2001 emphasises "the creation of a *tertium genus* which combines the essential characteristics of the criminal system with those of the administrative, in an attempt to reconcile the reasons for effective preventive measures with those, even more unavoidable, requesting greater guarantees".

L.D. 231/2001 has, indeed, introduced an "administrative" form of corporate liability to the Italian system – in observance of the dictates of Art. 27, Paragraph 1 of the Italian Constitution, which states that "Criminal liability is individual" – but with numerous commonalities with a "criminal" type of liability[32].

1.3. Liability criteria

Committing any one of the crimes set out in the Decree constitutes a basis for the application of the disciplinary measures laid down in the Decree.

The Decree envisages both objective and subjective criteria for liability (in a broad sense, considering that these criteria are applied to corporate bodies).

Objective criteria for liability:

The first fundamental and essential criteria for liability is objective in nature, and is namely that the crime – or administrative wrongdoing – is committed, "in the interests of or to the advantage of the corporate entity".

The corporate entity can therefore be held liable when the offence has been committed in its own interests or, in other words, to provide the corporate entity with some benefit, regardless of whether the objective of the wrongdoing is effectively or concretely achieved. This criterion is therefore dependent upon whether the crime has been perpetrated for this purpose, regardless of whether it is the sole purpose behind the offence.

The criterion relating to the seeking of advantage, on the other hand, requires the corporate entity to have objectively gained some advantage as a result of the crime having been committed, regardless of the intention of the individual who committed it.

[31]Art. 5, Paragraph 2, of L.D. 231/2001: "Corporate liability: *The corporate entity is exempt from liability in the event that the persons described in Paragraph 1 were acting solely in their own interest or in the interest of third parties".*

[32]Among the articles of greatest relevance to this topic are Articles 2, 8 and 34 of L.D. 231/2001. The first restates the principle of legality typical of criminal law; the second confirms the corporate entity's liability as independent from the liability of the natural person who engaged in the criminal conduct; the third envisages the circumstance that this liability, dependent on the commission of a crime, is ascertained through criminal proceedings and is, therefore, assisted by the characteristic guarantees of the criminal process. Furthermore, the punishing nature of the penalties applicable to the company should also be considered.

The corporate entity is not liable if the offence has been committed by one of the subjects described in the Decree if such a person was "acting solely in his or her own interest or in the interest of a third party". This confirms that, while the company cannot be held liable for crimes committed solely in the interests of the individual perpetrator or of third parties, the company will nevertheless bear liability if the interest is common to the company and to the individual perpetrator, or partly to one and partly to the other.

The second criterion for objective liability is represented by the type of person who commits the offence. As a matter of fact, as mentioned above, the corporate entity is responsible for offences committed in its interest or to its advantage only in the event that said offences are perpetrated by one or more qualified subjects, whom the Decree divides into two categories:

1) «by persons having functions of representation, administration or management of the corporate entity or of an organizational unit thereof possessed of financial and functional autonomy" or by those who "exercise, even if only *de facto*, management and control thereof." Examples of such individuals could be legal representatives, directors, general managers or managers of local offices or branches, and other individuals who exercise, even if only *de facto,* management and control of the corporate entity[33] (the so-called persons "in positions of seniority", or, "senior parties"; Art. 5, Para. 1, Point a) of L.D. 231/2001).

2) "by persons subject to the management or under the supervision of one of the persons in a position of seniority" (the so-called subordinates; Art. 5, Para. 1, Point b) of L.D. 231/2001). All those subjects who implement, in the interests of the company, the decisions adopted by those in positions of seniority, under the management and supervision of senior parties. All the employees of the corporate entity and all those individuals acting in the name of, on behalf of or in the interests of the corporate entity, such as, for instance, contractors, semi-subordinate workers, and consultants, fall under this category.

In the event that the crime is perpetrated by two or more individuals working together (giving rise to criminal conspiracy: Art.110 of the Italian Criminal Code; the situation is largely the same in cases of administrative offence), it is not necessary that the "qualified" subject perform, even in part, the type of action envisaged under the law. That he or she has knowingly provided a casual contribution to the perpetration of the crime is alone necessary and sufficient.

Subjective criteria for liability:

The Decree envisages corporate liability as a direct liability, in the case of action and in the case of omission. Subjective criteria for the attribution of liability conform to the characteristics of the corporate entity's culpability.

The corporate entity is held liable if it has not adopted or has not conformed to good management and control standards as part of its organization, or has not applied such standards when conducting its activities. Whether or not the corporate entity can be held culpable, and whether disciplinary action can therefore be taken against it, depends upon whether or not it can be shown that there was no proper company policy in effect, or that there were organizational deficits in the company structure, which allowed for the perpetration of one of the predicate crimes.

The corporate entity will be exempt from liability, however, if – before the crime was committed – it had adopted and effectively implemented an organizational and management model designed to prevent the perpetration of crimes of the type that was committed.

[33]Such as, for instance, the so-called *de facto* administrator (see Art. 2639 of the Italian Civil Code) or the majority shareholder.

1.4. The exempting power of Organizational, Management and Control Models

The Decree exempts the corporate entity from bearing any liability if, before the crime was committed, the corporate entity had adopted and effectively implemented an "Organizational, Management and Control Model" (the Model) designed to prevent crimes of the type that was committed from being perpetrated.

This notwithstanding, if the corporate entity has eliminated the structural deficits which gave rise to the crime by adopting and implementing organizational models designed to prevent crimes of the type committed before the commencement of first instance proceedings, then this will protect the company from the application of prohibitive sanctions, in accordance with the dictates of Art. 17 of the Decree.

In addition, if the Model is drawn up after sentence has been passed, and if the corporate entity has also taken steps to compensate the damage and make its profits available for confiscation, then the prohibitive sanctions issued against the company may be converted into financial penalties, in accordance with the dictates of Art. 78 of the Decree.

The Model has exempting power, regardless of whether the presumed crime has been committed by a person in a senior position or by a party subject to the management or supervision of a senior party.

Crimes committed by persons in senior positions

In the case of crimes committed by persons in senior positions, the Decree introduces a sort of presumption of liability on the part of the corporate entity, insofar as it contemplates exemption from liability only if it can prove that[34]:

a) "prior to the commission of the crime, its governing body had adopted and effectively implemented an organizational and management model designed to prevent crimes of the same type as the one that has occurred;"

b) "a body of the company with autonomous powers of initiative and control has been vested with the task of monitoring the implementation of and compliance with the models, as well as of updating them;"

c) "the persons who have committed the crime did so by fraudulently avoiding compliance with the aforementioned organizational and management models;"

d) «the body with autonomous powers of initiative and control has neither failed to exercise oversight nor exercised inadequate oversight."

In order for the corporate entity to be exempt from liability, all the conditions here listed must exist concurrently and jointly.

The company will therefore have to demonstrate that it is extraneous to the wrongdoing with which the senior party is charged, proving the existence of the concurrent requisites listed above and, as a consequence, the circumstance that the perpetration of the crime does not derive from any "organizational fault" of its own[35].

[34] Art. 6 of the Decree.

[35] The Explanatory Report to L.D. 231/2001 expresses itself on this subject in the following terms: *"In order for the company to be liable, therefore, it must not only be the case that the crime can be connected with it on the objective level (the conditions in which this occurs, as we have seen, are governed by Article 5); in addition, the crime must constitute an expression of company policy, or, at the very least, derive from a fault in organization".* In addition: *"the Decree is based on the (empirically sound) presumption that, in the case of a crime committed by a party in a senior position, the "subjective" requirement for the company's liability [i.e. the so-called "organizational fault" on the part of the company] is satisfied, since senior management expresses and represents corporate policy; in order for this not to be presumed, it is up the company to demonstrate its non-involvement, and this it can only do by proving that a series of requirements were concurrently satisfied."*

Crimes committed by parties subject to the management or supervision of a senior party:

In the event of crimes committed by parties subject to the management or supervision of senior parties, the company will only be answerable if it shown that the "perpetration of the crime was made possible by a failure to fulfil management and supervisory obligations."

In other words, corporate liability is based upon a failure to fulfil obligations of supervision and surveillance, duties assigned *ex lege* to senior management or transferred to other subjects by valid appointment[36].

In any event, the corporate entity is exonerated from violation of management and supervisory obligations "if, before the perpetration of the crime, it had adopted and effectively implemented an Organizational, Management and Control Model designed to prevent crimes of the type which occurred".

In the case of crimes perpetrated by parties subject to the management or supervision of a senior party, we see an inversion of the burden of proof. In the events envisaged by the aforementioned Art. 7, it will be the responsibility of the prosecution to prove that there was a failure to adopt and effectively implement an Organizational, Management and Control Model designed to prevent crimes of the type which occurred."

L.D. 231/2001 stipulates that the organizational and management models must contain specifications regarding the extent of delegated powers and the perpetration of crimes, as laid down in Art. 6, paragraph 2:

- identify of the areas of activity that are exposed to the perpetration of crimes;
- include specific protocols for planning the processes of decision-making and for implementing the corporate entity's decisions with regard to the crimes to be prevented;
- identify procedures for managing financial resources which are designed to prevent crimes from being committed;
- include duties of reporting towards the body responsible for monitoring the implementation of and compliance with the model;
- introduce a disciplinary system designed to punish lack of compliance with the measures laid down in the model.

Moreover, Art. 7, paragraph 4 of L.D. 231/2001 establishes the requirements for effective implementation of organizational models:

- periodic checks and the introduction of any necessary amendments to the model, in the event that significant violations of the regulations contained within the model are discovered, or when changes take place within the organization or its sphere of activities
- a disciplinary system designed to punish failures to respect the measures laid down in the model

Legislative Decree No. 81 of 9 April 2008, containing the Consolidated Law on Health and Safety in the Workplace, establishes the requirements with which organizational and management models must comply with regard to crimes related to health and safety in the workplace. These models:

[36]Art. 7, Paragraph 1, of the Decree.

– Must include systems designed to record whether required workplace health and safety activities have been carried out.

– Must include, as required by the nature and the size of the organization and the type of activities carried out, a description of functions that will ensure the presence of the technical skills and the powers necessary for risk checking, assessment, management and control, as well as a disciplinary system designed to punish any non-compliance with the measures laid down in the model

– Must also include a system designed to monitor the implementation of the model itself. This system must take into account changes which could affect the suitability of measures included in the model over time. The organizational model must be reviewed and, if necessary, amended, in the event that significant violations of the regulations governing accident prevention and hygiene in the workplace are discovered or, otherwise, in the event of changes within the organization and its activities as a result of scientific and technological advances.

1.5. Types of crimes and offences

Under L.D. 231/2001, the corporate entity can be held liable only for crimes expressly cited in L.D. 231/2001, and only if said crimes are committed in its interest or to its advantage, and only in the event they are committed by qualified subjects pursuant to Art. 5, Paragraph 1 of the Decree itself, or in the case of certain specific legal provisions made reference to the Decree, as in the case of Art. 10 of Law No. 146/2006.

For ease of exposition, the types of crimes and wrongdoings can be grouped into the following categories:

– Crimes in the sphere of relations with the Public Administration: these are the same group of crimes that were the original focus of L.D. 231/2001 (Articles 24 and 25)[37];

– Crimes against public trust, which include the counterfeiting of legal tender, instruments of public credit and revenue stamps, as dictated by Art. 25-bis of the Decree and introduced by Art. 6 of Legislative Decree 350/2001, converted into law with amendments by Art. 1 of Law No. 409 of 23 November 2001, containing "Urgent measures in anticipation of the introduction of the Euro"[38];

– Corporate crimes: Art. 25-ter, introduced in L.D. 231/2001 by Art. 3 of Legislative Decree No. 61 of 11 April 2002, which, as part of corporate law reform, extended the system of administrative responsibility of companies to include certain corporate crimes[39];

[37] This category includes the following crimes: misappropriation of funds to the detriment of the State of Italy or the European Union (Art. 316-bis of the Italian Criminal Code (hereinafter Criminal Code); illicit receipt of funds to the detriment of the State of Italy (Art. 316-ter of the Criminal Code); fraud to the damage of the State of Italy or another government agency (Art. 640, Paragraph 2.1 of the Criminal Code); aggravated fraud for the purpose of obtaining government grants (Art. 640-bis of the Criminal Code); computer fraud to the damage of the State of Italy or another government agency (Art. 640-ter of the Criminal Code); extortion (Art. 317 of the Criminal Code); bribery to obtain an official act or an act contrary to the duties of office (Articles 318, 319 and 319-bis of the Criminal Code); bribery during judicial proceedings (Art. 319-ter of the Criminal Code); bribery of persons responsible for a public service (Art. 320 of the Criminal Code); active bribery (Art. 321 of the Criminal Code); incitement to bribery (Art. 322 of the Criminal Code); extortion, bribery or incitement to bribery of members of European Union bodies and officers of the European Community or other foreign States (Art. 322-bis of the Criminal Code).

[38] This category includes the following crimes: acting in concert with others for the production, spending and/or introduction into the State of Italy of counterfeit legal tender (Art. 453 of the Criminal Code); the counterfeiting of currency (Art. 454 of the Criminal Code); spending and introduction into the State of Italy of counterfeit money, acting alone and not in concert (Art. 455 of the C.P.); the spending of counterfeit money received in good faith (Art. 457 of the Criminal Code); the production of counterfeit revenue stamps and/or the introduction into the State, purchase, possession or introduction into circulation of counterfeit revenue stamps (Art. 459 of the Criminal Code); the forgery of watermarked paper for use in the production of legal tender or revenue stamps (Art. 460 of the Criminal Code); the manufacture or possession of thread marks/watermarks or other instruments used in the production of counterfeit money, revenue stamps or watermarked paper (Art. 461 of the Criminal Code); the use of forged or altered revenue stamps (Art. 464 of the Criminal Code). Article 15, Paragraph 7 of Law No. 99 of 23 July 2009, containing "Provisions for the development and internationalization of firms, with particular reference to energy", amended Art. 25-bis to punish the forgery and alteration of brand names and trademarks or distinctive signs and marks (Art. 473 of the Criminal Code), as well as the introduction into the State of products bearing false signs and marks (Art. 474 of

the Criminal Code).

[39] This category includes the following crimes: false corporate communications (Art. 2621 of the Civil Code as amended by Art. 30 of Law No. 262 of 28 December 2005) and false corporate communications to the detriment of shareholders or of creditors (Art. 2622 of the Civil Code, as modified by the second Paragraph of Art. 30 of Law No. 262 of 28 December 2005); false statements in the reports or communications of the Independent Auditor (Art. 2624 of the Civil Code; Art. No. 35 of Law No. 262/2005, refers to Art. 175 of Legislative Decree No. 58 of 24 February 1998, and subsequent amendments, in Part V, Section I, Paragraph III, Article 174-bis and 174-ter); obstruction of control activities (Art. 2625, second Paragraph, Civil Code); fraudulent formation of share capital (Art. 2632 of the Civil Code); wrongful distribution of capital (Art. 2626 of the Civil Code); illegal allocation of profits and reserves (Art. 2627 of the Civil Code); unlawful transactions on the shares or on the quotas of the company or its controlling company (Art. 2628 of the Civil Code); transactions prejudicial to the creditors (Art. 2629 of the Civil Code); failure to communicate a conflict of interest (Art. 2629-bis of the Civil Code, introduced by Art. 31, Paragraph 1, of Law 262 of 2005, which integrated Section "r" of Art. 25-ter of L.D. 231/2001); fraudulent allocation of company assets by liquidators (Art. 2633 of the Civil Code); unlawful influence over the shareholders' meetings (Art. 2636 of the Civil Code); market rigging or manipulation (Art. 2637 of the Civil Code); obstructing public authorities in the execution of their monitoring activities (Art. 2638 of the Civil Code); Article 37, Paragraphs 34 and 35 of Legislative Decree No. 39 of 27 January 2010, implementing Directive EC/2006/43 dealing with legally required audits, abrogating Art. 2624 of the Civil Code and amending Art. 2625 of the Civil Code, did not update Art. 25-ter of L.D. 231/01 to bring it into line with these modifications: in light of the fact that the principle of "sufficient certainty" (*Translator's note: "tassatività" in Italian*), applies in the sphere of Italian criminal law, the aforesaid types of crime affected by the recent legislative actions should therefore no longer be included in the catalogue of predicate crimes giving rise to corporate liability.

– Crimes committed for the purposes of terrorism or for the subversion of democracy (as specified in Art. 25-quater of L.D. 231/2001, introduced by Art. 3 of Law 7 of 14 January 2003). These are "crimes committed for the purposes of terrorism or for the subversion of democracy, as set forth in the Criminal Code and in special laws", as well as crimes, differing from those described above, "which are nonetheless in violation of Article 2 of the International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999")[40];

– Market abuse offences, as specified in Art. 25-sexies of the Decree[41];

– Crimes against individuals, as specified in Art. 25-quinquies, introduced into the Decree by Art. 5 of Law 228 of 11 August 2003, which include child prostitution, child pornography, human trafficking, enslavement or servitude[42];

– Transnational crimes: Under Art. 10 of Law No. 146 of 16 March 2006, the administrative liability of corporate bodies was extended to cover crimes of the types specified under Law No. 146 even when those crimes have been committed at a transnational level[43];

– Crimes against life and personal safety: Art. 25-quater of the Decree, introduced by Law no. 7 of 9 January 2006, extends the administrative liability of corporate bodies to include crimes involving mutilation of the female genital organs;

[40] The International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999, punishes any person who unlawfully and wilfully provides or collects funds in the knowledge that they are to be used, in full or in part, in order to carry out: (i) any act intended to cause death or serious bodily injury to a civilian, when the purpose of such an act is to intimidate a population or to compel a government or an international organization to perform or to abstain from performing any act; (ii) any act deemed unlawful in the treaties governing the safety of civil aviation, the safety of maritime navigation, the protection of nuclear material, the protection of diplomatic agents, and the suppression of terrorist bombings. Legislative requirements in connection with the category of "*crimes committed for purposes of terrorism or for the purpose of the subversion of democracy, as set forth in the Criminal Code and in special laws"* are described in a general way, as precise regulations referring to these offences are not specified. However, the principle predicate crimes are those pursuant to Art. 270-*bis* of the Criminal Code (*Conspiracy for purposes of terrorism, including international terrorism, or for purposes of the subversion of democracy*), which punishes those who promote, form, organize, manage or finance associations which intend to perpetrate violent actions for terrorist or subversive purposes, and Art. 270-ter of the Criminal Code (*Aiding and abetting conspirators*) punishes those who provide shelter, food, hospitality, transportation or communication equipment to any person involved in conspiracy for purposes of terrorism or subversion.

[41] Art. 25-sexies, introduced by Art. 9 of Law 62 of 18 April 2005 ("European Community Law of 2004") states that a company can be made to answer for crimes involving the unlawful misuse of insider information (Art. 184 of the TUF) and/or market manipulation (Art. 185 of the TUF). According to Art. 187-quinquies of the TUF, the corporate entity may also be responsible for paying an amount equal to the administrative financial penalty imposed for administrative offences involving the misuse of insider information (Art. 187-bis of the TUF) and/or market manipulation (Art. 187-ter of the TUF) if said offences have been committed in its interests or to its advantage by persons who fall under the categories of either "persons in senior positions" or "persons subject to the management or supervision of others".

[42] Punishable crimes in this category are: enslavement or servitude (Art. 600 of the Criminal Code); human trafficking (Art. 601 of the Criminal Code); purchasing or selling slaves (Art. 602 of the Criminal Code); crimes involving child prostitution and the exploitation of minors (Art. 600-bis of the Criminal Code), crimes involving child pornography and the exploitation of same (Art. 600-ter of the Criminal Code); possession of pornographic material produced by means of the sexual exploitation of minors (Art. 600-quater of the Criminal Code; tourism aimed at the exploitation of child prostitution (Art. 600-quinquies of the Criminal Code).

[43] The crimes listed in the aforementioned Art. 10 of Law No. 146/2006 (criminal conspiracy, mafia-like criminal conspiracy, criminal conspiracy for the purpose of smuggling foreign tobacco products, conspiracy for the purpose of illicit trafficking in narcotic drugs or psychotropic substances, crimes concerning violations of the regulations on illegal immigration, inducing others to refrain from making statements or to make false statements to judicial authorities, personal aiding and abetting) are considered to be transnational when the offence has been committed in more than one State or, alternatively, if it is committed in one State, but a substantial part of the preparation or planning occurs in another State or, as yet another alternative, it is committed in one State, but an organized criminal group involved in criminal activities in more than one State is implicated. In this case, further provisions have not been listed within L.D. 231/2001. Liability derives from an independent provision of the aforementioned Art. 10, which lists the specific administrative penalties applicable for each of the crimes listed above and specifies in its final paragraph, by way of reference, that "the provisions applicable to the administrative offences contemplated in this article are those laid down in Legislative Decree No. 231 of 8 June 2001".

– Crimes of involuntary manslaughter, serious personal injury or grievous bodily harm, committed with breach of regulations governing health and safety in the workplace. Art. 25-septies extends administrative liability of corporate bodies to include crimes under Articles 589 and 590, Paragraph 3, of the Criminal Code (Involuntary manslaughter and serious personal injury or grievous bodily harm) committed in violation of regulations governing health and safety in the workplace[44];

– Crimes of receiving, laundering, or using illegal capital: Art. 25-octies[45] of the Decree extends corporate liability to cover include crimes under Articles 648, 648-bis and 648-ter of the Criminal Code;

– Cybercrime and misuse of data: Art. 24-bis of the Decree contemplates new types of administrative offences linked to certain types of cybercrime and misuses of data[46];

– Crimes to the detriment of industry and trade, as specified in Art. 25-bis no.1 of the Decree[47];

– Crimes involving organized crime, as specified in Art. 24-ter of the Decree[48];

– Crimes associated with copyright infringement, as specified in Art. 25-novies of the Decree[49];

[44]The aforementioned Article was introduced by Art. 9 of Law 123 of 3 August 2007, subsequently amended by Art. 300 (Amendments to Legislative Decree No. 231 of 8 June 2001) of Legislative Decree No. 81 of 9 April 2008 and implementing Art. 1 of Law 123 of 3 August 2007 dealing with health and safety in the workplace, published in Official Gazette No. 101 – S.O. No. 108/Official Gazette of 30 April 2008.

[45] Art. 63, Paragraph 3 of Legislative Decree No. 231 of 21 November 2007, published in the Official Gazette No. 290 of 14 December 2007 and implementing Directive 2005/60/EC of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, as well as Directive 2006/70/EC, laying down implementing measures for Directive 2005/60/EC, introduced the new article of Legislative Decree No. 231 of 8 June 2001, administrative liability of corporate bodies in the case of crimes involving the receiving of stolen property or money, money laundering or the use of money, property or benefits of illegal provenance.

[46] Art. 24-bis was added to the body of L.D. 231/2001 by Art. 7 of Law No. 48 of 18 March 2008. Said Article ratifies and enacts the Council of Europe Convention on Cybercrime, adopted in Budapest on 23 November 2001; it also contains relevant updates to national regulations and was published in the Official Gazette No. 80 on 4 April 2008 – S.O. no. 79. It extends administrative liability of corporate bodies to include crimes under the following articles of the Criminal Code: 491-bis (falsifying electronic documents); 615-ter (unlawful access to a computer system or an electronic data transmission system); 615-quater (unauthorized possession and distribution of access codes for computer systems or electronic data transmission systems); 615-quinquies (distribution of equipment, devices or computer programmes designed to damage or disrupt a computer system or electronic data transmission system); 617-quater (Intercepting, preventing or disrupting computer or electronic communications); 617-quinquies (the installation of devices intended to intercept, prevent or disrupt computer or electronic communications); 635-bis (corruption of information, data and software); 635-ter (corruption of information, data and software used by the State or other public bodies which are of public utility); 635-quater (corruption of computer systems or electronic data transmission systems); 635-quinquies (corruption of computer systems or electronic data transmission systems of public utility); 640-quinquies (computer fraud by a subject who performs electronic signature certification services).

[47]Art. 25-bis, no. 1, was added by Art. 15, Paragraph 6 of Law No. 99 of 23 July 2009. It extends administrative liability for corporate entities to include the following crimes: disturbing the freedom of industry or trade (Art. 513 of the Criminal Code); fraud in trading (Art. 515 of the Criminal Code); the sale of non-genuine foods as genuine (Art. 516 of the Criminal Code), the sale of industrial products with false or misleading names, trademarks or distinctive marks (Art. 517 of the Criminal Code); the manufacture of goods by encroaching on industrial property rights, and trade in said goods (Art. 517-ter of the Criminal Code); the forging of geographic indications or denominations of origin for food and agricultural products (Art. 517-quater, Criminal Code); unlawful competition with threats or violence (Art. 513-bis, Criminal Code); fraud to the detriment of national industries (Art. 514, Criminal Code).

[48]Art. 24-ter was introduced by Law 94 of 15 July 2009, Art. 2, Paragraph 29. It extends administrative liability to corporate bodies in include the following crimes: criminal conspiracy (Art. 416, Criminal Code, with the exception of Paragraph 6); criminal conspiracy for the purposes of enslavement or servitude, human trafficking, purchasing or selling slaves, and crimes concerning violations of the regulations on illegal immigration, pursuant to Art. 12 of Legislative Decree 286/1998 (Art. 416, Paragraph 6, Criminal Code); mafia-like criminal conspiracy (Art. 416-bis, Criminal Code); political-mafia electoral fraud (Art. 416-ter, Criminal Code); kidnapping for the purpose of extortion (Art. 630, Criminal Code); conspiracy for the purpose of illicit trafficking in narcotic drugs or psychotropic substances (Art. 74 of Presidential Decree No. 309, of 9 October 1990); illegally manufacturing, introducing into the State, offering for sale, transferring, possessing, or carrying in a public place or in a place open to the public weapons of war or war-like weapons or parts of the same, explosives, or illegal arms, as well as the more common firearms (Art. 407, Paragraph 2, Letter a), Number 5, Criminal Procedure Code).

[49]Art. 25-novies was introduced by Law No. 99 of 23 July 2009. It extends administrative liability for corporate bodies to include the following crimes: making available to the public, over an electronic communications transmission system, utilizing any type of connection, a protected original intellectual work or a part thereof (Art. 171, l. 633/1941, Paragraph 1 letter a) -bis); the same crime described in the above point, but involving another's intellectual property not destined for publication, in a way that is detrimental to the honour and reputation of the author (Art. 171, l. 633/1941, Paragraph 3); unlawful duplication, for profit, of computer programmes; the import, distribution, sale or possession, for commercial or business purposes, or the licensing of programmes embodied in media supports not bearing the SIAE stamp; making available the means to enable or facilitate the unlawful removal of or functional circumvention of protection devices for computer programmes (Art. 171-bis l. 633/1941, Paragraph 1);

– Crimes of inducing others to refrain from making statements or to make false statements to judicial authorities (Art. 377-bis, Criminal Code), as specified in Art. 25-decies of the Decree[50]

– Environmental crimes, as specified in Art. 25-undecies of the Decree[51];

Crimes involving the employment of foreign nationals who are illegal immigrants, as specified in Art. 25-duodecies of the Decree[52]

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the reproduction, transfer onto other media, distribution, communication, presentation or showing in public of the contents of a compilation of data; the extraction or reuse of the contents of a compilation of data; the distribution, sale or licensing of compilations of data (Art. 171-bis l. 633/1941, paragraph 2); the unlawful duplication, reproduction, transmission or public dissemination by any means, in whole or in part, of intellectual property intended for television or cinema, through sale or rental of discs, tapes or analogous media supports or any other type of media containing phonograms or videograms of comparable musical, cinematographic or audio-visual works or sequences of moving images; works or parts of works of literary, dramatic, scientific, didactic, musical or dramatic-musical nature, as well as multimedia works, even when included in collective or composite works or compilations of data; the reproduction, duplication, transmission or broadcast, sale or otherwise placing on the market, releasing for any reason or unlawfully importing more than fifty copies or samples of works protected by copyright or by related rights; the input, via any connection to electronic communications networks or any connection of any kind, of an original intellectual work, or part thereof, that is copyright protected (Art. 171-ter l. 633/1941); Failure to communicate to the SIAE the identification data of media for which the SIAE stamp is not required or making false declarations (Art. 171-septies l. 633/1941); the fraudulent manufacture, sale, importation, advertising of, installation, modification and use, whether public or private, of devices, or parts of devices, for the decoding of conditional-access audio-visual transmissions, whether over the air, by satellite or by cable, in analogue or digital form(Art. 171-octies l. 633/1941).

[50] Art. 25-decies was added by Art. 4 of Law 116/09.

[51] Art. 25-undecies, added to L.D. 231/2001, extended corporate liability to include the following crimes, the majority of which are contraventional in nature:

a) The unauthorized discharge of industrial waste waters containing hazardous substances and/or discharge of said substances in violation of the authorization regulations (Art. 137, Paragraphs 2 and 3 of Legislative Decree No. 152 of 3 April 2006); discharge of industrial waste waters containing hazardous substances in excess of the limit values established in the tables (Art. 137, Paragraph 5, periods one and two of Legislative Decree 152 of 3 April 2006); violations of prohibitions on discharging into the soil, surface layers of the subsoil, the subsoil or underground waters (Art. 137, paragraph 11 of Legislative Decree No. 152 of 3 April 2006); discharge into the sea, by ships or aircraft, of waters containing substances or materials the dumping of which is banned (Art. 137, Paragraph 13, of Legislative Decree No. 152 of 3 April 2006); the collection, transport, recovery or disposal of wastes, trading in wastes or waste brokerage without the required authorizations, enrolment or communication (Art. 256, Paragraph 1, letters a) and b), of Legislative Decree No. 152 of 3 April 2006); creating or managing an unauthorized dump (Art. 256, Paragraph 3, first and second period of Legislative Decree No. 152 of 3 April 2006); failure to observe the requirements contained in the authorizations to manage a dump or other waste-related activity (Art. 256, paragraph 4 of Legislative Decree No. 152 of 3 April 2006); unauthorized mixing of wastes (Art. 256, paragraph 5 of Legislative Decree No. 152 of 3 April 2006); temporary deposit of hazardous medical wastes in their place of production (Art. 256, Paragraph 6 of Legislative Decree No. 152 of 3 April 2006); causing pollution of the soil, the subsoil, the surface waters or underground waters and failure to inform the competent authorities (Art. 257, Paragraphs 1 and 2 of Legislative Decree No. 152 of 3 April 2006); providing false information on waste analysis certificates or using false waste analysis certificates (Art. 258, paragraph 4 and Art. 260 bis, paragraphs 6 and 7 of Legislative Decree No. 152 of 3 April 2006); the illicit trafficking of wastes (Art. 259, paragraph 1 of Legislative Decree No. 152 of 3 April 2006); operations organized for the illicit traffic of wastes (Art. 260 of Legislative Decree No. 152 of 3 April 2006); violations of the system for the verification of waste traceability (Art. 260 bis, paragraph 8 of Legislative Decree No. 152 of 3 April 2006); crimes connected to emissions into the atmosphere (Art. 279, paragraph 5 of Legislative Decree No. 152 of 3 April 2006);

b) Import, export, transport and illegal use of animal species, and trade in plants that have been artificially reproduced (Art. 1, Paragraphs 1 and 2, and Art. 2, Paragraphs 1 and 2, of Law No. 150 of 7 February 1992); falsification or alteration of certificates and licenses and the use of false or altered licenses to import animals (Art. 3 bis of Law. No. 150 of 7 February 1992);

c) Violation of regulations on the use of substances hazardous to the ozone layer (Art. 3, Paragraph 6 of Law No. 549 of 28 December 1993);

d) Intentional dumping of pollutants from ships into the sea (Art. 8, paragraphs 1 and 2 of Legislative Decree No. 202 of 6 November 2007); unintentional dumping of pollutants from ships into the sea (Art. 9, paragraphs 1 and 2 of Legislative Decree No. 202 of 6 November 2007);

e) The killing, destruction, capture, removal or possession of specimens of protected wild animal or plant species (Art.727 bis, Criminal Code);

f) Destruction or deterioration of a habitat inside a protected site (Art. 733 bis, Criminal Code).

[52] Art. 22, paragraph 12-*bis* of Legislative Decree 286 of 22 July 1998 (the so-called Consolidated Law on Immigration) "Temporary and permanent employment", as specified in Art. 25-duodecies of Legislative Decree No. 231/01, "the employment of foreign nationals who are illegal immigrants", states that: "the penalties for actions listed in Paragraph 12 (Editor's note: i.e. the case of "an employer who takes on foreign workers without a residence permit referred to in the present article, or whose residence permit has expired and no request has been made in accordance with the terms of the law for a renewal, or whose permit has been cancelled") are increased by between one third and one half:

a) If there are more than three workers involved;

b) If the workers involved are below the legal employment age

c) If the workers are subject to any of the other exploitative working conditions referred to in Article 603-bis, paragraph 3 of the Italian Criminal Code (Editor's note: i.e. "situations of grave danger linked to the nature of the work being performed or the working conditions").

Paragraph three of Article 603-bis of the Italian Criminal Code, entitled "illegal brokering and labour exploitation," states that: "3. The following situations are to be considered aggravating circumstances and will result in the penalties imposed being increased from between one third and one half:

1) If the number of workers employed is greater than three;

2) If one or more of the subjects employed is/are below the legal employment age;

– Crimes of bribery between private parties, as specified in Art. 25-ter, letter s-bis of the Decree[53].

New additions will shortly be made to the categories listed above, due in part to the legislative tendency to extend the sphere of applicability of the Decree, often as a consequence of having to comply with international and European requirements.

1.6. The Penalty System

As a consequence of the aforesaid crimes being committed or attempted, the following penalties can be applied to corporate entities, as specified in Articles 9-23 of L.D. 231/2001:

– Financial penalties (and precautionary seizure of assets);

– Prohibitory sanctions (can also be applied as a precautionary measure), which may last no less than three months and no longer than two years (bearing in mind that, pursuant to Art. 14, Paragraph 1 of L.D. 231/2001, "The object of prohibitory sanctions is the specific activity within the sphere of which the entity's offence was committed"). They may consist of:

  – A ban on carrying out the activity;
  – Suspension or revocation of permits, licences or concessions used for the perpetration of the offence;
  – A ban on negotiating with the public administration, except for the purposes of obtaining the provision of a public service;
  – Debarment from grants, loans, contributions or subsidies and, where applicable, the revocation of those already granted;
  – A ban on advertising goods or services;

– Confiscation (and precautionary seizure of assets);

– Publication of the sentence (in cases where prohibitory sanctions are applied).

Financial penalties are determined by a criminal judge based on system of "shares", numbering no less than one hundred and no more than one thousand, of variable amount ranging from a minimum of 258.22 euros to a maximum of 1549.37 euros. The judge determines financial penalties to be applied, deciding:

– The number of shares, taking into account the gravity of the offence, the degree of responsibility borne by the corporate entity, and the activities conducted in the interests of eliminating or mitigating the consequences of the crime and of preventing further offences;

– The single share amount is established on the basis of the corporate entity's financial condition and assets.

3) If, during the course of this crime, the brokered workers have been subjected to any situations of grave danger linked to the nature of the work being performed or the working conditions."

[53] Specifically, the new letter s-bis) has been added to Art. 25-ter, Paragraph 1 of Legislative Decree 231/01, bringing with it the addition of the new crime of bribery between private parties, as described in cases falling under the new Paragraph 3 of Art. 2635 of the Italian Civil Code. In brief, pursuant to the new letter s-bis of Art. 25-ter, in "cases that fall under Paragraph 3 of Art. 2635 of the Italian Civil Code", penalties can be imposed on the company to which the party engaging in active bribery belongs, insofar as only this company can benefit from the action of bribery. On the contrary, the company to which the party engaging in passive bribery belongs is seen, under regulatory definition, to have undergone damage as a result of violation of the duties of office and of loyalty.

The corporate entity shall fulfil its obligation to pay financial penalties out of its assets or its mutual fund Art. 27, Paragraph 1 of the Decree)[54].

Prohibitory sanctions can only be applied in response to crimes for which said penalties are contemplated and only in the case that at least one of the following conditions is met:

a) The corporate entity has profited significantly from the crime and the crime was committed by persons in senior positions or by parties subject to the management of others when, in the latter of these two cases, the perpetration of the crime was made possible or facilitated by serious organizational deficits;
b) In the event that the offences are repeated[55].

Prohibitory sanctions are contemplated when the following actions have been committed: crimes against the Public Administration; certain crimes against public trust; crimes involving terrorism and the subversion of the democracy; crimes against the individual; crimes involving female genital organ mutilation; transnational crimes; crimes in the sphere of health and safety; receiving stolen goods or money, money laundering or using ill-gotten money, goods, or other benefits; cybercrimes and misuse of data; crimes involving organized crime; certain crimes to the detriment of industry and trade; crimes associated with copyright infringement; environmental crimes.
The judge determines the type and duration of the prohibitory sanction on the basis of how effective each sanction would be for preventing crimes of a similar nature to the one committed and, if necessary, penalties can be applied jointly (Art. 14, paragraphs 1 and 3 of L.D. 231/2001).

Penalties imposing bans on carrying out company activities, bans on negotiating with the public administration, and bans on advertising goods or services may, in the most serious cases, be permanent[56].

The judge may arrange for the corporate entity's activity to continue (rather than issuing prohibitory sanctions) pursuant to Art. 15 of the Decree, and in accordance with the conditions specified therein, under the oversight of a court appointed administrator, for a period of time equal to the duration of prohibitory sanctions[57].

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[54] The idea of assets applies to companies and corporate bodies with legal status, while the idea of "mutual fund" applies to associations that are not legally recognized.

[55] Art. 13, paragraph 1, letters a) and b) of L.D. 231/2001. On this topic, see also Art. 20 of L.D. 231/2001, pursuant to which: "*Repetition occurs when the company that has already been definitively found guilty of an offence commits another within five years of the definitive sentence".* With reference to the relationship between the aforesaid regulations, see De Marzo in, op. cit, 1315: "*Alternatively, with reference to requisites set out in letter a)* [Editor's note: of Art. 13], *letter b) identifies repetition of the crime as a prerequisite for the application of prohibitive sanctions, as specified explicitly in the legislation. Pursuant to Art. 20, repetition occurs when a company that has already been definitively found guilty of an offence arising from a crime commits another within five years of the definitive sentence. In this case, the perpetration of crimes in spite of a definitive sentence having been applied constitutes proof of an inclination towards criminal activity or a tolerance of criminal actions, without there being any further need to evaluate the amount of benefit obtained or analyse the organizational models the corporate entity has adopted. What emerges is the understanding that the ordinary system of financial penalties (and, where applicable, of prohibitory sanctions, in the event that the previously committed offence met the conditions laid down in Letters a) or b) of Art. 13,Pparagraph 1) was not able to function as an effective deterrent to committing actions that fail to respect the fundamental standards of legality".*

[56] On this topic, see Art. 16 of L.D. 231/2001, according to which: "*1. The corporate entity may be permanently banned from carrying out an activity if it has profited significantly from the crime and if it has already been sentenced at least three times in the prior seven years to temporarily suspend its activity. 2. The judge may sentence the corporate entity to be permanently banned from entering into negotiations with the public administration, or from advertising goods and services, in the event that it has already been sentenced to the same penalty at least three times during the prior seven years. 3. If a corporate entity or one of its organizational units is regularly used solely or prevalently for the purpose of allowing or facilitating the perpetration of crimes for which it can be held liable, then it may be permanently banned from carrying out its activities and the provisions laid down in Article 17 do not apply".*

[57] Art. 15 of L.D. 231/2001: "Court appointed administrator – *If conditions are met for the applications of prohibitory sanctions involving a ban on the corporate entity's activities, the judge may arrange for such activities to continue under the oversight of a court appointed administrator for a period equal to the duration of the prohibitory sanction, in the event that at least one of the following conditions are found to exist: a) the corporate entity provides a public service or a service of public necessity, the disruption of which would cause serious harm to the general public; b) disruption of the corporate entity's activities may, based upon the size of its business and the economic conditions in its geographic area of operation, have serious repercussions on the employment situation.*

1.7. Attempted crimes

In the event that an attempt is made to commit one of the crimes described in L.D. 231/2001, but the crime is not actually committed, then financial penalties (in terms of amount) and prohibitory sanctions (in terms of duration) are reduced by between one third and a half.

Penalties will not be applied if the corporate entity voluntarily stops or blocks the offence from being carried out (Art. 26 of L.D. 231/2001). Non-application of the penalties is justified in this case, as the company terminates all relations with the parties that allegedly acted on its behalf and in its name.

1.8. Modifications to the corporate entity

Articles 28-33 of L.D. 231/2001 deal with the effect of events that modify the corporate entity – such as company transformations, mergers, demergers and divestitures – on financial liability[58].

In case of transformations, a company is held liable for crimes committed before the date of the transformation (in line with the nature of this transaction, which implies the simple change of the type of company, without implying extinguishment of the original legal entity (Art. 28 of L.D. 231/2001).

In case of mergers, the corporate entity resulting from the merger (including by incorporation) is liable for the crimes for which the corporate entities involved in the merger were liable (Art. 29 of L.D. 231/2001).

Art. 30 of D.L. 231/2001 states that, in the case of partial demergers, the demerged corporate entity remains liable for crimes committed before the demerger effective date.

The corporate entities benefitting from the demerger (whether total or partial) are severally and jointly liable for the payment of financial penalties owed by the demerged corporate entity for crimes committed before the demerger effective date, within the limits of the net equity transferred to each company.

This limit is not applicable to beneficiary companies if they have received the business unit in which the crime was committed, even if only a part thereof.

Within the sentence arranging for the continuation of corporate activities, the judge lays down the responsibilities and the powers of the court appointed administrator, taking into account the specific activities in the context of which the corporate entity committed the offence. Within the sphere of his responsibilities and powers, the court appointed administrator oversees the adoption and effective implementation of organizational and control models designed to prevent crimes of the type committed. He may not carry out extraordinary administration operations without authorization from the judge. Any profit deriving from the continuation of activities will be confiscated. Activities cannot continue under the oversight of a court appointed administrator if the disruption of activities is the consequence of the application of a prohibitory sanction involving a permanent ban".

[58] Legislation makes provisions for two contrasting requirements: on the one hand, that of preventing such operations from representing a means for corporate bodies to easily escape their administrative liability and, on the other, that of ensuring that genuine reorganisation operations are not penalized. The Explanatory Report to the Decree states that, "*The general criterion applied is to calculate financial penalties in line with the provisions of the Civil Code with regard to the other payables of the original company, while maintaining, however, the connection between the prohibitory sanctions and the business unit in which the crime was committed.*"

Prohibitory sanctions for crimes committed before the demerger effective date are applicable to the corporate bodies which retained or received the business unit in which the crime was committed, including only a part thereof.

Art. 31 of D.L. 231/2001 provides common requirements for mergers and demergers with respect to establishing penalties, in the event that these extraordinary corporate transactions occurred before court proceedings were concluded. It specifies that the judge must determine financial penalties pursuant to Art. 11, Paragraph 2 of L.D. 231/2001[59], taking into account the financial condition and assets of the company originally liable, and not those of the company on which the penalties will be imposed following the merger or demerger.

In the case of prohibitive sanctions, the corporate entity to which liability falls following the merger or demerger may ask the judge to convert the prohibitive sanctions into financial penalties, on the condition that: (i) the organizational fault which made it possible for the crime to be committed has been eliminated (ii) the corporate entity has taken steps to compensate the damage and made the part of its profits thus obtained available for confiscation. Art. 32 of L.D. 231/2001 allows the judge rule on whether or not there has been repetition in cases where the corporate entity resulting from a merger or the beneficiary of a demerger has, in the case of offences committed after the effective merger or demerger date, committed a repetition; the judge can make this determination on the basis of sentences already passed against corporate entities participating in the merger or against the demerged corporate entity[60], in accordance with Art. 20 of L.D. 231/2001. Liability in cases of divestiture or assignment are both governed by Art. 33 of L.D. 231/2001, under which the acquiring company or assignee of the company within which the crime was committed is jointly and severally required to pay the financial penalties which have been imposed on the divesting party or assignor, with the following limitations:

(i) in the event that the divesting party has been forced to make a precautionary payment;
(ii) the acquiring party's liability is limited to the worth of the company acquired and to the financial penalties which appear in compulsory accounting records, and which are the result of administrative offences of which the acquiring party was, in any case, aware.

Conversely, prohibitory sanctions imposed on the divesting party do not extend to the acquiring party.

[59]Art. 11 of L.D. 231/2001: "Criteria for determining the severity of financial penalties: *1. When determining the severity of financial penalties, the judge determines the number of shares by taking into account the seriousness of the crime, the extent to which the corporate entity is liable, as well as action taken by the corporate entity to eliminate or mitigate the consequences of the crime and to prevent further offences being committed. 2. The amount of the shares is determined based upon the corporate entity's financial conditions and its assets, for the purpose of ensuring that penalties are effective (...)".*

[60]Art. 32 L.D. 231/2001: "The relevance of mergers or demergers in case of repetition: *1. In cases where a corporate entity that is the result of a merger or the beneficiary of a demerger can be held liable for crimes committed after the effective date of merger or demerger, then the judge may consider that a repetition has taken place, in accordance with Art. 20, in light of sentences issued against the corporate entities participating in the merger, or the corporate entity resulting from the demerger, for crimes committed before that date. 2. In this context, the judge takes into account the nature of the offences and of the activity within the scope of which the offences were committed, as well as the characteristics of the merger or demerger. 3. For the corporate bodies who are the beneficiaries of a demerger, repetition can only be found to have taken place, pursuant to Paragraphs 1 and 2, if said beneficiaries received the business unit (whole or in part) in which the crime which caused the previous sentence to be issued against the demerged corporate entity was committed.*" The Explanatory Report to L.D. 231/2001 provides further clarification: *"In this case, repetition is not automatically assumed; rather, it is the left to the judge to determine whether repetition has taken place in light of the actual circumstances. In the case of corporate bodies which are the beneficiaries of a demerger, repetition can only be found to have occurred if said corporate bodies received, in whole or in part, the business unit in which the previous crime was committed.*"

[61]Art. 33 L.D 231/2001: "Divestiture: *1. In the event of the divestiture of the company within whose activities the crime was committed, the acquiring party is jointly and severally obliged to pay any financial penalties, except in the event of the divesting party having been forced to make a precautionary payment, and within the limits of the company's worth. 2. The acquiring party's obligations are limited to the payment of financial penalties which appear in compulsory accounting records which are the result of administrative offences of which the acquiring party was, in any case, aware. 3. The provisions of this article apply in the case of company assignments as well as in the case of divestitures".* The Explanatory Report to LD. 231/2001 offers further clarification on this point: *It is easy to understand that such transactions tend to lend themselves to manoeuvres for evading liability: this, however, adds even more weight to the corresponding requirements, in respect of such transactions, for the safeguarding of and protection of confidence in the legal process, given that this is an area of scenarios of 'selective succession to title', which leaves unaltered the identity (and the liability) of the divesting party or assignor.*"

1.9. Crimes committed abroad

The corporate entity can be held liable in Italy for crimes under L.D. 231/2001 committed abroad (Art. 4 of L.D. 231/2001) [62].

The bases on which corporate liability for crimes committed abroad may be established are as follows:

(i) the crime must be committed by a subject who is functionally related to the corporate entity, pursuant to Art. 5, Paragraph 1 of L.D. 231/2001;
(ii) The corporate body's main headquarters must be located within Italy;

(iii) the corporate entity can only be held accountable in the cases, and under the conditions, set down in Articles 7, 8, 9 and 10 of the Criminal Code (In cases in which the law provides for the guilty party (natural person) to be punished at the request of the Minister of Justice, proceedings shall be opened against the company solely if the Minister also requests it)[63] and, also in compliance with the principal of legality set down in Art. 2 of L.D. 231/2001, only for crimes for which its liability is ordained by an *ad hoc* legislative provision;

(iv) the cases and conditions listed in the aforesaid articles of the Criminal Code are fulfilled and the State in which the crime was committed is not proceeding to take legal action against the corporate entity.

1.10. Procedure for ascertaining offences

The liability for administrative offences arising from crimes is determined during the course of criminal proceedings. Art. 36 of L.D. 231/2001 makes the following provision with regard to this topic: "The competence to try cases of administrative offences committed by the corporate entity belongs to the criminal court judge competent for the crimes from which the offence arises.

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[62]The Explanatory Report to L.D. 231/2001 emphasizes the need to impose penalties for this frequently occurring criminal situation, in order that it not become a simple matter to evade the entire regulatory system governing situations of this nature. Art. 4 of L.D. 231/2001 provides as follows: "*1. In the cases and under the conditions set down in Articles 7, 8, 9 and 10 of the Criminal Code, corporate bodies whose headquarters are located inside the State of Italy will be held accountable in Italy for crimes committed abroad, unless the State in which the crime was committed takes legal action against them. 2. In cases in which the law provides for the guilty party (natural person) to be punished at the request of the Minister of Justice, proceedings shall be opened against the company solely if the Minister also requests it.*

[63]Art. 7 of the Criminal Code states: "*Crimes committed abroad: an Italian citizen or a foreigner who commits one of the following crimes on foreign soil is punishable under Italian law: 1) crimes against the Italian State; 2) crimes of counterfeiting the Seal of State and of using such a counterfeit seal; 3) crimes of counterfeiting money which is legal tender in the Italian State, or duty stamps or watermarked paper used for the making of Italian public credit instruments; 4) crimes committed by public officials in the service of the State involving abuse of their powers or violation of the duties attached to their office; any other crime for which special legal provisions or international conventions establish the applicability of Italian Criminal Law".* Art. 8 of the Criminal Code states: *"Political crime committed abroad: an Italian citizen or a foreigner who commits, on foreign soil, a political crime not included in those indicated in Number 1 of the previous article, is punishable under Italian law, at the request of the Minister of Justice. If it is a crime punishable on the complaint of the person injured, this complaint is required in addition to the request from the Minister of Justice. For the purposes of the Italian criminal law, a political crime is any crime which injures a political interest of the State, or a political right of the citizen. A common crime is also considered a political crime if it is determined, in whole or in part, by political motives."* Art. 9 of the Criminal Code states: *"Common crime committed by a citizen abroad: an Italian citizen who, outside the cases indicated in the two previous cases, commits, on foreign soil, a crime for which Italian law orders life imprisonment or detention for a period of not less than three years, is punishable under the same law, provided always that he or she is on Italian soil. If it is a crime which carries a penalty of restriction of personal liberty for a shorter period, the guilty person is punishable at the request of the Minister of Justice or at the instance or on the complaint of the person injured. In cases covered by the provisions above, if it is a crime committed to the detriment of the European Community, of a foreign State or of a foreigner, the guilty person is punishable at the request of the Minister of Justice, provided always that his or her extradition has not been granted, or has not been accepted by the government of the state in which he or she has committed the crime."* Art. 10 of the Criminal Code states: *"Common crime committed by a foreigner abroad: a foreign citizen who, outside the cases indicated in articles 7 and 8, commits on foreign soil, to the detriment of the State or of a citizen, a crime for which the Italian law orders life imprisonment, or detention for a period of not less than one year, is punishable under the same law, provided always that he or she is on Italian soil, and that punishment is requested by the Minister of Justice, or at the instance or on the complaint of the person injured. If the crime is committed to the detriment of the European Community, of a foreign State or of a foreigner, the guilty person is punished under Italian law, at the request of the Minister of Justice, provided always that: 1) he or she is on Italian soil; 2) it is a crime for which the penalty is life imprisonment, or detention for a period of not less than three years; 3) his or her extradition has not been granted, or has not been accepted by the government of the state in which he or she has committed the crime, or by the government of the state to which he or she belongs.*"

In proceedings to ascertain a corporate entity's administrative offences, the same provisions for the composition of the court and the associated procedural arrangements are followed as for the crimes from which the administrative offence arises".

Another rule, inspired by the considerations of effectiveness, homogeneity and procedural economy, is the mandatory combining of the proceedings: the proceedings against the corporate entity must be combined, as far as possible, with the criminal proceedings against the natural person who is the perpetrator of the predicate crime for which the corporate entity is liable (Art. 38 of L.D. 231/2001). This rule is qualified in the text of Art. 38, Paragraph 2 of L.D. 231/2001 which, conversely, governs cases where proceedings take place separately for administrative offences[64]. The company takes part in the criminal proceedings with its own legal representative, except in cases where the latter is charged with the crime from which the administrative offence arises; when the legal representative does not appear, the corporate entity is represented by defending counsel (Art. 39, Paragraphs 1 and 4 of L.D. 231/2001).

1.11. Codes of Conduct prepared by associations representing corporate entities

Art. 6, Paragraph 3 of L.D. 231/2001 states that: "Organisational and management models can be adopted which ensure the requirements referred to in Paragraph 2, on the basis of codes of conduct drawn up by the associations representing companies. The models can be submitted to the Ministry of Justice, which, in conjunction with the competent ministries, can make comments, within thirty days, on the suitability of the models in terms of their ability to prevent offences".

Confindustria has drawn up "Guidelines for creating organisational, management and control models pursuant to L.D. 231/2001", published on 7 March 2002, supplemented on 3 October 2002 with an appendix on so-called corporate crimes (introduced into L.D. 231/2001 by L.D. 61/2002), updated on 24 May 2004 and, most recently, submitted to the Ministry of Justice on 18 February 2008 for amendments aimed at providing instructions regarding suitable measures to implement in order to prevent the new predicate crimes in the sphere of market abuse, female genital mutilation, transnational organised crime, health and safety in the workplace, and money laundering from being committed (last updated on 31 March 2008). On 2 April 2008, the Ministry of Justice communicated that it had finished reviewing the new version of the "Confindustria Guidelines for creating organisational, management and control models pursuant to L.D. 231/2001 (hereinafter, "Confindustria Guidelines"). Among other things, the Confindustria Guidelines provide methodological instructions for identifying at-risk areas (areas/activities in which crimes might be committed), planning a control system (the so-called protocols for the formation and implementation of corporate decisions) and the contents of the organisational, management and control model.

In particular, the Confindustria Guidelines recommend that member companies use risk assessment and risk management processes, and they provide the following stages for the creation of the model:

- identification of risks and protocols;

[64]Art. 38, Paragraph 2 of L.D. 231/2001 states that: "*Separate proceedings for administrative offences committed by the company shall be held only when: a) suspension of proceedings has been ordered under Article 71 of the Criminal Procedure Code* [suspension of proceedings due to incapacity of the accused, *Editor's Note*]; *b) the proceedings have been settled with an abbreviated judgement under Article 444 of the Criminal Procedure Code* [application of the penalty on request, *Editor's Note*], *or the criminal sentence decree has been issued c) observance of the procedural provisions makes it necessary."* For the sake of thoroughness, we should also recall Art. 37 of L.D. 231/2001, under which *"The ascertainment of the corporate entity's administrative offence shall not proceed when criminal proceedings cannot be commenced or continued against the perpetrator of the crime for lack of a condition of prosecutability"* (i.e. the grounds laid down in Title III of Book V of the Criminal Procedure Code: complaint, petition for proceedings, request for proceedings or authorization to proceed, for which see, respectively, Articles 336, 341, 342, 343 of the Criminal Procedure Code).

- adoption of a series of general tools, the principal ones being a code of ethics, with reference to the crimes listed in L.D. 231/2001, and a disciplinary system;
- identifying the criteria for the selection of a Supervisory Board, indicating its requirements, duties and powers, and its obligations with regard to providing information.

1.12. Verification of suitability

In order for the criminal judge to ascertain whether administrative liability lies with the company, two separate issues must be examined. Firstly, it must be ascertained that the crime that falls within the Decree's sphere of application has indeed been committed and, secondly, "verifying the suitability" of any organizational model which has been adopted by the company in question.

The judge's certification of the abstract suitability of the organizational model for preventing the crimes specified in L.D. 231/2001 is conducted in accordance with the criterion of so-called "posthumous prognosis".

The judgment of suitability must be made in accordance with a criterion which is substantially *ex ante facto*, through which the judge places himself, ideally, in the real situation of the company at the time at which the offence occurred, in order to test the appropriateness of the model adopted.

In other words, the organizational model which must be judged "suitable for preventing the crimes" is that which, prior to the commission of the crime, could have been and ought to have been considered, with reasonable certainty, capable of eliminating or, at least, minimizing the risk of the commission of the crime which later occurred