Rai Com S.p.A.

Organisational, management and control model pursuant to Legislative decree 231/01

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1. Introduction

The structure of this Organisational Model includes a "General Section" which relates to the corporate organisation as a whole, the project to create the Model, the Supervisory Body, the disciplinary system, the training and communication procedures, and "Special Sections" that deal with the detailed application of the standards referred to in the "General Section", with reference to the elements of the offence set out under Legislative decree 231/01 that the Company decided to use due to the type of business it is engaged in.

The following are analysed in the "Special Sections" that follow:

- Special Section "A" - Offences in relations with the Public Administration and bribery between private parties
- Special Section "B" - Counterfeiting money, legal tender, revenue stamps or instruments or distinctive marks, crimes against industry and commerce
- Special Section "C" – Corporate Offences
- Special Section "D" – Crimes of terrorism, crimes against individuals, cross-border offences, receiving stolen goods, money-laundering and the use of money, goods or benefits with unlawful origin, including self-laundering, organised crime, convincing others not to make statements or to make false statements to the legal authorities, employment of citizens from other countries who are not legally resident in the country
- Special Section "E" - Crimes committed in breach of health and safety regulations at the workplace
- Special Section "F" – Computer crimes and unlawful data processing
- Special Section "G" – Copyright crimes
- Special Section "H" – Environmental offences

In accordance with the analysis of the company, the activities carried out by the Company and the areas potentially subject to the risk of offence, only the unlawful actions described in the Special Sections were considered to be significant and therefore specifically examined under the Model, which should be referred to for more detailed identification.
The other administrative liability "predicate offences" of organisations in accordance with the Decree (offences against public trust pursuant to article 25-*bis* of Legislative decree 231/01[1], crimes against life and individual safety *pursuant to* article 25-*quater*.1 of

[1] More specifically, reference is made to the following offences: offences of counterfeiting, spending and introduction into the country, acting in concert, of counterfeit banknotes and coins (article 453 Criminal Code), alteration of money (article 454 Criminal Code), spending and introduction into the country, without acting in concert, of counterfeit money (article 455 Criminal Code), spending of counterfeit money received in good faith (article 457 Criminal Code), counterfeiting of revenue stamps, introduction into the country, purchase, possession or circulation of counterfeit revenue stamps (article 459 Criminal

Legislative decree 231/01[2] and offences and administrative market abuse offences pursuant to article 25-*sexies* of Legislative decree 231/01[3]) were assessed by the Company and found to have abstract risk only and not real, and in any case, on the basis of the analyses carried out, the control instruments set up to prevent the above-mentioned offences could protect against those offences, along with compliance with the Code of Ethics and legislative provisions.

Each Special Section comprises the following paragraphs:

- the first relates to the description of the “Relevant elements”;
- the second paragraph regards “Identification of the susceptible areas and activities”: in accordance with the “risk analysis”, carried out pursuant to the provisions of article 6, paragraph 2 letter a) of Legislative decree 231/01, the company departments involved in processes that could potentially be exposed to the risk of committing the relevant actions in accordance with the Decree could be identified. The Model also indicates the susceptible activities in order to clarify what areas of activity are more likely to be subject to the risk of committing each group of offences. Please refer to the “risk analysis” document for a more detailed list of the individual organisational factors at risk;
- the third paragraph contains the guidelines on the “Behavioural and decision-making process implementation standards”: the “Rules of conduct” are aimed at providing a reminder to comply with the Code of Ethics and specifies the rules of conduct that must govern the behaviour of the intended audience of the Model to prevent the commission of the single groups of offences. On the other hand, the “Decision-making process implementation standards” is aimed at setting out the “specific protocols to plan the formulation and implementation of the decisions of the organisation in relation to the offences to prevent” in accordance with the provisions set out under article 6, paragraph 2, letter b) of the Decree.

2. Purpose

The structure of the Model, with the “Special Sections” allows - within the scope of each of the macro-areas drawn up with reference to the groups of unlawful actions provided under Legislative decree 231/01 - identification of the susceptible activities which are then associated with the instruments of control adopted for prevention, and timely update of the

Code), counterfeiting of watermarked paper used for the manufacture of legal tender or revenue stamps (article 460 Criminal Code), manufacture or possession of watermarks or instruments for counterfeiting money, revenue stamps or watermarked paper (article 461 Criminal Code), use of counterfeit or altered revenue stamps (article 464 Criminal Code).

[2] More specifically, this refers to female genital mutilation (article 583 – *bis* Criminal Code).

[3] More specifically, this refers to insider dealing offences (article 184 Consolidated Finance Act) and market manipulation (article 185 Consolidated Finance Act) and the unlawful administrative actions of insider dealing (article 187-*bis* Consolidated Finance Act) and market manipulation (article 187-*ter* Consolidated Finance Act).

Model through any advisable additions, where the Legislator wished to include further relevant criminal elements.

The “Special Sections” must be considered in addition to the rules of conduct in the company procedures, and the Code of Ethics that guides the behaviour of the intended audience in the various operating areas in order to prevent unethical behaviour or behaviour that is not in line with the Company guidelines.

The control instruments identified below are binding for the intended audience of the Model and include the obligation to act (compliance with the procedures, reports to the control bodies), and not to act (compliance with prohibitions), brought expressly to the knowledge of the intended audience.

Compliance with said obligations, as already mentioned in the “General Section” and re-confirmed herein, has specific legal force; if these obligations are breached, the Company will react by applying the disciplinary and penalty system described in the “General Section”.

More specifically, the Special Section of the Model:

- indicates the procedures that members of the social bodies, employees and external staff must comply with in order to apply the Model properly;

- provides the Supervisory Body and heads of other company departments who cooperate with it with the executive tools needed to perform the controls, monitoring and auditing.

In general, all company representatives must behave in accordance with the terms of the following documents with respect to the aspects that regard their areas of competence:

- Model;

- Code of Ethics;

- Guidelines/procedures/rules;

- Bribery-prevention three-year plan;

- powers of attorney, authorisation and organisational communications;

- any other document that governs activities that fall under the range of application of the Decree.

It is also expressly forbidden to behave in a way that conflicts with the provisions of prevailing law.

3. The control system

The control system, prepared by the Company, also on the basis of instructions from the Confindustria guidelines, and "best practices", provides for the following with respect to the Susceptible Activities and Areas identified:

- *"general" control standards,* applicable to all Susceptible Activities;
- *"specific" control standards,* applicable to certain Susceptible Activities and explained in the individual Special Sections.

3.1 General control standards

The general control standards to consider and apply with reference to all the Susceptible Activities are the following:

- *separation of functions/activities:* compliance with the principle of separation of functions is required between people who authorise, people who carry out the actions and people who control;
- *regulations/circulars:* the company must contain formalised corporate instructions and procedures that can provide principles of conduct, operational procedures for the execution of all susceptible activities and procedures to file the relevant documentation;
- *authorisation powers and authorised signatures*: authorisation powers and authorised signatures must: (a) be consistent with the organisational and management responsibilities assigned, providing, where requested, an indication on the expenditure approval thresholds; (b) be clearly defined and known about in the company;
- *traceability*: each operation relating to the susceptible activities must, where possible, be adequately recorded and filed. The decision-making, authorisation and susceptible activities performance process must be capable of being checked after the fact, including through appropriate documentary support, and in any case, there must be an express prohibition on cancelling or destroying the records, or, in accordance with the case, the rules regarding the option to cancel or destroy the records must be set out in detail.

3.2 Specific control standards

On the basis of the general standards of control reported above, the specific standards of control that refer to the general ones are set out so that:

a) all operations, and formulation and implementation of Company decisions comply with the standards and instructions contained in the law, the articles of association, the Code of Ethics and the corporate procedures;
b) company procedures that can provide codes of conduct and operational procedures for the performance of susceptible activities and procedures to file the relevant documentation are established and adequately communicated;
c) for all operations:
   - the company management, coordination and internal control responsibilities are formalised, along with the hierarchical levels and description of the relative responsibilities;
   - the formation stages of the records and record formation authorisation levels are always recorded and can be recreated in order to ensure transparency in the choices made;
   - the Company adopts authorised signatory communication instruments and an authorisation and power of attorney system;
   - the assignment and exercise of the powers in the decision-making process is consistent with the positions of responsibility and the relevance and/or criticality of the underlying financial transactions;
   - different people implement the decisions, keep the accounts on the operations that have been decided on, and control the transactions as provided by law and the procedures set out under the internal control system;
   - only authorised persons in accordance with Legislative decree 196/2003 as amended, and regulatory provisions are given access to Company data and can work on said data;
   - confidentiality when sending the information is guaranteed;
   - the documents relating to the formulation of the decisions and their implementation are filed and stored by the applicable department using procedures that do not allow them to be subsequently altered unless this is made clear.

With reference to susceptible activities that are highly complex and require specific actions to establish the control measures, the applicable regulations and international standards for implementation of the certified management systems are taken into account.

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

4.1 The relevant elements (articles 24, 25, 25-*ter* of Legislative decree 231/01)

This Special Section refers to offences that may be possible within the scope of relations between Rai Com and the Public Administration and between Rai Com and private parties. The individual elements envisaged under Legislative decree 231/01, articles 24, 25, 25-*ter* letter s) *bis* are briefly described below.

The regulatory references of the relevant elements are provided below, along with a brief description of certain significant aspects for each of the predicate offences of Legislative decree 231/01.

4.1.1 Corruption-related offences

Bribery for the performance of an official act and range of application (articles 318 and 320 Criminal Code)

The offence described under article 318 of the Criminal Code will be committed where a public official, in the performance of his/her official acts or powers, unlawfully receives, for him/herself or for a third party, money or other benefits, or accepts the promise for same (for example where a company representative promises the applicable public official that they will hire one of their family members or provide them with a fictitious consultancy job in order to obtain an authorisation by a public party).

The penalty provided for parties who carry out these criminal actions is imprisonment for one to six years.

In accordance with article 320 of the Criminal Code, the provisions set out under article 318 of the Criminal Code also apply to people engaged to carry out a public service: however, in these cases, the penalties provided by law are reduced by up to a third compared to the crimes involving public officials.

Bribery for an action that conflicts with official duties, aggravating circumstances and range of application (articles 319, 319-bis and 320 Criminal Code)

The offence described under article 319 of the Criminal Code refers to cases where a public official, due to omission or delay or having omitted to do or delayed an official action, or for carrying out or having an action carried out that conflicts with the official duties, receives, for him/herself or for a third party, money or other benefits, or accepts a commitment (for example bribery of public officials by company representatives or through consultants to preventing the imposition of fines).

For the purposes of framing this offence in relation to the execution of an "action that conflicts with official duties", both the unlawful or illegal actions must be considered (i.e. prohibited by imperative laws or breaching laws imposed to validate them or make them effective), and the actions that - even though formally valid - were carried out by the public official in breach of the duty of impartiality or using their position to serve private interests or in any case interests that conflict with those of the Public Administration.

The penalty provided for parties who carry out these criminal actions is imprisonment for six to ten years.

The punishment is increased for these offences in accordance with article 319-*bis* of the Criminal Code if the action that conflicts with the official duties involves giving the public employees, salaries or pensions or entering into contracts in which the administration that the public official belongs to is interested.

In accordance with article 320 of the Criminal Code, the provisions of article 319 of the Criminal Code also apply to a person engaged to carry out a public service: however, in these cases, the penalties provided by law were reduced by up to a third compared to the crimes involving public officials.

In accordance with article 321 of the Criminal Code, the penalties provided under articles 318, 319, 319-bis, 319-ter and 320 of the Criminal Code in relation to alleged crimes referred to articles 318 and 319 of the Criminal Code also apply to anyone who gives or promises money or other benefits to public officials or people engaged in public services.

Finally, the offence described under articles 318 and 319 of the Criminal Code differ from extortion since there is an agreement between a bribing party and a party being bribed aimed at gaining mutual advantage, while in extortion, the private party is subject to an act by the public official.

Judicial bribery (article 319-ter of the Italian Criminal Code.)

This offence refers to cases where the situations indicated under articles 318 and 319 of the Criminal Code are committed to favour or damage a party to a civil, criminal or administrative proceeding, and the "public official" is acting as a judge, clerk or other official of the legal authorities (for example where a company representative puts "pressure" on a public prosecutor to obtain a request to dismiss criminal proceedings).

It is important to emphasise that the offence can be committed regardless of whether the Company forms part of the proceedings or not.

The penalty provided for parties who carry out the above-mentioned crime is imprisonment of six to twelve years:

- if the situation leads to the unjust conviction of someone to imprisonment of not more than five years, the penalty is imprisonment for six to fourteen years;

- if the situation leads to the unjust conviction of someone to imprisonment of more than five years or a life sentence, the penalty is imprisonment for eight to twenty years.

Incitement to bribery (article 322 Criminal Code)

These offences arise in situations where money or other undue benefits are offered or promised to a public official or person engaged to carry out a public service to exercise their duties or powers, and this offer or promise is not accepted. A party who commits this crime will have the penalty applied as established under article 318 of the Criminal Code (imprisonment for six to ten years), reduced by a third. This penalty also applies to public officials or persons engaged in public services who request sums of money or other benefits or the promise thereof in order to exercise their duties or powers.

On the other hand, if the offer or promise is made to induce public officials or persons engaged to carry out public services to omit or delay an official action, or to carry out an action that conflicts with their duties, and the offer or promise is not accepted, the penalty established under article 319 of the Criminal Code shall apply (imprisonment of six to ten years), reduced by a third. This penalty also applies to public officials or persons engaged in public services who request a promise or sum of money or other benefits not to do or to delay or not to have done or to have delayed an official action, or to carry out or have carried out an action that conflicts with their official duties.

Bribery between private parties (article 2635 Civil Code)

This offence refers to cases where administrators, general managers, managers in charge of drafting the company accounting statements, the statutory auditors or the liquidators, or anyone who has to supervise one of the parties indicated above, after giving or promising money or other benefits, for themselves or others, carry out or fail to carry out actions, in breach of the obligations relating to their positions or the obligations of loyalty, causing damage to the company. The penalty provided is imprisonment from one to three years for the parties indicated under the first paragraph and up to one year and six months if the action is committed by anyone subject to their management or supervision.

Additionally, the offence refers to cases where anyone gives or promises money or other benefits to the above-mentioned persons. This case will only be relevant to the administrative liability of the company to the extent provided for under article 25-*ter* of Legislative decree 231/01.

The penalties will be doubled if they involve companies who are listed on regulated Italian markets or other countries of the European Union or disclosed to the public to a significant extent in accordance with article 116 of the Consolidated Finance Act.

4.1.2. Extortion

Extortion (article 317 Criminal Code)

The offence refers to cases where the public officials or persons engaged to carry out public services force someone to unduly give or promise money or other benefits to them or to third parties by misusing their positions or their powers.

Extortion, similarly to bribery, is a bilateral crime since it requires the actions of two separate parties, the extortionist and the person subject to extortion.

However, unlike bribery, the extortionist shall be the only one subject to the penalty since the person subject to the extortion is the victim of the offence: therefore, since the activities carried out by the Company are private, its representatives cannot commit this offence since they are not acting in a public capacity; at the most, they could conspire to commit the offence of extortion by a public official in accordance with article 110 of the Criminal Code.

Additionally, it is theoretically possible for Company employees to hold public office outside their normal work: for example Company employees who are member of municipal councils. In that case, when performing their official function or duties, they must not do anything that could give an advantage to the Company in breach of their official duties and/or their functions.

The penalty provided for parties who carry out these criminal actions is imprisonment for six to twelve years.

Unlawful incitement to give or promise benefits (article 319-quater Criminal Code.)

The offence refers to cases where the public officials or persons engaged to carry out public services force someone to unduly give or promise money or other benefits to them or to third parties by misusing their positions or powers.

The penalty provided for public officials or persons engaged to carry out public services is imprisonment for three to eight years; the penalty provided for anyone who promises money or other benefits to public officials or persons engaged to carry out public services is imprisonment for up to three years.

4.1.3 Fraud

Fraud against the State or other public body (article 640, paragraph 2, no. 1 of the Criminal Code)

These offences refers to cases where contrived or fraudulent acts are used to obtain unfair advantage (including also any omission of information that, if it had been known, would have certainly negatively influenced the wish of a country, other public organisation or the

European Union) to the extent of misleading and causing loss (of a pecuniary nature) to said entities.

The penalty provided for parties who carry out these criminal actions is imprisonment for one to five years and fines from Euro 309 to Euro 1,549.

Aggravated fraud to obtain public funds (article 640-bis Criminal Code)

This offence is committed if the situation described under article 640 of the Criminal Code above relate to obtaining aid, loans or other amounts from the State, other public organisations or the European Union.

The penalty provided for parties who carry out these criminal actions is imprisonment for one to six years.

Computer fraud (article 640-ter Criminal Code.)

Computer fraud refers to cases where the operation of a computer or data transmission system is altered in any way, or action is taken, without the right to do so, on data, information or programs contained on a computer system, in order to obtain unfair advantage for the person who does it or others.

This offence could involve the alteration of computer records held by Public Administrations to make it appear that essential conditions have been met to take part in invitations to tender or obtain public funding; or to change tax or social security data involving the company, already sent to the applicable Public Administration.

Another hypothesis could be the breach of a computer system in order to enter an amount relating to funding that is higher than that obtained legitimately; or, in the case of purchasing goods from the Public Administration, alteration of the computer system to show that payments have been made that were not actually made.

In relation to normal Rai Com activity, this could involve alteration of the computer system or data transmission system, managed by a public organisation who guarantees that televoting will be carried out on a fair basis, in order to favour the victory of a certain competitor.

The penalty provided for parties who carry out these criminal actions is imprisonment for six months to three years, and fines from Euro 51 to Euro 1,032.

The penalty is imprisonment from one to five years and a fine from Euro 309 to Euro 1,549 where there is fraud against the State or another public organisation, or if it was committed by abusing one’s position as system operator.

The penalty is imprisonment from two to six years and a fine from Euro 600 to Euro 3,000 if

it is committed with theft or unlawful use of the digital identity to the detriment of one or more parties.

The penalty of imprisonment and the fine provided for in the first paragraph will be increased if one of the situations provided under number 1) of the second paragraph of article 640 of the Criminal Code occurs, i.e. if the action is committed by misuse of the position as system operator.

The third paragraph punishes, in the way described in the fourth paragraph, anyone who commits the offence with theft or unlawful use of the digital identity to the detriment of one or more parties.

4.1.4 Embezzlement and unlawful receipt of funds

Embezzlement against the State (article 316-bis Italian Criminal Code)

This offence refers to cases where anyone - who does not form part of the public administration, having obtained aid, grants or financing from the State, any other public organisation or the European Union to help initiatives to create works or carry out activities of public interest activities - does not use them for that purpose.

In order to constitute the offence, only a part of the amounts received have to have been used for different purposes from the originally intended purposes, and do not refer, in any way, to whether the planned activity has actually been carried out or not. The offender's objectives are also irrelevant since the subjective element of the offence is found in the wish to remove resources intended for a pre-established purpose.

The penalty provided for parties who carry out these criminal actions is imprisonment for six months to four years.

Rai Com could theoretically commit the offence of embezzlement against the State, provided for and punished by article 316-bis of the Criminal Code, since it could create, develop, define, enter into and/or manage projects aimed at the participation by RAI in Italian or European calls for tender for non-refundable loans or subsidised loans.

Another typical example would be obtaining public funding to hire people who belong to special categories but which purpose is then ignored.

Unlawful receipt of funds causing loss to the State (article 316-ter Criminal Code.)

This offence refers to cases where - by the use or the presentation of false statements or documents or that state untruths or by failing to give necessary information - aid, loans, subsidised loans or other similar types of funding, of any type, is obtained without having

the rights, from the State, other public organisations or the European Union.

In this case, unlike the situation with the previous offence, the use that is made of the funding is not important since the offence is committed upon receipt of the funding.

The penalty provided for parties who carry out these criminal actions is imprisonment for six months to three years and, in less serious cases, an administrative fine of between Euro 5,164 and Euro 25,822.

The offence that refers to fraud aimed at the unlawful receipt of public funds, as set out under article 316-ter of the Criminal Code, could be committed if Rai Com produces, on behalf of RAI, false documents showing the possession of the requirements provided by law and thereby benefiting from State or EU aid.

Finally, this offence is secondary compared to the elements described under article 640-*bis* Criminal Code (aggravated fraud to obtain public funds), in the sense that it only refers to cases where the behaviour does not constitute the elements of the offence set out therein.

The line separating the unlawful receipt of funds causing loss to the State (pursuant to article 316-*ter* Criminal Code) and aggravated fraud for obtaining public funds (pursuant to article 640-*bis* Criminal Code) lies in the type of criminal conduct of the offence which is limited to presenting false documents in the first case, or failing to provide information that should be provided; while the second case involves contrived or fraudulent acts that lead to errors by the Public Administration.

4.2 Identification of susceptible areas and activities within the scope of offences in relations with the Public Administration and bribery between private parties

In relation to the offences that are conditioned on instituting direct or indirect relations with the Public Administration, all the corporate areas that provide for instituting relations with the Public Administration were identified as susceptible activities:

1. ***Management of negotiations of framework contracts and agreements (as principal and/or agent) with Organisations or Institutions, centralised or local, national or international, public or private***

2. ***Management of relations with public parties:***

   a) to obtain authorisations or licences

   b) to request occasional/specific administrative measures

   c) to manage obligations, assessments or inspections

   d) to recruit personnel

e) to manage social security treatment

f) other

3. ***Management of relations with Supervisory Authorities, Administrative Authorities and other Authorities***

4. ***Preparation of income statements or tax withholding statements or other statements needed to pay taxes in general***

5. ***Management of the request / acquisition and/or management of aid, funding, loans, or guarantees granted by public/private parties***

6. ***Management of court, out-of-court or arbitration proceedings***

The following processes were also identified as being "instrumental" to the activities examined above since they could both constitute support and assumption (financial and operating) for committing offences in the relations with the Public Administration even though there are no direct relations with the Public Administration; and be "susceptible activities" with reference to the offence of bribery between private parties since this is characterised by the existence of direct relations with private parties.

7. ***Security Trading***

8. ***Purchase of work, goods and services***

a) purchase of goods and services with service contract

b) Purchase of operating goods and services

c) Purchase / hire of audiovisual / musical / photographic / product / work material (including the rights)

d) Purchase of consultancy services

e) Purchase of marketing-related rights

9. ***Recruitment, management and development of staff***

10. ***Management of financial transactions, including intra-group***

11. ***Sale of goods and services in Italy and abroad***

a) Sale of rights to public parties

b) Sale of rights in Italy

c) Sale of rights abroad

d) Other Sales (for example consultation services, television channels, etc.)

e) Sale of rights on web platforms

12. Revenues from the use of Rai Com music in RAI programs

13. Free gifts, presents and benefits

14. Organisation and management of events/sponsorships

15. Travelling expenses and advances

16. Corporate advertising

17. Selection and management of the agents

18. Selection and management of commercial partnerships

4.3 Rules of conduct and implementation of decision-making processes

4.3.1 Rules of conduct

This Special Section provides for the express prohibition of Corporate Bodies, Employees - on a direct basis - and external staff - limited to the obligations provided under specific procedures and codes of conduct and the specific clauses in the implementation contracts respectively - from:

- carrying out, helping to carry out, or causing the carrying out of behaviour that - considered individually or collectively - includes, directly or indirectly, the elements of the offence considered above (articles 24, 25, 25-*ter* letter s-*bis*) of Legislative decree 231/01);

- breaching the company principles and procedures provided under this Special Section.

This Special Section therefore provides for the obligation by the parties indicated above to diligently comply with all prevailing laws, and more specifically:

- not to accept or request presents or favours such as free gifts or forms of hospitality, or other benefits unless the value is low and could be considered as normal in accordance with the occasion, and could not be interpreted, by an impartial observer, as intended to acquire improper benefits. It is not permitted to offer, promise, give gifts or favours such as free gifts or forms of hospitality, or other benefits unless the value is low as indicated in the Code of Ethics. In any case, this expenditure must always be authorised, documented, and comply with budget limits.

- within the scope of business negotiations, requests or commercial relations with the Public Administration or with a private party, the following actions are not permitted (on a direct or indirect basis):

  - examining or proposing opportunities for employment and/or commercial opportunities that could benefit Public Administration employees on a personal basis or private parties;

  - request or obtain confidential information that could compromise the integrity or reputation of both parties;

- within the scope of relations, that do not have to be commercial, between Rai Com and the Public Administration, public officials, parties engaged to carry out public services or private parties must not:

  - offer, promise, give, including through third parties, money or other benefits, that could also entail work or commercial opportunities, to the public official involved or the private party, [4]their respective family members, or parties connected to them in any way;

  - from accepting the requests or solicitations, including through third parties, of money or other benefits, that could also entail work or commercial opportunities, from the public official involved, the family members of the parties indicated above or parties connected to them in any way;

  - from looking for or unlawfully initiating personal relations of favouritism, influence or interference, that could affect, directly or indirectly, the outcome of the relationship;

[4] Family members include the following: the spouse of a Public Party; grandparents, parents, brothers or sisters, children, grandchildren, uncles or aunts or first cousins of the Public Party or their spouse; the spouses of any of these persons; or any other party that shares the home of these persons; the spouse of the private party; grandparents, parents, brothers or sisters, children, grandchildren, uncles or aunts or first cousins of the private party or their spouse; the spouses of any of these persons; or any other party that shares the home of these persons.

- they must not misuse their positions or powers to force or persuade anyone to give or promise, unlawfully, to them or third parties, also on behalf of Rai Com, money, presents or other benefits from parties who have received, or could receive benefits from activities or decisions relating to the position held;

- not make unofficial payments with the aim of speeding up, favouring or ensuring the execution of a routine activity or in any case provided within the scope of the duties of public or private parties that Rai Com has relations with;

- not request services from consultants that are not adequately justified within the scope of the relationship established with them;

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

- not use amounts received from national or EU public bodies as grants, benefits or loans for different purposes than those originally intended;

- not condition, in any way or with any means, the freedom to choose of parties who, in any role, are required to make statements before the Legal Authorities;

- not promise or follow up on employment requests in favour of representatives of the Public Administration or parties indicated by them in order to influence the independence of judgement or lead to the assurance of any advantages to Rai Com;

- not put in place or instigate others to carry out any corrupt practices of any nature.

4.3.2 Rules implementing decision-making processes

The *standards* of control identified for the individual Susceptible Activities are listed here below.

1. ***Management of negotiations of framework contracts and agreements (as principal and/or agent) with Organisations or Institutions, centralised or local, national or international, public or private***

The execution of the activities provides for the following:

- roles and tasks of the Departments in charge of managing the initial relations with the Public Party[5]/private party, providing for specific control instruments (for example calling meetings, reporting on the main terms) in order to ensure compliance with the rules of integrity, transparency and legitimacy of the process;

- the identification of specific information flows between the Departments involved in the process, with the aim of mutual control and coordination;

- the person appointed to represent the Company who will be granted the applicable power of attorney and delegation of authority;

- acquisition of the documentation and the approvals needed to prepare the quotation/bid to the counterparty;

- drawing up the draft contract, with potential assistance from the applicable company department; including contractual provisions aimed at compliance with the control standards/rules of conduct in the management of activities by the third party, and the activities to be carried out in the event of any deviations;

- the procedures to prepare, check and approve the documentation to be sent to the counterparty in relation to execution of the agreement/framework contract;

- checking the execution of the activities in accordance with what is set out under the agreement/framework contract agreed;

- the procedures and criteria at the basis of any changes and/or updates of the agreements/framework contract.

- separation of the Departments in charge of preparing the quotation and submitting the bid, providing for specific ways to check the adequacy of the bid, classified in relation to the type and size of the contractual activity;

- sending the data and information to the Department/Facilities in charge of the contract through a system (including computer) that allows the single steps to be traced and identification of the parties that input the data onto the system;

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[5] Public Party:
- anyone who exercises a legislative, judicial or administrative public function;
- anyone who acts as an official in the interest of or on behalf of (i) a national, regional or local public administration, (ii) an agency, office or body of the European Union or an Italian or foreign, national, regional or local public administration, (iii) an owned company, subsidiary or associate company of an Italian or foreign public administration, (iv) an international public organisation 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 Organisation, or (v) a political party, a member of a political party or a candidate for a political office, Italian or foreign;
- anyone engaged to carry out a public service, or those who, in any manner, perform a public service, where public service is understood to be an activity that is governed the same way as a public function but without the typical powers of a public function. The performance of simple duties or the provision of purely physical work are not included.

- separation of the contract closing activities, providing information for the support application for the invoicing, payment checking and debiting;
- the procedures and terms of how to manage any counterparty objections, identifying the Departments/Facilities in charge of receiving the objections, checking the validity of the issue in dispute, the provision for any cancellation and checking on them;
- parties who have relations with or enter into negotiations with the Public Administration cannot alone and freely:
    - agree the contracts that they have negotiated;
    - access the financial resources and/or authorise payments;
    - make consultation/professional service appointments;
    - give any benefits;
    - hire staff.

2. Management of relations with public parties:

a) to obtain authorisations or licences

b) to request occasional/specific administrative measures

c) to manage obligations, assessments or inspections

d) to recruit personnel

e) to manage social security treatment

f) relating to the preparation of income statements or tax withholding statements or other statements needed to pay taxes in general;

g) other

The execution of the activities provides for the following:

- separation of the Departments involved in these activities, providing for specific control systems (for example calling meetings, reporting the main terms) in order to ensure compliance with the rules of integrity, transparency and legitimacy of the process;

- definition of the roles and tasks of the Committee/Department in charge of controlling the stages for obtaining and managing the permits and/or authorisations, with specific regard to the factual and legal assumptions for submitting the relative request;

- the methods and departments in charge of managing inspections and assessments for the issues in question;

- granting special power of attorney or authorisation to the parties who may be involved in the inspections and/or assessments in order to give them the power to represent the Company before the public authorities in the event of inspections and/or assessments and identification of the person who will represent the Company before the grantor Public Administration, who will be given the applicable power of attorney and authorisation;

- drafting of an information report on the activities carried out during the inspection by the attorneys/authorised parties indicated above, containing, inter alia, the names of the officials met, the documents requested and/or delivered, the parties involved and a summary of the verbal information requested and/or provided;

- when and how to approach any other Departments or if necessary and urgent, inform top management;

- identification of specific control systems (for example calling meetings, reporting the main terms) in order to ensure compliance with the rules of integrity, transparency and legitimacy of the process;

- identification of specific control and assessment protocols on the truth and accuracy of the documents for the Public Administration (for example joint checking by the person in charge of submitting the application and the person in charge of managing the relations with the Public Administration);

- identification of specific information flows between the Departments involved in the process, with the aim of mutual control and coordination.

3. Management of relations with Supervisory Authorities, Administrative Authorities and other Authorities

The control of the activity provides for the following:

- the formalisation of directives that approve the obligation to ensure maximum collaboration and transparency in the relations with the supervisory authorities and the other control bodies;

- identification of a party in charge of managing the relations with the Supervisory Authorities and the other control bodies, specifically authorised by the top management;

- identification of the people in charge of the receipt, consolidation and transmission, validation and re-examination of the data, the information and the documents requested;

- identification of specific formal information flows between the Departments involved in the process, and the documentation and traceability of the individual steps;

- filing and maintenance of the data, the information and the documents sought.

4. Management of the request / acquisition and/or management of aid, funding, loans, or guarantees granted by public/private parties

The control of the activity provides for the following:

- separation of the Departments in charge of monitoring the opportunities to access grants and/or funding, making contact with the private/public party for the request for information, drafting the application, submitting the application and managing the grant/funding, drawing up specific control instruments (for example calling meetings, reporting on the main terms) in order to ensure compliance with the rules of integrity, transparency and legitimacy of the process;

- specific checks on the truthfulness and legitimacy of the documents that need to be submitted to access the grant and/or funding (for example joint checking by the person in charge of submitting the application and the person in charge of checking management of the grant and/or funding);

- identification of specific information flows between the Departments involved in the process, with the aim of mutual control and coordination;

- identification of the person appointed to represent the Company who will be granted the applicable power of attorney and delegation of authority;

- definition of the roles and tasks of the Committee/Department in charge of ensuring the exact correspondence between the actual purpose for which the grant and/or funding is used and the purpose for which it was obtained.

- formalisation of the modalities and Committees involved in the reporting phase to the financing body.

5. *Management of court, out-of-court and arbitration proceedings*

The control of the activity provides for the following:

- identification and separation of Departments involved in the activity in question;
- the procedures and terms for the rapid transmission of the objection to the "Legal and Corporate Affairs" Department along with an explanatory report, of the facts on which the claim is based;
- identification of specific information flows between the Departments involved in the process, with the aim of mutual control and coordination;
- identification of specific periodic reporting lines between the "Legal and Corporate Affairs" Department and top management on the status of the disputes and the possibility and terms of out-of-court settlements or court mediations;
- that the dispute is based on objective parameters and any settlement and/or mediation will be carried out by the person who has the necessary power of attorney and authorisation to act in the dispute, including the power to mediate or settle the dispute;
- indication of the selection criteria for external professionals (for example: experience, subjective professional competence and integrity requirements, references, etc.) and how to manage and control the work of said professionals (to that end, referring to the standards of control relating to the susceptible activity of managing consultation and professional services);
- supervision of the dispute and approval of the invoices issued by the consultant, also with reference to the adequacy of the fees in relation to the tariff level applied;
- the traceability procedures of the internal process;
- that relations with the Legal Authorities and the Public Administration within the scope of court and out-of-court disputes must be guided by the principles of honesty, transparency and traceability, even when managed through an external lawyer;
- periodic monitoring of the progress of disputes by the "Legal and Corporate Affairs" Department
- management of the relations in a way that ensures that parties are not persuaded not to make statements or make untrue statements to the Legal Authorities.

6. Purchasing work, goods and services / security trading

a) purchase of goods and services with service contracts

b) purchase of operating goods and services

c) purchase / hire of audiovisual / musical / photographic / products / work material (including the rights)

d) purchase of consultancy services

e) purchase of marketing-related rights

The control of the activity provides for the following:

- Transparent standards of conduct, that are also impartial, objective at all stages of the supply/consultation/performance and professional service process to ensure the best possible cost, quality and time arrangements;
- The roles, responsibilities and operational procedures for the phase of requesting, assessing and approving requests for supply/consultation/performance and professional services.

See the following provisions regarding the specific stages of the process:

Implementation of process to request supplies/consultation/performance and professional services

- the formal planning by the claimants Committes, where compatible with the plans of production, of their supply requirements of goods, services and works
- formalisation of requests for supplies/consultation services/performance and professional services, which must contain:
    - the purpose of the request, i.e. the precise description of the goods, work or service that needs to be acquired;
    - the product category of the goods, service or work to be procured;

  - the financial value of the request;
  - administrative-accounting and management information;
  - places, times and terms of delivery, duration of benefits and frequency of the project status report;
  - the type of procedure to be followed explaining in full and in detail the reasons for the possible use of negotiated procedures;
  - the technical specifications or technical requirements of the goods, work or service to be acquired, or the description of the respective characteristics, specifying the quality, technical characteristics and compliance with legal requirements, with special reference to safety at work, health and environmental protection;
  - the reason justifying any need to negotiate directly with a single economic operator;
  - the Department/Structure that will have the role of “contract manager”;
  - other specific information provided for the goods, the work or service to be sourced, when necessary;
- approval of the request by the provisioning department;
- if the requesting Departments/Facilities are the same as the Facilities who have to make the purchase, the guarantee that the principle of separation of activities will be complied with, keeping the persons who manage the purchase separate from those who request it or use it.

Selection of the suppliers/consultants and qualification process:

- the rules and criteria that permit the technical and management capacity and the ethical, economic and financial reliability of a supplier/consultant to be checked and monitored on the basis of objective, pre-established elements; the selected supplier/consultant must be able to guarantee:
  - the safeguarding and protection of the environment;
  - promotion of healthy and safe work conditions;
  - compliance with health and safety measures at the workplace;
  - prohibition on forced labour or exploitation of minors;

  - freedom of trade union association and collective bargaining;

- the prediction of an invitation to tender for selection of the supplier/consultant unless individual cases which allow entering into direct negotiations;

- the assessment of suppliers/consultants must comply with the principles of transparency, equal treatment and the Code of Ethics;

- the provision of a register/list of suppliers, specifying:

  - the procedures relating to the request for admission, analysis and evaluation of the request, the designation and its effects, the ways to manage and update the list;

  - the matters expressly exempt from the obligation to be on the company register/list;

- the provision of a validity period relating to the status of being designated as supplier/consultant, which must be adequate, and ensure periodic checking and updating, also following feedback, inspections or systematic gathering of information.

Procurement process:

- formalisation of the procedure starting from definition of the requirement up to authorisation and issuing of a purchase request, with indication of the management methods and authorisation levels;

- identification of the purchase order, checking to ensure that it corresponds with the authorised purchase request, the authorisation and performance procedures;

- provision of methods to receive and the declare acceptance of the goods/service acquired;

- checking that the requests for supplies/consultation/performance and professional services come from authorised parties;

- ensuring that recourse to direct negotiations with a single economic operator are only carried out in the cases provided for by law and case law and clearly identified, adequately motivated and documented, and subject to suitable control and authorisation systems;

- identification of the rotation criteria for the persons involved in the supply process;

- the prohibition, for parties who negotiate with the Public Administration, on entering into contracts on their own and freely;

- separation of the main activities between the person who makes the decision to begin procedures, the one who decides on the requirements for participation in the tender/selection, the one who decides on the choice of contracting party, the one who makes the agreement, the one who decides on any changes/additions, the one who checks compliance with the contractual terms, the one who manages relations with the third party contracting parties at the assessment and testing stages or at delivery, and the one who manages any settlements);

- the provision regarding the prohibition on entering into contracts with parties indicated on the Reference lists relating to combating the funding of terrorism (published by the Financial Information Unit set up at the Bank of Italy), subject to formal authorisation by the Chief Operating Officer or the General Manager regarding the powers assigned;

Contracts:

- drafting the written contract for the supply/consultation/performance and professional services in accordance with the principles and guidelines defined by the applicable Facilities/Departments;

- the separation of tasks between the persons who manage the operating activities during the supply/consultation/performance and professional services requesting process and the person who approves the contract;

- definition of the management methods of the contract amendments that charge the drafting of a new purchase request and the explanation of the reasons for it;

- drafting contractual terms and conditions that take account of:

  - costs;

  - safety conditions;

  - procurement times;

  - any other relevant aspects for execution of the activity;

  - method used to pay for the goods, the work or the service requested (unit instalments, lump sum, repayable, etc.) in accordance with company payment policy rules;

  - duration of the contracts;

- the addition of the following agreements into the contracts for supplies/consultation/performance and professional services:
    1. specific binding clauses for third parties aimed at preventing behaviour, actions or omissions that could lead to liability in accordance with Legislative decree 231/01; clauses that provide for the obligation to be aware of and comply with the standards in the Code of Ethics and the Model adopted by Rai Com; and application of penalties in the event of breach of said obligations;
    2. specific anti-bribery clauses such as:
        - a declaration by the supplier that the amount paid comprises the exclusive payment for the work described under the contract and that it may never be given to a Public Party or private party, or one of their family members, as a bribe, or transferred directly or indirectly to members of the company bodies, directors or Company employees;
        - a prohibition on suppliers directly or indirectly transferring the payment to directors, managers, members of the company bodies or employees of the company or their family members;
    3. the indication of the parties for whom the supplier / consultant takes on the responsibility for guaranteeing compliance with applicable laws, and more specifically refers to the applicable Anti-Bribery laws[6] and the Code of Ethics;
    4. rules governing sub-contracting;
    5. the application of penalties in the event of breach by the supplier/consultant of the obligations, declarations and guarantees indicated above, or in the event of breach of the anti-bribery laws;
- for the tender contracts, standard contractual clauses regarding the costs of safety and compliance with the rules regarding the specific clauses with which the contractors declare that they are aware of and undertake to comply with prevailing labour laws (for example the payment of contributions, fulfilling safety obligations), protection of minors and women's work, hygiene-health conditions and safety conditions, trade union rights or in any case the right of association and representation required by the laws of the country where it operates, and financial traceability;

[6] Anti-Bribery Laws: a) the Italian Criminal Code, Decree 231 and other applicable provisions (law 6 November 2012, no. 190, containing "Provisions for the prevention and suppression of bribery and unlawfulness 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), the other public rights laws and commercial laws against bribery in effect in the world and international anti-bribery treaties such as the Convention of the Organisation for Cooperation and Economic Development in the fight against the bribery of foreign public officials in international economic transactions and the United Nations Convention against bribery; b) the internal Anti-Bribery provisions adopted by the company in order to prevent bribery-related risks.

- the allocation of the Contract to a Contract Manager, specifying the role and duties, and acceptance by the contract manager of the role and duties assigned with provision for or authorisation by an authorised person in a higher position, who is not the manager, in the event of changes/additions and/or renewal of the contract. The Contract Manager will receive shall receive adequate training and training on the standards and rules of conduct of the Company, the Code of Ethics and Model 231, and more specifically on the Anti-Bribery Laws. The Contract Manager will be in charge of:
  - monitoring and verifying the correct performance of the Contract;
  - ascertaining and ensuring that the counterparty always operates in compliance with the criteria of maximum diligence, honesty, transparency, integrity and in accordance with Anti-Bribery Laws, Model 231 and the Code of Ethics of the Company;
  - noting any critical issues encountered in the performance of the relationship in the activities carried out by the Supplier/Consultant in order to immediately alert the applicable department;
- identifying and implementing rules and responsibilities to store and file the documentation relating to the various phases of the processes put in place and carrying out the controls needed to ensure compliance of the procedure.

Control of the "Security Trading" susceptible activities also provides for the following:

- definition of the roles and responsibilities of the Departments that are involved in the preparation of the documentation needed to define the agreement as the occasion arises;
- compliance with the principle of traceability of the process adopted to enter into the contract.

7. Recruitment, management and development of staff

The control of the activity provides for the following:

- The roles, responsibilities and operational procedures for the request, assessment and approval stages for staff recruitment requests;
- the staff selection/recruitment steps in accordance with the hiring requirements established by the Company;

- the existence of an annual budget to hire staff which is approved and monitored over time and by a party in charge of checking compliance with the expenditure margins established in the budget;

- the existence of formal procedures that can provide: (i) objective and transparent candidate selection criteria (for example degree/diploma, knowledge of foreign languages, previous professional experience, etc.); ii) traceability of the sources of the *CVs*; iii) a reward system that includes predetermined and measurable goals, and the input from other departments in the definition of the bonus plans and the selection of the relative beneficiaries;

- the provision regarding the prohibition on recruiting staff indicated on the Reference Lists relating to combating the funding of terrorism (published by the Financial Information Unit set up at the Bank of Italy), subject to formal authorisation by the Chief Operating Officer or the General Manager according to the powers assigned;

- the execution of anti-bribery controls by the applicable Departments, for the resources considered suitable for hiring, such as checks on the previous professional experience indicated by the candidate and the request for information regarding, where possible, any criminal records/pending charges or criminal proceedings in course;

- the assessment of the above-mentioned checks in relation to the role and duties that the candidate will have to carry out;

- the rules and responsibilities for storing and filing the documentation relating to the various phases of the processes put in place and the controls needed to ensure compliance of the procedure.

8. Management of the financial transactions, including intra-group

The control of the activity provides for the following:

- the separation between the Departments in charge of planning, management and control of the financial resources;

with reference to payments:

  - the declaration that the service has been performed;

  - the controls and registration procedures for the invoices received;

  - the procedure for preparing and authorising the payment proposal;

- the payment procedures;
- formalisation of the reconciliation of the current bank accounts by reasons for leaving; any reconciliation items must be justified and traceable with supporting documentation;

with reference to payments:

- the methods for registering and accounting for the takings;
- the prohibition on using cash or other bearer financial instruments for any collection, payments, fund transfers, use or other utilisation of financial resources, and the prohibition on the use of anonymous current accounts or savings books or those with false names. Any exceptions to the use of cash or other bearer financial instruments shall be permitted for small amounts and are governed by specific procedures (for example petty cash procedures);
- the prohibition on having relations, negotiating and/or entering into and/or performing contracts or actions with the persons indicated on the Reference Lists relating to combating the funding of terrorism (published by the Financial Information Unit set up at the Bank of Italy), subject to formal authorisation by the Chief Operating Officer or the General Manager in accordance with the powers assigned;
- the prohibition on accepting or carrying out payment orders from parties that cannot be identified, with no registration details or where the payment cannot be traced (amount, name/company name, address or current account number) or if full correspondence between the name of the supplier/customer cannot be ensured after checking at the time of opening/changing the supplier/customer register on the system, or of the name on the account on which to have the payment come/accepted;
- the obligation only to make payments to beneficiaries on accounts held in the beneficiary’s name; payments cannot be made onto numbered accounts or in cash or to a party who is not the beneficiary or to a different country from the beneficiary’s country or from where the service was carried out;
- the payments will be made: (a) subject to the written authorisation of the Contract Manager who will confirm the service and/or that the contract terms have been fulfilled to pay the amount due; (b) only against invoices or written payment requests of the counterparty or in accordance with what was established on the Contract.

9. Sale of goods and services in Italy and abroad

a) Sale of rights to public parties

b) Sale of rights in Italy

c) Sale of rights abroad

d) Other Sales (for example consultation services, television channels, etc.)

e) Sale of rights on web platforms

The control of the activity provides for the following:

- the definition of the roles and responsibilities of the facilities/departments that are involved in preparation of the documentation needed to define the agreement as the occasion arises;
- compliance with the principle of traceability of the process adopted to define the contract;
- the obligation to exclusively use contract models prepared by the applicable facility/department and submit any significant changes to the aforementioned models for approval by these facilities;
- the obligation to formalise and sign the contracts before starting the service and limitation of the option to enter into contracts after the service has begun to exceptional cases, with the specific reasons given in writing;
- the prohibition on having relations, negotiating and/or entering into and/or performing contracts or actions with the persons indicated on the Reference Lists relating to combating the funding of terrorism (published by the Financial Information Unit set up at the Bank of Italy), subject to formal authorisation by the Chief Operating Officer or the General Manager in accordance with the powers assigned;
- checking the existence, availability, ownership and source of the goods being sold.

See the following provisions regarding the specific stages of the process:

Identification of the counterparty

- the prohibition on entering into contractual relations with customers who do not meet requirements in terms of morals and profession competence skill established by the company;

- requesting customers to produce a self-declaration that sets out the corporate structures (including minorities) and chain of control (including any trustees for which the beneficiaries are also named), in addition to a declaration of compliance of the entire corporate structure and chain of control with the ethics and professional standards of the Company. This standard can be waived by a risk analysis and assessment process providing that formal authorisation has been obtained by the corporate position of the appropriate hierarchical level;

- the check, by the sales department, of the information obtained;

- The prohibition on entering into contracts with parties on *black lists.* Parties are put onto black lists by the administrative department if the following conditions are met*:*

  - out-of-court credit recovery entrusted to specialist agencies;

  - cases taken to court or to arbitration;

  - insolvency or subject to bankruptcy procedures;

  - unpaid credit written off;

  - there is evidence of fraud against the Company;

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

- the supplies/services will be blocked and the contract will be revoked if a counterparty is put onto the black list;

- the authorisation by the Chief Operating Officer and/or the General Manager, on the basis of the powers given, to maintain any business relations with customers on a black list if there are specific business reasons.

Contractual standards

- contracts must be determined in association with the applicable Facilities/Departments, in particular, with the Legal and Corporate Affairs" Facility, to guarantee compliance with current legislation, including antitrust regulations, administrative liability and anti-bribery laws;

- the contracts must be in writing with the exception of the cases expressly indicated in company procedures, and contractual standards must be used.

- ad hoc clauses or even ad hoc contracts can be used if necessary, or the customer's standard contractual terms providing that they have been approved by the applicable Facilities/Departments;

- the allocation of the Contract to a Contract Manager, specifying the role and duties, and acceptance by the contract manager of the role and duties assigned with provision for or authorisation by an authorised person in a higher position, who is not the manager, in the event of changes/additions and/or renewal of the contract. The Contract Manager shall receive adequate training and training on the standards and rules of conduct of the Company, the Code of Ethics and Model 231, and more specifically on the Anti-Bribery Laws. The Contract Manager will be in charge of:

    - monitoring and ensuring the correct performance of the Contract;

    - ascertaining and ensuring that the counterparty always operates in compliance with the criteria of maximum diligence, honesty, transparency, integrity and in accordance with Anti-Bribery Laws, Model 231 and the Code of Ethics of the Company;

    - noting any critical issues in the performance of the agreement with respect to the activities carried out by the Supplier/Consultant in order to immediately alert the applicable department.

Price lists/Fees

- the establishment of drafting criteria for the proposals/offers of sale to the counterparties;

- any changes to the structure of the price components and the criteria for determining them that have to be justified and approved by the applicable Committee;

- the formalisation of the discount levels subject to a specific authorisation procedure;

- the provision of the correct, complete and timely communication of contractual price lists/prices/discounts in the company's IT sales system; the price/discount on the invoice will be approved by the applicable Departments and will not exceed the approved contractual price list/price/discount; the transfer of data related to the system prices (register, order and invoice) must be done promptly and completely.

10. Revenues from the use of Rai Com music in RAI programs

The control of the activity provides for the following:

- the identification and separation of the Departments, including the Parent Company, involved in the activity in question;
- obtaining due authorisation from the Head Offices/Departments, including the Parent Company;
- the roles, responsibilities and operational procedures to define the transfer of music, produced internally by Rai Com or purchased by third parties in the Rai programs;
- identification of specific information flows between the Departments involved in the process, to obtain joint control and coordination;
- the storage and filing of revenue-related documentation and controls to allow reconstruction of the different stages of the processes put in place.

11. Free gifts, presents and benefits

The control of the activity provides for the following:

- the roles, responsibilities and operational procedures for the request, assessment and approval stage of the free gifts;
- identification of the characteristics that any gift must have, such as:
    - it may not be a cash payment;
    - it must be given for legitimate business reasons and in good faith;
    - it may not be given to exercise undue influence or expectations of a return favour;
    - it must be reasonable according to the circumstances, be in good taste and comply with standards of generally accepted professional courtesy, in accordance with local laws and regulations that apply to public or private parties[7];

[7] Only applicable for activities carried out abroad.

- that any free gifts made to family members or persons indicated by a private party, business partner[8] or public party, proposed at their request, or if no proposal was made, that can be traced to the relationship linking them to the beneficiary, must be considered to be a benefit provided directly to the private party, business partner or public party, and therefore subject to the limitations provided by the applicable procedure;

- the accurate, transparent registration of the financial information with enough details about expenses for corporate free gifts and the gifts relating to specific projects. These expenses must be backed up by applicable documentation to identify the name and title of each beneficiary[9] and the purpose of each gift, the economic advantage of other benefits;

- the provision regarding the prohibition on giving gifts to the persons indicated on the Reference Lists relating to combating the funding of terrorism (published by the Financial Information Unit set up at the Bank of Italy) subject to formal authorisation by the Chief Operating Officer or the General Manager regarding the powers assigned;

- a summary report (for example half-yearly) of the items given, for each type of free gift, in the applicable period, containing:

    - the purpose,
    - the beneficiary,
    - the description of the item,
    - the purchase price,
    - the request made with indication of the relative authorisation,
    - the quantity given,
    - the date given.

- management of the specific top management corporate gift requirements in accordance with the approved budgets in agreement with the respective secretarial offices;

- the storage and filing of documentation relating to the gifts offered or received by people in order to check compliance with the applicable procedure and allow reconstruction of the different stages of the processes put in place;

[8] Each third party, who is not an employee, who receives or provides products or services from/to the Company or from/to third parties who act on behalf of the company (for example consultants, intermediaries, dealers, agents, etc.).
[9] This provision does not apply to gifts with limited economic value (for example diaries, umbrellas, calendars, pens, etc.)

- appointment of a Free gift Manager to manage the free gifts. The Free gift Manager shall receive adequate training and training on the standards and rules of conduct of the Company, the Code of Ethics and Model 231, and more specifically on the Anti-Bribery Laws:
- The Free gift Manager shall be in charge of:
    - monitoring and ensuring the correct performance of the Free gift distribution process;
    - monitoring and storing the items to be used as free gifts.

Free gifts, economic benefits offered or received by staff

In addition to the above, control of the activity provides for the following:

- that any free gifts, economic benefits or other benefits offered or received by staff must be reasonable and in good faith from an objective viewpoint;
- the obligation to notify the direct superior about the free gift or economic benefit offered to or received by staff if the actual or estimated value exceeds (or probably exceeds):
    - , the “individual limit” of 150 euros[10];
    - the “cumulative limit” (corresponding to four times the “individual limit") that accrues when the same party or organisation receives or is offered, in one year, a free gift or an economic benefit that exceeds that amount, even if individually each free gift or benefit does not exceed the “individual limit” indicated above;
- the registration (even if the free gift was refused) in an accurate, transparent manner, on a suitable register, kept by the applicable department and containing the following information:
    - name of the person who was offered or who received the free gift or economic benefit (beneficiary);
    - name of the company and the person who made that offer or provided the free gift or economic benefit;

[10] The reference value indicated as “modest value” was identified in accordance with governmental circular of 8 February 2012 in which the “instructions for all the facilities that depend on the Ministry for the Economy and Finance and the President of the Council, to ensure efficiency and good value in administrative activities” were established.

  - date the free gift was offered to the staff;
  - current or estimated value;
  - indication of whether it was accepted or refused and reasons.

Free gifts given to third parties

In addition to the above, control of the activity provides for the following:

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

12. *Organisation and management of events/sponsorships*

The control of the activity provides for the following:

- the roles, responsibilities and operational procedures for the request and assessment stage of the sponsorship/event to be included in the Events Plan;
- the performance of all the sponsorship/event activities in accordance with the approved budget;
- identification of the information that the requests must contain:
  - promoter;
  - reasons;
  - cost;
  - any other sponsors present.
- formalisation, in a suitable document, of the assessment of the requests made by a team established for the purpose;
- identification of the parties authorised to approve the sponsorship/event;
- formalisation of the reasons behind any failure to authorise the sponsorship/event;

- the controls made to check whether the promoter is a well-known party and recognised as reliable on the market;
- the written form of the sponsorship contract;
- the prohibition on having relations, negotiating and/or entering into and/or performing contracts or actions with the persons indicated on the Reference Lists relating to combating the funding of terrorism (published by the Financial Information Unit set up at the Bank of Italy);
- a declaration by the promoter that the amount paid comprises the exclusive payment for the work described under the contract and that it may never be given to a Public Party or private party, or one of their family members, as a bribe, or transferred directly or indirectly to members of the company bodies, directors or Company employees;
- the communication obligations of the promoter upon signing the sponsorship contract, or during its performance, if the promoter, or in the case of a company, the parties involved in the company organisation (for example, directors, employees, majority shareholders), can be classified as a Public Party;
- identification of the information that must be put into the sponsorship contract such as:
    - the description of the event/initiative,
    - the benefits for the recipient Company,
    - the amount of payment provided for and the payment terms;
- the value and amount to be paid pursuant to the sponsorship contract;
- the invoicing terms (or payment methods) and payment conditions, taking into account that such payments may be made exclusively to the promoter and in the country in which the promoter is established, exclusively to the promoter's account as indicated on the Sponsorship Contract and never to an anonymous numbered account or in cash;
- the promoter's commitment to comply with applicable laws, and to register the amount received correctly and transparently in its own books and registers;
- the right of the Company to terminate the contract, stop payments and receive compensation for loss if the promoter breaches the obligations, declarations or guarantees as indicated above, or if the applicable law is breached;

- the right of the Company to carry out controls on the promoter if there is a reasonable suspicion that the promoter could have breached the Contractual provisions of the Sponsorship;

- the allocation of the Contract to a Contract Manager, specifying the role and duties, and acceptance by the contract manager of the role and duties assigned, with provision for or authorisation by an authorised person in a higher position, who is not the manager, in the event of changes/additions and/or renewal of the contract. The Contract Manager shall receive adequate training and training on the standards and rules of conduct of the Company, the Code of Ethics and Model 231, and more specifically on the Anti-Bribery Laws. The Contract Manager will be in charge of:

    - monitoring and ensuring the correct performance of the Contract;

    - ascertaining and ensuring that the counterparty always operates in compliance with the criteria of maximum diligence, honesty, transparency, integrity and in accordance with Anti-Bribery Laws, Model 231 and the Code of Ethics of the Company;

    - noting any critical issues in the performance of the contractual agreement in order to immediately alert the applicable department.

- the execution of the event reporting through certification of performance and the calculation of the final costs incurred for the organization and management of the event;

- the formalisation of the rules and responsibilities for storing and filing the documentation relating to the various phases of the processes put in place and the controls needed to ensure compliance of the procedure.

13. Travelling expenses and advances

The control of the activity provides for the following:

identification of application of the applicable procedures by the parties who can authorise travel and services outside the company to ensure implementation pursuant to the criteria of cost-effectiveness and the approved budget. Specifically, these parties evaluate:

- during the travel authorisation stage:
    - the need for the travel and the reasonableness of the duration, authorising any special conditions;
    - the need to provide an advance and its amount.

  - during the report authorisation stage, the reasons relating to:
    - the reasonableness of the costs incurred;
    - the use of taxis where not normally permitted;
    - the use of means of transport in special cases or to reach destinations that had not originally been planned for;

- the means of reimbursement and preparation of the statement of travel expenses;

- the ceiling for the use of cash advances for travel expenses;

- the types of expenses which can be reimbursed if there is sufficient supporting documentation;

- identification of the controls related to correct implementation of the authorisation procedure and the documentation supporting the reimbursement request for the expenses sustained for travel and work performed outside the place of work;

- the storage and filing of documentation relating to the request, authorisation, agreement and management stages of the activities, and the controls to allow reconstruction of the different stages of the processes put in place.

14. Corporate advertising

The control of the activity provides for the following:

- the formalisation of standards, rules and activities within the scope of the corporate communication processes with special reference:

  - to identification of the responsibilities and the standards of conduct to adopt;

  - to identification of the roles, tasks and responsibilities in the determination, approval and distribution of the corporate communications;

  - the characteristics of the advertising message, which: must be clear, truthful and accurate; be transparent and recognisable as such (and especially a prohibition on subliminal advertising) so that the intended audience is not passively subjected to it; must non praise non-existent qualities or effects; be fair, especially with respect to the competition;

  - must identify a party who will be in charge of keeping up to date with regulations and case law on the matter.

15. Selection and management of agents

The control of the activity provides for the following:

- the analysis of the dimensioning of the number of the agents necessary to achieve the Company business goals;
- formalisation of the decision-making process and the reasons leading to the choice of agent;
- definition of the minimum requirements of reliability/integrity/commercial credibility of the agent on the basis of certain relevant indicators (for example adverse public data - protests, insolvency proceedings - or acquisition of sales information on the company, the shareholders and the directors through specialised companies and/or by obtaining specific self-certification by the counterparty and/or by submission of the General Criminal Record Certificate);
- the prohibition on having relations, negotiating and/or entering into and/or performing contracts or actions with the persons indicated on the Reference Lists relating to combating the funding of terrorism (published by the Financial Information Unit set up at the Bank of Italy), subject to formal authorisation by the Chief Operating Officer or the General Manager in accordance with the powers assigned;
- separation of the departments that select the agents/introduced business agents, that sign the contract, calculate the remuneration, make payments and authorise settlement of the payments;
- the traceability of the relevant documentation, the level of formalisation and filing procedures/timeframes;
- the definition of remuneration linked to pre-established parameters;
- specific binding clauses for third parties aimed at preventing behaviour, actions or omissions that could lead to liability in accordance with Legislative decree 231/01; clauses that provide for the obligation to be aware of and comply with the standards in the Code of Ethics and the Model adopted by Rai Com; and application of penalties in the event of breach of said obligations;
- specific anti-bribery clauses such as:

  - a declaration by the agent that the amount paid comprises the exclusive payment for the work described under the contract and that it may never be given to a Public Party or private party, or one of their family members, as a bribe, or transferred directly or indirectly to members of the company bodies, directors or Company employees;
  - a prohibition on the agent directly or indirectly transferring the payment to directors, managers, members of the company bodies or employees of the company or their family members;
  - the application of penalties in the event of breach by the agent of the obligations, declarations and guarantees indicated above, or in the event of breach of the anti-bribery laws;
  - the right of the Company to carry out controls on the agent if there is a reasonable suspicion that the agent could have breached the contractual provisions described above;
- the existence of indicators that trigger further control procedures upon the occurrence of certain irregularities (for example if the agent carries out sales activities in a country or industrial sector well-known for bribes and corruption);
- the identification of specific cases and updating and/or review criteria, ordinary or extraordinary, of the initial agent evaluation (for example if a payment increase was requested rather than a discount, for issues not related to changes in the contract terms during negotiations);
- the allocation of the Contract to a Contract Manager, specifying the role and duties, and acceptance by the contract manager of the role and duties assigned with provision for or authorisation by an authorised person in a higher position, who is not the manager, in the event of changes/additions and/or renewal of the contract. The Contract Manager shall receive adequate training and training on the standards and rules of conduct of the Company, the Code of Ethics and Model 231, and more specifically on the Anti-Bribery Laws. The Contract Manager will be in charge of:
  - monitoring and ensuring the correct performance of the Contract;
  - ascertaining and ensuring that the counterparty always operates in compliance with the criteria of maximum diligence, honesty, transparency, integrity and in accordance with Anti-Bribery Laws, Model 231 and the Code of Ethics of the Company;
  - noting any critical issues in the performance of the agreement with respect to the activities carried out by the agent in order to immediately alert the applicable department;

- the rules and responsibilities for storing and filing the documentation relating to the various phases of the processes put in place and the controls needed to ensure compliance of the procedure.

16. Selection and management of commercial partnerships

The control of the activity provides for the following:

- the partners must only be well-known organisations, reliable and with an excellent reputation with respect to honesty and fair trading practices unless otherwise formally authorised by the CEO in the case of beginner or emerging partners;

- the classification of every partner;

- formalisation of the decision-making process and the reasons that led to the choice of partner and the investment hypotheses, taking account of the artistic, publishing and economic-financial assessments of the production, and an analysis of the consistency with the publishing policies defined by Company Management and the investment plans of the Company;

- definition of the minimum reliability/integrity/commercial credibility requirements of the partner on the basis of certain relevant indicators (for example adverse public information - protests, insolvency proceedings - or acquisition of sales information on the company, the shareholders and the directors through specialised companies and/or by obtaining specific self-certification by the counterparty and/or by submission of the General Criminal Record Certificate);

- the prohibition on having relations, negotiating and/or entering into and/or performing contracts or actions with the persons indicated on the Reference Lists relating to combating the funding of terrorism (published by the Financial Information Unit set up at the Bank of Italy), subject to formal authorisation by the Chief Operating Officer or the General Manager in accordance with the powers assigned;

- the formalization of any stage of trade negotiations with partners in order to outline the preliminary economic and commercial terms and the main editorial components of the agreement;

- the traceability of the relevant documentation, the level of formalisation and filing procedures/timeframes;

- the formalization of the agreement with the partner as authorized by the Competent Procurator

- specific binding clauses for third parties aimed at preventing behaviour, actions or omissions that could lead to liability in accordance with Legislative decree 231/01; clauses that provide for the obligation to be aware of and comply with the standards in the Code of Ethics and the Model adopted by Rai Com; and application of penalties in the event of breach of said obligations;

- specific anti-bribery clauses such as:

    - a declaration by the counterparty that the amount paid comprises the exclusive payment for the work described under the contract and that it may never be given to a Public Party or private party, or one of their family members, as a bribe, or transferred directly or indirectly to members of the company bodies, directors or Company employees;

    - a prohibition on the counterparty directly or indirectly transferring the payment to directors, managers, members of the company bodies or employees of the company or their family members;

    - the application of penalties in the event of breach by the agent of the obligations, declarations and guarantees indicated above, or in the event of breach of the anti-bribery laws;

    - the right of the Company to carry out controls on the partner if there is a reasonable suspicion that the partner could have breached the contractual provisions described above;

- the existence of indicators that trigger further control procedures upon the occurrence of certain irregularities (for example if the partner carries out sales activities in a country or industrial sector well-known for bribes and corruption.)

5. SPECIAL SECTION B - Counterfeiting instruments or distinctive marks and Crimes against industry and commerce

5. 1 The relevant elements of counterfeiting instruments or distinctive marks (article 25-*bis* of Legislative decree 231/01) and crimes against industry and commerce (article 25-*bis*.1 of Legislative decree 231/01)

Law no. 99 dated 23 July 2009 containing the "Provisions for the development and internationalisation of companies, including in the area of energy" at article 15, paragraph 7, made changes to Legislative decree 231/01.

The measure changed article 25-*bis* (which also punishes the counterfeiting and alteration of brands or distinctive marks and the introduction into the country of products with false markings), introduced article 25-*novies* "Copyright crimes" (provided under Special Section G), updated the category of predicate offences of administrative liability with introduction of article 25-*bis*.1, listed as "Crimes against industry and commerce" which punishes, inter alia, fraud in the exercise of commerce, "food fraud", the falsification of geographical indications or designations of origin.

More specifically, Law no. 99 of 2009 expanded the catalogue of predicate offences pursuant to Legislative decree 231/01, with addition of the offences of falsification, alteration and sale of products with false markings into article 25-*bis* (articles 473 and 474 of the Criminal Code); this regulatory amendment therefore led to reformulation of the article 25-*bis* index to include the elements protecting distinctive marks and instruments.

The rationale behind the above-mentioned regulatory provision was to make companies more responsible to protect the trust by the general consumers public in the general information of the distinctive marks of industrial products.

Moreover, Legislative decree n. 125 dated 21 June 2016, in the implementation of the Directive 2014/62/UE on the protection of the euro and other currencies against counterfeiting by criminal law, changed:

- Art. 453 c.p. by extending criminal liability to the case of undue manufacture of excess coins, by that who is authorized to the production of the same, but abuses of the tools or materials in its availability;

- Art. 461 c.p., by including the "data" in the group of tools intended for counterfeiting money, comprising watermarks and computer programs.

The new predicate offences pursuant to article 25-bis are:

Counterfeiting, alteration or use of markings, trademarks or distinguishing signs or patents, models and designs (article 473 Criminal Code)

In accordance with the criminal law elements, anyone who is aware of the existence of industrial ownership and falsifies or alters Italian or foreign distinctive signs or trademarks of industrial products, or anyone, without having conspired to falsify or alter, uses said falsified or altered trademarks or marks, will be punished with imprisonment of six months to three years and a fine of Euro 2,500 to Euro 25,000.

A sentence of imprisonment of one to four years and a fine of Euro 3,500 to Euro 35,000 will be imposed on anyone who falsifies or alters patents or industrial designs or models, national of foreign, or, without having conspired to falsify or alter, uses said falsified or altered patents, designs or models.

The crimes provided under the first and second paragraphs will be subject to punishment on condition that Italian and EU regulations and international agreements on the protection of intellectual property or industrial property have been complied with.

In the first paragraph, trademarks and distinctive marks of intellectual property or industrial products are subject to protection.

A trademark is a symbolic or nominative sign used by businesses to mark products or goods.

A patent must be understood as a certificate that links a new invention or industrial discovery to a certain party who is granted the exclusive right to use said invention by the State.

Therefore, patents are public documents, which could also be protected by general regulations against forged documents, but which the law wished to protect by adding them to laws on false signs due to the specific significance that patents have in this area.

On the other hand, for the purposes of article 473 of the Criminal Code, the words “designs” and “models” are understood in the sense of certificates granting patents for industrial models and patents for designs and ornamental models.

With respect to punishable conduct, article 473 of the Criminal Code primarily condemns falsification or alteration.

Falsification must be understood as behaviour carried out to provide the falsified trademark with qualities that would generate confusion as to the real origin of the product, possibly misleading consumers.

On the other hand, alteration entails the partial modification of a genuine trademark.

The punishable behaviour must in any case relate to the distinctive mark subject to registration and not on the instruments (stamps, printers, plates, etc.) needed to reproduce the mark by the elimination or addition of marginal elements.

Introduction into the State and sale of products with false markings (article 474 Criminal Code)

The criminal offence punishes - apart from where there is criminal association in the offences as provided under article 473 - anyone who introduces into the territory of the State, in order to gain profit, industrial products with trademarks or other distinctive marks, Italian or foreign, that are falsified or altered, with imprisonment of one to four years and fines of between Euro 3,500 to Euro 35,000.

Apart from cases where there is conspiracy to falsify, alter, introduce into the territory of the State, anyone who holds for sale, puts up for sale or otherwise places the products described in the first paragraph into circulation, shall be punished with imprisonment for up to two years with a fine of up to Euro 20,000.

The crimes provided under the first and second paragraphs will be subject to punishment on condition that Italian and EU regulations and international agreements on the protection of intellectual property or industrial property have been complied with.

To that end, the crimes described under articles 473 and 474 of the Criminal Code punish many types of actions, including “making use of” and “otherwise placing into circulation” products with false markings.

These expressions seem to refer to a very broad range of activities, including, in summary, all cases of use of the trademark (obviously as long as it involves commercial or industrial use, and not exclusively personal).

According to the interpretation of the law, “placing into circulation” in particular is conduct that describes all possible ways of putting the consumer market into contact with the goods: it could be reasonably hypothesised that advertising is a form of ‘putting into contact’ as mentioned above, even though to an indirect extent. For example in the case where advertising space is given (with awareness that the trademark is deceptive, and the wish to disclose it) to a company for the promotion of a product or service with a trademark that could mislead or create confusion in the public due to its similarity with another trademark of a similar product.

The new predicate offences pursuant to article 25-bis regarding offences against industry and trade are:

Sale of industrial products with false markings (article 517 Criminal Code).

In accordance with the criminal law elements, anyone who puts intellectual property or industrial products up for sale or otherwise into circulation, with Italian or foreign names, trademarks or distinctive marks, that could mislead the buyer as to the origin, source or quality of the work or product, shall be punished with imprisonment of up to two years and a fine of up to Euro 20,000. This is a lesser included offence since it will only be charged if the action does not contain the elements found in another provision of the law.

The right protected by the provision is good faith and fair trade practices, breach of which is considered to be a threat to the interests of most consumers.

Please refer to the comments on the previous regulation for more information on the concepts of “putting up for sale” or “placing into circulation”.

The intellectual property or products must be put up for sale or placed into circulation with Italian or foreign names, trademarks or distinctive marks that could mislead the buyer as to the origin, source or quality of the work or product.

“Italian or foreign trademarks or distinctive marks” are symbolic or nominative signs used by businesses to mark products or goods. However, the trademarks do not have to be registered, since article 517 of the Criminal Code, unlike article 474 of the Criminal Code, does not require the prior compliance with regulations on industrial property. A trademark may also be a group trademark to indicate the origin of the products for all the related companies.

“Names” are intended to mean the names that characterise the product of a certain type.

All the Italian and foreign marks must be capable of misleading the purchaser: this attitude should be evaluated in accordance with the habits of an average consumer when making a purchase.

The deception must regard the origin, source or quality of the work or the product. For more information, please refer to what was described for article 515 of the Criminal Code.

Manufacture and sale of goods produced through misappropriation of industrial property rights (article 517-ter Criminal Code)

Subject to application of articles 473 and 474 of the Criminal Code, the criminal law regulation punishes anyone who, being in a position to be aware of the existence of the ownership of industrial property, manufactures or uses industrial methods on objects or other goods by misappropriating industrial property rights, or in breach of said rights, or anyone who, in order to gain profit, introduces into the territory of the State, holds for sale, puts up for sale to consumers, or in any case places the goods described above into circulation.

The penalty is imprisonment of up to two years and a fine of up to Euro 20,000.

The same penalty will be applied to anyone, who, in order to gain profit, introduces into the territory of the State, holds for sale, puts up for sale to consumers, or in any case places the goods described above into circulation.

These crimes will be subject to punishment on condition that Italian and EU regulations and international agreements on the protection of intellectual property or industrial property have been complied with.

Disruption to the freedom of industry or trade (article 513 Criminal Code)

This offence punishes anyone who uses violence to property or fraudulent means to prevent or disrupt the exercise of an industry or trade with imprisonment of up to two years and fines of between Euro 103 and Euro 1,032. The elements of this offence protect the normal exercise of industrial activity or trade carried out by private parties.

"Violence to property" refers to the notion contained in article 392, second paragraph of the Criminal Code whereby "in accordance with criminal law, there will be violence to property if the property is damaged or transformed or its purpose is changed".

Therefore, reference must be made to any change to the physical status of the property, with or without damage to it.

More specifically, property will be damaged if it is destroyed, lost or impaired; it will be transformed if it is materially changed, even if improved; its purpose will be changed if there is a subjective change of purpose with respect to the person who had it available or used it.

"Fraudulent means" refer to any means that could mislead, such as tricks, deceptive actions, simulations, lies. Therefore, the common feasibility of the typical offence of competition led certain strands of legal theory to identify fraudulent means as those actions described under article 2598 of the Civil Code, and therefore, for example, in the use of other registered trademarks, the circulation of false or misleading news, or in general, false advertising or parasitic competition, i.e. imitating the initiatives of the competitor in a way that leads to confusion.

The elements of the crime may also be found in unfair competition if the disruption of the economic activities of others is due to misleading or unlawfully deceptive behaviour carried out to harm the activity and provided that the use of fraudulent means is not aimed at obtaining economic benefit.

The behaviour must be aimed at preventing or disrupting the industry or the trade.

"Preventing" means not allowing the activity to be carried out, obstructing the start of it, or stopping it after it has already started.

"Disruption" refers to an alteration of the normal execution of the activity that could occur at the start or during the activity.

This is a lesser-included offence since it will only be charged if the action does not contain the elements found in a more serious crime. Since this is a lesser-included offence, the elements are complementary to the elements set out in article 513-*bis* of the Criminal Code with respect to behaviour that warrants more serious sanctions.

Finally, we should specify that "trade" refers to any activity involving the exchange of goods

or services, including banking and insurance activities, transport and shipping.

Unfair competition with threats or violence (article 513-bis Criminal Code)

The criminal law regulation introduced into the criminal code by article 8 of Law no. 646 of 1982, punishes anyone who carries out acts of competition with violence or threats in the exercise of a commercial, industrial, or in any case production activity, with imprisonment of between two to six years. The penalty is increased if the competition relates to an activity financed in whole or in part and in any way by the State or other public organisations.

The regulation in question refers to behaviour that can be classified as unfair competition which takes place through intimidation that tends to control, or at least condition the commercial, industrial or production activities to be carried out with violence or threats.

The criminal elements were introduced by the law to sanction competition put in place using mafia methods; therefore, under *voluntas legis*, it is characterised by employment of standard forms of intimidation used by organised crime, who use violent or threatening methods to thwart the basic laws of market competition intended to ensure the smooth operation of the economic system, and by reflection, the freedom of people to make their own decisions in the sector.

However, there is no special relationship between the elements pursuant to article 513-*bis* of the Criminal Code and the offence of criminal conspiracy pursuant to article 416 of the Criminal Code and mafia-type criminal conspiracy pursuant to article 416-*bis* of the Criminal Code, in view of the episodic nature of the first crimes and the associative nature of the second ones: it follows that there could be conspiracy.

The offence may be committed by anyone who acts in the exercise of a commercial, industrial, or in any case productive activity.

“Commercial” is any activity of placing goods into circulation, “industrial” is any activity aimed at producing goods or services and “productive” is any activity financially geared towards the preparation and sale of products or services on a certain market.

The sanction will be increased if the conspiracy relates to activities funded with public money. The rationale behind this increase is to increase protection of activities funded by public money that have significant social utility. Further, this increase is justified by the criminological aspect whereby criminal organisations tend to get involved in commercial or production activities that are in sectors supported by public funding and to take a monopoly position in the absorption of public money.

Finally, this offence absorbs the offences of private violence, damage and battery. Finally, the relationship with article 513 of the Criminal Code is determined in terms of the dominance of article 513-*bis* since this is a lesser-included offence pursuant to article 513 of the Criminal Code.

Fraud against national industries (article 514 Criminal Code)

In accordance with the criminal law elements, anyone who puts industrial products up for sale or places them into circulation on Italian or foreign markets, with falsified or altered names, trademarks or distinctive marks, causing harm to the national industry, shall be punished by imprisonment of one to five years and a fine of not less than Euro 516.

The elements of "falsification, alteration or use of trademarks, distinctive marks or patents models or designs" and "Introduction into the State and commerce of products with false markings" will not be found if internal laws or international agreements on the protection of industrial property have been complied with. In these cases the penalty will be increased.

Putting on sale or placing on the distribution circuits relates to the sale, production or distribution as a necessary addition to the activity of production.

Along with the provision for trademarks and distinctive marks, the elements of criminal law also include "names", that can be identified as names, signs, emblems, signatures, etc. placed on products to distinguish them, but which do not form part of the trademark.

Damage to the national industry, a basic element of article 514, may take the form of any harm caused to the national industry such as the reduction of business in Italy or abroad, the failure to increase business, blackening the good name of the company in relation to the product in question or fair trade practices.

The offence will be considered to have been committed at the time and place the harm occurred. Therefore, it would be considered to have been perpetrated in Italy even if traded on foreign markets provided that the effects are felt, and cause harm, to Italian economic potential.

Fraud in the exercise of trade (article 515 of the Criminal Code.)

The elements of the offence sanctions anyone who, when exercising a commercial activity, or in a shop open to the public, gives a moveable object for another to the purchaser, or a movable object, which, due to origin, source, quality or quantity, differs from the one declared or agreed, with imprisonment of up to two years or a fine of up to Euro 2,065.

This crime hurts the economic interests of an undetermined circle of people and harms the property interests of private parties to a more general extent. The regulation aims to protect honesty and legitimacy in commercial trading. This is a lesser-included offence since it will only be charged if the action does not contain the elements found in a more serious crime.

Commercial fraud assumes the existence of a contract: since the law refers to the purchaser and not the buyer, it may involve any contract that creates the obligation to deliver a moveable thing (for example a sale or return contract, a supply contract or an exchange), and not just a purchase/sale, which however is still the type of negotiation in which this unlawful action most commonly occurs. However, even though this regulation

operates in a mainly bilateral sense, it does not refer to the property interests of the parties, but rather to good faith in commercial exchanges, to protect both the consumer public and producers and sellers. In the single dishonest exchange, the protection of the interests of the entire community are protected where there is a custom of honesty, loyalty and legitimacy in the trading.

The crime is committed with delivery of the item, i.e. the receipt of the item by the purchaser. Delivery does not necessarily just occur when the purchaser actually receives the goods, but also when an equivalent document is accepted (a waybill, bill of lading, etc.).

The delivered item must be different from what had been declared or agreed: this difference must be identified in relation to the content of the declaration or the agreement.

The difference in “origin” relates to the geographic place of production of items that are particularly appreciated by consumers precisely because they have been produced in a specific zone or region.

The difference in “provenance” essentially refers to two hypotheses; the first involves the identification of a product that is different from the original with an indication of origin, while the second refers to using the activity of a company which is different from its own activity, in the packaging of a product.

Difference in “quality” refers to when an item of the same type or of the same appearance as that declared or agreed is delivered, but of a lower price or usability due to a different composition or change in taste.

Difference in “quantity” relates to the weight, measurement or even the number.

The paragraph of article 515 of the Criminal Code also provides for a special aggravating circumstance which involves fraud of precious items, including any items that have a higher saleable value than normal due to their rarity, artistic value, historical value, or age. For these cases, imprisonment is set at up to three years or fines of not less than Euro 103.

A conflict of regulations arises between the criminal law regulation in question and article 517 of the Criminal Code “Sale of industrial products with false markings”, where the crime described under article 515 of the Criminal Code prevails since it can punish the attack on the veracity of the markings.

There is also a conflict between the aforementioned criminal law regulation and article 516 of the Criminal Code “sale of non-genuine foodstuffs as genuine” in view of the structural difference between the two crimes.

Finally, we should mention the relationship between the crime of fraud in commerce and the hypothesis of unfair competition as set out under article 2598, no. 3 of the Civil Code. Case law has constantly confirmed that an act of fraud in commerce, corresponding to what is set out under article 515 of the Criminal Code, does not include unfair competition per se in accordance with article 2598, no. 3 of the Civil Code, since the action does not have to be

capable of generating the threat of loss to create immediate or possible repercussions for a competing company.

Due to the provisions of article 518 of the Criminal Code, the sentence includes publication of the ruling.

Sale of non-genuine foodstuffs as genuine (article 516 Criminal Code)

The criminal elements punish anyone who puts up for sale or otherwise places non-genuine foodstuffs on sale, with imprisonment of up to six months or with a fine of up to Euro 1,032.

This criminal offence aims to protect individual interests such as good faith in commercial exchanges, breach of which could harm the economic order.

“Putting on sale” means offering a certain substance in return for payment.

On the other hand, “placing into circulation” refers to any way of putting the public into contact with the goods, including for free.

The subject matter covered refers to non-genuine foodstuffs.

The word “foodstuffs” includes both products that come directly or indirectly from the ground (by cultivation or growing), and products that have been handled, processed or transformed, and therefore come from industrial processes, regardless of their physical state (solid, liquid or gaseous).

Genuineness is the basic characteristic of food products and can be understood in a natural and formal sense; the natural genuineness indicates that a substance has not been altered from its normal biochemical composition; on the other hand, the formal concept of genuineness (known as legal genuineness) reflects the compliance of the composition of a product to the formal requirements of a regulation. Therefore, both products whose essence or composition has been subject to alteration by the addition of other substances or removal of nutritious principles compared to the ones provided must be considered to be non-genuine.

Due to the provisions of article 518 of the Criminal Code, the sentence includes publication of the ruling.

Infringement of geographical indications or appellations of origin of agro-food products (article 517-quater Criminal Code)

The criminal law regulation sanctions anyone who falsifies or somehow alters geographic indications or designations of origin of agro-food products, or those who, in order to gain profit, introduce into the territory of the State, hold for sale, put up for sale to consumers, or in any case place those products into circulation with falsified indications or names. The penalty is imprisonment of up to two years and a fine of up to Euro 20,000.

The same penalty will be applied to anyone, who, in order to gain profit, introduces into the territory of the State, holds for sale, puts up for sale to consumers, or in any case places these products with falsified indications or names into circulation.

The elements of fraud in trading or selling foodstuffs and the falsification of geographic indications or designations of origin of agro-food products (set out under articles 515, 516 and 517-*quater* of the Criminal Code respectively), are crimes that would not appear to be related to the business activities of Rai Com.

5.2 Identification of the areas and the susceptible activities relating to counterfeiting instruments or distinctive marks and crimes against industry and commerce

The analysis of the company processes, carried out during the Project[11,] led to identification of the activities in which the criminal offence referred to under article 25-*bis* and 25-*bis.*1 of Legislative decree 231/01 could take place.

The processes examined in relation to article 25-*bis* and article 25-*bis.1* are listed below:

1. Sale of goods and services in Italy and abroad

- ***a) Sale of rights to public parties***
- ***b) Sale of rights in Italy***
- ***c) Sale of rights abroad***
- ***d) Other Sales (for example consultation services, television channels, etc.)***
- ***e) Sale of rights on web platforms***

[11] To this end, see paragraph 3.1 of the General Section.

5.3 Rules of conduct and implementation of decision-making processes

5.3.1 Rules of conduct

This Special Section deals with the express prohibition by Corporate Bodies, Employees - on a direct basis - or external staff - limited to the obligations respectively provided for under specific procedures and codes of conduct and the specific clauses in the contracts implementing the following principles - of:

- carrying out, helping to carry out, or causing the carrying out of behaviour that - considered individually or collectively - includes, directly or indirectly, the elements of the offence considered above (articles 25-*bis* and 25-*bis*.1 of Legislative decree 231/01);
- breaching the company principles and procedures provided under this Special Section.

Within the scope of the aforementioned behaviour, the following is more specifically prohibited:

1. putting - including through advertising messages and telepromotions - industrial products up for sale or into circulation with names, trademarks or distinctive marks, Italian or foreign, that could mislead the buyer as to the origin, source or quality of the work or product;
2. providing untrue information that damages potential third party competitors;
3. carrying out any form of intimidation or harassment against competitors.

5.3.2 Rules implementing decision-making processes

The *standards* of control identified for the individual Susceptible Activities are listed here below.

1. Sale of goods and services in Italy and abroad

a) Sale of rights to public parties

b) Sale of rights in Italy

c) Sale of rights abroad

d) Other Sales (for example consultation services, television channels, etc.)

e) Sale of rights on web platforms

The activities shall be carried out in compliance with the standards of control provided for in the “Sale of goods and services in Italy and abroad” process

a) Sale of rights to public parties

b) Sale of rights in Italy

c) Sale of rights abroad

d) Other Sales (for example consultation services, television channels, etc.)

e) Sale of rights on web platforms

reported in “Special Section A - Offences in relations with the Public Administration and bribery between private parties” to which reference is made.

Execution of the activities also provides for the following for the susceptible activities indicated above:

- ensuring that the activities carried out are performed properly and delivery of the goods in accordance with the requirements and terms defined in the contracts;
- prior to putting on sale, ensuring that the name and/or trademark and/or distinctive mark has been put on the product properly;
- checking that the nature, quantity and characteristics (including qualitative) of the goods correspond with the permitted tolerances, with what is indicated on the documents that confirm execution of the supply or with the contractual commitments.

6. SPECIAL SECTION C – Corporate Offences

6.1 The relevant elements of the corporate offences (article 25-*ter* of Legislative decree 231/01)

The regulatory references of the relevant elements are provided below, pursuant to article 25-*ter* (known as corporate offences), along with a brief description of certain significant aspects for each of the predicate offences of Legislative decree 231/01.

Corporate criminal offences

False corporate disclosures (articles 2621 and 2622 Civil Code)

These crimes are carried out through the mindful exposure or omission in the financial statements, the reports or other corporate communications provided by law, aimed at shareholders or the public, of material facts which are untrue or relevant material facts where communication is imposed by the law on the economic, capital or financial situation of the company or the group that it belongs to in a way that can actually mislead others.

The elements pursuant to article 2621 of the Civil Code occur in relation to corporate communications "required by law" and the requirement of "relevance" was added for untrue material facts.

The offence set out under article 2622 of the Civil Code only relates to listed companies, identified under the article as "companies who issue financial instruments admitted for trading in a regulated Italian or other European Union country markets".

Punishment for the offence of "False corporate disclosures" (article 2621 Civil Code) is imprisonment of one to five years.

Punishment for the offence of "false corporate disclosures of listed companies" (article 2622 Civil Code) is imprisonment of three to eight years.

These penalties also apply if the falsehood or omissions relate to goods held or administered by the company on behalf of third parties.

article 2621-*bis* of the Civil Code (facts of a minor nature) associates the penalty of six months to three years of imprisonment to the offence of false corporate communications of a minor nature taking account of the nature and size of the company and how the conduct was carried out and its effects.

Note that:

- parties who commit the offence can include directors, general managers, managers in charge of drawing up the corporate accounting documents, statutory auditors or liquidators (therefore involving the "own offence") or anyone else, who, according to article 110 of the Criminal Code, conspires with the above parties to commit the offence[12];

- the conduct must be aimed at obtaining unfair advantage for themselves or others in the financial statements, the reports, or in the other corporate communications provided by law;

- the conduct must be capable of misleading the intended audience of the communications;

- there will still be liability if the information relates to goods held or administered by the company on behalf of third parties.

False statements in a prospectus (article 2623 Civil Code)

This criminal behaviour entails reporting false information in the prospectuses required for soliciting investments or admission to listing on regulated markets, or in the documents to publish during public offers of acquisition or exchange, that could mislead or hide information or news with the intention of misleading the intended audience of the prospectus.

Note that:

- there must be awareness of the falsehoods and the intention to mislead the intended audience of the prospectus;

- the behaviour must be capable of misleading the intended audience of the communications;

- the conduct must be aimed at obtaining unfair advantage for themselves or others;

- the sanction will be more serious if the criminal conduct caused pecuniary damage to the intended audience of the prospectus.

article 34, paragraph 2 of law no. 262/2005 revoked article 2623 of the Civil Code which punished this offence[13] and the criminal elements - previously sanctioned in accordance

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[12] This observation (relating to the conspiracy by an *outside party*) applies, in general, to all own offences.

[13] The revoked article 2623 of the Civil Code, in effect prior to the amendment provided under law no. 262/2005, was as follows: "False statements in a prospectus - *Anyone, who, in order to obtain unfair advantage for themselves or for others, in the prospectuses required for soliciting investments or admission to listing on regulated markets, or in the documents to publish during public offers of acquisition or exchange, with awareness of the falsehood, and the intention to mislead the intended audience of the prospectus, gives false information or hides data or news in a way that could mislead the aforementioned intended audience, shall be punished, if the behaviour has not caused them pecuniary damage, by*

with the revoked regulation - is currently, provided for and sanctioned under article 173-*bis* of the Consolidated Finance Act, which provides for imprisonment of one to five years.

With reference to the predicate offences of administrative liability, article 25-*ter* of the aforementioned Decree currently refers to the revoked civil regulation, while it does not make any reference to the offence introduced by Law 262/2005. The legislative amendments would therefore seem to nullify the administrative liability of companies in accordance with article 25-*ter* of the Decree with reference to the offence of false statements in a prospectus.

Article 27 of Legislative decree no. 39 of 27 January 2010 - Falsehoods in reports and communications by the statutory auditing managers

The offence punishes those responsible for auditing, who, in order to obtain unfair advantage for themselves or others, in the reports or other communications, aware of the falsehoods and with the intention of misleading the intended audience of the communications, certify the falsehood, or hide information regarding the economic, property or financial situation of the company, organisation or party subject to auditing, in a way that could mislead the intended audience of the communications on the aforementioned situation. If the conduct did not cause pecuniary damage, the sanction is imprisonment of up to one year.

The sanction will be imprisonment of one to four years if the aforementioned conduct caused pecuniary damage to the intended audience of the communications.

The third and fourth paragraphs provide for increased punishment in the case of auditing public interest organisations (the sanction in that case is imprisonment of one to five years) if the action is committed by the head of auditing of a public interest entity for money or other benefits given or promised, or in conspiracy with the directors, the general managers or the statutory auditors of the company subject to auditing (the sanction provided under the third paragraph - imprisonment from one to five years - will be increased by up to one half).

The penalty provided under paragraphs 3 and 4 apply to anyone who gives or promises benefits and to the general managers and members of the board of management and the control body of public interest organisation subject to auditing, who conspired to commit the action.

Article 37, paragraphs 34 and 35, Legislative decree no.39 of 27 January 2010, implementing Directive 2006/43/EC relating to auditing, revoked article 2624 Civil Code,[14],

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imprisonment of up to one year. The sanction will be imprisonment of one to three years if the conduct described in the first paragraph caused pecuniary damage to the intended audience of the prospectus."

[14] The revoked article 2624 of the Civil Code, in effect prior to the amendment provided under Legislative decree no. 39 of 27 January 2010, was as follows: Falsehoods in reports or communications of the auditing firm - *"Those responsible for auditing, who, in order to obtain unfair advantage for themselves or others, in the reports or other communications, aware of the falsehoods and with the intention of misleading the intended audience of the communications, certify the falsehood or hide information regarding the economic, capital or financial situation of the company, organisation or party subject to auditing, in a way that could mislead the intended audience of the communications on the aforementioned situation, shall be punished with imprisonment of up to one year if the conduct caused pecuniary damage. The sanction will be imprisonment of one to four*

and was not coordinated with article 25-*ter* of Legislative decree 231/01: in view of the obligatory principle in criminal law, the above-mentioned elements subject to recent legislative action should not therefore be listed under the catalogue of predicate offences of administrative liability of the organisation any longer. However, similarly to what is set out under article 2623 of the Civil Code, account should be taken of this in drafting this Model as a prudential measure.

Obstructing control (article 2625 Civil Code)

The first paragraph of article 2625 of the Civil Code describes the unlawful administrative action of managers who obstruct or in any case interfere with the execution of controls by shareholders or corporate bodies and provides for a monetary administrative fine of up to Euro 10,329. The unlawful administrative action does not generate direct liability of the Organisation, which, conversely, is provided for in the crime described under the second paragraph of the same article 2625 of the Civil Code where that criminal conduct causes loss to the shareholders. In that case, the sanction is for imprisonment of up to one year on foot of an action taken by the injured party. The third paragraph increases the punishment (doubles it) if the action relates to listed companies; the punishable conduct entails the hiding of documentation, or the employment of other deceptive actions that could produce the two events that constitute the offence (obstruction of control or obstruction of auditing). The regulation also includes simple obstruction as one of the ways the prohibited conduct can be made manifest, which extends the area of the prohibition to mere obstructionism.

With regard to the elements referred to above, when article 37, paragraphs 34 and 35, Legislative decree no. 39 of 27 January 2010, which implements directive 2006/43/EC relating to audits amended article 2625[15] of the Civil Code, it did not coordinate with article 25-*ter* of Legislative decree 231/01; article 25-*ter* refers to article 2625 of the Civil Code, which, in the new version, no longer includes the obstruction of auditor control, which was moved in Legislative decree 39/2010 to article 29, which is not referred to by article 25-*ter* and provides for two new elements (under the form of unlawful administrative action and criminal administrative action) of obstruction of control relating to auditing,

The first paragraph of article 29 of Legislative decree 39/2010 is applied against directors who hide documents or carry out other deceptive actions to prevent, or in any case obstruct, controls or audits, with a fine of up to 75,000 euros.

The second paragraph sets out the crime that occurs when the obstructing conduct causes

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years if the conduct described in the first paragraph caused pecuniary damage to the intended audience of the communications."

[15] Article 2625 of the Civil Code, in effect prior to the amendment provided under Legislative decree no. 39 of 27 January 2010, was as follows: Obstructing control - *If directors hide documents or carry out other deceptive actions to prevent, or in any case obstruct the control or audit work to be carried out by the shareholders, other company bodies or the auditing firm pursuant to the law, they will be punished with a monetary fine of up to 10,329 euros.*
If the conduct caused loss to the shareholders, the sanction will be imprisonment of up to one year on foot of an action taken by the injured party.
The penalty will be doubled if they involve companies who are listed on regulated Italian markets or other countries of the European Union or disclosed to the public to a significant extent in accordance with article 116 of the Consolidated Finance Act pursuant to Legislative Decree no. 58 of 24 February 1998.

loss to the shareholders. In this case, the fine will be up to seventy-five thousand euros and imprisonment of up to eighteen months. The third paragraph establishes an increased fine where public interest organisations are being audited. The fines set out under paragraphs 1 and 2 will be doubled.

In view of the obligatory principle in criminal law, the above-mentioned elements subject to recent legislative action should not therefore be listed under the catalogue of predicate offences of the administrative liability of the organisation; however, account should be taken of this in the drafting of this Model as a prudential measure.

Fictitiously paid-up share capital (article 2632 Civil Code)

This offence may be committed when: share capital in a company is created or increased fictitiously by allocation of higher company shares or quotas than the amount of share capital; shares or quotas are subscribed to on a reciprocal basis; contributions in kind, receivables or company assets are significantly overvalued, in the case of transformation.

The penalty is imprisonment of up to one year.

The liable parties will be the directors and the contributing shareholders.

Unlawful return of capital contributions (article 2626 Civil Code)

Apart from the cases of lawful reduction of share capital, the “typical” scenario provides for the return, including fictitious, of contributions to the shareholders, or freeing them from the obligation to make them.

The liable parties will be the directors and the punishment will be imprisonment for up to a year.

Unlawful allocation of profits or reserves (article 2627 Civil Code)

This criminal conduct entails allocating profits or advances on profits not actually earned or allocated to legal reserves, or allocating reserves, even if not comprising profits, that may not be legally distributed.

Note that:

- the liable parties will be the directors;
- the return of the profits or re-establishment of the reserves prior to the deadline provided for approval of the financial statements will be one way to nullify the offence.

The penalty is imprisonment of up to one year.

Unlawful transactions on shares or equity interests of the parent company (article 2628 Civil Code)

This offence is committed with acquisition or subscription - not including the cases permitted by law - of shares or equity interests, also issued by the parent company, which affects the amount of the share capital or the reserves which cannot be distributed by law. The penalty is imprisonment of up to one year.

Note that:

- the liable parties will be the directors;
- the reconstruction of the share capital or the reserves prior to the deadline provided for approval of the financial statements will be one way to nullify the offence, with respect to the financial year in which the conduct was carried out.

Transactions prejudicial to creditors (article 2629 Civil Code)

This offence occurs when, in breach of the law protecting creditors, there is a reduction in the share capital or mergers or demergers with other companies that causes loss to creditors.

Note that:

- the liable parties will be the directors;
- repayment of the loss to the creditors prior to the finding will be one way of nullifying the offence.

Unlawful allocation of company assets by liquidators (article 2633 Civil Code)

The offence is committed by allocating company assets among shareholders prior to paying the company creditors, or allocating the amounts necessary to pay them, causing loss to the creditors. The penalty is imprisonment for six months to three years.

Note that:

- the liable parties will be the liquidators;
- repayment of the loss to the creditors prior to the finding will be one way of nullifying the offence.

Undue influence at the shareholders' meeting (article 2636 Civil Code)

The "typical" conduct will occur when the majority at the shareholders' meeting uses false actions or fraud in order to obtain unfair advantage for themselves or others. The penalty is imprisonment for six months to three years.

Stock manipulation (article 2637 Civil Code)

The offence will be committed if false news is circulated or simulated operations or other deceptive actions are carried out that could actually cause a significant alteration to the price of financial instruments, which are unlisted, or where a request for admission to trading on a regulated market has not been submitted, or that significantly affect the trust of the public in the capital stability of banks or banking groups. The penalty is imprisonment for one to five years.

Failure to disclose a conflict of interest (article 2629-bis Civil Code)

The criminal law elements punish the director or member of the board of management of a company with securities listed on regulated Italian markets or the market of another European Union country, or issued to the public to a significant extent in accordance with article 116 of the Consolidated Act pursuant to legislative decree no. 58 of 24 February 1998 as amended, or by a party subject to supervision in accordance with the Consolidated Act pursuant to legislative decree no. 385 of 1 September 1993 of the aforementioned Consolidated Act pursuant to legislative decree no. 58 of 1998, of legislative decree no. 209 of 7 September 2005 or legislative decree no. 124 of 21 April 1993, that breaches the obligations provided under article 2391, first paragraph of the Civil Code, with punishment of imprisonment from one to three years, if damage is caused to the company or third parties.

Obstruction of the work of public supervisory authorities (article 2638 Civil Code)

The conduct becomes criminal if untrue material facts of the economic, capital or financial situation of the parties subject to supervision are given in the legally required communications to the supervisory authorities, even though the facts are subject to assessment, in order to obstruct said duties; or through hiding, using other fraudulent means, in whole or in part, facts that should have been communicated regarding said situation. The penalty is imprisonment for one to four years.

This penalty will be doubled if it involves companies who are listed on regulated Italian markets or other countries of the European Union or disclosed to the public to a significant extent.

The criminal conduct will also be manifest when the work of the supervisory authorities is intentionally hidden, in any way, including through failure to make the necessary communications.

Note that:

- the liable parties are the directors, general managers, managers in charge of drafting the company accounting documents, the statutory auditors and the liquidators of companies or organisations and the other parties subject by law to the public supervisory authorities, or with obligations towards them;
- there will still be liability if the information relates to goods held or administered by the company on behalf of third parties.

6.2 Identification of susceptible areas and activities within the scope of corporate offences

The analysis of the company processes, carried out during the Project[16], led to identification of the activities in which the criminal offence referred to under article 25-*ter* of Legislative decree 231/01 could take place. The processes examined are listed below:

1. ***Preparation of the financial statements, reports or other corporate communications provided for by law***
2. ***Management of relations with the shareholder, the Board of Statutory Auditors and the auditing firm***
3. ***Management of relations with Supervisory Authorities, Administrative Authorities or other Authorities***
4. ***Capital transactions and allocation of profits***
5. ***Issue of press releases***

6.3 Rules of conduct and implementation of decision-making processes

6.3.1 Rules of conduct

This Special Section provides for the express prohibition of corporate bodies, employees - on a direct basis - and external staff - limited to the obligations provided under specific procedures and codes of conduct and the specific clauses in the implementation contracts of the following principles - of:

- carrying out, helping to carry out, or causing behaviour that - considered individually or collectively - includes, directly or indirectly, the elements of the offence falling under those considered above (article 25-*ter* of Legislative decree 231/01);

[16] To this end, see paragraph 3.1 of the General Section.

- breaching the company principles and procedures provided under this Special Section.

This Special Section therefore provides for the obligation by the parties indicated above to diligently comply with all prevailing laws, and more specifically:

1. ensure that they behave honestly, transparently and on a collaborative basis, in compliance with the law and company procedures, in all activities aimed at putting together the financial statements and other corporate communications, in order to provide the shareholders and third parties with true and correct information on the economic, capital and financial situation of the company;
2. strictly comply with all regulations aimed at protecting the completeness and effectiveness of the share capital so as not to harm the guarantees of creditors or third parties in general;
3. ensure the normal operation of the Company and Corporate Bodies, guaranteeing and facilitating all types of internal control of company management as provided under the law, and the free and correct execution of the wishes of the shareholders' meetings;
4. not carry out false transactions or issue false news about the Company;
5. carry out, in any form or of any nature, purchases, sales or other types of transactions, on financial instruments, using inside information that they became aware of through their position as a member of a board of administration, management, or control of the issuer, or of the investment in the capital of the issuer;
6. carry out said transactions, using inside information that they became aware of in the exercise of work, a profession, a job or a position;
7. disclose this information to third parties apart from reasons relating to the normal exercise of work, profession, duties or position;
8. recommend or induce third parties to carry out transactions giving cause for legal action on the basis of this information;
9. circulate false news that could lead to alteration of the prices of financial instruments;
10. carry out simulated operations or other deceptive actions that could alter the price of financial instruments.

Within the scope of the aforementioned behaviour, the following is more specifically prohibited:

a) the portrayal, or sending for processing and portrayal in financial statements or other corporate communications, false data, information with data missing, or in any case information that does not reflect the real situation, on the economic, capital or financial situation of the company;

b) the portrayal, or sending for processing and portrayal in the separate accounts, false data, information with data missing, or in any case information that does not reflect the real situation;

c) leaving out data or information required by law on the economic, capital or financial situation of the company, also for the purposes of the separate accounts;

d) returning contributions to the shareholders or freeing them from the obligation to make them, apart from cases of lawful reduction of share capital;

e) allocating profits or advances on profits not actually earned or earmarked for legal reserves;

f) purchasing or subscribing to own shares outside the cases provided for by law to the detriment of the share capital;

g) reducing the share capital or carrying out mergers or demergers in breach of the law protecting creditors, causing them loss;

h) creating or falsely increasing the share capital, giving shares for a value that is lower than their par value;

i) doing anything that would materially prevent, by hiding documents or using other fraudulent means, the execution of the control by the shareholders or the Board of Statutory Auditors;

j) determining or unlawfully influencing the adoption of decisions at shareholders' meetings, and to that end carrying out simulated or fraudulent actions that could artificially alter the proper expression of the wishes of the shareholders' meeting;

k) publishing or disclosing false notifications or carrying out simulated transactions or other fraudulent or deceptive behaviour, relating to the economic, financial or capital situation of the Company;

l) presenting untrue facts in the aforementioned communications or presentations, or hiding significant facts regarding the economic, capital or financial position of the Company;

m) distributing or helping distribute, in any way, false information, news or data or performing fraudulent transactions or in any case misleading, in a way that could only partially lead to modification of the price of financial instruments;

n) complying with the rules that govern formation of the price of financial instruments, strictly avoiding the performance of actions that could significantly modify them, taking account of the actual market situation.

6.3.2 Principles of implementing the decision-making processes

The *standards* of control identified for the individual Susceptible Activities are listed here below.

1. ***Preparation of the financial statements, reports or other corporate communications provided for by law***

The execution of the activities provides for the following:

- the definition of the main phases in which the activity in question is organised, such as:
    - management of the general accounts;
    - measuring and estimating the items in the financial statements;
    - drawing up separate financial statements and interim accounting statements;
- the definition and distribution to the persons involved in the preparation of the financial statements, of regulations that clearly define the accounting standards to adopt to define the items in the financial statements, and the operational procedures to account for them. These regulations must be added/updated with the indications provided by the applicable office on a timely basis in accordance with any new civil laws, and distributed to the above-mentioned intended audience;
- the definition of rules and responsibilities aimed at checking the amounts on the financial statements with specific reference to the control activities on the financial disclosure;
- the definition of instructions for the Departments to establish what data and news must be provided to the Control, Administration and Finance Department in relation to the annual and interim closings (for the separate financial statements) and the Administrative Management of the Parent Company (for the consolidated financial statements), with what methods and the relative time-frames;
- acquisition by RAI-Radiotelevisione Italiana Spa of the letter confirming the veracity and completeness of the information provided in order to draw up the consolidated financial statements and provision of the same confirmation system for the separate financial statements of the Company;
- holding one or more meetings between the auditing firm, the Board of Statutory Auditors/Supervisory Body, the Head of the Control, Administration and Finance Department before the meeting of the Board of Directors to approve the financial statements, to assess any critical points that emerged during the audit;
- compliance with the obligation whereby the only party to change the accounting figures can be the Department who generated them. Adequate justification, documentation and filing of any changes made to the draft financial statements /interim statements must also be provided;

- the provision, in addition to the Departments/Facilities involved in drawing up the financial statements and related documents, of basic training (regarding the main legal and accounting principles and issues on the financial statements) to the Departments/Facilities involved in defining the items in the financial statements;

- use of a system (including computer) to send the data and information to the applicable department/facility with specific procedures to manage access, with procedures that allow the single steps to be traced and identification of the parties that input the data onto the system and that can reveal unauthorised access;

- attribution of roles and responsibilities relating to the holding, storage and updating of the financial statements files and the other corporate accounting documents (including the confirmations), from their formation and approval of the draft financial statements by the Board of Directors to the filing and publication (including on the computer) of them after approval by the Shareholders' meetings, and relative filing.

2. Management of relations with the shareholder, the Board of Statutory Auditors and the auditing firm

The execution of the activities provides for the following:

- the obligation to provide maximum collaboration and transparency in relations with the auditing firm, the board of statutory auditors and for shareholder requests;

- the obligation to send to the auditing firm and the board of statutory auditors - in advance - all the documents relating to the items on the agenda of the shareholders' meetings or the meetings of the Board of Directors for which an opinion has to be given in accordance with the law;

- the guarantee, by the head of the applicable Department, of the completeness, relevance and accuracy of the information and the documents provided to the auditing firm, the board of statutory auditors or the shareholder, and making the information and/or documents requested and/or necessary to carry out the auditing available to them in order to guarantee compliance with the applicable regulations;

- the attribution of roles and responsibilities regarding collection of all the requests which arrived on a formal basis and all the information/data/documents delivered or made available to the auditing firm, the board of statutory auditors or the shareholders as a result of those requests;

- the regulation of the auditing firm selection stages and the rules to maintain the independence of the auditing firm for the term for which it is engaged.

3. *Management of relations with Supervisory Authorities, Administrative Authorities or other Authorities*

The execution of the activities provides for the following:

- the formalisation of orders that approve the obligation to ensure maximum collaboration and transparency in the relations with the Supervisory Authorities;
- identification of a party who will be in charge of managing the relations with the Supervisory Authorities in the event of inspections, specifically authorised by the top management;
- identification of the people in charge of the receipt, control, consolidation and transmission, validation and re-examination of the data, the information and the documents requested;
- the methods used to file and store the information provided, and the obligation to make the initial notification and report on closure of the activities.

4. *Capital transactions and allocation of profits*

The execution of the activities provides for the following:

- the formalisation of rules, also from RAI-Radiotelevisione Italiana Spa, for the Departments involved in preparing the documents at the basis of the Board of Directors decisions on advances on dividends, contributions, mergers and demergers, where the responsibilities and methods to prepare the supporting documentation are established;
- preparation of a report for the Board of Directors that justifies the distribution of profits and reserves in accordance with legal requirements;
- the documentation and filing, with the applicable Departments, of the main stages of the susceptible activities in question.

5. *Issue of press releases*

The execution of the activities provides for the following:

- the definition of roles and duties of the parties involved in preparing and disclosing the data and news and there must be separation between the department that provides the data, the department in charge of preparing the disclosure and the party who authorises its release;

- the definition and formal approval of an Annual Communication Plan and the sharing of the same with the RAI Press Office;

- traceability of the sources and information by the party in charge of issuing the press releases and similar information items;

- the formalisation of rules to identify the roles and responsibilities for external communication and for filing the approved document;

- the formalisation of restrictions (procedures or internal circulars, contractual clauses) to maintain the confidentiality of any relevant information that employees/external staff become aware of. These restrictions must expressly provide for the prohibition on disclosing the relevant information within or outside the Company unless through the approved channels.

7. SPECIAL SECTION D – Organised crime, crimes of terrorism, crimes against individuals, receiving stolen goods, money-laundering and the use of money, goods or benefits with unlawful origin, self-laundering, convincing others not to make statements or to make false statements to the legal authorities, employment of citizens from other countries who are not legally resident in the country, cross-border offences

7.1 The relevant elements (article 24-*ter,* article 25-*quater*, article 25-*quinquies,* article 25-*octies,* article 25-*decies,* article 25-*duodecies* of Legislative decree 231/01*,* articles 3 and 10 of Law no. 146 of 16 March 2006)

The regulatory references of the relevant elements are provided below, along with a brief description of certain significant aspects for each of the predicate offences of Legislative decree 231/01.

7.1.1 The elements of organised crime referred to under article 24-*ter* of Legislative decree 231/01, of the offence of convincing others not to make statements or to make false statements to the legal authorities referred to under article 25-*decies* of Legislative decree 231/01 and the cross-border offences referred to under articles 3 and 10 of Law no. 146 of 16 March 2006

Article 2, paragraph 29, of Law no. 94 of 15 July 2009 introduced the administrative liability of organisations with introduction of article 24-*ter*, in relation to the following crimes of association:

- criminal association (article 416 of the Criminal Code), also for the purpose of committing child prostitution crimes (article 600-*bis*); child pornography (article 600-*ter*), possession of pornographic material (article 600-*quater*), virtual pornography (article 600-*quater.*1), tourist trips for the purpose of exploiting the prostitution of children (article 600-*quinquies*), sexual violence (article 609-*bis*), sexual acts with minors (article 609-*quater*), bribery of a minor (article 609-*quinquies*), group sexual violence (article 609-*octies*), seduction of minors (article 609-*undecies*);

- forcing into or keeping in slavery or servitude, trafficking in persons, purchase and sale of slaves, and offences relating to breaches of the provisions of illegal immigration under article 12 of Legislative Decree 286/1998 (article 416, paragraph 6 Criminal Code)

- mafia-type association (article 416-*bis* Criminal Code);

- crimes committed under the conditions of article 416 - *bis* of the Criminal Code for mafia-type organisations or in order to facilitate the activities of those associations;

- mafia-related political election exchange (article 416-*ter* Criminal Code);

- kidnapping for extortion (article 630 Criminal Code);

- criminal association aimed at illicit trafficking of narcotic or psychotropic substances (article 74, Presidential Decree no. 309 of 9/10/1990);

- illegal manufacture, introduction into the State, offering for sale, sale, possession and carrying in public places or places open to the public, of weapons of war or warlike weapons or parts thereof, explosives, clandestine weapons and other common firearms, apart from those described under article 2, paragraph 3, Law no. 110 of 18/04/1975.

Article 10 of Law no. 146 of 26/03/2006 had previously introduced the administrative liability of organisations in relation to the following offences committed on a cross-border basis[17]:

- criminal association (article 416 Criminal Code);

- mafia-type association (article 416-*bis* Criminal Code);

- criminal association aimed at illicit trafficking of narcotic or psychotropic substances (article 74, Presidential Decree no. 309 of 9/10/1990);

- criminal association for the smuggling of foreign processed tobacco (article 291-*quater* of the consolidated text in Presidential Decree no. 43 of 23/01/1973);

- trafficking migrants for the crimes described under article 12, paragraph 3, 3-*bis*, 3-*ter* and 5, of the consolidated act pursuant to Legislative decree no. 286 of 25/07/1998

- convincing others not to make statements or to make false statements to the judicial authorities (article 377-*bis* Criminal Code);

- aiding and abetting (article 378 Criminal Code).

[17] A cross-border offence is one punishable with imprisonment of not less than four years if it involves an organised criminal group, as well as:
a) being committed in more than one country;
b) or being committed in one country, but a substantial part of its preparation, planning, direction or control takes place in another country;
c) or being committed in one country, but where an organised crime group is implicated that is involved in criminal activities in more than one country;
d) or being committed in one country but with substantial effects in another country.

Criminal association (article 416 Criminal Code)

This type of crime is committed when three or more people act in association to commit a number of crimes. Article 416 of the Criminal Code sanctions those who promote or establish or organise criminal associations with imprisonment of three to seven years. The mere fact of being part of a criminal association is an offence, with the penalty being imprisonment for one to five years. The heads are subject to the same punishment established for the promoters. The sentence will be increased if the number of associates is ten or more.

Paragraphs 6 and 7 provide for increased penalties in relation to certain categories of "purpose - offences" (for example "Forcing into or keeping in slavery or in captivity"; "trafficking in persons"; "sexual violence"; "Prostitution or child pornography"). Article 416, first paragraph of the Criminal Code, even before referring to the single actions of promoting, establishing, managing, organising, or simple participation, conditions the sanctions to the time when (the "when") "three or more people" actually "associate" to commit more than one crime.

Mafia-type association (article 416-bis Criminal Code);

Mafia-type association occurs when those who form part of the association use the force of intimidation connected with membership of the associations, subjugation, and the consequent code of silence to commit crimes, to directly or indirectly acquire the management or in any case control of businesses, permits, authorisations, public tenders or services or to make unfair profits or benefits for themselves or others, or in order to prevent or hinder the free exercise of the vote or to procure votes for themselves or others during elections.

Members of the association can be sentenced to imprisonment for ten to fifteen years. Anyone who promotes, manages or organises the association can be sentenced to imprisonment for twelve to eighteen years. The elements also provide for the aggravated version of the crime:

- if the association is armed, the sanction of imprisonment of twelve to twenty years will apply for the cases provided for under the first paragraph and from fifteen to twenty-six years for the cases provided under the second;

- if the economic activities that the associates intend to carry out or maintain control over are funded in whole or in part with the price, product, or profit of the crimes, the penalties established in the paragraphs above will be increased by one third to one half.

Criminal association to smuggle tobacco processed abroad (article 291-quater Presidential Decree no. 43/73)

Criminal association to smuggle tobacco processed abroad occurs when three or more people associate to commit more than one crime set out under article 291-*bis* of the Criminal Code (which punishes anyone who introduces, sells, transports, acquires or holds in the territory of the State a quantity of smuggled tobacco processed abroad of more than ten standard kilograms). Anyone who promotes, establishes, manages, organises or finances the association will be punished, for that only, with imprisonment of three to eight years. Anyone who participates in the association will be punished with imprisonment of one to six years.

Criminal association aimed at illicit trafficking of narcotic or psychotropic substances (article 74, Presidential Decree no. 309 of 9 October 1990)

This aim of this type of association is to illicitly traffic narcotic or psychotropic substances when three or more people associate to commit more than one of the crimes set out under article 73 of D.P.R. no. 309/90 (production, trafficking and unlawful possession of narcotic or psychotropic substances). Anyone who promotes, establishes, manages, organises or finances the association will be punished, for that only, with imprisonment of not less than twenty years. Any member of the criminal association will be punished with imprisonment of not less than ten years. The penalty will be increased: if the number of associates is ten or more; if there are people who use the narcotic or psychotropic substances among the participants or if the association is armed.

Crimes of association, and especially those set out under articles 416 and 416 *bis* of the Criminal Code, are characterised by the stable, permanent nature of the criminal agreement between parties who establish, participate, promote or organise the association.

To that end, the association requires - albeit minimal - stable organisation, to carry out the criminal objectives with the intention to continue operating even after the execution - even though only planned - of the crimes actually planned. The association - which must comprise at least three people - must also have a vague criminal plan pursued by the associates who do not therefore have to intend to carry out a specific and defined number of unlawful actions.

The organisation will be liable primarily in relation to generic criminal association, characterised by the mere intention of the associates to commit more than one crime: to that end, the offences that the association intends to commit can include any crime, such as fraud, tax crimes, environmental crimes, money-laundering, bribery, corporate crime, etc. However, the criminal liability of organisations has now also been expressly extended to associations that pursue the specific objective or unlawfully trafficking narcotic or psychotropic substances, or the illegal manufacture, introduction into the State, offering for sale, sale, possession or carrying to public places or places open to the public, of weapons of war or warlike weapons or parts thereof, explosives, clandestine weapons and other more common firearms, or, the cross-border smuggling of tobacco processed abroad and

the trafficking of migrants.

Due to the specific structure of these crimes - in order to avoid undue extension of the range of application of the Decree, and in accordance with the principle of legality set out under article 2 - the interest or benefits must refer to the crime of association and not to the actual purpose-crimes carried out by the criminal associates.

In addition, as noted above, said unlawful offences do not have to be actually committed for the criminal association to exist; they just having to be simply included under the objectives of the association.

Organisations can also be found criminally liable for mafia-type associations, which - in accordance with article 416-*bis*, paragraph 3 - will be found where the participants use the "mafia method" which entails using the power of intimidation of the association, subjugation, and the consequent code of silence to commit crimes, to directly or indirectly acquire the management, or in any case control, of businesses, franchises, authorisations, public tenders or services or to obtain unfair profits or benefits for themselves or others, or in order to prevent or hinder the free exercise of the vote or to procure votes for themselves or others during elections.

To this end, the criminal liability of the organisation may derive from either the participation of its leaders or employees in the criminal association as organisers, promoters, members or directors, also in relation to the possibility of indirect support, i.e. when a natural person - even though not actually a member of the association, and has not subscribed to the undetermined and unlawful goals - provides support to the organisation, also with respect to its specific activities or interests.

In order to correctly identify the risk profiles associated with these crimes, it is also important to show that the organisation may only be considered to be a true association aimed at the commission of a number of crimes in extreme or special cases, which cases result in the definitive prohibition of the activity in accordance with article 14, paragraph 4. To that end, the Decree Report and article 10, paragraph 4 of Law 146/2006 provides important elements for its interpretation: this identification is only possible where "the organisation or its organisational unit is consistently used for the single or primary objective of permitting or facilitating the commission of the crimes indicated".

Mafia-related political election exchange (article 416-ter Criminal Code)

This punishes anyone who accepts the promise to procure votes using the methods set out under the third paragraph of article 416-*bis*, in exchange for the provision or promise to provide money or other benefits with imprisonment of four to ten years.

This sanction shall apply to people who promise to procure votes using the methods set out under the first paragraph.

Kidnapping for robbery or extortion (article 630 Criminal Code)

This crime refers to cases where a person is kidnapped in order to obtain, for themselves or for others, unfair advantage as the price for freeing the person, and is punished by imprisonment of twenty-five to thirty years. The offence will be aggravated if the kidnapping results in the unintentional death of the kidnapped person. The sentence will be imprisonment of thirty years in that case. If the offender causes the death of the kidnapped person, the penalty will be a life sentence.

Provisions against illegal immigration (article 12, paragraphs 3, 3-bis, 3-ter and 5 of Legislative Decree 286/98)

Firstly, article 12 of the Consolidated Act pursuant to Legislative decree 286/98 provides for the elements known as aiding and abetting illegal immigration, who is anyone who "in breach of the provisions of this consolidated act, does anything to help a foreigner enter the territory of the State". The second case in point contained in article 12 and known as aiding and abetting illegal emigration, is anyone who "does (…) anything to help the illegal entry into another state of which the person is not a citizen or where they do not have permanent residency".

Paragraph 3-*bis* of article 12 provides for an increase in the penalties pursuant to the third paragraph if two or more of the following conditions are met:

- "the action regards the entry or illegal stay in the territory of the State of five or more people;
- the life or safety of the person was exposed to danger when attempting to procure the entry or illegal stay;
- the person was subject to inhuman or degrading treatment when attempting to procure the entry or illegal stay;
- the action was carried out by three or more people acting in association or using international transport services or forged or altered documents or in any case illegally obtained";
- the perpetrators of the actions had weapons or exploding devices available.

Paragraph 3-*ter* of article 12 provides that the penalties will also be increased by a third to a half and a fine of Euro 25,000 will be applied for each person "if the actions pursuant to paragraphs one and three are carried out to recruit persons for prostitution or in any case sexual exploitation or regard the entry of children to be used for unlawful activities in order to facilitate exploitation" or when the aiding and abetting of illegal immigration or the aiding and abetting of illegal emigration are carried out "to obtain profit, including indirect".

The fifth paragraph of article 12 provides for another criminal action, known as aiding and

abetting illegal stays, involving persons who "in order to obtain an unfair advantage from the unlawful status of the foreign person or within the scope of activities punished under this article, aids and abets the stay of these in the territory of the State in breach of the regulations of this consolidated act". This crime will be punished by imprisonment of up to four years and a fine of up to Euro 15,493. If the action is carried out in association by two or more persons, or if it regards the stay of five or more persons, the sanction will be increased by one third to one-half.

Aiding and abetting (article 378 Criminal Code).

Article 378 of the Criminal Code condemns the conduct of anyone who - after having committed a crime punishable by a life sentence or imprisonment, apart from the case of being an accomplice in the crime, helps anyone to avoid investigation or searches by the Authorities. The provisions of this article shall also apply if the person who has been helped cannot be charged or did not commit the crime.

In order for the crime to be committed, the help given by the aider and abettor will have to have at least potentially harmed the investigations by the authorities.

The penalty is imprisonment of up to four years.

Inducement not to make statements or to make false statements to the judicial authorities (article 377–bis Criminal Code)

Article 377-*bis* of the Criminal Code sanctions behaviour by anyone who uses violent means, threats, or the "offer or promise of money or other benefits" to persuade anyone who is asked to make statements before the judicial authorities that can be used in criminal proceedings not to make statements, or to made false statements if they have the right not to respond[18].

The penalty is imprisonment of two to six years.

Inducement, which can be identified in the structure of the crime pursuant to article 377-*bis* of the Criminal Code, includes violence, threats, or the offer or promise of money or other benefits.

The crime, now provided as a predicate offence, also on the basis of article 25-*decies* of the decree, would previously charge an organisation with administrative liability - in accordance with article 10 of Law no. 146/2006 - only when it involved a cross-border crime.

[18] This crime was introduced into the criminal code, and more especially within the scope of crimes against the judicial authorities, by article 20 of Law no. 63 of 2001.

7.1.2. Crimes committed for the purpose of terrorism or the subversion of democracy as referred to by article 25-*quater* of Legislative decree 231/01 and the crimes of receiving, laundering and using money, goods or assets of unlawful origin, and self-laundering referred to under article 25-*octies* of Legislative decree 231/01

The general nature of the references made under article 25-*quater* are problematic with respect to the exact identification of the criminal elements that could involve application of the rules provided under Legislative decree 231/01. However, the following elements can be identified as the main predicate offences of the liability pursuant to Legislative decree 231/01 with reference to "*crimes committed for the purpose of terrorism or subverting the democratic order envisaged by the criminal code and special laws*":

A. with respect to crimes envisaged by the Criminal Code:

Criminal association for the purpose of terrorism, including international, or subversion of the democratic order (article 270-bis of the Criminal Code): "Anyone who promotes, establishes, organises, manages or funds criminal associations that propose committing acts of violence for terrorist purposes or the subversion of the democratic order shall be punished with imprisonment of seven to fifteen years. Anyone who participates in said criminal associations will be punished with imprisonment of five to ten years. For the purposes of criminal law, terrorism purposes will also be found when the acts of violence are directed against a foreign State, or international institution or body. With respect to the convicted person, it will always be obligatory to confiscate the property that will be needed or intended to be used to commit the crime and the property that is the price, product, and profit, or that constitutes the use".

Assistance to the criminal associates (article 270-ter of the Criminal Code): "Anyone - apart from where there is criminal association or aiding and abetting - who gives refuge or provides food, lodgings, means of transport or instruments of communication to any of the persons indicated under articles 270 and 270-*bis*, shall be punished with imprisonment of up to four years".

Recruitment for terrorism purposes, including international terrorism (article 270-quater of the Criminal Code): "Anyone, apart from the cases provided for under article 270-*bis*, who recruits one or more persons to carry out acts of violence or the sabotage of essential public services, for terrorism purposes, even if aimed against a foreign State, or international institution or body, shall be punished with imprisonment from seven to fifteen years".

Training activities for terrorism purposes, including international terrorism (article 270-quinquies of the Criminal Code): "Anyone, apart from the cases provided for under article 270-*bis*, who trains or in any case provides instructions on the preparation or use of explosive materials, firing weapons or other weapons, chemical substances or

bacteriological or poisonous or dangerous substances, or any other technique or method to carry out acts of violence or sabotage of essential public services, for terrorism purposes, even if aimed against a foreign State or international institution or body, shall be punished with imprisonment from five to ten years. This punishment shall also apply to the person who has been trained."

Actions for the purpose of terrorism (article 270-sexies of the Criminal Code): "Actions will be considered to be for the purpose of terrorism if, by its nature or context, it can cause serious damage to a country or an international organisation, and are carried out with the scope of intimidating the public or forcing the public powers or an international organisation to carry out or abstain from carrying out any action or destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation, or other actions defined as terrorist or committed for purposes of terrorism by conventions or other forms of international law that are binding on Italy".

Attacks for the purpose of terrorism or subversion (article 280 of the Criminal Code): "Anyone, who, for the purpose of terrorism or subversion of the democratic order attacks the life or safety of a person, shall be punished, in the first case, with imprisonment of not less than twenty years, and in the second case, with imprisonment of not less than six years. If a person is seriously injured due to an attack on their safety, the penalty shall be imprisonment of not less than eighteen years; if it results in serious injury, the penalty shall be imprisonment of not less than twelve years. If the actions described in the paragraphs above are directed at persons who carry out legal or prison duties or public safety in the exercise or due to their duties, the penalties will be increased by a third. If a person dies due to the actions described in the paragraphs above, the penalty will be a life sentence in the case of an attack on life, and imprisonment of thirty years in the case of an attack on safety. Extenuating circumstances, not including those provided for under articles 98 and 114, that concur with the aggravating circumstances set out under the second and fourth paragraphs, may not be considered to be equivalent or prevalent with respect to those, and the reduction of the penalty will apply to the quantity of the penalty resulting from the increase due to the aforementioned aggravating circumstances."

Act of terrorism with deadly weapons or explosives (article 280-bis of the Criminal Code): "Unless the action constitutes a more serious offence, anyone who carries out any actions aimed at damaging the mobile or fixed property of others for terrorism purposes by the use of explosive devices or in any case deadly devices, shall be punished with imprisonment from two to five years. For the purposes of this article, explosive devices or in any case deadly devices are intended to be weapons or similar items indicated under article 585 and capable of causing significant material damage. If the action is directed against the premises of the President of the Republic, the legislative assemblies, the constitutional court, government bodies or anybody provided for under the Constitution or constitutional laws, the penalty will be increased by up to a half. If the action creates danger to public safety or serious damage to the national economy, imprisonment will be from five to ten years. Extenuating circumstances, not including those provided for under articles 98 and 114, that concur with the aggravating circumstances set out under the third and fourth paragraphs, may not be considered to be equivalent or prevalent with respect to those, and

the reduction of the penalty will apply to the quantity of the penalty resulting from the increase consequent to the aforementioned aggravating circumstances”.

Kidnapping for the purpose of terrorism or subversion (article 289-bis Criminal Code): “Anyone, who, for the purpose of terrorism or subversion of the democratic order, kidnaps someone, shall be punished with imprisonment of twenty-five to thirty years. If the kidnapping results in any case in death, whether intentional or not, of the kidnapped person, the offender will be punished with imprisonment of thirty years. If the offender causes the death of the kidnapped person, the penalty will be a life sentence. If an associate disassociates him or herself from the others, and does something that results in the kidnapped person being freed, this person will be punished with imprisonment of two to eight years; if the kidnapped person dies as a result of the kidnapping, after being freed, the penalty will be imprisonment of eight to eighteen years. If there is an extenuating circumstance, the penalty provided under the second paragraph will be replaced by imprisonment of twenty to twenty-four years; the penalty provided under the third paragraph will be replaced by imprisonment of twenty-four to thirty years. If there is more than one extenuating circumstance, the penalty to apply due to the reductions may not be less than ten years in the case provided under the second paragraph and fifteen years in the case provided under the third paragraph.”

Incitement to commit some of the crimes provided under the first and second sections (article 302 of the Criminal Code): “Anyone who incites anyone else to commit one of the crimes, with criminal intent, as provided under the first and second sections of this title, for which the law provides the death penalty or a life sentence or imprisonment, shall be punished, if the incitement is not acted upon, or if the incitement is acted upon but the crime is not committed, with imprisonment of one to eight years. However, the punishment to apply will always be less than half of the punishment provided for the crime to which the incitement referred.”

Assistance to conspirators or to an armed group (article 307 of the Criminal Code): “Anyone - apart from where there is criminal association or aiding and abetting - who gives refuge or provides food, lodgings, means of transport or instruments of communication to any of the persons who were involved in the criminal association or the group indicated in the two articles above [i.e.: political conspiracy by association; armed group] shall be punished with imprisonment of up to two years”.

B. with respect to the crimes provided for under special laws:

- **article 1 of Law 15/1980** provides that any offence that is committed for the purpose of terrorism or the subversion of democracy will be considered to be an aggravating circumstance;

- **law 342/1976** punishes crimes against the safety of air navigation;

- **law 422/1989** punishes crimes against the safety of sea navigation and crimes against the safety of installations on intercontinental platforms.

The promotion, establishment, organisation or management of unlawful associations could also be carried out through the Internet, an instrument that guarantees anonymity and the option to distribute all kinds of criminal messages to multiple recipients.

In addition, we must stress how article 270-*bis* of the Criminal Code also expressly punishes the funding of terrorist associations or associations involved in the subversion of democracy: a form of financing could be represented by donations or other types of help (for example also by giving prizes) to non-profit groups, who are actually involved in criminal activity that is prohibited by criminal law.

Similar attention has to be given to trading relationships with third party companies, for example relating to the agreement of contracts to supply goods or services (for example an advertising campaign) since these associations could act as covers for obtaining funds for their own unlawful purposes.

Finally, there is an element of risk in all “distribution process” programs in relation to the behaviour of persons who “provide...instruments of communication to certain persons who are part of the associations indicated under articles 270 and 270-*bis* of the Criminal Code” pursuant to article 270-*ter* of the Criminal Code.

In implementing Directive 2005/60/EC of the European Parliament and Council regarding prevention of use of the financial system for money-laundering purposes, Legislative decree no. 231 of 2007 revised the overall anti-money laundering regulations in Italian law. Article 63, third paragraph, of Legislative decree 231 introduced article 25-*octies* into the category of administrative liability predicate offences, setting fines and injunctive measures for organisations for the offences of receiving stolen goods, money-laundering and using money, goods or benefits from unlawful sources (offences pursuant to articles 648, 648-*bis* and 648-*ter* of the Criminal Code).

Article 64, paragraph 1, letter f) of that regulation also repealed paragraphs 5 and 6 of article 10 of Law 146/2006, combating cross-border organised crime that already provided that the organisation would be liable, and sanctions pursuant to Legislative decree 231/01 for the offences of money-laundering and using money, goods or benefits from unlawful sources (articles 648-*bis* and 648-*ter* of the Criminal Code), if they were cross-border offences in accordance with the definition contained in article 3 of law 146/2006.

It follows that in accordance with article 25-*octies* of Legislative decree 231/01, the organisation can now be punished for the offences of receiving stolen goods, money-laundering and using of unlawful capital, even if carried out in a mainly “national” arena provided that it is in the interest of the organisation or to its advantage.

To that end, a description of the crimes referred to under article 25-*octies* of Legislative decree 231/01 is set out below.

Receiving stolen goods (article 648 Criminal Code)

Article 648 of the Criminal code incriminates anyone who "not including the cases of criminal association in the offence, acquires, receives or hides money or proceeds from any crime, or in any case is involved in the acquisition, receipt or hiding".

The penalties of imprisonment from two to eight years and fines of Euro 516 to Euro 10,329 are applied to this crime.

The penalty will be increased if the action relates to money or property sourced from the crimes of aggravated robbery, aggravated extortion or aggravated theft.

The penalty is imprisonment for up to six years and fines of up to Euro 516 if the action is of a minor nature.

Acquisition is meant as the effect of a trade, for free or for valuable consideration, whereby the agent gets possession of the item.

The term receive indicates all forms of receipt of possession of the proceeds from the crime, even if only temporary or as an act of goodwill.

Hiding refers to hiding the item that came from the crime after having received it.

Receipt may also occur by intervention in the acquisition, receipt or the hiding of the item. This behaviour is expressed in any mediation activities, not to be understood in the statutory sense (as set out by case law), between the main offender and the third acquiring party.

The final paragraph of article 648 of the Criminal Code extends criminal liability also "even when the perpetrator from whom the money or property comes is not subject to charge or punishment, or one of the elements of prosecution of said crime is missing".

The purpose of incriminating the receipt of stolen goods is to prevent the harm to the property interests which began with perpetration of the main offence. A further objective is to prevent the commission of the main offences as a result of the limits put on circulation of the goods from said crimes.

Money laundering (article 648-bis Criminal Code)

This crime is committed if anyone "apart from the cases of where there is criminal conspiracy, replaces or transfers money, goods or other benefits from crimes committed with criminal intent; or carries out other operations in relation to them in a way that prevents identification of their criminal origin". The penalty is imprisonment from four to twelve years and fines of Euro 5,000 to Euro 25,000. This crime can even exist if the perpetrator from whom the money or property comes is not subject to a charge or punishment, or one of the

elements of prosecution of said crime is missing. A crime committed with criminal intent will have to have been committed beforehand, but the offender will not have conspired to commit that crime.

The penalty will be increased if the action is committed in the exercise of a professional activity, and will be decreased if the money, goods or other benefits are from a crime where the penalty of imprisonment is less than the maximum of five years.

The provision even applies if the perpetrator, from whom the money or property come from, is not subject to a charge or punishment, or one of the elements of prosecution of said crime is missing. An action that places obstacles on the identification of the above-mentioned goods after they have been replaced or transferred is significant.

Use of money, assets or benefits of unlawful origin (article 648-ter Criminal Code)

This crime is committed by “anyone, apart from where there is criminal association or in the cases provided under articles 648 of the Criminal Code (Receiving stolen goods) and 648-*bis* of the Criminal Code (Money-laundering), who uses money or goods or other benefits from the crime in economic or financial activities”. The penalty of imprisonment from four to twelve years and a fine of Euro 5,000 to Euro 25,000 are applied.

Even in this case, the exercise of a professional activity will constitute an aggravating circumstance, and the last paragraph of article 648 is extended to these parties, but the penalty will be reduced if the action is of a minor nature.

The specific reference to the term “use” which is broader than “invest” which assumes use for specific purposes, expresses the meaning of “in any case using”. On the other hand, reference to the concept of “activity” to indicate the investment sector (economy or finance) means that the occasional or sporadic use of money or other benefits is excluded.

The specific nature of the offence with respect to money-laundering is in the objective of losing the traces of the unlawful origin of the money, goods or other benefits, pursed by the use of said resources in economic or financial activities.

The law intended to punish those activities which - unlike money-laundering - do not immediately replace the goods from the crime, but in any case contribute towards “cleaning up” the unlawful proceeds.

With reference to the crimes of receiving stolen goods, money-laundering and use of unlawful proceeds, Rai Com could theoretically be held liable in all cases of use of unlawful proceeds or use of goods or other benefits from unlawful activities (for example theft), transfer of false credit instruments or subject to theft.

Self-laundering (article 648-ter.1 Criminal Code)

Article 3, paragraph 3 of Law no. 186 of 15 December 2014, published in the Official Gazette of 17 December 2014 with respect to the appearance and re-entry of capital held abroad and self-laundering, adds the crime of self-laundering to the Criminal Code, under article 648-ter 1, which punishes anyone who, having committed or helped perpetrate a crime committed with criminal intent, uses, replaces, or transfers the money, assets or other assets derived from the commission of said offence into economic, financial, entrepreneurial or speculative activities to actually prevent identification of their criminal origins. The applicable penalty is imprisonment of two to eight years and a fine of Euro 5,000 to Euro 25,000.

Lighter penalties will be applied in the case of the second paragraph, or where the money, assets or other benefits derive from a crime committed with criminal intent that is punishable with imprisonment of less than the maximum of five years. In these cases, the penalty is imprisonment of one to four years and a fine of Euro 2,500 to Euro 12,500.

The penalty will be increased if the actions are committed during exercise of a banking or financial activity or any other professional activity.

The penalty will be reduced by up to a half if anyone has effectively acted to prevent the conduct from leading to further consequences or to guarantee evidence of the offence or identification of the assets, money or other benefits resulting from the crime.

The provision also applies if the perpetrator, from whom the money or property comes, is not subject to a charge or punishment, or one of the elements of prosecution of said crime is missing.

7.1.3. Crime against the individual person referred to under article 25-*quinquies* of Legislative decree 231/01

Article 25-*quinquies* (Crimes against the individual person) of the Decree provides:

"In relation to commission of the crimes provided under section I of chapter III of title XII of book II of the criminal code, the following monetary fines will apply with respect to the organisation:

a) for the crimes described under articles 600, 601 and 602, the monetary fine is from four hundred to one thousand units;

b) for the crimes described under articles 600-bis, first paragraph, 600-ter, first and second paragraph, also regarding the pornographic material pursuant to article 600-quater.1, and 600-quinquies, the monetary fine is from three hundred to eight hundred units;

b) for the crimes described under articles 600-bis, first paragraph, 600-ter, third and fourth paragraph, and 600-quater, even if referring to the pornographic material pursuant to article 600-quater.1, the monetary fine is from two hundred to seven hundred units.

In the event of conviction for one of the crimes indicated under paragraph 1, letters a) and b), the injunctive relief provided under article 9, paragraph 2 shall apply, for a duration of not less than a year.

If the organisation or one of its organisational units is permanently used for the single or main objective of permitting or facilitating the commission of the crimes indicated in paragraph 1, the sanction of definitive prohibition from exercising the activity in accordance with article 16, paragraph 3 shall apply".

Legislative Decree 39/2014 (article 3) added to article 25-*quinquies* of Legislative decree 231/01 a reference to article 609-*undecies* containing «Grooming of minors», thereby including that crime into the list of crimes that can be related to legal persons.

We will list the crimes referred to under article 25-*quinquies* here below:

Forcing into or keeping in slavery or servitude (article 600 Criminal Code),

"Anyone who exercises power corresponding to the right to ownership over another person or anyone who forces or keeps persons in a condition of continuous enslavement, forcing them to work or provide sexual services or to beg, or in any case to services that exploit them, will be punished with imprisonment of eight to twenty years.
A person will be forced into or kept in a state of enslavement when violence, threats, fraud, abuse of authority is employed, or advantage is taken of a situation of physical or mental inferiority or a situation of necessity or through the promise or giving of money or other advantages to those who have authority over the person.
The sanction will be increased by a third to a half if the actions described in the first paragraph are committed against persons younger than eighteen or are aimed at exploiting prostitution or to subject the injured party to removal of organs".

Child prostitution (article 600-*bis* Criminal Code)

The crime involves the forcing into prostitution of a person who is younger than eighteen, or in aiding and abetting or exploiting prostitution. The penalty is imprisonment from six to twelve years and fines of Euro 15,000 to Euro 150,000.

The second paragraph incriminates the actions of anyone who carries out sexual acts with a minor of between fourteen and eighteen in exchange for money or other benefits, including promises, with penalties of imprisonment of one to six years and fines of Euro 1,500 to Euro 6,000.

Child pornography (article 600-*ter* Criminal Code)

This crime will be committed by anyone who:

a) using persons who are younger than eighteen, creates pornographic displays or shows or produces pornographic material or forces persons of younger than eighteen to take part in pornographic displays. In those cases, the penalty is imprisonment of six to ten years and fines of Euro 24,000 to Euro 240,000;

b) trades in the pornographic material described in point a). In this case also, the penalty is imprisonment of six to twelve years and fines of Euro 24,000 to Euro 240,000;

c) apart from the cases set out under point a) and point b), using any means, including electronic, distributes, spreads, circulates or publishes the pornographic material described under point a), or distributes or spreads news or information aimed at the sexual grooming or exploitation of persons younger than eighteen. The penalty is imprisonment of one to five years and a fine of Euro 2,582 to Euro 51,645;

d) apart from the cases set out under point a), point b) and point c), offers or gives others, including free, the pornographic material described under point a). In those cases, the penalty is imprisonment of up to three years and fines of Euro 1,549 to Euro 5,164.

Finally, the sixth paragraph incriminates anyone who attends pornographic displays or shows in which people of younger than eighteen are involved, punishing them with imprisonment of up to three years and fines of Euro 1,500 to Euro 6,000.

Possession of pornographic material produced by sexually exploiting minors (article 600-*quater* of the Criminal Code)

This crime will be committed by anyone who, apart from the cases set out under article 600-*ter* of the Criminal Code, knowingly procures or possesses pornographic material made using persons of younger than eighteen. For these cases, imprisonment is up to three years and fines of not less than Euro 1,549.

Virtual pornography (article 600-*quater*.1 Criminal Code)

"The provisions pursuant to articles 600-ter and 600-quater also apply when the pornographic material shows virtual images created using images of persons younger than eighteen or part of them, but the sanction is reduced by one third.

Virtual images refer to pictures made with graphic processing techniques that are not fully or partially associated with real situations, where the quality of screening makes non-real situations appear to be real".

Tourist initiatives aimed at the exploitation of child prostitution (article 600-*quinquies* Criminal Code)

Anyone who organises or advertises trips aimed at the exploitation of prostitution to the harm of minors or in any case including said activity. In those cases, the penalty is imprisonment of six to twelve years and fines of Euro 15,493 to Euro 154,937.

Trafficking in persons (article 601 Criminal Code)

"Anyone who traffics people that find themselves in the position as described under article 600, or, in order to commit the crimes described in the first paragraph of that article, forces them by fraud or by violence, by threats, abuse of authority or taking advantage of a situation of physical or mental inferiority of a situation of necessity, or by the promise or giving of sums of money or other advantages to the person that they have authority over, to enter or stay or leave the territory of the State, or to transfer to the State, shall be punished with imprisonment of eight to twenty years.

The sanction will be increased by a third to a half if the crimes described in this article are committed against persons younger than eighteen or are aimed at exploiting prostitution or in order to subject the injured party to removal of organs".

Purchase and sale of slaves (article 602 Criminal Code)

"Anyone, apart from the cases indicated in article 601, who acquires or sells or transfers a person who is in one of the conditions described in article 600 shall be punished with imprisonment of eight to twenty years.

Grooming of minors (609-*undecies*)

"Anyone who intends to commit the crimes set out under articles 600, 600-bis, 600-ter and 600-quater, even if relating to the pornographic material pursuant to article 600-quater.1, 600-quinquies, 609-bis, 609-quater, 609-quinquies and 609-octies, and grooms a person of younger than sixteen, shall be punished with imprisonment of one to three years unless the action constitutes a more serious crime. Grooming refers to any action aimed at eliciting the trust of a minor using deceptive actions, enticements or threats carried out also by the use of the Internet or other networks or means of communication."

In the majority of cases (for example possession of pornographic material produced by sexually exploiting minors), the risk of committing the actions described above is not connected to the specific activity carried out, but rests in how it is carried out and the existence of workplaces (offices, editorial offices, recording studios, et), where these crimes could be committed (for example the establishment of interpersonal relations similar to those provided under article 600 of the Criminal Code, aimed at providing the services).

Additionally, within the scope of the "production and distribution process", the type of program could theoretically facilitate the perpetration of one of these crimes: for example the shooting of films by exploiting minors to put into a documentary or a television product; or the disclosure, including occasional, of information that could permit the grooming or exploitation of minors.

With respect to the offence described under article 600 *quinquennial* of the Criminal Code, this could involve advertising by providing services in areas known for rampant child prostitution, where the description of the places are associated with pictures of minors

which could somehow suggest the “advertising” of that type of prostitution.

The use of the Internet within the scope of “on line distribution” could also facilitate the commission of crimes against individuals: for example especially the distribution, disclosure or advertising of pornographic material created by exploiting minors, who, by express provision of article 600 *quarter* of the Criminal Code, is subject to sanction even if done by electronic means.

7.1.4. The crime of Employment of citizens from other countries who are not legally resident in the country referred to in article 25-*duodecies* of Legislative decree 231/01

On 9 August 2012, Legislative decree 109/2012 came into effect (published on the Official Gazette no. 172 of 25/07/2012) which introduced article 25-*duodecies* into Legislative decree 231/01 "Employment of citizens from other countries who are not legally resident in the country”.

The aforementioned article 25-*duodecies* refers to the elements of the crime set out under article 22, paragraph 12-*bis,* Legislative decree no. 286/1998, which increases the punishment (with the penalty increased by a third to a half if the workers employed: *i)* are more than three; *ii)* are not of working age; *iii)* are exposed to situations of serious danger, with reference to the services to provide and the work conditions pursuant to the third paragraph of article 603-*bis* Criminal Code) of employers who employ foreign workers who do not have residence permits, or whose permits have expired and where the renewal, revocation or cancellation has not been requested.

The increase in the sanction (from one third to one half) will be applied to the penalty provided for the above-mentioned basic offence, with imprisonment of six months to three years and a fine of Euro 5,000 for each worker employed.

7.2 Identification of the sensitive areas and activities falling under the area of organised crime, crimes of terrorism, crimes against individuals, receiving stolen goods, money-laundering and the use of money, goods or benefits with unlawful origin, convincing others not to make statements or to make false statements to the legal authorities, employment of citizens from other countries who are not legally resident in the country, cross-border offences

The analysis of the company processes carried out during the Project[19] led to identification of the activities in which the activities could hypothetically occur:

[19] To this end, see paragraph 3.1 of the General Section.

A. the organised crime referred to by article 24-*ter* of Legislative decree 231/01, the crime of convincing others not to make statements or to make false statements to the legal authorities referred to under article 25-*decies* of Legislative decree 231/01, and cross-border offences referred to under articles 3 and 10 of Law no. 146 of 16 March 2006. The processes examined are listed below:

1. ***Management of negotiations of framework contracts and agreements (as principal and/or agent) with Organisations or Institutions, centralised or local, national or international, public or private***
2. ***Security Trading***
3. ***Purchase of work, goods and services***

   a) Purchase of goods and services with service contracts

   b) Purchase of operating goods and services

   c) Purchase / hire of audiovisual / musical / photographic / products / work material (including the rights)

   d) Purchase of consultancy services

   e) Purchase of marketing-related rights
4. ***Recruitment, management and development of staff***
5. ***Management of the financial transactions, including intra-group***
6. ***Sale of goods and services in Italy and abroad***

   a) Sale of rights to public parties

   b) Sale of rights in Italy

   c) Sale of rights abroad

   d) Other Sales (for example consultation services, television channels, etc.)

   e) Sale of rights on web platforms
7. ***Revenues from the use of Rai Com music in RAI programs***
8. ***Free gifts, presents and benefits***

9. ***Organisation and management of events/sponsorships***

10. ***Travelling expenses and advances***

11. ***Selection and management of the agents***

12. ***Selection and management of commercial partnerships***

13. ***Management of court, out-of-court or arbitration proceedings***

B. the elements of crimes committed for the purpose of terrorism or the subversion of democracy as referred to by article 25-*quater* of Legislative decree 231/01. and the crimes of receiving, laundering and using unlawful money and self-laundering referred to under article 25-*octies* of Legislative decree 231/01:

1. ***Management of negotiations of framework contracts and agreements (as principal and/or agent) with Organisations or Institutions, centralised or local, national or international, public or private***

2. ***Purchase of work, goods and services***

   a) Purchase of goods and services with service contracts

   b) Purchase of operating goods and services

   c) Purchase / hire of audiovisual / musical / photographic / products / work material (including the rights)

   d) Purchase of consultancy services

   e) Purchase of marketing-related rights

3. ***Security Trading***

4. ***Recruitment, management and development of staff***

5. ***Management of the financial transactions, including intra-group***

6. ***Sale of goods and services in Italy and abroad***

   a) Sale of rights to public parties

   b) Sale of rights in Italy

   c) Sale of rights abroad

d) Other Sales (for example consultation services, television channels, etc.)

e) Sale of rights on web platforms

7. ***Revenues from the use of Rai Com music in RAI programs***
8. ***Free gifts, presents and benefits***
9. ***Organisation and management of events/sponsorships***
10. ***Travelling expenses and advances***
11. ***Selection and management of the agents***
12. ***Selection and management of commercial partnerships***
13. ***Management of court, out-of-court or arbitration proceedings***
14. ***Publishing activities (editions and co-editions)***
15. ***Preparation of income statements or tax withholding statements or other statements needed to pay taxes in general***
16. ***Management of the request / acquisition and/or management of aid, funding, loans, or guarantees granted by public/private parties***
17. ***Management of relations with public parties***
18. ***Management of relations with Supervisory Authorities, Administrative Authorities or other Authorities***

C. crimes against the individual person referred to under article 25-*quinquies* of Legislative decree 231/01:

1. ***Activities that involve the direct or indirect use of labour (for example: awarding tender contracts)***
2. ***Purchase of work, goods and services***

a) Purchase of goods and services with service contracts

b) Purchase of operating goods and services

c) Purchase / hire of audiovisual / musical / photographic / products / work material (including the rights)

d) Purchase of consultancy services

e) Purchase of marketing-related rights

3. ***Free gifts, presents and benefits***
4. ***Organisation and management of events/sponsorships***
5. ***Travelling expenses and advances***
6. ***Selection and management of the agents***
7. ***Selection and management of commercial partnerships***
8. ***Publication of content on Internet sites/company web channels***
9. ***Purchase / hire of audiovisual / musical / photographic / products / work material (including the rights)***

D. the elements of the offence of Employment of citizens from other countries who are not legally resident in the country referred to in article 25-*duodecies* of Legislative decree 231/01:

1. ***Employment of foreign workers (employment/managing tender contracts)***

7.3 Rules of conduct and implementation of decision-making processes

7.3.1 Rules of conduct

This Special Section provides for the express prohibition of corporate bodies, employees - on a direct basis - and external staff - limited to the obligations provided under specific procedures and codes of conduct and the specific clauses in the implementation contracts of the following principles - of:

- carrying out, helping to carry out, or causing the carrying out of behaviour that - considered individually or collectively - includes, directly or indirectly, the elements of the offence considered above (article 24-*ter* article 25-*quater*, article 25-*quinquies*, article 25-*octies*, article 25-*decies*, article 25-*duodecies* of Legislative decree 231/01, articles 3 and 10 of Law no. 146 of 16 March 2006);

- breaching the company principles and procedures provided under this Special Section.

This Special Section therefore provides for the prohibition on the above-mentioned parties from:

- committing or behaving in a way that could constitute or be connected to cross-border offences, relating to criminal association, including mafia type, convincing others not to make statements or to make false statements to the legal authorities, personal aiding and abetting and aiding and abetting relating to criminal association for the purpose of smuggling tobacco processed abroad, and the unlawful dealing of narcotic or psychotropic substances, or relating to breaches against the laws against illegal immigration; such as:
  - conspiring to commit more than one crime including in particular, smuggling tobacco processed abroad and the unlawful dealing of narcotic or psychotropic substances;
  - forming part of, in any position, mafia or camomile type associations, or in any case, unlawful associations;
  - doing anything directly aimed at obtaining the entry of a foreigner into the territory of the State in breach of the law, or actions aimed at obtaining the unlawful entry of a foreigner into another country of which the person is not a citizen or does not have a permanent residency permit;
  - doing the same things set out in the point above to recruit persons to use for prostitution or in any case sexual exploitation, or that regard the entry of minors to be used in unlawful activities to aid and abet their exploitation;
  - aiding and abetting foreigners staying in the territory of the State to obtain unfair advantage from their illegal status;
  - using any means to persuade a person asked to make statements before the legal authorities to be used in criminal proceedings, not the make the statements or to make false statements if they have the right not to answer;
  - helping anyone escape investigation or evade searches by the authorities;

- having relations, negotiating and/or entering into and/or performing contracts or actions with the persons indicated on the Reference Lists relating to combating the funding of terrorism (published by the Financial Information Unit set up at the Bank of Italy), or forming part of organisations on said lists, subject to formal authorisation by the Chief Operating Officer or the General Manager in accordance with the powers assigned;

- giving benefits to the persons indicated on the Reference Lists relating to combating the funding of terrorism (published by the Financial Information Unit set up at the Bank of Italy), or forming part of organisations on said lists, subject to formal authorisation by the Chief Operating Officer or the General Manager in accordance with the powers assigned;

- hiring the persons indicated on the Reference Lists relating to combating the funding of terrorism (published by the Financial Information Unit set up at the Bank of Italy), or forming part of organisations on said lists, subject to formal authorisation by the Chief Operating Officer or the General Manager in accordance with the powers assigned;

- promoting, establishing, organising, managing the funding, including indirectly, of associations that carry out acts of violence on persons or things for terrorist purposes, abroad or in any case to the detriment of a foreign country or an international institution or body;

- giving refuge or hospitality, means of transport or instruments of communication to persons who form part of subversive associations or associations set up for terrorist purposes or to subvert the public order;

- committing or doing something that knowingly accepts the risk that crimes against the individual person could be committed, such as:

    - forcing a person into slavery or similar;

    - dealing with or trading slaves or persons in similar conditions to slaves;

    - selling or purchasing even a single person forced into slavery;

    - persuading a minor to carry out sexual acts in exchange for sums of money (child prostitution); doing something that facilitates the exercise of child prostitution or involves the exploitation of anyone who uses their body to gain part of the earnings;

    - exploiting minors for the creation of pornographic displays or material, and trading, selling, disclosing, transmitting, including free, of said material, or pornographic material that shows virtual images made using pictures of minors or parts of them;

  - procuring or possessing pornographic material produced by sexually exploiting minors;
  - organising or promoting trips that have the purpose, even if not the exclusive purpose, of exploiting prostitution to the detriment of minors;
- replacing or transferring money, goods or other benefits originating from crimes committed with criminal intent or doing something, in relation to said operations, in a way that prevents the identification of their criminal origin;
- using money or goods or other benefits from the crime in economic or financial activities;
- employing foreign workers who do not have residence permits or whose permits have been revoked or expired and who have not requested, in accordance with the law, their renewal, revocation or cancellation.

7.3.2 Principles of implementing the decision-making processes

The *standards* of control identified for the individual Susceptible Activities are listed here below.

1. Management of negotiations of framework contracts and agreements (as principal and/or agent) with Organisations or Institutions, centralised or local, national or international, public or private

This is carried out in accordance with the standards of control provided for the "Management of negotiations of framework contracts and agreements (as principal and/or agent) with Organisations or Institutions, centralised or local, national or international, public or private" process reported in "Special Section A - Offences in relations with the Public Administration and Bribery between Private Parties" to which the reader is referred.

2. Purchase of work, goods and services / Security Trading/ Activities that involve the direct or indirect use of labour (for example: awarding tender contracts)

This is carried out in accordance with the standards of control provided for the "Purchase of work, goods and services / Security Trading" process reported in "Special Section A - Offences in relations with the Public Administration and Bribery between Private Parties" to which the reader is referred.

3. Staff recruitment (including service agreements)/ Employment of foreign workers

This is carried out in accordance with the standards of control provided for the "Recruitment, management and development of staff" process reported in "Special Section A - Offences in relations with the Public Administration and Bribery between Private Parties" to which the reader is referred.

This provides for the following:

- the obligation to put the reasons for the decision to allow/request the entry of a person into the territory of a State into formal form;
- assignment of responsibility for ensuring that:
    - the person entered the country in accordance with the reasons given;
    - compliance with legislation on immigration matters in the country of destination;
- indication of the persons for whom the Company obtains a permit for entering the territory of a country with indication of the date when the person will leave the country, were necessary;
- the formal creation of a specific application form to send to the prefecture in the event of hiring a non-EU national resident abroad;
- the commitment to guarantee the foreign worker the salary and insurance package provided under prevailing law and the applicable national collective labour contracts and to make the obligatory communications regarding the work relationship in the required timeframes;
- the filing of the work permit employment contract in the employee's folder and the authorisation issued by the applicable authority;
- ascertainment by the applicable Department/Facility, that the worker has the postal receipt of the application issuing the residence permit before starting the work relationship.

4. Management of the financial transactions, including intra-group

This is carried out in accordance with the standards of control provided for the "Management of the financial transactions, including intra-group" process reported in "Special Section A - Offences in relations with the Public Administration and Bribery between Private Parties" to which the reader is referred.

5. Sale of goods and services in Italy and abroad

This is carried out in accordance with the standards of control provided for the “Sale of goods and services in Italy and abroad” process reported in “Special Section A - Offences in relations with the Public Administration and Bribery between Private Parties” to which the reader is referred.

6. Revenues from the use of Rai Com music in RAI programs

This is carried out in accordance with the standards of control provided for the “Revenues from the use of Rai Com music in RAI programs” process reported in “Special Section A - Offences in relations with the Public Administration and Bribery between Private parties” to which the reader is referred.

7. Free gifts, presents and benefits

This is carried out in accordance with the standards of control provided for the “Free gifts, presents and benefits” process reported in “Special Section “A” - Offences in relations with the Public Administration and Bribery between Private Parties” to which the reader is referred.

8. Organisation and management of events/sponsorships

This is carried out in accordance with the standards of control provided for the “Organisation and management of events/sponsorships” process reported in “Special Section A - Offences in relations with the Public Administration and Bribery between Private Parties” to which the reader is referred.

9. Travelling expenses and advances

This is carried out in accordance with the standards of control provided for the “Travelling expenses and advances” process reported in “Special Section A - Offences in relations with the Public Administration and Bribery between Private Parties” to which the reader is referred.

10. Selection and management of the agents

This is carried out in accordance with the standards of control provided for the “Selection and management of the agents” process reported in “Special Section A - Offences in relations with the Public Administration and Bribery between Private Parties” to which the reader is referred.

11. Selection and management of commercial partnerships

This is carried out in accordance with the standards of control provided for the “Selection and management of commercial partnerships” process reported in “Special Section “A” - Offences in relations with the Public Administration and Bribery between Private Parties” to which the reader is referred.

12. Management of court, out-of-court or arbitration proceedings

This is carried out in accordance with the standards of control provided for the “Management of court, out-of-court or arbitration proceedings” process reported in “Special Section A - Offences in relations with the Public Administration and Bribery between Private Parties” to which the reader is referred.

13. Publishing activities (editions and co-editions)

This is carried out in accordance with the standards of control provided for the “Publishing activities (editions and co-editions)” process reported in “Special Section G - Copyright Crimes” to which the reader is referred.

14. Preparation of income statements or tax withholding statements or other statements needed to pay taxes in general

This is carried out in accordance with the standards of control provided for the “Preparation of income statements or tax withholding statements or other statements needed to pay taxes in general” process reported in “Special Section A - Offences in relations with the Public Administration and Bribery between Private Parties” to which the reader is referred.

15. Management of the request / acquisition and/or management of aid, funding, loans, or guarantees granted by public/private parties

This is carried out in accordance with the standards of control provided for the “Management of the request / acquisition and/or management of aid, funding, loans, or guarantees granted by public/private parties” process reported in “Special Section A - Offences in relations with the Public Administration and Bribery between Private Parties” to which the reader is referred.

16. Management of relations with public parties

This is carried out in accordance with the standards of control provided for the “Management of relations with public parties” process reported in “Special Section A - Offences in relations with the Public Administration and Bribery between Private Parties” to which the reader is referred.

17. Management of relations with Supervisory Authorities, Administrative Authorities or other Authorities

This is carried out in accordance with the standards of control provided for the “Management of relations with Supervisory Authorities, Administrative Authorities and other Authorities” process reported in “Special Section A - Offences in relations with the Public Administration and Bribery between Private Parties” to which the reader is referred.

18. Publication of content on Internet sites/company web channels

This is carried out in accordance with the standards of control provided in the “Special Section F - Computer crimes and unlawful data processing” to which the reader is referred.

19. Purchase / hire of audiovisual / musical / photographic / products / work material (including the rights)

This is carried out in accordance with the standards of control provided for the “Purchase of work, goods and services” process reported in “Special Section A - Offences in relations with the Public Administration and Bribery between Private Parties” to which the reader is referred.

This provides for the following:

- identification of roles and responsibilities in the formal checking of what has been purchased from both the technical and editorial standpoints;
- the traceability of said checking activity.

8. SPECIAL SECTION E - Crimes committed in breach of health and safety regulations at the workplace

8.1 The relevant elements of crimes committed in breach of health and safety regulations at the workplace

Article 9 of Law no. 123/2007 introduced into Legislative decree 231/01 article 25-*septies*, which extends the administrative liability of organisations to manslaughter (article 589 – 2nd paragraph Criminal Code) and serious or grievous bodily harm through negligence (article 590 – 3rd paragraph, Criminal Code), committed in breach of accident prevention regulations or regulations on occupational hygiene and health protection (such as the regulations provided under Legislative decree no. 81 of 9 April 2008, “Consolidated act on health and safety at work” as amended).

The regulatory references of the relevant elements are provided below, along with a brief description of certain significant aspects for each of the predicate offences of Legislative decree 231/01.

Manslaughter (article 589 Criminal Code)

Anyone who is negligently responsible for the death of a person will be sentenced to imprisonment of six months to five years.

If the action is committed in breach of road traffic provisions or regulations governing the prevention of accidents at work, the penalty is imprisonment of two to seven years. If more than one person dies, or one or more persons die and one or more persons are subject to bodily harm, the penalty that is attached to the most serious wrongdoing committed will apply, increased by up to a third, but the punishment may not exceed fifteen years.

Bodily harm through negligence (article 590 of the Criminal Code)

Anyone who is responsible for bodily harm to another through negligence shall be punished with imprisonment of up to three months or a fine of up to Euro 309. If the bodily harm is serious, the penalty will be imprisonment of one to six months or a fine of Euro 123 to Euro 619; if it is grievous, imprisonment will be from three months to two years or a fine of Euro 309 to Euro 1,239.

If the serious or grievous bodily harm have been committed in breach of road traffic provisions or regulations governing the prevention of accidents at work, the penalty for serious bodily harm will be imprisonment from three months to one year or a fine of Euro 500 to Euro 2,000 and the penalty for grievous bodily harm will be imprisonment of one to three years.

If more than one person is subject to bodily harm, the penalty applied will be the penalty

provided for the most serious wrongdoing committed, increased by up to a third; but the punishment may not exceed five years.

The crime will be punished if the injured party complains, except for the cases described in the first and second paragraphs, limited to actions committed in breach of regulations on the prevention of accidents at work or regarding hygiene at work or that resulted in occupational disease.

In view of the specific nature of the material to be regulated, centred upon preparation of risk reduction measures, not just with regard to offences committed with malicious intent that can generally be traced back to decisions, but also with offences committed without malicious intent that are generally committed during production activities, the structure of this “Special Section” is partly different to the one used to rule the previous forms of risk: this difference is due to the fact that this sector is broadly regulated by external regulations, i.e. a large body of regulatory provisions that embrace both the mechanisms to identify the guarantee positions and the type and content of the precautionary measures. The ‘special nature’ - regulatory and criminological - of the ‘context’ therefore makes it necessary to construct an independently ‘structured’ prevention system.

With regard to *the objective criteria to use to find that the organisation may be held liable, reference has* to be made to article 5 of Legislative decree 231/01, where it establishes that the predicate offences can be applied to the organisation only if committed (by top management and others) in its interest or to its benefit. Since the objective criteria for imputation of liability can be applied to offences committed without malicious intent, via an assessment made after the fact, it relies on what is known as expenditure savings for the organisation: the advantage would be that financial resources would not have to be used to bring the company activities up to standard with respect to the distribution of the guarantees and the adoption and adjustment of the precautionary measures, and in terms of saving time to carry out company activities.

With regard to the *subjective criteria for imputation of liability*, the adoption of the organizational, management and control model plays a decisive role in releasing the organisation from liability; especially since, in the case of offences committed by top management, according to the position taken by legal theory, it would not even be necessary to show evasive fraudulent conduct, since it would actually be enough - in order to release the organisation from liability - to show adoption of the model, its ability to prevent the action and the fact that its breach is not a result of a failure to implement control and supervision.

Rai Com could therefore be liable for unlawful conduct in crimes of manslaughter and serious or grievous bodily harm caused by a failure to arrange for safety and health protection measures at the workplace as provided by law, and where the Company gained an advantage as a result of the consequent savings achieved in terms of costs or time.

With reference to offences that could give rise to the administrative liability of an organisation, Legislative decree no. 81 of 9 April 2008 containing the Consolidated Act on Health and Safety at Work, establishes, at article 30 (organisation and management

model), that an organisation and management model that could exempt the company from administrative liability - adopted and effectively implemented - would have to guarantee a company system that fulfils all legal obligations identified by the law relating to:

a) compliance with the technical and structural legal standards relating to equipment, facilities, workplaces and chemical, physical and biological agents;

b) risk assessment and preparation of the consequent prevention and protection measures;

c) organisational activities such as emergencies, first aid, management of tender offers, periodic safety meetings, consultations with worker representatives for safety;

d) healthcare monitoring activities;

e) training and communication activities for the workers;

f) supervision of work procedures and instructions in safety by the workers;

g) the acquisition of legally required certifications and documentation;

h) periodic check to ensure the procedures adopted are applied and are effective.

In accordance with Legislative decree 81/2008, this organisational and management model must:

- also provide for suitable systems to record that the above activities have been carried out;
- in any case, to the extent required by the nature and size of the organisation and the type of work carried out, ensure that adequate facilities are set up to provide the technical skills and authority necessary to check, evaluate, management and control the risk, and a disciplinary system that can punish failure to comply with the measures indicated in the model;
- also provide for a system to ensure that the model continues to be implemented and the measures adopted continue to be appropriate. The organisational model must be reviewed and if necessary changed if significant breaches of regulations relating to the prevention of accidents or work hygiene are discovered, or if there are changes in the organisation and activities in relation to scientific or technological progress.

Article 30 provides that:

- upon first application, the company organisational models defined in accordance with the UNIMAGINABLE guidelines for health and safety at the workplace (SGT.) of 28 September 2001 or the British Standard OHS AS 18001:2007 are presumed to comply with the requirements pursuant to the previous paragraphs for the corresponding parties (paragraph 5);
- the permanent consultation commission for health and safety at the workplace will draw up simplified procedures for the adoption and efficient implementation of the safety organisation and management models of small and medium sized companies. These procedures were implemented with a decree by the Ministry of labour, health and social policies (paragraph 5-*bis*).

8.2 Rai Com and management of workplace health and safety

Rai Com works in premises on the basis of a lease entered into with RAI Television Italiana Spa, and the ordinary and extraordinary maintenance of the buildings and service systems of the infrastructure (for example air conditioning systems, fire-safety systems and protections, heating systems, etc.) are governed and defined on the basis of a contract between the two companies and are managed by the Rai Television Italiana Spa Purchasing and Services Department.

Rai Com also entered into a “Service Supply Contract” with RAI Television Italiana Spa in order to govern, inter alia, the following services (provided by RAI to RAI Com):

- Human resources management;
- General services;
- Administration and Treasury services;
- ICY Services;
- Production services.

The aforementioned “Service supply contract” states that “With the Prevention and Protection Service of its organisation, Rai guarantees the Safety and Health and Environmental Protection activities (risk assessment, identification of measures for the safety and health of the workplaces, compliance with prevailing law, processing of preventive and protective measures, etc.).”

The main components of the company prevention and management system that were identified were the following company positions:

- the *Employer*: the party described under article 2 letter b) of Legislative decree 81/08, and if the same as the General Manager, must ensure due compliance with all operational and organisational requirements under Legislative decree 81/08 as amended, and all other provisions of the law set out regarding the protection of health of the workers;

- *the Prevention and Protection Service Manager (RSPCA):* a person appointed by the Employer to coordinate the risk Prevention and Protection Service, and who has the ability and professional skills established under article 32 (article 2, letter f) of Legislative decree 81/08).

- the *Company Doctor:* a doctor who has one of the titles and the training and professional requirements pursuant to Legislative Decree 81/08, who works with the Employer to assess the risks and who is appointed to monitor the healthcare and all other tasks pursuant to Legislative Decree 81/08;

- *the Workers' Safety and Environment representatives (LS):* persons elected as union representatives to represent the workers with respect to the health and safety issues during work (article 2 letter i) of Legislative decree 81/08);

- *Emergency and first aid operators:* As provided under article 43 of Legislative decree 81/08, Rai Com appointed one or more workers to implement the measures needed for first aid purposes and to prevent fires and carry out fire-safety, and worker evacuations. These workers must receive adequate training and be formally appointed in writing and notification must be given to all interested parties and the Prevention and Protection Service Manager.

- *Worker*: a person who, regardless of the type of contract, works in the Employer's organisation, with or without remuneration, including to just learn a trade, skill or profession (article 2 letter a) of Legislative decree 81/08).

8.3 The Management System for the Health and Safety of Workers documentation

The main documents comprising the health and safety Management System include the following:

- "*Rules on the environment, and health and safety at work*"
- "*Risk Assessment Document*";
- Specific evacuation and emergency plans for each separate place of work.

8.4 Identification of the sensitive areas and activities in the area of crimes committed in breach of health and safety regulations at the workplace

The analysis of the company processes, carried out during the Project[20], led to identification of the activities in which the criminal offence referred to under article 25-*septies* of Legislative decree 231/01 could hypothetically occur. The processes examined are listed below:

1. **Planning:** the planning and organisation of the roles and activities related to the protection of health, safety and hygiene at the work place are aimed at:

    - establishing goals that are in line with company policies;
    - establishing the processes needed to reach the goals;
    - defining and allocating resources.

2. **Implementation and Function:** the Implementation and Function activity defines:

    - the organisational structure and responsibilities;
    - training, consultation and communication methods;
    - methods to manage the documentary system and checking of documents and data;
    - operational control methods;
    - emergency management.

3. **Corrective actions and control:** the corrective actions and control activity defines:

    - the measurement and monitoring of performance;
    - the registration and monitoring of accidents, incidents, breaches and corrective and preventive actions;
    - registration management methods;
    - periodic audit methods.

[20] See paragraph 3.1 of the General Section.

4. **Review by Management:** periodic reviews by Company Management are aimed at assessing whether the health and safety management system was properly created and whether it goes far enough to meet the policies and objectives of the company.

8.5 Rules of conduct and implementation of decision-making processes

8.5.1 Rules of conduct

This Special Section expressly prohibits Corporate Bodies, Employees - on a direct basis - and external staff from doing the following, limited to the obligations provided in the specific procedures and codes of conduct and specific clauses in the contracts respectively:

- carrying out, helping to carry out, or causing the carrying out of behaviour that - considered individually or collectively - includes, directly or indirectly, the elements of the offences considered above (25-*septies* of Legislative decree 231/01);
- breaching the company principles and procedures provided under this Special Section.

The prevention of accidents and protection of health and safety at the workplace is a fundamental requirement in the protection of human resources and third parties.

To this end, there must also be the commitment to prevent and suppress behaviour and practices that could result in the humiliation of employees in their professional capacity and expectations, or that could result in the isolation, disrepute or damage to their image at the workplace.

More specifically, decisions on health and safety are based on the following basic principles and criteria:

- avoidance of risks;
- assessment of the unavoidable risks;
- combating risks at the source;
- adapting the work to the person, especially with regard to planning the work stations and the choice of work tools and work or production methods, also to cut down on monotonous or repetitive work and reduce the effects of this type of work on health;
- taking account of the degree of development of the techniques;

- replacing anything dangerous with something that is not dangerous or less dangerous;
- planning prevention in order to obtain a cohesive whole that integrates work organisation, work conditions, social relations and the influence of the work place factors into the technique;
- giving priority to collective protection measures over individual protection measures;
- giving adequate instructions to the workers.

8.5.2 Principles of implementing the decision-making processes

The *standards* of control identified for the individual Susceptible Activities are listed here below.

A. Planning

The regulations provide as follows for those activities:

Policy and objectives: a formal Policy document that defines the guidelines and general goals in health and safety that the company has decided to achieve:

- formally approved by top company management;
- containing the commitment to comply with prevailing law in applicable health and safety measures and the other requirements agreed to;
- containing the commitment to prevent accidents and work-related illnesses and to continually improve the management and services of the health and safety system;
- adequately distributed to employees and the interested parties[21];
- periodically reviewed to ensure that the objectives expressed therein are appropriate and adequate with respect to the risks in the organisation (for example to new regulations and laws).

Annual and long-term plans: a Plan of Improvement / Plan of Investments in health and safety at the workplace, approved by the authorised company bodies:

[21] Interested individuals or groups, involved or influenced by the health and safety at work services of an organisation.

- containing clear identification of the deadlines, responsibilities and availability of the resources needed for implementation (financial, human, logistical, equipment);
- adequately communicated to the organisation so that the staff is sufficiently aware of same;
- providing for the responsibilities with respect to the approval, execution and reporting of expenditure on health, safety and the environment.

Legal and other provisions: company rules that define the criteria and methods to adopt for:

- updates on applicable legislation and the other applicable instructions regarding health and safety;
- identification of where said instructions should apply (corporate area) and how to distribute them.

B. Implementation and Function

The regulations provide as follows for those activities:

System regulations and documentation: corporate procedures that govern the roles and responsibilities in managing the documentation relating to the health and safety management system (for example manuals, procedures, work instructions), in accordance with the corporate policies and guidelines. More specifically, the aforementioned procedures should also describe the methods used to manage and file and keep the documentation produced (for example the filing/referencing procedures to guarantee an adequate level of traceability / checking).

Organisation and Responsibilities - Employer: organisational provisions to identify the employer that takes account of the organizational structure of the Company and what type of production it is involved in.

Organisation and Responsibilities - Prevention and Protection Service Manager/Prevention and Protection Service Operators/Company Doctor/Emergency Operators: organisational provisions regarding the appointment of a Prevention and Protection Service Manager, the Prevention and Protection Service Operators, the Company Doctor and the Emergency management operators who:

- will define the specific requirements in accordance with prevailing law;
- ensure the traceability of the checks carried out regarding possession of the specific requisites provided by applicable legislation;

- carry out assessments on the staff to understand the skills and availability to cover those specific roles;
- formally designate and make the relative appointments;
- ensure that the formal acceptance of the positions assigned can be traced.

Identification and assessment of the risks - Roles and Responsibilities: company rules that identify roles, responsibilities and the procedures to execute, approve and update the global assessment and record all the risks in the company. More specifically, this procedure:

- identifies roles, authority, skill requirements and the need to train the staff in charge of identifying the dangers, the risks and risk control;
- identifies the responsibilities for the checking, approval and update of the contents of the Risk Assessment Document;
- identifies the methods and criteria to use to review the timeframes or periods decided for the danger identification process and risk assessment;
- where necessary, ensures that the involvement of the company doctor can be tracked when identifying dangers and making risk assessments;
- assesses the various types of sources of risk: dangers that are ordinary or generic, ergonomic, specific, process-related or organisational and identification of standard areas in terms of danger within the company;
- identify the workers' representative roles;
- provide a list and description of the chemical agents and equipment and machines at the work site;
- explicitly define the assessment criteria used for the various risk categories in accordance with prevailing regulations and instructions.

Presence of the Risk Assessment Document: a document that reports on the risk assessment drawn up in accordance with the rules, and defining at least the following:

- the assessment procedure, specifying the criteria adopted;
- identification of the prevention and protection measures and the individual protection provisions resulting from the assessment;

- the plan of the measurements considered to be necessary to ensure improvement of the safety levels over time.

Operational control – Assignment of jobs and duties: company rules that identify the criteria and procedures defined to assign duties to the workers by the Employer. More specifically, this procedure:

- defines the criteria used to assign the duties to the workers on the basis of their ability and conditions in relation to their health and safety, and from what has emerged from the results of the health assessments carried out;
- defines the organisational measures to ensure participation by the Company Doctor and the Prevention and Protection Service Manager in the definition of the roles and responsibilities of the workers;
- ensures that the assessments made for that scope can be traced (for example definition of check lists setting out the lists of critical jobs and/or processes that can impact on health and safety).

Emergency management: company rules to manage emergencies in order to reduce the effects on the health of the public and the external environment. More specifically, this procedure:

- identifies the measures to control risk situations in the case of an emergency;
- provides indications on how to leave the work station or dangerous area where there is serious and immediate danger;
- determines how the appointed workers should implement measures to prevent fires, evacuate the workers in the case of immediate, serious danger and provide first aid;
- identifies the measures to take to avoid risks to the health of the public or damage to the external environment;
- describes the ways and the scheduling/frequency of emergency drills.

Management of fire risk: there must be company rules that define the measures needed to prevent fires. More specifically, this procedure contains:

- the roles and responsibilities for the activities to carry out for the request to issue and renew the fire prevention certificate, including monitoring the measures requested by the Fire Department;
- instructions on how to inform the workers on the rules of behaviour to implement in the event of fire;

- the filing and checking procedures of the fire-safety measures;
- information on the fire register filing and updating procedures.

Periodic meetings: a calendar that provides for periodic meetings of all the parties involved in checking the situation in the management of health and safety issues and adequate circulation of the results of the meetings through the organisation in accordance with prevailing law.

Consultation and communication: company rules that govern the distribution of information on health and safety matters to ensure that all company levels are made aware of how to identify, reduce and manage risks in the workplace. More specifically, this procedure governs:

- the periodic information given by the employer to the employees;
- the information to the Company Doctor, if necessary, on the processes and risks linked to the type of work carried out.

Information and training: company rules governing the training process. More specifically, this procedure:

- defines the methods to use to train each worker on: company risks, prevention and protection measures, specific risks and safety rules, dangerous substance characteristics (safety sheets and good operating practice rules), emergency procedures, appointees and roles of the Prevention and Protection Service Manager and the company doctor, where applicable instructions on how to use the work equipment and the individual protection equipment;
- defines the criteria on how to provide training to each worker (for example on recruitment, transfer, change of duties, introduction of new equipment, technologies or hazardous substances);
- with reference to the parties involved in managing the health and safety matters, sets out the identification of the environment, the content and methods of how to provide training according to the role within the organisation (Worker Safety Representatives, Prevention and Protection Service Operators, Emergency and First Aid Teams);
- defines the timeframes in which to provide the training to workers on the basis of the methods and criteria defined (definition of a Training Plan on an annual or long-term basis).

Relations with suppliers and contractors – information and coordination: company rules that define:

- the methods and content of the information that must be provided to external companies regarding all the rules and instructions that a company awarded the contract for an order must be aware of and must undertake to comply with and have its employees comply with;

- the roles, responsibilities and methods to use to draw up the Risk Assessment Document which indicates the measures to adopt to eliminate the risks due to interference between workers if different companies are involved in carrying out a job.

Relations with suppliers and contractors – qualification: company rules that define the supplier qualification procedure. More specifically, this procedure takes account:

- of the results of the checks on the technical-professional requirements of contractors pursuant to article 26, paragraphs 1 and 90, paragraph 9 of Legislative decree no. 81/2008;

- of compliance with anything established with the purchase specifications and the best technology available in terms of protecting health and safety.

Relations with suppliers and contractors – contractual clauses: contractual standards relating to the safety costs in supply contracts, tender contracts and sub-contracts.

Asset *management:* company regulations that govern the maintenance/inspection of the company *assets* to guarantee their completeness and adequacy. Specifically, these regulations provide for the following:

- the roles, responsibilities and methods to manage the assets;

- the periodic checks on the adequacy and completeness of the assets and compliance with applicable regulations;

- the planning, execution and check of the inspection and maintenance activities using suitably qualified staff.

C. Corrective actions and control

The control of the activity provides for the following:

Measurement and monitoring of performance - accidents: a procedure indicating the following:

- the roles, responsibilities and methods to use to report, find and carry out internal investigations of the accidents;

- the roles, responsibilities and methods to use to report, trace and investigate the accidents that occur and the “near accidents”;

- the methods to use to communicate the accidents which occurred by the operational managers to the employer and the Accident Prevention and Protection Service Manager;

- the roles, responsibilities and monitoring methods for accidents which occur (taking into account any disputes/litigation pending relating to the accidents that have occurred in the workplace) in order to identify the areas where accident risk is higher.

Measurement and monitoring of performance - other data (besides the accidents): a procedure that defines roles, responsibilities and methods to use to record and monitor (including through the use of indicators):

- the data on the health inspections;

- the plant safety data (lifting devices and lifts, electrical systems, pressure equipment, underground tanks, laser equipment, machines);

- the data on hazardous substances and mixtures used in the company (safety sheets);

- other data besides the accident data (taking into account any disputes/litigation which may have arisen) in order to identify the areas where the accident risk is higher.

Measurement and monitoring of performance - cases/disputes: procedures that define the roles, responsibilities and monitoring methods for pending disputes/litigation relating to the accidents that have occurred in the workplace in order to identify the areas where the accident risk is higher.

Auditing: a procedure that governs roles, responsibilities and operational procedures relating to auditing and the periodic check of efficiency and effectiveness of the safety management system. More specifically, this procedure defines:

- the timescales for scheduling the activities (formal audit plan);

- the skills which the personnel involved in the auditing activities must have in accordance with the principal of independence of the auditor with respect to the activity that has to be audited;

- the audit registration methods;
- the ways to identify and apply the corrective actions if divergence is found compared to what was set out by the company health and safety management system or applicable laws and instructions;
- the way to check the implementation and effectiveness of the above-mentioned corrective actions;
- how to communicate the results of the audit to top management.

Reporting: company standards that govern the roles, responsibilities and operational procedures for reporting to top management. These reports must guarantee the traceability and availability of the data relating to the activities that regard the safety management system, and more specifically the periodic sending of related information:

- any differences between the results obtained and the planned objectives (including changes in the law, changes to the systems, the processes or the company procedures that could make it necessary to update the mapping and the Model);
- the results of the audits (including accident investigation reports, review reports and any communications/reports from the external interested parties such as control bodies and third parties).

D. Management Review

The control of the activity provides for the following:

The review process: a procedure that defines roles, responsibilities and methods to use to carry out a review by company top management in relation to the efficiency and effectiveness of the company health and safety management system. This procedure encompasses the following activities:

- analysis of any differences between the results obtained and the planned objectives;
- analysis of the audit results;
- analysis of the monitoring results on the performance of the health and safety management system (accidents, other data);
- the state of progress of any improvements made on the basis of the previous review;

- identification of any goals for improvement for the subsequent period and the need to make any changes to elements of the company health and safety management system;
- traceability of the activities carried out.

9. SPECIAL SECTION F – Computer crimes and unlawful data processing

9.1 The relevant elements of the computer crimes and unlawful data processing (article 24-*bis* of Legislative decree 231/01)

The regulatory references of the relevant elements are provided below, along with a brief description of certain significant aspects of each of the predicate offences of Legislative decree 231/01.

Law no. 48 of 18 March 2008 "Ratification and execution of the Convention of the Council of Europe on computer crimes, signed in Budapest on 23 November 2001, and provisions for the adaptation of internal legislation" expanded the criminal offences that can render a company liable.

These rules govern protection of ***computer systems*** (referring to "any equipment, device, set of equipment or devices, interconnected or connected, one or more of which, on the basis of a program, automatically process data" - article 1 Budapest Agreement of 23 November 2001) or ***computer data*** – referring to "any representation of facts, information or concepts that can be processed with a computer system, including a program that allows a computer system to carry out a function".

Additionally, the difference between the concept of "computer system" and "data transmission system" should be explained: a computer system is a set of hardware and software components that can process data, i.e. the equipment that is commonly called a computer along with the programs and data necessary for a computer to operate. As soon as two or more computer systems are connected to each other through telecommunication networks, they create a "data transmission system", which can exchange data, i.e. transfer information and processes over certain distances: the best example is of an Internet network. Basically, the "data transmission" originates from the need to apply the "telecommunication" system to the "computer" system.

Article 7 of Law 48/2008 introduced article 24-*bis* into the "Computer crimes and unlawful data processing" Decree which could find administrative liability by organisations for the following offences:

Electronic documents (article 491-bis Criminal Code)

"If any of the misrepresentation provided under this paragraph relates to a public or private computer document, with evidentiary value, the provisions of the Paragraph shall apply relating to public acts and private agreements respectively".

The regulations apply criminal sanctions to forgery crimes using computer documents. The forgery crimes referred to include the following:

Material misrepresentation committed by a public official in public records (article 476 of the Criminal Code): "The public official, who, in the exercise of his or her functions, creates in whole or in part, a false record or alters a true record, shall be punished with imprisonment of one to six years. If the misrepresentation relates to a record or part of a record which is considered valid until a claim of misrepresentation is made, imprisonment shall be three to ten years".

Material misrepresentation committed by a public official in administrative certificates or authorisations (article 477 of the Criminal Code): "If a public official, in the exercise of his/her functions, forges or alters administrative certificates or authorisations, or, by forging or alteration, makes it appear that the conditions required for their validity have been met, they shall be punished with imprisonment of six months to three years".

Material misrepresentation by a public official on true copies of public or private records and certificates confirming the contents of the records (article 478 of the Criminal Code): "If a public official, in the exercise of his or her functions, assuming the existence of a public or private record, reproduces a copy and issues it in legal form, or issues a copy of a public or private record that is different from the original, he/she shall be punished with imprisonment of one to four years. If the misrepresentation relates to a record or part of a record which is considered valid until a claim for misrepresentation is made, imprisonment shall be for three to eight years. If the misrepresentation is made by a public official in a certificate regarding the content of public or private records, the punishment shall be imprisonment of one to three years".

False certification by a public official in public records (article 479 of the Criminal Code): "If a public official receives or creates a record in the exercise of his/her functions, falsely confirming that an action was carried out by him/her or occurred in his/her presence, or confirms that he/she has received declarations that were not given, or leaves something out or alters declarations received by him/her, or in any case falsely confirms something where the record serves to prove the facts, he/she will be subject to the penalties established under article 476".

False certification committed by a public official in administrative certificates or authorisations (article 480 of the Criminal Code): "If a public official, in the exercise of his/her functions, provides false confirmations, in administrative certificates or authorisations, where the record serves to prove the facts, he/she shall be punished with imprisonment of three months to two years".

False certification by a person who provides a publicly necessary service (article 481 of the Criminal Code): "In the exercise of a healthcare or forensic job, or other publicly necessary service, if anyone provides a false certification, where the record serves to prove the facts, he/she will be punished with imprisonment of up to one year or with a fine of € 51.00 to € 516.00. These penalties will be jointly applied if the action is carried out for profit".

Material misrepresentation by a private party (article 482 of the Criminal Code): "If any of the actions described under articles 476, 477 or 478 are committed by a private party, or a public official outside the exercise of their functions, the penalties established in said articles shall apply, reduced by a third".

False certification committed by a private party on a public record (article 483 Criminal Code): "Anyone who falsely confirms to a public official, on a public record, something, where the record serves to prove the facts, shall be punished with imprisonment of up to two years. If they involve false confirmations on the civil registry, imprisonment may not be less than three months".

Falsehoods in registers and notifications (article 484 of the Criminal Code): "Anyone who is legally obliged to file records subject to inspection by the public safety authorities or to notify the authorities regarding their industrial, commercial or professional operations, and writes or allows false information to be written, shall be punished with imprisonment of up to six months or a fine of up to Euro 309.00".

Misrepresentation in private agreements (article 485 Criminal Code.): "Anyone - in order to obtain a benefit for themselves or others or to cause harm to others - who forms, in whole or in part, a false private agreement, or alters a real private agreement, shall be punished, if they use it or allow others to use it, with imprisonment of six months to three years. Any false additions made to a real agreement will be considered to be alterations after they have been definitively formed".

Misrepresentation on a signed blank sheet of paper. Private document (article 486 of the Criminal Code): "Anyone - in order to obtain an advantage for themselves or others or to cause harm to others - who unlawfully uses a signed blank sheet of paper that is held for a reason involving an obligation or an option to fill it in, and writes or has written a private document with legal effect that is different from what they were obliged to do or authorised to do, shall be punished, if the sheet of paper is used or is allowed to be used, with imprisonment of six months to three years. A blank sheet of paper will be considered to be signed if the signer has left any space which is intended to be filled in, blank".

Misrepresentation on a signed blank sheet of paper. Public record (article 487 of the Criminal Code): "If a public official unlawfully uses a signed blank sheet of paper held for official purposes or for a reason involving an obligation or an option to fill it in, and writes or has written, a public record that is different from what they were obliged to do or authorised to do, he/she will be punished in accordance with the provisions set out respectively in articles 479 and 480".

Other misrepresentations on signed blank sheets of paper. Applicability of the provisions on material misrepresentation (article 488 of the Criminal Code): "The provisions of material misrepresentation on public records or in private agreements shall apply to misrepresentation on other types of signed blank sheets of paper from those described in the two previous articles".

Use of false record (article 489 of the Criminal Code): "Anyone who, without having been party to the misrepresentation, uses a false record, shall be subject to the penalties provided in the previous articles, reduced by a third. If it involved private agreements, anyone who commits the action will only be subject to punishment if they carried it out to gain a benefit for themselves or others or to cause harm to others".

Elimination, destruction or hiding true records (article 490 of the Criminal Code): "Anyone, who destroys, eliminates or hides a public record or a true private agreement, in whole or in part, will be subject to the penalties set out under articles 476, 477, 482 and 485 respectively in accordance with the differences set out therein. The provisions of the paragraph of the previous article shall apply".

True copies that take the place of the missing originals (article 492 of the Criminal Code): "In accordance with the provisions above, "public records" and "private agreements" include the original records and true copies of them when they can take the place of the missing originals in accordance with the law".

Misrepresentation by public employees working in a public service (article 493 of the Criminal Code): "The provisions of the previous articles on misrepresentations committed by public officials also apply to employees of the state or other public organisations, engaged in a public service relating to the records that they draw up when exercising their functions".

Unauthorised access to a computer or data transmission system (article 615-ter Criminal Code)

Anyone who gains unauthorised access to a computer system or a data transmission system protected by security measures or who gains access against the express or implied wishes of the person who has the right to exclude them. The penalty is imprisonment of up to three years.

The penalty will be imprisonment of one to five years:

1) if the action is committed by public officials or persons engaged to carry out public services by abusing their authority or breaching the duties attached to the function or service or abusing their positions as system operators;

2) if violence to property or persons is used by the offender to carry out the action, or if they are clearly armed;

3) if the action results in the destruction or damage to the system or the total or partial interruption to its function, or the destruction or damage to the data, the information or the programs contained in it.

If the actions described in the first and second paragraphs relate to public interest computer or data transmission systems, the penalty will be imprisonment of one to five years and three to eight years respectively.

Unauthorised possession and distribution of access codes to computer or data transmission systems (article 615-quater of the Italian Criminal Code.)

This crime will be carried out by anyone, in order to obtain an advantage for themselves or others, or to cause harm to others, who unlawfully obtains, reproduces, circulates, communicates or sends codes, key words or other methods that could be used to gain access to computer systems or data transmission systems protected by security measures or in any case provides instructions or indications on how to do this. The penalty of imprisonment of up to one year shall be applied and a fine of up to Euro 5,164.

Distribution of computer equipment, devices or programs aimed at damaging or interrupting a computer or data transmission system (article 615-quinquies of the Italian Criminal Code)

Anyone who - in order to unlawfully damage a computer system or data transmission system, the information, data or programs contained therein or relating to them, or to aid in the total or partial interruption or alteration of its function - obtains, produces, reproduces, imports, circulates, communicates, delivers or in any case makes available other equipment, devices or computer programs, will commit the crime. The penalty of imprisonment of up to two years shall be applied and a fine of up to Euro 10,329.

Unlawful interception, blocking or interruption of computer or data transmission communications (article 617-quater of the Italian Criminal Code)

The crime, which may be committed by anyone, entails the unlawful interception or blocking or interruption of communications relating to a computer system or a data transmission system or between different systems. The penalty is imprisonment of six months to four years.

Unless the action constitutes a more serious offence, this penalty will apply to anyone who reveals to the public, using any type of information, the content of the communications described in the first paragraph.

Installation of equipment that can intercept, prevent or interrupt computer or data transmission communications (article 617-quinquies of the Criminal Code)

Anyone who, apart from the cases provided by law, installs equipment that can intercept, prevent or interrupt communications relating to a computer or data transmission system or between a number of systems will have committed the crime. The penalty is imprisonment of one to four years.

Damage to computer information, data or computer programmes (article 635-bis Criminal Code)

The crime, unless the actions constitute a more serious offence, involves the destruction, damage, cancellation, alteration or elimination of information, data or computer programs of others, by anyone who does it. The penalty is imprisonment of six months to three years.

Damage to information, data and computer programmes used by the State or other public body or of public utility (article 635-ter Criminal Code)

Unless the action constitutes a more serious offence, the crime - which may be committed by anyone - involves actions aimed at the destruction, damage, cancellation, alteration or elimination of information data or computer programs used by the State or by another public organisation or related to one, or in any case one of public utility. The penalty is imprisonment of one to four years. If the action results in the destruction, damage, cancellation, alteration or elimination of the information of the data or the computer programs, the penalty will be imprisonment of three to eight years.

Damage to computer or data transmission systems (article 635-quater of the Criminal Code)

Unless the action constitutes a more serious offence, the crime will be committed by anyone who - through the behaviour described under article 635-*bis* of the Criminal Code or through the introduction or transmission of data, information or programs - destroys, damages or renders computer or data transmission systems of others unusable in whole or in part, or seriously disrupts their function. The penalty is imprisonment of one to five years.

Damage to public interest computer or data transmission systems (Article 635-quinquies Criminal Code);

This crime will be committed if the action described under article 635-*quater* of the Criminal Code is aimed at destroying, damaging, or making public interest computer or data transmission systems unusable in whole or in part, or seriously disrupting their operation. The penalty for this offence is imprisonment of one to four years. If the action results in the destruction or damage to public interest computer or data transmission systems, or if they are rendered unusable in whole or in part, the penalty will be imprisonment of three to eight years.

Computer fraud by the provider of electronic signature certification services (article 640-quinquies Criminal Code)

This crime will be committed by anyone who provides electronic certification services, who - in order to obtain unfair advantage for themselves or others or to cause harm to others - breaches the obligations set out under the law for the issue of defined certificates. The penalty of imprisonment of up to three years shall be applied and a fine of Euro 51 to Euro 1,032.

9.2 Identification of susceptible areas and activities within the scope of computer crimes and unlawful data processing

The analysis of the company processes, carried out during the Project[22], led to identification of the activities in which the criminal offence referred to under article 24-*bis*of Legislative decree 231/01 could hypothetically occur. The processes examined are listed below:

1. **Management of user profiles and the authentication process**
2. **Management and protection of jobs**
3. **Management of access to and from the outside**
4. **Operation and protection of networks**
5. **Management of system output and storage devices (for example USB, CD)**
6. **Physical safety (including cable safety, network devices, etc.)**

Rai Com entered into a “Service Supply Contract” with RAI Radiotelevisione Italiana Spa in order to govern, inter alia, the following services (provided by RAI to Rai Com):

- Human resources management;
- General Services;
- Administration and Treasury services;
- ICT Services;
- Production services.

The activities indicated at points 1 to 4 and point 6 fall within the scope of the ICT services.

9.3 Rules of conduct and implementation of decision-making processes

9.3.1 Rules of conduct

This Special Section provides for the express prohibition of Corporate Bodies, Employees - on a direct basis - and external staff - limited to the obligations provided under specific procedures and codes of conduct and the specific clauses in the contracts respectively - from:

[22] See paragraph 3.1 of the General Section.

- carrying out, helping to carry out, or causing the carrying out of behaviour that - considered individually or collectively - includes, directly or indirectly, the elements of the offence considered above (24-*bis* of Legislative decree 231/01);

- breaching the company principles and procedures provided under this Special Section.

On the basis of applicable international standards, company computer safety systems refer to the set of technical and organisational measures aimed at ensuring the protection of the completeness, availability and confidentiality of the automated information and the resources used to acquire, store, process and communicate said information.

According to that approach, the basic computer safety goals of the Company are the following:

- ***Completeness:*** guarantees that all company data fully and fairly represents, in an objective manner without interpretation, the content to which it refers. This goal is pursued by adopting adequate countermeasures that prevent accidental or intentional alterations that could change the original meaning, or alternatively, make it possible to find said modification of the data and correct it.

- ***Confidentiality:*** guarantees that a piece of information pertaining to a company is only made available to the authorised applications and users;

- ***Availability*: ** guarantees the availability of the company information in accordance with the need for business continuity and compliance with regulations (legal and non-legal) which require the storage of historical data or certain service levels.

More specifically, this Special Section provides for the following behaviour rules with reference to the above-mentioned parties:

a) prohibition on altering public or private computer documents, that could have evidentiary use;

b) prohibition on unauthorised access to the computer or data transmission systems of public or private parties;

c) prohibition on unauthorised access to the computer or data transmission systems in order to alter and/or cancel data and/or information;

d) prohibition on the unauthorised holding or use of codes, key words or other means that could permit access to a computer or data transmission system of competitors, public or private, in order to acquire confidential information;

e) prohibition on the unauthorised holding or use of codes, key words or other means that could permit access to a computer or data transmission system in order to acquire confidential information;

f) prohibition of any procurement and/or production and/or circulation of equipment and/or software that could damage a computer system or data transmission system of public or private parties, the information, data or programs contained therein, or that could fully or partially interrupt or alter their function;

g) prohibition on any fraudulent interception, block or interruption of communications relating to the computer or data transmission systems of public or private parties, in order to acquire confidential information;

h) prohibition on installing equipment for the interception, blocking or interruption of communications of public or private parties;

i) prohibition on modifying and/or cancelling data, information or programs of private or public parties or in any case, of public interest;

j) prohibition on damaging information, data or computer or data transmission programs of others;

k) prohibition on destroying, damaging or making public interest computer or data transmission systems unusable;

l) prohibition on unduly using, exploiting, circulating or reproducing intellectual property of any nature covered by copyright in any way, in any form, for money or for personal reasons;

Therefore, the above-mentioned parties must:

1. use the information, applications and equipment exclusively for official purposes;

2. not provide or sell third parties any computer equipment without the prior authorisation of the Purchasing and Service Department Manager;

3. notify the Purchasing and Service Department and the Manager of that department of any theft, damage or disappearance of said instruments; additionally, if there is a theft of any type of computer equipment or it disappears, the interested party, or anyone to whom it was delivered, within 24 hours from the event, must provide the Computer Technology Department with the original claim to the Public Safety Authority;

4. avoid introducing and/or keeping in the Company (in paper, computer form or using company instruments), in any form or for any reason, documentation and/or computer material that is confidential and owned by third parties, subject to acquisition of their

express agreement;

5. avoid transferring and/or sending files, documents or any other confidential documentation owned by the Company or any other Group company, outside the Company unless this has to be done for reasons closely related to their jobs, and in any case, subject to authorisation of their Managers;
6. avoid leaving their computers unattended and/or accessible to others;
7. avoid using the passwords of other users in the company, even for access to protected areas in their names or on their behalf, unless expressly authorised by the Computer Technology Manager;
8. avoid using software and/or hardware instruments that could intercept, falsify, alter or eliminate the content of computer communications and/or documents;
9. use the Internet connection for the purposes and time strictly necessary to carry out the activities that made the connection necessary;
10. comply with the procedures and standards provided, promptly notifying the applicable departments of any anomalous uses and/or functions of the computer resources;
11. only use products officially purchased by the company on the Company equipment;
12. not make copies of data or software unless it has been specifically authorised;
13. not use computer instruments for any purpose outside the specifically authorised purposes;
14. comply with all other specific regulations regarding access to the systems and the protection of the company's data and applications;
15. scrupulously comply with the company safety policies for the protection and control of the computer systems.

9.3.2 Implementation principles of the decision-making processes

The *standards* of control identified for the individual Susceptible Activities are listed here below.

	Safety policies	*Organisation of safety for internal users*	*Organisation of safety for external users*	*Classification and control of the assets*	*Physical and environmental safety*	*Management of communications and operations*	*Access control*	*Management of incidents and problems*	*Auditing*	*Human Resources and safety*	*Encryption*	*Purchasing, development and maintenance safety*
Management of user profiles and the authentication process	8	8		8			8	8	8	8	8	8
Management of system output and storage devices (for example USB, CD)	8	8		8		8			8	8	8	

It Security Guidelines: the standard requires a policy to be set out on the safety of the computer system, which, inter alia, provides for the following:

a) the communication methods, including to third parties;

b) the methods to use to review them, on a periodic basis and following significant changes.

Organisation of safety for internal users: the standard requires a regulatory instrument that defines the roles and responsibilities of managing how internal users access the system and their obligations when using the IT systems.

Organisation of safety for external users: the standard requires a regulatory instrument that defines the roles and responsibilities of managing how external users access the system and their obligations when using the IT systems, and on management of the relations with third parties in the event of access, management, communication and the supply of products/services to process the data and information by said third parties.

Classification and control of the assets: the standard requires a regulatory instrument that defines the roles and responsibilities to identify and classify the company assets (including data and information).

Physical and environmental safety: the standard requires a regulatory instrument that provides for adoption of controls to prevent unauthorised access, damage and interference to the premises and assets contained therein by making the areas and the equipment safe.

Management of communications and operations: the standard requires a regulatory instrument that ensures the accuracy and the safety of operations on the IT systems through policies and procedures. More specifically, this regulatory instrument will ensure:

a) the correct and safe operation of the information processors;

b) protection from danger;

c) the backup of information and software;

d) the protection of information exchanges by using all types of communication instruments, including with third parties;

e) the instruments used to track the activities carried out on the applications, systems and networks, and protection of said information from unauthorised access;

f) a check of the logs that record user-activities, the exceptions and the security-related events;

g) control of the changes to the processors and the systems;

h) the management of removable devices.

Access control: the standard requires a regulatory instrument that governs access to information, computer systems, the network, the operating system and the applications.

More specifically, this regulatory instrument provides as follows:

a) for individual authentication of users through user identification codes and passwords or other secure authentication systems;

b) for staff control lists authorised to access the systems and the specific authorisations for the various users or categories of users;

c) for registration and deregistration procedures to allow and revoke access to all the computer systems and services;

d) for review of the access rights of users in accordance with pre-established time limits using a formal process;

e) for the removal of the access rights in the event of termination or change of the type of relationship that gave the access right;

f) for access to the network services exclusively to users who were specifically authorised and restrictions on the ability of users to connect to the network;

g) for segmentation of the network so that it is possible to ensure that the connections and information flows do not breach the rules controlling access of the company applications;

h) for closure of the inactive sessions after a pre-determined period of time;

i) for keeping the storage devices (for example USB keys, CDs, external hard disks, etc.) and

j) adoption of clear screen rules for the processors used;

k) plans and operating procedures for the teleworking activities.

Management of IT safety incidents and problems: the standard requires a tool that adequately defines methods to use to process incidents and problems relating to IT safety. More specifically, this regulatory instrument provides as follows:

a) for appropriate management channels to communicate the Incidents and Problems;

b) for the periodic analysis of all the individual and recurring incidents and identification of the root causes;

c) for management of problems that generated one or more incidents until they have been definitively resolved;

d) for the analysis of reports and Incident and Problem trends and identification of preventive actions;

e) for appropriate management channels to communicate all the system or service weaknesses that have been observed or are potential;

f) for analysis of the documentation available on the applications and identification of weaknesses that could generate problems in the future;

g) for the use of basic information to help resolve the Incidents;

h) for the maintenance of the databases containing information on known errors that have not yet been fixed, the respective workarounds and the definitive solutions that have been identified or implemented;

i) for the quantification and monitoring of the types, volumes, and costs linked to the incidents relating to IT safety.

Auditing: the standard requires a regulatory procedure that governs roles, responsibilities and operational procedures relating to the periodic checking of the efficiency and effectiveness of the IT management system.

Human Resources and safety: the standard requires adoption of a regulatory procedure that provides for the following:

a) assessment (prior to entering into or agreeing a contract) of the experience of the people who will be working in the IT jobs, with special reference to IT system safety, and taking account of applicable regulations, the main ethics and classification of the information that the aforementioned parties will have access to;

b) specific training and periodic updates on the company IT safety procedures for all employees, and, where relevant, for third parties;

c) the obligation to return the assets supplied to carry out their jobs (for example computers, mobile phones, authentication tokens, etc.) by employees and third parties upon conclusion of the work relationship and/or contract;

d) removal, for all employees and third parties, of the right to access the information, the systems and the applications upon conclusion of the work relationship and/or the contract or in the event of a change of job.

Purchasing, development and maintenance safety: the standard requires adoption of a regulatory procedure that provides for the following:

a) identification of the safety requirements during planning or changes to the existing IT systems;

b) management of the risks of errors, losses or unauthorised changes to the information processed by the applications;

c) the confidentially, authenticity and completeness of the information;

d) safety in the IT system development process.

10. SPECIAL SECTION G - COPYRIGHT CRIMES

10.1 The relevant elements of copyright crimes (article 25-*novies* of Legislative decree 231/01)

The regulatory references of the relevant elements are provided below, along with a brief description of certain significant aspects of each of the predicate offences of Legislative decree 231/01.

Article 25-*novies* of Legislative decree 231/01, introduced by article 15 paragraph 7, letter c) of Law no. 39 of 23 July 2009, and listed as "Copyright Crimes", states as follows:

1. In relation to commission of the crimes described under articles 171, first paragraph, letter a-*bis*), and third paragraph, 171-*bis*, 171-*ter*, 171-*septies* and 171-*octies* of law no. 633 of 22 April 1941 (hereinafter also referred to as copyright), a fine of up to five hundred units will be applied to the organisation.

2. In the event of conviction for the crimes indicated under paragraph 1, the injunctive relief provided under article 9, paragraph 2 shall apply, for a duration of not less than a year. The provisions set out under Article 174-*quinquies* of the aforementioned law no. 633 of 1941 shall apply.

These regulations protect the *moral rights* and the right to *economic use* by the author:

- of creative *intellectual property* that belongs to the world of literature, music, figurative arts, architecture, theatre or cinema, in any form or type of expression;
- *computer programs* as with literary works in accordance with the Berne Convention on the protection of literary and artistic works, ratified and brought into force with Law no. 399 of 20 June 1978, and *databases* which, by choice or the arrangement of the material, constitute intellectual creations by the author.

More specifically, the following is included under the protection:

1) literary, dramatic, scientific, educational or religious works, in both written and oral form;

2) musical works and compositions, with or without words, dramatic-musical works and musical variations that constitute original works in themselves;

3) choreographic and pantomime works, with the tracks written down or in another form;

4) sculptures, paintings, designs, engravings or similar figurative art, including scenography;

5) architectural designs and works;

6) cinematographic works, silent or with sound, provided that it is not just simple research protected in accordance with the regulations under the fifth paragraph of the second title;

7) photographic works and those expressed with similar processes to photography;

8) computer programs, in any form provided that they are original and derive from the intellectual creation of the programmer;

9) databases intended as "collections of works, data or other independent elements systematically or methodically arranged and individually accessible by electronic means or in another way". However, database protection does not extend to the content of the databases, and does not affect existing rights on the content;

10) industrial design works that of themselves are creative and have artistic merit.

Collective works that contain extra or partially extra intellectual property are also protected as original creations, in addition to the creative processing of pre-existing intellectual property, such as translations into other languages (for example dubbing films), reworking and adaptations.

Copyright arises from a creative process that can be perceived from the outside and therefore acquires expressive form. It is not necessary for the creation to be on a support medium since for example an oral communication could also be a form of expression, but a mere idea will not be protected by copyright since it has not been expressed.

The creation constitutes intellectual property when it is characterised by novelty and originality as an expression of the personality of the author. As noted above, these two requirements must also be met in collective works, especially literary works such as encyclopaedias and newspapers - where the creative activity more appropriately consists of the creative contribution of the person who organises and directs the assembly of pre-existing works and the creative processing of the intellectual property of others.

The author of the intellectual property is entitled to the *moral rights* by the mere fact of having created the work. Unlike *economic use rights*, moral rights cannot be sold and can be claimed at any time, even when the author no longer has the right to make financial arrangements for the protected work.

Just as with the moral rights, the economic use rights also generally arise from the sole fact of creation; however, exceptions include the creation of databases, computer programs and industrial design works by employees. In these cases, the moral rights of the author-employee remain intact, but the rights of use are acquired as original rights by the employer.

This is not true for producers of cinematographic works, who will be the exclusive owner of the rights of use relating to the cinematographic exploitation of the work, subject however to the moral and economic rights of the four co-authors (author of the subject-matter, author of the scenography, author of the music and director), with respect to cinematographic work (see article 46 of copyright law), and subject to their exclusive rights of use of their

individual contributions (the subject-matter, the scenography and the music, but not the director), which do not affect the producer's rights. This provision becomes clearer if we consider that the individual creative contributions of the co-authors would not have been capable of creating a cinematographic work without the means of production and the organisation of the film, and therefore the contribution by the cinematographic producer is necessary. The rights of use of the film will in any case be limited to exploitation of the work and the producer may not modify or transform the work unless to the extent of the changes needed for the cinematographic adaptation.

The rights connected to the cinematographic producer are different from the rights of use. They cannot be classified as copyright, even from an economic viewpoint, since they relate to a series of situations considered by the law to be worthy of protection independently from the creation of intellectual property.

The provision of related rights responds to the need to prevent phonographic and video piracy as it conflicts with the legitimate expectations of the phonographic or cinematographic producer to earn money, and who - regardless of the content of the support produced - has the right to enjoy economic exploitation of it or the copies made of it, and therefore the exclusive right to authorise operations such as the reproduction, distribution, making available to the public or hiring.

The people who make radio or television broadcasts are also owners of related rights, including the exclusive right to authorise the recording, reproduction and distribution of the transmissions or to make them available.

There are also the related rights due to the artists who interpret and perform works such as musicians, dancers and singers who have the exclusive right to both authorise the recording of their artistic performances and also to authorise and earn from them.

Regardless of the related rights, the producers of phonograms, the interpreters and the performers, also have the right to receive remuneration for the use of the phonograms for profit (produced by them or for which the recording of the artistic performance was authorised) through cinematography or radio or television broadcasts, including communication to the public via satellite.

The elements referred to by article 25-*novies*of Legislative decree 231/01 in relation to the breach of copyright are:

- ***Making protected intellectual property, or a part thereof, available to the public on a system of data transmission networks through connections of any kind and without having the right (article 171, paragraph 1, letter a-bis) Law 633/1941).***

- ***Crimes referred to in the paragraph above committed on the work of others that was not intended to be published, or by misappropriation of authorship, or by distortion, defacing or other modification of the work, if offensive to the honour or reputation of the author (article 171, paragraph 3 Law 633/1941).***

On the basis of article 171, paragraph 1, letter a *bis*, anyone who makes any form of protected intellectual property available to the public, placing it on a system of data transmission networks, will be subject to sanction.

If this is done for profit, it will fall under the provisions of article 171-*ter*, second paragraph, letter a *bis.*

A second hypothesis of making intellectual property available to the public on a data transmission network system could be through "offering" audio or video data flows (streaming), that can be seen or heard during the "transmission" and therefore even if not saved on a computer. Even "unauthorised" streaming would seem to fall under the area of exercising a musical, audio-visual or advertising publication each time the content of the programs transmitted over the network comprise the copyright-protected pictures or sounds without the right to use said rights.

On the basis of article 171, paragraph 3, if the offence described under letter a-*bis* is committed on the work of another which was not intended to be published or by seizing ownership of the work or by distorting, defacing or otherwise changing the work, if offensive to the honour or reputation of the author, the penalty will be imprisonment of up to one year or a fine of not less than Euro 516.

- ***Unauthorised duplication, for profit, of computer programs; import, distribution, sale or possession for commercial or business purposes or leasing of programs on media not marked by the SIAE (Italian Society of Authors and Publishers); production of means to allow or facilitate the arbitrary removal or circumventing of the protection devices of computer programs (article 171-bis, paragraph 1, Law 633/1941).***

- ***Reproduction on media not marked by the Italian Society of Authors and Publishers, transfer to another medium, distribution, communication, display or demonstration to the public, of the contents of a database in order to gain profit; extraction or reuse of the database in breach of the rights of the creator and user of a database; distribution, sale or leasing of databases (article 171-bis, paragraph 2, Law 633/1941).***

The first paragraph described the unlawful behaviour through a number of different expressions ("unlawfully duplicates [...] computer programs or [...] imports, distributes, sells, holds for commercial or business purposes or leases"), all of which refer to certain ways of using the software and which could cause harm to the property interests of the owner of the rights of use. Basically, article 171-*bis* sets out the prohibited behaviour with reference to the content of the various rights of economic use of the intellectual property. The penalty is imprisonment from six months to three years and fines of Euro 2,582 to Euro 15,493 for that offence.

The penalty will not be less than the minimum of two years of imprisonment and a fine of Euro 15,493 (thirty million Lire) if it is a serious matter.

With respect to the concept of duplication, this, with reference to software, firstly entails copying *files* from a material medium which could be a *hard disk* of a *personal computer*, a

floppy disk, a *compact-disc* - or another medium - of a type similar to the one indicated - so that the duplicator comes into possession of the data “without the previous situation being changed to the harm of the person who was the original possessor.

However, the activities indicated by the regulations do not necessarily assume the existence of a material medium and the offence could therefore also be committed by unauthorised downloading of a program.

The provision in question is considered to include breach of the licence to use a program, and so will be liable for unlawful reproduction even if the contractual terms governing the relations between the owner of the corresponding rights and the user of the program have not been complied with.

However, in order to be criminally relevant, the duplication must result in the production of an identical copy of the program, and not the reworking or creation of new software, even if similar, on condition that the program on which it was “inspired” has not been unduly used or changed for that operation.

However, the backup copy is not included under the terms of the regulation, as the reserve copy produced by the user to avoid losing the program.

Additionally, the unauthorised duplication or distribution of the program must be done in order to make a profit. An aim that goes beyond a profit motive, not being carried out for earnings only, but also being carried out with the idea of saving money, in the sense of unfulfilled financial loss (for example using the same program on more than one device).

With regard to the commercial or business purpose behind possession of the program, it should include one that relates to the context of the action, so that said (static) activity will be revealed both when it is intended for sale, and when the program is intended to be merely used internally in a company, or when it could also be useful or necessary to carry out the business activity.

This regulation also punishes the renting of programs that do not have the approved Italian Society of Authors and Publishers (SIAE)[23] mark where said mark is required (it is not required for example for programs like operating systems, drivers, or software that can be acquired exclusively by downloading from the Internet). The reason for this is clear if we consider that the rights of economic use are independent from one another since they can be sold separately (for example the license for use on a certain medium does not give the right to rent it, just as, on the other hand, acquisition of the legitimate possession of material protected by copyright does not also give the right to distribute it in public), and said mark on each individual medium shows the rights attached (for example rental is usually prohibited on music and video game CDs).

[23] The Italian Society of Authors and Publishers (SIAE) places a mark on each medium containing computer programs or multimedia programs, and on all mediums containing sounds, voices or moving images that have the recorded works or parts thereof intended to be put on sale or transferred for use of any nature for profit.
However, this mark must not be capable of being transferred onto another medium; it must contain elements that allow identification of the title of the work for which it was requested, the name of the author and the producer or the owner of the copyright; finally, it must indicate a progressive number for each individual work reproduced or recorded, and whether it is intended for sale, rental, or any other form of distribution.

Only mediums that have gone through the generally required procedure with the Italian Society of Authors and Publishers intermediation - even if they do not have to be marked - will provide the guarantee that all the rights of economic use have been complied with for the intellectual property contained therein.

The second part of the first paragraph of article 171-*bis* punishes the duplication, distribution, sale, possession, or rental referring (not to mediums containing the computer program, but) to "any medium intended solely to permit or facilitate the arbitrary removal or actual avoidance of devices applied to protect computer programs". The penalty is imprisonment from six months to three years and fines of Euro 2,582 to Euro 15,493 for that offence.

The penalty will not be less than the minimum of two years of imprisonment and a fine of Euro 15,493 (thirty million Lire) if it is a serious matter.

This regulation is a type of early protection of the property interests which have been violated, to prevent the access and unlawful duplication of software, by means that can remove or avoid the protection systems, as shown by the fact that the regulation requires "the medium in question to be solely intended to override the protections put in place to protect the *software*".

With respect to the behaviour described under article 171-*bis*, 2nd paragraph, the behaviour cannot be considered to be unlawful if it involves ordinary queries for private use by authorised users or the assumption of normal management of databases. This will be triggered only on condition that it goes beyond the operational limits of the collection or causes harm to the manufacturer, as happens for example in cases of extraction or re-use for commercial purposes and aimed at unfair competition with respect to the manufacturer's product.

The penalty is imprisonment of six months to three years and fines of Euro 2,582 to Euro 15,493 for that offence. The penalty will not be less than the minimum of two years of imprisonment and a fine of Euro 15,493 if it is a serious matter.

- ***Crimes committed for profit, for non-personal use, and with one of the following forms of conduct described under article 171-ter, paragraph 1, Law 633/1941:***

    - unauthorised duplication, reproduction, transmission or distribution in public with whatever means, in whole or in part, of intellectual property intended for television, cinema, sale or rental of disks, tapes or similar media or any other media containing phonograms or videos of musical, cinematographic or audio-visual works or sequences of moving images (letter a);

    - unauthorised reproduction, transmission or distribution in public with whatever means, of literary, dramatic, scientific or educational, musical or dramatic-musical, multimedia works, or parts thereof, even if included in collective or composite works or databases (letter b);

- introduction into the territory of the State, possession for sale or distribution, trade, rental, or transfer of any kind, public screening, broadcast via television by whatever method, and broadcast via radio, of the unlawful duplications or reproductions referred to in letters a) and b) without having contributed to their duplication or reproduction (letter c);

- possession for sale or distribution, trade, sale, rental, transfer of any kind, public screening, broadcast via radio or television by any method, of videotapes, cassettes, any medium containing phonograms or videos of musical, cinematographic or audio-visual works or sequences of moving images or other media that require the Italian Society of Authors and Publishers mark to be attached, but which lack that mark or have counterfeit or altered marks (letter d);

- retransmission or distribution by any means of an encrypted service received by means of equipment or parts of equipment for decoding broadcasts with conditional access, in the absence of agreement with the legitimate distributor (letter e);

- introduction into the territory of the State, possession for sale or distribution, sale, rental, or transfer of any kind, commercial promotion, or installation, of devices or special decoding elements that permit access to an encrypted service without payment of the fee due (letter f);

- manufacture, import, distribution, sale, rental, transfer of any kind, advertising for sale or rental, or possession for commercial purposes, of devices, products or components, or the provision of services, whose commercial use or prevalent purpose is to circumvent effective technological protection measures or that are designed, produced, adapted or developed to enable or facilitate the circumvention of such measures (letter f-*bis*);

- unauthorised removal or alteration of the electronic rights-management information referred to in article 102-*quinquies*, or distribution, import for distribution, broadcast by radio or television, communication or making available to the public, of works or other protected materials from which such electronic information has been removed or altered (letter h).

These cases are punished with imprisonment from six months to three years and fines of Euro 2,582 to Euro 15,493.

- ***Crimes characterised by one of the following forms of conduct described under article 171-ter, paragraph 2, Law 633/1941:***

  - reproduction, duplication, transmission or unauthorised broadcasting, sale or trade, transfer of any kind or illegal import of more than 50 copies or pieces of works protected by copyright and related rights (letter a);

  - input for profit of a work or part of work protected by copyright onto a system of computer networks through connections of any kind in breach of the exclusive author's right of communication to the public (letter a-*bis*);

  - engagement in the behaviour contemplated by Article 171-*ter*, paragraph 1, Law 633/1941, by those exercising the reproduction, distribution, sale, marketing or import of works protected by copyright and associated rights for business purposes (letter b);

  - promotion or organisation of the unlawful activities identified in Article 171-*ter*, paragraph 1, Law 633/1941 (letter c).

These cases are punished with imprisonment from one to four years and fines of Euro 2,582 to Euro 15,493.

The provisions of article 171-*ter*, paragraphs 1 and 2, aim to protect the rights of phonographic and videographic producers and sanction phonographic and videographic "piracy".

The reproduction and broadcast in public must be authorised by the beneficial owner for the intellectual property intended for sale and the television and cinematographic market, just as the reproduction and distribution of media that contains phonograms or videos of musical, cinematographic or audio-visual works must be authorised.

The reproduction or distribution of literary, dramatic, musical, etc. works, or parts thereof, is also subject to the same authorisation, since these rights belong exclusively to the owners of the rights to the economic use of the work: the crime will be committed if this activity is carried out unlawfully and is intended for sale (assuming it is being done for profit).

The rights of producers or in any case the owners of rights to use the intellectual property will also be considered to have been breached by anyone who holds them for sale or distribution, screens them in public or transmits them by radio or television or allows them to be listened to in public, even if the protected works or video or phonographic media containing the intellectual property have not been materially reproduced or distributed.

If it is the producer who has the exclusive right to economically exploit the work, each of the above operations - therefore aimed at obtaining a profit - will constitute unlawful economic exploitation of the work.

The same reasoning applies to the criminal sanction in the cases where the operations

noted above regard media that is not marked by the Italian Society of Authors and Publishers (in the cases where the mark is obligatory): the lack of a mark, in accordance with the regulations, will mean that unlawful nature of the medium can be assumed.

A second offence will occur when someone exploits a work "with conditional access" and re-transmits or distributes it, without authorisation.

The manufacture, distribution or advertising for the purpose of sale or rental, or the possession for commercial purposes of devices that permit the unlawful access to services with conditional access (upon payment of a fee), will also be subject to sanction for the same reasons of protection; this is also true for the removal (not permitted) of the anti-piracy devices and the broadcast over radio or television of protected material from which said devices had been removed. If the criminal protection of the economic rights to use a protected work extends to those activities that threaten breach of copyright on the one hand, it also leads to sanctions for those who take advantage of the material in that "altered" state on the other.

- **Failure to notify the SIAE of the identification data of media that does not require marking by producers or importers of such media, or misrepresentation regarding the fulfilment of the obligations regarding the mark *(article 171-septies, Law 633/1941).***

Media that is not subject to attachment of the Italian Society of Authors and Publishers marks will also have to go through them, so any producers or importers who intend to sell them on the national territory will have to give timely communication to the SIAE of the identifying details of the work.

- **Fraudulent production, sale, import, promotion, installation, modification, utilisation for public and private use, of equipment or parts of equipment for decoding audio-visual broadcasts with conditional access via air, satellite, cable, in both analogue and digital form *(article 171-octies, Law 633/1941).***

The regulation punishes both those who install and use decoders of encrypted television transmissions (for public or private use) for fraudulent reasons ("with conditional access" "regardless of the application of a fee") but also those who produce or distribute these devices.

The penalty is imprisonment from six months to three years and fines of Euro 2,582 to Euro 25,822 for that offence.

The penalty will not be less than two years of imprisonment and a fine of Euro 15,493 (thirty million Lire) if it is a serious matter.

10.2 Identification of susceptible areas and activities within the scope of breaching copyright

The analysis of the company processes, carried out during the Project[24], led to identification of the activities in which the criminal offence referred to under article 25-*novies*of Legislative decree 231/01 could hypothetically occur:

1. **Purchase of marketing-related rights**
2. **Sale of goods and services in Italy and abroad**
   a. **Sale of rights to public parties**
   b. **Sale of rights in Italy**
   c. **Sale of rights abroad**
   d. **Other Sales (for example consultation services, television channels, etc.)**
3. **Revenues from the use of Rai Com music in RAI programs**
4. **Publishing activities (editions and co-editions)**
5. **Publication of content on the company Internet sites**
6. **Installation of protected computer programs (for example software and databases)**

10.3 Rules of conduct and implementation of decision-making processes

10.3.1 Rules of conduct

This Special Section provides for the express prohibition of corporate bodies, employees - on a direct basis - and external staff - limited to the obligations provided under specific procedures and codes of conduct and the specific clauses in the implementation contracts of the following principles - from:

- carrying out, helping to carry out, or causing the carrying out of behaviour that - considered individually or collectively - includes, directly or indirectly, the elements of the offence considered above (article 25-*novies* of Legislative decree 231/01);
- breaching the company principles and procedures provided under this Special Section.

[24] See paragraph 3.1 of the General Section.

Within the scope of the aforementioned behaviour, the following is more specifically prohibited:

- unlawfully making protected intellectual property, or a part thereof, available to the public, by introducing it into a system of data transmission networks through connections of any kind;
- unlawfully duplicating, importing, distributing, selling, possessing, installing, renting computer programs contained on media that do not have the mark of the Italian Society of Authors and Publishers;
- using means that can permit or facilitate the arbitrary removal or actual avoidance of devices applied to protect the programs referred to above;
- unlawfully reproducing, transferring onto other media, distributing, communicating, submitting or showing in public the contents of a database, or extracting or re-using or unlawfully distributing, installing, selling or renting databases or the data contained therein;
- unauthorised duplication, reproduction, transmission or distribution in public of intellectual property intended for television, cinema, or for the sale or rental, phonograms or videos of musical, cinematographic or audio-visual works or sequences of moving images on any medium, literary, dramatic, scientific, educational, musical or dramatic-musical works or multi-media works.
- introducing into the territory of the State, holding for sale, selling or in any case transferring in any way, or sending with any means, the unlawful duplications or reproductions mentioned above;
- holding for sale, sale, transferring of any kind, transmitting phonograms or videos of musical, cinematographic or audio-visual works or sequences of moving images on any media, by any means, that require attachment of the Italian Society of Authors and Publishers mark, which lack that mark or have a counterfeit or falsified mark;
- retransmission or distribution by any means of an encrypted service received by means of equipment or parts of equipment for decoding broadcasts with conditional access, in the absence of agreement with the legitimate distributor;
- introduction into the territory of the State, holding for sale, sale of any kind, commercial promotion, installation of devices or special decoding elements that permit access to an encrypted service without payment of the fee due;
- manufacturing, importing, sale, rental, transferring of any nature, advertising for sale or rental, holding for commercial purposes, or using for commercial purposes, equipment, products or components that could circumvent the “technological measures of protection” put in place to protect the copyright and the other rights related to its exercise;

- unlawfully removing or altering “electronic information” placed to protect the copyright or other rights related to its exercise, or distributing, importing for the purpose of distribution, circulating, communicating with any means or making available to the public, works or other protected materials, from which the electronic information was removed or altered;

- fraudulent production, putting up for sale, importing, promotion, installation, modification, utilisation for public and private use, of equipment or parts of equipment for decoding audio-visual broadcasts with conditional access via air, satellite, cable, in both analogue and digital form.

Therefore, the above-mentioned parties must:

- only acquire, realise or put on the network content (photographs, video sequences, poetry, comments, reviews, articles or other written content, *files* of music or any format) that has a licence of use, or in any case, that complies with copyright laws and other rights connected to their use;

- first ensure (by one or more managers who have been expressly appointed for the purpose), where possible, or through specific controls including periodic, with maximum precision and timeliness, that the content on the network complies with prevailing law on copyright and rights connected with use of the protected intellectual property;

- ensure that there has been the express acceptance of responsibility by the third parties regarding compliance with copyright regulations and other rights related to use of the intellectual property for all the above-mentioned content that is put onto the network by third parties or acquired by the Company and put on the network.

- similarly, ensure that input onto the network of all the aforementioned content by users is carried out on condition that the users identify themselves (registration and authentication), and express acceptance of responsibility by the users regarding input onto the network of content protected by copyright regulations and the other rights related to their use;

- in any case it must be possible to trace all uploads, input of content onto blogs, forums communities etc., with immediate removal of anything that does not comply with the copyright laws or other laws related to their use;

- only use software with licenses for use and within the limits and under the conditions provided by prevailing law and the license itself, apart from the computer programs available for downloading and free use, on in accordance with the terms and limits provided by law or the holder of the copyright and the other rights related to their use;

- only use databases with licenses for use and within the limits and under the conditions provided by prevailing law and the license itself, apart from the freely consultable ones, in accordance with the terms and limits provided by law or the holder of the copyright and the other rights related to its use, also with regard to the research extraction, processing, reworking or publishing the data contained therein.

10.3.2 Implementation principles of the decision-making processes

The standards of control identified for the individual Susceptible Activities are listed here below.

1. Purchase of marketing-related rights

The execution of the activities provides for the following:

- involvement of the applicable Department in the definition, if applicable, of contractual clauses containing the commitment/declaration (according to the case) by the counterparties:
    - that they are the legitimate holders of the right to economic use of the works protected by copyright being transferred or that they have obtained the legitimate authorisation of grant in use to third parties;
    - that they will hold the Company harmless from any harm or prejudice that could result from the non-truthfulness, inaccuracy or incompleteness of said declaration.

2. Sale of goods and services in Italy and abroad

   a. Sale of rights to public parties

   b. Sale of rights in Italy

   c. Sale of rights abroad

   d. Other Sales (for example consultation services, television channels, etc.)

3. Revenues from the use of Rai Com music in RAI programs

4. Publishing activities (editions and co-editions)

The execution of the activities provides for the following:

- the obligation to comply with the instructions set out under the law in relation to the protection of the moral and property rights of the author, with specific reference to the use, storage and distribution of texts, music, designs, pictures, photographs, computer programs and databases protected by copyright (the "Works").

  More specifically, the following must be complied with:

    - the provisions of applicable law with reference to the acquisition, storage, use, reproduction, duplication, processing, circulation and distribution (including through data transmission networks) of the Works and their parts;

    - the provisions of the law to protect the ownership of the Works and the limitations provided on the right to duplicate the computer programs and the reproduction, transfer, distribution and/or communication rights of the database content;

- identification of the authorisation mechanisms for the use, reproduction, processing, duplication and distribution of Works or parts of the Works;

- the adoption of protection instruments (for example rights to access) relating to the storage and filing of Works, ensuring that inventory will be taken;

- ensuring - upon receipt of the media containing computer programs, databases, phonograms, videos or musical, cinematographic or audio-visual works and/or sequences of moving images - that they contain the mark by the authorities in charge of monitoring copyright or the exemption of that obligation for that particular type of media;

- involvement of the applicable Department in the definition, if applicable, of contractual clauses containing the commitment/declaration (according to the case) by the counterparties:

    - that they are the legitimate holders of the right to economic use of the works protected by copyright being transferred or that they have obtained the legitimate authorisation of grant in use to third parties;

    - that they will hold the Company harmless from any harm or prejudice that could result from the non-truthfulness, inaccuracy or incompleteness of said declaration.

5. Publication of content on the company Internet site

This is carried out in accordance with the standards of control provided in the "Special Section F - Computer crimes and unlawful data processing" to which the reader is referred.

6. Installation of protected computer programs/Use of databases

This is carried out in accordance with the standards of control provided for in "Special Section F - Computer crimes and unlawful data processing" to which the reader is referred, and compliance with the standards of control for the "Purchase of work, goods and services" process reported in "Special Section A - Offences in relations with the Public Administration and Bribery between Private Parties" to which the reader is referred.

This provides for the following:

- the obligation to comply with the law to protect the ownership of the Works and the limitations provided to the right to duplicate the computer programs and the reproduction, transfer, distribution and/or communication rights of the database content;
- identification of the authorisation mechanisms for the use, reproduction, processing, duplication and distribution of Works or parts of the Works;
- the adoption of protection instruments (for example rights to access) relating to the storage and filing of Works, ensuring that inventory will be taken;
- formally ensuring - upon receipt of the media containing computer programs, databases, phonograms or videograms or musical, cinematographic or audio-visual works and/or sequences of moving images - that they contain the mark by the authorities in charge of monitoring copyright or the exemption of that obligation for that particular type of media;
- management of the software licences that provide for, inter alia, the following: a) the requirement definition methods; the methods to manage the licence acquisition process; c) the methods to check the license for use against what has been acquired;
- the rules for installing protected computer programs and identification of a party in charge of acquiring the protected computer programs that is different from the person in charge of installing them.

11. SPECIAL SECTION H – Environmental offences

11.1 The relevant elements of environmental offences

The regulatory references of the relevant elements are provided below, along with a brief description of certain significant aspects for each of the predicate offences of Legislative decree 231/01, with the specification that the only ones that apply to Rai Com operations are those relating to management of waste and protection of the ozone layer.

Crimes set out under the Criminal Code

Killing, destruction, catching, taking, possession of specimens of protected wild fauna and flora species (article 727-bis Criminal Code)

Subject to the action constituting a more serious offence, anyone -apart from permitted cases - who kills, catches, or keeps a protected wild animal species will be punished with one to six months or with a fine of up to Euro 4,000, apart from the cases in which the action involves a negligible quantity of these species with a negligible impact on the state of conservation of the species.
Anyone - apart from the permitted cases - who destroys, picks or keeps specimens of protected wild flora will be punished with a fine of up to Euro 4,000, apart from the cases in which the action involves a negligible quantity of these species with a negligible impact on the state of conservation of the species.

In order to apply said provisions, “protected wild fauna and flora species” refer to those indicated in attachment IV of directive 92/43/EC and attachment I of directive 2009/147/CE.

Destruction or damage to habitats in a protected site (article 733-bis Criminal Code)

Apart from where it is permitted, anyone who destroys a habitat in a protected location or in any case damages it or jeopardizes the state of conservation shall be punished with imprisonment of up to eighteen months and a fine of not less than Euro 3,000.

In order to apply this provision, “habitat in a protected location” refers to any species habitat where a zone has been classified as a zone of special protection in accordance with article 4, paragraphs 1 or 2, of directive 2009/147/EC, or any natural habitat or species habitat where a site was designated as a special zone of conservation in accordance with article 4, paragraph 4, of the directive 92/43/EC.

The risk of committing this offence could occur if company activities are carried out in protected natural areas.

Environmental pollution (article 452-bis Criminal Code)

Anyone who unlawfully jeopardizes or damages the following to a measurable, significant extent shall be punished with imprisonment from two to six years and fines of Euro 10,000 to Euro 100,000:

1) the water or air, or extended or significant portions of the ground or sub-surface;

2) an ecosystem, biodiversity, including agricultural, flora or fauna.

When the pollution is produced in a natural protected area or subject to landscape, environmental, historical, artistic, architectural or archaeological restrictions, or where protected animal or plant species could be harmed, the penalty will be increased.

Environmental disaster (article 452-quater Criminal Code)

Apart from the cases described under article 434, anyone who unlawfully causes an environmental disaster shall be punished with imprisonment of five to fifteen years.

The following alternatively constitute environmental disasters:

1) the irreversible alteration of an ecosystem balance;

2) alteration of the balance of an ecosystem which is particularly difficult to restore and only possible with exceptional measures;

3) damage to public safety due to the magnitude of the action causing the damage to spread or the due to the damaging effects or the number of persons damaged or exposed to danger.

When the disaster occurs in a natural protected area or an area subject to landscape, environmental, historical, artistic, architectural or archaeological restrictions, or an area where harm could be caused to protected animal or plant species, the penalty will be increased.

Criminal negligence against the environment (article 452-quinquies Criminal Code)

If any of the actions described under articles 452-bis and 452-quater are committed through negligence, the penalties provided under said articles will be reduced by a third to two-thirds.

If the danger of environmental pollution or environmental disaster is the result of the commission of the actions described under the previous paragraph, the penalties will be further reduced by a third.

Crimes of association aggravated by being aimed (also on a complicit basis) at committing the crimes described under title VI bis of the Criminal Code (article 452-octies)

When the criminal association described under article 416 is aimed - on an exclusive or complicit basis - at committing some of the crimes provided under this title, the penalties provided under article 416 will be increased.

When the criminal association described under article 416-bis is aimed at committing some of the crimes provided under this title, or acquisition of the management or in any case control of the economic activities, permits, authorisations, tender contracts or public services in an environmental area, the penalties provided under article 416-bis will be increased.

The penalties pursuant to the first and second paragraphs will be increased by a third to a half if public officials or people engaged to carry out public services who exercise functions or provide services in environmental matters form part of the criminal association.

Dealing in and dumping highly radioactive material (breach of article 452-sexies)

Unless it constitutes a more serious offence, anyone who unlawfully sells, purchases, receives, transports, imports, exports, obtains for others, holds, transfers, dumps or unlawfully discards highly radioactive material shall be punished with imprisonment from two to six years and fines of Euro 10,000 to Euro 50,000.

The penalty set out under the first paragraph will be increased if the action causes a danger of jeopardizing or degrading:

1) the water or air, or extended or significant portions of the ground or sub-surface;

2) an ecosystem, biodiversity, including agricultural, flora or fauna.

If the action causes danger to the life or safety of persons, the penalty will be increased by up to a half.

Crimes established by the Environmental Code set forth in Legislative Decree no. 152 of 3 April 2006

Water pollution (article 137)

- unauthorised discharge (absent, suspended or revoked authorisation) of industrial waste water containing hazardous substances (paragraph 2). The penalty is imprisonment from three months to three years and fines of Euro 5,000 to Euro 52,000;

- discharge of industrial waste water containing hazardous substances in breach of the requirements imposed by the authorisation or the applicable authorities (paragraph 3). The penalty is imprisonment of up to two years; discharge of industrial waste water containing hazardous substances in violation of table limits or more restrictive limits established by Regional Authorities or Autonomous Provincial Authorities or by the competent authority (paragraph 5, first and second sentences). The offence is punished with imprisonment of up to two years with fines of Euro 3,000 to Euro 30,000, or with the imprisonment of six months to three years and fines of Euro 6,000 to Euro 120,000 (in accordance with the various limits established on different tables as set out under Attachment 5 of Legislative decree 3-4-2006 no. 152);

- breach of the prohibitions on discharge into the ground, groundwater or underground (paragraph 11). The offence is punished with imprisonment of up to three years;

- discharge at sea by ships or aircraft of substances or materials whose spillage is prohibited, except in minimal quantities authorised by competent authorities (paragraph 13). The offence is punished with imprisonment of two months to two years.

This provision contains 14 criminal elements. Most of the cases involve offences relating to hypothetical or alleged danger, which do not have to exist, and where there is no specific or actual capacity to harm, or where the behaviour has not put the protected asset into danger.

They involve criminal offences that can be committed by “anyone”; however, since the criminal aspect revolves around the industrial nature of the water, they are offences committed by the businessperson or in any case the person who exercises the trade or production activity of the service.

The criminal protection is set out under four different types of offence:

a) unauthorised discharge, or where authorisation has been suspended or revoked;

b) exceeding the limits contained in certain tables attached to the Consolidated Excise Duty Act or the more restrictive values established by the Regions, Independent Provinces or administrative authorities;

c) failure to comply with the instructions contained in the authorisation or the instructions or measures set out by the applicable authorities or the prohibitions established by other State or Regional provisions;

d) breach of the obligations to conserve the data relating to the automatic controls or to communicate them, or the obligation to allow access to the production sites to the persons engaged to carry out the inspections.

Unauthorised waste management (article 256)

- collection, transportation, recovery, disposal, trade and brokerage of non-hazardous and hazardous waste, without the required authorisation, registration or notification (article 256, paragraph 1, letters a) and b). The offence is punished: a) with the penalty of imprisonment from three months to one year and a fine of Euro 2,600 to Euro 26,000 if it involves non-hazardous waste; a) with the penalty of imprisonment from six months to two years and a fine of Euro 2,600 to Euro 26,000 if it involves hazardous waste;

- construction or operation of an unauthorised dump (article 256, paragraph 3, first sentence). The penalty is imprisonment from six months to two years and a fine of Euro 2,600 to Euro 26,000;

- construction or operation of an unauthorised dump intended - including partially - for the disposal of hazardous waste (article 256, paragraph 3, second sentence). The penalty is imprisonment from one to three years and a fine of Euro 5,200 to Euro 52,000;

- unauthorised mixing of waste (article 256, paragraph 5). The penalty is imprisonment from six months to two years and a fine of Euro 2,600 to Euro 26,000 if it involves hazardous waste;

- temporary storage at the place of production of hazardous medical waste (article 256, paragraph 6). The offence is punished with imprisonment of three months to one year or with a fine of Euro 2,600 to Euro 26,000. The administrative monetary fine of Euro 2,600 to Euro 15,500 will be applied for quantities of no more than two hundred litres or equivalent quantities.

Paragraph 1 of article 256 envisages, among the possible forms of unlawful management of waste (own waste or produced by third parties), the collection, transport, recycling, disposal, trade or intermediation, if carried out outside the prescribed mechanisms of control by the public administration and without the necessary authorisations, registrations or communications.

Since it is an offence, this unlawful action can be punished as either wilful or negligent.

It is a theoretical danger type of offence, since the law punishes the exercise of activities that go beyond the preventive control by the public administration, even when the various activities are actually carried out with respect for the environment.

Paragraph 3 punishes anyone who creates or manages an unauthorised dump.

There has to be stability to have a dump, and the waste should be dumped in a certain area designated for that purpose on a habitual basis since occasional dumping does not fall under these provisions but falls under the provisions of article 255, paragraph 1 and 256, paragraph 2. A dump is also different from an uncontrolled landfill since it has a more defined character.

However, management of the dump constitutes an activity that follows the realisation, which may be carried out by the same person or other parties, and entails setting up an organisation of persons and things to operate this dump.

Since it is an offence, the unlawful action can be punished as either wilful or negligent, and includes the most serious of the offences provided for in terms of waste.

Paragraph 5 refers to an offence aimed at sanctioning breach of the prohibition against mixing dangerous waste.

This includes a common offence since the prohibition is directed against anyone who has the actual availability of waste.

Mixing is to be understood as joining different types of waste together, with the consequence of making it difficult or impossible to diversify the mixed waste.

This offence is instantaneous in nature and is committed when there is unauthorised mixing of waste.

In the specific case of Rai Com, the unlawful behaviour provided under paragraphs 3 and 5 could be committed by Rai Com, in its position as a producer of waste, in the event of incorrect management of temporary waste depositing/storage.

The provisions of paragraph 6 should not apply to Rai Com in view of the small amount of medical waste produced.

Contaminated sites (article 257)

- pollution of the soil, subsoil, surface water and groundwater with concentrations exceeding the risk threshold (unless necessary decontamination measures are taken in accordance with a project approved by the competent authority), and failure to notify the competent authorities (paragraphs 1 and 2). The pollution referred to in paragraph 2 will be aggravated by the use of hazardous substances.

The behaviour described under paragraph 1 is punished with imprisonment from six months to one year or a fine of Euro 2,600 to Euro 26,000 unless decontamination measures are taken in accordance with a project approved by the applicable authorities within the scope of the process described under articles 242 et seq. If the communication described under article 242 is not made, the offender will be punished with imprisonment from three months to one year or a fine of Euro 1,000 to Euro 26,000.

The behaviour described under the second paragraph will be punished with imprisonment from one year to two years and a fine of Euro 5,200 to Euro 52,000.

This provision provides for a penalty of either imprisonment or a fine for anyone who pollutes the ground, subsoil, surface water or groundwater with concentrations exceeding the risk threshold, unless decontamination measures are taken in accordance with a project approved by the applicable authorities within the scope of a suitable administrative process.

The regulation also incriminates anyone who causes potential pollution or anyone who discovers pollution caused by others in the past and does not notify the applicable authorities.

Paragraph 2 provides that pollution caused by hazardous substance will constitute an aggravating circumstance, punishable with a joint sanction of imprisonment and a fine.

The “hazardous substances” formula refers to the waste indicated as such under attachment D; the substances contained in water discharges refer to the tables referred to by article 137; on the other hand, there are no definitions or classifications of hazardous air substances in Legislative decree 152/2006.

Forgery and use of false waste analysis certificates (articles 258 and 260-bis)

- The penalty of imprisonment of up to two years will be applied to anyone who provides false information when drafting a waste analysis certificate with regard to the nature, composition and physical-chemical characteristics of the waste, or anyone who uses a false certificate during transportation (article 258, paragraph 4, second sentence);

- The penalty of imprisonment of up to two years will be applied to anyone who drafts a false waste analysis certificate to be used in the waste traceability control system (SISTRI) with regard to the nature, composition or physical-chemical characteristics of the waste, or anyone who provides a false certificate in the data to provide for the purpose of tracing the waste (article 260-*bis*, paragraph 6).

Rai Com could even be liable for these offences due to unlawful actions committed by third party suppliers, in the interest of or to the benefit of the Company, when sampling and establishing the characteristics of waste through chemical analyses, and the subsequent filling in of the SISTRI documentation.

- Transport of hazardous waste without a hard copy of the SISTRI - Area handling sheet or the waste analysis certificate, and use of an analysis certificate containing false information about the waste transported in the SISTRI system. The penalty of imprisonment of up to two years shall be applied for the transport of hazardous waste. This penalty will also be applied to anyone who uses a false waste analysis certificate with regard to the nature, composition and physical-chemical characteristics of the waste being transported during the transport (article 260-bis, paragraphs 6 and 7, second and third sentences).

Transport of waste with a fraudulently altered paper copy of the SISTRI - Area handling sheet (article 260-bis, paragraph 8, first and second sentences). The penalty provided by the combined provisions of articles 477 and 482 of the criminal code shall apply. The sanction will be increased by up to a third in the event of hazardous waste.

Unlawful waste trafficking (articles 259 and 260)

- Shipment of waste constituting unlawful trafficking (article 259, paragraph 1). The penalty is a fine of Euro 1,550 to Euro 26,000 and imprisonment of up to two years. The sanction will be increased if hazardous waste is being shipped.

- Activities organized through several operations and preparation of means and continuing operations, for the unlawful trafficking of waste (article 260). Crime, characterized by the specific intent of unfair profit and multiple significant actions (sale, receipt, transportation, export, import or abusive handling of large quantities of waste). This will be punished with imprisonment of one to six years. If it involves highly radioactive waste, the penalty will be imprisonment of three to eight years (paragraph 2).

Article 259 provides for two criminal offences related to cross-border trafficking and shipping of waste. In accordance with EC regulation no. 1013/2006, illegal shipment refers to any cross-border shipments made a) without previously notifying the applicable authorities, b) without the authorisation of the applicable authorities; c) with authorisation by the applicable authorities obtained by falsifications, false statements or fraud; d) in a way that is not actually specified in the notice or in the transport documents; e) in a way where recovery or disposal of the waste conflicts with EU or international regulations and f) in conflict with the articles of the regulations themselves.

The provisions of article 260 incriminate the most serious forms of unauthorised waste management, on a continuous, organised fashion, and relating to large quantities of waste.

The subjective element of the offence is represented by the specific wilful pursuit of unfair advantage.

The crime was not structured as associative and can therefore also be carried out by a single person who manages to unlawfully manage large quantities of waste.

However, the operations will actually have to have been carried out for the crime to be committed.

The unlawful action may also be committed as part of authorised activities if the methods used or types of waste treated breach the provisions of the authorisations or other legal limits, in whole or in part.

Air pollution (article 279)

- breach, in the exercise of a business, of the emission limits, or of the requirements laid down by the authorisation, plans and programs or legislation, or by the applicable authorities, which also results in exceeding air quality target limits set by prevailing regulations. The penalty of imprisonment of up to one year will apply if the exceeding of the emission limits also leads to exceeding the air quality limits provided under prevailing law (article 279, paragraph 5).

This criminal offence could be applied to the Rai Com business with respect to the management (including the authorisation requirements and relative monitoring) and maintenance of the plants that generate emissions into the air.

Crimes under Law no. 150 of 7 February 1992 in the international trading of specimens of flora and fauna in danger of extinction and keeping dangerous animals

- import, export, transport and illegal use of animal species (in the absence of a valid certificate or license, or contrary to the requirements dictated by those measures);
- possession, use for profit, purchase, sale or exhibition for sale or for commercial purposes of specimens without the required documentation; unlawful trading of artificially propagated plants (article 1, paragraphs 1 and 2 and article 2, paragraphs 1 and 2). The conduct referred to in articles 1, paragraph 2, and 2, paragraph 2, will be aggravated in the case of repeat offences or offences committed in the exercise of business activities;
- falsification or alteration of certificates and licenses; notifications, communications or false or altered statements for the purpose of obtaining a certificate or license; use of false or altered certificates and licenses for the importation of animals (article 3-*bis*, paragraph 1);
- possession of live specimens of wild or captive bred mammal and reptile species, which constitute a danger to health and public safety (Article 6, paragraph 4).

The provisions of article 1 contain a real list of unlawful behaviour.

This is a criminal law provision comprising an analytical - case-law technique that begins with a conditional clause: “unless the action does not constitute a more serious offence”.

The actions described in said article are the most serious of those relating to unlawful international trading of highly protected species set out under attachment A of EC regulation no. 338/1997.

The criminal conduct under letter a) involves the import, export and re-export without a certificate or with an invalid licence.

Letter b) relates to the actions of anyone who fails to comply with the provisions aimed at keeping the species safe, specified in an import or export licence, or in a re-export certificate.

Letter c) penalises anyone who uses the species described under attachment A of EC regulation no. 338/1997 in a way that does not correspond with the provisions contained in the authorisation measures or the certification that is issued along with the import licence or subsequently certified.

Letter d) refers to transport or transit, including on behalf of third parties, without the

required certificates.

Letter e) incriminates an action that had not previously been considered to be an offence: trading in protected species.

Letter f) describes a set of unlawful actions with profit being the common denominator.

The penalty is imprisonment of six months to two years and a fine of Euro 15,000 to Euro 150,000 for the above-mentioned crimes.

The final provision of this article, contained in paragraph 3, relates to the crime of unlawful administrative action which occurs in the case of import, export or re-export of personal or domestic objects which come from the species indicated under paragraph 1, in breach of EC regulation no. 939/1997. The penalty is an administrative fine of Euro 6,000 to Euro 30,000 for that offence.

With respect to the provisions of article 2, the material objective of the offence is constituted by the specimens (of animals and plants) from the species listed under Attachments B and C of EC regulation no. 338/1997.

The actions described under letters a) to f) are the same as those set out under the same letters of article 1, even though regarding species subject to less danger of extinction and therefore accorded a lower level of protection. The penalty applied is either a fine of Euro 20,000 to Euro 200,000 or imprisonment from six months to a year.

In accordance with paragraph 2, if there is a repeat offence, the aforementioned alternative penalties become cumulative.

Paragraph 4 sets out another unlawful administrative action offence: the failure to communicate that a licence or certificate application has been rejected.

The regulation sanctions the failure by the requesting party to comply with the obligation to give notice of a previous rejection to the management body that it is submitting the new licence or certificate application to.

The elements of article 16 of EC regulation no. 338 of 1997 that apply to paragraph 1 are the ones concerning: 1) a false, falsified or invalid certificate or licence, or modified without authorisation by the body that issued it - letter a); 2) the false statement or communication of false scientific information in order to get a licence of certificate – letter c); 3) use of false, falsified or invalid licences or certificates, or modified without authorisation, as a means of getting an EU licence or certificate – letter d); 4) the failure to give or false import notification – letter e) and 5) the falsification or modification of any licence or certificate issued in accordance with the regulation.

This relates to misrepresentation of documents, sanctioned under the criminal code.

Paragraph 2 of the article refers to Legislative decree 43/1973 which is the Consolidated Act of the provisions on customs matters.

The provisions of article 6 prohibit the possession of live specimens of wild or captive bred mammal or reptile species, which constitute a danger to health and public safety.

In accordance with paragraph 2, the Ministry of the Environment along with the Ministry of the Interior, the Ministry of Health and the Ministry of Agricultural, Food and Forestry policies were put in charge of identifying the species described in the paragraph above and preparing a list of said species.

Paragraph 3 states that parties who possessed the species listed had to make a declaration to the applicable prefecture within ninety days from the date of entry into effect of the decree at the date of publication of the decree in the Official Gazette indicating the criteria to apply to identification of the species described under paragraph 1.

On the other hand, paragraph 6 states that the provisions of the previous paragraphs do not apply to those parties.

The penalty is imprisonment of up to six months or a fine of Euro 15,000 to Euro 300,000.

The aforementioned offences could be potentially committed by Rai Com in television broadcasts that have protected animal/plant species in them.

Offences under Law no. 549 of 28 December 1993, concerning the protection of stratospheric ozone and the environment

- Breach of the provisions which provide for termination and reduction of the use (production, utilisation, marketing, import or export) of substances harmful to the ozone layer (article 3, paragraph 6). The penalty is imprisonment of up to two years and a fine of up to three times the value of the substances used for production, import or marketing purposes. In the more serious cases, the sentence will also result in revocation of the authorisation or licence used to carry out the unlawful activity.

This unlawful action could be potentially committed by Rai Com or by third parties in the interest of or to the benefit of Rai Com in the management and maintenance of systems containing substances that harm the ozone layer (for example air conditioners)

Offences envisaged by Legislative Decree no. 202 of 6 November 2007, on pollution of the marine environment by ships

- negligent spill of pollutants at sea by ships (article 9, paragraphs 1 and 2). The penalty will be a fine of Euro 10,000 to Euro 30,000 for the crime described under paragraph 1 and imprisonment from six months to 2 years and a fine of Euro 10,000 to Euro 30,000 for the crime described under paragraph 2;

- the wilful spill of pollutants at sea by ships (article 8, paragraphs 1 and 2). The penalty will be imprisonment of six months to two years and a fine of Euro 10,000 to Euro 50,000 for the crime described under paragraph 1 and imprisonment from one to three years and a fine of Euro 10,000 to Euro 80,000 for the crime described under paragraph 2.

The conduct referred to in articles 8, paragraph 2 and 9, paragraph 2 will be aggravated if the breach causes permanent or particularly serious damage to water quality, animal or vegetable species or parts thereof.

11.2. Rai Com and the environment

Rai Com works in premises on the basis of a lease entered into with RAI Radiotelevisione Italiana Spa, and the ordinary and extraordinary maintenance of the buildings and service systems of the infrastructure (for example air conditioning systems, fire-safety systems and protections, heating systems, etc.) are governed and defined on the basis of a contract between the two companies and are managed by the Rai Radiotelevisione Italiana Spa Purchasing and Services Department.

Rai Com also entered into a “Service Supply Contract” with RAI Radiotelevisione Italiana Spa in order to govern, inter alia, the following services (provided by RAI to RAI Com):

- Human resources management;
- General Services;
- Administration and Treasury services;
- ICT Services;
- Production services.

The aforementioned “Service supply contract” states that “With the Prevention and Protection Service of its organisation, Rai guarantees the Safety and Health and Environmental Protection activities (risk assessment, identification of measures for the safety and health of the workplaces, compliance with prevailing law, processing of preventive and protective measures, etc.).”

11.3. Identification of susceptible areas and activities within the scope of environmental offences

The analysis of the company processes of Rai Com, carried out during the Project[25], led to identification of the activities in which the criminal offence referred to under article 25-*undecies* of Legislative decree 231/2001 could hypothetically occur.

The processes examined are listed below:

1. **Planning:** planning activities are aimed establishing goals that are in line with company policies, establishing the processes needed to achieve the goals and defining and allocating resources.

2. **Implementation and Function:** Implementation and function is aimed at defining the organisational structure and responsibilities;

More specifically, with reference to operational control, the susceptible activities identified are the following:

- Waste management;

11.4 Rules of conduct and implementation of decision-making processes

11.4.1 Rules of conduct

This Special Section expressly prohibits Corporate Bodies, Employees - on a direct basis - and external staff from doing the following, limited to the obligations provided in the specific procedures and codes of conduct and specific clauses in the contracts respectively:

- carrying out, helping to carry out, or causing the carrying out of behaviour that - considered individually or collectively - includes, directly or indirectly, the elements of the offence considered above (25-*undecies* of Legislative decree 231/01);

- breaching the company principles and procedures provided under this Special Section.

More specifically, the Recipients must comply with the following in their work and execution of all related operations:

- each action that could have an environmental impact must attempt to reduce to a minimum the real or potential damage that could be caused to the environment;

- material should preferably be re-used and recycled, delaying its transformation into waste for as long as possible;

[25] See paragraph 3.1 of the General Section.

- the waste should preferably be recycled instead of being disposed of, reducing the overall quantity of waste produced to the greatest extent possible;

- the temporary storage and subsequent handing over of the waste must be done safely and in compliance with prevailing law;

- no waste may be thrown away or discarded in other places besides those permitted for waste collection and handing over; more specifically, the Company must ensure that the use, taking, collection and handing over are carried out in full compliance with the law and the authorisations, ensuring that said substances are not discarded or spilled into the environment;

- the treatment, handing over and transport of the waste must be carried out exclusively by parties who have the necessary knowledge to ensure the proper execution of procedures, with assurance that the staff will be able to use the adequate initial training, which should then be completed with further training;

- in the case of activities which are carried out by contractors or sub-contractors, where certain work or phases of work have to be carried out in areas subject to environmental protection, the Company must require strict compliance with the regulations set out under Legislative decree no.152/2006 and of course, Legislative decree 231/01, and inform the technicians and workers carrying out the work that the environment as a whole should be protected, preserved or at least subject to the lowest impact possible, in compliance with applicable regulations and authorisations.

11.4.2 Implementation principles of the decision-making processes

The standards of control identified for the individual Susceptible Activities are listed here below.

1. **Planning**

The regulations provide as follows for those activities:

Policy and objectives: the existence of a formal document with the policies that define the reference frameworks to establish and review the environmental objectives and targets that the company decides to achieve, and that:

- is consistent with the nature, size and environmental impact of the business activities;

- contains the commitment to comply with prevailing law on applicable environmental matters, continuous improvement and the prevention of pollution;

- is implemented and kept active;

- is distributed to employees and parties that work on behalf of the organisation;
- is made available to the public;
- has been formally approved by top company management.

2. Implementation and Function

The regulations provide as follows for those activities:

Function allocation system: a function allocation system based on the following case-law development principles:

- effectiveness - with the authorised person having both decision-making and financial independence;
- technical and professional suitability and experience of the authorised person;
- monitoring of the activity of the authorised person, no acquiescence, no interference;
- certainty, specificity and awareness.

A formal system for allocating the functions requires company rules that:
i) provide for clear identification of the area of operation of the authorisation;
ii) guarantee that traceability can be checked and continuity of the authorisations and traceability of the express acceptance of the authorisation by the authorised persons/sub-delegated persons;
iii) explicitly expresses the option for the authorised person to sub-delegate functions in environmental matters or not;
iv) provides for the traceability of criteria on the basis of which the consistency between functions that have been authorised and decision-making powers and the expenditure assigned is determined;
v) defines the control procedures to ensure that the authorised person maintains the technical-professional requirements, a periodic continuing education and technical-professional development plan, and a periodic assessment system of the technical-professional competence;
vi) provides for a formal continuous/periodic information flow between the authorising party and the authorised person;
vii) governs a formal monitoring system.

Roles and Responsibilities: the definition of roles and responsibilities for the application, maintenance and improvement of the Environmental Management System and to manage the environmental matters.

The attribution of responsibilities on environmental aspects**:**

- will be formally recorded;
- will be communicated within the organisation;
- will be consistent with the powers and organisational roles of the staff;
- will take account of the necessary skills for the performance of the activities;
- will take account of the possession of any specific requirements provided in accordance with prevailing environmental laws.

Operational control: company rules to keep the significant environmental aspects associated with the Company's activities under control, especially with regard to activities that could involve the commission of the environmental offences set out under Legislative decree 231/01.

Waste management: company rules that govern the management of waste produced by the organisation to ensure that it is carried out in accordance with regulatory requirements and prevailing law. More specifically, these company rules will define the roles, responsibilities and operational procedures for:

- the identification of all types of waste and attribution of the EWC code and any hazards attached, including through laboratory analyses, providing also for responsibilities and operational procedures to prepare the samples;
- compliance with the requirements of the regulations or the authorisation orders for the producers of waste (for example registration with SISTRI);
- management of the collection and temporary storage of waste in the place of production in order to ensure compliance:
    - with the temporary storage requirements (for example quantitative and time limits, signs, labels, containers, technical characteristics of the storage areas - for example waterproofing, cover, drainage systems, construction standards);
    - with the prohibition on mixing hazardous waste with non-hazardous waste and hazardous waste that has different harmful characteristics, including the dilution of hazardous substances;
- the initial and periodic checks to ensure that the registrations/communications/authorisations required by law for waste management by the third parties who receive the waste (intermediaries, transporters, recyclers, disposal operators) are in order (including checks of the licence plates of the vehicles);

- the preparation and filing of administrative documentation regarding waste management (for example forms, loading and unloading registers, Single Form Environmental Certificate, analytical certificates, authorisations, registers, communications);
- checking receipt of the fourth copy within the time-frames provided under regulations and actions to carry out if not received;
- traceability of all the activities related to waste management.

Applicable principles for adoption of the Organisational, management and control model pursuant to Legislative decree 231/01

Appendix A

APPENDIX A

Regulatory framework

1.1. Introduction

Legislative decree no. 231 of 8 June 2001 (hereinafter "Legislative decree 231/01" or the "Decree"), in implementation of the authorisation granted to the Government with article 11 of Law no. 300 of 29 September 2000, sets out the rules and regulations on "*liability of organisations for unlawful administrative actions connected to offences*", which apply to organisations that have legal personality and even companies and associations that do not have legal personality[26].

The Decree mainly comes from certain international and EU conventions ratified by Italy, and provide for the liability of collective organisations for certain criminal offences: these entities can be considered to be "liable" for certain unlawful actions committed or attempted, also in the interest of or to the benefit of themselves, by members of top management (the parties "in top positions" or "at the top") and those who are subject to the management or supervision of these parties at the top (article 5, paragraph 1 of Legislative decree 231/01)[27].

Legislative decree 231/01 therefore updated Italian law so that both monetary and injunctive relief may be applied against organisations, on a direct, independent basis, in relation to offences attributed to parties who are functionally linked to the organisations in accordance with article 5 of the Decree[28].

Administrative liability of organisations is separate from the criminal liability of natural persons who commit offences; it does not replace it but is added to the personal liability of the individual who has committed the offence.

However, this will be not be applied if the organisation involved has, inter alia, adopted and effectively implemented organisation, management and control models to prevent said offences prior to the offence being committed; these models can be adopted on the basis of codes of conduct (guidelines) drawn up by the representative associations of the company, including Confindustria, and communicated to the Ministry of Justice.

[26]Public economic organisations and private organisations that provide public services fall under that category, while the State and territorial public organisations, non-economic public organisations and organisations that carry out constitutionally significant functions do not fall under that category.

[27] Article 5, paragraph 1 of Legislative decree 231/01: "Liability of an organisation - The organisation will be liable for offences committed in its interest or to its benefit: a) by persons with representative, administrative or managerial authority for the organisation or one of its organisational units that has financial and functional autonomy and by persons who in fact manage or control the organisation; b) by persons subject to the management or supervision of one of the persons described under letter a)".

[3] On the basis of article 8 of Legislative decree 231/01: "Autonomy of the liability of the organisation – 1. an organisation will be liable if: a) the offender has not been identified or cannot be charged; b) the offence is extinguished for a reason besides a pardon. 2. Unless the law provides otherwise, proceedings will not be taken against the organisation if a pardon has been granted for an offence where it could be liable and the accused party declined to apply it. 3. The organisation may decline the pardon".

In any case, administrative liability will be not be charged if the top management and/or their subordinates acted solely in their own interests or in the interest of third parties[29].

1.2. Nature of the liability

With reference to the nature of the administrative liability *pursuant to* Legislative decree 231/01, the Explanatory Report to the decree emphasises the "*birth of a third type that links the essential characteristics of the criminal system and the administrative system in the attempt to adapt the logic of preventive effectiveness to the even more crucial logic of maximum guarantee*".

Legislative decree 231/01 introduced a type of "administrative" liability for organisations into our law - in compliance with the provisions of article 27, first paragraph of our Constitution "Criminal liability is personal" - but with numerous points of contact with a "criminal" type of liability[30].

1.3. Criteria for imputation of liability

Commission of one of the offences set out under the Decree constitutes the condition under which the applicable regulations will apply.

The Decree provides for objective and subjective imputation of liability criteria to be applied (with respect to organisations, in the broad sense).

Objective criteria for imputation of liability

The first basic, essential objective criteria for imputation of liability is formed by the condition that the offence - or unlawful administrative action - is committed «*in the interest of or to the benefit of the organisation*».

The liability of the organisation will therefore arise if the unlawful action was committed in the *interest* of the organisation or *to benefit* the organisation without it being necessary for the objective to have been actually achieved or not. It therefore involves a criteria that relies on the *objective* – even though not exclusively – for which the unlawful action was carried out.

However, benefit criteria relates to *the positive result* that the organisation objectively

[29] Article 5, paragraph 2 of Legislative decree 231/01: "Liability of the organisation – *The organisation will not be responsible if the persons indicated in paragraph 1 acted exclusively in their own interests or in the interest of third parties*".

[30] In that sense see – among the most significant – articles 2, 8 and 34 of Legislative decree 231/01 where the first article reaffirms standard criminal law principle of legality; the second article confirms the independence of organisation's liability with respect to the finding of liability of the natural person who carried out the criminal action; the third article refers to the situation whereby said liability, dependent on the commission of an offence, is found within the scope of criminal proceedings and will therefore be subject to the guarantees attached to criminal proceedings. The punitive character of the sanctions applicable to the organisation are also taken into consideration.

attained through commission of the unlawful action, regardless of the intention of the person who committed it.

The organisation will not be liable if the unlawful action has been committed by one of the parties indicated by the Decree «*in the party's own interest or in the interest of third parties*». This confirms that if the exclusive interest sought prevents the organisation from being liable, liability will then arise if there is a *joint* interest between the organisation and the natural person, or that can be referred in part to one and in part to the other.

The second objective criteria for imputation of liability is formed by the person who carried out the unlawful action. As noted above, the organisation will be liable for the unlawful action committed in his/her interest or to his/her benefit only if the action has been carried out by one or more defined parties, which the Decree groups into two categories:

1) «*by persons with representative, administrative or managerial authority for the organisation or for one of its organisational units with financial and functional independence*», or by persons who «*in fact manage or control*», the company such as a lawyer, a director, a general manager or the manager of a branch or office or the persons who *in fact* manage or control the organisation[31] (known as the persons in "top management" or "management" positions; article. 5, paragraph 1, letter a) of Legislative decree 231/01);

2) «*by persons subject to the management or supervision of one of the top managers*» (persons subject to another's management; article 5, paragraph 1, letter b), of Legislative decree 231/01). People who *carry out* the decisions in the interest of the organisation, made by managers under the direction and supervision of the top management fall into this category. In addition to employees of the organisation, all those who act in the name of, on behalf of, or in the interest of these people can fall into this category, such as external staff, freelancers or consultants.

If more than one party acts in concert to commit the offence (giving rise to the *accomplices in the offence*: article 110 of the Criminal Code; the same is substantially true in the case of unlawful administrative actions), it is not necessary for the "defined" person to carry out the typical action provided by law, even on a partial basis. It is necessary - and sufficient - for these parties to provide a mindful, causal contribution towards the execution of the offence.

Subjective criteria for imputation of liability

The Decree delineates the liability of the organisation as direct, on its own behalf and culpability; the subjective criteria for imputation of liability relates to the degree of culpability of the organisation.

[31] Such as the person known as the de facto manager (see article 2639 of the Civil Code) or the sovereign partner.

The organisation will be considered to be liable if it has not adopted or complied with good management and control standards related to the organisation and performance of its business activities. The *culpability* of the organisation, and therefore the option to accuse it, will depend on finding an improper or insufficient structure in the organisation of the company, which has not managed to prevent the commission of one of the predicate offences.

The organisation will not be considered liable if it - *prior to commission of the offence* - adopted and effectively implemented an organisation and management model that is capable of preventing commission of the same types of offences as the one in question.

1.4. Exempting value of the organizational, management and control model

The Decree will exempt the organisation from liability if it - *prior to commission of the offence* - adopted and effectively implemented an "organisation, management and control model" (the Model) that is capable of preventing commission of the same types of offences as the one in question.

However, if the organisation eliminated the organisational shortcomings that led to the offence by adopting and implementing organisational models to prevent the onset of these types of offences before first instance proceedings are begun, it can avoid application of the injunctive measures in accordance with the provisions of article 17 of the Decree.

Additionally, if the Model is drawn up after the ruling, and is accompanied by compensation for damage and reimbursement of any benefits obtained, any injunctive relief ordered can be converted into a fine in accordance with article 78 of the Decree.

The Model operates to exempt the company if the predicate offence was committed by either a top manager or a party subject to the management or supervision of a top manager.

Unlawful actions committed by top managers

With respect to offences committed by top managers, the Decree introduced a type of *presumption of liability of the organisation*, since it provides for the exemption from its liability only if it shows that[32]:

a) « *the management body has adopted and efficiently implemented an "organisational and management model to prevent the types of offences that have occurred" before the action was carried out*»;

b) «*the task of supervising operation and compliance with the models and ensuring that they are updated is entrusted to a body in the organisation that has independent powers to take the initiative and control*»;

[32] Article 6 of the DECREE.

c) «*the people who have committed the offence have fraudulently evaded the organisational and management Model*»;

d) «*there was no failure or insufficient supervision by the body with independent powers to take the initiative or control*».

The conditions listed must *all concur* and be met in order for the organisation to be considered exempt from liability.

Therefore, the company must show that it is not part of the actions claimed against the top manager, proving that the above-mentioned requirements were met, and concur, and therefore, that commission of the offence did not result from its "organisational negligence"[33].

Unlawful actions committed by persons subject to the management or supervision of a top manager

With respect to the offences committed by persons subject to the management or supervision of a top manager, the organisation will *only* be liable if it is found that «*commission of the offence was made possible by the lack of compliance with management or supervisory obligations*».

In other words, the liability of the organisation will be based on failure to comply with management and supervisory duties, which duties are attributed by law to the top management or transferred to other parties pursuant to valid authorisation[34].

In any case, there will be no breach of the management or supervisory obligations «if the organisation has adopted and efficiently implemented an organisational, management and control model that can prevent the types of offences in question from being carried out before the offence was committed».

In the event of an offence committed by a person subject to the management or supervision of a top manager, it involves an inversion in the burden of proof. In the case provided under the aforementioned article 7, the accusation must prove the failure to adopt and effectively implement a model of organizational, management and control that can prevent the offences of the type committed.

[33]To that end, the Explanatory Report to the Decree provides as follows: "*In order to find liability by the organisation, the offence must be capable of being linked to an objective plan (the conditions of which, as noted above, are governed by article 5); the offence must also express company policy or at least result from negligent organisation*". Further: "*it starts with the assumption (empirically based) that if an offence is committed by a top manager, the "subjective" requirement of the liability of the organisation [i.e. what is known as* "organisational negligence" *of the organisation] will be met if the top manager expresses and represents company policy; where this does not occur, it will have to be the company who has to show its lack of involvement, and this can only be done by proving the existence of a series of concurring requirements."*

[34]Article 7, paragraph 1 of the Decree.

Legislative decree 231/01 describes the content of the organisation and management models, providing that they must do the following as specified by article 6, paragraph 2, in relation to extending authorisation powers and the risk of committing the offences:

- identify the activities that could lead to the possibility of the offences being committed;
- establish specific protocols to plan the formation and implementation of the organisation's decisions in relation to the offences to be prevented;
- identify suitable financial management methods for preventing the offences from being committed;
- provide for disclosure obligations to the body responsible for supervising the implementation and compliance of the models;
- introduce a disciplinary system that punishes failure to comply with the measures set out in the model.

Article 7, paragraph 4 of Legislative decree 231/01 also defines the requirements for the effective implementation of the organisational models:

- the periodic check and possible amendment of the model if significant breaches of the provisions are discovered, or if there are changes to the organisation or its business activities;
- a disciplinary system that punishes failure to comply with the measures set out in the model.

With reference to offences in the area of health and safety that could lead to administrative liability for the organisation, Legislative decree no. 81 of 9 April 2008 contains the Consolidated Act on Health and Safety at Work, and establishes that an organisation and management model must:

- also provide for suitable systems to record that the above activities have been carried out;
- in any case, to the extent required by the nature and size of the organisation and the type of work carried out, ensure that adequate facilities are set up to provide the technical skills and authority necessary to check, evaluate, management and control the risk, and a disciplinary system that can punish failure to comply with the measures indicated in the model;
- also provide for a system to ensure that the model continues to be implemented and the measures adopted continue to be appropriate. The organisational model must be reviewed and if necessary changed if significant breaches of regulations relating to the prevention of accidents or work hygiene are discovered, or if there are changes in the organisation and activities in relation to scientific or technological progress.

1.5. Criminal offences and unlawful actions

On the basis of Legislative decree 231/01, the organisation can be held liable only for the offences expressly referred to under Legislative decree 231/01, if committed in its own interest or to its benefit by defined parties *pursuant to* article 5 paragraph 1 of the Decree, or in the case of the specific legal provisions that the Decree refers to, such as article 10 of law no. 146/2006.

The elements could be included, for ease of presentation, in the following categories:

- **crimes in relations with the Public Administration.** This is the first group of offences originally identified by Legislative decree 231/01 (articles 24 and 25)[35];
- **crimes against public trust**, such as counterfeit money, legal tender or revenue stamps, provided under article 25-*bis* of the Decree, introduced by article 6 of Law Decree 350/2001, converted into law, with amendments by article 1 of Law no. 409 of 23 November 2001, containing "*Urgent provisions in view of the introduction of the euro*"[36];
- **corporate criminal offences.** Article 25-*ter* was introduced into Legislative decree 231/01 by article 3 of Legislative decree no. 61 of 11 April 2002, which, within the scope of corporate law reform, also provided for expansion of the regime of administrative liability of companies to certain corporate criminal offences[37];

[35] They include the following offences: Embezzlement to the detriment of the State or the European Union (article 316-*bis* Criminal Code), Unlawful receipt of funds to the detriment of the State (article 316-*ter* Criminal Code), Fraud to the detriment of the State or other public organisation (article 640 paragraph 2, n. 1 Criminal Code), Aggravated fraud to obtain public funds (article 640-*bis* Criminal Code), Computer fraud to the detriment of the State or other public organisation (article. 640-*ter* Criminal Code), Extortion (article 317 Criminal Code), Bribery for the exercise of a function or bribery for an action that conflicts with official duties (articles 318, 319 and 319-*bis* Criminal Code), Bribery in legal records (article. 319-*ter* Criminal Code), Bribery of persons engaged in public services (article 320 Criminal Code), Convincing others to give or promise benefits (article 319-quater Criminal Code), Bribing party crimes (article 321 Criminal Code), Incitement to bribery (article 322 Criminal Code), Bribery and incitement to bribery of the members of the European Union bodies or officials of the European Union and foreign countries (article. 322-*bis* Criminal Code),

[36] They regard the crimes of Counterfeiting of money, spending and introduction into the State, with complicity, of counterfeit money (article 453 Criminal Code), Alteration of money (article 454 Criminal Code), Spending and introduction into the State, without complicity, of counterfeit money (article 455 Criminal Code), Spending of counterfeit money received in good faith (article 457 Criminal Code), Counterfeiting of duty stamps, introduction into the State, purchase, possession or circulation of counterfeit duty stamps (article 459 Criminal Code), Counterfeiting of watermarked paper used for the manufacture of public credit instruments or duty stamps (article 460 Criminal Code), Manufacture or possession of watermarks or instruments for counterfeiting money, duty stamps or watermarked paper (article 461 Criminal Code), Use of counterfeit or altered duty stamps (article 464 Criminal Code). Law no. 99 dated 23 July 2009 containing the "Provisions for the development and internationalisation of companies, including in the area of energy" at article 15, paragraph 7, made changes to article 25-*bis*, which now sanctions also the forgery and alteration of trademarks or distinctive marks (article 473 of the Criminal Code) and the introduction into the country of products with false markings (article 474 Criminal Code).

[37] They include the offences of False corporate communications (article 2621 Civil Code as amended by article 30 of law no. 262 of 28 December 2005 and law no. 69 of 27 May 2015) and False corporate communications to the detriment of shareholders or creditors (article 2622 Civil Code, as amended by the second paragraph of article 30 of law no. 262 of 28 December 2005), Misrepresentation in reports or communications by the auditing firm (article 2624 Civil Code; article 35 of law no. 262/2005, introduced article 175 of Legislative decree no. 58 of 24 February 1998, as amended, part V, title I, chapter III, article. 174-*bis* and 174-*ter*), Obstruction of audits (article 2625, second paragraph, Civil Code), Fictitiously paid-up share capital (article 2632 Civil Code), Improper return of contributions (article 2626 Civil Code), Unlawful allocation of profits and reserves (article 2627 Civil Code), Unlawful transactions on shares or equity interests or of the parent company (article 2628 Civil Code), Transactions prejudicial to creditors (article 2629 Civil Code), Failure to give notice of conflict of interest (article 2629-bis Civil Code, introduced by article 31, first paragraph, of law no. 262 of 2005, which included letter r) of article 25-*ter* of Legislative Decree. 231/2001), Undue allocation of corporate assets by the liquidators (article 2633 Civil Code), Undue influence at shareholders' meetings (article 2636 Civil Code), Market manipulation (article 2637 Civil Code), Impeding the public supervisory authorities from the exercise of their functions (article 2638 Civil Code.). Article 37, paragraphs 34 and 35, Legislative decree no.39 of 27 January 2010, implementing Directive 2006/43/EC relating to auditing the accounts, revoked article 2624 of the Civil Code and amended article 2625 of the Civil Code but did not coordinate with article 25-*ter* of

- **crimes related to terrorism or the subversion of democracy** (referred to in article 25-*quater* of Legislative Decree no. 231/01, introduced by article 3 of law no. 7 of 14 January 2003). They relate to "*crimes related to terrorism or the subversion of democracy as provided by the criminal code and special laws*" and other crimes besides those listed above, "*that were in any case committed in breach of the provisions of article 2 of the International Convention for the Suppression of the Financing of Terrorism adopted in New York on 9 December 1999*")[38];
- **market abuse**, referred to by article 25-*sexies* of the Decree[39];
- **crimes against individuals** , as provided under article 25-*quinquies*, introduced into the Decree by article 5 of law no. 228 of 11 August 2003, such as child prostitution, child pornography, trafficking in persons or forcing into or keeping in slavery[40];
- **cross-border offences.** Article 10 of law no. 146 of 16 March 2006 provides for the administrative liability of an organisation also with respect to offences specified under the law that have cross-border characteristics[41];

Legislative decree. 231/01: in view of the obligatory principle in criminal law, the above-mentioned elements subject to recent legislative action should not therefore be listed under the catalogue of predicate offences of administrative liability of the organisation any longer.

[38] The international Convention for the suppression of the financing of terrorism adopted in New York on 9 December 1999 sanctions anyone who, illegally and wilfully, provides or gathers funds in the knowledge that they will be, even partially, use to carry out: (i) acts intended to cause death or serious bodily injury to a civilian, when the purpose of such act is to intimidate a population or to compel a government or an international organisation to do or to abstain from doing any act; (ii) acts constituting offences in accordance with the convention with respect to: safety of flying or navigation, protection of nuclear material, protection of diplomatic agents, inhibition of attacks by the use of explosives. The category of "*crimes committed for the purpose of terrorism or subverting the democratic order envisaged by the criminal code and special laws*" is mentioned by the law in a general manner, without indicating the specific regulations that would involve application of this article in the event of their breach. In any case, the main predicate offences can be identified as article 270-*bis* of the Criminal Code (*Association set up for terrorist purposes, including international or the subversion of democracy*) which sanctions anyone who promotes, establishes, organises, manages or funds associations that promote violent acts for terrorist or subversive purposes, and article 270-*ter* of the Criminal Code (*Assistance to people in the associations*) which sanctions anyone who gives refuge or provides food, lodgings, means of transport, or instruments of communication to any of the persons who form part of associations set up for terrorist or subversive purposes.

[39]Article 25-*sexies*, introduced by article 9 of law no. 62 of 18 April 2005 ("Community Law 2004") provides that the company may be liable for charges of insider dealing (article 184 Consolidated Finance Act) and market manipulation (article 185 Consolidated Finance Act). On the basis of article 187-quinquies of the Consolidated Finance Act, an organisation may also be held liable for payment of an amount equal to the monetary administrative sanction paid for the unlawful administrative actions of insider dealing (article 187-*bis* of the Consolidated Finance Act) and market manipulation (article 187-*ter* Consolidated Finance Act), if committed in its own interest or to its benefit, by persons who belong to the categories of "top managers" or "parties subject to the management or supervision of others".

[40]The offences subject to sanction are: forcing into or keeping in slavery or servitude (article 600 of the Criminal Code), trafficking in persons (article 601 of the Criminal Code), acquisition or sale of slaves (article 602 of the Criminal Code), offences relating to child prostitution and the exploitation of child prostitution (article 600-*bis* Criminal Code), child pornography and the exploitation of child pornography (article 600-*ter* Criminal Code), possession of pornographic material produced by the sexual exploitation of minors (article 600-*quater* Criminal Code), tourist initiatives aimed at the exploitation of child prostitution (article 600-*quinquies* Criminal Code). Law no. 172 of 1 October 2012 was published in the Official Gazette no. 235 dated 8 October 2012 on the «Ratification and execution of the Convention of the Council of Europe for the protection of minors against exploitation and sexual abuse», adopted by the Committee of Ministers of the Council of Europe on 12 July 2007 and opened for signature on 25 October 2007 in Lanzarote. Certain changes to the Criminal Code were made when ratifying the Convention of the Council of Europe that affect the scope of articles 24-ter and 25-*quinquies* of Legislative decree 231/2001.
Legislative decree 39/2014 (article 3) added a reference to article 609-undecies into article 25-quinquies of Legislative decree 231/2001 containing «Grooming of minors», thereby including that offence in the list of offences to which legal persons can be subject.

[41] The offences indicated under the aforementioned article 10 of law no.146/2006 (criminal association, mafia-type association, criminal association to smuggle foreign-processed tobacco, criminal association for the unlawful trafficking of narcotic or psychotropic substances, illegal immigration, convincing others not to make statements or to make false statements to the legal authorities, aiding and abetting) will be considered cross-border if the unlawful action is committed in more than one country, or, if committed in one country, with a substantial part of the preparation and planning of the unlawful

– **crimes against life and personal safety**. Article 25-*quater*.1 of the Decree, introduced by law no. 7 of 9 January 2006, provides that the practice of female genital mutilation is one of the crimes where administrative liability can be attached to the organisation;

– **manslaughter or grievous bodily harm through negligence, committed in violation of the rules on health and safety at work.** Article 25-*septies* provides for the administrative liability of the organisation in relation to the crimes described under articles 589 and 590, third paragraph of the Criminal Code (Manslaughter or serious or grievous bodily harm) committed in breach of the rules on the protection of health and safety at work [42];

– **receiving stolen goods, money laundering and use of money, assets or benefits of unlawful origin, and self-laundering**. Article 25-*octies*[43] of the Decree extends the liability of the organisation also with reference to the offences provided for under articles 648, 648-*bis,* 648-*ter,* 648-*ter* n.1 of the Criminal Code;

– **computer crimes and unlawful data processing**. Article 24-*bis* of the Decree provides for new elements of unlawful administrative action that result from certain computer crimes and the unlawful processing of data[44];

– **crimes against industry and commerce,** referred to under article 25-*bis* no.1 of the Decree[45];

action in another country, or even if committed in one country, it involves an organised criminal group who carry out criminal activities in more than one country. In this case, no further provisions were added to the body of Legislative decree 231/01. The liability derives from an independent provision in the aforementioned article 10, which establishes the specific administrative sanctions applicable to the above-mentioned offences - as mentioned - in the final paragraph stating "the provisions pursuant to Legislative decree no. 231 of 8 June 2001 apply to the unlawful administrative actions provided under this article".

[42]The aforementioned article was introduced by article 9, law no. 123 of 3 August 2007, as amended by article 300 (Amendment of Legislative decree no. 231 of 8 June 2001) of Legislative decree no. 81 of 9 April 2008, implementing article 1 of law no. 123 of 3 August 2007 regarding the protection of health and safety at the workplace, published on the Official Gazette bi, 101 - S.O. No. 108/ Official Gazette of 30 April 2008.

[43] Article 63, paragraph 3, of Legislative decree no. 231 of 21 November 2007, published on the Official Gazette on 14 December 2007 no. 290, containing the implementation of directive 2005/60/CE of 26 October 2005 and regarding prevention of the use of the financial system for money-laundering purposes of the proceeds of criminal activities and terrorism financing, and Directive no. 2006/70/EC, containing the implementing measures for it, introduced the new article into Legislative decree no. 231 of 8 June 2001, which provides for the administrative liability of an organisation even in the case of receiving stolen goods, money-laundering and using money, goods or benefits of unlawful origin. Article 3, paragraph 3 of Law no. 186 of 15 December 2014, published in the Official Gazette of 17 December 2014 with respect to the appearance and re-entry of capital held abroad and self-laundering, added to the Criminal Code, under article 648-ter 1.

[44] Article 24-*bis* was introduced into the text of Legislative decree 231/01 by article 7 of law no. 48 of 18 March 2008 containing the ratification and execution of the Convention of the Council of Europe on computer crimes, signed in Budapest on 23 November 2001, and provisions for the adaptation of internal legislation published on the Official Gazette no. 80 dated 4 April 2008 - S.O. no. 79. Crimes which can attach administrative liability to organisations are those set out under articles 491-*bis* (Misrepresentation in computer documents), 615-*ter* (Unauthorised access to a computer or data transmission system), 615-*quater* (Possession and unauthorised distribution of access codes to computer or data transmission systems), 615-*quinquies* (Distribution of equipment, devices or computer programs that damage or interrupt a computer or data transmission system), 617-*quater* (Installation of equipment that can intercept, prevent or interrupt computer or data transmission communications), 617-*quinquies* (Installation of equipment that can intercept, prevent or interrupt computer or data transmission communications), 635-bis (Damage to computer information, data or programs), 635-*ter* (Damage to computer information, data or programs used by the State or other public organisations or in any case of public interest), 635-quater (Damage to computer or data transmission systems), 635-quinquies (Damage to public interest computer or data transmission systems) and 640-quinquies (computer fraud by the party who provides electronic signature certification services) of the Criminal Code.

[45]Article 25-bis no.1 was added by article 15, paragraph 6, of law no. 99 of 23 July 2009. The crimes that can attach administrative liability to organisations include: Disruption of the freedom of industry or trade (article 513 Criminal Code), Fraud in the exercise of trade (article 515 Criminal Code), Sale of non-genuine food items as genuine (article 516 Criminal Code), Sale of industrial products with false markings (article 517 Criminal Code), Manufacturing and sale of goods made

- **organised crime,** referred to under article 24-*ter* of the Decree[46];

- **offences relating to breach of copyright,** referred to under article 25-*novies* of the Decree[47];

- **convincing others not to make statements or to make false statements to the judicial authorities** (article 377–*bis* Criminal Code) referred to by article 25-*decies* of the Decree[48]

- **environmental offences**, referred to by article 25-*undecies* of the Decree[49];

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usurping industrial property rights (article 517-*ter* Criminal Code); Falsification of geographical indications or designation of origin of agro-food products (article 517-*quater* Criminal Code), Unlawful competition with threats or violence (article 513 *bis* Criminal Code), Fraud against national industries (article 514 Criminal Code).
-article 25-ter was introduced by Law no. 94 of 15 July 2009, article 2, paragraph 29. The crimes that can attach administrative liability to organisations include: Criminal association (article 416 Criminal Code, including the amendment introduced by Law no. 172 of 1 October 2012 ratifying the Convention of Lanzarote on the protection of minors against sexual exploitation and abuse), as an exception to the sixth paragraph); Criminal association for the aim of (article 416, sixth paragraph, Criminal Code): i) forcing into or keeping in slavery or servitude (article 600 Criminal Code); ii) trafficking in persons (article 601 Criminal Code); iii) the acquisition and sale of slaves (article 602 Criminal Code.); iv) crimes regarding breach of the laws on illegal immigration pursuant to article 12 Legislative decree 286/ 1998; Mafia-type association (article 416-*bis* Criminal Code); Mafia-related political election exchange (article 416-*ter* Criminal Code); Kidnapping for extortion (article 630 Criminal Code); Criminal association aimed at illicit trafficking of narcotic or psychotropic substances (article 74, Presidential Decree no. 309 of 9 October 1990); Illegal manufacture, introduction into the State, offering for sale, sale, possession and carrying in public places or places open to the public, of weapons of war or warlike weapons or parts thereof, explosives, clandestine weapons and other common firearms (article 407, paragraph 2, letter a), no. 5) Criminal Procedure Code) (see law 110/1975). Law no. 172 of 1 October 2012 was published in the Official Gazette no. 235 dated 8 October 2012 «Ratification and execution of the Convention of the Council of Europe for the protection of minors against exploitation and sexual abuse», adopted by the Committee of Ministers of the Council of Europe on 12 July 2007 and opened for signature on 25 October 2007 in Lanzarote. Certain changes to the criminal code were made when ratifying the Convention of the Council of Europe that affect the scope of articles 24-*ter* and 25-*quinquies* of Legislative decree 231/2001.

[47] Article 25-novies was introduced by Law no. 99 of 23 July: The crimes that can attach administrative liability to organisations include: making a protected intellectual property, or part thereof, available to the public, in a system of data transmission networks through connections of any kind (article 171, Law 633/1941 paragraph 1 lett a) *bis*); the crimes referred to above committed on the work of others not intended for publication if offensive to honour or reputation (article 171, law 633/1941 paragraph 3); unauthorised duplication, for profit, of computer programs; import, distribution, sale or possession for commercial or business purposes or leasing of programs on media not marked by the Italian Society of Authors and Publishers (SIAE); production of means for removing or circumventing the protection devices of computer programs (article 171-*bis* Law 633/1941 paragraph 1); reproduction, transfer to another medium, distribution, communication, display or demonstration to the public, of the contents of a database; extraction or re-use of the database; distribution, sale or leasing of databases (article 171-*bis* Law 633/1941 paragraph 2); Unauthorised duplication, reproduction, transmission or distribution in public with whatever means, in whole or in part, of intellectual property intended for television, cinema, sale or rental of disks, tapes or similar media or any other media containing phonograms or videos of musical, cinematographic or audio-visual works or sequences of moving images; literary, dramatic, scientific or educational, musical or dramatic-musical, multimedia works, even if included in collective or composite works or databases; reproduction, duplication, transmission or unauthorised broadcasting, sale or trade, transfer of any kind or illegal import of more than fifty copies or pieces of works protected by copyright and related rights; input of intellectual property protected by copyright or a part thereof into a system of data transmission networks through connections of any kind (article 171-ter, Law 633/1941; Failure to notify the SIAE of identification data of media that does not require marking, or misrepresentation (article 171-*septies*, Law 633/1941); fraudulent production, sale, import, promotion, installation, modification, utilisation for public and private use, of equipment or parts of equipment for decoding audio-visual broadcasts with conditional access via air, satellite, cable, in both analogue and digital form (article 171-*octies*, Law 633/1941).

[48] Article 25-*decies* was added by article 4 of Law 116/09.

[49] Article 25-*undecies* was added to Legislative decree 231/01, extending the liability of the organisation to offences, most of which are offences, of:
a) unauthorised discharge of industrial waste water containing hazardous substances and discharge of these substances in breach of the requirements imposed by the authorisation (article 137, paragraphs 2 and 3 of Legislative decree no. 152 of 3 April 2006); discharge of industrial waste water in breach of the table limits (article 137, paragraph 5, first and second sentences of Legislative decree no. 152 of 3 April 2006); breach of the prohibitions on discharge into the ground, groundwater or underground (article 137, paragraph 11 of Legislative decree no. 152 of 3 April 2006); discharge at sea by ships or aircraft of substances whose spillage is prohibited (article 137, paragraph 13, of Legislative decree no. 152 of 3 April 2006); collection, transportation, recovery, disposal, trade and brokerage of waste, without the required authorisation, registration or notification (article 256, paragraph 1, letters a) and b) of Legislative decree no. 152 of 3 April 2006); construction or operation of an unauthorised dump (article 256, paragraph 3, first and second sentences of Legislative decree no. 152 of 3 April 2006); non-

- **the offence of employing citizens from other countries who are not legally resident in the country** referred to in article 25-*duodecies* of the Decree[50];
- **bribery offence between private parties,** referred to under article 25-*ter* letter s *bis* of the Decree[51]**.**

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compliance with the provisions in the authorisation managing a dump or other waste related activities (article 256, paragraph 4 of Legislative decree no. 152 of 3 April 2006); unauthorised mixing of waste (article 256, paragraph 5 of Legislative decree no. 152 of 3 April 2006); temporary storage at the place of production of hazardous medical waste (article 256, paragraph 6 of Legislative decree no. 152 of 3 April 2006); pollution of the soil, subsoil, surface water or groundwater, and failure to notify the competent authorities (article 257, paragraphs 1 and 2 of Legislative decree no. 152 of 3 April 2006); preparation or use of a false waste analysis certificate (article 258, paragraph 4 and article 260 *bis*, paragraphs 6 and 7, of Legislative decree no. 152 of 3 April 2006); unauthorised trafficking of waste (article 259, paragraph 1 of Legislative decree no. 152 of 3 April 2006); organised unauthorised waste trafficking activities (article 260, of Legislative decree no. 152 of 3 April 2006); breach of waste traceability control system (article 260-*bis*, paragraph 8 of Legislative decree no. 152 of 3 April 2006); air pollution (article 279, paragraph 5, of Legislative decree no. 152 of 3 April 2006);
b) the import, export, transport or unlawful use of animal species and trading of artificially reproduced plants (article 1, paragraphs 1 and 2, and article 2, paragraphs 1 and 2, of Law no. 150 of 7 February 1992); falsification or alteration of certificates and licenses and use of false or altered certificates or licences to import animals (article 3 *bis* of Law no. 150 of 7 February 1992);
c) breach of the provisions relating to the use of substances that harm the ozone layer (article 3, paragraph 6 of Law no. 549 of 28 December 1993);
d) the wilful spilling of pollutants at sea by ships (article 8, paragraphs 1 and 2 of Legislative decree no. 202 of 6 November 2007); the wilful spilling of pollutants at sea by ships (article 9, paragraphs 1 and 2 of Legislative decree no. 202 of 6 November 2007);
e) killing, destruction, catching, taking, possession of specimens of protected wild fauna and flora species (article 727-*bis* Criminal Code)
f) destruction or damage to habitats in a protected site (article 733-*bis* Criminal Code.)
Law no. 68 of 22 May 2015, published in the Official Gazette General series - n. 122 of 28 May 2015 "Provisions regarding crimes against the environment".
With respect to the administrative liability of organisations, the law amends article 25-undecies, paragraph 1, of Legislative decree 231/01 adding the following predicate offences:
a) the crime of environmental pollution (breach of article 452-bis of the Criminal Code) with a fine of two hundred and fifty to six hundred units;
b) the crime of environmental disaster (breach of article 452-quater of the Criminal Code) with a fine of four hundred to eight hundred units;
c) crimes committed without malicious intent against the environment (with reference to articles 452-bis and quater, breach of article 452-quinquies of the Criminal Code) with a fine of two hundred to five hundred units;
d) crimes of association aggravated by being aimed (also on a complicit basis) at committing the crimes described under title VI bis of the Criminal Code (breach of article 452-octies) with a fine of three hundred to a thousand units;
e) the crime of dealing in and abandoning highly radioactive material (breach of article 452-sexies) with a fine of two hundred and fifty to six hundred units.
Additionally, with respect to the offences that follow below, the original fines are confirmed:
- 727-bis (Killing, destruction, catching, taking, possession of specimens of protected wild fauna and flora species and
-733-bis Criminal Code (Destruction or damage to habitats in a protected site)

[50] Article 22, paragraph 12-*bis*, Legislative decree no. 286 of 22 July 1998, (known as the Consolidated Act on Immigration) Employment on fixed term and open-ended contracts referred to in article 25-duodecies of Legislative decree 231/01 "Employment of citizens from other countries who are not legally resident in the country" provides as follows: The penalties for the situation described under paragraph 12 (eds note: i.e. where the "employer who employs foreign workers who do not have residence permits as provided under this article, or whose permits have expired and where the renewal, revocation or cancellation has not been requested in accordance with the law") will be increased by one third to one half:
a) if the number of employees is more than three;
b) if the employees are not of working age;
c) if the employees are subject to other working conditions that are particularly exploitive pursuant to the third paragraph of article 603-*bis* of the Criminal Code (eds note: i.e. "situations of serious danger with regard to the type of services to provide and the conditions of work")."
Article 603 *bis* of the Criminal Code, third paragraph "Unlawful intermediation and exploitation of work", provides that: "3.
The following constitute specific aggravating circumstances that will increase the sanctions by a third to a half:
1) if the number of workers recruited is higher than three;
2) if one or more of the recruited persons is not of working age;
3) if the action was carried out by exposing the workers obtained to situations of serious danger with regard to the type of services to provide and the conditions of work".

[51] More specifically, article 25-*ter*, paragraph 1 of Legislative decree 231/01 had letter s-*bis* added), which referred to the new crime of bribery between private parties in the cases that fall under the new third paragraph of article 2635 of the Civil Code. The new letter s-*bis* of article 25-ter, referring to the "cases provided for under the third paragraph of article 2635 of the Civil

The above-mentioned categories will soon be broadened further, also in view of the tendency of the law to widen the range of operation of the Decree, also to bring national laws into line with international and EU obligations.

1.6. Sanction system

The following sanctions will be applied under articles 9 - 23 of Legislative decree 231/01 against the organisation as a result of the commission or attempted commission of the above-mentioned offences:
– fines (and seizure as an interim measure);

– injunctive relief (which can also be applied as interim measures) with duration of not less than three months and not more than two years (in accordance with article 14, paragraph 1, of Legislative decree 231/01, "*The injunctive relief will specifically relate to the unlawful activity carried out by the organisation* ") which in turn may entail:

- a ban on exercising the activity;
- suspension or revocation of the authorisations, licences or permits that facilitated commission of the unlawful action;
- a prohibition on contracting with the public administration unless a public service has to be obtained;
- removal of concessions, loans, contributions or benefits and revocation of any that may have already been granted;
- a prohibition on advertising goods or services;

- confiscation (and seizure as an interim measure);
- publication of the ruling (if injunctive relief has been sought).

The fine will be decided by the criminal court through a system based on "units" with a number that is not less than one hundred and not higher than one thousand, and for amounts that vary between a minimum of Euro 258.22 and a maximum of Euro 1549.37. The court will examine the following when deciding on the amount of the fine:

– the number of units, taking account of the seriousness of the event, the level of responsibility of the organisation and the activities carried out to eliminate or reduce the consequences of the event and prevent the commission of further unlawful actions;

– the amount of the single unit on the basis of the economic and capital situation of the organisation.

Code", basically provides that in accordance with Legislative decree 231/01, companies that the bribing party belong to may be subject to sanction since only the company can benefit from the bribery carried out. On the other hand, the company to whom the bribing party belongs, by regulatory definition, suffers damage following breach of official or loyalty duties.

The organisation will pay the fine with its assets or a common fund (article 27, paragraph 1 of the Decree)[52].

Injunctive relief will only apply to offences where this type of relief is expressly provided for on condition that at least one of the following conditions are met:

a) the organisation obtained a significant benefit from committing the offence and the offence was committed by parties in top management positions or by parties subject to other management when, in this case, commission of the offence was determined or facilitated by serious organisational shortcomings;
b) if the unlawful actions are repeated[53].

Injunctive relief may be ordered for the following: crimes against the public administration, certain ones against public trust, terrorism-related crimes and subversion of democracy, crimes against individuals, female genital mutilation, cross-border crimes, crimes against health and safety, receiving stolen goods, money-laundering and use of money, goods or benefits of unlawful origin, and computer crimes and the unlawful processing of data, organised crime, certain crimes against industry and commerce, copyright infringement crimes and environmental crimes.
The court will determine the type and duration of the injunctive relief, taking account of how suitable the individual sanctions would be to prevent unlawful actions like those committed, and if necessary, may apply them on a joint basis (article 14, paragraph 1 and paragraph 3, Legislative decree 231/01).

Sanctions involving prohibitions on exercising the business, a prohibition on contracting with the public administration and a prohibition on advertising goods or services may be applied - in the most serious cases - on a permanent basis[54].

The court may allow the organisation's business activity to continue (instead of issuing an injunction), in accordance and under the conditions set out under article 15

[52] The concept of assets must refer to companies and organisations with legal personality, while the concept of "common funds" regard associations without legal personality.

[53]Article 13, paragraph 1, letters a) and b) Legislative decree 231/01. To that end, see also article 20 Legislative decree 231/01, whereby "*A repeat offence will be committed if the organisation has been found liable at least once for an unlawful action relating to the offence and commits another in the five years following conviction.*" Regarding the relationship between the above-mentioned regulations, see De Marzo, *work cited*, 1315: "*As an alternative to the requirements set out under letter a)* [of article 13, eds note]*, letter b) identifies the repeat of the unlawful action as the condition for application of the injunctive relief expressly provided for by law. In accordance with article 20, the repeat offence will be committed if the organisation has already been found liable at least once for an unlawful action relating to the offence and commits another in the five years following conviction. In this case, even though liability for the previous breach has already been found and already been irrevocably sanctioned, commission of the offence shows the propensity or tolerance towards commission of the offences, so things do not have to be further held up by investigating the extent of the benefits obtained or analysing the organisational models adopted. What emerges in any case is the awareness that the ordinary fine system (and also the injunction system if the previous unlawful actions have met the conditions set out under letters a) or b) of article 13, paragraph 1) has not been capable of acting as an effective deterrent with respect to an action that conflicts with a basic canon of the law*".

[54]To that end, see article 16 of Legislative decree 231/01, whereby: "*1. A permanent injunction may be ordered against exercising the business if the organisation obtained a significant benefit from the offence, and temporary injunctions had already been issued against the exercise of the business at least three times in the past seven years. 2. The court may apply a permanent injunction against the organisation from contracting with the public administration or advertising goods or services if the same sanction was applied against it at least three times in the past seven years. 3. If the organisation or its organisational unit is consistently used for the single or primary objective of permitting or facilitating the commission of crimes that it can be liable for, a permanent injunction against exercising its business is always applied, and the provisions of article 17 do not apply*".

of the Decree, appointing a commissioner to that end for a period equal to the duration of the injunction[55].

1.7. Attempts

If an attempt is made to commit the crimes subject to sanction under Legislative decree 231/01, the fines (in terms of amount) and the injunctive relief (in terms of duration) will be reduced by a third to a half.

The sanctions will not be imposed if the organisation voluntarily prevents the performance of the action or the realisation of the event (article 26 Legislative decree 231/01). In this case, the failure to impose sanctions is justified on the basis of the breaking off of all immediate relations between the organisation and the parties who purport to act in its name and on its behalf.

1.8. Changes in the organisation

Articles 28-33 of Legislative decree 231/01 govern the effect on the financial liability of the organisation of changes related to transformations, mergers, demergers or winding up of the company[56].

In the event of transformation (in accordance with its nature that implies a simple change in the type of company without extinguishing the original legal party), the organisation will stay liable for the offences committed before the date the transformation took effect (article 28 Legislative decree 231/01).

In the event of a merger, the resulting organisation (including for merger by incorporation) will be liable for the offences that the organisations taking part in the merger were liable for (article 29 of Legislative decree 231/01).

[55]Article 15 Legislative decree 231/01: "Legal commissioner – *If the conditions for application of injunctive relief applies which would cause the business activity of the organisation to be suspended, the judge, when applying the interim measure, will order the business activity of the organisation to be continued by a commissioner for a period equal to the duration of the injunctive relief being applied, if at least one of the following conditions are met: a) the organisation carries out a public service or a publicly necessary service where a temporary suspension could lead to serious harm to the general public; b) the temporary suspension of the business activities of the organisation could cause serious damage to local employment levels taking account of its size and the local economy. With the ruling allowing the business activity to be continued, the court will indicate the duties and powers of the commissioner, taking account of the specific unlawful activities that had been carried out by the organisation. Within the scope of the duties and powers indicated by the court, the commissioner will take charge of adopting and efficiently implementing organisation and control models that will be capable of preventing the types of offences that have occurred. The commissioner may not carry out actions of extraordinary administration without court authorisation. The benefits resulting from the continuation of the business activity will be confiscated. A commissioner may not be ordered to run the business activity if business has been suspended following application of a permanent injunction*".

[56]The law took account of two opposing requirements: on the one hand, the attempt to prevent these transactions from constituting an instrument to help the organisation from easily avoiding administrative liability, and on the other, not to penalise reorganisation efforts that do not intend to avoid this type of liability. The Explanatory report to the Decree states "*The main principle followed was to govern the types of fines in accordance with the standards set out by the Civil Code regarding the other general debts of the original organisation, while, conversely, maintaining the connection of the injunctive relief with the branch of the business in which the offence was committed*".

Article 30 of Legislative decree 231/01 provides that in the event of partial demerger, the spun-off company will be liable for the offences committed before the date the demerger took effect.

The beneficiaries of the demerger (both total and partial) will be jointly and severally liable to pay the monetary fines due from the spun-off company for the offences committed before the date the demerger took effect, to the limit of the actual value of the net worth transferred to the single organisation.

This limit does not apply to the beneficiary companies to which the branch of activity in which the offence was committed was devolved.

The injunctive relief relating to offences committed before the date the demerger took effect apply to organisations where the branch of activity in which the offence was committed remained or was transferred, only in part.

Article 31 of Legislative decree 231/01 sets out the common provisions relating to both mergers and demergers, regarding the decision of the sanctions if these extraordinary operations occur prior to conclusion of the finding. The judge must determine the fine in accordance with the criteria provided under article 11 paragraph 2 of Legislative decree 231/01[57], in any case referring to the economic and financial position of the organisation that was originally liable, and not to the position of the organisation to be sanctioned following the merger or demerger.

In the event of injunctive relief, the organisation who will be liable following a merger or demerger may ask the court for the conversion of the injunctive relief into a fine, on condition that: (i) the organisational negligence at the basis of the commission of the offence was eliminated, and (ii) the organisation has compensated for the damage and made any part of the advantage gained available (for the confiscation). Article 32 of Legislative decree 231/01 allows the court to take account of any convictions already made against the organisations forming part of the merger or the spun-off organisation for the purpose of the repeat offences, in accordance with article 20 of Legislative decree 231/01, in relation to the unlawful actions of the organisation resulting from the merger or the beneficiary of the demerger, with respect to the offences subsequently committed[58]. A single set of laws governs the sale and transfer

[57]Article 11 of Legislative decree 231/01: "Criteria for measuring the fine - *1. When measuring the fine, the court will determine the number of units, taking account of the seriousness of the event, the level of responsibility of the organisation and the activities carried out to eliminate or reduce the consequences of the event and prevent the commission of further unlawful actions. 2. The amount of the unit is set on the basis of the economic and capital situation of the organisation in order to ensure the effectiveness of the fine.*(…)".

[58]Article 32 of Legislative decree 231/01: "Relevance of the merger or demerger with respect to repeat offences - *1. In the event of the liability of an organisation formed through a merger or a beneficiary of the demerger for offences committed after the date that the merger or demerger took effect, the court may consider the repeat offence, in accordance with article 20, also in relation to the sentences made against the parties who took part in the merger or the spun-off company for offences committed prior to that date. 2. To that end, the court will take account of the nature of the breaches and the business activities in which they were committed, and the characteristics of the merger or demerger. 3. With respect to organisations who benefit from the demerger, in accordance with paragraphs 1 and 2, the repeat offence can only be considered, if the branch of the business in which the offence was committed for which a conviction was made against the spun-off*

of companies (article 33 of Legislative decree 231/01)[59]; in the case of the transfer of a company in which the offence was committed, the transferee will be jointly and severally obliged to pay the monetary fine imposed on the transferor, with the following limitations:

(i) this is subject to the right to enforce prior discussion by the transferor;

(ii) the liability of the transferee is limited to the value of the company transferred and the fines resulting from the obligatory accounts, or due for unlawful administrative actions that it was in any case aware of.

On the other hand, the injunctions imposed on the transferor will not extend to the transferee.

1.9. Offences committed abroad

The organisation may be liable in Italy for offences - as contemplated under Legislative decree 231/01 - committed abroad (article 4 Legislative decree 231/01)[60].

The assumptions on which the liability of the organisation for offences committed abroad are the following:

(i) the offence must be committed by a party who is functionally linked to the organisation in accordance with article 5, paragraph 1 of Legislative decree 231/01;

(ii) the organisation must have its main headquarters in Italy;

(iii) the organisation may only be liable in the cases and under the conditions provided by articles 7, 8, 9, 10 of the Criminal Code (in the cases where the law provides that the offender - natural person - will be punished upon request by the Ministry of justice, action will only be taken against the organisation if the request is

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organisation, was transferred to them, even in part.". The Explanatory report to Legislative decree 231/01 clarifies that "*However, in that case, the repeat offence will not operate automatically, but will be subject to the discretionary judgement of the court in accordance with the actual situation. With respect to the organisations that benefit from the demerger, this may also be found only when it regards an organisation to whom the branch of the business activity where the previous offence was committed was transferred, even in part*".

[59]Article 33 of Legislative decree 231/01: "Transfer of company. - *1. In the case of the transfer of a company in which the offence was committed, the transferee will be jointly and severally obliged, subject to the right to enforce prior discussion by the transferor, and within the limits of the value of the company, to pay the fine. 2. The obligation of the transferee will be limited to the fines resulting from the obligatory accounts, or due for unlawful administrative actions that it was in any case aware of. 3. The provisions of this article also apply in the case of the sale of a company*". See the Explanatory report to Legislative decree 231/01 where it states: "*It is understood that these transactions are also susceptible to being used to avoid liability: and however, the opposing need to protect the transfer and safety of the legal process is more meaningful than this since there is the possibility of the transfer of title that will maintain the identity (and liability) of the transferor or the transferee*".

[60]The Explanatory report to Legislative decree 231/01 underlines the need to sanction criminal situations that frequently occur, also in order to avoid easy evasion of the entire set of laws in question. Article 4 of Legislative decree 231/01 provides as follows: "*1. In the cases and under the conditions provided under articles 7, 8, 9 and 10 of the Criminal code, the organisations who have their main headquarters in the territory of the State will also be liable for offences committed abroad, provided that the State in which the action was committed does not bring charges against them. 2. Where the law provides that the offender will be punished upon request by the Ministry of Justice, action will be taken against the organisation only if the request is also formulated against the organisation.*"

also formulated against the organisation itself)[61] and, also in compliance with the principle of legality set out under article 2 of Legislative decree 231/01, only for offences where the liability is provided by a specific legislative provision;

(iv) if the cases and conditions pursuant to the above-mentioned Criminal Code articles are met, the State of the place where the offence was committed will not take action against the organisation.

1.10. Finding unlawful actions

Criminal proceedings are held to find liability for unlawful administrative actions resulting from offences. To that end, article 36 of Legislative decree 231/01 provides *“The competence to find an organisation liable for unlawful administrative actions will be entrusted to a criminal judge qualified to rule on the offences in question. Provisions regarding composition of the court and the procedures relating to the offences on which the unlawful administrative action depends must be complied with for proceedings to find unlawful administrative action”.*

On the basis of improving the effectiveness, standardisation and procedural economy, another rule is the compulsory joinder of proceedings: proceedings against the organisation must be joined, to the extent possible, to the criminal proceedings brought against the natural person who carried out the predicate offence for liability by the organisation (article 38 of Legislative decree 231/01). This rule is reconciled with the provisions of article 38, paragraph 2 of Legislative decree 231/01, which, on

[61]Article 7 Italian Criminal Code: “Offences committed abroad” - *Any citizen or foreigner who commits any of the following offences in a foreign country will be punished under Italian law: 1) crimes against the personality of the Italian State; 2) crimes involving the forging of the State seal and use of said forged seal; 3) crimes relating to counterfeit money in the State territory or Italian revenue stamps or legal tender; 4) crimes committed by public officials who are acting in the service of the State, abusing power or breaching duties relating to their jobs; 5) any other offence where special provisions of the law or international conventions establish that Italian criminal law shall apply”.* Article 8 Italian Criminal Code.: “Political crimes committed abroad - *Any citizen or foreigner who commits any political crime in a foreign country that is not included in those listed under number 1 of the previous article shall be punished under Italian law, upon request by the Ministry of Justice. If it is a crime that can be punished upon complaint by the injured party, a complaint will also have to be made. For the purposes of criminal law, any crime that offends a political interest of the State or a political right of a citizen is considered to be a political crime. A common crime that has been determined in whole or in part by political motives is also considered to be a political crime.*” Article 9 Italian Criminal Code.: “Common offence committed by a citizen abroad - *Apart from the cases indicated in the two articles above, if the citizen commits a crime abroad, for which Italian law has established a life sentence, or imprisonment of not less than a minimum of three years, the person shall be punished in accordance with that law, if the person is in the territory of the State. If the crime warrants a punishment that restricts personal liberty for a shorter time period, the offender shall be punished upon request by the Ministry of justice, or by filing a motion or a complaint by the injured party. In the cases provided for by the provisions above, if they regard a crime committed against the European Union, a foreign country or a foreigner, the offender shall be punished upon request by the Ministry of justice, if extradition has not been granted or has not been accepted by the government of the country where the crime was committed*”. Article 10 Italian Criminal Code.: “Common offence committed by a citizen abroad - *Apart from the cases indicated in articles 7 and 8, if a foreigner commits a crime abroad, against the country or a citizen, and for which crime Italian law has established a life sentence or imprisonment of not less than a minimum of one year, the person shall be punished in accordance with said law, if the person is in the territory of the State, and it has been requested by the Ministry of justice, or by filing a motion or a complaint by the injured party. In the crime is committed against the European Union, a foreign country or a foreigner, the offender shall be punished in accordance with Italian law, upon request by the Ministry of justice, provided that: 1) the person is in the territory of the State; 2) it is a crime that warrants a life sentence, or imprisonment of not less than a minimum of three years; 3) extradition has not been granted or has not been accepted by the government of the State where the crime was committed or that of the country to which the person belongs”.*

the other hand, governs cases in which proceedings are brought separately for unlawful administrative actions[62]. The organisation will be represented at the criminal proceedings by its legal representative unless this person is charged with the offence on which the unlawful administrative action depends; if the legal representative does not appear, the organisation will be represented by the defending party (article 39, paragraphs 1 and 4, of Legislative decree 231/01).

1.11. Codes of conduct drafted by the representative associations of the organisations

Article 6, paragraph 3, of Legislative decree 231/01 provides that "*Organisation and management models can be adopted, guaranteeing the requirements pursuant to paragraph 2, on the basis of codes of conduct drafted by representative associations of the organisations, communicated to the Ministry of Justice, who, in agreement with the applicable Ministries, may make observations on the suitability of the models to prevent offences, within thirty days".*

Confindustria has defined the "Guidelines to establish organisation, management and control models pursuant to Legislative decree 231/01", distributed on 7 March 2002, amended on 3 October 2002 with Appendices related to corporate offences (introduced into Legislative decree 231/01 with Legislative decree 61/2002), updated on 24 May 2004 and subsequently sent to the Ministry of Justice on 18 February 2008 for the adjustments aimed at providing instructions on the measures that could prevent the commission of new predicate offences relating to market abuse, female genital mutilation, cross-border organised crime, health and safety at the workplace and anti-money laundering (updated on 31 March 2008). On 2 April 2008, the Ministry of Justice gave notice of conclusion of the examination process of the new version of the "Confindustria guidelines for the construction of organisation, management and control models pursuant to Legislative decree 231/01" (hereinafter the "Confindustria guidelines").
The updates to the Confindustria guidelines were completed in March 2014. The new version adapts the previous 2008 text to new legislation, case law and standards created in the intervening time. The document was subject to inspection by the Ministry of Justice who gave its definitive approval on 21 July 2014.
The Confindustria guidelines provide, inter alia, methods on how to identify the risk areas (sector/activities where the offences could be committed), planning for a control system (the protocols to plan the training and implementation of the organisation's decisions), and the contents of the organisation, management and control model.

[62]Article 38, paragraph 2, Legislative Decree 231/01: "*Proceedings will be taken separately for the unlawful administrative action by the organisation only when: a) suspension of the proceedings has been ordered in accordance with article 71 of the Code of Criminal Procedure* [suspension of proceedings due to incapacity of the accused party, eds note]*; b) the proceedings were settled with a summary judgement or with application of the penalty in accordance with article 444 of the Code of Criminal Procedure* [application of penalty upon request, eds note]*, or the conviction was issued; c) compliance with the court proceedings make it necessary.*" In order to provide the complete picture, we also refer to article 37 of Legislative decree 231/01, whereby "*The organisation will not be liable for unlawful administrative action if the criminal action cannot be started or brought against the offender due to the lack of a prosecution condition*" (as set out under Title III of Book V of the Code of Criminal Procedure: action, application to begin proceedings, request for proceedings, or authorisation to proceed, pursuant to articles 336, 341, 342, 343 respectively of the Code of Criminal Procedure.).

More specifically, the Confindustria guidelines suggest that associated companies use *Risk Assessment* and *Risk management* processes, and provide for the following stages to define the model:

- identification of the risks and protocols;
- adoption of certain general instruments including the code of ethics with reference to the offences pursuant to Legislative decree 231/01 and a disciplinary system;
- identification of the criteria to choose the supervisory body, instructions on its requirements, duties and powers and the information obligations.

1.12. Control of suitability

The assessment carried out by the criminal court regarding the existence of the elements of administrative liability by the company concerns two profiles. On the one hand, assessment on commission of an offence that falls within the scope of application of the Decree, on the other, the “control of suitability” of any organisational model adopted by the company.

The control by the court regarding the theoretical suitability of the organisational model to prevent the offences described under Legislative decree 231/01 will be carried out in accordance with the criteria known as the “forecast after the fact”.

The assessment of suitability will be formulated in accordance with a criteria which is substantially after the fact, so the court will ideally be placed in the position of the company as it existed when the unlawful action occurred, in order to test the suitability of the Model adopted.

In other words, an organisational model will be considered to have been “suitable to prevent the offences” if, prior to committing the offence, it could be considered to have been capable of eliminating, or at least minimising, with reasonable certainty, the risk of committing the offence which subsequently occurred.