Banca Ifis

Organizational Management and Control Model pursuant to Legislative Decree no. 231/2001

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Summary

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1. General section

1.1. Introduction

Legislative Decree no. 231 of 8 June 2001 has introduced in Italy an independent and direct form of criminal liability of entities deriving from the commission of certain offenses in the interest or to the advantage of those entities by subjects included in their organizational structure, whether those subjects have apical roles or functions, or whether they serve subordinate roles or functions and are thereby subject to the supervision and direction of others.

This Legislative decision constituted an event that was in many ways revolutionary in the national legal context because it signified the overcoming of the dogmatic conviction, in force up to that point, according to which it was not possible to attribute criminal responsibility to a legal entity other than a natural person, given the impossibility of attributing the commission of any offense to a subject lacking will and a conscience.
With the evolution of economic and juridical relations and the ever-increasing complexity and articulation of the economic system as a whole, this rigid doctrinal approach, often expressed as *societas delinquere non potest*[1], and mired in constitutional provisions[2], revealed itself to be an obstacle to the structuring of a regulatory and repressive system suitable for forms of crime typical of corporate or business realities, perhaps not new, but certainly increasingly relevant.
Modern studies in criminology have shown that there are forms of illegality that are not attributable to the individual agent and that are, rather, attributable to autonomous business policy: consequently the recognition of an entity's corporate culture should bring with it the due recognition of the liability of a legal person. For example, the constant pressure toward achieving results, an essential factor in the development of any production reality, if not regulated or adequately made to reflect realistically (and lawfully) achievable goals, can become the mechanism through which an individual is induced by the company policies to commit crimes in the interest of the latter.
In this context, however, the entry of the criminal liability of entities into our legal system was the effect of fulfilling specific contractual obligations assumed by Italy in the international arena and in particular in the EU Assembly.
The introduction of a form of liability for legal persons was, in fact, an act imposed in Europe by the Brussels Convention, signed 26 July 1995 with the protocols signed 27 September and 29 November 1996, as well as by the Second Protocol on the protection of the financial interests of the European Communities signed on 27 June 1997 and, in the non-EU context, by the OECD Convention on

[1] In our legal system, the roots of this concept even seemed to be grafted onto the Constitutional Charter: Art. 27 of the Constitution, in consecrating the personality principle of criminal responsibility and the re-educational purpose of the sentence, has always been considered an insurmountable dogmatic obstacle to the provision of forms of criminal responsibility for legal persons.

[2] Art. 27 para. 1 of the Constitution of the Italian Republic: "Criminal responsibility is personal". On the subject, it is noted that "by virtue of the relationship of organic identification with its top manager, the entity responds on its own, without involving the constitutional principle of the prohibition of criminal liability for the acts of others (Article 27 of the Constitution). Nor does Legislative Decree no. 231 outline a hypothesis of objective liability, providing, instead, the need for the so-called "organizational culpability" of the entity, that is, not having prepared a set of preventive measures suitable for avoiding the commission of crimes of the type that has been committed; the finding of such an organizational deficit allows a full and easy attribution to the entity of the criminal offense committed in its operational context "(Cass. n. 27735 of July 16, 2010).

Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on 17 December 1997[3].

1.2. The legal nature of the liability of entities pursuant to Legislative Decree no. 231/2001

The liability introduced by Legislative Decree no. 231/2001 presents its own characteristics belonging to both administrative and penal disciplines.

In addition to *nomen iuris*, which defines the liability of the entity as administrative, the rules governing the statute of limitations on the unlawful act alleged against the institution belong to the sphere of administrative law, providing for an autonomous five-year term to be suspended for the entire duration of the proceedings and attributable to the model of administrative offenses, contained in Law no. 689/81.

Likewise, the regulations for the transformation of entities provide for the transfer of responsibility from the original body to the body(ies) resulting from a transformation, merger and/or spin off event. This is because the financial liability of the company under which the offenses were committed is completely independent and separate from the corporate events subsequent to the commitment of the offense. Furthermore, the lack of the provision within the context of Legislative Decree no. 231/2001 of a conditional suspension of the sentence, which is a characteristic of the criminal sanction system, has been interpreted as a further indicator of the administrative nature of the liability as introduced by the provision in question.

Several provisions of Legislative Decree no. 231/2001 are, however, purely criminal in nature [4]. First of all, the decree examines the factual identity of the criminal offense and of the offense on which the crime depends, the frame of which is taken from what is regarded as the most authoritative doctrine by the institution complicit with persons involved in the offense, and which includes both the conduct of the natural person who materially committed the offense, and that of the legal person connected to him or her through the criteria of interest and advantage. Furthermore, the jurisdiction for "231" offenses is criminal. Naturally, the Public Prosecutor is qualified to carry out investigations concerning the liability of the entity whose "name" is entered in a designated register of (legal) persons subject to investigation, which is kept and updated by the offices of the Public Prosecutor's Office; in the event that the procedure passes the preliminary investigations stage, the liability of the entity is ascertained by the criminal Judge whose jurisdiction remains even if a ruling is ordered not to proceed against the natural person or in the event that the offender is not identified[5].

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[3] International sources, however, have not provided information regarding the formalities of ascertaining the liability of legal persons but have limited themselves to requesting the introduction of provisions within the legal systems involved for crimes committed on behalf of companies; this in order to avoid potential distortions of the competition rules specific to the single market.

[4] The following also suggest the criminal nature of the liability ex D. Lgs. 231/01: i) the regime of criminality of the attempt (art. 26), ii) the principle of succession of laws over time and the provision of retroactivity of the most favourable rule (art. 3), iii) the extraterritorial importance attached to the institution's wrongdoing (art. 4).

[5] With regard to the choice of the criminal jurisdiction, the Ministerial Report to Legislative Decree 231/01 clarifies that the reason for this intervention is twofold and derives from the need to combine the demands of effectiveness and of assurance of the entire system. In fact, the insufficiency of the investigative powers granted to the public administration in the procedural model outlined in Law no. 689/1981 with respect to the verification needs that arise within the liability system of entities has been noted. Since the criminal offense is one of the prerequisites for liability, it is necessary to have all the necessary means of ascertainment that are provided for in criminal proceedings, and which are far more incisive and penetrating than the arsenal of investigative powers provided for by Law 689/1981. Conversely, the administrative criminal nature of the offenses of the entity, documented by the applicability of penetrating disqualification sanctions deriving from the criminal armamentarium and by the very proximity to the crime, makes it necessary to prefigure a system of assurances much more effective than that, notably inadequate, of Law no. 689/1981. Consequently, it was decided to substantially equate the entity to the accused, so as to put the former in the condition of being able to benefit from all the assurances due to the latter.

The ministerial report to Legislative Decree no. 231/2001 specified that this provision has given rise to a *tertium genus*[6] of liability which: "combines the essential features of the criminal and administrative systems in an attempt to reconcile the reasons for preventive effectiveness with those, even more unavoidable, of the maximum guarantee" and therefore structured an autonomous discipline in which elements of the criminal and administrative systems coexist[7].

1.3. Scope (art. 1)

Article 1 of Legislative Decree no. 231/2001 outlines the subjective scope of criminal/administrative liability deriving from a crime.

Paragraph 1 of article 1 implements the more general concept of "entity" as opposed to the more specific "legal person", indicating the intention of the Legislation to extend the liability introduced by the decree in question even to entities devoid of legal status. In the framework of the decree, the decision was made to encompass a broad range of recipients which, regardless of their formal legal framework, are endowed with a distinct level of autonomy from the natural persons who make up their structure.

Entities with legal status are expressly included among the recipients of the regulations defined by Legislative Decree no. 231/2001. Among these entities are:

- Joint stock companies or partnerships;
- Associations and Foundations (including Onlus);
- Credit and Insurance institutions[8];
- Public sector financial entities, companies and associations, including those without legal status, such as: a) ATI, b) De facto companies, c) Companies between professionals, d) Single-member companies and Limited Liability Companies with a single shareholder;
- Publicly owned companies, local health authorities and hospital and health organizations [9];
- Ecclesiastical Entities with legal status, Cooperatives and Committees without legal status (according to doctrine).

Excluded from the list of recipients are:

- State and local public Entities;
- Parties and Trade Unions as Entities of constitutional relevance;

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[6] The Court of Cassation, sect. VI Pen. in the passage of sentence no. 27735 of 16 July 2010: "The d. lgs. n. 231/01 introduced a tertium genus of liability with respect to traditional systems of criminal liability and administrative liability, providing for an autonomous administrative liability of the entity in the event of the commission, in its interest or to its advantage, of one of the crimes expressly listed in Section 3 by a person who holds a top position, on the assumption that the crime is committed by the company, for which it must respond".

[7] This interpretation was subsequently endorsed by the majority jurisprudence and by the United Sections of the Supreme Court in the decision relating to the accident that took place in the Thyssen Kroup factory in Turin (Criminal Court. SS.UU. 05.03.2014). The Supreme College has formed jurisprudential guidelines on the subject over the years, noting that: (i) according to a first approach, the entity's responsibility for a crime would have an administrative nature (ex multis, Cassation, SS.UU., sentence 34476 of 23.01.2011); (ii) by virtue of a second orientation (Cassation, SS.UU. sent. n. 26654 of 27.03.2008), this responsibility should, however, be recognized as being of a criminal nature, as Legislative Decree 231/2001 "Introduced into our legal system a specific and innovative punitive system for collective bodies, equipped with specific rules regarding the structure of the offense, the sanctioning system, the financial responsibility, the changes in the body, the cognition procedure and the of execution […]"; (iii) finally, a third line of jurisprudence (Cassation, Section VI, ruling no. 27735 of 18.02.2010) held that Legislative Decree 231/2001 introduced a "*tertium genus*" of responsibility, providing for an autonomous liability of the entity in the event of the commission, in its interest or to its advantage, of one of the predicate offenses by a person holding a top position. That said, the Supreme College has decided to adhere to the last thesis presented, considering the system provided for by Legislative Decree 231/2001 as a normative "*corpus*" of particular importance, a "*tertium genus*" that combines the features of the criminal and administrative legal systems.

[8] Among the recipients of the regulations laid down by Legislative Decree 231/2001 are stockbroking companies, asset management companies, investment companies for which some exceptions are provided due to the need for coordination with banking legislation, in particular regarding the precautionary phase of the procedure and relations with the Bank of Italy during the Preliminary Investigations phase.

[9] These are entities which, while exercising a public service, maintain entrepreneurial autonomy and a corporate structure focused on respecting the criterion of economy in pursuing activity. It should be noted that the inclusion of ASL and ASO among the recipients of the regulations relating to the administrative liability of entities is the subject of discussion in the doctrine and that it was originally excluded from the Ministerial Report to the decree. Nevertheless many of these subjects have of Organizational Models compliant with Legislative Decree no. 231/2001.

- Non-economic public Entities, such as Ministries, Prefectures, Courts, Superintendencies, CNR, INPS, INAIL, ISTAT, CONSOB, ISVAP;
- Entities without legal status such as ecclesiastical Entities without legal status, Landlordships, family businesses, Equity funds, Trusts.

1.4. The principle of legality (art. 2)

Article 2 of Legislative Decree no. 231/2001, according to which "*The entity cannot be held responsible for an act constituting a crime if its administrative responsibility in relation to that crime and the related sanctions are not expressly provided for by a law that had been enacted before the commission of the act,*" contains wording almost identical to that of article 1 of the Criminal Code, which expressly refers to the principle of legality, by virtue of which the recipient body of the discipline "231/2001" cannot be held responsible if the figure of the alleged crime and the related sanctions are not indicated in the list of crimes provided for by the Decree (in arts. 24 and 25) or in any case provided for in a specific regulation that had been enacted before the commission of the act.
The catalog of predicate offenses contained in articles 24 and 25 of the Decree is now significantly more extensive than on the date the law was first enacted. It currently includes the following criminal offenses:

- Misappropriation of funds, fraud to the detriment of the State, a public entity or the European Union, or for the attainment of public funds, cyber fraud to the detriment of the State or a public entity and fraud in public supplies (art. 24 Legislative Decree no. 231/2001) [article modified by Legislative Decree no. 75 of 14 July 2020];
- Computer crimes and unlawful data processing (Article 24(2) of Legislative Decree no. 231/2001) [article added by Law no. 48/2008; amended by Legislative Decree no.7 and 8/2016 updated to the Conversion law no. 133 of 18.11.2019];
- Organized crime offenses[10] (Art. 24(3) Legislative Decree n. 231/2001) [article added by Law no. 94/2009, amended by Law 69/2015 and subsequently by Law 236/2016];
- Embezzlement, extortion, undue incentive to offer or promise benefits, corruption and abuse of office (Article 25 of Legislative Decree no. 231/2001) [article amended by Law no. 190/2012 and by Law no. 3 of 9 January 2019 and amended by Legislative Decree no. 75 of 14 July 2020];
- Counterfeiting of coins, public credit cards, revenue stamps and identification instruments or tokens (Article 25(2) of Legislative Decree No. 231/2001) [article added by Legislative Decree n. 350/2001, converted with amendments by Law no. 409/2001; modified by Law no. 99/2009; amended by Legislative Decree no. 125/2016];
- Crimes against industry and trade (Article 25-(2)(1) of Legislative Decree 231/2001) [article added by Law no. 99/2009];
- Corporate offenses (Article 25(3) of Legislative Decree 231/2001) [article added by Legislative Decree no. 61/2002, amended by Law no. 190/2012, by Law 69/2015 and subsequently by Legislative Decree no. 38/2017];

[10] The introduction of associative crimes among the potential cases "231/01" means that the legal person can be held liable in the event of the commission of an offense of criminal association by apical subjects or subordinates in its interest or to its advantage regardless of whether the specific crime to which the act is tied is among the list referred to in Articles 24 and 25 of the same Legislative Decree 231/2001. Through criminal association, crimes other than those listed can therefore filter into the administrative liability of the entities, which presents possible delicacies in the mapping of risks having regard to the typical activities of the company.

- Crimes in support of terrorism or subversion of the democratic order provided for by the criminal code and special laws (Article 25(4) of Legislative Decree no. 231/2001) [article added by Law no. 7/2003];
- Practices of mutilation of female genital organs (art. 583-bis of the criminal code) (art. 25(4)(1) of Legislative Decree no. 231/2001) [article added by Law no. 7/2006];
- Crimes against the individual (Article 25(5) of Legislative Decree 231/2001) [article added by Law no. 228/2003; modified by Law no. 199/2016 and subsequently by Law no. 236/2016 and then again by Law no. 110 of 14 July 2017];
- Crimes of market abuse (Article 25(6) of Legislative Decree no. 231/2001) [article added by Law no. 62/2005]
- Crimes of manslaughter and of negligence resulting in serious or grievous personal injuries, committed in violation of accident prevention regulations and the protection of health and sanitation in the workplace (Article 25(7) of Legislative Decree No. 231/2001) [article added by L. no. 123/2007];
- Receipt, laundering and use of money, goods or benefits of illegitimate origin, as well as self-laundering (Article 25(8) of Legislative Decree no. 231/2001) [article added by Legislative Decree no. 231/2007; modified by Law no. 186/2014];
- Crimes pertaining to copyright violation (Article 25(9) of Legislative Decree no. 231/2001) [article added by Law no. 99/2009];
- Inducement to withhold statements or to make false statements to the judicial authority (Article 25(10) of Legislative Decree no. 231/2001) [article added by Law no. 116/2009];
- Environmental offenses (Article 25(11) of Legislative Decree No. 231/2001) [article added by Legislative Decree No. 121/2011, amended by Law no. 68/2015];
- Employment of third-country nationals with irregular status (Article 25(12) of Legislative Decree No. 231/2001) [article added by Legislative Decree No. 109/2012];
- Racism and xenophobia (Article 25(13) of Legislative Decree no. 231/2001) - [article added by Law 167 of 20 November 2017 for the complete implementation of the framework decision 2008/913 / GAI-Justice and home affairs];
- Fraud in sports competitions, illegal gambling or betting and gambling carried out by means of prohibited devices (Article 25(14) of Legislative Decree No. 231/2001) [article added by Article 5 of the Law no. 39 of 03 May 2019];
- Tax offenses (Article 25(15) of Legislative Decree 231/2001) [Article added by Legislative Decree n. 124 of 26 October 2019 coordinated with Conversion Law No. 157 of 19 December 2019 and amended by Legislative Decree No. 75 of 14 July 2020];
- Smuggling of contraband (Article 25(16) of Legislative Decree no. 231/2001) [Article added by Legislative Decree no. 75 of 14 July 2020];
- Inchoate offenses (Article 26 of Legislative Decree no. 231/2001);
- Liability of entities for administrative offenses dependent on a crime (Article 12, Law no. 9/2013) [for entities operating in the virgin olive oil supply chain]
- Transnational crimes (Law no. 146/2006 amended by Law no. 236/2016).

1.5. System of sanctions (arts. 10-23)

The following are provided for by Legislative Decree no. 231/2001 against the company as a result of the commission or attempted commission of the crimes mentioned above:

- pecuniary sanction up to a maximum of Euro 1,549,370.69 (and precautionary seizure of assets)[11]. The pecuniary sanction is determined by the criminal judge through a system based on "quotas" and is of a number of not less than one hundred and not more than one thousand and of an amount ranging from a minimum of Euro 258.22 to a maximum of Euro 1,549.37. In the commensuration of the pecuniary sanction the judge determines:
  - the number of quotas, taking into account the gravity of the act, the degree of responsibility of the company as well as the activity carried out in order to eliminate or mitigate the consequences of the act and to prevent the commission of further offenses;
  - the amount of the single quota, based on the company's economic and financial conditions.
- disqualification sanctions (also applicable as a precautionary measure) lasting no less than three months and no more than two years (it being understood that, pursuant to art. 14, para. 1 of Legislative Decree no. 231/2001, "*Disqualification sanctions relate to the specific activity to which the offense of the entity refers*") which, in turn, may consist of:
  - disqualification from the exercise of business activity;
  - suspension or revocation of authorizations, licenses or concessions functional to the commission of the offense;
  - prohibition of entering into public sector contracts;
  - exclusion from benefits, loans, grants or subsidies and the possible revocation of those granted;
  - prohibition of advertising goods or services;
  - confiscation of the profit of the crime (and preventive seizure as a precautionary measure);
  - publication of the sentence (in case of application of a disqualification sanction).

Disqualification sanctions are applicable only in response to the crimes for which they are expressly provided, subject to one of the following conditions:

- the company has derived a significant profit from the commission of the offense and the offense was committed by persons in apical positions or by persons subject to the management of others when, in the latter case, the commission of the offense was influenced or facilitated by serious organizational deficiencies;
- in cases of repeated offense.

The judge determines the type and duration of the disqualification sanction, taking into account the suitability of the individual sanctions to the prevention of further offenses of the type committed and, if necessary, may apply them jointly (art. 14, paras. 1 and 3, Legislative Decree no. 231/2001).
In the most serious cases the sanctions of disqualification from exercising the activity, prohibition of entering into public sector contracts and the prohibition of advertising goods or services may be applied definitively. It should also be noted that, in place of the imposition of the sanction, continuation of the

[11] The provision is pursuant to article 25(6), paragraph 2, of Legislative Decree no. 231/2001 in the field of market abuse, according to which: "If following the commission of the crimes referred to in paragraph 1 (market abuse ed.), The product or profit obtained by the entity is of considerable significance, then the penalty is increased up to ten times this product or profit ". The sanction in this way, in addition to being remitted to a greater degree to the discretion of the Judge, can reach very high levels, and moreover, go to cumulate with the confiscation of the profit.
It should also be noted that in the event of the commission of tax offenses included in the Catalog of predicate offenses in art. 25(15) of Legislative Decree no. 231/2001, the legislation provides that if, following the commission of one of these crimes, the entity has achieved a significant profit, the pecuniary sanction is increased by one third.

company's business by a commissioner appointed by the judge pursuant to and under the conditions set out in article 15 of Legislative Decree no. 231/2001 is possible.
Where commission of the offense is hypothetical, in the form of an attempt, and the crime is relevant to the administrative liability of entities, the pecuniary sanctions (in terms of amount) and disqualification sanctions (in terms of time) are reduced by one third to one half. The imposition of sanctions is excluded in cases in which the entity voluntarily prevents the act or the event from being carried out (art. 26 of Legislative Decree no. 231/2001). The exclusion of sanctions is justified, in this case, by virtue of the interruption of any relationship of affiliation between the entity and subjects assuming to act in its name and on its behalf. This is a particular supposition of the so-called "Active withdrawal", provided for by article 56, paragraph 4, Criminal Code 43.

1.6. Principle of non-retroactivity (art. 3)

The first paragraph of article 3 of Legislative Decree no. 231/2001 provides that: "The entity cannot be held responsible for an act that, according to a subsequent law, no longer constitutes a crime or in relation to which the administrative liability of the entity is no longer provided for, and, if there has been a conviction, its execution and legal effects cease. " In this case the Decree incorporates a basic principle set by the Criminal Code in the context of the temporal effectiveness of punitive rules, by virtue of which a legal entity cannot be subjected to an administrative sanction:

- when the offense is no longer provided for by law as an offense;
- when a crime is no longer included in the list of predicate offenses provided for by the Decree. In this case, if a definitive sentence has been passed, its execution and all legal effects cease.

The second paragraph of article 3 applies the penal principle of "*favor rei*" and provides that: "*if the law of the time in which the offense was committed and those subsequent are different, the law whose provisions are more favorable is applied, unless an irrevocable ruling has been made*." Therefore, in the case of a succession of laws over time, the most favorable law to the entity must be applied, with the sole limit of the final judgment of the sentence.
Finally, the third paragraph excludes the applicability of the rules referred to in the first two paragraphs in the case of exceptional and temporary laws.

1.7. Principle of territoriality (art. 4)

Article 4 of the Decree provides that the rules pertaining to administrative responsibility are applicable to all entities headquartered in the territory of the state, even if the offense was committed outside of the territory. In the case of a crime committed abroad, the jurisdiction of the Italian judge is established by applying the criteria set for individuals by articles 7-10 of the Criminal Code. It does not operate, however, if the foreign State in whose territory the crime was committed is obliged to proceed against the entity.
Italian jurisdiction exists even where only a portion of the criminal conduct has been committed in Italy. In the not infrequent event that predicate offenses are committed in Italy by foreign entities, precedent has repeatedly affirmed the jurisdiction of the Italian judge, regardless of whether the foreign entity is headquartered in the national territory. Case law of merit and legitimacy has pointed out that the exemption of foreign entities from the application of administrative liability pursuant to Legislative

Decree no. 231/2001 would create an unacceptable disparity in treatment among subjects acting within the Italian economic and social system[12].
Entities headquartered in the Italian territory, therefore, will answer for crimes committed in Italy in their interest or to their advantage as required by article 6 of the Decree (to be discussed below) and for crimes committed abroad, within the limits set by article 4 of the same. Namely, the entities that have their headquarters abroad will not be liable if the crime is committed entirely abroad. If, however, the crime is committed in their interest or to their advantage even in part in the Italian territory, the Italian jurisdiction and the regulation of Legislative Decree no. 231/2001 applies.
In brief, in the event of a crime committed abroad, the regulations set by the Decree apply when:

- the offense is committed abroad by a person functionally linked to the entity, pursuant to article 5, paragraph 1, of Legislative Decree no. 231/2001;
- the entity has its main office in the territory of the Italian State;
- the entity can answer only in the cases and under the conditions provided for by articles 7, 8, 9 and 10 of the criminal code (in cases where the law provides that the guilty party - a natural person - is punished at the request of the Minister of Justice, proceedings are brought against the entity only if the request is also formulated against the entity itself);
- the cases and conditions referred to in the aforementioned articles of the criminal code exist, and the State of the place where the crime was committed does not proceed against the entity.

1.8. Criteria for the objective imputation of liability (art.5)

The liability of Entities introduced with Legislative Decree no. 231/2001 is based on the commission of a predicate offense in the interest or to the advantage of the Entity by a physical person included in its organization or company structure.
Specifically, article 5 provides that:
"The entity is responsible for crimes committed in its interest or to its advantage:
a) by persons who hold representative, administrative or management offices of the entity or one of its organizational units with financial and functional autonomy as well as by persons who exercise, even de facto, the management and control of the same;
b) by persons subject to the management or supervision of one of the subjects referred to in letter a).
2. The entity is not liable if the persons indicated in paragraph 1 have acted in their own exclusive interest or in that of third parties".

1.8.1. Subordinate or apical subjects

The organic relationship between the subject acting materially and the entity is the logical and legal basis that supports the overall structure of the Decree. The Entity, as a center of interests that has given opportunity and origin to the offense, will therefore have to answer for the crimes committed by:

- apical subjects who, according to the definition referred to in letter a) of the aforementioned regulation, have functions of representation, administration or management of the entity or one

[12] In the context of the judicial proceedings relating to the Viareggio railway disaster, the Court of Appeal of Florence specified how the exemption of foreign entities without headquarters in Italy from the application of administrative liability introduced by Legislative Decree 231/2001 "would create unacceptable unequal treatment compared to companies carrying out the same activity perhaps also abroad but having a registered office or branch in Italy, because they would always be excluded from judicial control and severe sanctioning treatment, to which the latter would always be subject "(See Court of Appeal of Florence, section III, 16.12.2019, conf. Court of Lucca 31.7.2017.)

of its organizational units that are financially and functionally autonomous, or who manage and control the entity, even de facto;

- subordinate subjects, subject to the management and supervision of apical subjects.

In attributing responsibility to the Entity, as per the mechanisms laid out in the Decree, the distinction between apical and subordinate subjects is fundamental, because, particularly with regard to the distribution of the burden of proof between prosecution and defense, the guidelines corresponding to each category of subject are markedly different.

Regarding apical subjects, irrespective of the titles attributed to the individual, the Legislation favors a practical type of categorization reliant upon whether the subject takes part in the formulation of the will of the entity and the definition of company policy, it being understood that the senior functions must in any case be traced back to the three activities indicated by the law, i.e., representation, administration or management.

Representative personnel are to be considered apical subjects, while the representatives identified by virtue of certain acts of special or even general proxy should be ascribed to the category of subordinate subjects, as they are bound to reporting obligations, more compatible with the position of those who are subject to the direction and supervision of others.

Among those who perform administrative functions are included the members of the Board of Directors and all those who hold governance and management roles in the entity, regardless of the exercise of executive powers; they are, therefore, to be included in the “apical” category, as are non-executive directors and those without proxies, as well as independent directors and those linked to the entity by an employment relationship.

The duties of management mainly relate to the figure of general managers who, despite being employees of the entity and not bodies of it, are of central operational importance with which extremely broad decision-making powers necessarily coincide.

Apical subjects also include those who perform the aforementioned functions in the context of an organizational unit with financial autonomy. Consider, for example, branch managers who, although subject to the management of the headquarters and to a certain level of control, are nevertheless vested with decision-making powers not unlike those of general managers. Essentially, it can be said that significant financial and functional autonomy in the management of an organizational unit corresponds to an apical role which, in any case, must always be the subject of an assessment in the given case[13].

In addition, the decree explicitly provides for the equivalence between formal qualifications and factual situations, thus including the subjective positions that, in practice, carry out management and control activities in the category of the apical subjects. In line with the aforementioned factual approach, a person who is able to determine general strategies and concrete operational conduct, exercising pervasive authority over the same, can be considered an apical subject of an entity. The matter of de facto control may be constituted by interventions of a non-episodic nature such as to configure continuous management of the company according to the scheme outlined by article 2639 of the Italian Civil Code [14].

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[13] Nothing about the system of delegation of functions is written in The Decree. It will therefore be necessary to verify in the specific case which powers are the object of the delegation and, where the delegated party is in fact called upon to exercise powers typical of an apical position, he may be qualified as such, even where certain powers remain in the hands of the delegating party.

[14] Art. 2639 of the Italian Civil Code, c.1: "For the offenses provided for in this title, the person formally vested with the qualification or the holder of the function provided for by the civil law is equivalent to both those who are required to perform the same function, otherwise qualified, and those who perform the typical powers inherent to the qualification or function on an ongoing and significant basis.”

Excluded from the category of apical subjects for the purposes of Legislative Decree no. 231/2001 are the statutory auditors and persons who exclusively perform control and/or supervisory functions, or those who do not have managerial powers, such as members of the supervisory body.

With regard to the category of subordinate subjects, the Legislation extends to the personnel subject to supervision and management by others the discipline for assigning administrative and criminal liability to the entity for crimes committed in its interest by individuals. This extension responds to the need to avoid evasive liability mechanisms implemented by the Entity (by those who govern it) by taking advantage of the division and fragmentation of roles and functions typical of complex organizations that are increasingly characterized by a significative articulation of structures.
The classification and typing of subordinate subjects is not always easy. The interpreters oscillate between one reading of the rule that restricts this category only to those who are in a stable relationship of subordination with the institution and are classified as such in the organization chart, and another that claims that subordination as relevant for the purposes of article 5 of the Decree is of a more substantial nature, and should include all those who perform a specific task under the direction and control of apical subjects of the entity with effects on its legal sphere. According to this interpretation of the rule, external collaborators, consultants, commercial and distribution employees such as agents and dealers should be considered as subordinates.
In case law, the extensive thesis which favors the substantive reading of the law prevails: the conditions for the application of precautionary measures, for example, have been considered valid also with respect to actions taken by subjects unrelated to the corporate organization chart, as in the case of consultants[15].
A practical context for the distinction between apical and subordinate subjects is in the area of work safety, where employer and the managers whose powers, although they are the concretization of directives of the employer, are expressed in the autonomous activity of work organization and in stringent powers of control, fall into the category of apical subjects. Conversely, the persons in charge who have mere supervisory powers over their subordinates, but who do not serve organizational and managerial functions, are classified as subordinates. The category of subordinates also includes the competent doctor and the head of the prevention and protection service: the latter in fact functions as a mere consultant to the employer and has no decision-making autonomy.

1.8.2. Interest or advantage

As seen, article 5 of the Decree puts forth an objective principle for attributing criminal-administrative liability to the entity as regards criminal conduct carried out in its interest or to its advantage. The Ministerial Report as well as the prevailing case law, in adherence to the letter of the law, attribute to the term "*in the interest or to the advantage*" a separate and alternative efficacy to each of the two concepts for the purpose of assigning liability to the entity.
The criterion of interest therefore relates to the (intended) purpose of the criminal action, typically the undue enrichment of the entity which may or may not materialize, while the criterion of advantage is valued in objective terms and is identified with the effects perceived by the entity as a consequence of the crime. Obviously, if the advantage can only be verified ex post, interest must be factored into an evaluation of the ex ante conduct, i.e., having regard to the time of the commission of the crime, making

[15] See Court of Milan, 28.10.2004. Siemens

an analytical projection as to the advantage that the entity may achieve (as a consequence of unlawful conduct).
The case law dating back has already pointed out that "the normative expression (interest or advantage ed.) does not contain a hendiadys, because the terms refer to legally different concepts, being able to distinguish an upstream interest for the purpose of undue enrichment, prefigured and perhaps not realized, as a result of an offense, from an advantage objectively obtained with the commission of the crime, even if not envisaged ex ante, so that interest and advantage are actually in competition" [16].
According to case law, interest and advantage are competing and alternative criteria. Therefore, in order to establish the criminal-administrative liability of the entity, it is sufficient to ascertain the occurrence of only one of the two
There is also a different reading of the term interest or advantage that does consider the expression as a hendiadys which, in reality, would convey a unitary meaning through the use of two synonyms; it has been noted that such an interpretation of the rule, although proposed by authoritative doctrine, has not been successful in application. On this point the United Sections expressed themselves in the aforementioned decision on the Thyssenkrupp case, pointing out that "*the criteria of interest and advantage are alternative and concurrent with each other, as the criterion of interest expresses a teleological evaluation of the crime (...) while that of the advantage has an essentially objective connotation, and as such can be evaluated ex post, on the basis of the effects concretely derived from the commission of the offense*"[17]
As detailed in the section of this organizational model dedicated to workplace safety and environmental crimes, it is anticipated that the criteria for attributing interest and advantage pose some problems of interpretation in application to those predicate offenses punished by way of culpability. It has been found, in fact, that there is difficulty in logically reconciling the aforementioned criteria for attributing responsibility to the entity with the occurrence of harmful events, such as injuries or manslaughter, that happen as the result of violation of accident prevention regulations, given that in no case can such events be motivated by an interest or procure any advantage to the entity within whose structure they occur. In such situations, in fact, the entity suffers inevitable economic and reputational damage.
On this point, case law has demonstrated that the criteria for attributing responsibility to the entity - interest and advantage – when applied to the culpable crimes in question, must refer to the conduct and not to the unfortunate event that the agent did not want and is certainly neither in the interest of the agent nor of the entity in which it operates. In culpable crimes, the criteria of an interest of or an advantage to the entity can be met when the individual has acted in violation of the precautionary rules in the area of safety, for example to: i) avoid costs to the entity related to the provision of appropriate accident prevention measures, ii) accelerate work times and increase productivity, iii) save on employee training and, in general, implement a company policy aimed at saving costs related to safety.
On this point, the aforementioned Thyssenkrupp ruling specified that "*the concepts of interest and advantage, in culpable event offenses, must necessarily refer to the conduct and not to the unlawful outcome (...) this solution does not cause any logical difficulties: it is quite possible that conduct characterized by the violation of the precautionary regulations and therefore negligent is put in place in the interest of the entity or in any case determines the achievement of an advantage. (...) If this solution does not present inconsistencies, it is quite possible that the agent knowingly violates caution, or even foresees the event that may arise, even without wanting it to, to coincide with the functional demands of the*

[16] See. Cass. Pen. Sez. II, 30.11.2006 n. 3615, Jolly Mediterraneo S.r.l.
[17] See Cass. Pen. SS.UU. 24.4.2014, no. 38343, Thyssenkrupp

institution's strategies. A fortiori there is perfect compatibility between non-compliance with the precautionary measures and an advantageous outcome for the entity ".
This positioning marked the subsequent rulings of the Supreme Court, which, in a recent decision, stated that: "*the criteria of objective imputation represented by interest and advantage, both to be referred to the conduct of the agent and not to the event, occur when the offender has violated the precautionary regulations with the conscious intent of achieving cost savings for the entity, regardless of its actual achievement, or if he has systematically violated the accident prevention regulations, objectively obtaining some advantage for the entity, under a form of cost savings or production maximization, regardless of the desire to obtain the advantage himself*"[18].

1.8.3. Exclusive interest of the agent

The second paragraph of article 5 of the Decree specifies that the liability of the entity is excluded in the event that the subjects identified in the first paragraph, the apical subjects and subordinates, have acted in their exclusive interest or in that of third parties[19].
The rule pertains to the hypothetical situation in which the offense is in no way attributable to the entity, since not even a marginal interest to the entity can be identified, the relationship of organic identification ceases and, with it, the possibility or reason to transfer to the entity a reproach that traces back to the conduct of the agent.
This provision relates only to the notion of interest and not to that of advantage, from which it follows that the liability of the entity is excluded regardless of whether or not it profits from the conduct of the individual, as this increase in assets is entirely fortuitous and therefore not attributable to the will of the entity.

1.9. Criteria for the subjective imputation of liability (arts. 6 and 7)

Articles 6 and 7 of the Decree govern the criteria for attributing criminal conduct to the entity based on an assessment of its liability for the conduct of its employees or collaborators. According to the framework defined by the Decree, the offense is attributable to the entity when the entity has failed to implement and disseminate a corporate or business culture founded in legality and has failed to adopt an organizational structure supported by an adequate control system. In general, in the system outlined by Legislative Decree no. 231/2001, the liability of the entity derives from the occurrence of a crime

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[18] Cass. Pen. section IV, 21.3.2019, no. 28097

[19] The Explanatory Report to Legislative Decree 231/2001, in the part relating to art. 5, paragraph 2, Legislative Decree 231/2001, states: "The second paragraph of article 5 of the scheme is based on letter e) the termination clause of the delegation and excludes the liability of the entity when natural persons (whether they are top managers or subordinates) have acted in their own exclusive interest or that of third parties. The norm stigmatizes the case of "breaking" of the scheme of organic identification; that is, it refers to the hypothesis in which the offense of the natural person is in no way attributable to the entity because it was not carried out even in part in its interest. And it should be noted that, where the obvious extraneousness of the moral person is found in this way, the judge will not even have to verify whether the moral person has by chance gained an advantage (the provision therefore operates in derogation of the first paragraph). "
The Assonime Circular 5/19 states that: The administrative liability of entities, cit., 5, states the following: "The wording of the aforementioned paragraph 1 of art. 5 (presence of the disjunctive preposition "o") therefore seems to allow the entities to be held responsible either when, despite having acted for this purpose, a benefit has not been given to the entity, or when, despite not having acted for this purpose, the institution benefits. However, the law adds that the "entity is not liable if people (...) acted in their own exclusive interest or that of third parties" (Article 5, paragraph 2). The two provisions are not easy to coordinate. The Explanatory Report seems to clarify that the entity that derives an "advantage" from a crime that was not committed to pursue the interest of the entity itself, may not be sanctioned according to the rules of Legislative Decree no. 231. The exclusivity of the interest held by the person who committed the crime would make, in fact, irrelevant, for the purposes of applying the sanction, any advantage obtained as a result of the entity. The entity is therefore responsible: a) when those who committed the crime acted to favor the entity itself, even if the entity did not derive any advantage from the criminal conduct; b) when he has in any case received an advantage from the commission of the crime, unless it is possible to demonstrate that those who acted were motivated by the exclusive personal interest (or of third parties)."

attributable to its staff and exists whenever there is a failure to prepare suitable organizational measures for the avoidance of criminal acts.
As mentioned in the previous chapter, the imputation mechanism outlined in articles 6 and 7 of Legislative Decree no. 231/2001 outlines two differentiated regimes which distinguish the category to which the person who committed the predicate offense belongs. The definition of two regimes is an expression of the distinction between crimes that convey business policy, as they are committed by persons in apical positions, and crimes that derive from a lack of controls put in place by persons in apical positions of the entity and are committed by subordinate subjects.

1.9.1.Apical subjects (art. 6)

Article 6, paragraph 1, of Legislative Decree no. 231/2001 provides that:
"1. If the offense was committed by the persons indicated in article 5, paragraph 1, letter a), the entity is not liable if it proves that:

a) the management body had adopted and had effectively implemented, before the offense was committed, organizational and management models suitable for preventing crimes of the kind that occurred;
b) the task of supervising the functioning and observance of the models and ensuring that they are updated was entrusted to a body of the entity with autonomous powers of initiative and control;
c) the persons have committed the crime by fraudulently evading the organization and management models;
d) there was no omission or insufficient supervision by the body referred to in letter b). " (...) "

In outlining the criteria for attributing to the entity the offenses committed in its interest by persons in apical positions, the law adheres to the theory of organic identification which, from a procedural point of view, takes the form of an inversion of the burden of proof by virtue of which, if the offense is committed by persons in apical positions, the liability of the entity is presumed unless the entity itself provides proof of having fulfilled the obligations referred to in letters a) and b) and the occurrence of the circumstances referred to in letters c) and d) of article 6 of the Decree. The provision in question is based on the assumption that the acts of persons in apical positions coincide with corporate policy[20] and entail the charge of liability, except in the exonerating circumstance, the contents of which are duly laid out in the Decree itself.
In particular, the entity is not liable if:

a) prior to the commission of the offense, it adopted and effectively implemented an organizational model suitable for the prevention of offenses of the kind that occurred. The adoption of an organizational model (i.e., a structured system of principles of conduct, operating procedures, inspection and organizing measures and disciplinary sanctions) does not constitute an obligation but rather a burden for the entity. This is a condition for a possible exemption from liability when a crime is committed by representatives of the entity. Of course, the adoption of

[20] In this regard, the Explanatory Report to Legislative Decree 231/2001 expresses itself in these terms: "For the purposes of the entity's liability, it will therefore not only be necessary that the crime be linked to it on an objective level (the conditions under which this occurs, as we have seen, are governed by article 5); moreover, the offense must also constitute an expression of company policy or at least derive from organizational culpability". And again: "we start from the presumption (empirically founded) that, in the case of a crime committed by persons in apical positions, the "subjective" requirement of the entity's liability [ie the so-called "Organizational culpability" of the entity] is satisfied, since the apical subject expresses and represents the entity's policy; if this does not happen, the company will have to prove its irrelevance, and this can only be done by proving the existence of a series of concurrent requirements."

the model cannot be limited to a formality; if it is to have an exempting effect[21] it must in fact be reflected in action that is concretely suitable for countering the onset of illegal activities within the entity, the specific structure of which must be built and constantly updated.

b) it has entrusted the task of supervising the functioning and observance of the models and of ensuring their updating to a Supervisory Body (SB) with autonomous powers of initiative and control. The Supervisory Body must, through its functions, guarantee the monitoring of activities and verify compliance with the regulations set out in the organizational model.
c) it demonstrates that the subjects who committed the offense have fraudulently evaded the organizational model. The wording of the provision implies that it is not sufficient to rule out participation by the entity in the commission of the individual's offense. Rather, it is necessary to provide proof that the model served as an obstacle to the commission of the offense, forcing the offenders to employ complex and costly means to circumvent it. The exonerating outcome for the entity is therefore possible when it is clear that the crime was committed not because of organizational weakness or insufficient supervisory structure of the entity but in spite of the control system of the same.
d) it demonstrates that no aspect of culpability, such as the failure to adopt an organizational or supervisory measure that would have prevented the commission of the crime, is recognizable in the entity and in particular in the supervisory body.

1.9.2.Subordinate subjects

Article 7 of the Legislative Decree. no. 231/01 provides that:
"1. In the case provided for by article 5, paragraph 1, letter b), the entity is liable if the commission of the offense was made possible by the failure to comply with obligations of management or supervision.
2. In any event, non-compliance with management or supervisory obligations is excluded if the entity, prior to the commission of the offense, adopted and effectively implemented an organization, management and control model suitable for the prevention of offenses of the type that occurred.
3. The model provides, in relation to the nature and size of the organization as well as the type of activity carried out, suitable measures to ensure that the performance of the activity is in compliance with the law and to promptly discover and eliminate situations involving risk.
4. The effective implementation of the model requires: a) its periodic assessment and possible modification when significant violations of the provisions are discovered or when changes occur in the organization or activity and b) a disciplinary system suitable for sanctioning non-compliance with the measures indicated in the model."

Pursuant to the first paragraph of article 7, the attribution to the entity of an offense committed by a subject who is subject to control by others is based on its own pattern of culpable liability, where the aspect of culpability attributed to the entity concerns the non-compliance with management and

[21] Case law precedents in which the ruling recognized the exemption value of the organizational model include the sentence of the G.i.p. of the Court of Milan of 17 November 2009 (Impregilo S.p.a. case) and sentence no. 1188/11 of the G.i.p. of the Court of Cagliari of 4 July 2011 (Saras S.p.a. case). With particular reference to the sentence cited last, the Judge held that the interest of the company (i.e., the containment of safety costs) indicated in the charge was not related to the crime and, therefore, did not allow for the attribution of the offense to the entity. In this regard, the final passage of the decision is reported on the point "For the sake of completeness - although this goes beyond the assessments imposed by the principle of correlation between the accusation and the fact - it must in any case be noted that the culpable conduct deemed to exist is not attributable to an economic choice of the company, rather to shortcomings in the setting of some aspects of an overall adequate safety management system and certainly not set with a view to saving. Therefore, pursuant to art. 66 Legislative Decree 231/2001, the liability of the entity must be excluded with the only formula provided by the law, that is, the non-existence of the fact".

supervisory obligations. More generally, the imputation of liability results from an organizational defect that materializes in a *culpa in vigilando* pertaining not to a specific subject but to the entity as a whole.
The second paragraph of article 7 specifies that non-compliance with management or supervisory obligations must be excluded in the event that the entity, prior to the commission of the offense, adopted and effectively implemented an organizational model suitable for the prevention of offenses of the kind that occurred. The presence of this specific circumstance allows for the ruling out of any type of connection between the crime committed by the subordinate and shortcomings on the part of the entity.
The assessment of the suitability of the model is carried out according to the criteria contained in the third and fourth paragraphs of article 7, which provide general indications necessary to define the structure that any organizational model must present, without prejudice to the obvious need to adapt to the various organizational structures and in particular to the various corporate and production realities.
In short, the following must be verified:

- The model contains suitable measures to ensure that activities are carried out in compliance with the law and to promptly discover and illuminate situations involving risk;
- Periodic evaluations have been carried out as to the fulfillment of the requirements contained in the organizational model;
- The necessary changes have been adopted in the event of any violations or in the face of changes in the organization or activity of the entity;
- A suitable disciplinary system is in place to sanction failure to comply with the measures indicated in the model.

The Organizational Model must include the "Provisions for the protection of the authors of reports of crimes or irregularities of which they have become aware in the context of a public or private employment relationship" as introduced by Law 179/2017 which contains specific provisions related to whistleblowing[22].

1.10. Adoption of the organizational model and effective exemption from administrative liability (arts. 6 and 7)

Analysis of articles 6 and 7 of Legislative Decree no. 231/2001 allows for the identification of a (the) fundamental content of the entire discipline of the administrative liability of entities, and that is the extent of the exemption with respect to this liability and the related sanctions connected to the adoption and effective implementation prior to the offense of an organization and management model suitable for the prevention of offenses of the kind that occurred.
As we have seen, article 6 for apical subjects and article 7 as regards subordinate subjects define the obligations the entity must fulfill in order to benefit from the exemption in question, it being understood that adopting and effectively implementing an organizational model remains a purely voluntary act.

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[22] In particular, art. 6, c.2(2) of Legislative Decree 231/2001 introduced by Law no. 179/2017 provides that: The models referred to in letter a) of paragraph 1 provide for: a) the persons indicated in article 5, paragraph 1, letters a) and b), as well as for those who in any capacity collaborate with the entity, the obligation to submit, to protect the integrity of the entity, detailed reports of unlawful conduct, relevant pursuant to this decree, which in good faith, on the basis of a reasonable belief based on factual elements, they believe to have occurred, or violations of the organization and management model of the entity of which they have become aware due to the functions performed; b) alternative reporting channels, of which at least one is suitable for guaranteeing the confidentiality of the identity of the whistleblower, even with IT methods; c) suitable measures to protect the identity of the whistleblower and to maintain the confidentiality of the information in any context following the report, to the extent that anonymity and confidentiality are enforceable by law; d) the prohibition of retaliation or discriminatory acts, direct or indirect, against the whistleblower for reasons connected, directly or indirectly, to the report, without prejudice to the right of assignees to protect themselves if criminal or civil liability related to the falsity of the declaration is ascertained e) in the disciplinary system adopted pursuant to paragraph 2, letter e), sanctions against those who violate the obligations of confidentiality or carry out retaliatory or discriminatory acts against the whistleblower.

Since the adoption of an organizational model is a voluntary act, it follows that the provisions of Legislative Decree no. 231/2001 are compulsorily applied to all recipient entities which are therefore exposed to the sanctioning system introduced by this framework. Furthermore, it must be noted that the lack of a suitable model may constitute an autonomous violation of the duties of the directors of the entity in terms of the adequacy of the administrative, organizational and accounting structure of companies (art. 2381, paras. 3 and 5 of the Italian Civil Code) and of the general duty to administer with diligence (art. 2392 of the Italian Civil Code).

With regard to the contents of the organizational models for the prevention of crimes, articles 6 and 7 of Decree 231 provide an indication of some general requirements. The characteristics and contents of the organizational models were also extensively outlined in the years following the enactment of the Decree, incorporating guidelines from the principle trade associations[23], which in turn implemented recommendations arising from the following juridical opinions:

i. Risk analysis, consisting in identifying the areas and/or activities that lend themselves to an offense and possible methods of implementation of the offense in said areas and activities (art. 6, para. 2, letter a), Confindustria Guidelines, p. 47 et seq.). In specific terms concerning the so-called 231 assessment, the structure of the organizational model must be founded upon:
    a. inventory of the areas of activity within the company, directed toward identifying those areas that, due to the nature and characteristics of the activities carried out, may foster the potential commission of predicate offenses (Confindustria Guidelines, p. 47 et seq.);
    b. analysis of potential risks with the scope of identifying possible methods of implementation of predicate offenses within the various corporate areas identified. The analysis must lead to a depiction of how the offenses may be committed within the operational context (internal and external) of the entity, taking into consideration, among other things, the entity's past as well as offenses committed by other entities operating in the same sector (Confindustria Guidelines, p. 49 et seq.).

ii. A system of protocols and procedures for regulating the activities of the entity in at-risk areas and/or activities, including methods of managing financial resources, in order to prevent the commission of criminal offenses (art. 6, para. 2, lett. b) and c); Confindustria Guidelines, p. 50 et seq.). Protocols and procedures must specifically provide:
    a. a Code of Ethics and conduct understood to be the adoption of ethical principles, namely the identification of the primary corporate values the entity intends to uphold, constituting the foundation of the preventive control system;

[23] Art. 6 of Decree 231 expressly states that organization, management and control models can be adopted on the basis of codes of conduct drawn up by the representative associations of the entities. This regulatory provision serves to promote, among the members of trade associations, alignment with the principles expressed by Decree 231 and, likewise, to stimulate the development of structured codes that can serve as a reference point for operators who are preparing to draw up an organization and management model. In this context, the Italian Banking Association (ABI) issued in 2002, with a subsequent update in 2004, the "Guidelines for the adoption of organizational models on the administrative responsibility of banks", defining the fundamental elements that, in the context of the peculiarities of credit institutions, help to define an organization and management model compliant with the provisions of Decree 231. The ABI Guidelines list and describe the fundamental components of an organizational model suitable for the prevention of the offenses referred to in Legislative Decree 231/2001 as follows: - identification of the activities within which the offenses may be committed; - provision of rules aimed at planning the formation and implementation of decisions in relation to the crimes to be prevented and identification of the methods for managing financial resources; - appointment of an internal control body that has the task of supervising the functioning and observance of the organizational and management model adopted by the company, and of updating it; - provision of information obligations towards the control body; - definition of a disciplinary system to sanction non-compliance with the organizational model and the rules of conduct provided; - publication and dissemination of the organizational model adopted; - staff training on administrative liability of entities and on the components of the adopted Model. A further reference, in a broad sense, is constituted by the "Guidelines for the construction of organizational, management and control models pursuant to Decree 231" issued by Confindustria in 2003 and subsequently updated. In this context, the current document has been prepared taking into consideration the indications provided by the ABI and Confindustria Guidelines, as far as applicable to the peculiarities and specific corporate context, as well as on the basis of the indications provided by Banca Ifis in its role of management and coordination.

    b. regulation of the carrying out of sensitive activities, including provisions for appropriate check points, a separation of duties between those who carry out crucial phases of each at-risk process (so that no one individual is able to carry out an entire process independently) and traceability of activities and of checks carried out;
    c. an organizational system that is sufficiently up-to-date, formalized and clear;
    d. adequate allocation of the powers of authorization and signature;
    e. communication and training activities.

iii. A supervisory body which is endowed with autonomous powers of initiative and control, meets the requirements of autonomy, independence, professionalism and continuity of action and is tasked with overseeing the functioning and implementation of the model and of updating it, (art. 6, para. 1, letter b), Confindustria Guidelines, p. 75 et seq.);

iv. The provision of information obligations in the face of this body (art. 6, para. 2, letter d), Confindustria Guidelines, p. 75 et seq.);

v. A disciplinary system suitable for sanctioning violations of the model (art. 6, para. 2, letter e), art. 7, para. 4 letter b), Confindustria Guidelines, p. 70 et seq.);

vi. The provision of one or more channels allowing for persons in apical positions and subordinates to submit detailed reports of relevant unlawful conduct pursuant to Decree 231 or violations of the 231 Model of the entity and which ensures:
    a. the confidentiality of the identity of the whistleblower in the management of the report;
    b. at least one alternative reporting channel that uses IT methods and is suitable for ensuring the confidentiality of the identity of the whistleblower;
    c. the prohibition of retaliation or discriminatory acts against the whistleblower for reasons related to the report;
    d. sanctions for those who violate the protection measures in place for the whistleblower, as well as those who, with willful misconduct or gross negligence, submit reports that turn out to be unfounded.

vii. The provision of continuous updating of the Model, based on changes in the activity/organization of the entity, as well as on the basis of the discovery of any unlawful conduct and/or violations of the model (art. 7, para. 4 letter a), Guidelines Confindustria, pp. 76 and 91, among others).

The requirements described above are necessary if the model is to be considered suitable for the prevention of the predicate offenses envisaged by Legislative Decree no. 231/2001 [24] . Moreover, in order for an entity to be exempt from liability for any crimes committed by its representatives, the model, in addition to complying with the aforementioned requirements, must also be effectively implemented and concretely structured in such a way that a crime cannot be committed except through a voluntary

[24] It is also noted that pursuant to art. 30 of Legislative Decree 81/2008 (the so-called Consolidated Safety Act, hereinafter also "TUS"), the organization and management model suitable for having an effective exemption from administrative liability pursuant to Legislative Decree 231/2001 must be adopted and effectively implemented, ensuring a company system for the fulfillment of all legal obligations relating to:
a) compliance with the technical-structural standards of the law relating to equipment, plants, workplaces, chemical, physical and biological agents;
b) risk assessment activities and preparation of consequent prevention and protection measures;
c) organizational activities, such as emergencies, first aid, procurement management, periodic safety meetings, consultations with workers' safety representatives;
d) sanitation surveillance activities;
e) the information and training of workers;
f) supervisory activities with reference to workers' compliance with procedures and instructions for work in safety;
g) the acquisition of documents and certifications required by law;
h) periodic checks on the application and effectiveness of the procedures adopted.

circumvention of the measures provided by the model, or is committed despite the timely observance of the obligations of the Supervisory Body.
Finally, it is useful to underline that in practice the organizational models are generally structured in two main parts:

i. A General Section that reflects the requirements just mentioned and usually contains sections dedicated to:
    a. the organization, governance model and system of control;
    b. the purposes and implementation of the model with related communication and Training;
    c. the continuous updating and improvement of the model;
    d. the Supervisory Body;
    e. the disciplinary system;
    f. the system for the receipt and management of reports.
ii. A Special Section divided by company processes or predicate offenses that:
    a. identifies sensitive activities, i.e., activities characterized by the inherent risk of the commission of predicate offenses;
    b. establishes control standards, i.e., it provides for prevention principles and protocols and related controls for each of the sensitive activities.

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1.11. The model of governance for Banca Ifis S.p.A.

Banca Ifis is a joint stock company whose share is listed on the Italian Stock Exchange. The company has chosen to adhere to the ordinary model of corporate governance, defined by article 2325 and ss. of the Civil Code, and articulated on the traditional bodies whose functions are determined by civil law and specified by the Articles of Association.

1.11.1. Shareholders' Meeting

The Shareholders' Meeting is a collective deliberative body made up of the Bank's shareholders and/or their representatives. The methods of operation as well as the powers and duties attributed to the Shareholders' Meeting are established by Law and by the Articles of Association of the Bank.
The Shareholders' Meeting is convened at least once a year, within 120 days of the close of the financial year.
Limiting itself to the tasks of more immediate impact on the governance of the company, the Shareholders' Meeting approves the financial statements, appoints members and removes, by way of the list voting system, members of the Board of Directors, establishing their remuneration. It appoints, by way of the list voting system, the Statutory Auditors and the Chairman of the Board of Statutory Auditors, establishing their remuneration. It deliberates on transactions involving amendments to the Articles of Association and on other matters assigned to it by the Articles of Association or by law.

1.11.2. Board of Directors

The Board of Directors, elected by the Bank's Shareholders' Meeting, establishes the strategic guidelines and continuously monitors their implementation, ensuring sound and prudent management.

The composition, operating methods and the powers and duties attributed to the Board of Directors are established by Law and by the Articles of Association of the Bank.
The Board of Directors defines the overall governance structure and approves the organizational structure of the Bank, verifies their correct implementation and promptly takes corrective measures in the case of any gaps or inadequacies.
The Board is entitled to all the powers of ordinary and extraordinary administration, excluding only those that the law restricts to the Shareholders' Meeting. The Board of Directors, in the performance of its strategic supervisory function, in addition to responsibilities that cannot be delegated pursuant to the law or the Articles of Association, is tasked with defining and approving the business model of the Bank, the strategic guidelines, the risk profiles, the guidelines for the design of the internal control system, the assessment process, and the criteria for identifying the most important transactions to be subjected to preventive examination by Risk Management. The Board approves the constitution of the Internal Audit and, upon proposal of the Chief Executive Officer, approves the constitution of the organizational units that are embedded in the corporate control functions, the policies and processes for evaluating corporate activities, the process for the development and validation of the internal risk measurement systems. It approves the process for the approval of new products - services for the start-up of new activities and entry into new markets. It approves the process for the management of employees, the Group policy on outsourcing of corporate functions, the code of ethics which the corporate bodies and employees are required to comply with for the mitigation of operational and reputational risks, the internal systems for reporting violations, the articulation of proxies and decision-making powers coherent with strategic courses and the established risk guidelines and verifying their performance with regard to credit and counterparty risks. In the exercise of its strategic supervisory function and the general lines of the management system of risk mitigation techniques which governs the entire process of acquisition, evaluation, control and realization of the risk mitigation tools used, the Board assumes general responsibility for guiding and controlling the information system, with a view to optimizing the use of technological resources in support of corporate strategies (IT Governance). The Board of Directors is called upon to make strategic decisions upon the proposal of the Chief Executive Officer in the area of IT risk and business continuity.

1.11.3. Board Subcommittees

Three internal board committees operate within the Board of Directors, operating at Group level:

1. Control and Risks Committee.
   The Control and Risks Committee performs support functions for the Board of Directors in matters of risks and the Internal Control System. It pays particular attention to all of the instrumental and necessary activities within this context so that the Board of Directors can pass resolutions;
2. Appointments Committee.
   The Appointments Committee performs support functions for the Board of Directors and the Chief Executive Officer throughout the process of appointing and co-opting directors in accordance with the provisions of the Bank of Italy Circular no. 285, as well as in self-assessment of the Corporate Bodies (Board of Directors and Chief Executive Officer), verification of the conditions envisaged pursuant to article 26 of the Consolidated Law on Banking (Requirements of professionalism, integrity and independence as well as the criteria of

competence and correctness of company representatives), and drawing up of succession plans for top executive positions;

3. Remuneration Committee.
   The Remuneration Committee performs functions of support for the Board of Directors in defining the remuneration and incentive policies of the Group.

The composition, mandate, powers (advisory, instructive, power of proposal), available resources and internal regulations pertaining to the committees are clearly outlined; establishment of a committee does not imply a limitation of the decision-making powers or responsibility of the Board of Directors. Each committee is, as a general rule, made up of 3-5 non-executive members, the majority of whom are independent. The roles and responsibilities of the Board Subcommittees are detailed in the relative organizational regulations.

1.11.4. Chief Executive Officer

The Board of Directors appoints a Chief Executive Officer from among its members and establishes his or her managerial powers. The Chief Executive Officer implements the resolutions of the Board of Directors, also relying on the General Manager. The Chief Executive Officer, as a figure with a managerial function, has an understanding of all business risks, including that of the possible malfunctioning of internal measurement systems (so-called "Model risk").
The Chief Executive Officer formulates proposals regarding strategic guidelines and objectives and submits them to the Board of Directors. He or she implements the strategic guidelines, the Risk appetite framework (RAF) and risk management policies, continuously monitoring compliance, and takes actions necessary to ensure that the organization and system of internal controls adhere to the applicable regulatory principles and requirements. The Chief Executive Officer defines and oversees the implementation of the risk management process, defines and oversees the implementation of the process (persons responsible, procedures, conditions) for approving investments in new products, of the distribution of new products or services (i.e., the launch of new activities or the entry into new markets), defines and oversees the implementation of the corporate policy on the outsourcing of corporate functions, defines and oversees the implementation of the processes of, and methodologies for, evaluating corporate activities and, in particular, the financial instruments which are constantly updated. He or she establishes the internal information flows intended to ensure that the corporate bodies and organizational units responsible for controls possess full knowledge and governability of the risk factors and the verification of compliance with the RAF. He or she puts in place the initiatives and interventions necessary to ensure, on an ongoing basis, the completeness, adequacy, functionality and reliability of the internal control system, bringing the results of the inspections carried out to the attention of the Board of Directors and prepares and implementing the necessary corrective or adaptative measures in the event that deficiencies or anomalies emerge, or following the introduction of new products, activities, services or relevant processes. He or she employs the ICAAP process, ensuring that it complies with the strategic guidelines and the RAF. Regarding credit and counterparty risks, in line with the strategic guidelines, he or she approves specific guidelines designed to ensure the effectiveness of the management system of risk mitigation techniques and guarantee compliance with the general and specific requirements of these techniques. The Chief Executive Officer is tasked with ensuring the completeness, adequacy, functionality and reliability of the information system. He or she

guarantees the accuracy and timeliness of information presented to the Board of Directors in relation to the economic and financial situation of the Bank and other issues of strategic importance, etc.
The Chief Executive Officer implements the governance policies and strategic guidelines as defined by the Board of Directors.

1.11.5. Board of Statutory Auditors

The Board of Statutory Auditors is elected by the Shareholders' Meeting. The composition, operating methods, powers and duties attributed to the Board of Statutory Auditors are defined by the Law and the Articles of Association of the Bank.
The Board of Statutory Auditors monitors compliance with the laws, regulations and statutory provisions as well as correct administration, the adequacy of the Bank's accounting and organizational structures, and the functionality of the overall internal control system. The Board of Statutory Auditors verifies and investigates the causes of and remedies for management irregularities, performance anomalies and gaps in the organizational and accounting structures, paying particular attention to compliance with the regulations regarding conflicts of interest.
In carrying out its duties, the Board of Statutory Auditors avails itself of the information flows from the internal control structures. Internal Audit, Risk Management, Compliance and Anti-Money Laundering reports must be transmitted to the Board of Statutory Auditors directly by the relevant managers.

1.11.6. Supervisory Body

The Supervisory Body, established pursuant to Legislative Decree no. 231/2001 regarding the administrative liability of Entities, operates as an autonomous unit responsible for supervising the effectiveness, observance and updating of the "organization, management and control" models suitable to the prevention of the crimes considered in Legislative Decree no. 231/2001. For a detailed analysis of this body, please refer to the specific Section of this general section.

1.11.7. General Management

The General Manager partakes in the functions of management, exercising his or her duties on the basis of powers conferred by the Board of Directors with regard to the various organizational units that oversee the Bank's business as well as to the multiple support units operating therein. The General Manager, in coordination with the Chief Executive Officer, puts forth the directives and guidelines of the Board of Directors, targeting the strategic objectives defined and approved by the latter. The General Manager makes decisions, within the limits allowed by the system of proxies, regarding the assumption of credit and counterparty risk and risk management; in collaboration with the head of the Business Department, he or she participates in the strategic planning process and defines market share and risk adjusted profitability objectives for specific strategic areas and proposes these to the Chief Executive Officer and, subsequently, to the Board of Directors, for approval. He or she defines the management guidelines to which the business units of the Bank must adhere in the implementation of the activities to be carried out in pursuit of strategic objectives, periodically verifies the effective achievement of strategic objectives (market share and profitability for specific strategic business areas) by making use of available management reports, continuously monitors the performance of impaired assets and guides the head of Problem Loans in defining the choices to be made in the interest of effectively and

efficiently managing counterparties in default. He or she, in conjunction with the managers of individual support units hierarchically subjected to him or her, defines and approves the related annual work programs and continuously verifies their effective and adequate implementation. Making use of the organizational units he or she supervises, the General Manager formulates proposals to the Chief Executive Officer with regard to the distribution and attribution of responsibilities to the various organizational units of the Bank so that tasks are clearly assigned, potential conflicts of interest are avoided and the relevant activities are directed by qualified personnel who possess an adequate degree of independent judgment and who are in possession of experience and knowledge proportionate to the tasks to be performed and with regard to the contents of processes (persons responsible, procedures, conditions) for the approval of investments in new products, the distribution of new products or services or the start of new activities or entry into new markets, for the outsourcing of corporate functions, including important operational functions, and for the assessment of business activities (in particular those that are significant and/or more complex and difficult to evaluate). Specifically, in accordance with the provisions of the Group Policy for the management of internal regulations, he or she analyzes the drafts of regulations drawn up by the Organization, validates their contents and submits them to the Chief Executive Officer for dissemination. In addition, the General Manager assists the Chief Executive Officer in implementing the aforementioned processes, specifically by coordinating the projects for the introduction of new operations in the areas covered by the organizational units he or she oversees. He or she approves the internal organizational procedures over which he or she holds authority (referring to the processes overseen by the organizational units directly subject to the authority of the General Manager and consistent with the regulatory provisions), defining the responsibilities of the corporate structures while taking into account the indications and guidelines expressed by the Board of Directors, the competent Authorities and the various international bodies as well as changes in the regulatory frameworks. He or she grants specific delegations of powers to Executives, Middle Managers and other employees vested with particular offices, independently or in application of resolutions of the Board of Directors.

The General Manager provides support to the Chief Executive Officer in implementing the capital and liquidity adequacy assessment process (ICAAP / ILAAP) and the risk management process.

1.11.8. Structure and Organizational Units of control

The control system of Banca Ifis is structured to verify the possible realization of all the risks inherent in the overall business and in corporate operations, including the risks associated with the commission of predicate offenses pursuant to Legislative Decree no. 231/2001, in order to promptly ensure the reporting of particular or general critical situations.
The controls of Banca Ifis operate through the usual triple layer organization in which there exists:

- a first level of control, defining and managing the "line" controls inherent in the operating processes and their related risks. It is put into practice by the internal resources of the structure itself, both in control by operator and by the person in charge/manager, but it can also entail, for specialized aspects, the use of other resources, internal or external to the entity;
- a second level of control, effected by technical structures of the company with expertise on the subject and separate from the first level and from the work sector subject to verification. This monitoring oversees the management process and control of risks related to the general operations of the Bank, ensuring their consistency with company objectives;

- a third level of control, carried out by the office of Internal Audit, which provides "assurance", that is, independent assessments of the structure and of the functioning of the control system.

Given this organizational scheme, at Banca Ifis, Organizational Units specifically designated for second and third level control activities have been established, the roles and responsibilities of which are described in the related organizational regulations approved by the Board of Directors.
The objectives they pursue in carrying out the inspections for which they are responsible are laid out below.

1.11.9. Internal Audit

The Internal Audit functions, on one hand, in monitoring, consistent with third level controls, the regular performance of operations and the evolution of risks and also in performing spot checks. On the other hand, it assess the completeness, adequacy, functionality (in terms of efficiency and effectiveness) and reliability of the organizational structure and of the other components of the internal control system, bringing possible improvements to the attention of the corporate bodies, particularly those pertaining to the RAF and the risk management process as well as to the instruments for measuring and controlling them. Based on the outcomes of its inspections, Internal Audit makes recommendations to the corporate bodies.

1.11.10. Risk Management

The Chief Risk Officer (CRO) is the head of the "Risk Management" organizational unit.
Risk Management is involved in defining the RAF, risk governance policies and the various phases that make up the risk management process as well as in establishing operational limits for the assumption of various types of risk. In this context, among other things, Risk Management is tasked with proposing the quantitative and qualitative parameters necessary for the definition of the RAF, which also encompass stress scenarios and, in the event of changes in the internal and external operational context of the bank, adjustment of these parameters. In addition, it verifies the adequacy of the RAF as well as, on an ongoing basis, the risk management process and operational limits.

1.11.11. Compliance

Compliance oversees, according to a risk-based approach, the management of the risk of non-compliance with regard to all company activities. This is done by assessing the adequacy of internal procedures to prevent the violation of external rules (laws and regulations) as well as self-regulation (for example, codes of conduct and codes of ethics) applicable to Group companies (including Banca Ifis).

1.11.12. Anti-Money Laundering

Anti-money laundering continuously verifies that corporate procedures are consistent with the objective of preventing and combating the violation of external rules (laws and regulations) and self-regulation in the field of money laundering and terrorist financing.

1.11.13. Financial Reporting Manager for the preparation of corporate accounting documents

Banca Ifis, pursuant to Law 262/05 "Provisions for the protection of savings and the regulation of financial markets", appoints a Financial Reporting Manager in charge of preparing accounting documents in accordance with the provisions of article 154(2) of the Consolidated Law on Finance. The latter ensures the reliability of the economic and financial situation of the Bank and of the Group by contributing to the overall assessment of the adequacy of the internal control system on financial reporting.

1.12. The corporate organizational structure

Below is an overview of the corporate and organizational structure of Banca Ifis, on which the above-mentioned governance and control system insists.

1.12.1. The business activities of Banca Ifis

The concise identification of the business activities carried out by Banca Ifis as a company active in the market constitutes a logical and operational prerequisite to the determination of the areas at risk of the commission of predicate offenses pursuant to Legislative Decree 231/2001, and it outlines the corporate context in which the company's governance system exists.
All the activities that distinguish the various areas of business of Banca Ifis are organized within the Business Department.
The Business Department, within the scope of the strategies defined by the Board of Directors, ensures the development of the various areas of business in which the Bank operates in terms of:

- attainment of commercial objectives, developing assessments and forecasts regarding economic and financial performance as well as regarding the possible development opportunities in relevant areas of business;
- definition of the product catalog as well as the most effective sales channels, determining distribution policies and pricing;
- development of business collaborations with other Group companies;
- monitoring the profitability of actions taken.

The Area of Corporate Finance is dedicated to offering structured finance transactions or investments in non-financial companies *in bonis* or in shares of interposed entities. Within these areas it deals in particular with origination, due diligence and management activities related to equity investments in non-financial companies *in bonis* and in shares of interposed entities.
Within the context of these activities, Corporate Finance ensures that there are no situations of simultaneous participation resulting from separate services or investment activities or ancillary services, when such participation could harm the proper management of conflicts of interest.

The Tax Credit Division is the organizational unit of the Bank dedicated to the purchase of tax credits, mainly from companies in insolvency proceedings or in liquidation.

The Pharmacy Department is dedicated to providing financing services to domestic pharmacies, both those developed internally and those reported by the commercial network of the subsidiary Credifarma. The department develops and manages commercial relations and business opportunities, evaluating the advisability of operations in compliance with the guidelines and strategic objectives laid out by the Board of Directors.

The Leasing and Rental Division is the organizational unit of the Bank dedicated to the provision and management of leasing and renting products.
In this context, it develops and manages commercial relations and business opportunities, evaluating the advisability of operations in compliance with the strategic guidelines and objectives defined by the Board of Directors.
The Leasing and Rental Division also carries out activities related to the debt recovery of retail portfolios, personal loans and mortgages and, in general, to the management of acquired portfolios (performing *in bonis* or impaired) in the context of broader projects for the acquisition of distressed credit.

The Insurance Development Area is concerned, as regards the insurance products offered to clients by the Bank, with defining the Bank's business plans regarding new opportunities in the sector, continuously monitoring their performance, identifying new products in line with the chosen positioning, and managing relations with insurance companies and external institutions in the sector of competence.

The Italian Commercial Area is the area of the Bank dedicated to the promotion of financing services for domestic businesses. It deals with the development and management of commercial relations and business opportunities in compliance with the strategic guidelines and objectives defined by the Board of Directors.

The International Commercial Area is the organizational unit of the Bank dedicated to the promotion of financing services for foreign companies as well as for domestic companies that carry out export activities.
It develops and manages commercial relations and business opportunities (including with the corresponding Factor Chain International), evaluating the advisability of the operations in compliance with the strategic guidelines and objectives defined by the Board of Directors.

1.13. Purpose of adopting the Organization Model pursuant to Legislative Decree no. 231/2001 by Banca Ifis

As previously noted, the framework introduced with Legislative Decree no. 231/2001 does not provide for the obligation to adopt an Organization and Management Model (rather it is merely an option available to the entity for the purposes of a possible exemption from liability). Banca Ifis, in line with its corporate policies and with the values and objectives of the Group it heads, has considered it appropriate since 2004 to adopt the Model based on the notion that it constitutes a valid tool for raising awareness among the recipients as to correct and transparent behavior and effective supervision for the purpose of preventing unlawful conduct.
Through the adoption of the Model, the Bank intends to pursue the following objectives:

- contribute to the creation and dissemination of a culture of legality within the company, entrusted to the Supervisory Body in cooperation with the control functions of which it avails itself, thereby preventing the commission of offenses related to business activity through the implementation and constant improvement and updating of a control and supervision mechanism articulated in principles of behavior and organizational and control safeguards mandatory for all recipients of the Model, as well as the supervision of effective compliance therewith by employees and collaborators of Banca Ifis;
- advise the recipients of Model 231 that any violation of the same is in radical contrast to the moral values and ethical principles that underlie the Bank's actions. Any such conduct, even if motivated by the intention to ensure advantages for the Company and the Group, will in no case be tolerated and will be sanctioned according to the corporate disciplinary provisions referred to by the 231 Model itself;
- create awareness among those operating in the interest of the bank that the commission of an offense within the context of business operations will result in the application of criminal sanctions against the agent and may also lead to the imposition of financial and disqualifying sanctions described in this same document against the Bank, with serious reputational and operational consequences as well as those of a financial nature;
- reinforce the internal control structure, involving all Bank personnel in the implementation and application of company regulations in order to prevent criminal conduct and to create operational and cultural conditions so that any violation of Model 231- even if only suspected - is reported promptly to the Supervisory Body.

1.13.1. Recipients of the Model

The rules contained in this Model apply:

- to persons who hold representative, administrative or management functions in the Company;
- to persons who manage and control the Company itself;
- to all employees of the Company subject to the management or supervision of the aforementioned subjects;
- (limited to specific indications in the related contractual agreements) to self-employed workers, consultants, professionals, commercial/financial partners, suppliers, attorneys and, in general, to third parties who work on behalf or in the interest of the Company.

The Model and its contents are communicated to the parties concerned in a manner suitable for ensuring effective knowledge of it, as indicated in this General Section. Therefore, the Recipients of the Model are required to comply meticulously with all the provisions of correctness and diligence deriving from the legal relationship they have established with the Company, including in fulfillment of their duties.
The members of the Corporate Bodies and employees are also recipients of specific information, communication and training activities related to the contents of Model 231/01. The other Recipients are required to read and, in any case, undertake to comply with the provisions contained therein.

1.13.2. Methodology for defining and implementing the Banca Ifis Model.

As previously mentioned, article 6, paragraph 2, letter a) of Legislative Decree no. 231/2001 indicates that among the requirements of the model is the identification of the processes and activities within which the offenses relevant to the Administrative Liability of Entities may be committed. In other words, these are business activities and processes that are commonly defined as "sensitive" (so-called "risk areas"). This standard provides the basic criterion, as well as, more precisely, the point of departure for the preparation of the update of the "Model 231" of Banca Ifis S.p.A.
The preparation of this Model was in fact preceded by a series of preliminary activities, divided into phases and aimed at building a risk prevention and management system in line with and founded upon the contents and suggestions prescribed by the Guidelines and existing best practices as well as the regulations contained in Legislative Decree no. 231/2001.
Below is a brief description of the phases in which the task of identifying the areas at risk was carried out prior to the preparation of the update of this Model:

1. Mapping of the activities at potential risk for the commission of significant offenses pursuant to Legislative Decree 23/2001 (so-called Sensitive Activities), with the further identification of the management/instrumental processes within which, in principle, the conditions and/or means for the commission of these offenses may occur;
2. Identification of each of the management/instrumental processes referred to in the previous point, of the main company procedures/documentation of reference to oversee them, as well as additional behavioral and organizational safeguards for each class of offense deemed relevant for the Bank;

On the basis of the activities described above, this Model has been prepared to present the set of regulations and procedures by which the Bank intends to counter the risk of the commission of offenses as provided for by Decree 231.

1.14. Supervisory Body

As anticipated, Legislative Decree no. 231/2001 provides that the Entity may be exonerated from liability resulting from the commission of predicate offenses if, among other things, the task of supervising the functioning and observance of the model and of ensuring its updating has been entrusted "to a body of the entity with autonomous powers of initiative and control" (see art. 6, para. 1, letter b), Legislative Decree No. 231/2001), “that is the Supervisory Body, and there has been no omitted or insufficient supervision by this body” (see art. 6, para. 1, letter d), Legislative Decree No. 231/2001).
Decree 231 also envisages, among the requirements of the organizational model, the provision of information obligations held by the Supervisory Body (see art. 6, para. 2, letter d), Legislative Decree No. 231/2001).
Further provisions relating to the Supervisory Body are contained in paragraphs 4 and 4(2) of article 6, pursuant to which the tasks of the Supervisory Body can be carried out directly by the management body in small entities or, in joint stock companies, by the board of statutory auditors, the supervisory board or the management control committee[25].

[25] The Confindustria Guidelines positively assess the possibility that the role of Supervisory Body can also be attributed to the Risk Control Committee and the Internal Audit Function (See Confindustria Guidelines Pages 87-89).

The provisions contained in Decree 231 regarding the Supervisory Body are therefore quite concise, notwithstanding the central role that the law unquestionably assigns to this body within the framework of the regulations relating to the liability of entities[26].

Since the enactment of Legislative Decree no. 231/2001 the case law and concurrent indications coming from the trade associations (in particular from Confindustria through the specific guidelines) have allowed for the identification of the principles that must typify the operations and the placement of the Supervisory Body within the context of the corporate reality, as well as of the requirements of its components [27]. Main indications refer to:

- Autonomy and Independence, by virtue of which it is necessary:
  - to avoid assigning operational tasks[28] to the Supervisory Body as a whole in order to prevent the controlling and controlled parties from coinciding [29];
  - to eliminate interference and conditioning of an economic or personal nature on the part of top management bodies;
  - to anticipate in the organizational model effective causes of ineligibility and forfeiture of the role of members of the Supervisory Body, so as to ensure integrity and the absence of conflicts of interest and kinship relations with the members of the corporate bodies and with senior management.
- Professionality, in particular:
  - the necessary appointment of competent subjects in the field of inspections and consultancy, capable of carrying out statistical sampling activities[30], analysis, risk assessment and containment, processing and evaluation of questionnaires;

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[26] The Explanatory Report to Legislative Decree 231/2001 on this point, states: "The entity (...) must also monitor the effective operation of the models, and therefore their compliance: to this end, to ensure the maximum effectiveness of the system, it is established that the *societas* makes use of a structure that must be established internally (in order to avoid easy maneuvers aimed at pre-establishing a legitimacy license for the work of the *societas* through the use of compliant bodies, and, above all, to establish real culpability of the entity), endowed with autonomous powers and specifically responsible for these tasks (...) of particular importance is the provision of an information burden towards the aforementioned internal control body, used to guarantee its own operational capacity (...)".

[27] "In order to ensure the effective fulfillment of the described requirements, both in the case of a Supervisory Body composed of one or more internal resources and in the event that it is composed, exclusively or even by several external figures, it will be appropriate that the members possess, in addition to the professional skills described, the formal subjective requirements that further guarantee the autonomy and independence required by the task (e.g. integrity, absence of conflicts of interest and kinship relationships with corporate bodies and with the summit, etc.). These requirements will be specified in the Organizational Model. The requirements of autonomy, integrity and professionalism may also be defined by reference to the provisions for other sectors of company legislation. This applies, in particular, when opting for a multi-subjective composition of the Supervisory Body and all the different professional skills that contribute to the control of company management in the traditional model of corporate governance are concentrated in it (e.g. a non-executive director or independent member of the internal control committee; a member of the Board of Statutory Auditors; the person in charge of internal control). In these cases, the existence of the aforementioned requirements is already ensured, even in the absence of further indications, by the personal and professional characteristics required by the legal system for independent directors, auditors and the person in charge of internal controls (See Confindustria Guidelines p. 78).

[28] The United Sections of the Cassation in Sentence, 24.04.2014, no.38343, Thyssenkrupp, cited above, have clearly defined their position regarding the possibility of or even the opportunity for a subject operating in an area at risk of offense to participate as a member of the Supervisory Body. The Sentence rejected the thesis according to which the presence within the Supervisory Body of subjects directly involved in the production processes (at risk of offense) improved the efficiency and functionality of the body by virtue of the specific technical skills provided. Specifically, the incorrect composition of the Supervisory Body was found, which included the head of the safety area of the steel company where the well-known and dramatic work incident occurred.

[29] With reference to the autonomy requirement provided for in art. 6, paragraph 1, lett. b) of Legislative Decree 231/01, the Court of Cassation stated that it is not appropriate for the Supervisory Body to report directly to the Chairman of the Board of Directors, because such an organizational framework would conflict with the principle that the controller cannot be subordinate to the controlled. (See Criminal Court Cassation Section V, 18.12.2013, no. 4677).

[30] The Confindustria Guidelines refer to techniques of:
- statistical sampling;
- techniques for analyzing and assessing risks and measures for their containment (authorization procedures; mechanisms for contrasting tasks);
- flow-charting of procedures and processes for identifying weaknesses;
- interview techniques and questionnaire elaboration;
- elements of psychology;

- it is appropriate that at least one of the members of the Supervisory Body should have legal powers.
- Continuity of action, for which it is necessary:
  - to set up a structure dedicated to the supervision of the organizational model;
  - to maintain documentation related to the activity carried out. The definition of the aspects relevant to the Supervisory Body's continuity of action (the scheduling of activity, the minutes of the meetings and the regulation of information flows from the corporate structures) may be entrusted to the Supervisory Body itself, in which case it will have to regulate its own internal functioning.

In compliance with the provisions of Legislative Decree no. 231/2001, along with resolution of the Board of Directors of 26 October 2004, Banca Ifis has established a Supervisory Body, the characteristics and requirements of which have been defined in the Regulations adopted by the same Body, acknowledging the indications from case law and trade associations mentioned above.
The Supervisory Body adopted a designated email address, in order to receive relevant communications and reports, as follows:

- *organismo.vigilanza@bancaifis.it*.

1.14.1. Meetings

The Supervisory Body meets at least every six months, on the initiative of the Chairman. It also meets on the initiative of the majority of its members whenever intervention regarding sensitive processes or anomalous situations is deemed appropriate.

1.14.2. Composition and requirements of the members of the Supervisory Body of Banca Ifis

The members of the Banca Ifis Supervisory Body are chosen from among qualified individuals and experts in the legal, accounting or tax fields, with adequate professionalism in the aforementioned matters and in possession of the requisites of independence and autonomy.
The members of the Body are not subject, neither in this capacity nor in the performance of their function, to the hierarchical and disciplinary power of any corporate body or function of the Bank.
The Supervisory Body is made up of a Statutory Auditor, chosen by the Board of Statutory Auditors, the Persons in Charge of Internal Audit and Compliance and two independent directors, chosen by the Board, one of whom holds the office of chairman (the "Chairman").
Any individual who has been convicted of crimes provided for by Legislative Decree no. 231/2001 or who has been banned, even temporarily, from public offices, or who manages companies or organizations which, even indirectly, hinder human development or contribute to violating the fundamental rights of the person, or who is in any way found to obstruct the conditions envisaged by the Bank's Code of Ethics cannot be elected to the office of member of the Supervisory Body.
The Code of Ethics, which is published on the company intranet and on Banca Ifis Group official website, constitute an annex to the present Organizational Management and Control Model.

1.14.3. Duties and powers of the Supervisory Body of Banca Ifis.

- methods for detecting fraud.

The Supervisory Body is called upon to serve as the internal body endowed with autonomous powers of initiative and control pursuant to Legislative Decree no. 231/2001.
In carrying out its duties pursuant to Legislative Decree no. 231/2001, the Supervisory Body is called upon to perform the following:

- identification and adequate monitoring of the risks referred to in Legislative Decree no. 231/2001 assumed or assumable with respect to actual corporate processes by constantly updating detection practices, the mapping of risk areas and "sensitive processes";
- keeping the Organizational Model up to date in accordance with the evolution of the law and so that it reflects any changes in the internal organization and business activity;
- verification of the adequacy of the Model insofar as its effectiveness in the prevention of illicit conduct;
- collaboration in the preparation and integration of internal codes of conduct;
- making use of Internal Audit and all internal corporate functions for the acquisition of relevant information pursuant to the law;
- promotion of initiatives for the dissemination of knowledge of the Model among the Company's bodies and employees, providing necessary instruction and clarification and offering specific training courses;
- periodically carrying out inspections targeting specific operations performed in the area of "sensitive processes";
- putting in place extraordinary inspections and/or targeted investigations where malfunctions of the Model are brought to light or the commission of offenses subject to prevention activities has occurred;
- monitoring compliance with and application of the Organizational Model and initiating sanctioning measures pursuant to the law and the employment contract via the relevant corporate functions;
- monitoring compliance with the rules concerning the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

The Body has access to all the activities carried out by the Company and the related documentation; where relevant or potentially relevant activities are entrusted to third parties, the Body must also be able to access the activities carried out by these subjects.
In relation to the tasks it is called upon to perform pursuant to Legislative Decree no. 231/2001, the Body:

- reports to the Board of Directors - whose meetings the Board of Statutory Auditors attends at the first possible meeting;
- liaises on an ongoing basis with the Chairman, the Chief Executive Officer and the Board of Statutory Auditors.

The Body, without prejudice to the competences of the individual structures of General Management, also has a consultative and propositional function to ensure that the Bank develops within the scope of ethical criteria. In particular, it has the task of:

- defining the initiatives deemed appropriate to disseminate knowledge of the Code of Ethics and to clarify its meaning and application;
- coordinating the development of the rules and procedures that implement the indications given by the Code of Ethics;
- promoting the periodic review of the Code of Ethics and of the implementation mechanisms;

- monitoring compliance with and application of the Code of Ethics and initiating sanctioning measures pursuant to the law and the employment contract via the relevant corporate functions;
- reporting to the Board of Directors on activities performed and on issues related to the implementation of the Code of Ethics.

In order to further reinforce the autonomy and independence requirements, the Supervisory Body is equipped with adequate economic resources, as approved by the Board of Directors, which the Supervisory Body has at its disposal in full autonomy.

1.14.4. Confidentiality obligations

The members of the Body:

- ensure the confidentiality of news and information acquired in the exercise of their roles and the activities carried out within the scope of their mandate, without prejudice to any information flows provided for by the organization, the management and control model or the legitimate orders of the Judicial Authority;
- must refrain from seeking and/or using confidential information for purposes other than the exercise of their duties and in any case for purposes not in accordance with the powers conferred and roles assigned them as members of the Body;
  These tasks are extended to the Secretary and collaborators of which the Body may make use of within its functions;

These tasks are extended to the Secretary and collaborators of which the Body may avail itself within the context of its functions.

1.14.5. Reporting and information flows

The Chairman of the Supervisory Body, or another member designated from time to time by the Chairman himself, reports to the Board of Directors at the first meeting on the activity carried out and, where appropriate, on the activities in progress and/or planned, as well as on the possible activation of financial autonomy.
In any case, the Body submits a report to the Board of Directors at least annually, reporting on the activity carried out.
The Chairman of the Supervisory Body, where necessary, evaluates the advisability of any further forms of reporting.
The second and third level control functions are required to send their prepared annual plans to the Supervisory Body, once they have been presented to the Board of Directors.
The Supervisory Body, if it deems appropriate, may call for periods of coordination with the Supervisory Bodies of the subsidiaries.

1.14.6. Information flows toward the Supervisory Body

As previously mentioned, the Organizational Model must provide for information obligations towards the Supervisory Body. The obligation to provide information[31] is an additional tool to facilitate the Body's

[31] The obligations of information related to any conduct contrary to the provisions contained in the Model fall within the broader duty of diligence and the employee's obligation of loyalty pursuant to art. 2104 and 2105 of the Italian Civil Code Art. 2104 of the Civil Code "*The*

performance of the supervisory activity on the functioning and observance of the Organizational Model and to ascertain, after the fact, the causes that enabled the occurrence of a predicate offense. The obligation in question is to be understood as applicable to corporate functions at risk of offense, and concerns the periodic results investigations of the activities put in place for the purpose of executing specific organizational and control measures provided for in the special part of this document. By way of example, such information pertains to:

- conduct which gives rise to liability in the event of the commission of predicate offenses;
- data and elements relating to the effective implementation, at all company levels, of the Organizational Model, with evidence of the disciplinary procedures in place or carried out and any sanctions applied;
- requests for legal assistance sent by managers and/or employees against whom the judiciary proceeds in the event of commission of predicate offenses;
- measures and reports from judicial police bodies which indicate that investigations have been carried out regarding the commission of predicate offenses;

1.14.7. Reporting of violations and whistleblowing

The Supervisory Body must be informed by employees, the Corporate Bodies, consultants and partners about occurrences that could give rise to the liability of Banca Ifis pursuant to Legislative Decree no. 231/2001.

The general obligation applies as per which all recipients are required to report information relating to the commission of an offense, the reasonable belief in the commision of an offense, or to any unlawful or alleged unlawful conduct that is of relevance to the discipline referred to in Legislative Decree no. 231/2001 of which they have become aware of on account of functions performed. The Body must be informed of any violation or alleged violation of the rules of the Model and of conduct in any way not in accordance with the rules of conduct adopted by Banca Ifis.

In line with the provisions of the law and best practices, Banca Ifis defines an internal system intended to foster reporting by its own personnel, and by that of its subsidiaries (hereinafter, Subsidiaries), of acts or deeds that may constitute a violation of the rules governing the activities carried out by the Parent Company and by the Subsidiaries (hereinafter also the Group).

Within the framework of this system, the Bank has also structured a reporting mechanism in compliance with the provisions of article 6, paragraph 2(2) in relation to whistleblowing which, as anticipated, provides:

- one or more channels that allow persons in apical positions and subordinates to submit reports of significant illegal conduct pursuant to Decree 231;
- at least one alternative reporting channel suitable for ensuring the confidentiality of the identity of the whistleblower using IT methods;
- the prohibition of retaliatory or discriminatory acts against the whistleblower.

Banca Ifis has designated Internal Audit as the department responsible for the internal reporting system. The Head of Internal Audit informs the Supervisory Body of the Parent Company of reports received (and, in the event of a report concerning a Subsidiary, the Supervisory Body of the latter) where they are

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employee must use the diligence required by the nature of the service due, by the interest of the company and by the higher interest of national production. He must also observe the provisions for the execution and for the discipline of the work given by the employer and his collaborators on whom he hierarchically depends "; "See Art. 2105: *The employee must not conduct business, on his own or on behalf of third parties, in competition with the employer, nor divulge information relating to the organization and production methods of the company, or make use of it in such a way as to be able to harm it.*".

addressed to the Supervisory Body or in any case related to acts or deeds that may implicate the liability of the Parent Company and/or the Subsidiary pursuant to Legislative Decree no. 231/2001.
Reports are transmitted through specific, autonomous and independent information channels with which the Group has expressly equipped itself. The characteristics of these channels ensure that the confidentiality of the identity of the whistleblowers and of those reported is constantly protected.
Group personnel can alternatively use one of the following transmission options:

- e-mail service (*segnalazioneviolazione@bancaifis.it*) dedicated to receiving reports of violations. This e-mail address is accessed only by the Internal Audit Manager of Banca Ifis;
- postal service (or internal mail). Reports must be sent in a sealed envelope, marked with the words "STRICTLY CONFIDENTIAL" and must be addressed to the Head of Internal Audit of Banca Ifis;
- specific application for whistleblowing accessible both from the company portal (IFIS4YOU) and from the institutional website (*www.bancaifis.it*). The management of this application is restricted to the Internal Audit Manager of Banca Ifis;
- delivery in person by the reporting party to the Internal Audit Manager of Banca Ifis.

In the event that the reporting party deems situations to be potentially incompatible with the ordinary process indicated, he or she proceeds by sending the report directly to the Chairman of the Board of Statutory Auditors of the Parent Company.
To ensure the confidentiality of the whistleblower and the reported party, specific persons within IT are identified and given the task of managing the mailboxes and dedicated software.
The reporting party attaches the documentation it deems useful for reporting purposes. The report must contain the elements indicated in the “Group Policy for the management of violation reports (whistleblowing)”. Upon submission of the report, the reporting party also discloses any possibility of a private interest related to the report and, therefore, the potential existence of a conflict of interest.
The confidentiality of the information provided by the whistleblower is guaranteed at every stage of the process and cannot be disclosed without his or her express consent. The confidentiality obligations do not apply when the information requested is necessary for investigations or pertinent to proceedings initiated by the judicial authority following the report.
If the whistleblower is not jointly responsible for the violation, the Group guarantees, in addition to confidentiality, protection from retaliation, sanctions, dismissal, and direct or indirect discriminatory measures having an effect on working conditions brought about for reasons directly or indirectly connected to the report. Even in the event that the report is unfounded, the whistleblower is also protected from disciplinary actions, unless he or she has engaged in willful misconduct and/or gross negligence.

In the management of the report, the confidentiality and protection of the personal data of the reported party is also ensured; his or her identity is communicated only in the event of actual need and when it is functional to inquiry for appropriate further information, the performance of investigations or any further assessments. Finally, the confidentiality of information received through the report is guaranteed. Under conditions of anonymity, the Group does not guarantee any protection to the whistleblower.
Where the reports are addressed to the Supervisory Body, the Internal Audit Manager also informs the Supervisory Body of the Parent Company and, in the case of a report concerning a Subsidiary, the Supervisory Body of the Subsidiary where present.

In coordination with the Supervisory Body for the reports addressed to it or which, in any case, relate to actions or facts that may entail liability pursuant to Legislative Decree no. 231/2001, the Head of Internal Audit, having assessed the admissibility of the report, analyzes its content in detail with reference to:

- the organizational area within which the reported violation is located;
- the identity of the persons responsible for the actions related to the reported violation;
- the nature of the violation.

The Head of Internal Audit decides upon and performs the actions necessary to ascertain the facts alleged in the report, in compliance with:

- principles of impartiality, confidentiality, employee dignity, and protection of personal data;
- Labor Law as well as contractual regulations of the sector.

Where appropriate or absolutely necessary in the light of the particular subject matter of the report received, the Head of Internal Audit, in order to perform an in-depth analysis of the contents of the report, may call upon the personnel belonging to the Organizational Unit that he or she supervises, may involve personnel from other structures or may avail him or herself of the support of third parties.
Once the inquiry has been completed, the Head of Internal Audit formalizes his or her assessments and submits them to the Chief Executive Officer and the General Manager as well as, where relevant, to the Supervisory Body, without prejudice to any potential situations of incompatibility. In the latter case, he or she reports directly to the Chairman of the Parent Company's Board of Statutory Auditors. The recipient makes the most appropriate decisions regarding the actions or facts that have emerged and involves, if necessary, Human Resources in order to determine any disciplinary measures to be taken against the reported persons and in order to manage, in his or her regard, disclosure of the report and consequent investigation.
The Head of Internal Audit does not participate in the adoption of any decision-making measures, which are remitted to the organizational units or to the competent corporate bodies.
For each report received, the Head of Internal Audit also proceeds to inform the whistleblower of the outcome of the assessments carried out under his or her authority.
The documentation produced is archived putting in place measures to ensure confidentiality:

- hard-copy documentation:
  - is archived in a secure location, inaccessible to third parties;
  - in the event of forwarding to third parties, is forwarded confidentially, documenting the recipients and obtaining, when possible, confirmation of receipt.
- electronic documentation is filed in network folders with controlled and limited access. All data (including attachments) pertaining to reports managed within the specific IT application are also subject to encryption.

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1.15. The disciplinary system

As anticipated, in order to benefit from the exempting effect of the Model, the Entity must ensure not only that the Model is adopted, but also that it is successfully implemented. This implementation requires, among other things, the adoption and application of a disciplinary system suitable for sanctioning non-compliance with the measures indicated in the Model. This system completes the

Organizational Model[32] and ensures that IT is effective. The regulatory data is explicit in attributing an essential role to the disciplinary system for the effective implementation of the Organizational and Management Model.
In particular, with regard to subjects in apical positions, article 6, paragraph 2 of Decree 231 provides that: "*in relation to the extension of the delegated powers and the risk of committing crimes, the models must (...) e) introduce a disciplinary system suitable for sanctioning non-compliance with the measures indicated in the model* "; with reference to subordinate subjects, article 7, paragraph 4 of Decree 231 states that: "*The effective implementation of the model requires: (...) b) a disciplinary system suitable for sanctioning failure to comply with the measures indicated in the model*".

1.15.1. General principles

Banca Ifis is committed to vigilance in order to avoid violations of the Organizational Model adopted and to appropriately sanctioning conduct contrary to the directives contained therein, adopting disciplinary measures as envisaged by collective bargaining.
The disciplinary regulations are also brought to the attention of employees by their being posted in a place accessible to all (art. 7 of Law no. 300 of May 20, 1970) and by means of a memorandum.
The disciplinary system of Banca Ifis S.p.A. pertains to all categories of subjects covered by the Bank's Organizational Model in a manner consistent with the main reference standards governing the respective contractual relationships: persons in apical positions, persons in subordinate positions or subject to the direction or supervision of others, and subjects linked to the Bank by collaboration or commercial relationships. The disciplinary system of Banca Ifis S.p.A. is autonomous with respect to criminal investigations. Banca Ifis has the right to apply, upon the outcome of the appropriate assessments by the Supervisory Body, the disciplinary sanctions deemed most appropriate to the specific case, in consideration of their autonomy, not necessarily coinciding with the court's judgment in criminal proceedings[33].
The type and extent of each of the sanctions listed below must be determined in relation to:

- the gravity of the violations committed and proportionate to the same;
- the duties performed;
- the predictability of the event;
- the intentionality of the behavior or degree of negligence, imprudence or inexperience;
- the overall behavior of the persons involved;

[32] See Confindustria Guidelines, pp. 70-71.

[33] Failure to comply with the measures provided for by the organizational model must activate the sanctioning mechanism provided for by the latter, regardless of the possible introduction of a criminal trial for any offense committed. Indeed, a model can be said to be implemented effectively only when it activates the disciplinary apparatus to counteract behavior that is symptomatic of the crime. In fact, a disciplinary system aimed at sanctioning behaviors already constituting a crime in and of themselves would end up unnecessarily duplicating the sanctions imposed by the state system (penalty for the natural person and penalty pursuant to Legislative Decree for the entity). Instead, it makes sense to provide for a disciplinary apparatus that operates as an internal defense within the company, which is added to and prevents the application of "external" sanctions by the state." See Confindustria, Confindustria Guidelines, p. 71. Analogously, "the disciplinary system, always in the context of the employment relationship, can be developed and applied regardless of the criminal relevance of the conduct; it is autonomous with respect to any criminal action and, indeed, must remain on a clearly distinct and separate level from the criminal and administrative law system; having a specific preventive and not merely punitive function. This means that the bank must promptly react to the violation of the rules of conduct, even if the person's behavior does not constitute a crime or does not lead to direct liability of the entity itself. Again in general terms, the bank's reaction can therefore disregard the ascertainment of the criminal relevance of the person's conduct. In fact, it constitutes a consolidated labor law principle - well extensible also to quasi-subordinate employment relationships - according to which the gravity of the worker's conduct and its ability to impact, in a more or less severe way, the bond of trust that binds him to the company, can and must be assessed separately from any criminal relevance of the conduct" (See ABI Guidelines p. 40).

- the functional position of the persons involved in the event and the consequent strength of the fiduciary bond underlying their relationship with the Bank;
- other particular circumstances surrounding the disciplinary violation.

The determination and application of the sanctions must take into account the principles of proportionality and adequacy with respect to the alleged violation.
The possible disciplinary sanctions, proposed by the Supervisory Body, are evaluated by the Board of Directors, the body competent to impose the sanction.

1.15.2. Employees

With reference to the disciplinary provisions of the National Collective Bargaining Agreement for senior executives and staff in professional areas (from 1st to 3rd) employed by credit, financial and instrumental companies, and in consideration of the particular trust that is at the foundation of the employment relationship with the aforementioned companies, the following penalties will be applied in proportion to the significance of the infringements indicated below:

- 1st professional area
    - Verbal reprimand:
        - slight non-compliance with the duties established by the contract or by the instructions given by superiors;
        - slight negligence in carrying out work.
    - Written reprimand:
        - infractions punishable by verbal reprimand which, due to objective circumstances, specific consequences or recidivism, are of greater significance;
        - minor instances of non-compliance with the duties established by the contract or by the instructions given by superiors;
        - minor negligence in carrying out work.
    - Suspension from service and of salary for a period not exceeding 10 days:
        - infractions punishable by lesser penalties which, due to objective circumstances or specific consequences or recidivism, are of greater significance;
        - repeated or serious failure to comply with the duties established by the contract or with the instructions given by superiors;
        - serious negligence in carrying out work.
    - Dismissal on justified grounds:
        - violations of contractual rules or duties intrinsic to the disciplinary sphere, to company directives, or to work performance, such as to constitute, either due to the particular nature of the infraction or to its recidivism, a "significant" non-fulfillment of the given obligations.
    - Dismissal for just cause:
        - serious infraction which (due to the willfulness of the act, criminal or pecuniary consequences, recidivism, or due to its particular nature) results in the loss of the trust on which the employment relationship is based and prevents even the provisional continuation of the relationship.

- Management staff, 2nd and 3rd professional area

- Verbal reprimand:
  - slight non-compliance with contractual provisions or directives and instructions given by management or superiors;
  - slight negligence in carrying out work;
  - tolerance of slight irregularities committed by other members of the staff or by third parties;
- Written reprimand:
  - repetition of infractions punishable by verbal reprimand;
  - minor non-compliance with contractual provisions or directives or instructions given by management or superiors;
  - minor negligence in carrying out work;
  - failure to report, or tolerance of, minor irregularities committed by other members of staff or by third parties;
- Suspension from service and salary for a period not exceeding 10 days:
  - infractions punishable by lesser penalties which, due to objective circumstances or specific consequences or recidivism, are of greater significance;
  - repeated or serious non-compliance with contractual provisions or directives and instructions given by management or superiors;
  - failure to report, or tolerance of, serious infractions committed by other members of the staff or by third parties;
  - serious negligence or that which has led to negative repercussions for the company or third parties;
- Dismissal on justified grounds:
  - violations of contractual rules or duties inherent to the disciplinary sphere, to company directives, or to work performance, such as to constitute, either due to the particular nature of the infraction or to its recidivism, a "significant" non-fulfillment of the given obligations.
- Dismissal for just cause:
  - serious infraction which (due to the willfulness of the act, the criminal or pecuniary consequences, recidivism, or due to its particular nature) results in breaking the trust on which the employment relationship is based, preventing even the temporary continuation of the relationship.

In relation to the provisions of article 7, paragraph 1 pursuant to Legislative Decree 231/2001: "*employees who abstain from work in relation to a strike proclaimed in violation of the rules referred to in the aforementioned agreement, are subject to disciplinary sanctions - objectively and subjectively proportionate to the gravity of the infringement - pursuant to legal and contractual provisions (including the fine), with the exclusion of the extinguishing measures of the relationship*".

The collective bargaining agreement also provides that: "*Disciplinary measures are applied in relation to the severity or recidivism of the infraction or the degree of culpability. When required by the nature of the infraction or the need for verification as a result of the same, the company, pending resolution of the final disciplinary measure, may order the temporary removal of the employee from service for the time strictly necessary*".

In relation to the provisions of Legislative Decree no. 231/2001, which regulates the administrative liability of legal persons and of companies and, in particular, pursuant to article 7, paragraph 4, letter b), and with specific reference to the provisions of articles 30 and 300 of Legislative Decree 81 of 2008 and subsequent amendments regarding the protection of health and safety in the workplace, employees who violate the obligations set out therein are subject to disciplinary sanctions - objectively and subjectively related to the severity of the infringement - pursuant to the legal and contractual provisions, the code of ethics adopted by the company and in compliance with the proportionality criteria established in this disciplinary code.
The employer cannot take any disciplinary measures against the worker prior to contestation of the charge and without having heard the worker in his or her defense. The measures cannot be imposed before 5 days have elapsed, during which time the worker can present his or her justifications.

1.15.3. Self-employed; External collaborators, Subjects having commercial contractual relations with Banca Ifis

Failure to comply with the Bank's Organizational Model by a self-employed worker, external collaborator, or a person having contractual/commercial relations with the Bank, may result in:

- verbal reprimand to the consultant/collaborator who violates the internal procedures and provisions of the Organizational Model, or adopts behavior that does not comply with the provisions of the Model. A special report of the meeting will be drawn up and will be kept by the Supervisory Body;
- termination of the consultancy/collaboration contract with the consultant/collaborator who adopts, in the performance of his or her function, behavior that is clearly in violation of the provisions of the Organizational Model in force such as to warrant the concrete application, by the Entity, of the sanctions provided for by Decree in question, recognizing that this conduct involves the fulfillment of acts such as to undermine the confidence of the Entity in its dealings with him or her or the occurrence of a situation of notable prejudice to the Entity.

The Bank has the right to request compensation for damages incurred as a result of such conduct.

1.15.4. Measures against persons in Apical positions, Directors and Statutory Auditors

Failure to comply with the Bank's Organizational Model by persons holding apical positions in the company, or personnel who fulfil representation, administration or management roles within the company or of one of its organizational units with financial and functional autonomy, as well as by persons who exercise de facto management and control of the company itself, whose relationship is characterized by a high degree of trust, can result in:

- A reprimand interview of the executive who violates the internal procedures and provisions set out in the Organizational Model in force in the Bank, or who adopts, in carrying out activities in the areas at risk, behavior that does not comply with the prescriptions of the Model, recognizing in such behavior the non-observance of the behavioral provisions widespread in the company. A special report will be drawn up of the interview which will be kept by the Supervisory Body pursuant to Legislative Decree no. 231/2001.

The significance of the subject's non-fulfillment of the behavioral requirements in force within the company will be assessed for the purposes of the premature and justified termination of the relationship itself.
In the event that the subject, in carrying out activities in at-risk areas, adopts behavior that is clearly in violation of the provisions of the Organizational Model in force in the company such as to warrant the concrete application by the company of the sanctions provided for by Legislative Decree no. 231/2001, termination of the employment relationship will ensue, recognizing that this conduct involves the fulfillment of acts which serve to undermine the confidence of the Entity in its dealings with him or her or the occurrence of a situation of notable prejudice to the Entity.
With regard to the Directors and the Statutory Auditors, the Supervisory Body informs the entire Board of Directors and the Board of Statutory Auditors of the Bank that they will take the appropriate actions as required by current legislation.
If the Directors or Statutory Auditors carry out acts upon which the commission of any of the offenses referred to in Legislative Decree no. 231/2001 may depend, on the proposal of the Supervisory Body, the Board of Directors is at liberty to provide for the following sanctions:

- reprimand interview of the Director or Auditor who violates the internal procedures and provisions set out in the Organization Model in force in the Bank or who adopts, in carrying out activities in at-risk areas, behavior that does not comply with the prescriptions of the same, recognizing in such behaviors non-compliance with the behavioral provisions widespread in the company. A special report will be drawn up of the interview which will be kept by the Supervisory Body pursuant to Legislative Decree no. 231/2001;
- proposal to the next Shareholders' Meeting (pursuant to art. 2383 of the Italian Civil Code) of removal from office for just cause of the Director or Statutory Auditor who adopts, in carrying out activities in at-risk areas, behavior clearly in violation of the requirements of the Organizational Model in force in the Bank and such as to warrant the concrete application by the Bank of the sanctions provided for by Legislative Decree no. 231/2001, recognizing that this conduct involves the fulfillment of acts which serve to undermine the confidence of the company in him or her or the occurrence of significant damage or a situation of considerable prejudice to the company.

1.15.5. No smoking, Law 3/2003

Current legislation requires the employer to prepare safety measures that are suitable to the protection of the healthiness of the working environment and the psycho-physical integrity of the workers.
In relation to the provisions of article 51, paragraph 1 of Law no. 3 as amended by article 7 of the Law 21 October 2003, n. 306 on the subject of "protection of the health of non-smokers", employees who violate the obligations set out therein are subject to disciplinary sanctions objectively and subjectively related to the seriousness of the infringement pursuant to the provisions of law and contracts, in compliance with the criteria of proportionality established in this disciplinary code.
The fines for the offender, provided for by Law 3/2003, consist in the payment of a sum ranging from a minimum of 27.5 euros to a maximum of 275 euros. This sanction is doubled if the violation is committed in the presence of a clearly pregnant woman or in the presence of children under the age of 12. For those in charge of monitoring the regulations on the prohibition of smoking, the penalties range from a minimum of 220 euros to a maximum of 2,200 euros, increased by half in the event that the

failure to adopt prevention has exposed women in an evident state of pregnancy or children under the age of 12 to secondhand smoke.

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1.16. Communication and training of the Recipients of the Organizational Model

The effective implementation of Banca Ifis's Organizational and Management Model requires the adequate dissemination and sharing of the rules and safeguards with which the Company requires compliance by all Recipients[34].
Knowledge of the Organizational Model is a clear prerequisite for its application and allows for the accountability of the entire audience of those who work or collaborate with Banca Ifis, precluding any improper conduct from being justified by the manager citing ignorance of the Model and preventing any illegal conduct, whether willful or negligent, from occurring in the business and corporate context due to a lack of understanding or erroneous interpretation of the Model itself or of the internal legislation from which it draws.

In principle, communication to personnel must be clear, effective and widespread and allow for continuous access to all the "231 tools" such as, in addition to this document, the Code of Ethics, the procedures, the powers of authorization and signature pertinent to hierarchical reporting, etc.
To this end, the updated version of the Organizational and Management Model of Banca Ifis is available and can be downloaded from the Ifis4You company portal and from the company intranet which also allows for access to the entire regulatory and documentary compendium of which the Model is an integral part or, in any case, an ancillary element.
At the outset of the employment relationship with Banca Ifis, the new employee or collaborator, however classified, is provided with all of the information necessary for access to the Bank's organizational model so that knowledge is guaranteed as well as, where necessary, the due awareness of the contents of Legislative Decree no. 231/2001 in addition to the essential features of the regulations on the administrative liability of Entities.

In the aforementioned interest of raising awareness and empowerment among Recipients, it is also envisaged that the new employee or collaborator signs a declaration committing to the reading of the document and to compliance with its prescriptions[35].
Banca Ifis intends to complement these information requirements with specific training activities concerning the contents of the Model; these activities will be modulated in relation to the role of the Recipients according to the risks associated with the operating areas to which they belong[36].

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[34](..) "Communication to personnel and their training". “These are two important requirements of the model for its proper functioning and must be modulated differently according to the recipients: employees in their generality, those who operate in specific areas of risk/sensitive activities, the components of the corporate bodies, etc. The communication in question must obviously pertain to the code of ethics, but also other tools such as authorization powers, hierarchical reporting lines, procedures, information flows and all that contributes to transparency in daily operations. Communication must be: capillary, effective, authoritative (i.e., issued from an adequate level), clear and detailed, and periodically repeated. In addition, it is necessary to allow for access to and consultation of the documentation constituting the Model including through the company intranet” (See Confindustria Guidelines page 53).

[35] New hires, on the other hand, are given an information set (for example CCNL, Organizational Model, Legislative Decree 231/2001, etc.), with which to guarantee them the knowledge considered of primary importance.

[36] Alongside communication, an adequate training program must be developed, modulated according to the levels of the recipients. It must illustrate the regions of opportunity – including legal - that inspire the rules and their concrete scope. In this regard, provisions are to be made

To ensure that training is accessible, communication channels and tools that facilitate access to content, even remotely, such as, typically, educational packages available online, may be used and in any case encouraged, where technically feasible.
The Supervisory Body is responsible for verifying the adequacy and effectiveness of the training activities.

1.17. Updating and improvement of the Organizational Model

As seen, article 6 paragraph 1, letter b) of Legislative Decree no. 231/2001 assigns to the Supervisory Body the task of ensuring the updating of the Model. This provision carries with it the power to solicit and propose organizational changes, the lack of which may result in the inapplicability of cause for exemption from liability.
Although the rule does not expressly identify situations in which it is necessary to adapt and update the Organizational Model, it is to be understood that this need arises in general whenever the Model is no longer suitable to the effective mitigation of the risk of offenses.
Situations which serve as an impetus to update and adapt the Organizational and Management Model of Banca Ifis include but are not limited to:

- significant violations of the Model itself, the frequency, severity or methods of which highlight inadequacy or gaps;
- significant changes to the internal structure of the company, of the corporation, of the business activities or of the manner in which they are carried out: take, for instance, companies, such as Banca Ifis itself, which over time have experienced an evolution and expansion in their company and corporate structure, both through entry into new business sectors, including through acquisitions of third-party companies, and through strategic decisions, such as listing on the Stock Exchange;
- regulatory changes and changes related to case law: in recent years especially, this situation has occurred more frequently, concerning the extension of the catalog of predicate offenses. However, the reverse also occurs, that is, the exclusion of one of the predicate offenses, perhaps on account of abrogation of a listed offense. Case law, especially that of legitimacy, has provided clarification with respect to the interpretation of Legislative Decree no. 231/2001 in relation to which it may be necessary to make changes to the model itself;
- issue and modification of guidelines by the relevant trade association communicated to the Ministry of Justice in accordance with article 6 of Legislative Decree no. 231/2001 and article. 5 and ss. of the Ministerial Decree of June 26, 2003, n. 201.

It is the duty of the Control Functions and of all the Bank's structures to communicate to the Supervisory Body facts and events that may make adjustment necessary.

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for the content of the training courses, their frequency, the compulsory nature of participation in them, the frequency and quality checks on the content of the programs, and the systematic updating of the contents of the training events due upon updates of the Model (See Confindustria Guidelines page 53).