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## **1. LEGISLATIVE DECREE No. 231/01**

### **1.1 Legal character of the Bodies' liabilities and reference standards**

The Legislative Decree No. 231/2001, containing the “Regulations on the administrative liability of legal persons, companies and associations, even those without legal status”, introduced into our legal system the administrative liability of bodies for any unlawful acts committed in their own interest or to their own advantage by persons holding a leading position in the body's organisation or by persons subject to the direction and supervision of others.

This overturns the dogma *societas delinquere non potest*, according to which only a natural person can be held liable for criminal offences and not even a legal person.

The reform was adopted pursuant to supra-national indications, which include: the Convention on the Financial Protection of the European Communities, signed in Brussels on 26 July 1995; the Convention on the fight against corruption involving officials of the European Communities or of Member States of the European Union, signed in Brussels on 26 May 1997; and the OECD Convention on combating bribery of foreign public officials in international business transactions, signed in Paris on 17 September 1997.

The introduction of administrative liability of legal persons therefore represents one of the most significant reforms which imposed to the member states of the European Union, Italy included, the adoption of homogeneous means to effectively suppress and prevent crime involving the economic sector.

The need to protect and guarantee the security of the market, which has now assumed the characteristics of a global market, that goes beyond the borders and particularities of each single State, as well as the transformation of the organisational structures of the company, have urged the international community, on the one hand, to try to create a homogeneous sanctioning system of unlawful conduct, and on the other, to identify specific responsibilities of the companies which, true protagonists of the international traffic, have assumed increasingly complex structures in terms of size and organisation.

The involvement of legal persons, both in the policy of prevention and in the responsibility for the conduct of each single person within their organisation, appears, in fact, to be a necessary step to ensure general fairness and ethics in the market.

The liability model set out by Legislative Decree No. 231/2001, based on a system of organisational fault, is inspired by the US model of compliance programs, conceived and developed by the Federal Sentencing Guidelines for Organisations, in force since 1991<sup>1</sup>.

The liability of the *societas* is, therefore, a direct, autonomous and possibly concurrent liability with that of the offender(s) (art. 8 of Legislative Decree No. 231/01).

With regard to the legal nature of the liability of entities, different approaches have been adopted.

Although the liability model set out in Legislative Decree No. 231/01 is, in many respects, of a distinctly criminal nature, it is expressly defined as "administrative" in the decree, although the accompanying report excludes the classification value of this expression.

According to the majority of legal opinion <sup>2</sup>, it is rather a hybrid type of liability, in which the specific features of criminal and administrative liability coexist, so much so that:

- the criminal procedural system is adopted for the purpose of its assessment and consequent imposition of the sanction;
- in observance of the principle of lawfulness and non-retroactivity of criminal law, set out in art. 25 of the Constitution, article 2 of the aforesaid provision states that the body cannot be held liable for an act which constitutes an offence if its administrative liability in relation to that offence and the relevant sanctions are not expressly prescribed by a law which came into force before the act was committed;
- the types of offence which could give rise to liability for the body are those specifically identified by Legislative Decree No. 231/01.

Therefore, Decree No. 231/01 on the one hand establishes a rigid repressive scheme, and on the other one provides for a mitigation of this rigour for the entity which has adopted suitable systems for preventing offences from which the liability of legal persons is derived.

The organisational, management and control Model referred to by Legislative Decree No. 231/01 has a twofold function: one is an exemption, given that its concrete, adequate and effective implementation and its constant adjustment exclude, in certain cases and under certain conditions, the liability of the entity; the other is a restorative function, because even in the event that the adoption of the Model or its adjustment is carried out post delictum, there could be a reduction in the monetary penalty and the non-applicability of interdiction measures.

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1 G. De Simone, La responsabilità da reato degli Enti: natura giuridica e criteri oggettivi d'imputazione, in *penalecontemporaneo.it*.

2 Cass. Pen., Sez. Un., 18 September 2014, No. 38343 (Thyssenkrupp case).

As already mentioned, since it comes to a liability for organisational fault, the aim is to encourage legal persons to adopt an internal organisation capable of preventing unlawful conduct.

In fact, the body is not liable if it proves that it has adopted the measures, indicated by the legislator, which are presumably suitable for the prevention function.

There are three essential conditions for the liability of the body to be configured:

- an offence has been committed to which the law relates the liability of the body;
- the offence has been committed in the interest or to the advantage of the organisation itself;
- the author of the offence, i.e. the person who causes the "administrative liability" of the Company in which or for which he/she operates is:
  - a) a senior subject, i.e. a person holding functions of representation, administration or management of the Company, as well as a person exercising, even actually, the management and control of the same;
  - b) a person subject to the management or supervision of such senior subjects.

With particular reference to the objective scope of application of the rules laid down by Legislative Decree No. 231/01, it should be noted that, in accordance with the principles of mandatory and territorial application of criminal law, pursuant to art. 4 of Legislative Decree No. 231/01, the entities having their head office in the territory of the Italian State are liable, in the cases and under the conditions set out in articles 7 to 10 of the Italian Criminal Code, in relation to offences committed abroad, provided that they are not prosecuted by the foreign State, i.e. the State where the offence was committed ("ne bis in idem" principle).

More specifically, apart from the cases of offences committed abroad which are unconditionally punishable (art. 7 and 8 of the Italian Criminal Code) or in any case subject to Italian criminal law (art. 9 and 10 of the Italian Criminal Code), subject to the "ne bis in idem" principle, pursuant to Art. 6, par. 2 of the Italian Criminal Code, an offence is deemed to be committed in the territory of the State when the act or omission that constitutes the offence has been committed in whole or in part in the territory of the State, or when the event resulting from such conduct has occurred there<sup>3</sup>.

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<sup>3</sup> Reference is made to case law on this point (most recently Cass. Pen., sez. VI, 7 April 2020, No. 116262, according to which: "the company is liable, like "anyone" - i.e. any natural person - for the effects of its "conduct", irrespective of its nationality or the place where it has its head office or mainly carries out its operations, if the alleged offence has been committed in Italy (or must in any case be deemed committed in Italy or in some of the cases in which there is national jurisdiction even in the case of an offence committed abroad), subject to the obvious condition that the further criteria for attributing liability under Articles 5 et seq. of Legislative Decree No. 231/2001 are met.

Therefore, the existence of Italian jurisdiction must be assessed in relation to the alleged offence, which is why an offence committed abroad by a company with its head office in Italy will be prosecutable only: i) in the cases referred to in articles 7 to 10 of the Italian Criminal Code (hypothesis where the national jurisdiction exists *ope legis*); ii) in the cases of an offence committed even in part in Italy, pursuant to art. 6 par. 2 of the Italian Criminal Code, in favour or in the interest of the entity, by senior or subordinate persons belonging to it (as per art. 5 et seq. of Legislative Decree No. 231/01).

Conversely, with regard to the subjective scope of application, Legislative Decree No. 231/2001 differentiates the rules of the imputation criterion operating on a subjective level depending on whether the offence is committed by a person in a senior position or by a mere subordinate.

In the first case, the burden of proof is reversed on the Company, which "is not liable if it proves" that it has adopted and effectively implemented, before the offence was committed by the person in a senior position, an "Organisational, management and control Model" (hereinafter "MOG 231") capable of preventing offences of the kind committed<sup>4</sup>.

The company also has the burden of proving that it has set up an internal body with autonomous powers of initiative and control (Supervisory Board - SB), which has been entrusted with the task of supervising compliance with the organisational models, as well as promoting their updating (see art. 6 par. 1(b) of Decree No. 231).

Finally, it is required to prove that the senior person committed the offence by "deceitfully bypassing the organisation and management models" previously adopted and effectively implemented (see art. 6, par. 1, letter c) of Legislative Decree No. 231/2001).

Otherwise, art. 7 of Legislative Decree No. 231/2001 governs the case where the offence is committed by a "person subject to the direction of others".

In such cases, the burden of proving that the prescribed organisational model has not been adopted or has been ineffectively implemented lies with the prosecution.

The Body is also required to ensure that the MOG 231 is periodically checked, and to amend it if significant breaches have occurred, or if there have been changes in the organisation or activity, as well as to adopt a disciplinary system capable of sanctioning the failure to comply with the measures specified on the model.

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<sup>4</sup> On the need to ascertain the suitability and implementation of the MOG 231, see most recently Cass. Pen., sez. IV, 28 October 2019, No. 43656.

Therefore, the preparation of an organisational and control model that ensures the effective and efficient monitoring of the Entity's critical processes (so-called sensitive activities), constitutes an exemption from the offence.

In the light of art. 5 par. 2 of Legislative Decree No. 231/2001, the Entity shall not be liable for the offence if the active parties acted in the exclusive interest of themselves or of third parties.

Furthermore, pursuant to art. 6, the Company is not liable if proves that:

- the management body has adopted and effectively implemented, before the offence was committed, organisational and management models capable of preventing offences of the same kind as the one that occurred;
- the task of supervising the operation of adhering to the models and keeping them updated has been entrusted to a body endowed with autonomous powers of initiative and control;
- the persons have committed the offence by deceitfully bypassing the organisation and management models;
- there was no omitted or insufficient supervision on the part of the appointed body.

Finally, art. 7 par. 4 of Legislative Decree No. 231/01 defines the requirements for the effective implementation of organisational models:

- periodic checking and possible amendment of the model when significant breaches of the requirements are detected or when there are changes in the organisation and activity;
- a disciplinary system suitable for sanctioning failure to comply with the measures indicated in the model;

## **1.2. Penalties against the Body.**

In the event that the Body should be held liable under Legislative Decree No. 231/01, as a result of the commission or attempted commission of the offences regulated therein, according to the scheme outlined above, sanctions are provided for against it.

In particular:

1. monetary sanction, calculated by means of a system based on quotas, which are determined by the judge in number and amount, within limits defined by law (art. 10, 11 and 12 of Legislative Decree No. 231/01);
2. prohibition measures (art. 9 par. 2 and art. 13 par. 2 of Legislative Decree No. 231/01), which can also be applied as a precautionary measure, for a period of not less than three

months and not more than seven years, unless there is a case of liability for a serious offence against the Public Administration (art. 25 par. 5)

Pursuant to art. 14 par. 1 of Legislative Decree No. 231/01, the prohibition measures relate to the specific activity regarding the offence committed by the body.

Therefore, in turn, they may consist in:

- a) the interdiction from exercising the activity;
- b) the suspension or revocation of authorisations, licences or concessions functional to the commission of the offence;
- c) the prohibition of contracting with the public authorities, except in order to obtain the performance of a public service.

This prohibition may also be limited to certain types of contracts or with reference to specific administrations;

- d) the exclusion from benefits, financing, contributions or aids and possible revocation of those already granted;
- e) the prohibition to advertise goods or services.

The prohibition measures, if necessary, may be applied jointly; otherwise, the interdiction from exercising the activity is considered to be the last resort, and may be applied only where the other prohibition measures turn out to be inadequate.

3. the confiscation of the price or of the profit derived from the offence, to be applied upon conviction of the Body (art. 19);
4. the publication of the conviction sentence (art. 18).



## **2. THE ORGANISATION AND MANAGEMENT MODEL ADOPTED BY ECOGEST S.P.A.**

### **2.a. Establishment of the model according to the corporate structure, governance system and internal control of ECOGEST s.p.a.**

ECOGEST s.p.a. is a single-member joint-stock company, entirely owned by a holding company, Greenway group srl.

It has its registered office in Italy and, since 2014, it also operates in Turkey and Romania through local companies entirely controlled from Italy. Since 2015, it owns business branches in Poland and France.

ECOGEST spa mainly has relationships with the public administration, participating in selection procedures of contractors for the assignment of public contracts, through the stipulation of tender and concession contracts, according to the provisions of Legislative Decree No. 50/2016. In fact, the **core business** is the construction and maintenance of public and private green installations; environmental recovery and reclamation in river areas with the aid of cutting-edge technologies in support of the environment; maintenance of green areas on roads, highways and railways; activities related to and connected with the construction of large public works.

Secondary activities, related and consequential to the core business, include the treatment and disposal of waste, site preparation and landscaping.

It is a medium-large company, employing an average of 135 people.

The **company policy**, which can be inferred from the mission statement and the Code of Ethics, that can also be found on the company's website, is clearly based on the pursuit of sustainable development, the protection of ethical and professional values, transparency and integrity.

The **company's governance system** has been outlined by the Board of Directors in compliance with the relevant regulations to which the company is subject.

The company has a traditional administration system that provides for a subdivision of responsibilities between the Shareholders' Meeting, the Board of Directors, the Board of Statutory Auditors and the Auditing Body.

ECOGEST spa has also provided for a system of express proxies and powers of attorney for the allocation of managerial and/or representative functions.

Therefore, ECOGEST spa aims at maintaining and developing trust-based relationships, founded on integrity, transparency and professionalism, both with the administrations it works with and with the private individuals with whom it establishes collaboration relationships (suppliers, subcontractors, partners), and with the recipients of the service (work and/or service), the so-called stakeholders.

ECOGEST spa adopts and undertakes to spread a culture based on respect for lawfulness, integrity and transparency, through the implementation of protocols of conduct drawn up pursuant to Legislative Decree No. 231/01, compliance with the law, company regulations, best practices and internal control procedures.

Precisely for the purpose of increasingly ensuring conditions of fairness and transparency in managing the company's activities, ECOGEST s.p.a. has deemed it appropriate to adopt an Organisation, Management and Control Model pursuant to Leg. Decree No. 231/2001 which, together with the Code of Ethics, the organisational procedures and the other policies and provisions of the Company, represents the plan to ensure an effective prevention and detection of violations of the law, as well as the set of corporate governance tools aimed at allowing the company to be run in a way that is sound and consistent with the pre-established targets.

ECOGEST spa is also determined to ensure that the aforementioned corporate governance tools are duly complied with and are constantly suitable to prevent offences from being committed. To this end, the Company undertakes to carry out a continuous check of the efficacy of the Model adopted with respect to its own organisational and business reality and with respect to the amendments made to the text of Leg. Decree No. 231/2001, as well as to any critical issues that have emerged in the application of the Model itself.

In particular, in line with the regulatory requirements and the reference best practices (Confindustria Guidelines), and with the development of case law on the liability of entities, the Company promptly adjusts its Organisational Model 231 through specific updates implemented whenever new elements arise, such as the inclusion of new crimes, and significant changes in the organisational structure of the Company.

## **2.b. Addressees of the Model**

The provisions of this Model are binding both for "senior subjects", i.e. persons holding functions of representation, administration or management of the Company or one of its organisational units, as well as for persons who exercise, even de facto, management and control - and for persons subject to their management or supervision.

They are therefore "Addressees" of the Model, each within the scope of their duties and responsibilities, in the context of the role held or in any case of the activities carried out for ECOGEST s.p.a., as defined by the articles of association, the internal system of proxies and powers of attorney, and the company's organisational chart:

1. the Chairman of the Board of Directors and the Board of Directors;
2. the Managing Director;

3. The General Manager;
4. the Chairman of the Board of Statutory Auditors and the Board of Auditors;
5. the Auditing Body;
6. the representatives of ECOGEST s.p.a. within the limits of the powers conferred on them, as per proxies and powers of attorney;
7. the technical management;
8. the manager and members of the administrative department;
9. the manager and members of the sales area;
10. the manager and members of the personnel department;
11. the manager and members of the tenders and purchasing department;
12. the quality, environment and safety manager;
13. the prevention and protection manager;
14. the safety committee;
15. the members of the internal auditing body (Internal Audit)
16. all "human resources", i.e. all employees, temporary workers and posted workers, as well as self-employed workers and other persons who are part of the Company's workforce, regardless of their contractual form and of the reference legislation;
17. external collaborators, regardless of their professional category and contractual form, within the limits in which their work is coordinated with the company organisation and subject to the direction or supervision of a senior person of ECOGEST s.p.a.;

### **2.c. Goals pursued**

The fundamental goal of adopting the MOG 231 is to improve the internal control system and the protocols of conduct already adopted by ECOGEST s.p.a. to prevent the occurrence of the types of offence identified in Decree 231.

In pursuit of this goal, the MOG 231 sets out to:

1. identify the sensitive activities attributable to each single company function which, due to its particular type or way in which it is carried out, may entail a risk of committing offences, pursuant to Legislative Decree No. 231/01;
2. identify and analyse potential risks with regard to the possible ways in which the offences may be committed, taking into account the operating context, both internal and external, in which the company carries out its activities;
3. assess the adequacy of the preventive control systems already adopted by ECOGEST s.p.a. and, where appropriate, arrange for them to be adjusted to ensure that the risk of

committing offences referred to in Legislative Decree No. 231/01 is reduced to an acceptable level;

4. define an integrated system of rules of conduct, both general (code of ethics) and special (models, management systems, guidelines, organisational procedures, implementation of an internal policy system), in order to process (regulate and discipline, i.e. define the correct *modus procedendi e operandi*) company activities corresponding to the "sensitive areas";
5. define a system of authorisation and control powers which may guarantee a precise and transparent representation of the corporate process of training and decision-making;
6. define a supervisory and control system capable of promptly reporting the existence or emergence of critical situations and/or risk of offences being committed;
7. define a communication and information system for the staff, so that they are aware of the Code of Ethics, the internal regulations and protocols, the authorisation powers, the hierarchical reporting lines, the procedures, the flows of information and everything that contributes to the transparency of the corporate activity;
8. the attribution to a Supervisory Board (SB) of specific responsibilities regarding the control of the effective functioning, adequacy and updating of the Model;
9. the definition of a system of sanctions relating to the violation of the provisions contained in the Code of Ethics and in the procedures expressly regulated and/or referred to in Model 231.

## **2.d. Structure of the Model.**

The Model 231 adopted by ECOGEST s.p.a. consists of a "General section", where the general regulations set out in Legislative Decree No. 231/01 are reviewed and the structural elements, reasons and goals pursued with the preparation of said Model are identified. The Model also consists of a "Special section", where the specific protocols of conduct are set out and, finally, all the annexes consisting of protocols, internal regulations, guidelines and operating procedures already adopted by ECOGEST s.p.a., as well as any other useful company document (articles of association, organisation chart, system of proxies and powers of attorney, etc...)

The protocols making up the special section are identified as follows:

### **A. OFFENCES AGAINST THE PUBLIC ADMINISTRATION**

- A.1. Participation in procedures for the assignment and execution of public contracts.
- A.2. Participation in funding procedures.
- A.3. Management of financial flows and payments.

- A.4. Use of financial resources for marketing, sponsorship, advertising operations.
- A.5. Recruitment and management of personnel.
- A.5.1. Compliance with the requirements of professionalism, integrity and reliability.
- A.5.2. Compliance with procedures for refunding employee expenses, handling of gifts, presents and other forms of entertainment.
- A.6. Relations with public administration institutions.
- A.7. Relations with the judicial authorities within the framework of criminal proceedings.
- A.8. Management of judicial and extrajudicial disputes, with particular reference to tax disputes and settlement agreements.
- A.9. Selection and management of suppliers, contractors, subcontractors, other partners.

#### **B. MANSLAUGHTER AND/OR NEGLIGENT INJURY IN BREACH OF THE RULES ON OCCUPATIONAL HYGIENE AND HEALTH PROTECTION**

- B.1. Monitoring of the implementation of the integrated health, safety and environmental risk management system and reporting to the SB

#### **C. ENVIRONMENTAL OFFENCES**

- C.1. Monitoring of the implementation of the integrated health, safety and environmental risk management system and reporting to the SB

#### **D. TAX OFFENCES**

- D.1. Management of relations with the financial administration
- D.2. Management of tax bills and, more generally, of tax, fiscal and financial matters
- D.3. Management of tax obligations
- D.4. Management of general accounting, financial statements and other corporate communications

#### **E. CORPORATE OFFENCES**

- E.1. Preparation and management of financial statements, reports and corporate communications
- E.2. Relations with the auditor and/or the auditing company and/or the supervisory body.

#### **F. ORGANISED CRIME OFFENCES**

- F.1. Relations with political and trade union organisations

#### **G. HANDLING OF STOLEN GOODS, MONEY LAUNDERING, USE OF MONEY, GOODS OR OTHER BENEFITS OF UNLAWFUL ORIGIN, SELF-LAUNDERING**

#### **H. COMPUTER CRIMES AND UNLAWFUL PROCESSING OF DATA**

- H.1. Use of IT systems and tools
- H.2. Use of digital signatures

H.3. Use of certified mail

H.4. Management of licences for application programs, software in use

**2.e. Operating procedures for monitoring, implementing and continuous updating of the Model.**

The Model of organisation, management and control pursuant to Legislative Decree No. 231/01 is adopted by the Board of Directors upon approval by the General Management of ECOGEST spa.

The Model will be monitored and reviewed when the need arises in connection with the implementation and/or modification of the types of crimes, referred to in Legislative Decree No. 231/01, changes in the organisational and corporate structure of the entity or, again, in the sensitive activities of the company.

Model 231 was prepared taking into account the provisions of Legislative Decree No. 231/01, as well as the Confindustria guidelines, as updated in June 2021, and the main reference frameworks in terms of internal control and risk management (such as: the Internal Control Integrated framework, the so-called CoSO Report; the Enterprise Risk Management framework, the so-called ERM), so as to make it adequate and customised in relation to the organisational, economic and financial needs of ECOGEST spa.

Furthermore, the indications coming so far from the relevant case law have been taken into account.

The operating procedures identified for the implementation and subsequent updating of the Model are as follows:

- identification of potential risks, assessment of the internal supervisory system and gap analysis;
- constant review, updating and mapping of the "sensitive areas", i.e. all those activities whose performance might directly give rise to the commission of one of the crimes covered by Decree No. 231 or the "instrumental" activities, i.e. the areas in which, in principle, the conditions, opportunities or means for committing the crimes in question might arise, through meetings, exchanges of information, brainstorming between the SB, senior personnel of ECOGEST spa and personnel in charge directly involved in the relevant process;
- implementation of the Company's control mechanisms, constantly assessing their adequacy, i.e. their ability to prevent and/or detect unlawful conduct;

- updating of the Code of Ethics and the internal regulations and protocols referred to in the MOG 231, where they prove to be ineffective or outdated, even in the light of the changes in the reference regulations;
- checking, controlling and monitoring of the adequacy of the system of proxies and powers of attorney;
- preparation of the system of sanctions relating to breaches of Model 231;
- Introduction of specific "contractual clauses 231" to be applied with third parties, in order to protect ECOGEST spa and make the third party liable.

## **2.f. Sensitive processes**

Due to the activity performed by ECOGEST spa, the following types of offences, as identified in Decree 231, are considered potentially likely to occur: art. 24 ( crimes against the property of the Public Administration), art. 25 ( crimes against the Public Administration), 24-bis (computer crimes and unlawful processing of data), 24-ter (organised crime offences), 25-ter (corporate offences), 25-septies (crimes relating to health and safety at work), 25-octies (handling of stolen goods, money laundering and use of unlawful utilities), 25-decies (incitement to withhold statements or to make false statements to the judicial authorities), 25-undecies (environmental offences), 25-duodecies (employment of citizens from non-EU countries with irregular residence status), 25-quinquiesdecies (tax offences).

Specific protocols of conduct have been defined for each type of offence.

Some of the duly identified protocols are common to a number of sensitive areas.

This is due to the fact that some business processes may in fact constitute a common premise for various offences.

Consequently, the ways in which potentially criminal conduct is carried out may involve different types of offences, even though they originate from the same corporate processes.

## **3. SUPERVISORY BOARD**

### **3.1. Identification of the Supervisory Board.**

Appointment and revocation.

Pursuant to art. 6 par. 1 letter b) of Legislative Decree No. 231/01, the Supervisory Board is that body endowed with autonomous powers of initiative and control, designed to ensure effective supervision of the proper application of Model 231, its proper functioning and constant updating.

The Supervisory Board and its members are therefore required to comply with the following requirements:

- Autonomy and independence: in order to exclude any form of overlapping or mixing between controlling and controlled entities, the SB must not be assigned operational tasks within the company in areas at risk of committing the alleged crime, so as not to compromise the objectivity of judgement when supervising (G.i.p., Court of Rome, 4 April 2003). It is necessary and appropriate that there is no form of interference and/or conditioning of the SB and its members by any component of the Entity, in particular by the top management. The members of the Board of Directors, the Managing Director, the General Manager, the so-called function managers, i.e. those who have operational functions in areas at risk of offence (specifically: RPPS, RSQ, etc.) are excluded from membership of the SB<sup>5</sup>. The members of the Supervisory Board must not find themselves in situations of conflict of interest with the entity, nor can they be in a relationship of marriage and/or kinship with the Board members.
- Honourability: persons who: a) have been convicted, even if not definitely, of one of the crimes provided for in Legislative Decree No. 231/01; b) have been irrevocably sentenced to imprisonment for a period of not less than one year for a crime against the public administration, public faith, property, public order, the public economy or for a non-negligent crime; c) have been the recipients of a preventive measure are not entitled to be elected as members of the SB. The SB members are chosen among individuals with an ethical and professional profile of unquestionable value.
- Professionalism: the SB members must have technical-specialist skills, particularly in the legal, economic, organisational and supervisory fields, to ensure the correct application of Legislative Decree No. 231/01 and the analysis of business systems.

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<sup>5</sup>Thus: Cass. Pen., Sez. Un., 38343/2014 (Thyssenkrupp case).



- Continuity of action: the Supervisory Board and its members must ensure that sensitive activities are checked continuously, monitoring the effectiveness and adequacy of Model 231 which has been adopted, ensuring that it is in line with regulatory developments and the company's organisational structure. To this end, it is necessary for the SB to receive, constantly and promptly, adequate "information flows" (periodic and/or by event) relevant to the company areas at risk of offence. It is appropriate for the SB to plan and schedule its activities, e.g. listening to the department managers, checking the activities carried out by them, coordination with other bodies of the Entity, etc.. (e.g. Internal Audit, Board of Directors, Board of Auditors).

The Supervisory Board is appointed by the Board of Directors.

All the above, in compliance with its freedom of choice, legally recognised, ECOGEST spa opts for a Supervisory Board having a collegial nature, and identifies as its members:

1. Dr. Claudio Battini, as Chairman of the Supervisory Board;
2. Lawyer Valentina Mazzotta, member;
3. Lawyer Chiara Barone, member.

The members of the Supervisory Board remain in office for three years and may be re-elected.

The Board of Directors, unanimously, after hearing the opinion of the Board of Statutory Auditors, may revoke, by Board resolution, the members of the SB, at any time, but only for just cause.

Only the following conditions shall be considered just cause for revocation of the SB members:

- the detection of a serious breach by the Supervisory Board in the performance of its duties;
- the failure to inform the Board of Directors of a conflict of interest precluding the retention of the role of member of the Body itself;
- the conviction of the Company, which is final, or a settlement sentence, where it appears from the deeds that the Surveillance Body failed to carry out, or insufficiently carried out, its supervision duties;
- the violation of confidentiality obligations with regard to news and information acquired in the exercise of the functions of the Supervisory Board;

If the revocation occurs without just cause, the revoked member, at his/her request, shall be immediately re-instated in office by the Board.

Each member may withdraw from time to time from the office by sending written notice of at least 30 days, to be communicated to the Board of Directors by registered mail with return receipt.

The Board of Directors shall appoint the new member during the first meeting of the Board itself, and in any case within 60 days from the termination date of the dismissed member.

### **3.2. Functions and powers of the Supervisory Board**

Pursuant to art. 6 par 1, letter b) of Legislative Decree No. 231/01, the Supervisory Board has autonomous powers of initiative and control. It is entrusted with the task of surveillance:

- on the functioning of and compliance with the Model;
- on the effectiveness and suitability of the Model in relation to the company's structure and its actual ability to prevent crimes being committed;
- check that the requirements of soundness and functionality of the Model are maintained over time;
- assess the appropriateness of the Model's updating, where there is a need for adaptation in relation to modified company conditions and/or regulations.

To this end, the Supervisory Board is also entrusted with the tasks of:

- periodically checking the map of the areas at risk of offence, in order to adapt it to the changes in the company's activities and/or structure;
- checking also on the basis of any integration of the areas at risk, the actual effectiveness of the Model in relation to the corporate structure and the actual ability to prevent crimes being committed, proposing - where deemed necessary - any updates to the Model;
- periodically carry out checks - on the basis of an annual program communicated to the Board of Directors - aimed at assessing the provisions of the Model; in particular, it shall ensure that the control procedures are actually implemented and documented in accordance with the provisions of the internal protocols and/or regulations and that the ethical principles are duly complied with. To this end, the Supervisory Board is endowed with general inspection powers and has free access, without any prior consent, to all the company's documentation, except in cases where such consent is required by laws and regulations, and has the possibility of acquiring relevant data and information from the persons in charge.

- The Supervisory Board must be constantly informed by the managers of the company's departments: i) on the aspects of the company's activity that may expose ECOGEST spa to the risk of offence; ii) on relations with third parties (consultants, suppliers, partners, etc.) who operate on behalf of the company within the scope of sensitive processes; iii) on extraordinary operations of the company.
- to prepare an annual report to be submitted to the Board of Directors, in order to highlight the problems encountered and identify the corrective measures to be taken;
- to coordinate with the company department managers to: i) exchange information to keep the areas at risk of offence up to date; ii) control the evolution of the areas at risk of offence to monitor them; iii) ensure that the corrective measures necessary to make the Model adequate and effective are taken promptly.
- collect, process and store all relevant information received on compliance with Model 231, and update the list of information that must be transmitted to it;

If, in the performance of its duties, the Supervisory Board finds shortcomings and/or gaps and/or omissions or, more generally, non-compliance or incorrect implementation of the procedures set out in Model 231, it must take all the necessary steps to correct this structural condition. To this end it shall:

1. urge the company department managers to comply with corporate procedures;
2. indicate what corrections and changes should be made to such corporate procedures;
3. report the most serious cases of non-implementation of the Model to the managers of each single company department.

If, on the other hand, monitoring of the state of implementation of the Model reveals the need for adjustment, since it has been fully and correctly implemented, but is not suitable for the purpose of avoiding the risk of occurrence of any of the offences provided for in Legislative Decree No. 231/2001, the Supervisory Board, in accordance with the provisions of Legislative Decree No. 231/2001, shall take the necessary measures to ensure that the Model is complied with.

The Board of Directors shall provide the Supervisory Board with economic and other means enabling it to be fully operational, also to safeguard its autonomy and independence, in order to avoid any possible form of retaliation to its detriment.

For any financial requirement, the Supervisory Board, in the performance of its duties, has the right to request the necessary resources from the Chairman.

### **3.3. Reporting function of the Supervisory Board to the Company's top management.**

The Supervisory Board, with respect to the Board of Directors, is required to:

- communicate, at the beginning of each financial year, the plan of the activities it is going to carry out to fulfil the tasks assigned to it;
- to communicate, periodically, the state of progress of the program defined and any changes made to said plan, stating the reasons thereof;
- to communicate, immediately, any significant issues arising from the activities, as well as any information and reports received;
- to report, at least annually, on the state of implementation of the Model, pointing out the need for improvement and corrective measures.

Periodically, the Supervisory Board may be invited to report on its activities not only by the Board of Directors, but also by the Board of Statutory Auditors.

Similarly, where necessary, the Supervisory Board may request to be summoned by the above-mentioned bodies to report on the operation of the Model or on specific situations.

Moreover, the Supervisory Board, depending on the specific circumstances, may:

- communicate the results of its investigations to the managers of the corporate functions, if the activities carried out by them reveal aspects requiring some further improvement. In this case, the Supervisory Board may request from the managers of the corporate functions an "action plan" with a timetable for the activities susceptible of improvement, as well as the specifications of the operational changes required to implement the existing protocols.
- report to the Board of Directors any conduct which is not in line with the requirements set out in the Code of Ethics, in the protocols of conduct referred to in Model 231 and in the regulations and internal protocols referred to therein, in order to acquire all the elements needed to make any communications to the competent entities for the assessment and application of disciplinary sanctions, as well as to provide any indications for the correction of any shortcomings in order to avoid the event from recurring.

In the above-mentioned cases, the Supervisory Board shall also be required to promptly notify the Board of Directors and the Board of Statutory Auditors of such circumstances, possibly requesting the support of the corporate functions which can cooperate in the assessment activity and in the identification of suitable actions to prevent the recurrence of the event.

### **3.4. Information and reports to the Supervisory Board**

#### **3.4.1. Information.**

Pursuant to art. 6 par. 2 letter d) of Legislative Decree No. 231/01 there are obligations to provide information to the Supervisory Board.

More specifically, this obligation falls on the managers of the corporate functions who are required to communicate:

- the periodic results of the control activity carried out by them to implement the protocols of conduct (summary reports of the performed activity, monitoring activities, conclusive indices, etc.);
- the abnormalities or atypical features found in relation to the specific circumstances and in the light of the information available.

Such information may concern, for example:

- decisions relating to the application for, payment and use of public funding;
- measures and/or information from the judicial police, or any other Authority, indicating that investigations are being carried out, even against unknown persons, for the offences referred to in Legislative Decree No. 231/01;
- information relating to the actual implementation, at all levels of the company, of the organisational model, disciplinary proceedings performed, any sanctions imposed, or measures for dismissal of such proceedings, with the relevant reasons;
- the results of the inspections carried out, in relation to specific reference periods, on the awarding of public contracts by the public administrations or by entities performing public utility functions.
- abnormalities and critical issues detected by the corporate functions and control bodies (e.g.: Board of Statutory Auditors, Internal Audit, Manager in charge of drafting the corporate accounting documents, RGQ, RPPS, Site Manager, etc.) concerning the control activities performed, where relevant for the purposes of this Model;
- requests for legal assistance forwarded by managers and/or employees against whom the Magistrates' Court proceeds for the offences provided for by Legislative Decree No. 231/2001;
- news relating to changes in the organisational structure of the Company;
- updates relating to the system of corporate powers, the granting of powers of attorney and proxies;

- any findings of the Auditing Company on the system of internal audits, on questionable facts and on the Company's accounting documents;
- appointments granted to the Auditing Company or to Companies related to it, other than the one concerning the audit of the financial statements;
- any warnings from the Supervisory Authorities;
- the organisational structure adopted with regard to accident prevention and hygiene and health at work;
- the risk assessment documents drawn up pursuant to the Occupational Safety Consolidation Act (Legislative Decree No. 81/2008) and any updates and amendments thereto;
- any inspections and prescriptions carried out in the field of accident prevention and occupational hygiene and health by the Supervisory Authorities.

For these purposes, a dedicated information channel is provided (creation of a specific e-mail address), which ensures the communication of such information flows to the Supervisory Board.

### **3.4.2. Whistleblowing and protection of whistleblowers**

ECOGEST spa supports and encourages reports from anyone who, in good faith, has reliable information or a reasonable suspicion, based on precise and consistent facts, that a violation of Model 231 and its protocols of conduct, or of the Code of Ethics, as well as the regulations and internal procedures referred to, has occurred or may occur.

ECOGEST spa provides the reporting person with specific channels of communication with the Supervisory Board, ensuring the confidentiality of identity.

More specifically, it is possible to send reports:

1. by e-mail to the ad hoc e-mail address managed exclusively by the Manager of Internal Audit;
2. by ordinary mail, in a sealed envelope, to the confidential and personal attention of the Internal Audit, at the registered office of ECOGEST spa.

The persons in charge of receiving such information shall assess, on the basis of the information available, whether the report is actually relevant for the purposes of Legislative Decree No. 231/01 and, if so, shall promptly inform the Supervisory Board, leaving the assessment to it and remaining available for joint activities.

The identity of the whistleblower is disclosed only if and when strictly necessary for the assessment by the Supervisory Board.

As a secondary and exceptional measure, if the whistleblower considers that there may be a conflict of interest with respect to the situation reported, he/she may address himself directly to the Supervisory Board, by sending an email to the specified address.

ECOGEST spa, in accordance with the Confindustria Guidelines, requests that reports be preferably made in the form of names, by committing to preserve the confidentiality of the identity of the whistleblower, without prejudice to the obligations of law and the protection of the rights of the Company and of the persons accused erroneously and/or in bad faith (art. 6, par. 2-bis, Legislative Decree No. 231/01).

In cases where:

1. reports are made with fraud or gross negligence, that turn out to be groundless,
2. direct or indirect retaliatory or discriminatory acts are carried out against the whistleblower for reasons directly or indirectly linked to the report,

appropriate sanctions will be applied, proportionate to the seriousness of the act committed, as provided for in this Model 231.

Anonymous reports will only be taken into account if adequately substantiated, in order to carry out the appropriate checks.

The whistleblower is responsible for the statements made.

Any form of abuse of whistleblowing, i.e. whistleblowing that is clearly opportunistic and/or made with the sole purpose of harming the reported person, as well as any other improper or instrumental use of the whistleblowing mechanism, is prohibited.

Acts of this nature against the whistleblower are prohibited and may be sanctioned in accordance with the provisions of this Model 231.

The Supervisory Board shall act in accordance with the principles of confidentiality, promptness of investigation and action, impartiality and collectiveness.

The Supervisory Board shall assess the information received and carry out the necessary checks to establish whether, on the basis of the information available, a breach of the Model has actually occurred.

If the Supervisory Board identifies a violation of the Model, it shall inform the competent corporate bodies of the outcome of its investigations, which are required to initiate the procedure for disputing the charges in accordance with the procedures defined in paragraph 5.3.

All the information, notifications and reports received by the Supervisory Board are stored in a special archive (computerised or on paper).

The access to the archive is allowed only to the members of the Board.

The access by persons other than the Supervisory Board members must be previously authorised by the latter and adequately justified.

Finally, on a residual and secondary basis, it remains possible to make reports verbally or in writing (e.g. by e-mail) directly to one's hierarchical superior/company contact person, as well as to the corporate bodies/functions in charge of specific supervisory functions (so-called managers of functions) who, in turn, shall promptly inform the SB and take any appropriate measure in the meantime.

For all matters not expressly provided for or regulated, please refer to law No. 179/2017, to the extent that it is applicable.

### **3.5. Information flows between Supervisory Board, Board of Directors and Board of Auditors**

This procedure is in addition to the protocol of reports and information to the SB and has the main purpose of regulating the "information flows" between the Board of Directors, the Board of Statutory Auditors and the Supervisory Board, to provide the SB with the information necessary to keep it constantly updated in relation to the company's performance, enabling it to effectively exercise its control action on compliance with Model 231, its procedures and those referred and connected to it, as well as to provide it with the tools to make changes or updates to the Model, so that it is updated and compliant with the company's organisation.

This procedure and any subsequent updates form an integral part of the Model and are approved by the Board of Directors of the Company, upon proposal of the Supervisory Board.

#### **3.5.1. Purpose and scope**

The object of the information flows is all information of a significant nature on the activities carried out, on the documentation of the procedures implemented, as well as on organisational and/or business changes that may have occurred to keep the corporate bodies and the SB constantly updated on corporate issues.

In particular, the information flows must concern:

- the general trend of management and its predictable evolution;
- the activities carried out with specific reference to the corporate operations of major strategic, economic, equity and financial importance, i.e. all the so-called unusual or



atypical operations, i.e. all those operations which actually involve particular critical elements due to their specific characteristics and/or intrinsic risks, to the nature of the counterparty and to the time of their completion;

- information and/or reports relating to the performance of internal procedures and protocols of conduct referred to in Model 231;
- any further information, operation, activity or event that it is deemed appropriate to bring to the attention of Directors, Auditors and members of the SB.

This procedure involves:

- Members of the Board of Directors;
- Members of the Board of Statutory Auditors;
- Members of the Supervisory Board;
- Individuals with representative functions of the body;
- Individuals with management liabilities of the body and/or of one of its organisational units with financial autonomy (so-called function managers).

### **3.5.2. Operating procedures**

The flow of information from Directors and Auditors to the Supervisory Board is ensured by:

- periodic meetings, which may also be urged by the Supervisory Board itself due to specific needs;
- transmission of documents, in particular:
  1. financial statements and annexes, corporate accounting documentation;
  2. minutes of the Board of Directors;
  3. minutes relating to atypical or unusual operations;
  4. minutes relating to transactions with other companies in the group;
  5. communications concerning possible violations of the computer system;
  6. reports, explanatory notes, memoranda, presentations, records drawn up by offices or consultants of the Company, including those in view or occasion of board meetings.

The Supervisory Board, in turn, reports to the top management and to the Board of Statutory Auditors on the implementation of the model and on the emergence of any critical issues, by means of three lines of reports, which can be summarised as follows:

1. directly to the Managing Director, in written form, also by e-mail with acknowledgement requested, as part of the report on the performed activity. In turn, the Managing Director informs the Board of Directors. This information flow, therefore, makes it possible to

maintain constant contact between the Supervisory Board and the Company. Periodically, to the Board of Directors and to the Board of Statutory Auditors.

2. In particular, for example, the Supervisory Board communicates: i) on a six-monthly basis: an informative report on the verification activity and its outcome. This communication must specify the content of the checks actually carried out, indicating any problems encountered and the measures taken as a result; ii) annually: an explanatory report on the implementation of the Model by the company. This communication makes it possible to inform the top management of the level of compliance with the procedures adopted with the Model.
3. Immediately, to the Board of Directors, with regard to: i) any significant issues arising from the activities carried out; ii) any behaviour or actions not in line with the corporate procedures; iii) the need to update the Model.

### **3.5.3. Further information flows to the Supervisory Board**

Those who have a managerial function and/or, regardless of his/her managerial status, have the power to represent the entity by means of specific power of attorney and/or hold the position of function manager, ensure the constant flow of information to the SB, by transmitting documents, such as:

- communications concerning violations of Model 231;
- periodic reports submitted by the managers of the sensitive areas and/or processes, as well as reports of audits carried out at the head office or at offices located in the territory;
- any other documentation deemed necessary by the Supervisory Board.

The aforementioned documentation must be sent to the SB upon its request or on a six-monthly basis.

In addition to reports of violations of a general nature relating to Model 231, the following information with relevant documentation must be sent to the Supervisory Board immediately or in any case without delay:

1. measures and/or information from the judicial police, or any other authority, from which it can be concluded that investigations are being carried out, even against unknown persons, for the offences referred to in Legislative Decree No. 231/2001;
2. proceedings brought by the magistrates' court in relation to offences referred to in Legislative Decree No. 231/2001;

3. requests for legal assistance made by managers and employees in the event of legal proceedings initiated against them, for offences referred to in Legislative Decree No. 231/2001;
4. reports of internal audits/inspections from which facts, acts, events or omissions may arise that are critical for compliance with the provisions of Legislative Decree No. 231/2001;
5. information on disciplinary proceedings undertaken and any sanctions imposed (including measures against employees) or measures for dismissing such proceedings, including the reasons thereof;
6. the results of the control activities carried out by the company departments to implement the Model, from which critical issues emerge;
7. abnormalities or unusual features found by the same functions;
8. internal and external communications concerning any case that can be linked to the offences referred to in Legislative Decree No. 231/2001;
9. the summary statements of the contracts awarded as a result of tenders and/or private negotiations;
10. news relating to organisational changes (organisation chart);
11. updates to the system of proxies and powers;
12. changes (openings and/or divestments) relating to areas and/or objects of activity;
13. communications from the auditing company concerning aspects that may indicate shortcomings in the internal control system.

This information, where there are no particular confidentiality requirements, may also be provided and transmitted orally by the Chairman of the Board of Directors during Board meetings, or during specific informal meetings, which must in any case be recorded in the minutes, open to the participation of Directors, Auditors and members of the Supervisory Board, organised to examine in depth issues of interest in relation to the management of the company.

All information flows shall be processed exclusively for purposes related to compliance with the obligations deriving from Legislative Decree No. 231/2001, and shall be used and subsequently stored, in paper and/or electronic form, in compliance with the laws governing privacy protection.

#### **3.5.4. Management of information flows by the Supervisory Board**

The activities into which the information flow management process is divided are:

- reception: the Supervisory Board receives the information flows from the Board of Directors and the Board of Statutory Auditors through the function manager;
- examination and possible request for information: the Supervisory Board takes into consideration the information flows received and, depending on whether it is necessary or not, may request to hear one or more senior subjects in order to obtain clarifications on what has been received; at the end of the hearing, it may assess whether it is appropriate to request written explanations or certifications of compliance with the organisational model of what has been decided by the top management.

The Supervisory Board is required to document the information flows received, through the storage of paper and/or electronic documents, in order to ensure complete traceability of all the institutional activities performed.

#### **3.6. Periodic checks**

In addition to the supervisory activity that the Body performs continuously, in order to ensure the effective performance and proper compliance with the Model, it periodically carries out specific checks on the actual ability of the Model to prevent offences, possibly, if it deems it appropriate, with the help of third parties.

This activity takes the form of a sample check of the main corporate acts, of the most important contracts concluded by ECOGEST spa in relation to sensitive processes, of the relevant documentation pertaining to the tracking of the activities covered by the protocols of conduct, as well as a check on their compliance with the rules set out in this Model.

The checks are run by the Supervisory Board, which is supported by other internal functions that, from time to time, are necessary for that purpose.

The checks and their outcome are the object of an annual report to the Board of Directors, through the Board of Statutory Auditors.

In particular, in the event of a negative outcome, the Supervisory Board shall set out, in the plan for the year, all the improvements to be implemented.

The checks on the adequacy of the Model carried out by the Supervisory Board focus on the effectiveness of its application within the company structures.

The checks can be carried out by means of audits, carried out on a sample basis, of the main corporate acts and contracts of major importance concluded by the entity, on the procedures

put in place in relation to the sensitive processes and to their compliance with the requirements of the Model.

As regards the information and reports received during the year, the measures taken by the Supervisory Board and the other persons concerned, an annual report shall be drawn up on the events deemed to be at risk, addressed to the Board of Directors through the Board of Statutory Auditors, as set out in the previous point.

The Supervisory Board regularly draws up a supervisory program through which it schedules its checks and audits.

The program contains a calendar of the activities to be carried out during the year, also contemplating the possibility of performing unscheduled checks and audits.

In conducting its activities, the Supervisory Board may avail itself of the support of functions and structures within the Company and/or outsourced with specific skills in the corporate sectors from time to time subject to control.

During the checks and audits the Supervisory Board is granted the widest powers in order to effectively perform the tasks entrusted to it.

To this end, the Board of Directors ensures and prepares suitable tools, procedures and/or channels of information enabling the Supervisory Board to become promptly aware of those events from which specific obligations to act and intervene arise, so as to allow the same body to effectively perceive non-compliance with controls, or abnormalities, or deficiencies (please refer to the **information flow** procedure, referred to in paragraph 3.5.).

Although the Board of Directors is responsible for updating the Model and adjusting it in relation to changes in the organisational structure, operational processes and in the results of the audits, the Supervisory Board retains, in any case, precise tasks and powers with regard to the care and promotion for the constant updating of the Model itself. In fact it is the task of the Supervisory Board to check the updating of the Model after finding shortcomings and/or gaps following checks on its effectiveness, if necessary by suggesting appropriate amendments.

#### **4. SPREADING AND KNOWLEDGE OF THE MODEL**

##### **4.1. Training and information for employees.**

For the purposes of implementing this Model, ECOGEST spa has the goal of ensuring correct knowledge, both for the resources already present in the company and for those implemented with this Model, of the rules of conduct contained therein, with different degrees of detail in relation to the different level of engagement of such resources in sensitive processes.

The information and training system is supervised and supplemented by the Supervisory Board, in its capacity of promoting the knowledge and spreading of the Model itself, in cooperation with the managers of the other functions involved from time to time in the application of the Model.

#### Initial communication

The adoption of this Model is communicated to all the resources present in the company at the time of adoption itself and entered on the company's portal. Any subsequent amendment to the Model shall be communicated through the same information channels.

All new employees will receive an email containing the documentation considered to be of primary importance (e.g. Code of Ethics, Organisational Model, insider information procedure). The Personnel Department also manages the initial coaching of the new resources in such a way as to ensure that the documentation is correctly and completely read and understood.

#### Training

The training activity aimed at spreading knowledge of the rules set out in Legislative Decree No. 231/2001 is differentiated, in terms of content and supply method, according to the qualification of the recipients, the risk level of the area in which they operate, whether or not they have a representative position in the Company.

With reference to staff training in relation to this Model, the Company guarantees the widest possible spreading of the prescriptions contained therein and the consequent awareness of all the staff with regard to its effective implementation, also by ensuring precise knowledge of the tasks, functions and responsibilities of each operator, in relation to the implementation of the specific protocols, as well as by promoting participation in training courses on the sensitive matters covered by this protocol.

More specifically, ECOGEST spa ensures a general training course following the adoption of this Model, as well as at least one training session every year, in order to ensure constant improvement of knowledge relating to specific skills, also in relation to any regulatory updates and/or organisational changes that have taken place and been included in the MOG.

#### **4.2. Information to collaborators and partners.**

Consultants, suppliers, subcontractors and, more generally, the Company's partners are informed about the adoption of the Model 231 and the content of the Code of Ethics, in order to

clarify and demonstrate the need for ECOGEST spa to ensure that their behaviour complies with the provisions of Legislative Decree No. 231/2001.

In order to officialise the commitment to mutual respect of the general principles stated in Model 231 and, in particular, of the Code of Ethics by third parties having contractual relations with the Company, it is expected that a specific clause be included in the reference contract, i.e. for existing contracts, the signing of a specific supplementary agreement to this end.

Within the framework of such clauses and agreements, specific contractual penalties may also be provided for in the event of a proven violation of the above-mentioned principles.

## **5 DISCIPLINARY SYSTEM**

### **5.1. Function of the disciplinary system**

Pursuant to art. 6 par.2 letter e) and art. 7 par. 4) letter b) of Legislative Decree No. 231/01, the provision of an adequate disciplinary and sanctionary system is an essential element to ensure the effectiveness of Model 231.

The disciplinary system applies in the event of violations of Model 231.

"Violation of the Model 231" means the failure to comply with the measures set out in the model, i.e. the negligent or wilful breach of conduct not in line with the provisions contained in the Code of Ethics and/or the procedural rules set out in Model 231 or the internal regulations or protocols explicitly referred to in Model 231.

The disciplinary sanction is applicable to the person involved within the limits and by way of the role, powers and functions that he/she holds within the Company or on its behalf.

The application of the disciplinary system and of the relevant sanctions is independent of the course and outcome of any criminal proceedings initiated by the judicial authorities in the event that the conduct to be censured also constitutes an offence under Legislative Decree No. 231/2001.

The adoption of disciplinary measures as a sanctioning "response" to a violation of the Model is separate from any criminal action by the judicial authorities, and indeed remains on a level that is clearly different and detached from the regulatory system of criminal and administrative law.

In fact, according to a consolidated principle of labour law, the seriousness of the worker's conduct and its ability to affect the bond of trust that binds him to the company can and must be assessed separately from the possible criminal relevance of the conduct.

The disciplinary system is addressed to and applies to all employees of the Company, to all persons who hold positions of representation, administration or management of the Company

or of one of its organisational units with financial and functional independence, to all persons exercising, even de facto, the management and control of the Company, as well as to all persons subject to their supervision and management, as provided for in Article 5 of Legislative Decree No. 231/2001.

The system must also apply to collaborators and third parties who find themselves in the conditions provided for by the above-mentioned rule, whose contractual/negotiated relations must provide for special clauses in the event of violation of the system provided for, such as for instance termination of the contract, cancellation from the list of suppliers, etc...

With particular reference to employees, the disciplinary code is integrated with the labour law profiles defined by the current regulations, special legislation and national and corporate collective bargaining.

Therefore, the disciplinary rules and the system of sanctions set out in Article 7 of Law No. 300/70 remain in force for the employees.

In particular, mention should be made of the provisions on health and safety at work (Legislative Decree No. 81/2008, recently updated by Legislative Decree No. 101 of 31 July 2020).

The disciplinary system is subject to constant checking and assessment by the Supervisory Board with the support of the competent corporate functions.

The disciplinary code is adequately disclosed through the adoption of appropriate publicity tools to all persons required to apply the provisions contained therein.

## **5.2. Penalties**

### **5.2.1. Penalties against employees (non-managers)**

The conduct of the employees that is not in line with the behavioural rules laid down in the Model constitutes a disciplinary offence and as such must be sanctioned.

The worker shall comply with the regulatory provisions issued by the Company, in order to avoid the penalties provided for by the National Collective Bargaining Agreement in force, disclosed pursuant to and in the manner provided for by Article 7 of Law No. 300 of 20 May 1970 (the so-called "Workers' Statute").

The type and extent of the disciplinary measure shall be determined taking into account the seriousness or recurrence of the misconduct or the negligence degree and assessing in particular:

- the intentionality of the conduct or the negligence degree, imprudence or carelessness, also in the light of the predictability of the event;



- the worker's overall conduct, by checking the existence of any other similar disciplinary records;
- the duties assigned to the worker, as well as the relative level of hierarchical responsibility and autonomy;
- any sharing of responsibility with other employees who contributed to the violation, as well as the relevant departmental position;
- the particular circumstances surrounding the violation or in which it occurred;
- the relevance of the obligations breached and whether or not the consequences of the violation have external relevance to the company;
- the extent of the damage caused to the Company or the possible application of penalties.

Disciplinary measures are applied not only in relation to the seriousness of the breaches, but also in consideration of any repetition of the same; therefore, the violations, if repeated several times, give rise to disciplinary measures of increasing weight, up to the possible termination of the employment relationship.

For this purpose, the measures imposed on the employee in the last five years are taken into account.

The disciplinary powers for employees - investigation of offences, disciplinary proceedings and application of penalties - shall be exercised as per legal and contractual provisions by the Employer of ECOGEST spa.

Disciplinary penalties are also provided for against those who violate the principles underlying the whistleblowing process, aimed at protecting both the whistleblower and the reported person.

In particular, the following disciplinary penalties are provided for:

- against those who, being responsible, do not keep the identity of the whistleblower confidential (art. 6, par. 2-bis) of Legislative Decree No. 231/01);
- against those who carry out or threaten forms of retaliation, discrimination or penalisation for reasons directly or indirectly connected to the report (art. 6, par. 2-ter and 2-quater, Legislative Decree No. 231/01);
- against anyone who, abusing the whistleblowing process, makes clearly opportunistic reports for the purpose of damaging the reported person, making reports with malice or gross negligence that turn out to be groundless, without prejudice to any determination of civil liability (pursuant to Article 2043) or criminal liability (for cases

of slanderous or defamatory reporting (art. 6, par. 2-bis, second paragraph, Legislative Decree No. 231/01).

#### **5.2.1.a. Specific penalties.**

##### **Verbal warning**

The verbal warning penalty may be implemented, provided that it is committed for the first time and can be qualified as negligent, in the event of a minor violation or failure to comply with the procedures established by Model 231, or in the event of adoption, within the identified risk profiles, of a conduct which is not in line with or not appropriate to the aforementioned requirements or, again, in the event of negligent violation of the principles of the Code of Ethics. This applies only if the violation is not likely to produce negative external effects such as to undermine the effectiveness of the Model.

##### **Written warning**

It is adopted in case of repeated misconduct punishable by a verbal warning, as well as for the following deficiencies:

- negligent violation of procedural rules provided for or clearly referred to by the Model or procedural errors, having external relevance, due to negligence of the employee;
- delayed communication to the Supervisory Board of information due as per Model 231 and relating to situations not particularly at risk;
- failure to participate, without adequate justification, in the training activities provided by the company in relation to the Model, the Code of Ethics and/or the procedures.

Even in this case, the extent of the violations must be such as not to undermine the effectiveness of the Model.

##### **Suspension from service and pay for a period not exceeding three days.**

The penalties referred to in this title shall be imposed in the event of repeated violations of the previous points or for the following deficiencies: culpable and/or negligent conduct which, due to the level of hierarchical or technical responsibility, or in the presence of aggravating circumstances, may undermine, even potentially, the Model's effectiveness.

By way of example, but not limited to this, the following damaging behaviours may be identified:

1. failure to comply with the procedures laid down in the Model concerning a procedure in which one of the necessary parties is the Public Administration;

2. adoption of incorrect, opaque, uncooperative or disrespectful behaviour with regard to the law and company procedures, in all activities aimed at drawing up the financial statements and other corporate communications;
3. failure to carry out promptly, correctly and in good faith all the communications required by law and regulations to the supervisory authorities or obstruction of the exercise of the supervisory functions undertaken by the latter;
4. serious procedural violations of the Model, such as to expose the Company to liability towards third parties, including, by way of example, the following conduct:
  - a. omission or issue of false declarations on compliance with the Code of Ethics and the Model;
  - b. failure to comply with the provisions relating to signatory powers and the proxy system;
  - c. negligent omission in the performance of the duties provided for by the Model for the purposes of risk management, including failure to provide the Supervisory Board with information due pursuant to the Model;
  - d. failure to supervise the conduct of personnel operating within their sphere of responsibility to check their actions in the areas at risk of offence and, in any case, in the performance of activities that are essential to operational processes at risk of offence;
  - e. non-compliance with the provisions contained in the Code of Ethics;
  - f. any other failure to comply with contractual regulations or specific corporate provisions communicated to the employee.

#### **Dismissal with notice for justified reason**

Dismissal with notice for justified reason is the consequence of a serious violation of the employee's contractual obligations, i.e. due to reasons relating to the production activity, the organisation of work and its regular functioning.

Examples of relevant reasons are:

- repeated and negligent violations, individually punishable by lighter penalties, not necessarily of a fraudulent nature, but nevertheless reflecting significant non-compliance by the employee;
- adoption, in the performance of activities classified as being at risk pursuant to Decree No. 231, of conduct which does not comply with the rules of the Model and which is specifically aimed at committing one or more of the offences set out in Decree No. 231;
- intentional failure to comply with the requirements of the Model for the purposes of risk management;
- repeated failure to comply with the provisions contained in the Code of Ethics;

- failure to provide the Supervisory Board with relevant information required pursuant to the Model.

### **Dismissal without notice for justified reason.**

Dismissal without notice for justified reason is inflicted in the event of such serious misconduct that the relationship cannot be continued, even temporarily.

The measure in question may be adopted in the event of any serious misconduct (due to the intentional nature of the offence, the seriousness of the negligence, the criminal or monetary consequences thereof, or its recidivism) that irreparably damages the relationship of trust between the Company and the employee and does not allow the continuation, even temporary, of the employment relationship itself.

A justified reason for dismissal shall be understood as all non-negligent offences concerning relations with third parties, both insofar as they are directly likely to incur the company's liability under Decree No. 231, and insofar as they are clearly detrimental to the relationship of trust between the Company and the employee.

Disciplinary dismissal for justified reason shall be considered not only appropriate, but also necessary, when serious violations of "ethical and behavioural principles", committed intentionally, are found.

By way of example and without limitation, dismissal without notice may result from:

- wilful violation of procedures having external relevance and/or circumvention thereof;
- fraudulent behaviour, unmistakably aimed at committing an offence included among those set out in Decree No. 231, such as to break the relationship of trust with the employer;
- violation and/or elusion of the control system, wilfully carried out by removing, destroying or altering the documentation provided for by the procedure, or by preventing the control of or access to information and documentation by the persons in charge, including the Supervisory Board;
- missing, incomplete or untrue documentation of the activities carried out with regard to the methods of documenting and storing deeds and procedures, intentionally aimed at preventing the transparency and traceability thereof.

### **5.2.2. Penalties against managers and those representing the company by virtue of an explicit proxy and power of attorney, even if they are not qualified as managers.**

In the event of significant non-compliance with the rules laid down in Model 231 by managers and those who represent the company on the basis of an express proxy or power of attorney,

even if they are not managers, or in the event of conduct which does not comply with the requirements of Model 231 while carrying out activities at risk of offences, as well as negligence or inexperience in identifying and consequently preventing the occurrence of violations of the Model and, in the most serious cases, the commission of offences, the measures provided for in the letter of appointment or in the integration of the original letter-contract shall be applied to the persons in charge.

In assessing the most appropriate initiatives to be taken, the particular circumstances, conditions and methods in which the conduct violating the Model and/or Code of Ethics occurred shall be taken into account: if, as a result of such assessment, the trust relationship between the Company and the manager is irreparably damaged, the measure of dismissal shall be adopted.

By way of example and without limitation to this, a violation punishable by dismissal shall be committed by any manager who:

- commits repeated and serious violations of the provisions of the Model and/or Code of Ethics;
- fails, through gross negligence or wilful misconduct, to supervise the conduct of the personnel operating within its sphere of responsibility for the purpose of checking their actions within the areas at risk of offence and, in any case, in the performance of activities which are essential to the operating processes at risk of offence;
- fails to promptly report any irregularities or abnormalities relating to the correct implementation of the procedures set out in Model 231, of which he/she becomes aware, such as to compromise the effectiveness of the Model itself or to determine a potential or current danger for the Company of inflicting the penalties set out in Decree No. 231;
- fails to promptly and fully report to the Supervisory Board any critical aspects, relating to areas within the scope of application of the organisational Model, which may have emerged following inspections, audits, communications, etc., by the competent authorities.
- makes donations in money or other goods and/or utilities to public officials;
- allocates sums received by way of grants, contributions or funding, from national or other public bodies, for purposes other than those for which they were intended;
- does not draw up in writing the assignments given to external collaborators or signs them in violation of the proxies received;

- makes untruthful declarations to national and other public bodies for the purpose of obtaining grants, contributions or funding or, in the case of obtaining the same, does not issue an appropriate statement;
- adopts an improper, non-transparent, non-cooperative or disrespectful conduct with regard to the law and corporate procedures, in all activities aimed at preparing the financial statements and other corporate communications and/or in the acquisition, processing and illustration of data and information relating to financial products and issuing parties;
- does not carry out with punctuality, correctness and good faith all the communications required by the law and regulations towards the supervisory authorities or hinders the exercise of the supervisory functions undertaken by the latter;
- does not keep a confidential record of the identity of the person who made a report, in accordance with the whistleblowing procedure, should he/she be responsible;
- implements or threatens forms of retaliation, discrimination or penalisation against another employee or collaborator, even for reasons connected, indirectly or directly, to a report made by the latter through the whistleblowing mechanism;
- makes, with fraud or gross negligence, reports of possible violations that turn out to be groundless, without prejudice to the possible assessment of civil liability (pursuant to Article 2043) or criminal liability (in the event of slanderous or defamatory reports pursuant to the Criminal Code).

The right of the Company to claim compensation for any greater damage suffered as a result of the manager's conduct shall in any case remain intact.

Where the manager concerned has power of attorney with authority to represent the Company externally, the application of the more serious measure of a written warning shall also entail the automatic revocation of said power of attorney.

### **5.2.3. Measures against directors and the General Manager.**

In the event of an ascertained violation of the provisions of the Model, including those of the documentation forming part of it, by an individual director, the Supervisory Board is required to promptly inform the Board of Directors and the Board of Statutory Auditors, so that they may adopt or promote the most appropriate and adequate initiatives, depending on the seriousness of the violation ascertained and in accordance with the powers provided for by current legislation and the Articles of Association.

In the event of an ascertained violation of the provisions of the Model by the entire Board of Directors, the Supervisory Board shall immediately inform the Board of Statutory Auditors, so that it can take measures to promote the consequent initiatives.

In the event of violation of the provisions of Model 231 by an individual Director, the Board of Directors may, depending on the extent and seriousness of the violation committed, directly proceed to impose the sanction of a formal written warning or the revocation, even partial, of the proxies and powers of attorney granted in the most serious cases, such as to undermine the Company's trust in the person in charge.

Finally, in the event of violations of the provisions of Model 231, by an individual Director, aimed uniquely at facilitating or encouraging the commission of an offence under Legislative Decree No. 231/2001, or at committing such an offence, the Director shall be liable to pay a penalty of a formal written reprimand. 231/2001 or to commit it, the sanctions (such as, by way of example, temporary suspension from office and, in the most serious cases, revocation of the office) shall be enacted by the Shareholders' Meeting, upon proposal of the Board of Directors or the Board of Statutory Auditors.

The same penalties also apply to the General Manager, who, pursuant to the law (under Article 2396 of the Italian Civil Code), is subject to the same provisions governing the liability of directors, in relation to the tasks entrusted to him/her.

#### **5.2.4. Measures against the Statutory auditors**

Upon receiving notice of violation of the provisions and rules of conduct of the Model by members of the Board of Statutory Auditors, the Supervisory Board shall promptly inform the entire Board of Directors and the Board of Statutory Auditors of what has happened, in order to take any appropriate steps.

The Board of Statutory Auditors shall proceed with the necessary investigations and may take, in accordance with the law, in agreement with the Board of Directors, the appropriate steps, such as, for example, calling the Shareholders' Meeting for revocation and corporate liability action pursuant to Article 2407 of the Italian Civil Code.

In any case, the right of the Company to claim compensation for the greater damage suffered as a result of the auditor's conduct shall remain intact.

#### **5.2.5. Measures against external collaborators**

Any behaviour adopted by collaborators, consultants or other third parties bound to the Company by a contractual relationship, other than an employment relationship, (e.g. suppliers,

subcontractors, partners) that is in contrast with the lines of conduct identified by Model 231 and/or by the Code of Ethics may determine, as set out in the specific contractual clauses included in the letters of appointment or in the negotiation agreements, the application of conventional penalties or, depending on the seriousness of the violation, the termination of the contractual relationship (see above).

In any case, the right of the Company to claim compensation for the greater damage suffered as a result of the conduct of the collaborator, consultant or third party remains intact, even regardless of the termination of the contractual relationship.

The Supervisory Board shall be held liable for monitoring the constant suitability of the contractual clauses drawn up for the purpose referred to in this paragraph, as well as for assessing the suitability of the initiatives undertaken by the relevant corporate function in respect of the above-mentioned persons.

#### **5.2.6. Measures against the Supervisory Board.**

In cases where the Supervisory Board has been unable, due to gross negligence, to identify and, consequently, take action to eliminate violations of Model 231 resulting in offences to the detriment of the Company, the Board of Directors must promptly inform the Board of Statutory Auditors.

The Board of Directors shall carry out the necessary inquiries and, in agreement with the Board of Statutory Auditors, may take the appropriate measures, including the revocation of the appointment for justified reason.

### **5.3. Establishment of violations and disciplinary proceedings.**

#### **5.3.1. General rules**

Except for the law provisions in force, when violations of Model 231 occur entailing the initiation of disciplinary proceedings against all its Recipients, with the consequent infliction of the relevant penalty, the Supervisory Board must be involved in the process of assessing, investigating and ascertaining the violation, as well as in assessing the appropriateness of a penalty measure, which shall be defined and imposed by the relevant corporate bodies.

The procedure for ascertaining violations may be initiated:

- a. as a result of a report received by the SB;
- b. in the absence of reports received, from specific elements collected during the checks carried out by the Supervisory Board, or by another internal body in charge (e.g. Internal



Audit), also on the basis of elements collected through the "Information flows to the Supervisory Board, pursuant to Legislative Decree No. 231/01".

In accordance with the general provisions of the Occupational Safety Consolidation Act (Legislative Decree No. 81/2008, the so-called TUSL in Italian), the following persons are responsible for identifying and reporting any violations, each within the scope of their own functions and responsibilities connected with the correct application of the legislation, policies, procedures, instructions and specific prescriptions that make up the Workers' Health and Safety Management System (SGS in Italian) and the adoption of suitable safety measures:

- a. Employer of ECOGEST spa
- b. Managers
- c. Quality and Safety System Manager (RSQ in Italian)
- d. Prevention and Protection Service Manager (RSPP in Italian)
- e. Safety Auditor

If the situation of an alleged violation arises from an auditing activity, the auditing documentation must be forwarded to the Supervisory Board:

- by the Internal Audit;
- by the Employer, for audits on the RSQ and RSPP only.

### **5.3.2. Imposition of penalties on the employees.**

In accordance and respect with the provisions of the law in force, and in compliance with the procedures, provisions and guarantees set out in Article 7 of the Workers' Statute, to which reference should be made in full, any employees involved in the disciplinary procedure may be called in to clarify the facts and situations alleged.

In any case, the charge shall be formalised and communicated to the employee(s) concerned, granting them the opportunity to oppose and provide their version, with an appropriate period of time to reply regarding their defence.

The General Manager, or by proxy, the Human Resources Manager, shall be responsible for initiating the disciplinary procedure and for imposing the penalty, which shall be proportionate to the seriousness of the violation committed and to any repeated offence.

The General Manager or, by proxy, the Human Resources Manager, shall act in compliance with the powers vested on him/her, in respect of the assessment of all relevant aspects, of the specific circumstances, of the opinion expressed by the Supervisory Body, as well as of the considerations of the employee who is accused of non-compliance with the procedures, provisions and guarantees laid down in Article 7 of the Workers' Statute.

In imposing the disciplinary penalty, the principle of proportionality between the offence and the penalty shall be complied with, and account shall be taken of any circumstances mitigating the seriousness of the conduct (activity aimed at removing or preventing the harmful consequences, extent of the damage or consequences, etc.) and all the specific circumstances of the case shall be assessed.

The outcome of any disciplinary proceedings for non-compliance with Model 231 is communicated to the SB.

The documentation issued with reference to the detection, assessment and communication of events potentially subject to sanction and the related assessment by the Function Manager and the Employer, as well as the notification to the employee of the penalty and any dispute, are filed by the Personnel Department.

### **5.3.3. Establishment of the violation and imposition of penalties on the managers.**

The above-described procedure for imposing penalties also applies to managers, in accordance with the law specifically relating to them.

### **5.3.4. Establishment of the violation and imposition of penalties on the directors.**

Upon receiving information of a significant violation, by one or more Directors, of the rules laid down in the Model and/or in the Code of Ethics or of conduct, during the performance of activities at risk pursuant to Decree No. 231, which does not comply with the provisions of the Model itself, the Supervisory Board shall promptly inform the entire Board of Directors and the Board of Statutory Auditors of what has happened, in order to take any appropriate measure. The Board of Directors shall carry out the necessary investigations and, in accordance with the law and the Articles of Association, and after consulting the Board of Statutory Auditors, may take the appropriate measures such as, for example, calling a Shareholders' Meeting to revoke the mandate, and/or take corporate liability action pursuant to Article 2393 of the Italian Civil Code.

## **6. MODEL UPDATING**

Decree No. 231 expressly sets out the requirement of updating the Organisation, Management and Control Model, in order to ensure that it is constantly adapted to the specific needs of the entity and its concrete operations.

The adjustment and/or updating measures of the Model shall be carried out essentially on the occasion of:

- regulatory innovations;
- violations of the Model and/or findings emerged during checks on its effectiveness (which may also be derived from experiences concerning other companies);
- changes in the organisational structure of the entity, also resulting from extraordinary operations or from changes in the business strategy arising from new areas of activity undertaken.

The updating of the Model and, therefore, its integration and/or amendment, is the responsibility of the Board of Directors to which the legislator has assigned the task of adopting the Model.

The simple "care" of the updating procedure, i.e. the mere solicitation to that effect and not its direct implementation, falls instead to the Supervisory Board in coordination with the Internal Audit.

## **7. CODE OF ETHICS**

The Code of Ethics and Model 231 are complementary and integrated.

The Code of Ethics and Model 231 are complementary and integrated with each other.

The Code of Ethics was adopted by ECOGEST spa before and regardless of the adoption of Model 231, in order to define the principles of conduct and the values pursued by the Company in performing its activities, as well as the commitments and responsibilities that its collaborators are required to fulfil.

The Code of Ethics, as it is formulated, proves to be an adequate, useful tool to provide all subjects operating in and for ECOGEST spa, clear and detailed information on the solution of problems of an ethical and commercial nature.

Therefore, reference is made to this document in full, considering it to all effects an integral part of Model 231.